



**CITY COUNCIL
MEETING AGENDA**

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

**Tuesday, March 21, 2023
7:00 PM**

- 1. Call to Order**
- 2. Roll Call**
- 3. Flag Salute**
- 4. Special Items:**
 - [a.](#) Proclamation Red Cross Month, March 2023
 - [b.](#) South Puget Sound Habitat for Humanity Update by Carly Colgan, South Puget Sound Habitat for Humanity Executive Director
- 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 Worksession, February 28, 2023
 - [b.](#) Approval of Minutes: City Council, March 7, 2023
 - [c.](#) Payment of Vouchers (Shelly Carter)
 - [d.](#) Service Provider Agreement with PBS for the Percival Creek Fish Passage Barrier Removal Project Amendment 3 (Dan Smith)
 - [e.](#) Capital Agreement with the Washington State Department of Commerce for the South Puget Sound Habitat Humanity Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP) (Troy Niemeyer & Brad Medrud)
 - [f.](#) Assignment of Agreement with the South Puget Sound Habitat for the Humanity Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP) (Troy Niemeyer & Brad Medrud)
 - [g.](#) Contract Award for Phase 3 Grant with WDFW for Bush Prairie HCP and HCP Update (Brad Medrud)
 - [h.](#) Consultant Agreement with Tierra Right of Way Services, Ltd, for Right-of-Way Services on the X Street Roundabout Project (Brandon Hicks)
 - [i.](#) Tree Board Appointment of Hannah Ohman and Brodrick Coval (Hanna Miles)
 - [j.](#) Heritage Tree Nomination (Alyssa Jones Wood)
- 7. Committee Reports**

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

8. Mayor/City Administrator's Report

9. Councilmember Reports

10. Any Other Business

11. 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://tcmmedia.org/stream.php>, select "Watch, Streaming Now, Channel 26."

OR

Go to <http://www.zoom.us/join> and enter the Webinar ID 823 7016 5215 and Passcode 179089.

Listen by Telephone

Call (253) 215-8782, listen for the prompts and enter the Webinar ID 823 7016 5215 and Passcode 179089.

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_LBySmPeSTs24ZM75w7Mr1Q

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://tcmmedia.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, during American Red Cross Month in March, we celebrate the humanitarian spirit of Tumwater and reaffirm our commitment to help ensure no one faces a crisis alone; and

WHEREAS, caring for one another is at the heart of our community and exemplified by the people of Tumwater whose simple acts of kindness through the Red Cross provide help and hope in people's most difficult moments – continuing the lifesaving legacy of Clara Barton, who founded the organization more than 140 years ago to prevent and alleviate human suffering; and

WHEREAS, every day, these ordinary individuals lend a helping hand to make an extraordinary difference for neighbors in need – whether it's providing emergency shelter, food and comfort for families displaced by home fires and other disasters; donating lifesaving blood for cancer patients, accident victims, and people with sickle cell disease and other life-threatening conditions; supporting military members and veterans along with their families and caregivers through the unique challenges of service; using vital skills like first aid and CPR to help others survive medical emergencies; or delivering international humanitarian aid and reconnecting loved ones separated by crises around the world; and

WHEREAS, their support, volunteerism and generous donations are critical to our community's resilience. We hereby recognize this month of March in honor of all those who fulfill Clara Barton's noble words, "You must never think of anything except the need and how to meet it," and ask everyone to join in this commitment.

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

March 2023 Red Cross Month

and I encourage all people to join me as I commend the efforts of the South Puget Sound and Olympics chapter of the American Red Cross and encourage local residents to reach out and support its humanitarian mission.

Signed in the City of Tumwater, Washington, and recognized on this 21st day of March in the year, two thousand twenty-three.




Debbie Sullivan
Mayor

**TUMWATER CITY COUNCIL WORKSESSION
MINUTES OF VIRTUAL MEETING
February 28, 2023 Page 1**

CONVENE: 6:00 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 and Economic Development Manager Austin Ramirez.

AIRPORT UPDATE: Mayor Sullivan introduced Warren Hendrickson to provide an update on the Airport Master Plan for the Olympia Regional Airport.

Mr. Hendrickson reported he is with the Port of Olympia serving as the Airport Senior Manager. Former Airport Manager Rudy Rudolph now serves as the Operations Director for the Port of Olympia. He also serves as the Acting Chair for the Commercial Aviation Coordinating Commission (CACC) for the state.

Mr. Hendrickson said his role on the CACC is separate from his position with the Port of Olympia. He is a member of the Washington State Aviation Alliance, an alliance of all aviation organizations in Washington State except for commercial and military aviation. The alliance advocates for legislation and serves as a non-voting member of the CACC.

The Airport Master Plan is a comprehensive study of the airport's short, medium, and long-term development plans to meet future aviation demand. As a Federal Aviation Administration (FAA) funded airport and part of the National Plan for an Integrated Airport System (NPIAS), the Port is required to complete a master plan update. The update is completed every eight to ten years dependent upon the nature of growth and changes within the aviation marketplace. The last master plan was completed in 2013.

The master plan provides guidelines for actions occurring at the airport for the next 10 years. The Port contracted with the Aviation Planning Group, a DBE (Disadvantaged Business Enterprise) company, to assist in developing the master plan. The subcontractor is DOWL. The update was initiated in the second quarter of 2021 with funding from the FAA of \$655,293.00. Because the grant was issued in 2021, Congress authorized all grants in 2021 to be paid at 100% reimbursement versus the normal 90% reimbursement rate saving the Port \$65,000.

The goals of the master plan include:

- Meet Aviation Demand
- Meet FAA Design Standards

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- Prepare for Future Development
- Prepare for Emerging Aviation Technologies
- Plan for and Demonstrate Airport Self-Sufficiency

The master plan document elements include:

- Inventory
- Forecast (approved by the FAA in 2021)
- Facility Requirements
- Alternatives
- Airport Layout Plan (approved by the FAA)
- Implementation – Capital Investment Plan

The preferred alternative protects and preserves existing infrastructure and meets FAA standards. Lacking an approved Airport Layout Plan, the Port of Olympia would not be eligible to receive state or federal funding. The contractor provided a final draft of the first chapters and is scheduled to complete the final chapters within the next 10 days. In addition to the six chapters of the master plan, three appendices are included covering:

- Commercial Service Feasibility Study (Part 139 dictates FAA airport certification for commercial airport)
- Public Involvement/Public Comments
- Emerging Technologies

The airport currently lacks certification to offer commercial service. Port Vision 2050 includes a recommendation to plan for future regional commercial service at the airport.

Mr. Hendrickson displayed an aerial illustration of the airport and identified the boundaries of the runway protection zones, which do not allow development other than for existing infrastructure. Other highlighted areas are designated as future aviation-related and aeronautical development. The plan calls for no changes in the airport fence but some taxiway locations will change to meet FAA standards. The main runway will be rehabilitated with repair and rehabilitation of two runways. The illustration identifies future aviation-related industrial property either on or adjacent to the airport. He outlined the location of the proposed soda bottling company. Other areas reflect potential hangar development. Most other development on the airport will be subject to the Habitat Conservation Plan.

Mr. Hendrickson outlined the highlights of the Commercial Service Feasibility Study. Currently, no market exists for commercial aviation

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service until 2035. In 2035, opportunities may exist to consider offering commercial air service if the market can support service. By 2040, the forecast potential is 280,000 passengers or 20,000 passengers per month. Today, the Port's operational capability is 209 operations daily. At the end of the forecast period, 240 operations are forecasted daily. An operation is a takeoff or landing. The population rate of growth in Thurston County will exceed the rate of growth at the airport during the forecast period.

Mr. Hendrickson responded to questions concerning the forecast for commercial air service and explained that because the airport is also federally funded, the Port must abide by FAA grant assurances. As a public use airport, the airport is available for use by the general public without a requirement for prior approval of the airport owner or operator. Additionally, airport runways are not capable of supporting the weight of large aircraft. The master plan does not recommend any changes to existing runway configurations.

Mr. Hendrickson addressed questions about the type of fuel used by different types of aircraft and future planning for the airport. Aircraft powered by piston engines require a small amount of lead in fuel. The Legislature is considering a bill to address the issue of lead-based fuel. An approved unleaded fuel is available for piston engine aircraft that universally applies to all types of piston aircraft in existence. The issue surrounds the lack of any production or distribution capabilities to offer unleaded fuel to the market. The master plan also includes consideration of air pollution. The Port believes issuing a SEPA Planning Checklist is warranted for the master plan and plans to pursue the SEPA review process. The Port completed a SEPA review as part of the 2013 master plan planning process as well. The master plan does not forecast the purchase of property for future expansion of the airport. The airport will experience incremental growth as the population of Thurston County increases.

Mr. Hendrickson shared that as part of the public engagement process, the Port hosted a question and answer session on January 18, 2023. The event attracted approximately 65 individuals between zoom, online, and in-person during the meeting. Some concerns surrounding the update was the Port planning to offer up to 630 airline flights a day. The source of the concern was identified in the 2013 planning document, which defined the capacity of a single runway airport serving 630 flights a day. The FAA's approved forecast for the Olympia Regional Airport discounts that scenario.

Mr. Hendrickson reported he recently met with the consultation team and

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reviewed the airport layout documents to finalize the documents for FAA approval. The draft document is scheduled for completion by mid-March with a goal of submitting the master plan to the FAA at the end of March. The formal FAA approval process entails a two-month process beginning in April and concluding at the end of May. In April, the Port will host another formal public comment period for comments on the master plan. All comments will be included in the secondary appendix scheduled for completion in early May. The final FAA approved Master Plan is scheduled to be presented to the Port of Olympia Commission on June 26, 2023 for acceptance.

Mr. Hendrickson summarized the master plan as reflective of no major changes to the footprint of the airport, realignment of taxiways to meet FAA standards, installation of efficient lighting (LED), and condensing the size of the secondary runway to increase pervious surface.

Mr. Hendrickson addressed questions about energy efficiency. The Port of Olympia has energy efficiency policies and programs to minimize or reduce energy use during operations. The Port has established sustainability teams and recently executed an interagency agreement with the Nisqually Indian Tribe to apply for a sustainability grant. The Port and Nisqually Indian Tribe plan to combine efforts during a yearlong study on the potential conversion of vehicle fleets to electric vehicles. The Port also has installed electric charging stations at the Olympia Farmer's Market.

Mr. Hendrickson updated the Council on the work of the CACC. The task assigned to the CACC was to identify a single preferred location for a new commercial aviation facility by June 2023. The Commission includes 15 voting members and 12 non-voting members with all members having an equal voice with the 15 voting members voting on the final recommendation. The Washington State Department of Transportation (WSDOT) Aviation Division provides administrative support. The timeline was extended by subsequent legislation because of the pandemic. The overall goal is to address commercial air passenger service as well as air cargo and general aviation service. The three-phased deadlines include January 2022, October 2022, and June 15, 2023. Members are volunteers and funding from the Legislature did not allow for any independent research and analysis. The CACC relied on existing plans or explored ways to locate other sources of data. Funds available to the CACC were limited to public outreach and administrative purposes. The Legislature prohibited the Commission from rendering any recommendations involving King County or Joint Base Lewis McChord (JBLM). In 1992, another study, The Flight Plan included three recommendations:

- Construction of a third runway at Sea-Tac Airport – completed

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- Provide commercial air service at Paine Field – completed
- Construct a new airport in South Puget Sound – not completed.

Puget Sound Regional Council (PSRC) soon after completed a study and a forecast, the Regional Aviation Baseline Study. The study identified Sea-Tac as unable to accommodate 27 million commercial passengers in the Puget Sound region resulting in the economic loss of \$31 billion and 209,000 jobs. WSDOT Aviation completed a study and verified PSRC's forecast. By 2032, existing facilities would be unable to serve capacity needs.

Based on recommendations in 1992, a South Sound airport, Sea-Tac, and Paine Field would provide three airports to serve the population. Following contact with 18 regional airports during the initial first round, owners of the airports and elected officials conveyed no interest in sponsoring another airport. The Commission concluded a new site selection was necessary. WSDOT Aviation generated data to enable the Commission to complete the analysis. During the first phase of review, the Commission considered six airports located throughout Puget Sound and determined no viable candidates. The second phase concluded in October 2022 with a recommendation to expand Paine Field to its maximum capacity to serve northern Puget Sound and identify a greenfield site with a two-runway configuration (3,100 acres). The CACC selected central east Pierce County and central Thurston County as the three greenfield sites because each site provided the greatest level of capacity to meet the 2050 target. Following analysis of the sites, local government entities at all levels and tribal nations universally opposed the three greenfield sites. Subsequently, the City of Yakima requested consideration of the McAllister Field as the new preferred airport location. The challenge with the site is the location as the population served by the airport resides in Puget Sound.

The CACC's four guiding principles for selection of an airport site are public benefit, economic feasibility, social justice, and environmental sustainability.

Mr. Hendrickson shared that over the prior three-year period, the website hosted by WSDOT Aviation included 700 individuals who had signed up to receive information. Following the announcement of the three greenfield sites, sign-ups increased to 4,200 in three weeks.

The CACC recognizes its direction to recommend a single site for a new airport while acknowledging the lack of any government or public support for any sites considered by the CACC. It is likely the Paine Field site

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would need to expand to the extent possible. However, beyond Paine Field, the CACC cannot provide a recommendation on a site that would meet capacity needs at this time.

House Bill 1791 is currently under consideration by the Legislature to create a successor commercial aviation coordinating work group. The bill passed from the House Transportation Committee and is moving through the legislative process. Until the CACC receives direction through new legislation, the CACC is required to forward a recommendation while acknowledging the information gleaned over the last several months. The CACC continues to engage with communities and is hosting two open houses with 1-hour question and answer sessions via zoom through the WSDOT Aviation website within the next several weeks. The next meeting of the CACC is tentatively scheduled on March 30, 2023. The CACC may render a final decision at that meeting.

Mr. Hendrickson offered four questions for moving forward:

1. Do we agree there is a problem? Is the forecast aviation capacity deficit for both passenger and cargo?
2. Do we agree it is worth solving?
3. If there is agreement for solving the problem, then how and where?
4. If not solved, it may require accepting the consequences of taking no action recognizing \$31 billion in economic gains and jobs would be lost.

Future conversations require a dialogue on defining the problem and ways of solving the problem rather than identifying a particular location.

The Council thanked Mr. Hendrickson for the update.

EXPERIENCE
OLYMPIA &
BEYOND UPDATE:

Manager Ramirez invited Annette Pitts, Executive Director, Experience Olympia & Beyond, to update the Council on research serving as the basis of the organization's new Business and Marketing Plan.

Last year, the organization was able to increase staffing capacity following COVID and added a market research analyst. In 2020, Thurston County lost over 700 jobs in the tourism and hospitality industry. The region has not recovered fully from the loss of those jobs. The research included considering a broader view and review of personal sentiments than in the past by asking similar questions about the visitor experience when visiting Thurston County. The findings were surprising and serve as the basis of the Business and Marketing Plan as the research identified differences in terms of how residents view the region versus how visitors view the region.

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Four hundred people participated in the survey identified either as residents, businesses (profit and non-profit), governmental entities, or visitors.

Ms. Pitts shared the results of the survey. Over 86% of visitors surveyed indicated they had previously visited the region. The main purpose of their visits was to visit friends and family followed by weekend getaways and vacations. Many of the respondents were multiple day visitors versus a day visitor with the average stay in the county of 3.6 days. Over 60% of the respondents indicated they stayed at a hotel or motel. The organization tracks short-term rentals through a service. The region's short-term rental lodging inventory is 11% of total rental rooms that have expanded by 3% since January 2022.

Ms. Pitts highlighted some survey responses reflecting the differential between visitors and local stakeholders for some specific areas within the county. The survey reflected a wide range of questions on homelessness, panhandling, public parking, transportation services, arts and cultural venues, restaurants, hotels and motels, and handicap accessibility.

The completed Business and Marketing Plan integrates data obtained through the survey and data from location services and consumer industry statistics and forecasts. The organization is introducing several campaigns. One is *Made in Thurston County* to identify locally made products, services, and stores in the county. The organization has launched the program *You belong Here* emphasizing the friendliness of the area. A systematic approach has been developed for all lodging tax award recipients regardless of the municipality providing the funds. Recipients receive a suite of services at no charge to include a listing on the website, social media advertising, inclusion within seasonal PR pit sheets distributed to local and national media, and inclusion within the organization's email and visitor email newsletters. Several public meetings are scheduled in March and April. The meetings are community listening sessions to share information on survey key findings and receive feedback from the community on ways to improve the destination experience for both residents and visitors. The organization will develop a plan and pursue efforts in 2024. Survey results are posted on the organization's website located at www.experienceolympia.com under reports.

Ms. Pitts addressed questions about the organization's name, which was adopted prior to her joining the agency. The name was adopted as it reflected a name that had more brand recognition. She has received much

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feedback about the name, as the name is not reflective of other local municipalities leading to the creation of co-brands of *Experience Tumwater*, *Experience Lacey*, and other communities within the Thurston County region at no additional cost. A style guide was produced as well as logos accessible to all municipal partners. She cited other efforts to ensure the organization is inclusive of all communities in the region. Additionally, most tourism organizations are a county or a collection of municipalities. It speaks to the importance of showcasing areas and events to attract visitors.

Ms. Pitts shared information on the partner portal enabling businesses and organizations to update their respective listing at any time at no charge. A blog listing is different and can be updated by contacting agency staff to shift the focus of the information for the organization or entity. She shared that the new website features an itinerary building/mapping tool to create self-guided tours around specific interests. The organization plans to identify different categories based on analytics from the website and visitor traffic to create different itineraries and tours, as well as integrating the organization's certified tourism ambassador program.

City Administrator Doan acknowledged the membership of Councilmember Jefferson on the Board of Directors for Experience Olympia and Beyond, as well as Parks and Recreation Director Denney. Director Denney has been very involved and recognized for his work on community events.

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

City Administrator Doan recommended deferring discussion on the Council's consent calendar to another meeting. The Council supported deferring the discussion.

ADJOURNMENT:

With there being no further business, Mayor Sullivan adjourned the meeting at 8:15 p.m.

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

**TUMWATER CITY COUNCIL MEETING
MINUTES OF HYBRID MEETING
March 7, 2023 Page 1**

CONVENE: 7:00 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, Police Chief Jon Weiks, Communications Manager Ann Cook, K9 Office Chase Grimmert, and City Clerk Melody Valiant.

SPECIAL ITEMS:

**MEET & GREET
WITH K9 THOR:** Police Chief Weiks introduced K9 Officer Chase Grimmert. K9 Officer Grimmert is the K9 Program's new K9 Officer.

K9 Officer Grimmert reported he been part of the K9 Program for the last three and half years in support of K9 Officer Mize and K9 James. As K9 Officer Mize is nearing retirement and K9 James is ending his career, the department moved forward and secured a new K9 dog. He introduced K9 Thor, who is a two-year old Belgian Malinois. They both completed 400 hours of training. Training included tracking, evidence search, radios, weapons, lost possessions and wallets, article search, and apprehension. Obedience is an important control element of a working K9. K9 Thor has demonstrated his ability for obedience. The initial relationship building was the most difficult part of the training as K9 Thor was previously a pet in a household in another state. The owner was no longer able to care for Thor and surrounded the dog to an organization that contacted a local agency, West Coast Police Canine, a civilian dog breeding and training company with decades of experience working with dogs. Of all the dogs tested by the department, Thor performed to department standards.

In moving forward, the program wants to continue maintaining a narcotics dog. The Tumwater Police Department has the only drug K9 in the county. Recently, K9 Officer Mize and K9 James discovered a substantial amount of drugs and pills. Drugs continue to be a presence in local communities and the rules as to how police officers interact with drug suspects have changed. Many other law enforcement agencies rely on the department's K9 Program to provide assistance. Another important role of the K9 is participating in community events.

Police Chief Weiks commented that the assignment is a 24/7 commitment. K9 officers live with their dog. K9 Officer Mize plans to continue working with the new team throughout the year and transition the department's new K9 team following his retirement.

K9 Officer Grimmert addressed questions on the capability of K9s to detect drugs, protocol for breaks from a K9, and how property crimes and crimes

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against society occur during night hours requiring the team to work evening hours. Currently, six K9 teams are available within Thurston County.

PROCLAMATION
WOMEN'S HISTORY
MONTH, MARCH
2023:

Mayor Sullivan read a proclamation declaring the month of March as *Women's History Month*. The proclamation urges people to take actions against gender bias and inequity and join her in recognizing women's contributions to culture, history, and society.

