



**CITY COUNCIL
AMENDED MEETING AGENDA**

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

**Tuesday, May 02, 2023
7:00 PM**

- 1. Call to Order**
- 2. Roll Call**
- 3. Flag Salute**
- 4. Special Items:**
 - [a.](#) Proclamation Tumwater Bike Month May 2023
 - [b.](#) Timberland Regional Library – State of Address (Executive Director Cheryl Heywood)
 - [c.](#) Proclamation Emergency Services Week May 21-27, 2023
- 5. Public Comment:** (for discussion of items not having a public hearing on tonight's agenda)
- 6. Consent Calendar:**
 - [a.](#) Approval of Minutes: City Council Special, April 11, 2023
 - [b.](#) Approval of Minutes: City Council, April 18, 2023
 - [c.](#) Payment of Vouchers (Shelly Carter)
 - [d.](#) Ordinance No. O2023-009 Regarding Transportation Network Companies (John Doan)
 - [e.](#) Resolution No. R2023-007 Delegation of Signature Authority for Grant Documents Related to Somerset Hill Fish Passage Barrier Removal Design (Dan Smith)
 - [f.](#) Stormwater Capacity Grant Agreement with the Department of Ecology Amendment No. 1 (David Kangiser)
 - [g.](#) Common Interest/Joint Defense Agreement with Olympia (Karen Kirkpatrick)
 - [h.](#) Thurston Community Media (TCMedia) Operating Agreement Amendment No. 2 (Ann Cook)
 - [i.](#) Reappointment of Bill Kallappa II to the Board of Parks and Recreation Commissioners and David Bills, Brian Reynolds, and Satpal Sohal to the Lodging Tax Advisory Committee (Hanna Miles)
 - [j.](#) Heritage Tree Nomination (Alyssa Jones Wood)
- 7. Council Considerations:**
 - [a.](#) Ordinance No. O2023-008, Amending Title 2 of the Tumwater Municipal Code, Adding Chapter 2.54, General Guidelines for Advisory Boards and Commissions (John Doan)

8. Committee Reports

- a. Public Health and Safety Committee (Leatta Dahlhoff)
- b. General Government Committee (Michael Althausen)
- c. Public Works Committee (Eileen Swarthout)

9. Mayor/City Administrator's Report

10. Councilmember Reports

11. Executive Session:

- a. Potential Litigation pursuant to RCW 42.30.110(1)(i)

12. Any Other Business

13. Adjourn

Hybrid Meeting Information

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

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

Watch Online

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

OR

Go to <http://www.zoom.us/join> and enter the Webinar ID 872 0286 1030 and Passcode: 923010

Listen by Telephone

Call (253) 215-8782, listen for the prompts and enter the Webinar ID 872 0286 1030 and Passcode 923010.

Public and Written Comment

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

https://us02web.zoom.us/webinar/register/WN_aNSrR-4KR7ON3KpGBWE52g

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

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

Post Meeting

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

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

Accommodations

The City of Tumwater takes pride in ensuring that people with disabilities are able to take part in, and benefit from, the range of public programs, services, and activities offered by the City. To request an accommodation or alternate format of communication, please contact the City Clerk by calling (360) 252-5488 or email CityClerk@ci.tumwater.wa.us. For vision or hearing impaired services, please contact the Washington State Relay Services at 7-1-1 or 1-(800)-833-6384. To contact the City's ADA Coordinator directly, call (360) 754-4128 or email ADACoordinator@ci.tumwater.wa.us

Proclamation

Whereas, bicycling is one of the most energy-efficient forms of transportation ever invented, and is a mode of transportation well suited to urban environments where trips are short in length and overly congested roads are difficult and costly to expand; and

Whereas, transportation accounts for about half of carbon dioxide emissions from fossil fuel in Washington State, which adds to the problem of climate change; and

Whereas, bicycle commuting reduces energy consumption, pollution, and congestion; and

Whereas, bicycling makes people healthier and more productive, prevents chronic diseases through physical activity, improves cardiovascular health, reduces stress, and supports physical, emotional and mental well-being; and

Whereas, the national non-profit bicycling safety and education association, the League of American Bicyclists, has declared the month of May to be National Bike Month for each of the last sixty-six (66) years, and has done so again in 2023; and

Whereas, the City of Tumwater supports healthier alternatives to inefficient drive-alone trips, particularly for travel around the City, by building bicycle facilities, and participating in the Wheel Options commute trip reduction campaign; and

Whereas, Intercity Transit, with many sponsors including local and regional businesses and organizations, is hosting the 36th Annual Bicycle Community Challenge during the month of May 2023.

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

May 2023
Bicycle Month

in the City of Tumwater, and in recognition of National Bike Month and Clean Air Month, I encourage all residents to put forth their best effort to reduce single-occupant motor vehicle trips to reduce air pollution, energy consumption and traffic congestion.

Signed in the City of Tumwater, Washington, and recognized on this 2nd day of May, two thousand twenty-three.



Debbie Sullivan
Debbie Sullivan
Mayor

Proclamation

WHEREAS, emergency medical services is a vital public service that provides lifesaving and supporting care to the people of Tumwater 24-hours a day, seven days a week; and

WHEREAS, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and

WHEREAS, the emergency medical services teams consist of first responders, emergency medical technicians, paramedics, emergency medical dispatchers, firefighters, police officers, educators, administrators, pre-hospital nurses, emergency nurses, emergency physicians, trained members of the public and other out of hospital medical care providers; and

WHEREAS, the members of emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills; and

WHEREAS, the people of the City of Tumwater recognized the need for and initiated a county-wide emergency medical services system since 1974. Emergency medical services has grown to fill a gap by providing important, out of hospital care, including preventative medicine, follow-up care, and access to telemedicine; and

WHEREAS, it is appropriate to recognize, honor, and promote the value of the accomplishments of emergency medical services providers and the Thurston County Medic One/Emergency Medical Services System by designating Emergency Medical Services Week.

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

May 21-27, 2023

Emergency Medical Services Week

in the City of Tumwater, and I encourage all people to join in this observance to recognize those who give so much of themselves and consistently rise to the challenge for the safety and health of others.

Signed in the City of Tumwater, Washington, and recognized on this 2nd day of May in the year, two thousand twenty-three.



Debbie Sullivan

Debbie Sullivan
Mayor

**TUMWATER SPECIAL CITY COUNCIL
MINUTES OF MEETING
April 11, 2023 Page 1**

CONVENE: 6:00 p.m.

PRESENT: Mayor Debbie Sullivan and Councilmembers Peter Agabi, Leatta Dahlhoff, Angela Jefferson, Charlie Schneider and Eileen Swarthout

Excused: Councilmembers Michael Althausen & Joan Cathey

Staff: City Administrator John Doan and Parks & Recreation Director Chuck Denney

Kyle Cronk, Shelton Family YMCA CEO

**WALKING TOUR
OF SHELTON YMCA**

At 6:00 p.m., everyone met at Shelton Family YMCA at 3101 North Shelton Springs Road, Shelton, WA 98584. From there a walking tour commenced of the Shelton YMCA.

ADJOURNMENT: The tour commenced at 7:15 p.m..

Prepared by Melody Valiant, City Clerk

TUMWATER CITY COUNCIL MEETING
MINUTES OF HYBRID MEETING
April 18, 2023 Page 1

CONVENE: 7:30 p.m.

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

Staff: City Administrator John Doan, City Attorney Karen Kirkpatrick, and City Clerk Melody Valiant.

PUBLIC COMMENT: **Patricia Riley, Roberts Road, Tumwater,** said she has learned that the location of the E Street Extension has changed. She is concerned about the plans to use a different route for the extension between Capitol Boulevard and Cleveland Avenue. The original plan depicted a straight route located south of the Department of Fish and Wildlife warehouse. She and her neighbors did not have a problem with the original route; however, the new route is located less than 100 feet from her neighbor's backyard. The original proposal retained most of the existing trees and a buffer for wildlife. The proposed route would disrupt lives every day. The neighborhood will have to deal with the disruption of the roadway. The selection of Option 2B would include a new access road to the LOTT property near the water tower. It appears no one has considered the wildlife, trees, or the constant noise and disruption it will cause to those who own homes in the area. The four-lane road would include bike lanes on both sides of the road, sidewalks, and curbs and would be routed between backyards and the old brewery million-gallon water tank. The distance from the backyards and the water tank is less than 300 feet. Because of the width of the road, the road would be close to property lines. A new roundabout will likely require a portion of a neighbor's property. Additionally, residents would be unable to turn left onto Cleveland Avenue. At least 10 deer live in the area behind the homes along with a variety of other wildlife. She asked when the City stopped considering the lives of animals that would most likely be killed by removing all the trees. She questioned the importance of the project over the lives of wildlife that have lived in the area much longer than the residents. The neighborhood would suffer from constant noise and property devaluation. Larger areas of timber removed is heartbreaking for two reasons – the destruction of trees and wildlife displaced from existing habitat with most dying in the process. All new development in the City includes removal of forests. She was informed that it would entail another two years before the City receives funding for the project and then the public would be notified. However, the proposals for funding were completed in 2015. If there is a delay, it would not be possible for neighbors to wait until funding is approved to have their voices heard. She understands the need for another road to connect Capitol Boulevard and Cleveland Avenue; however, there must be a better idea. The neighborhood has some ideas but communication is necessary with staff involved in the project. She is seeking more information concerning the project in order to schedule a meeting to share information on the impacts to the neighborhood.

TUMWATER CITY COUNCIL MEETING
MINUTES OF HYBRID MEETING
April 18, 2023 Page 2

Lisa Gillotti, 110 Copper Wood Lane, Lacey, advised that Build the Bus Home is transitioning to Nurture Hope. Under Nurture Hope, two programs will continue of building bus homes and showers for unhoused people. She is seeking locations at this time and would like to discuss the possibility of using the Fire Department parking lot as a potential site.

**CONSENT
CALENDAR:**

- a. Approval of Minutes: City Council Worksession, March 28, 2023
- b. Approval of Minutes: City Council, April 4, 2023
- c. Payment of Vouchers
- d. Agreement with Clearcreek Contractors for the 2023 Palermo Lagoon Dredging & Maintenance Project
- e. Service Provider Agreement with HDR Engineering, Inc. for the Old Highway 99 and 79th Avenue Roundabout Project
- f. Fire Engine Purchase Agreement
- g. Authority to Solicit Bids and Award Contract for the 2023 Pavement Maintenance Project

MOTION:

Councilmember Althaus moved, seconded by Councilmember Dahlhoff, to approve the consent calendar as published. Motion carried unanimously.

Mayor Sullivan advised of an abbreviated agenda due to a previous reception to meet City Administrator candidates.

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

City Administrator Doan acknowledged the meeting as the first in-person meeting of the entire Council since the start of the pandemic in 2019. He shared that the meeting would be his last Council meeting prior to his retirement and wanted to share some final thoughts. He thanked the Council for the opportunity to serve the community. Although he thoroughly enjoyed serving the City, some unsolved issues surrounding the brewery remain as both a challenge and an opportunity as there could be some amazing things that could occur on the property when the time is right. In the meantime, efforts on craft brewing, distilling, and cider making have been amazing and he is hopeful the Council continues to move forward. Over the past five years, the City has hired 50% of its workforce, which in itself is amazing. In his first year with the City, the City only hired one new employee. He acknowledged department directors who are subject matter experts and passionate about the community. Future projects include more park projects as well as a new community center. He thanked the Council for their support and their time devoted to the City.

Mayor Sullivan commented on the daunting task of filling his position. City Administrator Doan has been very important in ensuring her first year as the Mayor was successful, as well as supporting her through her recent personal loss. He leaves a legacy that everyone can see and appreciate.

**TUMWATER CITY COUNCIL MEETING
MINUTES OF HYBRID MEETING
April 18, 2023 Page 3**

ADJOURNMENT: **With there being no further business, Mayor Sullivan adjourned the meeting at 7:45 p.m.**

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

TO: City Council
 FROM: Shelly Carter, Assistant Finance Director
 DATE: May 2, 2023
 SUBJECT: Payment of Vouchers

1) Recommended Action:

Staff is seeking City Council ratification of:

- April 14, 2023 payment of Eden vouchers 173352 to 173374 in the amount of \$285,980.28 and electronic payments 902719 to 902731 in the amount of \$156,151.76 and wire payments of \$213,529.41; and Munis vouchers 180010 to 180066 in the amount of \$197,500.77 and electronic payments 903000 to 903011 in the amount of \$104,049.67;
 - April 21, 2023 payment of Eden vouchers 173375 to 173379 in the amount of \$4,115.48 and Munis vouchers 180067 to 180145 in the amount of \$393,429.62 and electronic payments 903012 to 903090 in the amount of \$623,371.49.
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2) Background:

The City pays vendors monthly for purchases approved by all departments. The Finance Director has reviewed and released the payments as certified on the attached Exhibit(s). The full voucher listings are available by request to the Assistant Finance Director. The most significant payments* were:

Vendor	\$	Description
Trebron Security, LLC	24,705.94	SOPHOS Xstream Protection – IT software
Shea Carr & Jewell Inc	52,909.69	Professional Services 2/26 to 4/1/23 – Israel to M Street Project
Cascade Recreation Inc	100,964.57	PE#4 Preserve Park Equipment Purchase & Installation
Herrera Environmental Consultants	33,176.12	Professional Services 1/28 to 3/31/23 – Stormwater Management Action Planning
Tapani Inc	69,038.05	PE# 3 Preserve Park
Var Technology Finance	55,438.46	GETAC Security/Accessories/Warranties – Police Dept.
LOTT Wastewater Alliance	560,700.82	March LOTT Fees

* Includes vouchers in excess of \$20,000, excluding routine utility payments.

3) Policy Support:

- Strategic Goals and Priorities: Fiscally responsible and develop sustainable financial strategies.
- Vision Mission Beliefs-Excellence: Efficient stewards of public resources, building public trust through transparency.

4) Alternatives:

- ☐ Ratify the vouchers as proposed.
- ☐ Develop an alternative voucher review and approval process.

5) Fiscal Notes:

The vouchers are for appropriated expenditures in the respective funds and departments.

6) Attachments:

- A. Exhibit A – Payment of Vouchers – Review and Approval
- B. Exhibit B – Payment of Vouchers – Review and Approval

EXHIBIT "A"

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein and that the claim is a just, due and unpaid obligation against the City of Tumwater, and that I am authorized to authenticate and certify to said claim.

Munis

Voucher/Check Nos 180010 through 180066 in the amount of \$197,500.77

Electronic payment No 903000 through 903011 in the amount of \$104,049.67

Eden

Voucher/Check Nos 173352 through 173374 in the amount of \$285,980.28

Electronic payment No 902719 through 902731 in the amount of \$156,151.76

Wire payments of \$213,529.41



Asst. Finance Director, on behalf of the Finance Director

Checks dated 04/14/2023

EXHIBIT "B"

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein and that the claim is a just, due and unpaid obligation against the City of Tumwater, and that I am authorized to authenticate and certify to said claim.

Munis

Voucher/Check Nos 180067 through 180145 in the amount of \$393,429.62

Electronic payment No 903012 through 903090 in the amount of \$623,371.49

Eden

Voucher/Check Nos 173375 through 173379 in the amount of \$4,115.48

A handwritten signature in cursive script, reading "Shelly G. Carter", is written over a horizontal line.

Asst. Finance Director, on behalf of the Finance Director

Checks dated 04/21/2023

TO: City Council
FROM: John Doan, City Administrator
DATE: May 2, 2023
SUBJECT: Ordinance No. O2023-009 regarding Transportation Network Companies

1) Recommended Action:

Adopt Ordinance No. O2023-009 repealing Tumwater Municipal Code Chapter 5.07 relating to Transportation Network Companies.

2) Background:

Ordinance No. O2016-004 was adopted June 7, 2016 to regulate Transportation Network Companies (e.g. Uber, Lyft, etc.). ESHB 2076 (2022) established a comprehensive state-wide regulation of Transportation Network Companies across the State of Washington. It preempts local government from regulating these Companies and their drivers. Consequently, the City's regulations need to be repealed. Because this is mandated, this item was placed directly on the consent agenda.

