



**CITY OF  
TUMWATER  
CITY COUNCIL  
MEETING AGENDA**

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

**Tuesday, September 05, 2023  
7:00 PM**

- 1. Call to Order**
- 2. Roll Call**
- 3. Flag Salute**
- 4. Public Comment:** (for discussion of items not having a public hearing on tonight's agenda)
- 5. Consent Calendar:**
  - [a.](#) Approval of Minutes: City Council Worksession, July 25, 2023
  - [b.](#) Approval of Minutes: City Council, July 31, 2023
  - [c.](#) Approval of Minutes: City Council Special Joint Tour with Port of Olympia - August 8, 2023
  - [d.](#) Payment of Vouchers (Shelly Carter)
  - [e.](#) Falls Terrace Right-of-Way License Agreement (Bill Lindauer)
  - [f.](#) Agreement with Clearcreek Contractors for the Palermo Lagoon Dredging & Maintenance Project Amendment #1 (Steve Craig)
  - [g.](#) Electrical Easement with Puget Sound Energy for Parcels 82700300300, 82700200000, and 82700100100 (Bill Lindauer)
  - [h.](#) Barnes Lake Management District Steering Committee Reappointment of Dana Day, Jody Keys, Linnea Madison, Lalani Shelton, and Tom Sparks (Hanna Miles)
  - [i.](#) Letter of Commitment with Department of Commerce for 2025 Comprehensive Plan Periodic Update Middle Housing Grant Application (Brad Medrud)
  - [j.](#) Preliminary Docket for 2023 Annual Housekeeping Amendments (Erika Smith-Erickson and Brad Medrud)
  - [k.](#) Offsite Lease with South Puget Sound Community College (Dan Smith)
- 6. 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)

7. **Mayor/City Administrator's Report**
8. **Councilmember Reports**
9. **Any Other Business**
10. **Adjourn**

### **Hybrid Meeting Information**

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

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### **Watch Online**

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

OR

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### **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\\_ZUb4E5QVRK2T80IzP3qsZQ](https://us02web.zoom.us/webinar/register/WN_ZUb4E5QVRK2T80IzP3qsZQ)

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](mailto: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**

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**TUMWATER CITY COUNCIL WORKSESSION**  
**MINUTES OF VIRTUAL MEETING**  
**July 25, 2023 Page 1**

**CONVENE:** 6:00 p.m.

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

Excused: Councilmember Eileen Swarthout.

Staff: City Administrator Lisa Parks, City Attorney Karen Kirkpatrick, Community Development Director Michael Matlock, Parks and Recreation Director Chuck Denney, Finance Director Troy Niemeyer, Water Resources and Sustainability Director Dan Smith, and Communications Manager Ann Cook.

**TOGETHER! HOST  
HOMES PILOT  
PROGRAM / STAY  
HOME PROGRAM  
PROJECT UPDATE:**

City Administrator Parks reported the City partnered with TOGETHER on a two-year pilot program intended to house unaccompanied youths within the community. The program's goal creates safe short-term housing options for students by matching them with host families within the community. The two-year contract ends at the end of August. She introduced Tami Mason Lathrop, TOGETHER Host Homes Director to provide an update on the outcome of the program.

Ms. Lathrop reported the program's vision and mission is ensuring all high schools have a safe and affirming home. The Host Homes Program provides safe, short-term hosted housing for unaccompanied high school students experiencing housing instability.

The program was launched in early 2022. The first student referrals were received in February and April 2022. Both students were matched with host homes in August 2022. Another student from North Thurston Public Schools was housed in fall 2022. From January to the present, the program has matched and housed seven students with three of the students located in the Tumwater School District and five students housed through kinship matches (previous relationships). The program is managed by three staff members.

Initially, staff did not anticipate the time required to facilitate the program to a point where everyone could trust and believe in the program and its goals to achieve desired outcomes. The first students were placed with a good host family who previously served as a foster care parent. Staff adjusted and course corrected the program while navigating the areas of needed focus to establish and expand the program.

Ms. Lathrop shared information on some of the successes of the program. Two of the participating students graduated from high school in June. At the beginning of the year, both students were at-risk for not graduating. Both students received scholarships to St. Martin's University and South

**TUMWATER CITY COUNCIL WORKSESSION**  
**MINUTES OF VIRTUAL MEETING**  
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Puget Sound Community College. Another student in the Tumwater School District reunified with a parent. The Community Schools Manager was able to assist the family with rental support for an apartment.