Mayor Sullivan presented the proclamation to Pam Dittloff with the Zonta Club of Olympia. Ms. Dittloff reported Zonta International was founded in 1919 as a global organization working to advance the status of women worldwide through service and advocacy. With more than 30,000 members of more than 1,200 Zonta Clubs in 63 countries and geographic areas, Zontians all over the world volunteer their time, talent, and support to local and international service projects and scholarship programs to fulfill Zonta's mission and objectives. The Zonta Club of Olympia was organized on October 10, 1928. The first service project formed a recreation council and promotion of a swimming hole on the Deschutes River. The program provided transportation to girls and boys for swimming and picnics. To earn money to fund the project, the club held a summer festival and style show in the gardens at the estate of Peter G. Schmidt. This year, the annual fundraiser is on September 16, 2023 at the Olympian Hotel featuring a play about the construction of the hotel. Each service project and education programs aim to provide life-changing opportunities for women and girls to achieve gender equality worldwide. Members of the community are invited to join Zonta in building a better world for women and girls by attending a get together at Uptown Grill on Thursday, March 9, 2023 to learn more about Zonta.

PUBLIC COMMENT: **Michael Cade, Executive Director, Thurston Economic Development Council (EDC), 4220 6th Avenue SE, Lacey,** thanked the Council for the resources provided to the EDC to create the BEST training program. The first session is scheduled on Friday, March 10, 2023. He invited community members to consider registering for the training through the website at thurstonedc.com. The training program, Business Entrepreneurial Start-up Training (BEST) is a five-week course for young and emerging entrepreneurs based on the basics of business development for business plan writing, structure and licensing, businesses for start-ups, branding and marketing, weekly access to a virtual Q&A, and accounting and finance. Participants have access to all the resources of the entrepreneurial network. The EDC has approximately 50 different points of entry for different businesses. The course will also ensure participants have established a relationship with other technical providers in the state, in Thurston County, Tumwater Chamber of Commerce, rotary clubs, and other marketing and networking opportunities.

CONSENT
CALENDAR:

- a. Approval of Minutes: City Council Worksession, February 14, 2023
- b. Approval of Minutes: City Council, February 21, 2023

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- c. Payment of Vouchers
- d. Interlocal Agreement with the City of Olympia for Fire Vehicle Repair and Maintenance Services
- e. National Opioid Settlement Allocation Agreement II
- f. I-5/Troster Road/Capitol Boulevard Reconfiguration Project, Construction Road Closures

Mayor Sullivan noted a date correction to item D reflecting an expiration of December 1, 2022 and not December 1, 2020.

MOTION:

Councilmember Althaus moved, seconded by Councilmember Swarthout, to approve the consent calendar as amended, reflecting an expiration date of December 1, 2022 for item D: Interlocal Agreement with the City of Olympia for Fire Vehicle Repair and Maintenance Services. Motion carried unanimously.

Mayor Sullivan reviewed the items approved on the consent calendar.

PUBLIC HEARINGS:

**RESOLUTION NO.
R2023-004,
AMENDING THE
SIX-YEAR
TRANSPORTATION
IMPROVEMENT
PROGRAM FOR
2023-2028**

Transportation Manager Ames introduced Meridith Greer with Greer Consulting. The proposal for consideration following the public hearing is a resolution to amend the current Six-Year Transportation Improvement Program (TIP) to add the Percival Creek Fish Passage Barrier Removal Project.

Manager Ames reviewed the annual TIP review and amendment process. The proposed amendment requires a public hearing. The proposal is to amend the current TIP for 2023-2028 to add the project. The current 2023-2028 TIP was approved by the City Council in June 2022.

The Percival Creek Fish Passage Barrier Removal Project received new funding from a state program, *Promoting Resilient Operations for Transformative Efficient and Cost Saving Transportation*. The City of Tumwater is the only municipality in the state to receive funding from the program. One of the requirements is to include the project within the City's TIP for addition to the State Transportation Improvement Program (STIP).

Ms. Greer said she is providing project and grant management for the project. The project has been identified on Tumwater's TIP for over 20 years. The project is focused in the area where Percival Creek runs under Sapp Road. Today, the roadway is narrow with no options for sidewalks or bike lanes. The area is used by pedestrians and bicyclists because it is located between two large housing developments. The site includes the only culvert on Percival Creek. The culvert was deemed a full fish passage barrier. The culvert blocks approximately one-third of Percival Creek for fish passage. The project replaces an undersized culvert with a 19-foot four-

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sided box culvert and includes realignment of the stream and installation of five large woody structures. North of the site is the Sapp Road Park, a 12-acre park owned and managed by the City of Tumwater. The area will be enhanced by the project. The project has completed 90% design. The project increases the size of each travel lane to meet current standards and adds six-foot wide bike lanes on both sides of the road as well as five-foot wide sidewalks on both sides of the road. The City previously received grant funds from the Salmon Recovery Funding Board to complete design of the project. In December, the City learned that the Washington State Department of Transportation received a new federal funding source under PROTECT. The City was able to secure \$2.1 million in funding to cover all construction costs of the project.

To receive PROTECT funding, the project must be shovel ready by June 2023, obtain a National Environmental Policy Act permit, certify right-of-way, and include the project on the STIP.

Manager Ames reported the proposed action adds the full project to the 2023-2028 TIP and allows for acceptance of grant funding of \$2,179,600 with local funds of \$240,400.00 for a total project cost of \$2.42 million.

Staff requests approval and authorization for the Mayor to sign Resolution No. R2023-004 following the public hearing.

Councilmember Cathey inquired about the type of the woody structures to be installed. Ms. Greer advised that the structure will be a large tree added and anchored within the stream. The installation mimics the natural system within a riparian area with trees on each side of the stream. As the stream moves, some trees naturally fall into the stream creating habitat and providing places for fish to hide. Those areas are important for the overall health of the system.

Councilmember Cathey asked about any enhancements to the park. Ms. Greer replied that the project is focused on replacing the culvert and enhancing the stream. The project does not include other elements related to the park other than staff with the Water Resources and Sustainability Department is working on efforts for habitat restoration within the park.

Councilmember Schneider asked about the volume of salmon that reside in the area. Ms. Greer explained that one of prerequisites to apply for funding for fish passage was identifying whether fish use the system. City staff worked with the local group from Wild Fish Conservancy and sampled water for eDNA, a technology used to detect the presence of fish species by analyzing stream water for traces of DNA. The testing confirmed the presence of fish but not the quantity of fish. Throughout the Deschutes watershed regional efforts are underway to restore salmon habitat. The project along with other efforts within the watershed will help restore

**TUMWATER CITY COUNCIL MEETING
MINUTES OF HYBRID MEETING
March 7, 2023 Page 5**

historic salmon runs.

Ms. Greer described the life history of salmon that starts with salmon born in freshwater followed by a process of transitioning to live in the ocean to seek food and grow. Salmon return to the stream of origin to complete the life cycle by laying eggs in the stream. The best habitat for eggs is located in the upper watersheds with the right mix of gravel and sediment. Within Percival Creek, salmon lay eggs in less than ideal conditions because fish are unable to reach the headwaters. Current efforts include opening the stream for passage to create opportunities to increase the number of salmon that survive and reach adulthood to return and continue the lifecycle.

Mayor Sullivan opened the public hearing at 7:50 p.m.

With there being no public testimony, Mayor Sullivan closed the public hearing at 7:50 p.m.

MOTION: **Councilmember Swarthout moved, seconded by Councilmember Jefferson, to approve Resolution No. R2023-004, amending the City's Six-Year Transportation Improvement Program for 2023-2028.**

**COMMITTEE
REPORTS:**

**PUBLIC HEALTH &
SAFETY:**

Leatta Dahlhoff

The next meeting on March 14, 2023 includes briefings on South Sound Behavioral Hospital and Tumwater HOPES.

**GENERAL
GOVERNMENT:**
Michael Althausen

The committee's next meeting on March 8, 2023 at 8 a.m. includes review and consideration of a Capital Agreement with the Washington State Department of Commerce for the Puget Sound Habitat Humanity Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP) and Assignment of Agreement with South Puget Sound Habitat for the Humanity Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP). The committee will receive updates on the Street Tree Plan and TMC 12.24 Street Trees, Landscape Code and a Contract Award for Phase 3 Grant with WDFW for Bush Prairie Habitat Conservation Plan.

PUBLIC WORKS:
Eileen Swarthout

The next meeting on Thursday, March 9, 2023 includes consideration of a Consultant Agreement with Tierra Right of Way Services, Ltd, for Right-of-Way Services on the X Street Roundabout Project and the Barnes Lake 2023 Budget & Work Plan.

**BUDGET AND
FINANCE:**
Debbie Sullivan

There was no meeting and no report.

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

At the March 1, 2023 Intercity Transit Authority meeting, members agreed to initiate a search to replace retiring General Manager Ann Freeman-Manzanares. Intercity Transit continues to work on the signal priority system with updates to the Olympia system. The Youth Education Rock n Roll grand opening was held earlier in the day from 3:30 p.m. to 6 p.m. at its new location off Pattison Street.

Mayor Sullivan is scheduled to provide a state of the City report to the Tumwater Rotary Club on Wednesday, March 8, 2023.

**COUNCILMEMBER
REPORTS:**

Leatta Dahlhoff:

Tumwater's Equity Toolbox effort held its kick-off meeting with Demarche Consulting. Councilmember Dahlhoff and Jefferson are representing the Council during the meetings. The effort will develop an equity and diversity toolbox for the Council, City staff, and the community.

Elections were conducted at the last meeting of the TCOMM 9-1-1 Administration Board. Lenny Greenstein was re-elected as Chair and Councilmember Dahlhoff was re-elected as Vice Chair.

The Olympia Sea Level Rise Response Collaborative held its annual officer elections and elected Dani Madrone from Olympia as Chair and Bob Iyall with the Port of Olympia as Vice Chair. Members received an update on the December 2022 high tide event that caused flooding in downtown Olympia. The event was the worst flooding the City of Olympia has experienced since 1987. The tide at Budd Inlet rose to 18.4 feet or 1.77 feet over the predicted tide. The record tide in 1987 was 17.99 feet. Members received an update from the City of Olympia and the LOTT Clean Water Alliance on catch basin covers in response to the high tide event, as well as an update on the Sea Level Rise Collaborative Work Plan.

Joan Cathey:

At the last meeting of the Thurston Solid Waste Advisory Committee, members received updates on the status of several legislative bills related to the environment and solid waste. The bills are on recycling, composting, packaging, plastic pollution, solid waste management outcomes, appliance disposal, lighting material disposal, and battery disposal. The Dart Container plant has closed in Tumwater eliminating an option for local communities to recycle styrofoam material. There currently is no recycling site in Thurston County for styrofoam material. The committee continues its work on siting a transfer station for solid waste in the south county area. The committee has reinitiated education and outreach efforts.

Councilmember Cathey requested time later in the meeting to discuss several subjects. Mayor Sullivan recommended including the discussion under other business at the end of the meeting.

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Charlie Schneider: Councilmember Schneider reported on his attendance to the Climate Action Steering Committee as the alternate for Councilmember Swarthout. He plans to attend the March 9, 2023 Public Works Committee meeting.

Councilmember Schneider said he continues to work on many volunteer projects throughout the City and plans to attend several non-profit fundraising events.

Angela Jefferson: Councilmember Jefferson said she had no intergovernmental committee meetings during the last several weeks other than a meeting on the Equity Toolbox with Councilmember Dahlhoff.

Peter Agabi: Councilmember Agabi attended the Joint Animal Services Commission meeting. The short meeting included a discussion on February statistics on the animal shelter and the five-year Strategic Plan in terms of achievements of goals. The shelter is experiencing plumbing issues and will be closed next week to make necessary repairs.

Future meetings include a meeting of the Thurston EDC and Transportation Policy Board. Councilmember Agabi is scheduled to be a guest speaker at a Washington Education Services meeting to discuss his service on the City Council.

Michael Althausen: The next meeting of the Regional Housing Council (RHC) is scheduled on March 8, 2023. The agenda includes a discussion on the charters for new advisory boards for affordable housing and homelessness, a briefing and presentation on fair housing laws and policies, and a discussion on topics and plans for future RHC meetings.

Eileen Swarthout: At the last meeting of the Climate Action Steering Committee on February 27, 2023, members reviewed the results of the retreat held earlier in January. One follow-up is a new interlocal agreement with local jurisdictions. Members received a presentation on a white paper on carbon sequestration prepared by the Thurston Regional Planning Council (TRPC). Councilmember Swarthout recommended scheduling the presentation during a Council worksession.

On March 3, 2023, Councilmember Swarthout attended the TRPC meeting. Members received an update from the National League of Cities on federal transportation funding, a presentation on the Regional Transportation Plan for the 2022 amendment cycle, and an update on the activities of the Climate Action Steering Committee.

OTHER BUSINESS: Councilmember Cathey referred to previous conversations about the number of items included on the consent calendar and her concerns surrounding the length of the calendar. Specifically, two of the items on the February 21,

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2023 consent calendar concerned her because she was unable to attend the meeting and would have pulled the items for additional discussion. She suggested reconsideration of moving issues through Council committees. Her first concern pertains to a 12-year property tax exemption proposal, which was the first 12-year proposal considered by the Council. The proposal merited additional conversation by the Council. The proposal was never reviewed by the General Government Committee and should have been reviewed by the Council. She was also disturbed to learn about the program as many in the community are struggling to remain in their homes despite paying their property taxes. The action affords a tax exemption to individuals who are able to pay their taxes. According to the staff report, the program does not result in the City losing any property tax because the difference is paid by other taxpayers in the City. The Council should consider that impacts in terms of current struggles people are experiencing to remain in housing and the increase in the cost of living. The Council should revisit the program in terms of whether it is a proper tool to attract development in the City. She also received some calls from several constituents about the Council's approval of the proposal.

Another issue that should not have been included on the consent calendar was the City's new logo. The first time the Council discussed the new logo was in October 2022 during a General Government Committee meeting. The committee offered comments on the proposed design, which was presented to the City Council on November 7, 2022 during a worksession. The Council provided feedback on some changes. Following that review, the Council did not receive any other update for the next three months until it was placed on the consent calendar. Her concern for placing the proposal on the consent calendar is the inability for Councilmembers to offer opinions and have adequate time to review by both the Council and the community.

Councilmember Cathey said the Council should reconsider placement of items on the consent calendar especially in light of the community response of the two agenda items adopted by the Council in February.

Councilmember Cathey requested information as to how SafePlace could become one of the City's designated charities. SafePlace is in need of donations of towels, blankets, sheets, gift cards for groceries or gas, and feminine hygiene products.

Councilmember Cathey reported approximately 50 years ago, she marched in support of Roe vs. Wade. Today, she no longer has autonomy over her own body, women's healthcare is suffering, and women are being targeted repeatedly in a "democratic" society. She is very concerned about current actions and how it affects women. Women are losing their rights as individuals to make decisions about personal healthcare and their bodies. She urged everyone to remain alert and make their voices heard.

**TUMWATER CITY COUNCIL MEETING
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Mayor Sullivan advised that the Council was briefed on the new logo design during the Council's February 14, 2023 worksession. A majority of the Council approved the main elements of the logo design.

Councilmember Althausen noted that following the Council's approval of the consent calendar on February 21, 2023, he recommended referral of the City's 8-year and 12-year tax exemption programs to the General Government Committee to review the effectiveness of both programs since the Council approved the programs in 2017.

Councilmember Jefferson proposed the Council should pursue a discussion with the new City Administrator to establish a standard for the inclusion of items on the consent calendar.

Councilmember Dahlhoff emphasized the Council committee process for vetting items that are subsequently placed on the consent calendar. The Council has the opportunity to pull any items for further review and discussion. With current and pending staff changes, the conversation is valid and speaks to personal preferences of Councilmembers on specific topics.

Councilmember Cathey preferred pursuing conversations with respect to the consent calendar sooner rather than later.

Councilmember Althausen noted that the two tax exemption contracts were not reviewed by the General Government Committee because the contracts fell under the function of existing policies adopted by the Council. However, moving forward in recognition for the importance of transparency it would be appropriate for future requests to be reviewed by the General Government Committee.

Councilmember Agabi commented that the Council approved both the 8-year and 12-year property tax exemption programs prior to his election to the Council. He recently received an inquiry as to the source of a donation to his campaign from the Association of Washington Realtors. It appears that the individual questioned the source of the donation because of his affirmative vote on the proposed contracts. He was unaware that the General Government Committee did not review the proposals.

Mayor Sullivan recommended revisiting the issue and sharing information on the Council's actions in 2017 to encourage more affordable housing development in the City.

In response to a question as to why the two tax exemption contracts were included on the consent calendar, Councilmember Althausen explained that although state law enables municipalities to create tax exemption programs, state law also requires Council approval of any tax exemption contract.

**TUMWATER CITY COUNCIL MEETING
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ADJOURNMENT: **With there being no further business, Mayor Sullivan adjourned the meeting at 8:35 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: March 21, 2023
 SUBJECT: Payment of Vouchers

1) Recommended Action:

Staff is seeking City Council ratification of:

- March 3, 2023 payment of vouchers 172975 to 173065 in the amount of \$870,668.77 and electronic payments 902593 to 902619 in the amount of \$188,653.04 and wire payments of \$213,697.59;
- March 10, 2023 payment of vouchers 173066 to 173135 in the amount of \$475,175.41 and electronic payments 902620 to 902646 in the amount of \$249,372.67 and wire payments of \$220,912.00.

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
AWC Employee Benefit Trust	139,290.26	Monthly Medical/Dental/Vision Premiums
Active Construction Inc	308,249.52	PE#1 I-5/Trosper/Capitol Reconfiguration Project
Lantec Products	63,700.00	Air Stripper Media for PW Ops
Stantec Consulting Svcs Inc	23,752.46	Professional Services 1/3/23 to 2/16/23 - Deschutes River Flood Reduction
Shea Carr & Jewell Inc	59,896.38	Professional Services 1/1/23 to 1/28/23 – Capitol/Israel/M Street Design
Cimco-GC Systems LLC	36,949.68	Valve Controls Maint. & Repairs
Shea Carr & Jewell Inc	46,479.52	Professional Services 1/29/23 to 2/25/23 – Capitol/Israel/M Street Design

* 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.

Voucher/Check Nos 172975 through 173065 in the amount of \$870,668.77
Electronic payment No 902593 through 902619 in the amount of \$188,653.04
Wire payments of \$213,697.59

A handwritten signature in cursive script, reading "Shelly G. Carter". The signature is written in black ink and is positioned above a horizontal line.

Asst. Finance Director, on behalf of the Finance Director

Checks dated 03/03/2023

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.

Voucher/Check Nos 173066 through 173135 in the amount of \$475,175.41
Electronic payment No 902620 through 902646 in the amount of \$249,372.67
Wire payments of \$220,912.00

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 03/10/2023

TO: City Council
FROM: Dan Smith, Water Resources & Sustainability Director
DATE: March 21, 2023
SUBJECT: Service Provider Agreement with PBS for the Percival Creek Fish Passage Barrier Removal Project Amendment 3

1) Recommended Action:

Staff requests City Council approve and authorize the Mayor to sign the Service Provider Agreement with PBS for the Percival Creek Fish Passage Barrier Removal Project Amendment 3. This amendment was approved by the Public Works Committee at their February 23, 2023 meeting

2) Background:

The culvert conveying Percival Creek under Sapp Road has been identified as a fish passage barrier due to slope. The City plans to replace the culvert with a larger one to allow fish to pass under the road unobstructed. The project received funding to complete final design and initiate permitting from the Washington State Recreation and Conservation Office's Salmon Recovery Funding Board on July 1, 2021. The City completed a Request for Qualifications process and selected to work with PBS to complete this work.

This amendment covers additional work not previously anticipated, including taking the project to bid ready status with 100% PS&E completion by June 2023.

3) Policy Support:

Strategic Priority B – Be a Leader in Environmental Sustainability

- Remove obstructions to fish passage
-

4) Alternatives:

- ☐ Request changes to the proposed amendment.
-

5) Fiscal Notes:

This amendment adds \$27,335 to the project budget to complete final PS&E deliverables. Total design and permitting work is expected to cost \$251,088 with \$79,600 of that total funded by a Salmon Recovery Funding Board Grant and the remainder funded by the Storm Drain fund.

6) Attachments:

- A. Service Provider Agreement with PBS for the Percival Creek Fish Passage Barrier Removal Project Amendment 3

**THIRD AMENDMENT
TO
SERVICE PROVIDER AGREEMENT
FOR
PERCIVAL CREEK FISH PASSAGE BARRIER REMOVAL**

This Third Amendment ("Amendment") is dated effective this 1st day of February, 2023, and is entered into by and between the CITY OF TUMWATER, a Washington municipal corporation ("CITY"), and PBS Engineering and Environmental Inc., an Oregon corporation ("SERVICE PROVIDER").