3) Policy Support:

Strategic Priority: Provide and Sustain Quality Public Safety Services

4) Alternatives:

This repeal is mandated by State law.

5) Fiscal Notes:

There will be minimal savings to the City.

6) Attachments:

A. Ordinance No. O2023-009

ORDINANCE NO. O2023-009

AN ORDINANCE of the City Council of the City of Tumwater, Washington, repealing Tumwater Municipal Code Chapter 5.07 (Ordinance O2016-004) relating to Transportation Network Company Services.

WHEREAS, the City Council approved Ordinance O2016-004 on June 7, 2016 to provide for and promote the safety and welfare of the general public with respect to the regulation of Transportation Network Company Services operating within the City of Tumwater; and

WHEREAS, Transportation Network Companies are companies like Uber or Lyft that use computer or mobile-phone-based applications to connect passengers and drivers for the purpose of providing prearranged rides; and

WHEREAS, on March 31, 2022, Governor Jay Inslee signed into law Engrossed Substitute House Bill (ESHB) 2076 to establish comprehensive state-wide regulations for Transportation Network Companies and drivers operating in Washington; and

WHEREAS, with certain exceptions not applicable to the City of Tumwater, ESHB 2076 expressly preempts the field of regulating Transportation Network Companies and drivers in Washington and provides that no local government may regulate Transportation Network Companies or drivers or impose any tax, fee, or charge that applies explicitly or exclusively to Transportation Network Companies or drivers; and

WHEREAS, the City must therefore repeal TMC 5.07 because its regulation of Transportation Network Companies and drivers is specifically preempted and prohibited by ESHB 2076.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Repealer. Chapter 5.07 of the Tumwater Municipal Code, Transportation Network Company Services, is hereby repealed in its entirety.

~~Chapter 5.07~~ ~~TRANSPORTATION NETWORK COMPANY SERVICES~~

~~Sections:~~

~~5.07.010 Purpose.~~

~~5.07.020 Definitions.~~

~~5.07.030 Turnwater business license required.~~

~~5.07.040 TNC license required.~~

~~5.07.050 TNC driver requirements.~~

~~5.07.060 TNC requirements.~~

~~5.07.070 Vehicle inspection and maintenance.~~

~~5.07.080 Insurance requirements.~~

~~5.07.090 Registered agent required.~~

~~5.07.100 Audit.~~

~~5.07.110 Operational requirements.~~

~~5.07.120 Nondiscrimination Accessibility.~~

~~5.07.130 Revocation, suspension, or denial of TNC license.~~

~~5.07.140 Enforcement.~~

~~5.07.150 Delegation and reciprocity.~~

~~5.07.160 Penalty.~~

~~5.07.010 Purpose.~~

~~The purpose of this chapter is to provide for and promote the safety and welfare of the general public and not to create or designate any particular class of persons who will or should be specially protected by its terms. Nothing contained in this chapter is intended, nor shall be construed, to create any liability on the part of the city or its employees for any injury or damage resulting from the failure of the licensee to comply with the provisions of this chapter, or by the city's or its employees' enforcement or failure to enforce any part of this chapter.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.020 Definitions.~~

~~For the purpose of this chapter, the following definitions apply:~~

~~A. “Digital network” means an Internet-enabled platform or application used to connect passengers with TNC drivers.~~

~~B. “Director” means the director of the city of Tumwater’s finance department.~~

~~C. “Operate a TNC in the city of Tumwater” means a TNC uses its digital network to connect a TNC driver to a passenger for a trip originating in the city of Tumwater.~~

~~D. “Operate as a TNC driver in the city of Tumwater” means a TNC driver accepts a trip request over a TNC’s digital network that originates in the city of Tumwater.~~

~~E. “Person” means any natural person of either sex, firms, corporations, partnerships and associations either acting by themselves or by servant, agent or employee. The singular shall include the plural and the masculine pronoun shall include the feminine and neuter.~~

~~F. “TNC driver” means an individual who uses a personal vehicle to provide transportation services arranged through a TNC’s digital network.~~

~~G. “TNC vehicle” means a personal vehicle used by a TNC driver to provide transportation services arranged through a TNC’s digital network.~~

~~H. “Transportation network company” or “TNC” means an entity that uses a digital network to connect passengers to TNC drivers who use personal vehicles to transport passengers for compensation between geographical points chosen by the passenger.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.030 Tumwater business license required.~~

~~A. It is a violation of this chapter for any TNC to operate in the city of Tumwater without a current and valid city of Tumwater business license.~~

~~B. It is a violation of this chapter for any driver, who is an independent contractor affiliated with a TNC, to operate as a TNC driver in the city of Tumwater without a~~

~~current and valid city of Tumwater business license. It is the responsibility of the TNC to communicate this requirement to TNC drivers.~~

~~C. TNC drivers must keep a copy of their business license in their vehicle when logged on and accepting rides from the TNC's digital network. It is the responsibility of the TNC to communicate this requirement to TNC drivers.~~

~~D. Except as described in subsections B and C of this section, the TNC shall have no obligations as to TNC driver business license requirements.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.040 TNC license required.~~

~~A. It is a violation of this chapter for any TNC to operate in the city of Tumwater without a current and valid city of Tumwater TNC license except as provided in TMC 5.07.150(B).~~

~~B. The director or designee may issue a TNC license; provided, that the TNC applicant submits an affidavit sworn under penalty of perjury, on a form provided by the city, that to the best of the applicant's knowledge, formed after a diligent inquiry into the facts, the TNC is in full compliance with this chapter, including, but not limited to, all driver, vehicle, insurance, and operational requirements.~~

~~C. The TNC license shall be effective for one year.~~

~~D. The annual TNC license fee shall be \$1,000 and shall be paid in full at the time of submitting all initial and renewal applications.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.050 TNC driver requirements.~~

~~A. TNC drivers shall certify that they have no known physical or mental infirmity which jeopardizes the ability to safely operate as a TNC driver transporting the public.~~

~~B. TNC drivers shall be at least twenty-one years of age.~~

~~C. TNC drivers shall possess a valid Washington State driver's license and shall have been continuously licensed as a driver by the state of Washington and/or another state for at least one year immediately prior to operating as a TNC driver in Tumwater. A home state driver's license with active military ID or student ID~~

~~with proof of full-time enrollment and nonresident status may be an acceptable alternative, subject to review and approval.~~

~~D.—TNC drivers shall certify that they have insurance that meets the minimum liability requirements for the state of Washington, including insurance coverage for use of the vehicle for transportation of passengers for hire as required by Chapter 48.177 RCW as enacted or subsequently amended.~~

~~E.—TNC drivers shall not have been convicted or found to have committed three or more moving violations during any twelve-month period during the three years prior to operating as a TNC driver in Tumwater.~~

~~F.—TNC drivers shall possess proof of motor vehicle registration and proof of current automobile liability insurance. The TNC shall certify that all drivers have insurance that meets the requirements of this chapter, including insurance coverage for use of the vehicle for transportation of passengers for hire as required by Chapter 48.177 RCW as enacted or subsequently amended.~~

(Ord. O2016-004, Added, 06/07/2016)

~~5.07.060 TNC requirements.~~

~~A.—The TNC or its agent shall maintain accurate and up-to-date records for all TNC drivers accessing its digital network to provide TNC services in the city of Tumwater. Said records shall include the driver's name, age, address, social security number, criminal history, driver's license, motor vehicle registration, vehicle safety inspection records, and proof of at least the minimum automobile liability insurance coverage required by the state of Washington, including insurance for use of the vehicle for transportation of passengers for hire as required by Chapter 48.177 RCW as enacted or subsequently amended.~~

~~B.—Prior to permitting a person to act as a TNC driver on its digital network, and annually thereafter, the TNC shall obtain and review a criminal background check report for such person. The criminal background check shall include a search of no less than five years of database history, unless prohibited by law, in which case the duration of the search shall be the maximum number of years permitted by law. The criminal background check shall include local, state, and national criminal history databases and national and state sex offender registries. Any person who is on a sex offender registry or who has a criminal conviction, within the past five years, of crimes involving driving under the influence of alcohol or controlled substances, felony fraud, sexual offenses, felony property damage or theft, acts of violence, acts of terror, reckless driving or negligent driving, or use of a motor vehicle to commit a felony, shall not be permitted to act as a TNC driver on the~~

~~TNC's digital network. The TNC or its agents shall maintain records of such criminal background checks for a period of two years. For purposes of this section, the term "criminal conviction" includes a "conviction or other disposition adverse to the subject" as defined under RCW 10.97.030, and bail forfeitures.~~

~~C. The TNC shall only permit an individual to act as a TNC driver on its digital network if it finds that the standards set forth in this section are met by such individual. The TNC shall revoke a driver's authority to act as a TNC driver on its digital network if the standards set forth in this section are not met.~~

~~(Ord. O2016 004, Added, 06/07/2016)~~

~~5.07.070 Vehicle inspection and maintenance.~~

~~A. TNC vehicles operating in the city of Tumwater shall be no more than ten years old.~~

~~B. The TNC shall inspect or cause to be inspected annually and every year thereafter, every motor vehicle used by a TNC driver before allowing the driver to use the motor vehicle to provide transportation services.~~

~~C. The inspection required in subsection B of this section must include, without limitation, an inspection of the foot and emergency brakes, steering, windshield, rear window, other glass, windshield wipers, headlights, tail lights, turn indicator lights, braking lights, front seat adjustment mechanism, doors, horn, speedometer, bumpers, steering system, muffler, exhaust, tires, rear view mirrors, and safety belts. The inspection must ensure that all of the components listed are in proper functioning order.~~

~~D. The TNC shall maintain vehicle safety inspection records for a minimum of three years.~~

~~(Ord. O2016 004, Added, 06/07/2016)~~

~~5.07.080 Insurance requirements.~~

~~The TNC shall comply with the automobile liability insurance requirements contained in Chapter 48.177 RCW as enacted or subsequently amended.~~

~~(Ord. O2016 004, Added, 06/07/2016)~~

~~5.07.090 Registered agent required.~~

~~The TNC shall maintain a registered agent for service of process in the state of Washington. The name, telephone number, and physical address of the registered agent shall be submitted to the city of Tumwater at the time of license application. The TNC shall notify the city of Tumwater in writing of any changes to its registered agent during the term of the license.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.100 Audit.~~

~~A. No more than twice per license year, the city may audit the TNC's records to review compliance with this chapter. Each audit shall be limited to records relating to no more than twenty randomly selected TNC drivers operating in the city of Tumwater. In the event the audit reveals discrepancies in the records reviewed, the city reserves the right to audit all of the TNC's records related to TNC drivers operating in the city of Tumwater.~~

~~B. The audit shall occur at Tumwater City Hall, 555 Israel Road SW, Tumwater, Washington; provided, that the city may in its discretion agree to an alternative location.~~

~~C. Notwithstanding the foregoing, the city may require the TNC to produce records at any time to investigate a specific complaint regarding compliance with this chapter.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.110 Operational requirements.~~

~~A. While in service in the city, TNC drivers shall only transport passengers who have arranged transportation through a TNC's digital network and shall not solicit or accept street hails by persons seeking transportation.~~

~~B. While in service in the city, each TNC vehicle shall display removable trade dress or marks which are visible from fifty feet and clearly associate the vehicle with a licensed TNC company.~~

~~C. The TNC's digital network or website shall display for the passenger the first name and photograph of the TNC driver as well as the make, model, and license plate number of the TNC vehicle.~~

~~D.—The TNC’s digital network or website shall display for the passenger the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC vehicle.~~

~~E.—The TNC shall implement a zero tolerance policy on the use of drugs or alcohol applicable to any TNC driver on its digital network. The TNC shall provide notice of the zero tolerance policy on its website, as well as the procedures to report a complaint about a TNC driver with whom the passenger was matched and for whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the ride. The TNC shall immediately suspend a driver upon receipt of a passenger complaint alleging a violation of the zero tolerance policy. The suspension shall last the duration of the investigation.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.120 Nondiscrimination—Accessibility.~~

~~A.—The TNC shall adopt a policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to riders and potential riders and notify TNC drivers of such policy.~~

~~B.—TNC drivers shall comply with all applicable laws regarding nondiscrimination against riders or potential riders on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity.~~

~~C.—TNC drivers shall comply with all applicable laws relating to accommodation of service animals.~~

~~D.—A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.130 Revocation, suspension, or denial of TNC license.~~

~~A.—A TNC license may be revoked, suspended, or denied by the director for any of the following reasons:~~

- ~~1.—Failure to meet or maintain any of the requirements or qualifications set forth in this chapter for obtaining a TNC license.~~

~~2.—A materially false statement contained in the application for the license.~~

~~3.—Any violation of this chapter.~~

~~B.—Prior to any revocation, suspension or denial of any TNC license, the city shall inform the TNC of their right to a hearing thereon. Such hearing, if requested, shall be conducted before the city prior to the implementation of any revocation, suspension or denial.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.140 Enforcement.~~

~~The director shall have the administrative authority to implement and enforce this chapter. The director may adopt rules and regulations for its administration not inconsistent with this chapter. This provision shall not be construed to abrogate or limit the jurisdiction of the Tumwater police department to enforce any provisions of this chapter or of any other city ordinance relating to motor vehicles or the operation of taxicabs or TNC vehicles.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.150 Delegation and reciprocity.~~

~~A.—The city of Tumwater may delegate the administration and enforcement of TNC licenses to a partner jurisdiction by interlocal agreement.~~

~~B.—The city of Tumwater honors valid TNC licenses issued by partner jurisdictions pursuant to an interlocal agreement as long as their ordinances regarding TNC licenses remain substantially the same as Tumwater's. A person holding a valid TNC license from a partner jurisdiction is authorized to conduct the licensed business within the city of Tumwater in exactly the same manner and subject to the same rules and regulations as a person holding a license from the city of Tumwater.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.160 Penalty.~~

~~A.—In addition to all other provisions and standards of this chapter, the acts or omissions set forth in this section are prohibited. Any TNC or TNC driver who shall fail to comply with any provision or standard of this chapter shall be in violation of this chapter. A TNC may be held responsible for violations by TNC drivers if the TNC is provided notice of the violation and fails to cure it within a reasonable~~

~~period. Any special license granted to a TNC may be suspended or revoked by the director or designate for such violation.~~

~~B. Submitting a Materially False Affidavit or Attestation. Any TNC submitting a materially false affidavit as provided for under TMC 5.07.040 shall be deemed to have committed a misdemeanor and, if found guilty, shall be subject to a fine not to exceed \$1,000, and/or to imprisonment not to exceed ninety days or to both such fine and imprisonment. Each day shall be a separate offense. In the event of a continuing violation or failure to comply, the second and subsequent days shall constitute a gross misdemeanor punishable by a fine not to exceed \$5,000 and/or imprisonment not to exceed three hundred sixty four days or both such fine and imprisonment. "Continuing violation" shall mean the same type of violation which is committed within a year of the initial violation.~~

~~C. Operating without a TNC License. Any TNC affiliating with a driver who is picking up a passenger in the city of Tumwater without having first obtained a TNC license shall be subject to a civil infraction as provided in TMC Chapter 1.10 and the penalties in TMC 1.10.120.~~

~~D. While in service, any TNC driver picking up a passenger in the city of Tumwater without having a current contract with a special licensed TNC shall be subject to a civil infraction as provided in TMC Chapter 1.10 and the penalties in TMC 1.10.120.~~

~~E. Any independent contractor TNC driver who picks up a passenger in the city of Tumwater and who has not obtained a business license under TMC 5.04.020 shall be subject to penalties as stated in TMC 5.04.080.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

Section 2. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 4. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 5. Effective Date. This ordinance shall become effective thirty (30) days after passage, approval and publication as provided by law.

ADOPTED this _____ day of _____, 2023.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:_____

Effective Date:_____

TO: City Council
FROM: Dan Smith, Director – Water Resources & Sustainability
DATE: May 2, 2023
SUBJECT: Resolution No. R2023-007 Delegation of Signature Authority for Grant Documents Related to Somerset Hill Fish Passage Barrier Removal Design

1) Recommended Action:

Staff requests City Council approve and authorize the Mayor to sign Resolution No. R2023-007 Delegation of Signature Authority for Grant Documents Related to Somerset Hill Fish Passage Barrier Removal Design, which will allow the City to apply for grant funding for the Somerset Hill project from the Recreation and Conservation Office and allow Dan Smith to serve as the City of Tumwater authorized signatory. This resolution was recommended for signature by the Public Works Committee at their April 6, 2023 meeting.