A. The CITY and the SERVICE PROVIDER entered into a Service Provider Agreement dated effective November 23, 2021, First Amendment dated October 21, 2022, and Second Amendment dated November 17, 2022, whereby the SERVICE PROVIDER agreed to provide design and permitting services ("Agreement").

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

C. The CITY and the SERVICE PROVIDER desire to amend the Agreement to add additional services and to increase the compensation paid to the SERVICE PROVIDER for providing the additional services during the term.

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

1. SCOPE OF SERVICES.

Section 1 of the Agreement is amended to provide for additional services as more particularly described and detailed in Exhibit "A-2," attached hereto and incorporated herein.

2. COMPENSATION.

In consideration of the SERVICE PROVIDER continuing to provide the services described in Section 1 of the Agreement and providing the additional services described in Exhibit "A-2", Section 4.C. shall be amended to increase the compensation paid to the SERVICE PROVIDER by an additional amount not to exceed TWENTY SEVEN THOUSAND THREE HUNDRED THIRTY FIVE and 00/100 DOLLARS (\$27,335.00). The total amount payable to the SERVICE PROVIDER pursuant to the original Agreement, the First, Second and this Third Amendment shall be an amount not to exceed TWO HUNDRED FIFTY ONE THOUSAND EIGHTY EIGHT and 00/100 Dollars (\$251,088).

Third Amendment to Service Provider Agreement - Page 1 of 2
Percival Creek Fish Passage Barrier Removal

4. FULL FORCE AND EFFECT.

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

DATED the effective date set forth above.

CITY:

CITY OF TUMWATER
555 Israel Road SW
Tumwater, WA 98501

SERVICE PROVIDER:

PBS Engineering and Environmental Inc.
4412 S Corbett Ave
Portland, OR 97239

Debbie Sullivan, Mayor

Signature (Notarized – see below)

Printed Name: Gregory P Jellison

Title: Principal Engineer/Vice President

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

[illegible]

I certify that I know or have satisfactory evidence that _____ 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 _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:_____

(Signature)

Notary Public in and for the State of Washington

My appointment expires _____

TO: City Council

FROM: Troy Niemeyer, Finance Director, and Brad Medrud, Planning Manager

DATE: March 21, 2023

SUBJECT: Capital Agreement with the Washington State Department of Commerce for the South Puget Sound Habitat Humanity Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP)

1) Recommended Action:

Approve the Capital Agreement with the Washington State Department of Commerce for the South Puget Sound Habitat for the Humanity Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP) for the Mayor's signature

2) Background:

After the City Council adopted Resolution No. R2018-016 in the summer of 2018, the City has undertaken a number of actions to address homelessness, increase affordable housing, and continue to work with other jurisdictions and agencies to explore regional solutions to these issues. In September 2021, the City Council adopted the Tumwater Housing Action Plan, which informs the City's Comprehensive Plan policies and development regulations and guides implementation strategies to help the City meet its housing needs.

The City has determined it to be an equitable choice to support an affordable housing project in Tumwater, which would result in affordable long-term housing and serve as a public benefit.

South Puget Sound Habitat for Humanity, with assistance from the City, was awarded by the Washington State Department of Commerce a Connecting Housing to Infrastructure Program (CHIP) America Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds federal grant of \$726,000 to offset utility infrastructure costs for the Tâlicn Townhomes project on 73rd Avenue SE. The City would enter into a Capital Agreement with the Department of Commerce for the grant and the City would manage that grant through an Assignment of Agreement, which is a separate item on the Council agenda.

3) Policy Support:

Strategic Priority to Build a Community Recognized for Quality, Compassion and Humanity with a goal of "Work with government, non-profit, and private partners to develop and implement a performance-based plan for affordable housing and to address homelessness"

Housing Element Goal H-3: To provide adequate, affordable housing for residents of all income groups, including sufficient housing affordable to low and moderate-income groups.

4) Alternatives:

- ☐ Take off consent, modify and approve the Capital Agreement with the Washington State Department of Commerce for the South Puget Sound Habitat for the Humanity

Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP) for signature by the Mayor

- ☐ Take off consent and reject the Capital Agreement with the Washington State Department of Commerce for the South Puget Sound Habitat for the Humanity Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP)

5) Fiscal Notes:

The Capital Agreement with the Washington State Department of Commerce for the CHIP ARPA State and Local Fiscal Recovery Funds federal grant will fund infrastructure improvements for the South Puget Sound Habitat Humanity Tâlicn Townhomes. The City would manage that grant through an Assignment of Agreement, which will be a separate item on the General Government Committee agenda.

6) Attachment:

- A. Capital Agreement with the Washington State Department of Commerce – South Puget Sound Habitat for Humanity Connecting Housing to Infrastructure Program (CHIP)



Capital Agreement with

City of Tumwater

through

America Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds -

Connecting Housing to Infrastructure Program (CHIP)

Purpose:

To support the development of affordable housing by paying for utility infrastructure improvements for the Tâlicn (Tumwater Townhomes) project

Start date: July 1, 2021

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**Washington State Department of Commerce
Local Government Division
Growth Management Unit – Connecting Housing to Infrastructure Program (CHIP)
ARPA State and Local Fiscal Recovery Funds Grant**

1. Grantee City of Tumwater 555 Israel Rd SW Tumwater, WA 98501		2. Project Address Tâlicn (Tumwater Townhomes) 1150 73 rd Ave SE Tumwater, WA 98512	
3. Grantee Representative Brad Medrud Planning Manager, Community Development (360)754-4180		4. COMMERCE Representative Eric Guida CHIP Program Manager (360)725-3044 eric.guida@commerce.wa.gov	
5. Grant Amount \$726,984	6. Funding Source Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date July 1, 2021	8. End Date June 30, 2023, subject to re-appropriation through June 30, 2025
9. Federal Funds (as applicable) \$726,984		Federal Agency US Dept. Treasury	
ALN (CFDA #): 21.027			
10. SWV # 0007172-00	11. UBI # 344-000-001	12. DUNS # 38517355	13. UNIQUE ENTITY ID # LLLDHHS4E5G1
14. Grant Purpose The outcome of this performance-based Grant Agreement is to undertake the construction of utility improvements as referenced in Attachment A – Scope of Work for the Tâlicn (Tumwater Townhomes) project, an affordable 28-unit owner-occupied townhome development.			
COMMERCE, defined as the Department of Commerce and Grantee acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grantee Terms and Conditions including Attachment “A” – Scope of Work, Attachment “B” – Certification of Availability of Funds to Complete the Project, Attachment “C” – Certification of the Payment and Reporting of Prevailing Wages,			
FOR GRANTEE _____ Debbie Sullivan, Mayor _____ Date APPROVED AS TO FORM ONLY _____ Name _____ Date		FOR COMMERCE _____ Mark K. Barkley, Assistant Director, Local Government Division _____ Date APPROVED AS TO FORM ONLY  _____ Sandra Adix Assistant Attorney General <u>March 31, 2022</u> Date	

DECLARATIONS

CLIENT INFORMATION

GRANTEE Name: City of Tumwater
Grant Number: 22-96720-219

PROJECT INFORMATION

Project Name: Tâlicn (Tumwater Townhomes)
Project Address: 1150 73rd Ave SE, Tumwater, WA
98512

GRANT INFORMATION

Grant Amount:	\$726,984
Appropriation Number:	2021 Washington State Capital Budget SSB 1080, Section 1074
Re-appropriation Number (if applicable):	
Grant End Date:	June 30, 2023, if funds are not re-appropriated. Grant End Date may be extended contingent on reappropriation
Biennium:	2021-2023
Biennium Close Date:	June 30, 2023
Earliest Date for Reimbursement:	March 3, 2021
Time of Performance:	In accordance with Special Terms and Conditions Number 4

FUNDING INFORMATION

Federal Funding:	Sec. 602 Coronavirus State Fiscal Recovery Funds of Title VI of Social Security Act as added by American Rescue Plan Act of 2021 (ARPA or "Act"), Title IX, Subtitle M, Sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 et seq.
Federal Award Agency:	US Department of Treasury
Amount of Federal Funds Obligated by this Action:	\$726,984

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

Extension of Grant Upon Reappropriation.

Notwithstanding General Term and Condition No. 4, the End Date of this Grant **may be extended upon written notice to Grantee from Commerce** for a period of time consistent with the effective date of any re-appropriation of funds, and/or with terms reflecting new Federal requirements for ARPA funds, if any. In Commerce's sole discretion, after review of any funding re-appropriation terms and applicable Federal law or guidance, a contract amendment in accordance with General Term and Condition No. 4 may be required to extend the End Date.

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1. AUTHORITY

Funding for this Grant has been provided in the 2021-2023 biennial state Capital Budget, SSB 1080, pursuant to Federal grants to Washington State under the American Rescue Plan Act of 2021 (ARPA or "Act"), sec. 9901, Public Law 117–2, codified at 42 U.S.C. 802 et seq. The parties anticipate that funding under this Grant that is unexpended in the 2021-23 state biennium may be re-appropriated in future biennia, subject to Federal requirements.

2. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Identification Number (FAIN): SLRF0002

Total amount of the federal award: \$726,984

Federal Awarding Agency: US Department of Treasury

Research & Development (R&D): award will not be used for R&D

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Grant, shall contain the following statements:

"This project was supported by grant awarded by the US Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of the Treasury. Grant funds are administered by the America Rescue Plan Act, State and Local Fiscal Recovery Funds, Washington State Department of Commerce."

3. GRANT MANAGEMENT

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

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

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

4. PERIOD OF PERFORMANCE, COSTS INCURRED, REIMBURSEMENT

- a) Period of Performance. The initial period of performance for this award begins on the date hereof and ends on June 30, 2023. If unexpended funds under this Grant are re-appropriated, the period of performance (Contract End Date) will be extended to not later than October 30, 2026.
- b) Costs Incurred Period. As set forth in Treasury's implementing regulations, Grantee may use funds awarded under ARPA to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024. Pursuant to Federal rules, a cost shall be considered to have been incurred if the Grantee has incurred an obligation with respect to such cost by December 31, 2024. All change orders for which reimbursement is requested must be executed on or before December 31, 2024.
- c) Reimbursement Period. All requests for reimbursement of eligible costs incurred between March 3, 2021 and December 31, 2024 payable from ARPA funds must be submitted to COMMERCE by the **earlier of** October 30, 2026 or 30 days prior to the Contract End Date.

5. COMPENSATION

COMMERCE shall pay an amount not to exceed the total contract amount listed on the contract Face Sheet for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

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6. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the GRANTEE for eligible Project expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the GRANTEE shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed for the billing period. The GRANTEE can submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Grants Management System (CMS), which is available through the Secure Access Washington (SAW) portal. The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Grant Number listed on the contract Face Sheet.

The voucher must be certified (signed) by an official of the GRANTEE with authority to bind the GRANTEE. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this Grant Agreement, or if work is not completed or Grant terminated, within fifteen (15) days following the end of the state biennium unless Grant Agreement funds are reappropriated by the Legislature in accordance with Additional Special Terms and Conditions set forth in the Declarations page above.

Each request for payment must be accompanied by:

- a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the GRANTEE.
- Any documentation of costs, and prevailing wage as per section 8 of the Special Terms and Conditions and Attachment C, CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES.
- A reportable expenses form as detailed in Section 7 of Special Terms and Conditions, SUBCONTRACTOR DATA COLLECTION.

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

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

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

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

Invoices and End of Fiscal Year

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

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

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

Duplication of Billed Costs

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

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Disallowed Costs

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

Withholding

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

7. SUBCONTRACTOR DATA COLLECTION

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

8. HISTORICAL OR CULTURAL RESOURCES, HUMAN REMAINS

CHIP projects are subject to the requirements of Washington State Governor's Executive Order (GEO) 21-02 "Archaeological and Cultural Resources". CHIP Grantees will cooperate with Commerce to fulfill the requirements of GEO-21-02. Commerce will delegate consultation authority to the grantee by letter, and each project must complete the EZ-1 Form to comply with the [GEO 21-02](#). In the event that historical or cultural artifacts are discovered at the Project site during construction or rehabilitation, the Grantee or subcontractor shall immediately stop work and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. If human remains are discovered, the Grantee shall immediately stop work and report the presence and location of the remains to the coroner and local enforcement, then contact DAHP and any concerned tribe's cultural staff or committee.

9. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

1. Submit to COMMERCE the reporting package specified in Uniform Guidance 2 CFR 200, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
2. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to the [Federal Audit Clearinghouse](#).
<https://facides.census.gov/Account/Login.aspx>

10. DEBARMENT

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

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- ii. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.
- C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE. Grantees should review section 14 of the Special Terms and Conditions for information on documenting that any subcontractors are not on the federal debarment list.
- D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- i. The lower tier Grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- ii. Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such contractor shall attach an explanation to this Grant.

The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

11. INSURANCE

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

12. COMPLIANCE WITH APPLICABLE LAW AND REGULATIONS

- A. Grantee agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Grantee also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Grantee shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- B. Federal regulations applicable to this award include, but are not necessarily limited to the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

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- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
 - x. Prohibition on certain telecommunications and video surveillance services or equipment 2 CFR [§ 200.216](#).
- C. Statutes and regulations prohibiting discrimination applicable to this award include, but are not necessarily limited to the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

13. FEDERAL EXCLUSION

These terms add to the terms in Section 12 Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion — Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Grantee also agrees to access the Federal Exclusion List at www.sam.gov and provide Federal Exclusion documentation to Commerce and to keep a copy on file with the Grantee's project records.

**SPECIAL TERMS AND CONDITIONS
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14. REGISTRATION WITH THE SYSTEM FOR AWARD MANAGEMENT (SAM)

By signing this Grant, the Grantee accepts the requirements stated in 48 CFR 52.204-7 to register with the System for Award Management at the SAM website (<https://www.sam.gov>). To register in SAM, a valid Unique Entity Identifier (UEI) is required. The Grantee is responsible for the accuracy and completeness of the data within the SAM database and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Grantee must remain registered in the SAM database after the initial registration. The Grantee is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in SAM to ensure it is current, accurate and complete. The Grantee shall provide evidence documenting registration and renewal of SAM registration to Commerce.

In the event of the Grantee's noncompliance or refusal to comply with the requirement stated above, Commerce reserves the right to suspend payment until the Grantee cures this noncompliance.

15. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Grant Agreement are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the Grant Agreement period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the Grant Agreement accordingly.

16. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Grant Agreement and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Grant Agreement; provided, however, that COMMERCE may be granted a security interest in real property, to secure funds awarded under this Grant Agreement to assure affordability when the CHIP grant program contributed to the project, unless monitored by another funder. The funding for this program, [SB 5651 (section 1032), laws of 2021] requires that projects serve and benefit low-income households, and requires affordability for at least 25 years. This provision does not extend to claims that COMMERCE may bring against the GRANTEE in recapturing funds expended in violation of this Grant Agreement.

17. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY

- A. The GRANTEE understands and agrees that any and all real property or facilities owned by the GRANTEE that are acquired, constructed, or otherwise improved by the GRANTEE using state funds under this Grant Agreement, shall be held and used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B. This provision shall not be construed to prohibit the GRANTEE from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this Grant Agreement.
- C. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture provision).

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18. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

- A.** The GRANTEE understands and agrees that any facility leased by the GRANTEE that is constructed, renovated, or otherwise improved using state funds under this Grant Agreement shall be used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B.** In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture Provision).

19. TERMINATION FOR FRAUD OR MISREPRESENTATION

In the event the GRANTEE commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this Grant Agreement, COMMERCE reserves the right to terminate or amend this Grant Agreement accordingly, including the right to recapture all funds disbursed to the GRANTEE under the Grant.

20. FRAUD AND OTHER LOSS REPORTING

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

21. ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Certification of the Availability of Funds to Complete the Project
- Attachment C – Certification of the Payment and Reporting of Prevailing Wages

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1. DEFINITIONS

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

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

2. ADMINISTRATIVE COST ALLOCATION

Administrative costs that may be allowed are set forth in the Special Terms and Conditions. Administrative services shared by other programs shall be assigned to this Grant based on an allocation plan that reflects allowable administrative costs that support services provided under each Grant administered by the Grantee. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

3. ALLOWABLE COSTS

Costs allowable under this Grant are actual expenditures according to an approved budget up to the maximum amount stated on the Grant Award or Amendment Face Sheet.

4. ALL WRITINGS CONTAINED HEREIN

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

5. AMENDMENTS

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

6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

7. APPROVAL

This contract shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

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8. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE. For the purpose of the CHIP contracts, which require a city, county or public utility sponsor of the affordable housing project, Commerce preapproves the grantee to assign this contract to their affordable housing partner. In this case, all requirements and contract terms flow to the assignee's subcontractors, specifically section 11, certification regarding debarment, and section 40, subcontracting, of the General Terms and Conditions. After assignment, all references to Grantee shall mean Grantee's assignee.

9. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorney's fees and costs.

10. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

3. Submit to COMMERCE the reporting package specified in Uniform Guidance 2 CFR 200, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
4. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to the [Federal Audit Clearinghouse](https://facides.census.gov/Account/Login.aspx).
<https://facides.census.gov/Account/Login.aspx>

11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this contract, the Grantee shall attach an explanation to this contract.

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- C. The Grantee agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Grantee further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- i. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - ii. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

12. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 - 1. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
 - 2. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
 - 3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

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

14. CONFORMANCE

If any provision of this contract 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.

15. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the Grantee terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the Grantee in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Grantee and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Commerce program administering this contract, including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the Grantee may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Grantee. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

16. COPYRIGHT PROVISIONS

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

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

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

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

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17. DISALLOWED COSTS

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

18. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Grant number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

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

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

19. DUPLICATE PAYMENT

The Grantee certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

20. GOVERNING LAW AND VENUE

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

21. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of, or resulting from, the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subcontractor's performance or failure to perform the contract. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

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22. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant are not employees or agents of the state of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

23. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Grant, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

24. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

25. LICENSING, ACCREDITATION AND REGISTRATION

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

26. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant.

27. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further contracts with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

28. PAY EQUITY

The Grantee agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B. Grantee may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

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(ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Grant may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Grantee is not in compliance with this provision.

29. POLITICAL ACTIVITIES

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

30. PREVAILING WAGE LAW

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

31. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR 200 for all purchases funded by this contract.

All recipients of funds under this Contract, including Contractor and subrecipients or subcontractors of any tier, must follow the procurement standards in 2 CFR §§ 200.318 through 200.327, including ensuring that the procurement method used for the contracts are appropriate based on the dollar amount and conditions specified in 2 CFR § 200.320.

The Grantee's procurement system should include but not necessarily be limited to, the following:

- A. General procurement standards 2 CFR [§ 200.318](#). A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Competition 2 CFR [§ 200.319](#). Procedures that ensure all procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).
- C. Methods of procurement to be followed 2 CFR [§ 200.320](#).
- D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms 2 CFR [§ 200.321](#).
- E. Domestic preferences for procurements 2 CFR [§ 200.322](#).

32. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Grant provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

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33. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

34. RECAPTURE

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

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

35. RECORDS MAINTENANCE

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

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

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

36. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

37. RIGHT OF INSPECTION

At no additional cost all records relating to the Grantee's performance under this Grant shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Grant. The Grantee shall provide access to its facilities for this purpose.

38. SAVINGS

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

39. SEVERABILITY

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

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40. SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Grant if it obtains the prior written approval of COMMERCE.

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

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

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

41. SURVIVAL

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

42. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

43. TERMINATION FOR CAUSE

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

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

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

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

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44. TERMINATION FOR CONVENIENCE

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

45. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Grantee to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

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

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

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

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

46. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of

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this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

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

47. WAIVER

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

48. WORK HOURS AND SAFETY STANDARDS

The Grant Work Hours and Safety Standards Act (40 U.S.C. 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Grant Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

SCOPE OF WORK

Funds awarded under this grant will be used for \$726,984 in capital expenditures for the Tâlicn (Tumwater Townhomes) project, an affordable 28-unit owner-occupied townhome project.

The location of the project is 1150 73rd Ave SE, Tumwater, WA 98512.

Project activities will include and be limited to the construction of the following utility improvements:

Water utility improvements: Installation of water main per plan sheet C2.1 – C2.5 to include:

- 73rd Ave SE - Installation of new water main including live tap and fire hydrants (using select native material for backfill)
- Halvorsen LN SE – Installation of new water main including connections to existing lines • Installation of new fire hydrant including live tap on Tumwater Blvd SE
- Installation of new domestic services to each lot ending at edge of ROW
- Testing, flushing, and inspections as required

Sewer utility improvements: Installation of sewer per plan sheet C3.1- C3.3 to include:

- 73rd Ave SE - Install new gravity sewer main and manhole including tie-in at existing manhole (using select native material for backfill)
- Remove existing 8” stub and re-core/re-channel existing manhole for new 10” PVC pipe • Halvorsen LN SE - Install new gravity sewer main and manhole including tie-in at existing manhole (using select native for backfill material)
- Installation of new 48” cut in manhole on existing 10” PVC line on Tumwater Blvd SE including new inside drop
- Install side services to each lot including clean out to edge of ROW per City standards
- Testing & inspections per City requirements

Stormwater utility improvements: Installation of storm piping per plan sheets C1.3 – C1.7 to include

- Installation of storm pipe and catch basins
- Installation of stormwater infiltration gallery
- Testing and inspections per City requirements

This project is expected to be complete by September 30, 2023.

The “Copyright Provisions”, Section 16 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

Based on the criteria within the state capital budget, SSB 1080 Sec 1074, (Laws of 2021), and criteria developed by Commerce to ensure the terms of the appropriation are met, all grants must meet the following criteria:

- Applicant must be a city, county or public utility district, applying in coordination with the developer of a multi-unit affordable housing project, located within a jurisdiction that imposed a sales and use tax under RCW 82.14.530(1)(a)(ii), 82.14.530(1)(b)(i)(B), 82.14.540, or 84.52.105.
- The utility project must serve new multi-unit affordable¹ housing projects that serve and benefit low-income households.² If the project is a mixed-income project, the affordable portion of the development must be at least 25%.
- The affordable housing project should be part of a program that will monitor affordability for a minimum of 25 years, such as the Housing Trust Fund, low-income housing tax credits, housing authority, or a city monitoring process. A covenant and/or note and deed of trust may be required as part of securitization to ensure affordability.

¹ "Affordable housing" has the same meaning as in RCW 43.185A.010, and means residential housing for rental occupancy which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty percent of the family's income. In the context of homeownership, the definition from the [Housing Trust Fund Handbook](#) applies (Section 701.7): "affordability occurs when a household's monthly housing costs are generally no more than 38 percent of monthly household income and total debt is no more than 45 percent of monthly household income. Housing costs include mortgage principal, interest, property taxes, homeowner insurance, homeowner association fees, and land lease fees, as applicable. Total debt includes other debt and utilities."

² "Low-income household" has the same definition as in RCW 43.185.010(6), and means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the project is located.

CERTIFICATION PERFORMANCE MEASURE – SCOPE OF WORK

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE as of the date and year written below.

Debbie Sullivan, Mayor

DATE

How this project meets criteria for APRA SLFRF Projects

This project aligns to the Expenditure Category 3 of ARPA SLRF, services to Disproportionately Impacted Communities, Housing Support: Affordable Housing EC 2.15.³ Under ARPA's SLFRF guidance, funding for this grant falls under the category of responding to "*Public Health and Economic Impacts*" of the COVID-19 public health emergency. Within that category of eligible actions, this program is intended to "*Building Stronger Communities through Investments in Housing and Neighborhoods*" by serving those communities that were hardest hit by the pandemic through investments in affordable housing development. Eligible services include: *Affordable housing development to increase supply of affordable and high quality living units*. Supporting the development of affordable housing is important to address a limited supply of housing, some of which is inadequate, or of poor quality.⁴ The Interim Final Rule supports this finding by stating that "both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began" including "low income communities, people of color, and Tribal communities."⁵

³ <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>

⁴ See specific language at printed pages 26795 and 26796 of the [Interim Final Rule](#) to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under ARPA).

⁵ Ibid, page 26787.

CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE ENTIRE PROJECT

Type of Funding	Source Description and purpose	Amount
CHIP Grant	Washington State Department of Commerce	\$726,984
Other Sources		
Source 1	Washington State Housing Trust Fund	\$840,000
Source 2	Thurston County Capital (Home and 2060)	\$300,000
Source 3	Thurston County CDBG Grant	\$300,000
Source 4	Habitat for Humanity Self-Help Home Ownership Program (SHOP)	\$700,000
Source 5	Olympia Federal Saving Construction Loan	\$1,237,500
Source 6	Sales of Homes	\$3,944,627
Total Other Sources		\$6,692,127
Total Project Funding		\$7,419,111

CERTIFICATION PERFORMANCE MEASURE - AVAILABILITY OF FUNDS

The GRANTEE by its signature, certifies that project funding from sources other than those provided by this Grant Agreement has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this Grant Agreement, as of the date and year written below. The GRANTEE shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE's review upon reasonable request.

Debbie Sullivan, Mayor

DATE

CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the Project funded by this Grant Agreement, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. See section 8 of the Special Terms and Conditions and section 30 of the General Terms and Conditions.

Before invoices are paid, the "awarding agency" must provide documentation of the "intent to pay prevailing wages". Before the final funds are paid from the state, an "affidavit of wages paid" from L&I must also be provided. The GRANTEE or assignee, shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

CERTIFICATION PERFORMANCE MEASURE – PREVAILING WAGES

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE and their subcontractors as of the date and year written below.

Debbie Sullivan, Mayor

DATE

TO: City Council

FROM: Troy Niemeyer, Finance Director, and Brad Medrud, Planning Manager

DATE: March 21, 2023

SUBJECT: Assignment of Agreement with the South Puget Sound Habitat for the Humanity Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP)

1) Recommended Action:

Approve the Assignment of Agreement with the South Puget Sound Habitat for the Humanity Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP) for the Mayor's signature

2) Background:

After the City Council adopted Resolution No. R2018-016 in the summer of 2018, the City has undertaken a number of actions to address homelessness, increase affordable housing, and continue to work with other jurisdictions and agencies to explore regional solutions to these issues. In September 2021, the City Council adopted the Tumwater Housing Action Plan, which informs the City's Comprehensive Plan policies and development regulations and guides implementation strategies to help the City meet its housing needs.

The City has determined it to be an equitable choice to support an affordable housing project in Tumwater, which would result in affordable long-term housing and serve as a public benefit.

South Puget Sound Habitat for Humanity, with assistance from the City, was awarded by the Washington State Department of Commerce a Connecting Housing to Infrastructure Program (CHIP) America Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds federal grant of \$726,000 to offset utility infrastructure costs for the Tâlicn Townhomes project on 73rd Avenue SE. The City would enter into a Capital Agreement with the Department of Commerce for the grant, which is a separate item on the Council agenda, and the City would manage that grant through the Assignment of Agreement.

Because of the amount of the assignment of agreement, the Mayor will need to sign the agreement after the City Council gives its approval. The General Government Committee was briefed on the agreement at their March 8, 2023 meeting and recommended that it go to City Council consent.

3) Policy Support:

Strategic Priority to Build a Community Recognized for Quality, Compassion and Humanity with a goal of "Work with government, non-profit, and private partners to develop and implement a performance-based plan for affordable housing and to address homelessness"

Housing Element Goal H-3: To provide adequate, affordable housing for residents of all income groups, including sufficient housing affordable to low and moderate-income groups.

4) Alternatives:

- ☐ Take off consent, modify and approve the Assignment of Agreement with the South Puget Sound Habitat for the Humanity Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP) for signature by the Mayor
- ☐ Take off consent and reject the Assignment of Agreement with the South Puget Sound Habitat for the Humanity Tâlicn Townhomes – Connecting Housing to Infrastructure Program (CHIP)

5) Fiscal Notes:

The Capital Agreement with the Washington State Department of Commerce for the CHIP ARPA State and Local Fiscal Recovery Funds federal grant will fund infrastructure improvements for the South Puget Sound Habitat Humanity Tâlicn Townhomes. The City would manage that grant through the Assignment of Agreement.

6) Attachment:

- A. Assignment of Agreement – South Puget Sound Habitat for Humanity Connecting Housing to Infrastructure Program (CHIP)

ASSIGNMENT OF AGREEMENT

SOUTH PUGET SOUND HABITAT FOR HUMANITY TÂLÍCN TOWNHOMES – CONNECTING HOUSING TO INFRASTRUCTURE PROGRAM (CHIP)

This Assignment (the “Assignment”) is effective as of _____ (the “Effective Date”) by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the “CITY”, and SOUTH PUGET SOUND HABITAT FOR HUMANITY, a Washington non-profit corporation, hereinafter referred to as “ASSIGNEE”.

WHEREAS, the CITY was awarded an American Rescue Plan Act (ARPA) Connecting Housing to Infrastructure Program (CHIP) grant of \$726,984 to support the development of affordable housing by paying for utility infrastructure improvements for the Tâlicn Tumwater Townhomes project; and

WHEREAS, the CITY entered into a Grant Agreement with Washington State Department of Commerce (“Commerce”) dated _____ (Contract Number 22-96720-219) (the “Grant Agreement”); and

WHEREAS, Section 8 of the General Terms and Conditions of the Grant Agreement allows the CITY to assign the Grant Agreement to their affordable housing partner, in this case SOUTH PUGET SOUND HABITAT FOR HUMANITY; and

WHEREAS, CITY desires to assign and ASSIGNEE desires to receive by assignment all of CITY’s rights and obligations under the Contract;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. ASSIGNMENT. CITY hereby assigns to ASSIGNEE all of its interests, rights and title held by CITY in and to the Grant Agreement attached hereto as Exhibit A. CITY reserves the ability to enforce any and all terms and conditions of the Grant Agreement in the same manner and to the same extent as COMMERCE and the State of Washington.
2. ASSUMPTION OF OBLIGATIONS. ASSIGNEE acknowledges the receipt of a copy of the Grant Agreement. ASSIGNEE hereby assumes all of CITY’s interests, rights, duties, liabilities and obligations in the Grant Agreement. ASSIGNEE agrees to comply with all the terms and perform all conditions and covenants in the Grant Agreement as if ASSIGNEE

were an original party therein. All requirements and contract terms flow to the ASSIGNEE and all references to Grantee shall mean ASSIGNEE.

3. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS.

A. ASSIGNEE certifies by signing this Assignment that to the best of its knowledge and belief that they:

- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- ii. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
- iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
- iv. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.

B. Where the ASSIGNEE is unable to certify to any of the statements in this contract, the GRANTEE shall attach an explanation to this contract.

C. The ASSIGNEE agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.

D. The ASSIGNEE further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- i. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- ii. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.

E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

4. CHANGE OF OWNERSHIP OR USE. The ASSIGNEE understands and agrees that any and all real property or facilities owned or leased by the ASSIGNEE that are acquired, constructed, or otherwise improved by the ASSIGNEE using funds awarded under the Grant Agreement shall be held and used by the ASSIGNEE for the purposes stated in the Grant Agreement for a period of at least twenty-five (25) years from the date the final payment is made under the Grant Agreement. In the event the ASSIGNEE is found to be out of compliance with the section, the ASSIGNEE shall repay the principal amount as stated on the Face Sheet of the Grant Agreement plus interest as more particularly described in the Grant Agreement.
5. COVENANT. The ASSIGNEE will include a Resale Restriction Covenant with all Purchase and Sale Agreements and all Assignment of Rents to ensure the Tâlicn Tumwater Townhomes project is classified as affordable housing for a period of at least twenty-five (25) years from the date the final payment is made under the Grant Agreement.
6. INDEMNIFICATION. To the fullest extent permitted by law, the ASSIGNEE shall indemnify, defend, and hold harmless the State of Washington, COMMERCE, agencies of the State, the CITY OF TUMWATER and all officials, agents and employees of the State and CITY for, from and against all claims for injuries or death arising out of, or resulting from, the performance of the Grant Agreement. "Claim" as used in this Assignment, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees,

attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The ASSIGNEE'S obligation to indemnify, defend, and hold harmless includes any claim by ASSIGNEE'S agents, employees, representatives, or any subcontractor or its employees.

ASSIGNEE expressly agrees to indemnify, defend, and hold harmless the State and CITY for any claim arising out of or incident to ASSIGNEE'S or any subcontractor's performance or failure to perform under the terms of the Grant Agreement. ASSIGNEE'S obligation to indemnify, defend, and hold harmless the State and CITY shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or CITY or its agents, agencies, employees and officials.

The ASSIGNEE waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, CITY, officers, agents or employees.

This section shall survive completion of performance, cancellation or termination.

7. INDEPENDENT CONTRACTOR RELATIONSHIP. The parties intend that an independent contractor relationship will be created by this Assignment. The ASSIGNEE and its employees or agents performing under this Assignment are not employees or agents of the CITY. The ASSIGNEE will not hold itself out as or claim to be an officer or employee of CITY or of the State of Washington by reason hereof, nor will the ASSIGNEE make any claim or right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the ASSIGNEE.
8. RECORDS. The ASSIGNEE shall maintain books, records, documents, data and other evidence relating to this Assignment and performance of the obligations described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

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

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

9. RIGHT OF INSPECTION. At no additional cost all records relating to the ASSIGNEE's performance under this Assignment shall be subject at all reasonable times to inspection, review, and audit by CITY, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Assignment. The ASSIGNEE shall provide access to its facilities for this purpose.
10. TERMINATION. CITY may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Assignment, in whole or in part.
11. FURTHER ASSURANCES. Each party agrees to execute and deliver any and all such other documents and instruments and take or cause to be taken any and all such other actions as any other party may reasonably request or that are reasonably necessary or appropriate in order to give full effect to the terms of this Assignment.
12. WAIVER. The Failure of either Party to enforce any provisions of this Assignment shall not be deemed a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Assignment.
13. GOVERNING LAW. This Assignment shall be governed by and construed in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.
14. SURVIVAL. The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Assignment shall so survive.
15. COUNTERPARTS. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document. In the event that any signature hereof is delivered by facsimile transmission or by e-mail as an attached, scanned document such signature shall create a valid and binding obligation of the Party executing the same with the same force and effect as if such e-mailed or facsimile signature page were an original thereof.

IN WITNESS WHEREOF, the authorized representatives of the Parties have

cause this Assignment to be executed effective as of the Effective Date.

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

APPROVED AS TO FORM:

DEBBIE SULLIVAN
Mayor

KAREN KIRKPATRICK
City Attorney

ATTEST:

MELODY VALIANT
City Clerk

SERVICE PROVIDER:
SOUTH PUGET SOUND HABITAT FOR HUMANITY
PO Box 2225
Olympia, WA 98507
Tax ID #: 91-1427020
Phone Number: (360) 956-3456

Signature (Notarized – see below)
Printed Name: Carly Colgan
Title: Chief Executive Officer

Notary Required for Service Provider Only

[illegible]

I certify that I know or have satisfactory evidence that CARLY COLGAN 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 CHIEF EXECUTIVE OFFICER of SOUTH PUGET SOUND HABITAT FOR HUMANITY to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

ASSIGNMENT OF CHIP GRANT TO SOUTH PUGET SOUND HABITAT FOR HUMANITY

Dated:_____

Notary Public in and for the State of Washington,

My appointment expires:_____

TO: City Council
 FROM: Brad Medrud, Planning Manager
 DATE: March 21, 2023
 SUBJECT: Contract Award for Phase 3 Grant with WDFW for Bush Prairie HCP and HCP Update

1) Recommended Action:

Approve the contract for the Phase 3 Grant with WDFW for Bush Prairie HCP and HCP Update for the Mayor's signature.

2) Background:

Working together with the Port of Olympia and large group of stakeholders, the City is in Phase 2 of the process of preparing the Bush Prairie Habitat Conservation Plan (HCP) with consultant assistance to identify appropriate mitigation for take of the Mazama Pocket Gopher, the Streak-Horned Lark, the Oregon Spotted Frog, and the Oregon Vesper Sparrow.

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

The HCP will allow operations and maintenance, recurring activities, and development to occur in some areas frequented by endangered species, offsetting any habitat loss with other, contiguous mitigation sites.

In 2016 for Phase 1, the City and Port were awarded an \$117,338.86 federal grant with a \$95,423.74 match (\$47,711.87 City/\$47,711.87 Port) of cash and staff time. The grant included \$16,000 for WDFW to manage the grant.

In 2018 for Phase 2, the City and Port were awarded an \$846,000.00 federal grant with a \$300,000 match (\$150,000 City/\$150,000 Port) of cash and staff time. The grant included \$54,000 for WDFW to manage the grant.

Now in 2023 for Phase 3 the City and Port were awarded a \$225,000.00 federal grant with a \$79,000 match (\$39,500 City/\$39,500 Port) of cash and staff time. The grant includes \$56,250 for WDFW to manage grant provided technical assistance and a WDFW \$14,750 match.

Because of the Phase 3 Grant amount, the Mayor will need to sign the contract after the City Council gives its approval. The General Government Committee was briefed on the grant at their March 8, 2023 meeting and recommended that it go to City Council consent.

3) Policy Support:

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

Comprehensive Plan Conservation Element Policy C-2.16: Protect and preserve habitats for species, which have been identified as endangered, threatened, or sensitive by the state or federal government, giving "special consideration: to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

4) Alternatives:

- ☐ Take off consent, modify and approve the Phase 3 Grant with WDFW for Bush Prairie HCP and HCP Update for signature by the Mayor
 - ☐ Take off consent and reject the Phase 3 Grant with WDFW for Bush Prairie HCP and HCP Update
-

5) Fiscal Notes:

This is a federal grant administered by WDFW and an internally funded work program task.

6) Attachments:

- A. Contract Award for Phase 3 Grant with WDFW for Bush Prairie HCP



GRANT AGREEMENT

TITLE:	Bush Prairie HCP Phase 3	WDFW NUMBER:	23-21778
GRANTEE:	City of Tumwater	CONTRACT PERIOD:	01/01/2023 to 09/01/2025
TYPE:	Payable / Grant / Sub-Recipient Federal USFWS 22-20496	CONTRACT VALUE:	\$304,000.00 \$225,000 CASH TO TUMWATER & PORT (PASS-THRU) \$79,000 TUMWATER & PORT (NON-FEDERAL MATCH)

A. PARTIES TO THIS CONTRACT

This contract is entered into between the Washington State Department of Fish and Wildlife (WDFW), 600 Capitol Way North, Olympia, WA 98501-1091; and City of Tumwater (Grantee), 555 Israel Road SW, Tumwater, Washington 98501; and shall be binding upon the agents and all persons acting by or through the parties.

B. PURPOSE OF CONTRACT

The purpose of this contract is to provide a grant award to the Grantee for the project specified herein.

C. DESCRIPTION OF PROJECT

The Grantee shall perform the project as described in Attachments, which are incorporated herein by this reference:

Attachment A - General Terms and Conditions

Attachment B - Contract/Project Summary

Attachment C - Statement of Work

The Grantee is a subrecipient of federal funds as identified under "Federal Funding Information" in Attachment B.

D. PERIOD OF PERFORMANCE

The performance period under this contract shall commence on 01/01/2023 and terminate on 09/01/2025. No expenditures made before or after this period are eligible for reimbursement unless incorporated by written amendment into this contract. The contract may be terminated, or the performance period extended pursuant to terms set forth in Attachment A.

E. COMPENSATION / PAYMENT

The total dollars provided by WDFW for this contract shall not exceed \$225,000.00. The Grantee shall provide \$79,000 in non-federal match. Grantee is responsible for all project costs exceeding the grant award, and the required non-federal match totaling \$304,000. Only eligible reimbursement activities that are in direct support of the project deliverables identified in this contract will be reimbursed. Any additional services provided by the Grantee must have prior written approval of WDFW.

Compensation for services rendered shall be payable upon receipt of properly completed invoices, which shall be submitted to the Project Manager by the Grantee not more often than monthly. The invoices shall describe and document to WDFW's satisfaction a description of work performed, activities accomplished, or the progress of the project. The rates shall be in accordance with those herein agreed to.

Payment shall be considered timely if made by WDFW within 30 days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Grantee. WDFW may, in its sole discretion, terminate the contract or withhold payments claimed by the Grantee for the services rendered if the Grantee fails to satisfactorily comply with any term or conditions of this contract.

F. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties of this contract are subject to this contract, including the Attachments, which are incorporated herein by this reference. By signing this contract, the Grantee acknowledges that they have read, fully understand, and agree to be bound by all terms and conditions set forth in this contract.

G. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND WDFW POLICIES

The Grantee shall comply with, all applicable state, federal, and local laws, and regulations, including published WDFW policies, while performing under this contract

H. ORDER OF PRECEDENCE

In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

Applicable Federal and State of Washington statutes and regulations.

Special Terms and Conditions (including Attachment "C" – Statement of Work) as contained in this basic contract instrument.