2) Background:

The culvert conveying Percival Creek under Sapp Road has been identified as a partial barrier to fish passage due to velocity. The City plans to replace the culvert with a larger one that allows for easier fish passage, creates improved habitat, and helps to realign the creek toward its natural channel. The project is seeking design and permitting funding from the Washington State Recreation and Conservation Office's Salmon Recovery Funding Board.

3) Policy Support:

Strategic Priority B – Be a Leader in Environmental Sustainability

- Remove obstructions to fish passage

4) Alternatives:

☐ Request changes to the proposed resolution.

5) Fiscal Notes:

This project seeks \$280,000 from the Salmon Recovery Funding Board to complete 100% Plans, Specifications & Estimates. This grant source requires no match.

6) Attachments:

A. Resolution No. R2023-007 Somerset Hill Fish Passage Barrier Removal Design

RESOLUTION NO. R2023-007

A RESOLUTION of the City Council of the City of Tumwater, Washington authorizing the person identified below (in section 2) to act as the authorized representative/agent on behalf of The City of Tumwater and to legally bind The City of Tumwater with respect to the Somerset Hill Fish Passage Barrier Removal Design Project #23-1095 for which The City of Tumwater seeks grant funding assistance managed through the Recreation and Conservation Office (Office or RCO).

WHEREAS, grant assistance is requested by our organization to aid in financing the cost of the Project referenced above;

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

Section 1. Our organization has applied for or intends to apply for funding assistance managed by the Office for the above “Project.”

Section 2. The City Council of the City of Tumwater hereby authorizes Dan Smith, Water Resources & Sustainability Director, (and subsequent holders of that title/position) to execute the following documents binding our organization on the above Project: (1) Grant application (submission thereof), (2) Project contact (day-to-day administering of the grant and communication with the RCO), (3) RCO Grant Agreement, and , (4) Agreement amendments.

The City Council of the City of Tumwater hereby authorizes Debbie Sullivan, Mayor (and subsequent holders of that title/position) to execute property and real estate documents (Notice of Grant, Deed of Right of Assignment of Rights if applicable) binding our organization on the above Project. These are items that are typically recorded on the property with the County.

The above persons are considered “authorized representatives/agents” for purposes of the documents indicated. Our organization shall comply with a request from the RCO to provide documentation of persons who may be authorized to execute document related to the grant.

Section 3. Our organization has reviewed the sample RCO Grant Agreement on the Recreation and Conservation Office’s WEB SITE at: <https://rco.wa.gov/wp-content/uploads/2019/06/SampleProjAgreement.pdf>. We understand and acknowledge that if offered an agreement to sign in the future, it will contain an

indemnification and legal venue stipulation and other terms and conditions substantially in the form contained in the sample Agreement and that such terms and conditions of any signed Agreement shall be legally binding on the sponsor if our representative/agent enters into an Agreement on our behalf. The Office reserves the right to revise the Agreement prior to execution.

Section 4. Our organization acknowledges and warrants, after conferring with its legal counsel, that its authorized representative(s)/agent(s) have full legal authority to sign on behalf of the organization for their assigned role/document.

Section 5. Grant assistance is contingent on a signed Agreement. Entering into any Agreement with the Office is purely voluntary on our part.

Section 6. Our organization understands that grant policies and requirements vary depending on the grant program applied to, the grant program and source of funding in the Agreement, the characteristics of the project, and the characteristics of our organization.

Section 7. Our organization further understands that prior to our authorized representative(s)/agent(s) executing any of the documents listed above, the RCO may make revisions to its sample Agreement and that such revisions could include the indemnification and the legal venue stipulation. Our organization accepts the legal obligation that we shall, prior to execution of the Agreement(s), confer with our authorized representative(s)/agent(s) as to any revisions to the project Agreement from that of the sample Agreement. We also acknowledge and accept that if our authorized representative(s)/agent(s) executes the Agreement(s) with any such revisions, all terms and conditions of the executed Agreement shall be conclusively deemed to be executed with our authorization.

Section 8. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.

Section 9. If match is required for the grant, we understand our organization must certify the availability of match at least one month before funding approval. In addition, our organization understand it is responsible for supporting all non-cash matching share commitments to this project should they not materialize.

Section 10. Our organization acknowledges that if it receives grant funds managed by the Office, the Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Office after we incur grant eligible and allowable costs and pay them. The Office

may also determine an amount of retainage and hold that amount until all project deliverables, grant reports, or other responsibilities are complete.

Section 11. Our organization acknowledges that any property owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity unless otherwise allowed by grant program policy, or Office in writing and per the project agreement or an amendment thereto.

Section 12. Our organization certifies the following: the Project does not conflict with the Puget Sound Action Agenda developed by the Puget Sound Partnership under RCW 90.71.310.

Section 13. This resolution/authorization is deemed to be part of the formal grant application to the Office.

Section 14. Our organization warrants and certifies that this resolution/authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that our organization has full legal authority to commit our organization to the warranties, certifications, promises and obligations set forth herein.

Section 15. Ratification. Any act consistent with the authority and prior to the effective date of this Resolution is hereby ratified and affirmed.

Section 16. Severability. The provisions of this Resolution are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Resolution or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the Resolution, or the validity of its application to other persons or circumstances.

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

Section 17. Effective Date. This Resolution shall become effective immediately upon adoption and signature as provided by law.

RESOLVED this ____ day of _____, 2023.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Washington State Attorney General's Office

Approved as to form Brian Tallen 2/13/2020
Assistant Attorney General Date

TO: City Council
FROM: Dave Kangiser, Water Resources Specialist
DATE: May 2, 2023
SUBJECT: Stormwater Capacity Grant Agreement with the Department of Ecology Amendment No. 1

1) Recommended Action:

Approve and authorize the Mayor to sign Amendment No. 1 to the 2021-23 Capacity Grant supporting the City's stormwater program. This amendment was recommended for signature by the Public Works Committee at their April 6, 2023 meeting.

2) Background:

The Capacity Grant is issued by the Department of Ecology to support implementation of water quality efforts related to stormwater permit compliance. This grant has been used to purchase equipment and supplies related to stormwater maintenance activities and also helps fund trainings, educational materials, and spill response supplies. An amendment is being offered as additional funding was provided to the 2021-23 Capacity Grant Funding Program by the State Legislature. The purpose of this amendment is to increase the grant funding by \$25,000. The grant contract period will extend from March 31, 2023 to June 30, 2023 to allow more time for the expenditure of additional funds. The additional funds will be used to support Stormwater Management Action Plan implementation tasks such as developing an ambient water quality monitoring program and increasing the number of pet waste stations in sensitive areas.

3) Policy Support:

Environment: We act to preserve and enhance the natural environment and the social fabric of our community.

4) Alternatives:

☐ Do not accept the additional \$25,000 for stormwater compliance efforts.

5) Fiscal Notes:

This amendment adds \$25,000 to the Stormwater Fund to help meet stormwater permit requirements. No additional match is required of the City.

6) Attachments:

- A. Stormwater Capacity Grant Agreement with Department of Ecology Amendment No. 1
- B. Stormwater Capacity Grant Agreement with Department of Ecology



AMENDMENT NO. 1
TO AGREEMENT NO. WQSWCAP-2123-Tumwat-00217
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 2021-2023 Biennial Stormwater Capacity Grants (PROJECT).

The purpose of this amendment is to increase the grant funding by an additional \$25,000. The grant end date will also be extended from the original end date of 3/31/23 to 6/30/23 to allow more time for the additional funding to be utilized.

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

Total Cost:

Original: 50,000.00 Amended: 75,000.00

Total Eligible Cost:

Original: 50,000.00 Amended: 75,000.00

Expiration Date:

Original: 03/31/2023 Amended: 06/30/2023

CHANGES TO THE BUDGET

Funding Distribution EG220381

Funding Title: 2021-23 capacity grant

Funding Type: Grant

Funding Effective Date: 07/01/2021

Funding Expiration Date: 06/30/2023

Funding Source:

Title: Model Toxics Control Operating Account (MTCOA)

Fund: FD

Type: State

Funding Source %: 100%

Description: MTCA

Approved Indirect Costs Rate: Approved State Indirect: 30%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? No

2021-23 capacity grant	Task Total
Project Administration/Management	\$ 1,500.00
Permit Implementation	\$ 73,500.00

Total: \$ 75,000.00

CHANGES TO SCOPE OF WORK

Task Number: 1 **Task Cost: \$1,500.00**

Task Title: Project Administration/Management

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

C. The RECIPIENT shall manage the project. Efforts include, but are not limited to: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

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

Task Expected Outcome:

* Timely and complete submittal of requests for reimbursement, quarterly progress reports, Recipient Closeout Report, and two-page Outcome Summary Report.

* Properly maintained project documentation.

Deliverables

Number	Description	Due Date
1.1	Progress Reports that include descriptions of work accomplished, project challenges, and changes in the project schedule. Submitted at least quarterly in EAGL.	
1.2	Recipient Closeout Report (EAGL Form).	
1.3	Two-page draft and Final Outcome Summary Reports.	

CHANGES TO SCOPE OF WORK

Task Number: 2

Task Cost: \$73,500.00

Task Title: Permit Implementation

Task Description:

Conduct work related to implementation of municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit requirements. If the RECIPIENT is out of compliance with the municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit, the RECIPIENT will ensure funds are used to attain compliance where applicable. The following is a list of elements RECIPIENT's project may include.

- 1) Public education and outreach activities, including stewardship activities.
- 2) Public involvement and participation activities.
- 3) Illicit discharge detection and elimination (IDDE) program activities, including:
 - a) Mapping of municipal separate storm sewer systems (MS4s).
 - b) Staff training.
 - c) Activities to identify and remove illicit stormwater discharges.
 - d) Field screening procedures.
 - e) Complaint hotline database or tracking system improvements.
- 4) Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
 - a) Development of an ordinance and associated technical manual or update of applicable codes.
 - b) Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
 - c) Training for plan review or inspection staff.
 - d) Participation in applicable watershed planning effort.
- 5) Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
 - a) Inspecting and/or maintaining the MS4 infrastructure.
 - b) Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
- 6) Annual reporting activities.
- 7) Establishing and refining stormwater utilities, including stable rate structures.
- 8) Water quality monitoring to implement permit requirements for a Water Cleanup Plan (TMDL). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan (QAPP) that the DEPARTMENT approves prior

City of Tumwater

2021-2023 Biennial Stormwater Capacity Grants Project

Agreement No. WQSWCAP-2123-Tumwat-00217

to awarding funding for monitoring.

Monitoring, including:

- a) Development of applicable QAPPs.
- b) Monitoring activities, in accordance with a DEPARTMENT- approved QAPP, to meet Phase I/II permit requirements.
- 9) Structural stormwater controls program activities (Phase I permit requirement)
- 10) Source control for existing development (Phase I permit requirement), including:
 - a) Inventory and inspection program.
 - b) Technical assistance and enforcement.
 - c) Staff training.
- 11) Equipment purchases that result directly in improved permit compliance. Equipment purchases must be specific to implementing a permit requirement (such as a vector truck) rather than general use (such as a pick-up truck). Equipment purchases over \$5,000 must be pre-approved by Ecology.

Documentation of all tasks completed is required. Documentation may include: field reports, dates and number of inspections conducted, dates of trainings held and participant lists, number of illicit discharges investigated and removed, summaries of planning, stormwater utility or procedural updates, annual reports, copies of approved QAPPs, summaries of structural or source control activities, summaries of how equipment purchases have increased or improved permit compliance. Capital construction projects, incentives or give-a-ways, grant application preparation, TAPE review for proprietary treatment systems, or tasks that do not support Municipal Stormwater Permit implementation are not eligible expenses.

Task Goal Statement:

This task will improve water quality in the State of Washington by reducing the pollutants delivered by stormwater to lakes, streams, and the Puget Sound by implementing measures required by Phase I and II NPDES permits.

Task Expected Outcome:

RECIPIENTS will implement measures required by Phase I and II NPDES permits.

Deliverables

Number	Description	Due Date
2.1	Documentation of tasks completed	

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
2021-23 capacity grant	0 %	\$ 0.00	\$ 75,000.00	\$ 75,000.00
Total		\$ 0.00	\$ 75,000.00	\$ 75,000.00

City of Tumwater

2021-2023 Biennial Stormwater Capacity Grants Project

Agreement No. WQSWCAP-2123-Tumwat-00217

AUTHORIZING SIGNATURES

All other terms and conditions of the original Agreement including any Amendments remain in full force and effect, except as expressly provided by this Amendment.

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

This amendment will be effective 07/01/2022.

IN WITNESS WHEREOF: the parties hereto, having read this Amendment in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Washington State
Department of Ecology

City of Tumwater

By: _____

Vincent McGowan, P.E.

Date

Water Quality

Program Manager

By: _____

Dan Smith

Date

Director

Debbie Sullivan

Mayor

Date

Template Approved to Form by
Attorney General's Office



Agreement No. WQSWCAP-2123-Tumwat-00217

WATER QUALITY STORMWATER CAPACITY AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF TUMWATER

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

GENERAL INFORMATION

Project Title:	2021-2023 Biennial Stormwater Capacity Grants
Total Cost:	\$50,000.00
Total Eligible Cost:	\$50,000.00
Ecology Share:	\$50,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2021
The Expiration Date of this Agreement is no later than:	03/31/2023
Project Type:	Capacity Grant

Project Short Description:

This project will assist Phase I and II Permittees in implementation or management of municipal stormwater programs.

Project Long Description:

N/A

Overall Goal:

This project will improve water quality in the State of Washington by reducing stormwater pollutants discharged to state water bodies.

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State of Washington Department of Ecology

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Agreement No: WQSWCAP-2123-Tumwat-00217

Project Title: 2021-2023 Biennial Stormwater Capacity Grants

Recipient Name: City of Tumwater

RECIPIENT INFORMATION

Organization Name: City of Tumwater

Federal Tax ID: 91-6001520

DUNS Number: 038517355

UEI Number: LLLDHHS4E5G1

Mailing Address: 555 Israel Road SW
Tumwater, WA 98501Physical Address: 555 Israel Road SW
Tumwater, Washington 98501**Contacts**

Agreement No: WQSWCAP-2123-Tumwat-00217

Project Title: 2021-2023 Biennial Stormwater Capacity Grants

Recipient Name: City of Tumwater

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

State of Washington Department of Ecology

Agreement No: WQSWCAP-2123-Tumwat-00217

Project Title: 2021-2023 Biennial Stormwater Capacity Grants

Recipient Name: City of Tumwater

ECOLOGY INFORMATION

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

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

Contacts

Project Manager	Kyle Graunke PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 407-6452
Financial Manager	Kyle Graunke PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 407-6452

State of Washington Department of Ecology
 Agreement No: WQSWCAP-2123-Tumwat-00217
 Project Title: 2021-2023 Biennial Stormwater Capacity Grants
 Recipient Name: City of Tumwater

AUTHORIZING SIGNATURES

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

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


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

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

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

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

Washington State
 Department of Ecology

DocuSigned by:

 By: On behalf of
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Vincent McGowan, P.E. Date
 Water Quality 9/15/2022
 Program Manager

Template Approved to Form by
 Attorney General's Office

City of Tumwater

DocuSigned by:

 By: 07FAEFB262DC414...

Dan Smith Date
 Director 9/14/2022

DocuSign Envelope ID: 9EA6A242-94AD-44AF-9482-549619C3017F

State of Washington Department of Ecology

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Agreement No: WQSWCAP-2123-Tumwat-00217

Project Title: 2021-2023 Biennial Stormwater Capacity Grants

Recipient Name: City of Tumwater

Debbie Sullivan

DocuSigned by:

Debbie Sullivan

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Mayor

Date
9/13/2022

Agreement No: WQSWCAP-2123-Tumwat-00217

Project Title: 2021-2023 Biennial Stormwater Capacity Grants

Recipient Name: City of Tumwater

SCOPE OF WORK

Task Number: 1

Task Cost: \$1,500.00

Task Title: Project Administration/Management

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements.