Attachment "A" - General Terms and Conditions.

Any other provision, term or material incorporated herein by reference or otherwise incorporated.

I. CONTRACT REPRESENTATIVES

The below named representatives for each of the parties shall be the contact people for all communications and billings regarding the performance of this contract. All written communications regarding this contract shall be sent to the designated representatives at the addresses below unless notified in writing of any change.

Grantee's Representative

Brad Medrud
555 Israel Road SW
Tumwater, Washington, 98501
(360) 754-4180
bmedrud@ci.tumwater.wa.us

WDFW's Representative

Sean Williams
PO Box 43143
Olympia, Washington, 98504-3143
(360) 902-8136
sean.williams@dfw.wa.gov

J. ENTIRE CONTRACT

This contract, along with all attachments and exhibits, constitutes the entire agreement of the parties. No other understandings, verbal or otherwise, regarding this contract shall exist or bind any of the parties.

K. APPROVAL

This contract shall be subject to the written approval of WDFW'S authorized representative and shall not be binding until so approved. This contract may be altered, amended, or waived only by a written amendment executed by both parties.

IN WITNESS WHERE, WDFW and the Grantee have signed this contract.

CITY OF TUMWATER

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

SIGNATURE AND DATE

SIGNATURE AND DATE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

Attachment A -

GENERAL TERMS AND CONDITIONS
Grant Agreement
Federal Funds

DEFINITIONS

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

- A. "AGENCY" or "WDFW" shall mean the **Department of Fish and Wildlife** of the State of Washington, any division, section, office, unit, or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- B. "AGENT" shall mean the AGENCY Director, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "CFR" shall mean the Code of Federal Regulations. All references in the contract to CFR chapters or sections shall include any successor, amended or replacement regulations.
- D. "GRANTEE" shall mean any organization or individual that is performing service(s) under this contract and shall include all employees of the GRANTEE.
- E. "RCW" shall mean the Revised Code of Washington. All references in the contract to RCW chapters or sections shall include any successor, amended or replacement statutes.
- F. "Subcontractor" shall mean one not in the employment of the GRANTEE, who is performing all or part of those services under this contract under a separate contract with the GRANTEE. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.
- G. "USC" shall mean United States Code. All references in the contract to USC chapters or sections shall include any successor, amended or replacement statutes.

ACCESS TO DATA

In compliance with RCW 39.26.180, the GRANTEE shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the GRANTEE'S reports,

including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

AMENDMENTS

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

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

Both parties shall comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT

The work to be provided under this contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

BUY AMERICAN ACT

The GRANTEE shall comply with 41 USC 10a-10c (the "Buy American Act") by purchasing only American-made equipment and products with contract funds except articles, materials, and supplies — a) for use outside the United States; b) for which the cost would be unreasonable, as determined in accordance with federal regulations; c) for which the AGENCY determines that domestic preference would be inconsistent with the public interest; or d) that are not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities, of a satisfactory quality.

CENTRAL CONTRACTOR REGISTRATION AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS)

Unless exempt under 2 CFR 25.110, the GRANTEE shall comply with 2 CFR 25 and be registered in the federal Central Contractor Registration (CCR) system; maintain an active CCR registration with current information at all times during the period of performance for this contract; and provide its DUNS number to the AGENCY.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The GRANTEE shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the GRANTEE terminate this contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the AGENCY shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the contract by the GRANTEE. The rights and remedies of the AGENCY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the AGENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

COST PRINCIPLES AND AUDIT REQUIREMENTS

The CONTRACTOR agrees to comply with the costs principles contained in 2 CFR Part 200 as appropriate for this contract. The GRANTEE agrees to comply with the organizational audit requirements of 2 CFR Subpart F, and further understands and agrees that funds may be withheld, or other related requirements may be imposed, if outstanding audit issues (if any) from 2

CFR Subpart F audits (and any other audits of Contract funds) are not satisfactorily and promptly addressed.

COPYRIGHT PROVISIONS

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

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

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

The GRANTEE shall exert all reasonable effort to advise the AGENCY, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the GRANTEE with respect to any data delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the GRANTEE.

COVENANT AGAINST CONTINGENT FEES

The GRANTEE warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide

employees or bona fide established agents maintained by the GRANTEE for securing business. The AGENCY shall have the right, in the event of breach of this clause by the GRANTEE, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DAVIS-BACON AND RELATED ACTS

If any work performed by the GRANTEE or Subcontractor employees is subject to the Davis Bacon Act and Davis-Bacon prevailing wage provisions contained in applicable federal laws, the GRANTEE shall ensure that they and their Subcontractor(s) a) pay at least once per week wages to GRANTEE and/or Subcontractor laborers and mechanics at a rate not less than the minimum wages specified in wage determinations made by the U.S. Department of Labor; and b) provide to the AGENCY each week U.S. Department of Labor Form WH-347 "Payroll (For Contractors Optional Use)" stating the wages paid to GRANTEE and /or Subcontractor laborers and mechanics engaged in work funded by this contract.

DISALLOWED COSTS

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

DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

1. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the GRANTEE'S name, address, and contract number; and
 - Be mailed to the AGENT and the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the AGENT and the requester within 5 calendar days.

3. The AGENT shall review the written statements and reply in writing to both parties within 10 calendar days. The AGENT may extend this period, if necessary, by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

DRUG-FREE WORKPLACE

The GRANTEE shall comply with the Drug-Free Workplace Act of 1988, 41 USC 701-707, as amended. Compliance with the Drug-Free Workplace Act includes publishing a drug-free workplace statement and establishing a drug-free awareness program for GRANTEE employees; and taking actions concerning GRANTEE employees who are convicted of violating drug statutes in the workplace. The GRANTEE shall provide written notice of a conviction of a GRANTEE employee of a drug violation in the workplace to the AGENCY within seven (7) calendar days after the GRANTEE learns of the conviction.

DUPLICATE PAYMENT

The AGENCY shall not pay the GRANTEE, if the GRANTEE has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

ENTIRE AGREEMENT

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

EQUIPMENT MANAGEMENT

For the purposes of this contract, "Inventoriable Equipment" shall mean a tangible asset which has a service life of more than one year and with a unit cost of \$5,000 or greater; and tangible assets with a unit cost of more than \$300 that the AGENCY considers "small and attractive," such as engines, chain saws, communications equipment, global position systems, optical devices, cameras, microcomputer and related systems, smart phones and tablets, video equipment; and firearms, boats and motorized vehicles of any value.

If the GRANTEE uses contract funds to purchase Inventoriable Equipment, title to that Inventoriable

Equipment shall be held by the AGENCY unless otherwise specified in this contract. The AGENCY's Inventoriable Equipment provided to the GRANTEE shall be used only for the performance of this contract. Title to the AGENCY's Inventoriable Equipment shall remain with the AGENCY.

The GRANTEE shall take reasonable steps to account for and protect Inventoriable Equipment from loss or damage; report to the AGENCY any loss or damage of such property; and take reasonable steps to protect such property from further damage. The GRANTEE shall surrender to the AGENCY all Inventoriable Equipment either provided by the AGENCY or purchased with contract funds upon the completion or termination of this contract.

FEDERAL DEBARMENT AND SUSPENSION

The GRANTEE certifies, that neither it nor its "principals" (as defined in 49 CFR 29.105) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Further, the GRANTEE agrees not to enter into any arrangements or other contracts with any party that is on the "List of Parties Excluded from Federal Procurement or Non-procurement Programs" which can be found at <https://www.sam.gov>.

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

This contract is subject to the requirements of the Federal Funding Accountability and Transparency Act (FFATA) as stated in 2 CFR 170. The GRANTEE agrees to comply with applicable requirements to assist the AGENCY in reporting first-tier subawards of \$25,000 or more and, in certain circumstances, in reporting the names and total compensation of the five most highly compensated executives of first-tier subrecipients of award funds. Such data will be submitted to the FFATA Subaward Reporting System (FSRS).

FINAL INVOICE

The GRANTEE shall submit the final invoice not later than 60 calendar days from the end of the contract period.

GOVERNANCE

This contract is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this contract shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this contract, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Statement of work; and
- c. Any other provisions of the contract, including materials incorporated by reference.

GOVERNING LAW

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

INDEMNIFICATION

To the fullest extent permitted by law, the GRANTEE shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents, and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

The GRANTEE'S obligations to indemnify, defend, and hold harmless includes any claim by the GRANTEE'S agents, employees, representatives, or any Subcontractor or its employees.

The GRANTEE expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the GRANTEE'S or any Subcontractor's performance or failure to perform the contract. The GRANTEE'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials.

The GRANTEE waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless State and its agencies, officials, agents, or employees.

INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this contract. The GRANTEE and his or her employees or agents performing under this contract are not employees

or agents of the AGENCY. The GRANTEE will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the State of Washington by reason hereof, nor will the GRANTEE make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the GRANTEE.

INDUSTRIAL INSURANCE COVERAGE

The GRANTEE shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the GRANTEE fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, the AGENCY may collect from the GRANTEE the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the GRANTEE to the accident fund from the amount payable to the GRANTEE by the AGENCY under this contract and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the GRANTEE.

INSURANCE

The GRANTEE shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages, or expenses arising from any negligent or intentional act or omission of the GRANTEE or Subcontractor, or agents of either, while performing under the terms of this contract.

The GRANTEE shall provide insurance coverage, which shall be maintained in full force and effect during the term of this contract, as follows:

1. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the GRANTEE is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
2. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the GRANTEE, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per

occurrence, using a Combined Single Limit for bodily injury and property damage.

3. Marine Insurance. If the GRANTEE will be using a vessel or boat in the performance of this contract, the GRANTEE shall maintain a Commercial Marine Protection and Indemnity (P&I) Policy with P&I limit of not less than \$1,000,000 per occurrence and with a deductible not to exceed \$25,000 (to include diving operations if diving is a part of the contracted service for any liability which includes coverage for injury to the crew and passengers).
4. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. GRANTEE shall instruct the insurers to give AGENCY thirty (30) calendar days advance notice of any insurance cancellation.

If the GRANTEE is self-insured, evidence of its status as a self-insured entity shall be provided to the AGENCY. If requested by the AGENCY, the GRANTEE must describe its financial condition and the self-insured funding mechanism.

The GRANTEE shall submit to AGENCY within fifteen (15) calendar days of the contract effective date, a certificate of insurance or evidence of its status as a self-insured entity that outlines the coverage and limits defined in this section. The GRANTEE shall submit renewal certificates as appropriate during the term of the contract; the failure of the AGENCY to enforce this term in no way reduces the GRANTEE's responsibilities under this section.

LICENSING, ACCREDITATION AND REGISTRATION

The GRANTEE shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards, necessary for the performance of this contract.

LIMITATION OF AUTHORITY

Only the AGENT or AGENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or

binding unless made in writing and signed by the AGENT.

MATCHING FUNDS

The GRANTEE shall be responsible for providing matching funds as indicated in the contract (if any). If the GRANTEE is responsible for matching funds, they shall state the amount of match used during the billing period and the cumulative amount of match used to date on every invoice submitted for payment to the AGENCY. The GRANTEE shall comply with the uniform administrative rules on matching or cost sharing for Federal grants and cooperative agreements and subawards as appropriate for this contract:

Federal Grantor Agency: Matching or Cost Sharing Standards

Department of Agriculture	7 CFR Section 3016.24
Department of Commerce	15 CFR Section 24.24
Department of Defense:	32 CFR Section 33.24
Department of the Interior:	43 CFR Section 12.64
Environmental Protection Agency:	40 CFR Section 31.24

MINORITY, WOMEN AND VETERAN-OWNED BUSINESSES

The AGENCY encourages participation by minority and women-owned business enterprises certified by the Office of Minority and Women's Business Enterprises (OMWBE); and veteran-owned businesses certified by the Department of Veteran's Affairs (DVA). If any part of this contract is subcontracted to an OMWBE or DVA-certified firm the GRANTEE shall submit a statement of participation indicating what OMWBE or DVA certified firm was used and the dollar amount of their subcontracts.

NONDISCRIMINATION

During the performance of this contract, both parties shall comply with all federal and state nondiscrimination laws, regulations, and policies. In the event of the GRANTEE'S non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the GRANTEE may be declared ineligible for further contracts with the AGENCY. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

PREVAILING WAGE

If any work performed by the GRANTEE or its Subcontractors is subject to Chapter 39.12 of the Revised Code of Washington, the GRANTEE shall ensure that the GRANTEE and its Subcontractors pay the prevailing rate of wages to all GRANTEE

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and/or Subcontractor workers, laborers or mechanics in the performance of any part of the work described in the contract in accordance with state law and Department of Labor and Industries rules and regulations.

PRIVACY

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification, or loss. The GRANTEE shall ensure its directors, officers, employees, Subcontractors, or agents use personal information solely for the purposes of accomplishing the services set forth herein. The GRANTEE and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the AGENCY or as otherwise required by law. Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The GRANTEE agrees to indemnify and hold harmless the AGENCY for any damages related to the GRANTEE'S unauthorized use of personal information.

RECORDS MAINTENANCE

The parties to this contract shall each maintain books, records, documents, and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this contract will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period. Records and other documents, in any medium, furnished by one party to this contract to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RESTRICTIONS ON LOBBYING

The GRANTEE certifies that under the requirements of Lobbying Disclosure Act, 2 USC, Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the GRANTEE, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

RIGHT OF INSPECTION

The GRANTEE shall provide right of access to its facilities to the AGENCY, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AGENCY may terminate the contract under the "Termination" clause, without the thirty-day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions.

SEVERABILITY

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

SITE SECURITY

While on AGENCY premises, the GRANTEE, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

STATEWIDE VENDOR PAYMENT REGISTRATION

The GRANTEE is required to be registered in the Statewide Vendor Payment System prior to submitting a request for payment under this contract. The Washington State Office of Financial

Management (OFM) maintains the Statewide Vendor Payment System; to obtain registration materials contact the Statewide Payee Desk at (360) 407-8180; or go to: <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>.

SUBCONTRACTING

Neither the GRANTEE nor any Subcontractor(s) shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the GRANTEE to the AGENCY for any breach in the performance of the GRANTEE'S duties. This clause does not include contracts of employment between the GRANTEE and personnel assigned to work under this contract. Additionally, the GRANTEE is responsible for ensuring that all terms, conditions, assurances, and certifications set forth in this contract are carried forward to any subcontracts. The GRANTEE and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the AGENCY or as provided by law.

TERMINATION

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

TERMINATION FOR CAUSE

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

The AGENCY reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the GRANTEE from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by the AGENCY to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the GRANTEE: (1) was not in

default; or (2) failure to perform was outside of his or her control, fault, or negligence. The rights and remedies of the AGENCY provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

TERMINATION PROCEDURES

Upon termination of this contract, the AGENCY, in addition to any other rights provided in this contract, may require the GRANTEE to deliver to the AGENCY any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer. The AGENCY shall pay to the GRANTEE the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY, and the amount agreed upon by the GRANTEE and the AGENCY for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the AGENCY, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AGENT shall determine the extent of the liability of the AGENCY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The AGENCY may withhold from any amounts due the GRANTEE such sum as the AGENT determines to be necessary to protect the AGENCY against potential loss or liability. The rights and remedies of the AGENCY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the GRANTEE shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the GRANTEE under the orders and subcontracts so terminated, in which case the AGENCY has the right, at its discretion, to settle or pay any or

all claims arising out of the termination of such orders and subcontracts;

4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;
6. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
7. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the GRANTEE and in which the AGENCY has or may acquire an interest.

TRAFFICKING VICTIMS PROTECTION ACT

As described in 2 CFR Part 175 the AGENCY may terminate this contract, without penalty, if the GRANTEE is found to be in violation of the Trafficking Victims Protection Act of 2000

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

The CONTRACTOR shall comply with the uniform administrative rules for Federal grants and cooperative agreements and subawards contained in 2 CFR Part 200 and as appropriate for this contract:

<u>Federal Grantor Agency</u>	<u>2 CFR Chapter</u>
Department of Agriculture	IV
Department of Commerce	XIII
Department of Defense	XI
Department of the Interior	XIV
Environmental Protection Agency	XV

WAIVER

A failure by either party to exercise its rights under this contract shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this contract unless stated to be such in a writing signed by an authorized representative of the party and attached to the original contract.

WHISTLEBLOWER PROTECTION

If this contract exceeds the federal simplified acquisition threshold of \$100,000 the contract and all employees working on the contract are subject to the whistleblower protections established at 41 USC 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013. If subject to this statute the CONTRACTOR shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights

and protections under 41 USC 4712. This section is applicable to all subcontractors and subawardees related to this contract that exceed the federal simplified acquisition threshold of \$100,000, and the CONTRACTOR shall include this section in all such subcontracts and/or subawards.

APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL 3/20/2015

**Attachment B -
CONTRACT/PROJECT SUMMARY**

TITLE: Bush Prairie HCP Phase 3	WDFW CONTRACT NUMBER: 23-21778		
PERIOD: 01/01/2023 to 09/01/2025 GRANTEE: City of Tumwater GRANTEE CONTACT: Brad Medrud (360) 754-4180 CONTRACT TYPE: Payable / Grant / Sub-Recipient Federal USFWS 22-20496	WDFW MANAGER: Sean Williams (360) 902-8136		
SUMMARY CONTRACT DESCRIPTION: <p>The City of Tumwater and Port of Olympia, in partnership with WDFW, were awarded \$375,000 from a USFWS FY22 Section 6 Conservation Planning Assistance Grant (CFDA 15.615) to fund Phase 3 of the Bush Prairie Habitat Conservation Plan. This award includes \$281,250 (75%) in federal funds and \$93,750 (25%) in non-federal match. As the pass-through agency, WDFW is responsible for awarding funds to the City of Tumwater and Port of Olympia to support this project.</p> <p>This contract is a pass through grant between WDFW and the City of Tumwater for a total value of \$304,000. The City of Tumwater will receive \$225,000 in federal funds and will provide a non-federal match of \$79,000.</p> <p>Federal \$225,000; City/Port Match \$79,000; Total \$304,000</p>			
Federal Funding Information			
Master Index Number(s): 33321			
CFDA Number	Award Year	Award Number	Research & Development?
15.615 Cooperative Endangered Species Conservation Fund/US Department of the Interior	2022	F22AS00262	N/A

Attachment C Statement of Work

Bush Prairie Habitat Conservation Plan (HCP) Phase 3

A. Award Summary

The City of Tumwater (City) and the Port of Olympia (Port), in partnership with the Washington Department of Fish and Wildlife (WDFW), received a Cooperative Endangered Species Conservation Fund (Section 6) Habitat Conservation Plan (HCP) Planning Assistance grant in the amount of \$375,000 to complete Phase 3 of the Bush Prairie HCP.

Efforts to develop the Bush Prairie HCP began in 2016 under Phase 1 and continued in 2018 under Phase 2. Phase 3 will provide the City and Port with the financial resources to finalize the Bush Prairie HCP and Incidental Take Permit (ITP) application. The Bush Prairie HCP will allow for the protection of listed and at-risk prairie species and wetland ecosystems within a framework that allows the City and Port to manage growth and development responsibly within the urban growth boundary. The Bush Prairie HCP includes the following covered species: Olympia pocket gopher, streaked horned lark, Oregon spotted frog, and Oregon vesper sparrow.

Of the \$375,000 total project cost, \$281,250 (75%) will be provided through federal funds and \$93,750 (25%) will be provided as non-federal match. The City and the Port will receive \$225,000 in federal funds and will provide a non-federal match of \$79,000 (\$39,500 by the City, \$39,500 by the Port). WDFW will receive \$56,250 in federal funds to support grant administration and technical assistance and will provide a non-federal match of \$14,750.

B. Goals and Objectives

Goal 1 – Additional Work on Phase 2 Objectives

1. Continue the public engagement process with the public, stakeholder group, and partners to support the development of the Bush Prairie HCP, including the LOTT Clean Water Alliance.
2. Complete the second administrative draft of the Bush Prairie HCP and associated National Environmental Policy Act (NEPA) and Washington State Environmental Policy Act (SEPA) environmental review processes.

Goal 2 – Additional Bush Prairie HCP Development Objectives

3. Develop and update applicable development plans and codes to implement the Bush Prairie HCP.
4. Develop the necessary manuals, forms, checklists, and training program for administrators to implement the Bush Prairie HCP and for future project applicants to apply for permits. Develop a geobrowser or similar web-based application to support this work.
5. Develop a property acquisition and maintenance financial accounting and administrative system to manage conservation sites, prepare a covered activity tracker, and start early screening of mitigation lands.
6. Develop a habitat management plan for the reserve system and a standardized monitoring program.

C.Deliverables and Target Completion Dates

Goal 1 – Additional Work on Phase 2 Objectives

The additional work identified during the Phase 2 grant include continuing the public engagement process and completing the Bush Prairie HCP. These objectives are not sequential, and they can be achieved together. A project consultant will support the City and Port in addressing these objectives.

Objective 1: Build and Sustain the Public Engagement Process

Objective 1.1 – Continue Public Engagement Process Initiated in Phase 1 and 2

Continue to work with the public, stakeholders, and local, state, and federal partners to inform the development of the Bush Prairie HCP. This will include:

- Educate, inform, and involve the public in conservation planning for endangered species.
- Build on other local efforts by Thurston County, WDFW, Center for Natural Lands Management, Department of Defense, and the U. S. Fish and Wildlife Service (USFWS) to maintain and restore the South Puget Sound prairie ecosystem.
- Hold regular meetings of the Bush Prairie HCP development team to discuss strategy for the HCP, including representatives from the City, the Port, USFWS, a project consultant, and other key contributors.
- Seek feedback from the community stakeholder group on strategy for the Bush Prairie HCP.
- Complete assembling the elements of a strategy that builds partnerships to finish the draft Bush Prairie HCP, establishes conservation milestones, and recommends the roles and actions needed for effective conservation and mitigation from conservation partners. This will be included in the Public Engagement Appendix of the Bush Prairie HCP.

Objective	Deliverable	Target Completion Date
1.1	•Public Engagement Appendix in the Bush Prairie HCP	09/01/2025

Objective 1 Total Estimated Cost: \$11,294

Objective 2: Complete the Bush Prairie HCP and NEPA/SEPA Process

Objective 2.1 – Develop Second Administrative Draft of the Bush Prairie HCP

Work with USFWS and WDFW to respond to review comments and prepare a second administrative draft of the Bush Prairie HCP.

Objective 2.2 – Develop a Broader Conservation Strategy for the Streaked Horned Lark

Complete a broader conservation strategy as part of the second administrative draft of the Bush Prairie HCP that incorporates the October 2019 Memorandum of Understanding

between the Federal Aviation Administration (FAA) and USFWS Regarding Streaked Horned Lark Recovery in Oregon and Washington.

Objective 2.3 – Coordinate with the LOTT Clean Water Alliance

Coordination with the LOTT Clean Water Alliance on identifying and analyzing specific LOTT covered activities in the draft Bush Prairie Bush Prairie HCP.

Objective 2.4 – Complete NEPA/SEPA review

Collection of information and writing to support the NEPA and SEPA Environmental review process up to initiating NEPA (if Environmental Impact Statement (EIS)) or completing NEPA (if Environmental Assessment (EA)) within one to three years.

Objective	Deliverables	Target Completion Date
2.1	<ul style="list-style-type: none"> Second administrative draft of the Bush Prairie HCP 	12/31/2023
2.2	<ul style="list-style-type: none"> Streaked Horned Lark Conservation Plan Appendix to the draft Bush Prairie HCP 	12/31/2023
2.3	<ul style="list-style-type: none"> Incorporation of LOTT covered activities into the draft Bush Prairie HCP 	12/31/2023
2.4	<ul style="list-style-type: none"> Documentation of completed NEPA and SEPA 	09/01/2025

Objective 2 Total Estimated Cost: \$113,648

Goal 2 – Additional Bush Prairie HCP Development Objectives

Additional Bush Prairie HCP development objectives will focus on objectives that need to be in place when the ITP is issued, or very soon after ITP issuance, that were not originally anticipated in the Phase 2 scope. The objectives include update development plans and codes to implement the HCP, develop supporting documentation and a training program for administrators and project applicants, develop administrative systems to manage conservation lands, screen mitigation sites, and track covered activities, and develop a habitat management and monitoring program. These objectives are not sequential, and they can be achieved together. A project consultant will support the City and Port in these additional HCP development objectives.

Objective 3: Develop and Update Development Plans and Codes

Objective 3.1 – Update Development Plans and Codes

Identify and update City plans, development codes, guides, and guidelines, including those addressing existing procedures or developing cultural resource procedures equivalent to support USFWS National Historic Preservation Act (NHPA) Section 106 procedures, to support enacting the regulatory and incentive-based Bush Prairie HCP.

- Prepare written summary of updated City plans, development codes, guides, and guidelines and provide copies of updates.

Objective	Deliverables	Target Completion Date
3.1	<ul style="list-style-type: none"> • Written report outlining code changes completed to implement HCP, which may include: <ul style="list-style-type: none"> ○ Adopted City ordinance(s) amending City regulations ○ Amendments to City Development Guide ○ Adopted City ordinances(s) for other City Plans and Guidelines, as needed 	09/01/2025

Objective 3 Total Estimated Cost: \$10,588

Objective 4: Develop Manuals, Forms, Checklists, and Training Program

Objective 4.1 – Prepare Administrator’s Guide, Template Forms, and Annual Report Outline

Several tools will need to be developed to be used by City and Port staff for implementation of the Bush Prairie HCP.

- Develop an Administrator’s Guide for City and Port staff that summarizes how the City and Port will work together on key Bush Prairie HCP requirements regarding avoidance and minimization measures for covered activities, land acquisition surveys for the Reserve System, monitoring requirements, and annual reporting.
- Develop Bush Prairie HCP Templates, which will include development of standardized monitoring field sheets, developed for use on smartphones or tablets (digital collection), that can be linked to the geobrowser and database for ease in tracking (Objective 6.2), as well as other forms needed to support annual reporting (Objective 4.1) and the development of an umbrella habitat management plan for the Reserve System that can then be used as a template and informational resource during the development of specific habitat management plans for each acquisition that is submitted to the USFWS for review (Objective 6.1).
- Develop a written outline for the annual report that will be submitted to the public and USFWS each year for the Bush Prairie HCP.

Objective 4.2 – Prepare User’s Manual, Template Forms, and Checklists

Several tools will need to be developed to be used by applicants for implementation of the Bush Prairie HCP.

- Develop a user’s manual for project applicants that will become an Appendix to the Bush Prairie HCP.
- Develop Bush Prairie HCP project application forms.
- Develop checklists for avoidance requirements and survey requirements for project applicants.
- Develop fee calculators for project applicants and support documentation.

Objective 4.3 – Develop Training Program

Training is essential for City and Port staff, consultants, project applicants and developers, and any other individuals involved with the Bush Prairie HCP. Training material will be developed for individual audiences such as City permit review staff and developers and their consultants and delivered multiple times per year in the first several years to reach a wide audience of potential users. Reviews of the User's Guide and Administrators Guide as well as the Geobrowser, could occur during training.

- Develop written scope and schedule for training program.

Objective 4.4 – Develop Geobrowser or Similar Web-Based Application

A geobrowser is a web-based data visualization, analysis, and reporting platform for use by the City and Port. Geobrowsers feature user-friendly and interactive web maps, dashboards, and tracking tools that users can view and navigate to inform Bush Prairie HCP development and decisions. User authentication can provide different levels of access for the USFWS, stakeholders, and public. The geobrowser could also help project proponents locate their project and help estimate their fees.

- Develop a Geobrowser or Similar Web-Based Application and support documentation.

Objective	Deliverables	Target Completion Date
4.1	<ul style="list-style-type: none"> • Administrator's Guide or Desk Reference Manual in an Appendix to the draft Bush Prairie HCP • Bush Prairie HCP Templates in an Appendix to the draft HCP • Annual Report Outline in an Appendix to the draft Bush Prairie HCP 	12/31/2024
4.2	<ul style="list-style-type: none"> • Additional details for the draft Bush Prairie HCP Chapter 7 – Plan Implementation • User's Manual for Applicants • HCP Project Application Template Forms in an Appendix to the draft Bush Prairie HCP • Checklists for Avoidance Requirements and Survey Requirements for Applicants in an Appendix to the draft Bush Prairie HCP • Fee Calculators for Applicants Documentation in an Appendix to the draft Bush Prairie HCP 	12/31/2024
4.3	<ul style="list-style-type: none"> • Training Summary in an Appendix to the draft Bush Prairie HCP 	12/31/2024
4.4	<ul style="list-style-type: none"> • Geobrowser or Similar Web-Based Application and Support Documentation in an Appendix to the draft Bush Prairie HCP 	12/31/2024

Objective 4 Total Estimated Cost: \$44,647

Objective 5: Develop Administrative Systems to Support the Bush Prairie HCP

Objective 5.1 – Develop Property Acquisition and Maintenance Financial Accounting and Administrative System

Develop a property acquisition and maintenance financial accounting and administrative system with the necessary legal agreements to support the management of conservation lands for the Bush Prairie HCP.

- Develop the written scope and schedule for a property acquisition and maintenance financial accounting and administrative system with draft legal materials.

Objective 5.2 –Start Early Screening of Potential Mitigation Lands

Early screening would allow the City to be proactive in planning for acquisitions as part of the Reserve System and is an important step toward estimating and building the funding assurances within the Bush Prairie HCP before the ITP can be issued. Land acquisition can be a lengthy process and early screening will help to identify high priority areas for acquisition. Early screening will allow the City and Port to be ready to approach landowners when funding becomes available.

- Develop Early Screening of Potential Mitigation Lands program and support documentation.

Objective 5.3 – Prepare Covered Activity Tracker

A covered activity tracker is needed to meet the Bush Prairie HCP compliance requirements to track covered activities (e.g., location, species habitat type, land cover type, acreage) such that annual reports can be made, stay-ahead provisions demonstrated, and compliance with take limits ensured. If combined with a geobrowser or similar web-based application outlined in Objective 4.4, the covered activity tracker tool could include the integration of an SQL database with spatially explicit maps that help locate the covered activity within various “zones” of the Plan Area. The covered activity tracker could also be tied in with the current City permit tracking system.

- Develop covered activity tracker and support documentation.

Objective	Deliverables	Target Completion Date
5.1	<ul style="list-style-type: none"> • Property Acquisition and Maintenance Financial Accounting and Administrative System Appendix to the draft Bush Prairie HCP • Draft Memorandum of Agreement between the City and the Port in an Appendix to the draft Bush Prairie HCP • Other Draft Legal Materials as Needed in an Appendix to the draft Bush Prairie HCP 	06/30/2024
5.2	<ul style="list-style-type: none"> • Early Screening Summary in an Appendix to the draft Bush Prairie HCP 	06/30/2024
5.3	<ul style="list-style-type: none"> • Covered Activity Tracker Summary in an Appendix to the draft Bush Prairie HCP 	06/30/2024

Objective 5 Total Estimated Cost: \$23,646

Objective 6: Develop Habitat Management Plan and Monitoring Program

Objective 6.1 – Develop Habitat Management Plan

Develop an umbrella Habitat Management Plan for the Reserve System that will be used as a template and informational resource during the development of specific habitat management plans for acquisitions. Seek review and feedback from WDFW during the development of the Habitat Management Plan.

- Develop an umbrella Habitat Management Plan for the Reserve System.

Objective 6.2 – Develop Monitoring Program

Develop standardized monitoring field sheets, developed for use on smartphones or tablets (digital collection), that can be linked to the geobrowser and database for ease in tracking the species covered by the Bush Prairie HCP. The monitoring program would standardize how the City receives field data from developers. Work on developing the monitoring program will inform the work on the HCP, by testing how well the practices proposed in the HCP will work before issuance of the ITP. Seek review and feedback from WDFW during the development of the Monitoring Program.

- Develop standardized monitoring field sheets, developed for use on smartphones or tablets (digital collection), that can be linked to the geobrowser and database for ease in tracking.

Objective	Deliverables	Target Completion Date
6.1	<ul style="list-style-type: none"> • Habitat Management Plan Templates in an Appendix to the draft Bush Prairie HCP 	06/30/2024
6.2	<ul style="list-style-type: none"> • Monitoring Program Summary in an Appendix to the draft Bush Prairie HCP 	06/30/2024

Objective 6 Total Estimated Cost: \$21,177

Total Cost: \$225,000 in Federal Funds

Budget

Total Budget

Fund source	Dollar amount
Federal grant funds	\$225,000 <i>Pass-through allocated to the City and Port</i>
City/Port match amount	\$79,000 <i>\$39,500 by the City and \$39,500 by the Port</i>
Total budget (Federal + Non-federal match)	\$304,000

Budget by Objectives

Objective#	Objective Description	Estimate Amount of Federal Funds	Estimated Percentage of Federal Funds
1	Continue the Public Engagement Process	\$11,294	5.02%
2	Complete the Bush Prairie HCP and NEPA/SEPA	\$113,648	50.51%
3	Process Develop and Update Development Plans and Codes	\$10,588	4.71%
4	Develop Manuals, Forms, Checklists, and Training Program	\$44,647	19.84%
5	Develop Administrative Systems to Support the Bush Prairie HCP	\$23,646	10.51%
6	Develop Habitat Management Plan and Monitoring Program	\$21,177	9.41%
	Total Federal Award	\$225,000	100.00%
	City/Port Non-federal Match	\$79,000	
	Total Project Cost	\$304,000	

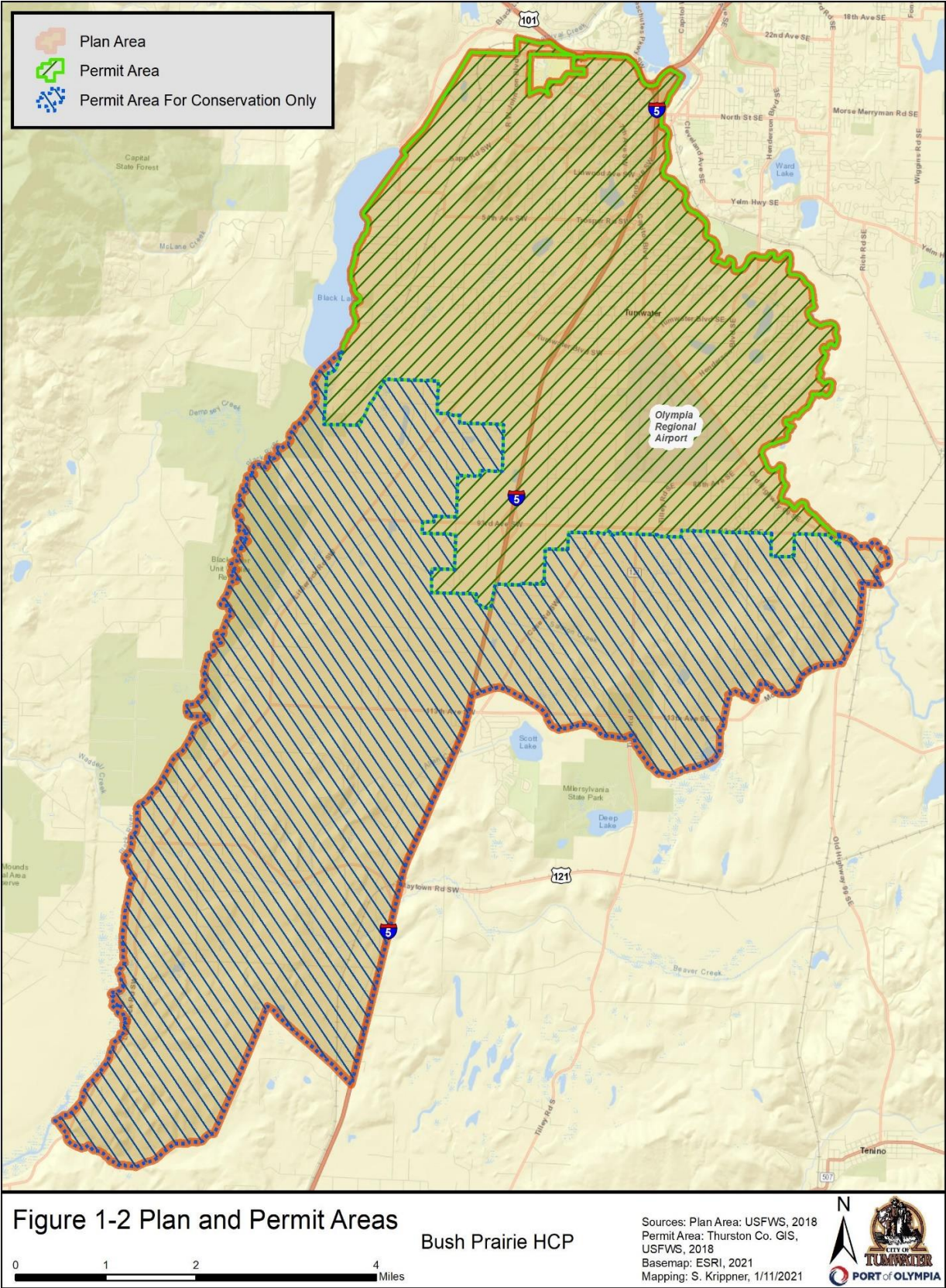
D. Reporting Requirements

Report Title	Report Period	Due Date
1 st Performance Progress Report	01/01/2023 – 12/31/2023	02/16/2024
Mid-year Progress Summary for WDFW	01/01/2024 – 06/31/2024	07/26/2024
2 nd Performance Progress Report	01/01/2024 – 12/31/2024	02/14/2025
Mid-year Progress Summary for WDFW	01/01/2025 – 06/31/2025	07/25/2025
Final Performance Report	01/01/2025 – 09/01/2025	11/14/2025

E. Location

The Bush Prairie HCP Plan Area (Draft Bush Prairie HCP Figure 1-2 below) covers the lands within the City boundaries, lands within the City's urban growth area that are under direct control of the Port, and any additional lands that are to be managed by the permittees for the purposes of covered species conservation.

The Bush Prairie HCP Plan Area will be at least 17,000 acres covering the City and lands within the Olympia pocket gopher ranges outside the City to the south. Discussions are underway to expand the Plan Area to include more suitable mitigation areas in the western Washington lowlands from Pierce County south to Vancouver and the Columbia River for the streaked horned lark outside the original proposed Plan Area. This work is part of Phase 3 Objective 4: Develop a Broader Conservation Strategy for the Streaked Horned Lark.



TO: City Council
FROM: Brandon Hicks, Transportation and Engineering Director
DATE: March 21, 2023
SUBJECT: Consultant Agreement with Tierra Right of Way Services, Ltd, for Right-of-Way Services on the X Street Roundabout Project

1) Recommended Action:

Staff recommends the City Council approve and authorize the Mayor to sign the Local Agency Professional Services Negotiated Hourly Rate Consultant Agreement, in substantially similar form as approved by the City Attorney, with Tierra Right of Way Services, LTD, in the amount of \$150,000, for right-of-way services on the X Street Roundabout Project. The Consultant Agreement was recommended for approval by the Public Works Committee at their March 9, 2023, meeting.

2) Background:

The X Street Roundabout is the fourth transportation project derived from the Capitol Boulevard Corridor Study. The first project was the Capitol Boulevard Feasibility Study, which is complete. The second project is the Interstate 5 / Trosper Road / Capitol Boulevard Reconfiguration project, which is under construction right now. The third project is the Capitol Boulevard Design project which completes a substantial portion of the design for the remaining projects in the Corridor Study positioning the City to be more competitive in future grant applications. The transportation projects derived from the Capitol Boulevard Corridor Study aim to reduce congestion and provide safer travel for all modes.

Right of way services for this project will include appraisals, negotiating with property owners to acquire property rights, relocation services, and other services as needed.

3) Policy Support:

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

4) Alternatives:

- ☐ Recommend selection of a different right of way consultant,
 - ☐ Recommend returning all grant funding and cancelling or delaying project.
-

5) Fiscal Notes:

The total project cost estimate is \$5.3 million for right of way and construction phases; the City has been awarded four separate grants totaling to approximately \$4.1 million for the project, local funds are programmed in the Transportation CFP budget.