Responsibilities include, but are not limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

C. The RECIPIENT shall manage the project. Efforts include, but are not limited to: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

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

Task Expected Outcome:

* Timely and complete submittal of requests for reimbursement, quarterly progress reports, Recipient Closeout Report, and two-page Outcome Summary Report.

* Properly maintained project documentation.

Recipient Task Coordinator: Tami Peterson

Project Administration/Management**Deliverables**

Number	Description	Due Date
1.1	Progress Reports that include descriptions of work accomplished, project challenges, and changes in the project schedule. Submitted at least quarterly in EAGL.	
1.2	Recipient Closeout Report (EAGL Form).	
1.3	Two-page draft and Final Outcome Summary Reports.	

Agreement No: WQSWCAP-2123-Tumwat-00217

Project Title: 2021-2023 Biennial Stormwater Capacity Grants

Recipient Name: City of Tumwater

SCOPE OF WORK

Task Number: 2

Task Cost: \$48,500.00

Task Title: Permit Implementation

Task Description:

Conduct work related to implementation of municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit requirements. If the RECIPIENT is out of compliance with the municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit, the RECIPIENT will ensure funds are used to attain compliance where applicable. The following is a list of elements RECIPIENT's project may include.

- 1) Public education and outreach activities, including stewardship activities.
 - 2) Public involvement and participation activities.
 - 3) Illicit discharge detection and elimination (IDDE) program activities, including:
 - a) Mapping of municipal separate storm sewer systems (MS4s).
 - b) Staff training.
 - c) Activities to identify and remove illicit stormwater discharges.
 - d) Field screening procedures.
 - e) Complaint hotline database or tracking system improvements.
 - 4) Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
 - a) Development of an ordinance and associated technical manual or update of applicable codes.
 - b) Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
 - c) Training for plan review or inspection staff.
 - d) Participation in applicable watershed planning effort.
 - 5) Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
 - a) Inspecting and/or maintaining the MS4 infrastructure.
 - b) Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
 - 6) Annual reporting activities.
 - 7) Establishing and refining stormwater utilities, including stable rate structures.
 - 8) Water quality monitoring to implement permit requirements for a Water Cleanup Plan (TMDL). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan (QAPP) that the DEPARTMENT approves prior to awarding funding for monitoring.
- Monitoring, including:
- a) Development of applicable QAPPs.
 - b) Monitoring activities, in accordance with a DEPARTMENT- approved QAPP, to meet Phase I/II permit requirements.
- 9) Structural stormwater controls program activities (Phase I permit requirement)
 - 10) Source control for existing development (Phase I permit requirement), including:
 - a) Inventory and inspection program.
 - b) Technical assistance and enforcement.
 - c) Staff training.
 - 11) Equipment purchases that result directly in improved permit compliance. Equipment purchases must be specific to implementing a permit requirement (such as a vector truck) rather than general use (such as a pick-up truck). Equipment

purchases over \$5,000 must be pre-approved by Ecology.

Documentation of all tasks completed is required. Documentation may include: field reports, dates and number of inspections conducted, dates of trainings held and participant lists, number of illicit discharges investigated and removed, summaries of planning, stormwater utility or procedural updates, annual reports, copies of approved QAPPs, summaries of structural or source control activities, summaries of how equipment purchases have increased or improved permit compliance. Capital construction projects, incentives or give-a-ways, grant application preparation, TAPE review for proprietary treatment systems, or tasks that do not support Municipal Stormwater Permit implementation are not eligible expenses.

Task Goal Statement:

This task will improve water quality in the State of Washington by reducing the pollutants delivered by stormwater to lakes, streams, and the Puget Sound by implementing measures required by Phase I and II NPDES permits.

Task Expected Outcome:

RECIPIENTS will implement measures required by Phase I and II NPDES permits.

Recipient Task Coordinator: Dave Kangiser

Permit Implementation

Deliverables

Number	Description	Due Date
2.1	Documentation of tasks completed	

Agreement No: WQSWCAP-2123-Tumwat-00217

Project Title: 2021-2023 Biennial Stormwater Capacity Grants

Recipient Name: City of Tumwater

BUDGET**Funding Distribution EG220381**

NOTE: The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.

Funding Title: 2021-23 capacity grant

Funding Type: Grant

Funding Effective Date: 07/01/2021

Funding Expiration Date: 03/31/2023

Funding Source:

Title: Model Toxics Control Operating Account (MTCOA)

Fund:

Type: State

Funding Source %: 100%

Description: MTCA

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? No

2021-23 capacity grant	Task Total
Project Administration/Management	\$ 1,500.00
Permit Implementation	\$ 48,500.00

Total: \$ 50,000.00

Funding Distribution Summary**Recipient / Ecology Share**

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
2021-23 capacity grant	0.00 %	\$ 0.00	\$ 50,000.00	\$ 50,000.00
Total		\$ 0.00	\$ 50,000.00	\$ 50,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS**GENERAL FEDERAL CONDITIONS**

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

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY**EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal

Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

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

REQUIREMENTS:

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

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

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

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

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

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

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

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

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

State of Washington Department of Ecology
 Agreement No: WQSWCAP-2123-Tumwat-00217
 Project Title: 2021-2023 Biennial Stormwater Capacity Grants
 Recipient Name: City of Tumwater

GENERAL TERMS AND CONDITIONS

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

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

06/24/2021 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

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

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

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

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

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

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

RECIPIENT shall:

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

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

RECIPIENT shall:

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

5. ASSIGNMENT

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

6. COMMUNICATION

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

7. COMPENSATION

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

State of Washington Department of Ecology

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Recipient Name: City of Tumwater

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

8. COMPLIANCE WITH ALL LAWS

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

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

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

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

9. CONFLICT OF INTEREST

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

10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

11. DISPUTES

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

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

State of Washington Department of Ecology

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Recipient Name: City of Tumwater

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

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

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

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

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

12. ENVIRONMENTAL DATA STANDARDS

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

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

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

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

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

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

13. GOVERNING LAW

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

14. INDEMNIFICATION

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

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

15. INDEPENDENT STATUS

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

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16. KICKBACKS

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

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

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

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

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

18. ORDER OF PRECEDENCE

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

19. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

20. PROGRESS REPORTING

Template Version 12/10/2020

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- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

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

22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

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

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

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

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

23. RECOVERY OF FUNDS

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

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

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

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

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

24. SEVERABILITY

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

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

26. SUSPENSION

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

State of Washington Department of Ecology

Agreement No: WQSWCAP-2123-Tumwat-00217

Project Title: 2021-2023 Biennial Stormwater Capacity Grants

Recipient Name: City of Tumwater

27. SUSTAINABLE PRACTICES

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

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

For more suggestions visit ECOLOGY's web page, Green Purchasing,

<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

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

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

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

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

b) For Convenience

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

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

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

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

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

c) By Mutual Agreement

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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

End of General Terms and Conditions

TO: City Council
FROM: Karen Kirkpatrick, City Attorney
DATE: May 2, 2023
SUBJECT: Common Interest/Joint Defense Agreement with Olympia

1) Recommended Action:

Approve and authorize the City Attorney to sign the Common Interest/Joint Defense Agreement with Olympia.

2) Background:

The City of Tumwater and City of Olympia entered into an interlocal agreement (ILA) for the planning and potential formation of a Regional Fire Authority (RFA) on May 19, 2021. The ILA was amended on December 7, 2022, and remains in effect through October 1, 2023.

On December 6, 2022, the Cities adopted a resolution (Tumwater Resolution R2022-014; Olympia Resolution M-2400) to form a regional fire authority and to submit a plan for the same to the voters for approval on the April 25, 2023, ballot.

In March 2023, the Cities prepared an informational mailer concerning the proposal to form the RFA, which was mailed to all box holders within each city.

The Public Disclosure Commission (PDC) notified Olympia that it had received two citizen complaints alleging violations of RCW 42.17A.555 against Officials of the City of Olympia and the City of Tumwater concerning the mailer.

Both Cities wish to avoid duplicative defense efforts, minimize defense costs, and promote cooperation, and further wish to avoid any suggestion or claim that they have waived any privileges by doing so. The Cities have engaged the law firm of Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S. to address the allegations in the PDC complaints. The Cities desire to have the law firm defend the allegations on behalf of both Olympia and Tumwater. Entering into a joint defense agreement will allow the Cities to share privileged or confidential information in defense of the PDC Complaints.

3) Policy Support:

Entering into this Common Interest/Joint Defense Agreement will allow us to continue to provide and sustain quality public safety services and allow us to complete the RFA planning work as outlined in the 2023/2024 Strategic Priorities and Goals.

4) Alternatives:

☐ Not authorize the signing of the Common Interest/Joint Defense Agreement.

5) Fiscal Notes:

Legal costs with Law, Lyman, Daniel, Kamerrer & Bogdanovich will be divided equally with the City of Olympia.

6) Attachments:

A. Common Interest/Joint Defense Agreement

COMMON INTEREST / JOINT DEFENSE AGREEMENT

THIS COMMON INTEREST / JOINT DEFENSE AGREEMENT ("Agreement") is made effective as of April 24, 2023, by and among the City of Olympia ("Olympia") and the City of Tumwater ("Tumwater"), referred to collectively herein as the "Parties."

RECITALS

A. The Parties have entered into an interlocal agreement (ILA) for the planning and to pursue recommendations regarding formation of a Regional Fire Authority (RFA). The ILA was executed by Olympia City Manager, Steven J. Burney, and Tumwater Mayor, Pete Kmet, on May 19, 2021. An amended ILA was entered into on December 7, 2022, which continues in effect through October 1, 2023.

B. On or about December 6, 2022, the Parties adopted a resolution (Tumwater Resolution R2022-014; Olympia Resolution M-2400) to form a regional fire authority and to submit a plan for the same to the voters for approval on the April 25, 2023 ballot.

C. In March 2023, the Parties prepared an informational mailer ("the Mailer") concerning the proposal to form the RFA which was mailed to all boxholders within each city.

D. On or about April 18, 2023, the Public Disclosure Commission notified Olympia that it had received two citizen complaints from Arthur West and Robert Shirley alleging violations of RCW 42.17A.555 against Officials of the City of Olympia and the City of Tumwater concerning the proposed creation of the Olympia-Tumwater Regional Fire Authority District. PDC staff has opened Case Number #124392 ("the Litigation") for further assessment of the allegations listed in both complaints.

E. The Parties have engaged the law firm of Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S., ("the Law Firm") to address the allegations in the PDC complaints. The parties desire to have the Law Firm defend the allegations on behalf of both Olympia and Tumwater. Consistent with the ILA, the parties agree that the costs of defense of the Litigation will be borne equally (50%) by each of the Parties.

F. The Parties believe that the Parties have mutual interests in mounting a joint and cooperative strategy in defense of the subject matter of the PDC Complaints.

G. The Parties wish to avoid duplicative defense efforts, minimize defense costs, and promote cooperation, and further wish to avoid any suggestion or claim that they have waived any privileges by doing so. The Parties acknowledge that they have been informed concerning potential conflicts of interest in undertaking a joint representation by the Law Firm and agree that any such conflict is waived.

H. In order to pursue the Parties' common interests effectively, the Parties have concluded that the mutual interests of the Parties will be best served by: (1) discussing factual, material, mental

impressions, interviews, and other information; (2) sharing work product, including mental impressions, conclusions, strategies, opinions, legal theories, and written work product; and (3) sharing privileged or confidential information, all of which will hereinafter be referred to as "Common Interest Information."

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth herein, and other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties by and through their undersigned representatives agree as follows:

AGREEMENT

I. The Parties will, at their sole discretion, share Common Interest Information subject to the intention and understanding that any Common Interest Information so shared is protected from disclosure to any third party by each of the Parties' respective attorney-client privileges, attorney work product privileges, and other applicable privileges, including the common interest privilege that arises from this Agreement.

2. It is further agreed, understood, and intended that this Agreement ensures that the exchanges and disclosures of Common Interest Information contemplated herein do not diminish in any way the confidentiality of the Common Interest Information and do not constitute a waiver of any privilege otherwise available. By disclosing information pursuant to this Agreement, neither the Parties nor their respective counsel intend to waive or diminish in any way the confidentiality or privileged nature of such information. Specifically, it is the intent of the Parties and of their respective counsel that any privilege applicable to such information and disclosure is and shall be protected and preserved, including, without limitation, the work product, attorney-client, and common interest privileges.

3. The Parties agree that all confidential documents and information exchanged subject to this Agreement are protected pursuant to the common interest doctrine.

4. The Parties agree that, to the extent they or their counsel have already been in communication or had any discussions with counsel for any of the other Parties about matters related to the Litigation, their communications, discussions, and work product have been and are subject to the common interest privilege. All such communications, discussions, and work product are now subject to this Agreement.

5. Except as provided in this Agreement or by court order, the Parties will not disclose Common Interest Information to any third party without first obtaining the consent of the other Parties to this Agreement. Common Interest Information may be shared with a Party's employees and representatives who have a need to know, with legal staff and attorneys within the Law Firm (except to the extent prohibited by any other arrangement, agreement, or ethical principle relating to conflicts of interest), and with any independent consultants and experts retained or appointed by a Party or by the Law Firm and assigned any task related to the Litigation. Any firm or individual permitted access to Common Interest Information shall be specifically advised that any and all such information is privileged and subject to the terms of this Agreement.

Common Interest Information that is shared may be used only in connection with the defense of the Litigation and not for any other purpose.

6. If any person or entity requests or demands, by subpoena or otherwise, any Common Interest Information, the City Attorney for the Party receiving the request will immediately notify the Law Firm and the City Attorney for the other Parties, and all counsel will take steps necessary to permit the assertion of all applicable rights and privileges with respect to Common Interest Information. The Parties will cooperate with each other in any proceeding relating to the disclosure of Common Interest Information.

7. In the event that any Party wishes to withdraw from this Agreement, the City Attorney for the Party desiring to withdraw shall notify the City Attorney for the other Parties in writing of the withdrawal, and this Agreement shall be terminated effective upon the receipt of such notice. Such termination shall not affect or impair the obligations of confidentiality with respect to Common Interest Information furnished pursuant to this Agreement prior to such termination, which obligation shall survive the termination of this Agreement.

8. This Agreement does not restrain any Party's independent judgment or the ability of any Party to undertake or to have legal counsel undertake any defense strategy that the Party deems appropriate. The Parties' counsel will not incur fiduciary duties to each other or to each other's clients as a result of this Agreement, and this Agreement does not create any agency or similar relationship between the Parties.

9. The Parties knowingly and intelligently waive any claim that any counsel is disqualified or otherwise precluded, due to his or her participation in this Agreement, from examining any witness, including employees and consultants of any other Party, at any trial, arbitration, deposition, or other proceeding related to the Litigation.

10. The Parties agree that all Common Interest Information received from any other Party, its counsel, or its consultants or experts retained or appointed in connection with the defense of the Litigation, shall be held in strict confidence by the receiving Party and by all persons to whom such information is revealed by the receiving Party.

11. No settlement of any claims related to the Litigation by any Party shall override or contravene the protections provided by this Agreement.

12. This Agreement shall continue in effect until it is terminated by one of the Parties as provided in paragraph 7 above.

13. This Agreement may not be modified, altered, or amended, except pursuant to an instrument in writing signed by all Parties and their respective counsel.

14. This Agreement shall be construed and interpreted in accordance with, and any and all disputes shall be governed by, Washington law.

15. At the conclusion of the Litigation, all materials containing or reflecting confidential Common Interest Information will be returned to counsel for the party that originally disseminated those materials if so requested.

16. The “Recitals” set forth in this document are incorporated by reference into this Agreement as if fully set forth herein.

17. This Agreement may be executed in one or more counterparts with original or electronic signatures, each of which shall be deemed to be an original, and together shall be one document.

Dated this _____ day of April, 2023

Mark Barber, City Attorney
City of Olympia

Dated this _____ day of April, 2023

Karen Kirkpatrick, City Attorney
City of Tumwater

TO: City Council
 FROM: Ann Cook, Communications Manager
 DATE: May 2, 2023
 SUBJECT: Thurston Community Media (TCMedia) Operating Agreement Amendment No. 2

1) Recommended Action:

Authorize the Mayor to sign the Second Amendment to the Operating Agreement with TCMedia. substantially in the form presented, subject to the City Attorney's approval.

2) Background:

The CITY and TCMedia entered into an Operating Agreement dated effective February 20, 2018. The Second Amendment extends the only term of the current agreement through December 31, 2023.

City staff are assessing the options of continuing with TCMedia or providing the service internally.

3) Policy Support:

Build a Community Recognized for Quality, Compassion, and Humanity

- Effectively engage the community in public notice and involvement activities
-

4) Alternatives:

- ☐ Authorize the Mayor to sign the Agreement.
 - ☐ Amend and authorize the Mayor to sign the Agreement.
 - ☐ Do not authorize signature.
-

5) Fiscal Notes:

In accordance with the current operating agreement, the City provides operating support to TCMedia. and Revenue from Public, Educational and Governmental Access (PEG Access) received from Comcast of Washington under its Cable Television Franchise agreement with the City will be shared with TCMedia, consistent with past practice.

The current year contract amount for services is \$83,793, and \$10,000 in PEG fees.

6) Attachments:

- A. TCMedia Operating Agreement Amendment No. 2
- B. TCMedia Operating Agreement Amendment No. 1
- C. Thurston Community Media (TCMedia) 2018-2022 Operating Agreement

**SECOND AMENDMENT
TO
OPERATING AGREEMENT
FOR
COMMUNITY ACCESS CABLE TELEVISION**

This Second Amendment ("Amendment") is dated effective this first day of June, 2023, and is entered into by and between the CITY OF TUMWATER, a Washington municipal corporation ("CITY"), and Thurston Community Television (dba Thurston Community Media), a Washington nonprofit, hereinafter referred to as TCMedia.

A. The CITY and TCMedia entered into an Operating Agreement dated effective February 20, 2018, and First Amendment dated January 1, 2023, whereby TCMedia agreed to provide cable television services to residents of the City ("Agreement").

B. Section D of the Agreement provides the Agreement may be extended as agreed between the parties.

C. The CITY and TCMedia desire to amend the Agreement to continue the services described in Section A of the Agreement by extending the term of the Agreement.

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

1. **TERM.**

Section D.1. of the Agreement shall be amended to extend the term of the Agreement until December 31, 2023.

2. **FULL FORCE AND EFFECT.**

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

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DATED the effective date set forth above.

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

TCMedia:
THURSTON COMMUNITY MEDIA

Debbie Sullivan, Mayor

Deborah Vinsel (Notarized – see below)

Printed Name:_____

Title: _____

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

State of Washington)
) ss

County of Thurston)

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

Dated:_____

(Signature)

ATTACHMENT A

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

**FIRST AMENDMENT
TO
OPERATING AGREEMENT
FOR
COMMUNITY ACCESS CABLE TELEVISION**

This First Amendment ("Amendment") is dated effective this first day of January, 2023, and is entered into by and between the CITY OF TUMWATER, a Washington municipal corporation ("CITY"), and Thurston Community Television (dba Thurston Community Media), a Washington nonprofit, hereinafter referred to as TCMedia.

A. The CITY and TCMedia entered into an Operating Agreement dated effective February 20, 2018, whereby TCMedia agreed to provide cable television services to residents of the City ("Agreement").

B. Section D of the Agreement provides the Agreement may be extended as agreed between the parties.

C. The CITY and TCMedia desire to amend the Agreement to continue the services described in Section A of the Agreement by extending the term of the Agreement.

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

1. TERM.

Section D.1. of the Agreement shall be amended to extend the term of the Agreement until June 30, 2023.

2. FULL FORCE AND EFFECT.

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

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OPERATING AGREEMENT Community Access Cable Television

This agreement is made and entered into this sacth day of Feh·(vl 11s by and between City of Tumwater, hereinafter referred to as "the City," and 'Thurston Community Television (dba Thurston Community Media), a Washington nonprofit corporation, hereinafter referred to as "TCMedia."

WHEREAS, the City has a franchise agreement with Comcast Cable of Washington, hereinafter "Comcast", to provide cable television services to residents of the City; and

WHEREAS, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 authorize cable franchising authorities to establish franchise requirements for facilities and equipment. Further the Acts permit franchise authorities to require channel capacities for public, educational, and governmental use by franchised cable companies and other companies providing similar services such as Open Video Services (OVS); and

WHEREAS, TCMedia has been organized to develop and promote the concepts of public, educational and governmental access to existing and future telecommunications media, and to establish and operate one or more media access centers to educate and assist individuals and organizations in the use of tools and techniques for the production of local cable television programming; and

WHEREAS, voting membership in TCMedia is open to any resident or nonprofit organization in the City, and the membership of TCMedia is broadly representative of the social service, cultural, educational, charitable and religious groups in the City; and

WHEREAS, TCMedia has established, operated, and maintained an access operation of service to the citizens, nonprofit organizations and government agencies of the City during the terms of previous Agreements.

NOW, THEREFORE, in consideration of the mutual undertakings and processes contained herein and the benefits to be realized by each party, and in further consideration of the benefit to the general public to be realized by the performance of this Agreement, the parties agree as follows:

A. RESPONSIBILITIES OF TCMedia

1. Services Provided – In General:

During the term of this Agreement, TCMedia shall operate, maintain and administer one or more public, educational and government access channels and one or more public community production facilities.

TCMedia shall administer public, educational and government access television channels, as defined in Addendum A, and community production facilities for the benefit of area residents, nonprofit organizations, and government

and educational agencies in conformity with the Addendums, Articles of Incorporation, Bylaws and Operating Policies of TCMedia attached hereto and incorporated herein by reference.

a. Promotion: TCMedia shall use its best efforts to promote and publicize the use of the access channel(s). TCMedia shall not discriminate in favor or against any organization, group or individual in promoting channel use.

b. Production Facilities and Equipment: TCMedia shall maintain community television production facilities with regular hours of operation for use by qualified users in accordance with the TCMedia Operating Policies. These facilities include, but are not limited to, a production studio, editing facilities and corporate offices located in the City of Olympia.

2. **Public (Community) Access:**

a. Program Scheduling: The Public Access Channel shall appear on a separate channel dedicated for this purpose. TCMedia shall schedule all public access programs on a nondiscriminatory basis and otherwise in accordance with the Operating Policies. TCMedia shall endeavor to schedule programming consistently to maximize audience potential by developing a regular program schedule in accordance with its policies.

b. Program Preview: In accordance with the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, neither the City nor TCMedia may regulate the content of public access programming unless such programming has been found in accordance with law to be obscene or otherwise unprotected by the Constitution of the United States, or in direct violation of local, state, or federal law. TCMedia agrees that, in cooperation with the City, it will:

(1) Require all public access producers or program suppliers to sign a contract with TCMedia, prior to the airing of a production or series of productions, which reasonably describes the nature of the programming.

(2) Invoke mandatory pre-broadcast review by TCMedia of any program by the producer, which, as described in the contract, portrays or depicts material considered sensitive for children under the Federal Cable Act of 1992 and Telecommunication Act of 1996.

(3) Provide for mandatory suspension of the program or series of programs if TCMedia determines that the producer materially misrepresented the content or nature of the production.

(4) Provide for mandatory suspension pending legal resolution of any program or series of programs if a court order should be issued against the program or series for any reason.

(5) Provide for mandatory suspension of any program or series of programs if the programming is obscene or otherwise unprotected by the Constitution of the United States, or is in direct violation of local, state, or federal law.

c. Dissemination of Public Information: TCMedia shall, at the request of the City, disseminate information regarding City sponsored events, public hearings, and public safety information on all channels. TCMedia will also cablecast public information programming at the request of the City including, but not limited to, City sponsored activities, public forums, and emergency and disaster information.

d. Training: TCMedia will schedule production and equipment training workshops on a regular basis. Training will be available to individuals and organizations as described in the TCMedia Operating Policies. Training will include an explanation of the producer's responsibility and legal accountability for the content of programming they produce. TCMedia will distribute printed information to all trainees that will include, but is not limited to, local statutes regarding the distribution of illegal material. Additionally, TCMedia shall, at the City's request, coordinate informational workshops for City employees on the use of video and cable access as a communications tool.

3. **Government and Educational Access Channels & Programming:**

a. Channel Use: Government, Educational and Community Service programming shall appear on a channel dedicated for this purpose that is separate from the public access channel. There is one channel designated for use by the City of Tumwater for Tumwater TV. There is a separate channel shared by Olympia, Lacey and Thurston County. From time to time but no less than annually, TCMedia shall, in cooperation with the funding jurisdictions, review and modify rules and procedures regarding the equitable scheduling and use of such channel(s).

b. Government Access Production Support: The TCMedia CEO, or other designated staff, will act as the liaison with the funding jurisdictions when TCMedia production services are requested. The TCMedia Executive Director, or assigned staff, will determine the appropriate technical support required for the development of government access programming. Each jurisdiction will identify a staffperson to act as the liaison with TCMedia regarding production needs. Ninety (90) days prior to the end of the calendar year, the liaison from the jurisdiction will meet

with the liaison from TCMedia to determine the production support needed by the jurisdiction for the coming year.

Each year this contract is in effect, TCMedia will provide 700 TCMedia staffhours to the City to use for the creating video programs or other digital communications services or products for which TCMedia has the technology, equipment and staff skills to support. Unused hours will expire at the end of the fiscal year.

Charges will be assessed to the City for all TCMedia staffhours required for City productions that exceed the total annual allocation by more than five percent (5%). Per hour charges will be based on the TCMedia production services rates established by the TCMedia Board of Directors. The base hourly rate is \$50 per hour. These rates are subject to change upon annual review by the TCMedia Board of Directors.

Production efforts by TCMedia on behalf of government agencies are governed by available staff and equipment resources and must be scheduled in advance. TCMedia recognizes that on occasion there are production needs that require a short advance notice and timely playback. TCMedia will make every effort to accommodate these special circumstances.

c. Program Content: The government agency or office requesting production services from TCMedia has primary responsibility for coordinating program content. The City will work with TCMedia to clarify details to ensure high production quality, and serve as an interface between TCMedia and event coordinators to ensure minimal interference with the functioning of public meetings, hearings or events. Government access production support by TCMedia will be for the primary purpose of creating programs for cablecast on the access channels but may, in addition, be used for training and other public purposes.

4. Channel Designations:

It is recognized that from time to time Comcast may realign the access channels. When that realignment occurs, the government access channel shall be placed on the lowest channel number available.

5. Rules and Procedures:

The policies and procedures in TCMedia Operating Policies, Bylaws, charges, and hours of operation may be modified to reflect changes in access operation provided that the City receives written notification forty-five (45) days prior to the effective date of said changes. The City's jurisdictional representative shall be notified of any such modifications.

6. Fiscal Responsibility:

TCMedia shall maintain fiscal records and accounts and shall annually render to the City a written financial operating statement within ninety (90) days after the end of the fiscal year. Such fiscal records and reports shall be retained in a manner consistent with the Budgeting, Accounting, and Reporting System for Counties and Cities and other Local Governments as issued by the State Auditor. The City shall have the right to monitor and audit the fiscal components of TCMedia to ensure actual expenditures are consistent with the terms of the contract. No less than 120 days before the end of the fiscal year, TCMedia shall submit to the City a request for funding for the coming year.

TCMedia shall submit monthly invoices to the City for payment for services rendered during the month. None of the funds provided under this Agreement shall be used by TCMedia for any partisan political activity, or to further the election or defeat of any candidate for public office, or to lobby for or against federal, state or local legislation of any kind whatsoever. This is not intended to restrict programs presenting factual information on topics of general community interest.

7. Access Operations Records and Reports:

TCMedia shall keep daily program logs containing the program title and playback time of each program. Maintenance records for all production equipment shall be kept for a period of three (3) years. Within 90 days of the close of the fiscal year, TCMedia shall provide the City with an annual report consisting of the numbers of training attendees and user certifications, hours of equipment and studio use, and numbers of first run and replayed programs by origin.

8. Liability Insurance:

TCMedia shall obtain liability insurance coverage for program content of \$1 million dollars, naming the City as an additional party.

9. Nondiscrimination:

TCMedia agrees that in operating the access facilities pursuant to this Agreement, it shall not discriminate in any way against any person, group or organization on the basis of race, color, national origin, sex, religion, age, marital status, veteran status, sexual orientation, political affiliation or disability in violation of the ordinances or resolutions of the City or the laws or Constitutions of the State of Washington or the United States of America. TCMedia shall take necessary steps to fully comply with all provisions of the Americans with Disabilities Act including efforts to expand access for those with disabilities; including but not limited to an assessment of closed or open caption devices for the hearing impaired, and greater access to TCMedia services and facilities for all those with disabilities.

B. RESPONSIBILITIES OF THE CITY

1. Compensation:

- a. **Operating Support.** The City shall pay operating support to TCMedia of an amount not less than the 2018 allocation of \$75,401.15. This allocation will be adjusted each year by the semi-annual first half Seattle Tacoma Bellevue Consumer Price Index "U" applied to the previous year's operating support allocation.
- b. Such payments for services shall be made in monthly installments upon receipt of an invoice. Funding for capital support shall be paid separately from operating support.
- c. **PEG Capital Support.** The City shall disperse to TCMedia for the purpose of Public, Educational and Governmental Access (PEG Access) capital costs, 50 percent (50%) of the capital contribution received by Comcast of Washington, N, Inc., under its Cable Television Franchise with CITY. Upon receipt of an invoice from TCMedia, the CITY will make support disbursements thirty (30) days following the end of the quarter.

The support for PEG Access capital costs may only be applied by TCMedia toward capital expenditures, whether through purchase or lease, related to PEG Access including, but not limited to, studio Tumwater City Council Chambers equipment, portable production equipment, program or playback equipment, PEG Access related facilities or equipment purchases, equipment or facility repair, renovation or construction, local origination, new return feeds, or for I-NET purposes.

2. Content and Indemnification:

The City shall have no responsibility for program content on the public access channel, unless the programming was produced by an agent or employee of the City as part of the City's access programming efforts. TCMedia shall indemnify and hold harmless the City from any claims, suits, liability, loss or damage, including attorney fees, caused by or arising out of any public access programming not produced by the City including but not limited to, any claim or legal action for alleged violation or infringement of copyright or other intellectual property right, invasion of privacy, obscenity or defamation, provided further that the City shall inform TCMedia in writing within twenty (20) working days of its receipt of notice of the existence of any such claim or action. TCMedia shall have sole discretion and authority for decisions regarding standards for program, quality and scheduling except as provided herein. It shall be TCMedia's responsibility to insure compliance with the standards provided by law relating to defamation, privacy or obscenity.

3. Production Guidelines - City Facilities:

The City may establish written guidelines for access to City facilities by production crews.

C. TCMedia BOARD APPOINTMENTS

The TCMedia Board shall, during the term of this Agreement, include one appointed representative from City of Tumwater and each of the jurisdictions who have entered into funding an agreement with, as designated by their respective elected bodies.

D. TERMS OF AGREEMENT

1. Term:

The term of this Agreement shall be in full force and effect from the date signed to December 31, 2022. At the end of said term, this Agreement may be extended as agreed between the parties.

2. Termination:

- a. Right to terminate: Either party shall have the right to terminate this agreement with or without cause upon ninety days (90) written notice to the other party by registered or certified mail, return receipt requested.

Either party shall have the right to terminate this agreement by reason of the other party's default. Notice of termination shall be by ninety (90) days written notice by registered or certified mail, return receipt requested. A notice of termination shall specify the basis thereof, including a detailed explanation of any alleged events of default. At least the following shall constitute an event of default of the part of the City:

- 1) Failure to make any payment to TCMedia required by this Agreement when due, or within a sixty (**60**) day grace period thereafter
- 2) Any other material breach of the Agreement.
- b. Default conditions: At least one of the following shall constitute an event of default on the part of TCMedia
 - 1) Any material failure by TCMedia to comply with the Operating Policies, or Bylaws of TCMedia.
 - 2) Material failure to maintain fiscal records and accounts regarding TCMedia operations.

3) Any other material breach of the Agreement.

Upon receipt of written notice of termination and/or of alleged events of default, the recipient shall have ninety (90) days to cure the default(s) before termination shall become effective. The availability of this remedy shall not bar any action by either party for specific performance of the provisions of the Agreement or any other remedy.