6) Attachments:

- A. Local Agency Professional Services Negotiated Hourly Rate Consultant Agreement
(Exhibits Excluded)
- B. Draft Right of Way Acquisition Map

Local Agency Professional Services Negotiated Hourly Rate Consultant Agreement

Agreement Number:

Does this Require DES filing? ☐ Yes ☒ No

Firm/Organization Legal Name (do not use dba's): Tierra Right of Way Servcies, LTD			
Address 1575 East River Road, Suite 201, Tucson, AZ 85718		Federal Aid Number STPUS-5235(018)	
UBI Number 601-302-918		Federal TIN 860641058	
Execution Date February 27, 2023		Completion Date December 31, 2024	
1099 Form Required <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Federal Participation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Project Title X Street Roundabout			
Description of Work Right-of-way services consisting of all items indicated as "Contract with a qualified consultant" on the City's approved "Right of Way Procedures" attached to the Request for Proposals (RFP) including, but not limited to, negotiating with property owners to acquire property rights, appraisal and appraisal review services in conformance with federal, state, and agency standards, relocation services, project certification services and other work as detailed in the RFP.			
<input type="checkbox"/> Yes	%	<input checked="" type="checkbox"/> No DBE Participation	Maximum Amount Payable: \$150,000.00
<input type="checkbox"/> Yes	%	<input checked="" type="checkbox"/> No MBE Participation	
<input type="checkbox"/> Yes	%	<input checked="" type="checkbox"/> No WBE Participation	
<input type="checkbox"/> Yes	%	<input checked="" type="checkbox"/> No SBE Participation	

Index of Exhibits

Exhibit A	Scope of Work
Exhibit B	DBE Participation
Exhibit C	Preparation and Delivery of Electronic Engineering and Other Data
Exhibit D	Prime Consultant Cost Computations
Exhibit E	Sub-consultant Cost Computations
Exhibit F	Title VI Assurances
Exhibit G	Certification Documents
Exhibit H	Liability Insurance Increase
Exhibit I	Alleged Consultant Design Error Procedures
Exhibit J	Consultant Claim Procedures

Agreement Number:

THIS AGREEMENT, made and entered into as shown in the "Execution Date" box on page one (1) of this AGREEMENT, between the City of Tumwater hereinafter called the "AGENCY," and the "Firm/Organization Name" referenced on page one (1) of this AGREEMENT, hereinafter called the "CONSULTANT."

WHEREAS, the AGENCY desires to accomplish the work referenced in "Description of Work" on page one (1) of this AGREEMENT and hereafter called the "SERVICES;" and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. General Description of Work

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

II. Scope of Work

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT. The Scope of Work was developed utilizing performance based contracting methodologies.

III. General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days' notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

Agreement Number:

Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26 shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY's "DBE Program Participation Plan" and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

In the absence of a mandatory UDBE, the Consultant shall continue their outreach efforts to provide SBE firms maximum practicable opportunities.

The CONSULTANT, on a monthly basis, shall enter the amounts paid to all firms involved with this AGREEMENT into the wsdot.diversitycompliance.com program. Payment information shall identify any DBE Participation. Non-minority, woman owned DBEs does not count towards UDBE goal attainment.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C – Preparation and Delivery of Electronic Engineering and other Data."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:

Name: Brandon Hicks
 Agency: City of Tumwater
 Address: 555 Israel Rd SW
 City: Olympia State: WA Zip: 98501
 Email: bhicks@ci.tumwater.wa.us
 Phone: 360-754-4140
 Facsimile: N/A

If to CONSULTANT:

Name: Mack Dickerson
 Agency: Tierra Right of Way Services, LTD
 Address: 1575 East River Road, Suite 201
 City: Tucson State: AZ Zip: 85718
 Email: mdickerson@tierra-row.com
 Phone: 1-800-877-0847
 Facsimile: N/A

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. This AGREEMENT may require filing with the Department of Enterprise Services (DES) pursuant to RCW 39.26.140. If such approval is required by DES, this AGREEMENT shall not bind the AGENCY until approved by DES. If the AGREEMENT must be approved by DES, work cannot begin, nor payment made until ten (10) or more working days following the date of filing, and until approved by DES. Any subsequent SUPPLEMENTAL AGREEMENT may also be subject to filing and/or approval from DES. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT titled "Completion Date."

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

Agreement Number:

V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov).

- A. Hourly Rates: Hourly rates are comprised of the following elements - Direct (Raw) Labor, Indirect Cost Rate, and Fee (Profit). The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibits “D” and “E” attached hereto and by reference made part of this AGREEMENT. These negotiated hourly rates will be accepted based on a review of the CONSULTANT’s direct labor rates and indirect cost rate computations and agreed upon fee. The accepted negotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. The initially accepted negotiated rates shall be applicable from the approval date, as memorialized in a final written acknowledgment, to 180 days following the CONSULTANT’s fiscal year end (FYE) date.

The direct (raw) labor rates and classifications, as shown on Exhibits “D” and “E” shall be subject to renegotiations for each subsequent twelve (12) month period (180 days following FYE date to 180 days following FYE date) upon written request of the CONSULTANT or the AGENCY. The written request must be made to the other party within ninety (90) days following the CONSULTANT’s FYE date. If no such written request is made, the current direct (raw) labor rates and classifications as shown on Exhibits “D” and “E”, will remain in effect for the twelve (12) month period.

Conversely, if a timely request is made in the manner set forth above, the parties will commence negotiations to determine the new direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period. Any agreed to renegotiated rates shall be memorialized in a final written acknowledgement between the parties. Such final written acknowledgement shall be incorporated into, and become a part of, this AGREEMENT. If requested, the CONSULTANT shall provide current payroll register and classifications to aid in negotiations. If the parties cannot reach an agreement on the direct (raw) labor rates and classifications, the AGENCY shall perform an audit of the CONSULTANT’s books and records to determine the CONSULTANT’s actual costs. The audit findings will establish the direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period.

The fee as identified in Exhibits “D” and “E” shall represent a value to be applied throughout the life of the AGREEMENT.

The CONSULTANT shall submit annually to the AGENCY an updated indirect cost rate within 180 days of the close of its fiscal year. An approved updated indirect cost rate shall be included in the current fiscal year rates under this AGREEMENT, even if/when other components of the hourly rate are not renegotiated. These rates will be applicable for the twelve (12) month period. At the AGENCY’s option, a provisional and/or conditional indirect cost rate may be negotiated. This provisional or conditional indirect rate shall remain in effect until the updated indirect cost rate is completed and approved. Indirect cost rate costs incurred during the provisional or conditional period will not be adjusted. The CONSULTANT may request an extension of the last approved indirect cost rate for the twelve (12) month period. These requests for provisional indirect cost rate and/or extension will be considered on a case-by-case basis, and if granted, will be memorialized in a final written acknowledgement.

The CONSULTANT shall maintain and have accessible support data for verification of the components of the hourly rates, i.e., direct (raw) labor, indirect cost rate, and fee (profit) percentage. The CONSULTANT shall bill each employee’s actual classification, and actual salary plus indirect cost rate plus fee.

Agreement Number:

- B. **Direct Non-Salary Costs:** Direct Non-Salary Costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the WSDOT'S Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and all revisions thereto. Air, train and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with these SERVICES. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the SERVICES provided under this AGREEMENT.
- C. **Maximum Amount Payable:** The Maximum Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT on page one (1.) The Maximum Amount Payable does not include payment for extra work as stipulated in section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- D. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in A and B above. The monthly billings shall be supported by detailed statements for hours expended at the rates established in Exhibit "D," including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT's employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.
- E. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the SERVICES under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.
- The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. Per the WSDOT's "Audit Guide for Consultants," Chapter 23 "Resolution Procedures," the CONSULTANT has twenty (20) working days after receipt of the final Post Audit to begin the appeal process to the AGENCY for audit findings.
- F. **Inspection of Cost Records:** The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and /or at the request of the AGENCY's Project Manager.

Agreement Number:

VI. Sub-Contracting

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit “A” attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit “E” attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each Task Order unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V “Payment Provisions” herein and shall be memorialized in a final written acknowledgement between the parties.

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE’s Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen’s Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT’s employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

Agreement Number:

VIII. Nondiscrimination

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964
(42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973
(23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973
(29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975
(42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987
(Public Law 100-259)
- American with Disabilities Act of 1990
(42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit “F” attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit “F” in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT’s failure to perform is without the CONSULTANT’s or its employee’s fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

Agreement Number:

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee. The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII "Extra Work."

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J". In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

XII. Legal Relations

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold the State of Washington (STATE), the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT

Agreement Number:

to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and/or the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and/or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or the AGENCY, its agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and/or the AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable, in performance of the Work under this AGREEMENT or arising out of any use in connection with the AGREEMENT of methods, processes, designs, information or other items furnished or communicated to STATE and/or the AGENCY, its agents, officers and employees pursuant to the AGREEMENT; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE's and/or the AGENCY's, their agents', officers' and employees' failure to comply with specific written instructions regarding use provided to STATE and/or the AGENCY, their agents, officers and employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONSULTANT terminate this AGREEMENT if it is found after due notice and examination by the AGENCY that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONSULTANT in the procurement of, or performance under, this AGREEMENT.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and/or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the Parties.

Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

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Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name: Cathy Nielsen
 Agency: City of Tumwater
 Address: 555 Israel Rd SW
 City: Tumwater State: WA Zip: 98501
 Email: tumwaterprojects@ci.tumwater.wa.us
 Phone: 360-754-4140
 Facsimile: N/A

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY, including that which may arise in reference to section IX "Termination of Agreement" of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V "Payment Provisions" until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

Agreement Number:

XIII. Extra Work

- A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit any “request for equitable adjustment,” hereafter referred to as “CLAIM,” under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the section XI “Disputes” clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the AGENCY

Attached hereto as Exhibit “G-1(a and b)” are the Certifications of the CONSULTANT and the AGENCY, Exhibit “G-2” Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit “G-3” Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit “G-4” Certificate of Current Cost or Pricing Data. Exhibit “G-3” is required only in AGREEMENT’s over one hundred thousand dollars (\$100,000.00) and Exhibit “G-4” is required only in AGREEMENT’s over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III “General Requirements” prior to its performance of any SERVICES under this AGREEMENT.

XVII. Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

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XVIII. Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, STATE and AGENCY security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, sub-consultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY's express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a nondisclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information.

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State's Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State's Confidential Information was received; who received, maintained and used the State's Confidential Information; and the final disposition of the State's Confidential Information. The CONSULTANT's records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State's Confidential Information, monetary damages, or penalties.

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

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The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT; or (b) as soon as such confidential or proprietary material is developed. "Proprietary and/or confidential information" is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and/or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as "Proprietary and/or confidential information" or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

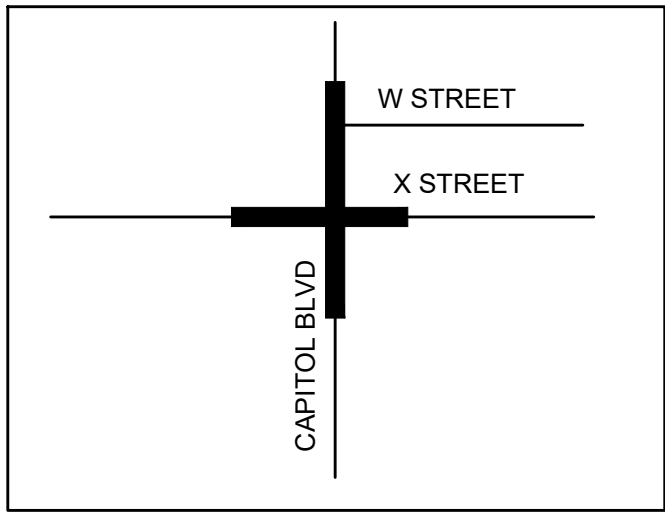
XIX. Records Maintenance

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain and maintain all "documents" pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all "documents" pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT's place of business during normal working hours. If any litigation, claim or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. "Documents" shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim or audit continues past the six (6) year retention period.

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENT 's, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbings, recordings, visual displays, photographs, minutes of meetings, tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

Agreement Number:

RIGHT OF WAY PLAN
FOR
X STREET ROUNDABOUT
CITY OF TUMWATER



VICINITY MAP
NTS

BENCHMARKS
NGS-Q-531 5" ALUMINUM CASE MON ELEV. 186.51'
NGS-P-351 5" ALUMINUM CASE MON ELEV. 168.73'

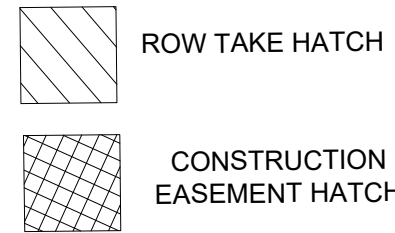
VERTICAL
NGVD 29

METHOD OF SURVEY
SURVEY PERFORMED BY CONVENTIONAL FIELD TRAVERSE USING
TOPCON GTS 1003 AND HIPER TOPCON GPS LINEAR AND ANGULAR
CLOSURE OF THE TRAVERSE MEET THE STANDARDS OF
WAC 332-130-090.

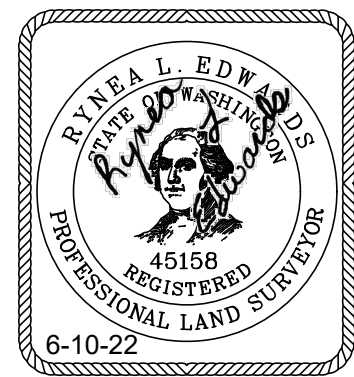
BASIS OF BEARING

WSPC NAD83/01 TIES TO THURSTON COUNTY
CONTROL POINT GP34005-15, GP34005-4T, TC 998.
DISTANCE SHOWN ARE GRID. AREAS SHOWN ARE GROUND
COMBINED SCALE FACTOR 0.999937

LEGEND



BUILDING LINE



Line Table		
Line #	Direction	Length
L1	S12° 11' 58"E	22.22
L2	S44° 15' 45"E	10.87
L3	S67° 33' 15"E	22.66
L4	S67° 25' 22"W	25.57
L5	S01° 54' 50"W	101.24
L6	S88° 05' 10"E	2.06
L7	S22° 11' 38"E	42.99
L8	S01° 14' 46"E	9.51
L9	S42° 22' 11"E	6.40
L10	S56° 33' 10"E	10.34
L11	S74° 44' 28"E	25.24

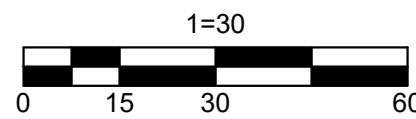
Line Table		
Line #	Direction	Length
L12	S89° 15' 52"E	50.11
L13	S84° 24' 14"W	57.64
L14	S57° 14' 24"W	6.39
L15	N87° 47' 30"W	10.06
L16	S24° 37' 49"W	13.50
L17	S02° 11' 53"W	109.01
L18	S16° 53' 55"W	29.55
L19	N87° 38' 45"W	5.98
L20	N01° 47' 54"E	90.68
L21	N04° 38' 30"W	10.93
L22	N87° 48' 07"W	11.03

Line Table		
Line #	Direction	Length
L23	N02° 17' 17"E	90.79
L24	N09° 46' 34"W	17.12
L25	N36° 44' 07"W	22.77
L26	N87° 38' 45"W	11.50
L27	N02° 11' 53"E	72.91
L28	N19° 45' 09"E	19.07
L29	S87° 48' 07"E	5.75
L30	S89° 26' 19"E	10.13
L31	S06° 53' 33"E	21.55
L32	S73° 35' 13"E	21.46
L33	S00° 23' 37"W	10.59

Line Table		
Line #	Direction	Length
L34	S01° 23' 32"E	10.72
L35	S67° 25' 22"W	21.29
L36	S04° 42' 10"W	51.66
L37	S01° 49' 58"W	40.70
L38	S28° 11' 55"E	14.39
L39	S20° 08' 31"E	28.87
L40	S01° 14' 46"E	9.33
L41	S42° 22' 11"E	6.01
L42	S86° 38' 15"E	28.03
L43	S41° 55' 45"E	7.68
L44	S89° 09' 48"E	49.95

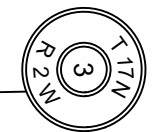
Line Table		
Line #	Direction	Length
L45	S78° 04' 08"W	25.90
L46	S88° 44' 41"W	30.19
L47	S84° 39' 42"W	14.94
L48	S00° 48' 30"W	24.25
L49	S46° 21' 58"W	31.65
L50	S78° 23' 38"W	21.17
L51	S02° 04' 42"W	36.62
L52	S02° 06' 35"W	100.90
L53	N88° 18' 17"W	11.55
L54	N87° 38' 45"W	18.22
L55	N02° 18' 01"E	208.37

Line Table		
Line #	Direction	Length
L56	N87° 42' 39"W	64.38
L57	N02° 35' 27"E	21.69
L58	N87° 38' 45"W	55.93
L59	N02° 11' 53"E	10.00
L60	N02° 11' 53"E	73.27
L61	N10° 44' 55"E	23.06
L62	S87° 48' 07"E	13.07
L63	S02° 11' 53"W	5.00
L64	S35° 57' 46"W	45.52



CALC. NW COR
SW1/4 OF THE NE1/4
OF THE SW1/4
SEC. 3.

CALC. NORTH 1/4 CORNER
SEC. 3, CALC PER THURSTON
COUNTY



CENTER 1/4 SEC. 3
CALC PER THURSTON COUNTY

S 88°06'02" E 2631.09'

W1/4 COR. SEC. 3
FOUND 1.5" BRASS
DISC IN CONCRETE IN
MONUMENT CASE
DOWN 0.6' (7/2022)

X STREET

NORTH LINE SE 1/4 OF THE NE 1/4

CAPITOL BLVD

CAPITOL BLVD

W STREET

N1/4 COR. SEC. 4
FOUND 3" BRASS CAP
(7/2022)

FOUND 2" BRASS DISC IN
CONCRETE MONUMENT
IN CASE DOWN 0.2'
(5/2022)

NE COR SEC. 3
FOUND 3" BRASS DISC IN
CONCRETE MONUMENT IN
CASE DOWN 0.6' (5/2022)

OWNERSHIP

NAME	PARCEL NO.	AREA	TAKE	REMAINDER	TEMPORARY CONSTRUCTION EASEMENT
SCHWAB PROPERTIES LTD	72850300100	1.01 ACRES (44,040 SQ.FT.)	2,761 SQ. FT.	0.95 ACRES (41,279 SQ.FT.)	1,676 SQ. FT.
NUT TREE LLC	12703140500	0.79 ACRES (34,268 SQ.FT.)	3,552 SQ. FT.	0.71 ACRES (30,716 SQ.FT.)	4,508 SQ. FT.
SLATER ENTERPRISE PHASE III LLC	12703112000	0.39 ACRES (17,305 SQ.FT.)	17,305 SQ. FT.	0 ACRES (0 SQ.FT.)	0 SQ. FT.
SLATER ENTERPRISE PHASE III LLC	12703112400	0.14 ACRES (5,999 SQ.FT.)	5,999 SQ. FT.	0 ACRES (0 SQ.FT.)	0 SQ. FT.
PROCHNAU, STEVE	12702222800	0.19 ACRES (8,215 SQ.FT.)	2,258 SQ. FT.	0.14 ACRES (5,957 SQ.FT.)	536 SQ. FT.
CAPITOL CITY PROPERTIES LLC	56600000100	0.79 ACRES (34,562 SQ.FT.)	1,182 SQ. FT.	0.77 ACRES (33,380 SQ.FT.)	504 SQ. FT.
PARKAL LLC	55100000100	0.93 ACRES (40,372 SQ.FT.)	996 SQ. FT.	0.90 ACRES (39,376 SQ.FT.)	551 SQ. FT.
BLACKWELL, ELEONORE	12702222500	0.28 ACRES (12,365 SQ.FT.)	338 SQ. FT.	0.28 ACRES (12,027 SQ.FT.)	423 SQ. FT.



5016 Lacey Boulevard SE, Lacey, Washington 98503
(360) 491-3399 (800) 454-7545 Fax (360) 491-3857

JOB NO. 19107

S19107 X ST ROW2.DWG

SHEET 1 OF 1

TO: City Council
FROM: Hanna Miles, Executive Assistant/Deputy City Clerk
DATE: March 21, 2023
SUBJECT: Tree Board Appointment of Hannah Ohman and Brodrick Coval

1) Recommended Action:

Confirm the Mayor's appointment of Hannah Ohman and Brodrick Coval to the Tree Board.

2) Background:

Hannah Ohman and Brodrick Coval have both interviewed and shown interest in filling the current vacancies on the Tree Board. Upon Council confirmation, both terms will be effective immediately through March 1, 2025.

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 appointments
 - ☐ Do not confirm the appointments
-

5) Fiscal Notes:

There is no fiscal impact associated with this action.