3. Arbitration:

In the event that any dispute shall arise to the interpretation of this Agreement, or in the event of a breach of this Agreement and if the parties cannot mutually settle such differences, then, the matter shall first be referred to mediation with a mutually selected mediator and, if necessary, to arbitration with an arbitrator mutually selected by the parties.

4. Notices:

Any notice herein provided, to be given to the City, shall be addressed and delivered to: City of Tumwater, 555 Israel Road SW, Tumwater, WA 98501.

Any notice to be given to TCMedia shall be addressed and delivered to: TCMedia, 440 Yauger Way SW, Suite C, Olympia WA 98502

5. Reopener:

Either party may request in writing that this agreement be reopened for renegotiation of all or part of the provisions set forth herein. Good faith discussions must commence within 30 days of receipt of the written request. Additionally, this contract shall be reopened at the time a request for activation of additional access channels is made for the purpose of discussion and determination of appropriate policies and operating procedures for the new channels, or for the purposes of determining an appropriate capital funding mechanism when provided by the renewal of the existing cable franchise agreement(s).

Further, should the Cable Communications Policy Act be further amended by Congress and/or different rules are promulgated by the FCC, which affect this Agreement, the Agreement may be reopened to address those changes.

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in the Contract are specifically excluded.

IN WITNESS THEREOF, the parties have hereunto set their hands the day and year first above written.

FOR TCMedia:

By: [Signature]
President, TCMedia Board of Directors

By: [Signature]
Depo S. Vinsel, Executive Director

FOR CITY OF TUMWATER:

-P)(
Pete Kmet, Mayor

ATTEST:

ht -
lij odyValiant, Cityrk

Approved as to form:

[Signature]
Karen Kirkpatrick, City Attorney

ADDENDUM A

Definitions

Public Access Channel -a local cable channel used as a public forum and dedicated for non-commercial television programming presented by local residents or non-profit organizations free from editorial control. Responsibility for the content of programs on the public access channel rests with the program producer or local sponsor and must not violate any local, state, or federal law. Administration and rules for use of the public access channel are guided by existing federal cable legislation and the local cable franchise contracts.

Public Educational Access Channel -a local cable channel dedicated for use by public educational institutions. Programming scheduled on the educational access channel must be by, for or about a local public educational institution. Programming from schools must be sanctioned by the school district or college administration. Programs will be produced by the various educational institutions and districts or may be imported. Programming may include: Distance Learning; After School Enrichment such as homework help with programs for students (i.e., Tech Time); Teacher In-service Training; School- to-work; Community Information such as school menus, policies, calendar of events, parent information; Telecourses; Satellite delivered services such as the NASA Channel, The Classic Arts Showcase, policy and informational teleconferences. Scheduling of programs on the educational access channel rests with TCMedia. Educational access channels are not open for use by the general public. Administration and rules for use of the public educational access channel are guided by existing federal cable legislation and the local cable franchise contracts.

Government Access Channel -a local cable channel dedicated for use by local government offices and agencies. Programming on the government access channel must be by, for or about a local government office or agency. Unless otherwise agreed to by City, programming support from TCMedia staff will be provided to the City without additional charge. Full production services may be provided by contract with other government agencies such as the LOTT Partnership, the Port of Olympia, Timberland Regional Library, Thurston Conservation District; Thurston Regional Planning Council, InterCity Transit, Animal Services, local fire districts, and other recognized local governmental agencies. On occasion, programming from state or federal agencies may also be shown on this channel. Government access channels are not open for use by the general public. Administration and rules for use of the government access channel are guided by existing federal cable legislation and the local cable franchise contracts.

Community Service Programming: Programs produced by TCMedia to supplement the government and public educational access programming may appear on either the Government and Education Access Channel or the Public Access Channel. Events that are sponsored by the funding jurisdictions, school sports, public meetings, cultural events, and parades that are not included in contractual production requirements are examples of community interest programming. Generally, TCMedia will take the initiative in production of these programs.

Facilities - channels, equipment, buildings administered by TCMedia for the purpose of providing access television services to government, educational, and public access program producers or suppliers.

TO: City Council
FROM: Hanna Miles, Executive Assistant/Deputy City Clerk
DATE: May 2, 2023
SUBJECT: Reappointment of Bill Kallappa II to the Board of Parks and Recreation Commissioners and David Bills, Brian Reynolds, and Satpal Sohal to the Lodging Tax Advisory Committee

1) Recommended Action:

Confirm the Mayor's reappointment of Bill Kallappa II to the Board of Parks and Recreation Commissioners and David Bills, Brian Reynolds, and Satpal Sohal to the Lodging Tax Advisory Committee.

2) Background:

Upon Council confirmation, the 3-year term for Bill Kallappa II on the Board of Parks and Recreation Commissioners will expire June 1, 2026; and the annual term for David Bills, Brian Reynolds, and Satpal Sohal will expire June 18, 2024.

3) Policy Support:

Vision | Mission | Beliefs

Our Vision:

Tumwater of the future will be people-oriented and highly livable, with a strong economy, dynamic places, vibrant neighborhoods, a healthy natural environment, diverse and engage residents, and living connection to its history.

4) Alternatives:

- ☐ Confirm some of the reappointments
 - ☐ Do not confirm the reappointments
-

5) Fiscal Notes:

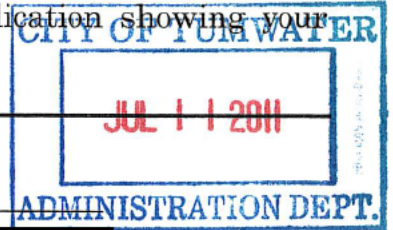
There is no fiscal impact associated with this action.

6) Attachments:

A. Applications and Supplemental Information of Volunteers

APPLICATION

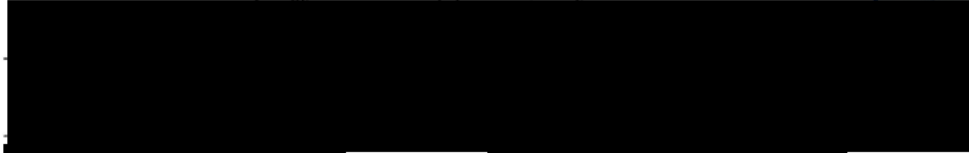
The City of Tumwater's advisory boards, commissions and committees are listed below with a short paragraph describing the make-up of the group. Please complete the application below and show your group preference, listing your first choice as #1, second choice as #2, etc. Please attach a letter of interest and a resume with this application showing your current qualifications and interests. Thank you!



Name:

Bill S. Kallappa II

Address:



Telephone:

(Home)

(Cell)

(Work)

Date:

6-27-11

Email:

BOARD, COMMITTEE OR COMMISSIONPREFERENCE
NUMBER:Barnes Lake Management District Steering Committee

Nine members; Mayoral appointment; two-year terms; active

Board of Park Commissioners:

Seven members; Mayoral appointment with Council confirmation; three-year terms; active

 1
Building Board of Appeals / Building Code Advisory Committee:

Seven members; Mayoral appointment; two-year terms

Civil Service Commission:

Three members; Mayoral appointment; six-year terms; active

Bill S. Kallappa II

Education

B.A. Interdisciplinary Studies
The Evergreen State College

March 2004

Focus in the area of education with credits earned in the fields of Early Childhood Education, Psychology, Sociology, Juvenile Justice, Human Biology, and Chemistry. Interned for the Gateways Program at two Washington state juvenile detention facilities where college students took classes with inmates earning either high school or college academic credits.

Employment

Youth Education Counselor
Nisqually Tribe

June 2010 to Present

Assist with the development and implementation of after school programs for Nisqually community youth. Assist with the design and implementation of the G.E.D. program at the Youth Center so the Nisqually community has access to G.E.D. instruction, testing and completion. Design and develop the "Inter-tribal Basketball League" for all south sound tribes including Nisqually for both Jr. High and High school age youth.

Skill Builder Coordinator/Youth Program Manager April 2006 to March 2010
Squaxin Island Tribe

Manage and design all youth programs pertaining to tribal youth K-12 including, but not limited to after school programs, summer day camps, and basketball tournaments. Manage tribal grants and budgets pertaining to youth programming including OJJDP tribal youth program grant. Execute tribal prevention model adding "protective factors" to tribal youth prevention programming. Supervise a staff of up to 20 during our summer recreation program where 120 youth were enrolled.

Youth Programs Manager
Skokomish Tribe

February 2005 to March 2006

Worked with tribal youth K-12 in after school and summer programming inclusive of cultural, educational, and recreational activities based components in order to provide youth with a safe and positive environment in which to grow. Specifically provided activities in order to reduce, control, and prevent tribal youth delinquency and prevent crimes both by and against tribal youth.

Educational Assistant/Athletic Coach
Tumwater School District

September 1994 to June 2004


Worked in Special Ed. Dept. with K-12 grade students with physical, behavioral, and learning disabilities in classroom, small group, and one-on-one settings. Participated in Individual Education Plan (IEP) and other staff meetings concerning students' progress as well as holding Parent/Teacher conferences. Delivered small group and individual curriculum to students. Served as athletic coach at both the middle and high School levels for football (9 years), boys and girls basketball (10 years), and co-ed track and field (10 years).


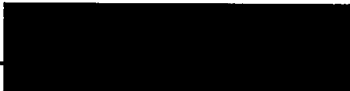
Tribal Affiliation Enrolled Makah tribal member

APPLICATION


The City of Tumwater's advisory boards, commissions and committees are listed below with a short paragraph describing the make-up of the group. Please complete the application below and show your group preference, listing your first choice as #1, second choice as #2, etc. Please attach a letter of interest and a resume with this application showing your current qualifications and interests.

Name: Satpal Sahal

Address: 

Telephone:  (Home)  (Cell)

(Work)

Date: 5/4/17 Email: 

BOARD, COMMITTEE OR COMMISSION

PREFERENCE
NUMBER:

Tax Advisory Committee

Barnes Lake Management District Steering Committee
Eleven members; Mayoral appointment; two-year terms; active

Board of Parks and Recreation Commissioners:
Seven members; Mayoral appointment with Council
confirmation; three-year terms; active

Civil Service Commission:
Three members; Mayoral appointment; six-year terms; active

Satpal Sohal
La Quinta Inn & Suites
4600 Capitol Blvd. SE
Tumwater, WA 98501
5/4/17

Hanna M. Miles
555 Israel Road SW
Tumwater, WA 98501

Dear Hanna M Miles

I Satpal Sohal would love the opportunity to serve as a member of the Tumwater tax advisory committee I want to be on the tax advisory committee because of my experience as a Hotelier I will bring a wealth of knowledge and experience to the tax advisory board I have served on three tax advisory committees and I currently own three hotels and we are building a fourth La Quinta and me and my wife also are the winners of franchisee of the year 2016 for La Quinta out of 850 Hotels.

My goal will be to help guide the tax advisory board to make decisions that help increase tourism and put more heads in beds in the city of Tumwater.

Sincerely,



Satpal Sohal

Satpal S Sohal

Professional Profile

- Entrepreneur who grew four businesses in near start up states to millions in annual sales through effective business planning management, financial planning, creative sales techniques, and innovative marketing.
- Expert knowledge and skills in operations management, real estate development, and financial planning with concentration.
- Skilled strategist who transforms strategic plans into workable solutions.
- Possesses strong analytical, leadership and follow-through skills.
- Detail oriented with the ability to develop, integrate, analyze, document and present business and financial plans in support of business objectives.
- Self-motivated, excellent team player, quick learner, organized, and strong interpersonal skills.
- Recognized by clients and colleagues as a consummate professional with a high degree of personal integrity.
- Known for a contagious passion for excellence, a talent for resourceful business solutions, and a capacity for motivational leadership.
- Possesses outstanding communication and presentation abilities.
- Effectively market tangible/intangible products and services.
- Skilled in persuasive presentation and profitable negotiation.
- Offers excellent customer relations skills.

Education

Sheffield University, School of business Administration, UK

- Bachelor of Arts In Business and Finance January 1994

ITT Technical Institute, Seattle, WA

- Electronic Engineering Technology December 1998

Licenses & Certificates

- Certified Hospitality Administrator September 2004

Professional Experience

Organizations/Planning and Humans Resources

- Recruited investors and assembled limited liability companies for various investment opportunities.
- Negotiated financing with multiple lending institutions.
- Executed \$700,000 renovation project for 70-unit hotel.
- Utilized historical and forecast data to perform trend analysis.
- Executed budget plan and company performance goals.

- Developed personnel, motivated staff to exceed goals, and improve sales.
- Selected and hired self-motivated administrative staff and trained them to be hard-working, customer-focused, and experts in their fields enabling them to work with minimal day-to-day supervision
- Experienced in foreclose or financially stressed properties.
- Currently on the Lodging Tax Advisory Committee for Auburn WA, and Liberty Lake WA.

Marketing and Sales

- Worked with marketing company to create logo and promotional material.
- Increased hotel sales by 40% by working with corporate customers and meeting customer demands.
- Consistently maintained a high-standard performance record via exceptional service, follow-through, and special attention to detail which resulted in higher sales.
- Researched and analyzed the property/hospitality market and re-focused business in response to market changes, making sure business always offered high quality and service at competitive rates.
- Established name recognition in hospitality industry and generated sales through a combination of sales and marketing techniques including implementation of sales packages, cold calls, corporate account development, Internet booking/sales, and judicious placement of advertising.

Properties

Owner

Tillicum Inn, Umatilla, OR

April 2001-Sold 2015

70 unit's motel

Owner

Econo Lodge, Chehalis, WA

December 2004-Sold 2016

70 unit's motel

Owner

Quality Inn & Suites, Liberty Lake, WA

February 2008- Present

70 unit's Hotel

Owner

La Quinta Inn & Suites, Auburn WA

November 2011- Present

70 Units Hotel

Owner

La Quinta Inn & Suites, Tumwater WA

November 2015- Present

80 Units Hotel

Owner

Rental house 1, Auburn WA

October 2015- Present

Owner

Rental house 2, Auburn WA

October 2015- Present

Owner

Rental house 3, Puyallup WA

October 2015- Present

Owner

Rental house 4, Puyallup WA

October 2015- Present

Owner

Rental house 5, Kent WA

October 2015- Present

Owner

Rental house 6, Renton WA

October 2015- Present

Tacoma Rescue Mission

Tacoma, WA

2014-present

Volunteered in the Rescue Mission's kitchen, prepping and preparing lunch for the guests and maintained cleanliness and sanitation of equipment. Worked closely with regular volunteers and kept a good spirit and attitude at all times.

Nativity House

Tacoma, WA

2013-present

Distributed necessities such as toiletries, socks, gloves, hats to the homeless. Spent time with the people that go to the Nativity House through deep conversations or with a simple game of cards. Learned the skill of listening and showing interest in people from all types of lives. Understood the importance in serving and meeting people where they are.

Tacoma New Life Church

Tacoma, WA

2007-2013

Participated in various programs for children such as assisting in the daycare, holiday festivals, supervising the playground area, and being staff of Vacation Bible School during the summer. Volunteered with church members on a weekly basis feeding the homeless on the streets, retirement homes, and local schools.

Philippines

Philippines

2012-2013

Went from village to village with a team of doctors, dentists, and other volunteers to provide medical, dental, and other treatments. We provided educational material and supplies to help improve the quality of life.

Charity Water

Africa

2007

Started and lead a fundraiser and awareness to help support an organization called Charity Water. We were able to raise thousands of dollars to build a water well in a remote village in Africa where thousands of people die every year due to contaminated water.

TO: City Council
 FROM: Alyssa Jones Wood, Sustainability Coordinator
 DATE: May 2, 2023
 SUBJECT: Heritage Tree Nomination

1) Recommended Action:

Staff recommends Council formally designate the Garry Oak tree nominated by Tree Board Jim Sedore as a Heritage Tree. The Tree Board approved this designation at their April 10, 2023 meeting.

2) Background:

TMC 16.08.075 *Heritage trees* establishes the process by which trees can be nominated for designation by citizens, the Tumwater Tree Board, or city staff.

On February 28, 2023 Tumwater resident and Tree Board member Jim Sedore nominated a Garry Oak (also known as an Oregon White Oak) at 5800 Littlerock Road SW. This nominated tree is located in City-owned right-of-way. The nominated tree was assessed by the City's Tree Professional rating its overall condition as good. Due to the presence of a fungus special maintenance is needed and City staff are already working to carry out this maintenance under the supervision of the City's Tree Professional.

3) Policy Support:

Be a leader in Environmental Sustainability.

- Implement Urban Forestry Plan.
-

4) Alternatives:

- ☐ Request more information
 - ☐ Reject the nomination
-

5) Fiscal Notes:

Once a Heritage Tree is designated it is eligible for a commemorative plaque and annual evaluation by the City's contracted Urban Forester, valued at approximately \$250. Additionally, staff time is used to review application with Tree Board and update the City's Heritage Tree map if approved.

6) Attachments:

- A. Heritage Tree Memorandum
- B. Heritage Tree Information Sheet provided by Jim Sedore
- C. Memorandum from Sound Urban Forestry



City Hall
555 Israel Road SW
Tumwater, WA 98501-6515
Phone: 360-754-5855
Fax: 360-754-4138

HERITAGE TREES MEMORANDUM

April 18, 2023

Contents

Background	1
Definition and Resources	2
Proposed Heritage Tree Nomination.....	2
Heritage Tree Nomination Form	Error! Bookmark not defined.
Photos and Location.....	4
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Background

The Tumwater City Council adopted the Urban Forestry Management Plan on March 2, 2021 by Ordinance No. 2020-004. Among the Urban Forestry Management Plan actions to be implemented, two addressed heritage trees:

Action 2.1.J. Designate, register, and promote heritage trees.

Priority	Leads [Primary (P) & Secondary (S)]	Timing	Monitoring Action
#2	Community Development (P) Tree Board (S)	Start in Spring 2023 based on Peninsula Environmental Group work and update every five years thereafter	Track number of trees considered heritage trees on an ongoing basis

Action 8.1.B. Identify tree specimens, including heritage trees, on City property that illustrate proper tree care and discuss in articles on the City website and social media.

Priority	Leads [Primary (P) & Secondary (S)]	Timing	Monitoring Action
#2	Community Development (P) Parks and Recreation (S) Public Works (S) Tree Board (S)	Start in Spring 2023 and evaluate every five years thereafter	Evaluate program as compared to the Goals, Objectives, and Actions of the Plan

Heritage Tree Memorandum

Definition and Resources

From the City's Heritage Trees website, heritage trees are:

"Trees that have historical significance, by virtue of age, association to a historical structure, district, person or event, rare or unique species, or significant stand (grove) of trees can be designated as Heritage Trees, and therefore provided with special protections."

You can find out more about heritage trees on our website here:

<https://www.ci.tumwater.wa.us/departments/community-development/trees/heritage-trees>

And in TMC 16.08.075 *Heritage trees designated* here:

<https://www.codepublishing.com/WA/Tumwater/#!/Tumwater16/Tumwater1608.html#16.08.075>

Appendix 1 contains the definitions section of TMC 16.08 *Protection of Trees and Vegetation* as well as TMC 16.08.075 *Heritage trees designated*.

"Heritage trees" and "historic trees" are defined in TMC 16.08.030 as follows:

M. "Heritage tree(s)" means tree(s) designated by the city and their owners as historical, specimen, rare, or a significant grove of trees.

N. "Historic tree" means any tree designated as an historic object in accordance with the provisions of TMC Chapter 2.62.

Proposed Heritage Tree Nomination

Board Member Jim Sedore filed a nomination form for a Garry Oak tree at 5800 Littlerock Road SW. The City's contracted Urban Forester visited the tree on March 15, 2023 and estimates the tree is 165-185 years old.

A new entry to a form/survey has been submitted.

Form Name: Heritage Tree Nomination Form
Date & Time: 02/28/2023 1:47 PM
Response #: 23
Submitter ID: 11778
IP address: 97.126.100.202
Time to complete: 7 min. , 56 sec.

Survey Details

Page 1

Heritage Tree Nomination Form

Trees that have historical significance, by virtue of age, association to a historical structure, district, person or event, rare or unique species, or significant stand (grove) of trees can be designated as Heritage Trees, and therefore provided with special protections.

Who is submitting this nomination?

(o) Other

Nominator contact information.

Nominator Name Jim Sedore
email lizardgym@gmail.com
Daytime Phone Number (360) 754-7902

What criteria does this tree meet?

(o) Rare: One or very few of a kind, or is unusual in some form of growth or species.

Please provide an address or location of the tree(s).

5800 Littlerock Road, Tumwater

Please provide as much information about the tree as you can (size, type, age).

Additional information has been sent to Alyssa Jones-Wood. says that he can sign as the property owner. The tree is located between the Walmart parking lot on the West and Littlerock Road on the East, across from the Union Cemetery.

From: Larsen, E. M., and J. T. Morgan. 1998. Management recommendations for Washington's priority habitats: Oregon white oak woodlands. Wash. Dept. Fish and Wildl., Olympia. 37pp.

Highlights from the Executive Summary; Pages ix-xi.

- Oaks provide habitat for species that are state listed as Sensitive, ,,
- In urban or urbanizing areas, single oaks, or stands of oaks <0.4 ha (1 ac), may also be considered priority habitat when found to be particularly valuable to fish and wildlife (i.e., they contain many cavities, have a large diameter at breast height [dbh], are used by priority species, or have a large canopy).
- Many invertebrates, including various moths, butterflies, gall wasps, and spiders, are found exclusively in association with this oak species. Oak/conifer associations provide contiguous aerial pathways for animals such as the State Threatened western gray squirrel, and they provide important roosting, nesting, and feeding habitat for wild turkeys and other birds and mammals
- Oaks in Washington may play a critical role in the conservation of neotropical migrant birds that migrate through, or nest in, Oregon white oak woodlands. The decline of Oregon white oak woodlands has been accelerated by human activities --primarily oak removal
- Management recommendations are designed to maintain and enhance the integrity of Oregon white oak woodlands, reverse the trend of oak habitat loss, and promote the protection of oak habitat that is presently in good condition. Oaks west of the Cascades and in wetter sites along the Columbia Gorge should be cut only for stand enhancement.

The landowner must consent to the nomination prior to consideration. Has the landowner agreed to this nomination?

(o) Yes

Heritage Tree Memorandum

Landowner contact information	
Landowner Name	Brandon Hicks, City of Tumwater Transportation and Engineering Director
email	Not answered
Daytime Phone Number	(360) 754-4140
If you have a a photo you would like to share, please upload it here.	

Thank you,
City of Tumwater, WA

This is an automated message generated by Granicus. Please do not reply directly to this email.

Photos and Location

Heritage Tree Memorandum



Heritage Tree Memorandum

**Next Steps**

The Tree Board suggests the City Council formally designate the Garry Oak at 5800 Littlerock Road SW as a Heritage Tree.

Staff Contact

Alyssa Jones Wood, LEED Green Associate, Sustainability Coordinator
City of Tumwater Water Resources & Sustainability Department
360-754-4140
ajoneswood@ci.tumwater.wa.us

Appendix 1 – TMC 16.08 Protection of Trees and Vegetation

[...]

16.08.030 Definitions.

A. “Buildable area” is that portion of a parcel of land wherein a building, parking and other improvements may be located and where construction activity may take place. Buildable area shall not include streams, flood hazard areas, geological hazard areas or wetlands and their buffers as defined in TMC Chapter 18.04. For the purpose of calculating required tree protection open space area, existing and newly dedicated city rights-of-way shall not be included.

B. “City” means the city of Tumwater, Washington.

C. “Code administrator” means the director of the community development department or the director’s designated representative.

D. “Conversion option harvest plan (COHP)” means a voluntary plan developed by the landowner and approved by the Washington State Department of Natural Resources and the city of Tumwater, indicating the limits and types of harvest areas, road locations, and open space. This approved plan, when submitted to the Department of Natural Resources as part of the forest practice application and followed by the landowner, maintains the landowner’s option to convert to a use other than commercial forest product production (releases the landowner from the six-year moratorium on future development).

E. Critical Root Zone or CRZ. Unless determined otherwise by the tree protection professional, the root protection zone for trees means an area contained inside an area on the ground having a radius of one foot for every inch of tree diameter, measured from four and one-half feet above ground level, but in no event shall the root protection zone be less than a six-foot radius.

F. “Drip line” of a tree means an imaginary line on the ground created by the vertical projections of the foliage at its circumference.

G. “Environmentally sensitive area” means any lands with the following characteristics:

1. “Geologically hazardous areas” as defined in TMC Chapter 16.20;
2. Lakes, ponds, stream corridors, and creeks as defined in TMC Chapter 16.32;
3. Identified habitats with which endangered, threatened, or sensitive species have a primary association as defined in TMC Chapter 16.32;

4. Wetlands as defined in TMC Chapter 16.28.

H. “Grading” means excavation, filling, or any combination thereof. Excavation and grading is governed by the International Building Code (IBC).

I. “Greenbelt” means certain designated areas of a project or development that are intended to remain in a natural condition, and/or private permanent open space, or serve as a buffer between properties or developments.

J. “Greenbelt zone” means any area so designated on the official zoning map of the city and subject to the provisions of TMC Chapter 18.30.

K. “Ground cover” means vegetation that is naturally terrestrial excluding noxious or poisonous plants and shall include trees that are less than six inches in diameter measured at four and one-half feet above ground level.

L. “Hazardous tree” means any tree that, due to its health or structural defect, presents a risk to people or property.

M. “Heritage tree(s)” means tree(s) designated by the city and their owners as historical, specimen, rare, or a significant grove of trees.

N. “Historic tree” means any tree designated as an historic object in accordance with the provisions of TMC Chapter 2.62.

O. “Land clearing” or “clearing” means any activity which removes or substantially alters by topping or other methods the vegetative ground cover and/or trees.

P. “Open space” means unoccupied land that is open to the sky and which may or may not contain vegetation and landscaping features, subject to the provisions in TMC 17.04.325 and 17.12.210.

Q. “Parcel” means a tract or plot of land of any size which may or may not be subdivided or improved.

R. “Qualified professional forester” is a professional with academic and field experience that makes them an expert in urban forestry. This may include arborists certified by the International Society of Arboriculture, foresters with a degree in forestry from a Society of American Foresters accredited forestry school, foresters certified by SAF, or urban foresters with a degree in urban forestry. A qualified professional forester must possess the ability to evaluate the health and hazard potential of existing trees, and the ability to prescribe appropriate measures necessary for the preservation of trees during land development. Additionally, the

qualified professional forester shall have the necessary training and experience to use and apply the International Society of Arboriculture's Guide for Plant Appraisal and to successfully provide the necessary expertise relating to management of trees specified in this chapter.

S. "Topping" is the removal of the upper crown of the tree with no consideration of proper cuts as per the current ANSI A300 Standard. Cuts created by topping create unsightly stubs that promote decay within the parent branch and can cause premature mortality of a tree. Topping a tree is considered to be a removal, and may require a tree removal permit.

T. "Tree" means any healthy living woody plant characterized by one or more main stems or trunks and many branches, and having a diameter of six inches or more measured four and one-half feet above ground level. Healthy in the context of this definition shall mean a tree that is rated by a professional with expertise in the field of forestry or arbor culture as fair or better using recognized forestry or arbor cultural practices. If a tree exhibits multiple stems and the split(s) or separation(s) between stems is above grade, then that is considered a single tree. If a tree exhibits multiple stems emerging from grade and there is visible soil separating the stems, then each soil-separated stem is considered an individual tree. Appropriate tree species under six inches may be considered with approval of the city tree protection professional.

U. "Tree plan" is a plan that contains specific information pertaining to the protection, preservation, and planting of trees pursuant to this chapter.

V. "Tree protection open space" is a separate dedicated area of land, specifically set aside for the protection and planting of trees.

W. "Tree protection professional" is a certified professional with academic and field experience that makes him or her a recognized expert in urban tree preservation and management. The tree protection professional shall be either a member of the International Society of Arboriculture or the Society of American Foresters or the Association of Consulting Foresters, and shall have specific experience with urban tree management in the Pacific Northwest. Additionally, the tree protection professional shall have the necessary training and experience to use and apply the International Society of Arboriculture's Guide for Plant Appraisal and to successfully provide the necessary expertise relating to management of trees specified in this chapter.

(Ord. O2013-017, Amended, 08/19/2014; Ord. O2013-025, Amended, 01/07/2014; Ord. O2011-002, Amended, 03/01/2011; Ord. O2006-014, Amended, 04/17/2007; Ord. O2002-012, Amended, 07/16/2002; Ord. O97-029, Amended, 03/17/1998; Ord. O94-029, Amended, 09/20/1994; Ord. 1311, Amended, 04/07/1992; Ord. 1190, Added, 05/16/1989)

[...]

16.08.075 Heritage trees designated.

A. Trees can be nominated for designation by citizens, the Tumwater tree board, or city staff.

1. Application for heritage tree designation must be submitted to the community development department. The application must include a short description of the trees, including address or location, and landowner's name and phone number. The application must be signed by both the landowner and nominator.
2. The tree board reviews the application and makes a recommendation to the city council.
3. All heritage trees will be added to city tree inventory and public works maps.

B. Trees that are designated as heritage trees shall be classified as follows:

1. Historical – A tree which by virtue of its age, its association with or contribution to a historical structure or district, or its association with a noted citizen or historical event.
2. Specimen – Age, size, health, and quality factors combine to qualify the tree as unique among the species in Tumwater and Washington State.
3. Rare – One or very few of a kind, or is unusual in some form of growth or species.
4. Significant Grove – Outstanding rows or groups of trees that impact the city's landscape.

C. The city will provide an evaluation and recommendation for tree health and care and will provide up to one inspection annually upon request of the landowner. The city may, at its discretion, provide a plaque listing the owner's name and/or tree species/location.

D. Heritage Tree Removal.

1. A tree removal permit is required for removal of any heritage tree(s).

2. The city tree protection professional shall evaluate any heritage trees prior to a decision on the removal permit. Recommendations for care, other than removal, will be considered.

3. Dead or hazardous trees are exempt from a tree removal permit after verification by the city tree protection professional.







E. Heritage Tree Declassification. Any heritage tree may, at any time, be removed from heritage tree status at the request of the landowner after providing two weeks' written notice to the community development department. Unless an agreement can be reached to preserve the tree, the tree will be removed from the heritage tree inventory list and the plaque, if any, will be removed.