6) Attachments:

A. Applications and Supplemental Information of Tree Board 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.

Name: Hannah Ohman

Address: [REDACTED]

Telephone: _____ (Home) _____ (Cell)

_____ (Work)

Date: 02/10/2023 Email: [REDACTED]

CITY OF TUMWATER
 FEB 22 2023
 EXECUTIVE DEPARTMENT

BOARD, COMMITTEE OR COMMISSION

PREFERENCE
NUMBER:

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

Crime Stoppers:

One citizen representative; Mayoral appointment with Council confirmation; three-year terms; active

Historic Preservation Commission:

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

Planning Commission:

Nine members; Mayoral appointment with Council confirmation; four-year terms; active

Thurston Community Television:

One citizen representative; Mayoral appointment; three-year terms; active

Tree Board:

Five to seven members; Mayoral appointment with Council confirmation; three-year terms; active

#1

Hannah Ohman
[REDACTED]

February 10, 2023

To whom it may concern,

I am writing to you regarding the open position on the tree board. I have always loved being outdoors and learning about my surroundings and decided to learn more in college; I began taking environmental studies classes my second semester at Warren Wilson College. I thrived at my university because of my excellent time management and organizational skills and would be happy for the chance to apply my knowledge as a part of this group.

At Warren Wilson, I learned how to identify native southern Appalachian plants by sight, and their common uses. Additionally, I am experienced in using wildflower and twig identification keys and am confident about learning to identify some new plants. I gained lots of experience hiking, removing invasive plants, re-routing and grading trails, and performed trail maintenance. Many of my classes included education in the field; I conducted experiments observing the effects of solarization and occultation on local field crops, worked with a group of my peers and constructed a forest management prescription plan for local land owners, and worked with the American Chestnut Foundation (ACF) planting hybrid blight resistant trees to name a few. However, my skillset extends beyond classroom education; as a recent graduate I took a job as a groundskeeper at Givens Highland Farms, I spent almost two years providing general grounds maintenance, assisted in the construction land development of 16 new homes, and successfully completed the OSHA 10 hour class and became a certified organic grower. At this job, I interacted positively with the public/residents and communicated closely with my supervisors and coworkers to ensure that each task was completed properly and safely. Recently, I have started a new chapter of my life working for the Department of Enterprise Services (DES) here in the capitol. I am a member of the parks unit that helps with the upkeep of the capitol grounds and surrounding parks.

Thank you for your time and consideration. I believe my strong background in ecological forestry, grounds maintenance, and interacting with the public/residents would make me well suited for this position and an integral member of your team. I am excited for the opportunity to work with you.

Sincerely,

Hannah Ohman

Hannah Ohman

[REDACTED]

Experience with:

- operating a chainsaw, felling trees, logging and skidding lumber
- bucking, splitting, and stacking firewood
- invasive plant removal through applying Garlon herbicide
- cultivating shiitake mushrooms, creating tinctures and selling them at market
- writing forest management prescriptions for local land owners
- worked with the American Chestnut Foundation (ACF) planting hybrid blight resistant trees
- wildland firefighter trained by the Swannanoa Fire Rescue substation in Bee Tree NC
- relating to and working with ill, disabled, elderly, emotionally upset, and at times hostile people
- trail rerouting, grading, and general grounds maintenance
- running and repairing irrigation systems

Education

Graduated Lisbon High school, Lisbon, Iowa, May 2015

Graduated from Warren Wilson College, Swannanoa, NC, May 2019 with a Bachelors of Science in Environmental Studies with a concentration on Ecological forestry.

Completed OSHA 10 hour safety class

Completed Texas Organic Research Centers, Natural Organic Growers Certification

Skills

- Facilitating group lessons, creating lesson plans
- Time management, implementing self created schedules
- Critical thinking skills, creative problem solving
- Strong communication skills
- Team building
- Setting and meeting both independent and team goals
- Resilience

References

Dave Charbonneau, Director of Facilities, Heron's Key, [REDACTED]

George Smith, Maintenance Supervisor, Heron's Key, [REDACTED]

Jim Boyer, Director of Facility Services, Givens Highland Farms, [REDACTED]
[REDACTED]

Jason Carney, Land Management Crew Supervisor, Givens Highland Farms, [REDACTED]
[REDACTED]

Mark Norwood, Maintenance Supervisor, Givens Highland Farms, [REDACTED]
[REDACTED]

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: Brodrick Coval

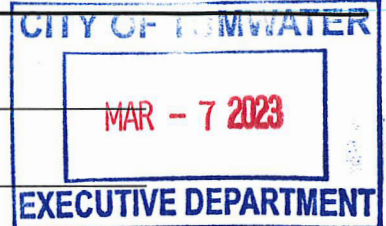
Address:

Telephone: (Home) (Cell)

(Work)

Date: 03/02/2023

Email:



BOARD, COMMITTEE OR COMMISSION

PREFERENCE
NUMBER:

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

2

Crime Stoppers:

One citizen representative; Mayoral appointment with Council confirmation; three-year terms; active

Historic Preservation Commission:

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

Planning Commission:

Nine members; Mayoral appointment with Council confirmation; four-year terms; active

Thurston Community Television:

One citizen representative; Mayoral appointment; three-year terms; active

Tree Board:

Five to seven members; Mayoral appointment with Council confirmation; three-year terms; active

1

Brodrick Coval


Dear fellow civil servants,

I am interested in participating in the Tumwater Tree Board and am eager to speak with you regarding the strengths of my candidacy as a new member of the Board. I have a passion for civil service, strong and transparent democratic processes, and a lifelong affinity for forestry and all things arboriculture. I have long sought an opportunity in local government but am adamant that my work in such a role needs to bring value to my community first and foremost—a seat on the Tumwater Tree Board is a perfect opportunity in this vein.

I received a bachelor of science in Environmental Studies and Agriscience from Michigan State University, with a concentration in Science and Policy. Committed to higher education, I then earned a Master of Forestry from Michigan Technological University. I received high honors from both institutions and was heavily involved in extracurricular activities.

My entire professional career has been focused on trees and public land management. I worked as a stewardship crew member on a county parks and recreation commission, and as a timber marker for the USDA Forest Service before life brought me to Tumwater. Here, I have worked for the WA Department of Natural Resources for six years, working in several capacities, from Field Forester to Legislative Coordinator, and most recently, Statewide Recreation Policy Manager. From these opportunities, not only have I deepened my understanding of trees and forests, but I have come to appreciate the public process when working with legacy projects.

Additionally, in 2020 I started a small business, [South Sound Wood](#). My company works with area arborists and community members to deliver a full suite of locally sourced salvaged wood products and services. We specialize in the “tree-to-table” model, beginning with salvaging local urban trees that would otherwise be turned into woodchips or burned as firewood, and giving them a second life as custom furniture pieces or dimensional lumber for building. This venture has deepened my roots in the community, built lifelong relationships, and furthered my understanding of the value of proper urban tree management. From the ecosystem services trees provide, to the environmental justice disparity issues we are grappling with as a society, the role of urban forests is the center of my professional life.

I see the Tumwater Tree Board as an excellent opportunity to serve my community and assist government decision-makers in developing and implementing sustainable policies that improve the lives of all their constituents. I hope to add value to this team of subject matter experts in whatever way I can.

I am excited about this opportunity and look forward to learning more about the role of the Tumwater Tree Board and the important work that this team accomplishes.

Best,
Brody Coval

Brodrick Coval

Work Experience

South Sound Wood—Tumwater, WA

8/20 – Present

Owner/President

- Initiate, develop, and implement company business strategies aimed to provide locally-sourced wood products from salvaged materials
- Run operations for multiple small-scale sawmills to salvage local urban wood and manufacture and sell dimensional and live-edge wood products
- Head furniture maker, specializing in the “tree-to-table” model
- Head of client relations and procurements (including arborist outreach)
- Member of Olympia Woodworkers Guild

Washington Department of Natural Resources—Olympia, WA

9/16 – Present

EP-3 Statewide Recreation Policy Manager (Recreation and Conservation Division 7/22 – Present)

- Review, update, and create policies for statewide recreation on DNR-managed uplands (~3 million acres)
- Manage statewide recreation contracts with non-profit cooperators
- Represent DNR on the Recreate Responsibly Coalition and associated workgroups
- Provide service for DNR recreation managers statewide
- Project team member and contract manager for DNR’s inaugural Statewide Recreation Plan (currently in progress)
- Analyze bills in the Washington State Legislature that impact DNR Recreation and lobby/respond accordingly

NRS-2 Timber Sales Forester (SPS Region 6/18 – 7/22)

- Lead forester for 11 timber sales; pre-harvest review, sale layout (VRH and Riparian Restoration), sale packet completion
- Support forester for several timber sales; pre-harvest review, sale layout and map-building
- Compliance forester for several timber sales; road building/maintenance and harvest
- Primary mentor and trainer for new foresters and forester on developmental assignment
- Point of contact for Unit representation at recreation user group meetings as well as directly with FOCF
- Unit lead for roadside spray vegetation management program
- Active member of the statewide Timber Sales Process Optimization team
- Active in Wildfire Program—qualified Receiving and Distributions Manager and Firefighter Type 1
 - Supervise Supply Unit and hand crew squad on wildfire incidents

Legislative Coordinator (Developmental Role in Legislative and External Affairs 1/20 – 6/21)

- Coordinated the Department’s analysis, response, and messaging for pertinent legislation
 - Passed a historic number of impactful agency-request bills as part of the Legislative Team
 - Develop and lead training efforts for Division Bill Coordinators and Subject Matter Experts
 - Participated in strategy meetings with DNR’s Executive Management Team
 - Led meetings with agency Bill Coordinators and Region Managers
 - Write weekly agency-wide updates on the status of legislative affairs
 - Staff and provide talking points for the Commissioner of Public Lands in legislator meetings
 - Collaborated with subject matter experts in public hearings in response to proposed legislation

NRS-2 (In-training) Silviculture Forester (PC Region 9/16 – 6/18)

- Contract administration—actively complied multiple contracts as both lead administrator and assistant forester for site prep (aerial and ground-based), reforestation (contracts and camps), vegetation management (mechanical and chemical release), and young-stand thinning (PCT) contracts while dealing with neighbor concerns and related social licensure parameters
- Stand assessment – conduct young stand surveys, recommend prescription/treatment, collect/record data.
- Design, build, and implement efficient record-keeping and planning-type spreadsheets for IMF district staff
- Acting timber sales forester
 - Lead forester for one timber sale pre-harvest review, sale layout, and packet completion
 - Support forester for one timber sale layout and map-building

Bartlett Tree Experts—Grand Rapids, MI**4/15 – 8/15**

- Plant Health Care Specialist – client consultation and plant diagnoses/prescription, pesticide applications, prescription fertilizer applications, soil sampling, root collar excavations, and record-keeping
- Tree and Shrub Work – tree climbing and ground-man operation for pruning and removals, aerial lift and crane training and usage, installation and maintenance of tree cables
- Scholarship – selected from a national pool of applicants to receive the Bartlett At-Large Scholarship award
- Achieved Tree Care Industry Association membership

USDA Forest Service—Watersmeet, MI**6/14 – 12/14****Forestry Technician—Timber Sales Prep**

- Timber cruising and marking in mixed northern hardwoods, and softwood plantations
- Successful completion of Qualified Timber Cruiser written examination.
- Reconnaissance and layout of timber sale units, GIS and GPS work
- Inspection of contractor timber cruising and marking
- JW Toumey Nursery; Field Technician—Watersmeet, MI

Ottawa County Parks and Recreation—Grand Haven, MI**5/12 – 1/13****Stewardship Technician**

- New trail design and construction
- Trail maintenance on existing trails and associated infrastructure
- Coordinate and work with volunteer community members
- Manage and map invasive species problem areas
- Forest ecosystem restoration
- Erosion control and shoreline restoration

Academic Work Experience**Michigan Technological University—School of Forest Resources and Environmental Science** **8/15 – 8/16****Teaching assistant (FW3377)**

- Instruction and curriculum input for Forest and Environmental Resource Management: supervise 18 students in field forestry practices, such as timber cruising and marking, road layout, property line delineation, riparian management zones, etc.

Teaching assistant (FW2051)

- Instruction in Forestry Field Techniques: supervise 22 students on practical skills field skills and tool usage
- Guest lecture on timber merchantability standards
- Set-up and proctoring of field labs and tests

School Forester's Aide—Earn and Learn Assistantship

- Assist in the management of over 6,000 forested acres on school property

Michigan State University Department of Forestry**8/12 – 12/12****Teaching Assistant (FOR 202)**

- Instruction, examination, and assessment for 31 students in Introduction to Forestry

Education**Michigan Technological University****8/15 - 8/16**

- Master of Forestry (accredited by Society of American Foresters)
- Overall GPA: 4.0
- Awarded Outstanding Graduate Student Service honor

Michigan State University**9/10 - 12/13**

- B.S. in Environmental Studies and Agriscience, in Science and Policy concentration
- Overall GPA: 3.83
- Dean's List with Honors 2010-2013

Skills and Certifications

- FFT1 and RCDM qualifications for wildland fire fighting (2017-present)
- WSDA Pesticide License Holder (2017-present)
- WA DNR Forklift Operator License (2016)

- First Aide Certified (2016-present)
- USDA Forest Service ATV Safety certification (2014)

Academic and Community Involvement

- Friends of Capitol Forest (FOCF) – trail volunteer
- Xi Sigma Pi Forestry Honors Fraternity member—Michigan Technological University chapter
- Awarded Mont Ripley Snow Sports Instructor of the Year award for youth and collegiate ski programs
- Virgin Islands Environmental Resource Station (USVI National Park)—parks/operations volunteer
- Michigan Technological University Integrated Field Practicum—264+ hours field forestry
- Michigan Technological University Forest Stewards Guild – Adopt-a-trail volunteer
- SAF student chapter—Michigan Technological University Forestry Club
- Michigan State University Leaders in Environmental and Agricultural Fields Club
- Michigan State University Alpine Ski and Snowboard Team Captain, Treasurer, Fundraising Coordinator

TO: City Council
FROM: Alyssa Jones Wood, Sustainability Coordinator
DATE: March 21, 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 March 13, 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 3, 2023 Tumwater resident and Tree Board member Jim Sedore nominated a Garry Oak (also known as an Oregon White Oak) at 1500 79th Ave SE. This nominated tree is located on City-owned property slated to become a Park. The nominated tree was assessed by the City's Tree Professional on February 8, 2023. At their March 13, 2023 meeting the Tree Board recommended that City Council approve the attached Heritage Tree Nomination.

3) Policy Support:

Be a leader in Environmental Sustainability.

- Implement Urban Forestry Plan.
-

4) Alternatives:

- ☐ 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. Additionally, staff time will be utilized to update the City's Heritage Tree map.

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

March 21, 2023

Contents

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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 1500 79th Avenue SE. The City's contracted Urban Forester visited the tree on February 8, 2023 and estimates the tree is 179 years old.

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

Form Name: Heritage Tree Nomination Form
Date & Time: 02/03/2023 9:17 AM
Response #: 21
Submitter ID: 11720
IP address: 97.113.28.59
Time to complete: 13 min. , 22 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) Resident

Nominator contact information.

Nominator Name Jim Sedore
email lizardgym@gmail.com
Daytime Phone Number (136) 075-4790

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).

1500 79th Ave, SE Tumwater WA

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

This tree is a Garry Oak, *Quercus garryana*, the only native oak of Washington State. In the 2022 Tumwater Survey of Street trees, only 7 of Garry Oaks were identified.

The tree is large (100+ feet tall). According to the WA State Dept of Fish & Wildlife, mature Garry Oaks are unique habitat for many animals, (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

./efaidnbmnnnibpcajpcglclefindmkaj/https://wdfw.wa.gov/sites/default/files/publications/00030/wdfw00030.pdf

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

(o) No

Landowner contact information

Landowner Name Mayor or City Council of Tumwater
email council@ci.tumwater.wa.us
Daytime Phone Number (360) 754-5855

If you have a a photo you would like to share, please upload it here.

Garry Oak looking South 2023.01.26.jpg

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

**Next Steps**

The Tree Board suggests the City Council formally designate the Garry Oak at 1500 79th Ave SE as a Heritage Tree.

Heritage Tree Memorandum

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

1500 79th Avenue – Quercus garryana

Location:	1500 79 th Avenue SE Tumwater WA 98501 In the East-center of the property								
Map									
Property owner	City of Tumwater								
Genus species	Quercus garryana								
Common name(s)	Garry Oak, Oregon Oak								
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	2023.03								
Nominator	Jim Sedore								
Supporting Tumwater Municipal Code regulations	<p>1. Tumwater Municipal Code Chapter 16.08 PROTECTION OF TREES AND VEGETATION</p> <p><u>16.08.030 Definitions.</u></p> <p>G. “Environmentally sensitive area” means any lands with the following characteristics:</p> <p>3. <u>Identified habitats with which endangered, threatened, or sensitive species have a primary association</u> as defined in TMC Chapter 16.32;</p> <p>Tumwater Municipal Code Chapter 16.32 FISH AND WILDLIFE HABITAT PROTECTION 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, 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.</u> These might include areas of high relative diversity or species richness, breeding</p>								

	<p>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>
WA State Dept of F&WL publications	<p>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.</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.</u> <u>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> • <u>Leave fallen trees, limbs, and leaf litter for foraging, nesting, and denning sites.</u> • <u>Retain contiguous aerial pathways.</u> • <u>Other oak enhancement activities include the following:</u> <ul style="list-style-type: none"> • <u>Planting Oregon white oak acorns and seedlings.</u> • <u>Selling or donating oak woodlands to conservation and land trust organizations.</u> • <u>Purchasing contiguous or notable stands of oaks by local, state, and federal agencies.</u> • <u>Designating large, contiguous oak and oak/conifer stands as critical areas.</u>

- Encouraging aggressive oak enhancement/regeneration measures by local, state, and federal agencies.

Threatened, Endangered, or candidates for these listings.

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

Health
assessment

Images



Garry Oak looking South 2023.01.26 by Jim Sedore



Quercus garryana looking East– 1500 79th Ave. 2023.01.26 by Jim Sedore

History
of the
propert
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From the Thurston County Historical Journal
Number 6
August, 2018
[efaidnbmnnnibpcajpcglclefindmkaj/https://laceyparks.org/wp-content/uploads/2022/04/Number-6-August-2018.pdf](https://laceyparks.org/wp-content/uploads/2022/04/Number-6-August-2018.pdf)

Helen Shank, Children's Advocate
Written by Karen Johnson

1951+

Between 1951 and 1953, Helen purchased several adjoining parcels of land and cobbled together around 300 acres on Bush Prairie in Tumwater. This land was attle's Capitol Hill. Finally, Helen's dream became reality in the old refurbished house where sixteen young women at a time could be eased back into society. "To many, it will be the first real home they have ever had." 72 destined to become Trails End Ranch and Trails End Stables. Apparently, when Helen bought the acreage around what would be named Trails End Lake (earlier known as Bush Lake and Drewry Lake), a single

	<p>17cabin in the world. That same year, Helen's like home existed on the north end of the lake. Workers constructed the camp during the winter of 1953 and spring of 1954, and the ranch opened for business in the summer of 1954. Helen also petitioned the county for the establishment of a road to access her property. 73 S</p>
1963+	<p>Helen publicized the Trails End Ranch in newspapers, campers' association publications, and other venues. One of her 1963 press releases said, "The three hundred acre ranch, located at the end of the Oregon Trail, affords young campers an opportunity to enjoy horseback riding, swimming, water skiing, firearms training, overnight camping trips, and a three day pack trip on horseback into Washington's Cascade Mountain Range." Other activities included fishing, camp-outs, boating, archery, softball, volleyball, badminton, ping-pong, crafts, and evening campfires. Press releases also usually included a brief description of a particular camper being of interest to a specific newspaper; for example, "Pamela Haverlock, daughter of Mr. and Mrs. Bert Haverlock of Bellingham, is spending part of her summer vacation enjoying the unique camping facilities of Trails End Ranch near Olympia, Washington."91</p>

SUF

SOUND URBAN FORESTRY, LLC

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

2/17/2023

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

RE: Proposed Heritage Tree – 1500 79th Ave SE 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 property at 1500 79th Ave SE. This tree has been nominated as a heritage tree by a member of the Tree Board. I visited the site on February 8, 2023.

Findings

The identified tree is an Oregon white oak (*Quercus garryana*). Diameter at breast height measures 42" with an approximate height of 85'. Canopy spread measures 60'. Overall condition is fair. There are two fungal fruiting bodies at the base on the north side.

Based on a 6" core sample and calculations the approximate age of the tree is 179 years (+/- 10 years).

Comments

The identified fungal fruiting bodies are associated with Inonotus Root and Butt Rot (*Inonotus dryophilus*). Infection is likely due to past grading that occurred on the north side, within 5' of the base. It is probable that the grading resulted in the tearing or ripping of large root(s) which allowed the wood decaying pathogen to establish. The extent of the infection is not significant at this time and has not caused instability or decline in the tree condition. I recommend it be monitored for any change in health.

The tree would benefit from selective pruning to clean the crown of dead or damaged branches measuring 3" or greater in diameter.

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