(Amended during 2011 reformat; O2006-014, Amended, 04/17/2007; Ord. O2002-012, Amended, 07/16/2002; Ord. O2000-012, Added, 07/18/2000)

Heritage Tree Information

5900 Littlerock Road SW – Walmart Supercenter parking lot

– Quercus garryana

Location:	5800 LITTLEROCK RD SW, TUMWATER, 98512								
Map									
Property owner	Owner Name: WAL-MART REAL ESTATE BUSINESS TRUST Owner Address: PO BOX 8050 MS 0555 , BENTONVILLE, AR 72716 Site Address: 5800 LITTLEROCK RD SW, TUMWATER, 98512 360,350.6019 Store Operator. Call 1-800-925-6278 (1-800-WALMART) – Customer service								
Genus species	Quercus garryana								
Common name(s)	Garry Oak, Oregon Oak								
Approx. size	Height – 60 feet DBH – 80 inches Age – 100 years								
Notes on species	https://www.monumentaltrees.com/en/usa-quercusgarryana/ <table><tr><th>Location</th><th>Girth </th><th>Height </th></tr><tr><td> Medford, Ken Denman Wildlife Area, OR</td><td>2.44 m</td><td>?</td></tr></table>			Location	Girth 	Height 	 Medford, Ken Denman Wildlife Area, OR	2.44 m	?
Location	Girth 	Height 							
 Medford, Ken Denman Wildlife Area, OR	2.44 m	?							
Date nominated	2023.02								
Nominator	Jim Sedore								
Support for the nomination	As Littlerock Road was widened and the property transitioned from private property (owned by Mary McQueen) to commercial (owned by Walmart), developers have recognized the beauty of this tree and adjusted their development to preserve this tree.								
Supporting Tumwater Municipal Code regulations	1. Tumwater Municipal Code Chapter 16.08 PROTECTION OF TREES AND VEGETATION <u>16.08.030 Definitions.</u> G. “Environmentally sensitive area” means any lands with the following characteristics: 3. <u>Identified habitats with which endangered, threatened, or sensitive species have a primary association</u> as defined in TMC Chapter 16.32; Tumwater Municipal Code Chapter 16.32								

	<p>FISH AND WILDLIFE HABITAT PROTECTION</p> <p>16.32.03 Definitions</p> <p>J. "Priority habitat, state" or "state priority habitat" means a seasonal range or habitat element, <u>so identified by the Washington State Department of Wildlife</u>, with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative diversity or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration.</p> <p>L. "Priority species, state" or "state priority species" means <u>those species that are so identified by the Washington State Department of Wildlife due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state-listed endangered, threatened and sensitive species.</u></p>
<p>WA State Dept of F&WL publications</p>	<p>Larsen, E. M., and J. T. Morgan. 1998. <i>Management recommendations for Washington's priority habitats: Oregon white oak woodlands.</i> Wash. Dept. Fish and Wildl., Olympia. 37pp.</p> <p><i>Highlights from the Executive Summary; Pages ix-xi.</i></p> <ul style="list-style-type: none"> • <u>Oaks provide habitat for species that are state listed as Sensitive, ,</u> • <u>In urban or urbanizing areas, single oaks, or stands of oaks <0.4 ha (1 ac), may also be considered priority habitat when found to be particularly valuable to fish and wildlife (i.e., they contain many cavities, have a large diameter at breast height [dbh], are used by priority species, or have a large canopy).</u> • <u>Many invertebrates, including various moths, butterflies, gall wasps, and spiders, are found exclusively in association with this oak species. Oak/conifer associations provide contiguous aerial pathways for animals such as the State Threatened western gray squirrel, and they provide important roosting, nesting, and feeding habitat for wild turkeys and other birds and mammals</u> • <u>Oaks in Washington may play a critical role in the conservation of neotropical migrant birds that migrate through, or nest in, Oregon white oak woodlands. The decline of Oregon white oak woodlands has been accelerated by human activities --primarily oak removal</u> • <u>Management recommendations are designed to maintain and enhance the integrity of Oregon white oak woodlands, reverse the trend of oak habitat loss, and promote the protection of oak habitat that is presently in good condition. Oaks west of the Cascades and in wetter sites along the Columbia Gorge should be cut only for stand enhancement.</u> • <u>Specific recommendations include the following:</u> <ul style="list-style-type: none"> • <u>Do not cut Oregon white oak woodlands except for habitat enhancement.</u> • <u>Create snags when thinning oaks or conifers instead of removing trees.</u>

- Leave fallen trees, limbs, and leaf litter for foraging, nesting, and denning sites.
- Retain contiguous aerial pathways.
- Other oak enhancement activities include the following:
 - Planting Oregon white oak acorns and seedlings.
 - Selling or donating oak woodlands to conservation and land trust organizations.
 - Purchasing contiguous or notable stands of oaks by local, state, and federal agencies.
 - Designating large, contiguous oak and oak/conifer stands as critical areas.
 - Encouraging aggressive oak enhancement/regeneration measures by local, state, and federal agencies.

Threatened, Endangered, or candidates for these listings.

://efaidnbmnnnibpcajpcgicfindmkaj/https://wdfw.wa.gov/sites/default/files/publications/00030/wdfw00030.pdf **Page 9 – Executive Summary**

Health
assessment

Images



Garry Oak looking East from Union Cemetery 2023.01.26 by Jim Sedore



Action:

2023.02.15 – 1617 – email from Alex Baruch re: 5900 Littlerock Road Garry Oak ownership - Walmart tree nomination

Alex Baruch. Wed, Feb 15, 4:17 PM to me

Hi Jim,

After further research we were able to come to the conclusion that the tree is in the right-of-way therefore the City can sign the form. Brandon Hicks, Transportation and Engineering Director said that he would be able to sign the form on behalf of the City. Please let us know if you have any other questions.

Sincerely, Alex Baruch

2023.02.11 – 1137 – Email from Jim to D. Puneet re: Walmart tree nomination

Liz & Jim Sedore lizardgym@gmail.com Attachments 11:37 AM to puneet.d, ALEX, Alyssa, bcc: Liz

To whom this may concern,

I am Jim Sedore, a member of the City of Tumwater Tree Board.

A Garry Oak on the NW edge of the Walmart property (5900 Littlerock Road, Tumwater WA) is being nominated as a Heritage Tree.

A photo of the tree is attached.

"Heritage Trees

Trees that have historical significance, by virtue of age, association to a historical structure, district, person or event, rare or unique species, or significant stand (grove) of trees can be designated as Heritage Trees, and therefore provided with special protections.

<https://www.ci.tumwater.wa.us/departments/community-development/trees/heritage-trees>

Property owner must give permission for the tree to be nominated.

1. Are you the person/company representative that would give this permission?
2. If not, can you reply with contact information for the person we should contact?

Thank you, Jim Sedore for the Tumwater Tree Board

2023.02.09 – Email from Alex Baruch. Feb 9, 2023, 3:19 PM To me

Hi Jim,

In speaking with staff and looking at the permit documents for Walmart it appears that this tree was retained as a part of the overall tree retention requirements for the development. As you mentioned it appears the tree is within the right-of-way which the City owns however when trees are planted or retained as a part of development requirements they are typically responsible for the maintenance of

those trees moving forward. That is the case with this tree as it was a part of the development's tree retention plan. Please let me know if you have any other questions.

Sincerely, Alex Baruch, Associate Planner, Community Development. City of Tumwater

555 Israel Rd SW | Tumwater, WA 98501

(360) 754-4180 | ABaruch@ci.tumwater.wa.us www.ci.tumwater.wa.us

2023.02.07 – 1024 – Email to Alex Baruch – City of Tumwater – re: 5900 Littlerock Road parkway oak tree ownership

Liz & Jim Sedore lizardgym@gmail.com 10:24 AM to ALEX, bcc: Liz

ALEX,

I'm on the Tumwater Tree Board and need a little information.

I'm looking for the "owner" of a large tree at 5900 Littlerock Road on the parkway.

There is a large, old Garry Oak along Littlerock Road at 5900 Littlerock Road. This is the Walmart parking lot.

When I look at the map,

<https://map.co.thurston.wa.us/Html5Viewer/Index.html?viewer=uMap.Main>, it appears that the tree is on the street parkway and NOT within the Walmart property line. There is a unique curve in the property line on the map around this tree area. Is this true?

If Walmart does not own this tree, (because it is not within their property line), who owns the tree?

I assume it would be the same ownership as Littlerock Road which is the City of Tumwater?

Thanks, Jim Sedore for the Tumwater Tree Board

SUF

SOUND URBAN FORESTRY, LLC

Appraisals ~ Site Planning ~ Urban Landscape Design and Management
Environmental Education ~ Risk Assessments

3/15/2023

City of Tumwater
Water Resources and Sustainability Department
Alyssa Jones Wood, Sustainability Coordinator
555 Israel Rd SW
Tumwater, WA 98501

RE: Proposed Heritage Tree – 5800 Littlerock Road SW Oregon White Oak

Ms. Wood:

Upon the request of the City of Tumwater, I have conducted an assessment of a tree located within the City's ROW adjacent to the Walmart property at 5800 Littlerock Rd SW. This tree has been nominated as a heritage tree by a member of the Tree Board. I visited the site on March 9, 2023.

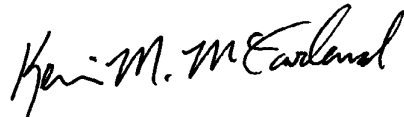
Findings

The identified tree is an Oregon white oak (*Quercus garryana*). Diameter at breast height measures 44" with an approximate height of 62'. Live canopy ratio is 40% and the overall condition is good. There are broken/damaged and dead branches measuring 3" in diameter and greater within the canopy. Trunk soundings did not indicate internal stem decay and there are no other indications of decay or structural issues. I did find evidence of *Armillaria* (shoestring root rot) rhizomorphs along the soil covered base of the tree.

Comments

The tree would benefit from selective pruning to clean the crown of any stubs and dead or damaged branches measuring 3" or greater in diameter. Also of concern is the excess soil and mulch around the base of the tree. Soil level should be so that the root flare is visible. I would recommend that the excess soil be carefully removed at an angle out to a distance of 4' so that the root flare be exposed (see photos and diagram). This should be accomplished by hand without the use of any equipment. No equipment should be allowed under this tree. The health of the tree may be compromised by the *Armillaria* if this is not done.

Professionally Submitted,



Kevin M. McFarland, Principal
Consulting Forester, Contracted City of Tumwater Tree Protection Professional
ISA Certified Arborist PN-0373 & Tree Risk Assessment Qualified

Sound Urban Forestry, LLC
P.O. Box 489
Tahuya, WA 98588
360-870-2511

Location of Nominated Tree



Photo of Nominated Tree



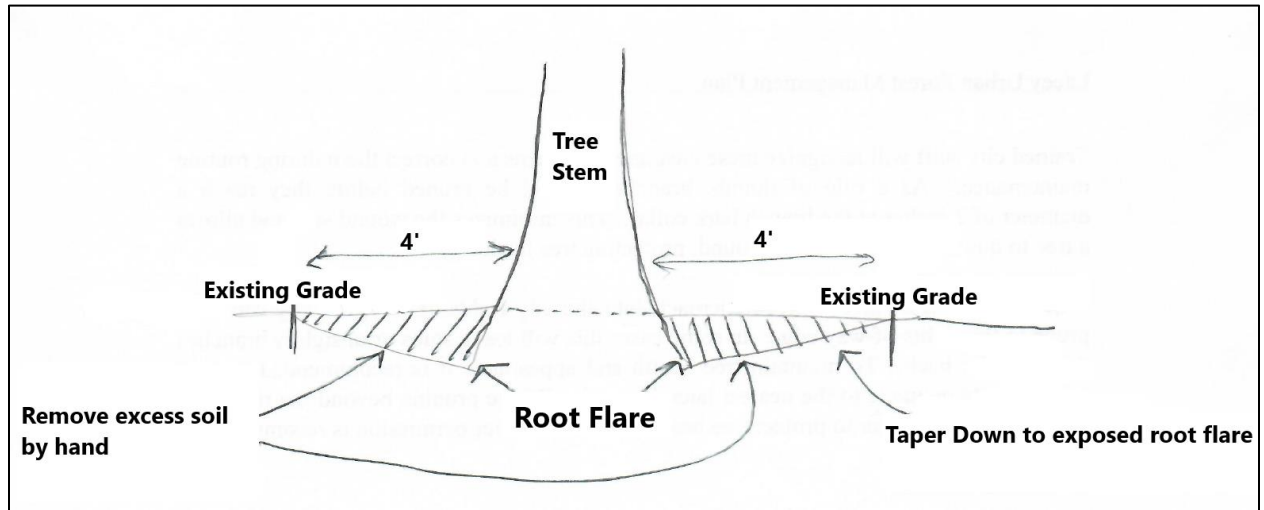
Photo of Excess Soil at the Base



Photo Showing Lack of Root Flare at Base



Diagram of Recommended Root Flare Exposure



TO: City Council
 FROM: John Doan, City Administrator
 DATE: May 2, 2023
 SUBJECT: Ordinance No. O2023-008, Amending Title 2 of the Tumwater Municipal Code, Adding Chapter 2.54, General Guidelines for Advisory Boards and Commissions

1) Recommended Action:

Adopt Ordinance No. O2023-008, amending Title 2 of the Tumwater Municipal Code, adding Chapter 2.54, General Guidelines for Advisory Boards and Commissions.

2) Background:

At the April 12th General Government Committee meeting, the Committee recommended adoption of Ordinance No. O2023-008. Current provisions for most of the City's boards and commissions do not provide authority or a process for removal of any member for failure to perform. The exception being the Planning Commission which is dictated by statute. The attached ordinance establishes a uniform process for removal of members of any advisory board, commission, task force, and other multi-member body created by the City Council. The action by the Mayor requires approval of the City Council.

This ordinance also clarifies that members are subject to applicable state and local laws, rules and regulations, including ethics provisions. This is important because City board and commission members are increasingly involved in activities (spending decisions, certificates of approval, budgets, artist commissions, etc.) which could create opportunities for conflicts of interest.

The City currently has vacancies on the Barnes Lake Management District Steering Committee, Civil Service Commission, Lodging Tax Advisory Committee and the Planning Commission. Interested residents are encouraged to apply. Information can be found at: <https://www.ci.tumwater.wa.us/departments/city-meetings/commissions-advisory-boards>.

3) Policy Support:

Strategic Priority: Refine and Sustain a Great Organization

4) Alternatives:

- ☐ Do not adopt Ordinance No. O2023-008
 - ☐ Modify the ordinance
-

5) Fiscal Notes:

There is minimal cost to this ordinance and it avoids potential pitfalls at a later time.

6) Attachments:

- A. Ordinance No. O2023-008, Amending Title 2 of the Tumwater Municipal Code, Adding Chapter 2.54, General Guidelines for Advisory Boards and Commissions

ORDINANCE NO. O2023-008

AN ORDINANCE of the City Council of the City of Tumwater, Washington, amending Title 2, Administration and Personnel, of the Tumwater Municipal Code, adding a new Chapter 2.54, General Guidelines for Advisory Boards and Commissions, to provide general guidelines governing City advisory boards and commissions and creating a uniform process for removal of members as more particularly described herein.

WHEREAS, the City has authority to create boards and commissions; and

WHEREAS, the City has established the following Boards and Commissions: Planning Commission, Historic Preservation Commission, Tree Board, Civil Service Commission, Board of Park Commissioners, LEOFF Plan I Disability Board, and Lodging Tax Advisory Committee; and

WHEREAS, the City wishes to ensure boards and commissions have rules to govern their proceedings and to create a uniform process to govern the removal of members of advisory boards and commissions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. A new Chapter 2.54, General Guidelines for Advisory Boards and Commissions, is hereby added to the Tumwater Municipal Code to read as follows:

Chapter 2.54

GENERAL GUIDELINES FOR ADVISORY BOARDS AND COMMISSIONS

Sections:

- 2.54.010 Applicability of Chapter.
- 2.54.020 Creation of Rules
- 2.54.030 Removal of Members.

2.54.010 Applicability of Chapter.

The provisions of this chapter shall apply to each advisory board, commission, committee, task force, or other multi-member body created by the city council, except as otherwise provided by city code or where in conflict with state law.

Each member of a board, commission, committee, task force or other multi-member body appointed by the city council shall comply with applicable state and local laws, rules, and regulations including the City of Tumwater Employee Code of Ethics.

2.54.020 Creation of Rules.

Each advisory board, commission, committee, task force, or other multi-member body shall establish, adopt and comply with its own rules of procedure.

2.54.030 Removal of Members.

- A. The mayor may remove a member of a board, commission, committee, task force, or other multi-member body at any time with approval of a majority of the city council.
- B. Vacancies for the remainder of an unexpired term shall be filled in the same manner in which the original appointment was made.

Section 2. Section 2.72.030, Terms of commissioners – Filling vacancies, of the Tumwater Municipal Code shall be amended as follows:

2.72.030 Terms of commissioners – Filling vacancies.

The first commissioners appointed and those appointed to newly created positions shall determine by lot whose term shall expire in one, two and three years respectively, and their terms shall begin after their appointment has been approved by the city council, and upon taking the usual oath of qualification. The terms of office, except the first, shall begin on the first Monday in June, and, at the expiration of each commissioner's term, the mayor shall appoint, with the consent of the city council, one member for a three-year term. ~~Members of the board may be removed at any time by the mayor, with the approval of five members of the council, and vacancies for the remainder of unexpired terms shall be filled in the same manner in which the original appointments are made.~~

(Ord. O2007-011, Amended, 07/17/2007; Ord. 636, Added, 02/06/1973)

Section 3. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not

limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 5. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 6. Effective Date. This ordinance shall become effective thirty (30) days after passage, approval and publication as provided by law.

ADOPTED this _____ day of _____, 2023.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:_____

Effective Date:_____

Ordinance No. O2023-008 - Page 3 of 3