Main challenges identified to date include student mental and behavioral health issues that are often beyond the scope of the program and the host families. The program attempted to add a licensed mental health counselor to provide support to program staff and to host families. However, the individual was not able to commit to the program. Other difficulties were obtaining a parent's permission for the youth to receive assistance. The program was unable to obtain permission from several parents. As the state required notarization of the contract, that requirement created a barrier for some families. Ms. Lathrop said she was able to be recertified as a notary and is able to visit with parents and students to complete the necessary paperwork.

Similar to other organizations across the country, staffing has been difficult especially because of the importance of hiring resources that are able to understand the trauma many students are experiencing and the ability to build trust between the student, case manager, and the host family.

Successes of the program include students obtaining government ID cards, completing driver education courses, opening bank accounts, and completing the school year with passing grades or better. Three students received awards at the end of the school year. Students received assistance to enroll for counseling. All students received budgeting assistance as each student receives a monthly stipend of \$50.

Several students and hosts exiting the program provided feedback. The host family indicated program support and response time exceeded their expectations. Case management and wrap-around services with the Community Schools Program assisted in improving behaviors and building trusts with adults. Monthly team meetings were recognized as helpful in building the communication between students and hosts. Hosts were able to submit requests for reimbursement each month not to exceed \$300.

Student feedback indicated that hosts should expect some time for students to adjust to their new environment. Students reported the program enabled them to focus more on school versus where they would live. The top request from students was having a cell phone. Through donations from the community, students received cell phones and service.

The intent was to match 10 students each year. The first year of the program produced no matches; however, the second year resulted in three matches in Tumwater. The program is intended to develop and foster professional relationships with community partners to ensure continuity and care and service provisions. The program is a member of the Thurston

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County Anchor Community Initiative Cohort. Many other non-profits have forwarded referrals to the program. Legal Counsel for Youth and Children (LCYC) worked with several of the students. The program developed a strong relationship with the ASHHO Cultural Center in Tumwater and with the Tumwater School District and North Thurston Public Schools.

Ms. Lathrop thanked the Council for supporting the program. Funds the program received afforded an effective and strong program that is gaining momentum.

Councilmember Dahlhoff asked about future goals and any adjustments of program goals. Ms. Lathrop said one goal is expanding the program countywide. Currently, the immediate focus is working with the Olympia School District to ensure all local school districts can access the program. The goal is to serve 10 unaccompanied students in Tumwater. The program is only successful if students are willing to participate. The next school year goal is to house seven Tumwater students.

Councilmember Althausser questioned whether placement of student in an Olympia residence would require the school district to provide transportation services based on the provisions in the McKinney–Vento Homeless Assistance Act. Ms. Lathrop affirmed participating students are entitled to transportation services when living outside the school district.

Councilmember Althausser asked about any other structural issues regarding state or federal requirements that impede the placement process. Ms. Lathrop said the main barrier has been the requirement for notary services. Additionally, contracts must be updated every six months. Several parents of students are often struggling with mental health and addiction challenges, as well as not living in the local area. Several students were successfully enrolled because they lacked a legal guardian. The program collaborates with LCYC to enable students to work with an attorney to identify ways for the student to participate in the program.

Councilmember Cathey asked whether the program has been able to solicit other major donors for the program. Ms. Lathrop said the program was able to secure several large grants from the Department of Commerce and through Building Changes through 2025.

Mayor Sullivan and the Council thanked Ms. Lathrop for the update on the program and for her efforts.

**DISCUSSION OF  
 PARK NAMING  
 PROCESS:**

Director Denney briefed the Council on the City’s current park naming process. The naming process also includes public participation and receiving input from the community. The recent naming of Kindred Park at the Preserve subdivision included mailing information to the region and the Preserve neighborhood and adjacent neighborhoods in addition to social

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media and Facebook posts.

Following collection of park name suggestions from the community, Director Denney reviews the recommendations to ensure names are appropriate. The names are forwarded for review and a recommendation by the Parks and Recreation Commission. The Council considers the recommendation and can either accept the recommendation, request the Commission consider another name, or the Council can offer a new name.

The last process generated some discussion in terms of the process for Kindred Park in the Preserve neighborhood. Director Denney requested feedback and suggestions on any changes in the naming process. During the last several park naming processes, the City delayed naming the park until the park was completed, which can lead to some confusion in the community as the park is often referred to as another name prior to construction. The “T” Street park is a good example as the park carried that name for many prior to construction of the park. Following completion of the park, the park was renamed to Deschutes Valley Park. He recommended initiating the naming process for parks prior to construction and completion of new parks.

Councilmember Jefferson supported engaging with local tribes during the naming process. Director Denney said direct contact could be easily pursued. A member of the Parks and Recreation Commission is a member of the Nisqually Indian Tribe. However, staff is able to outreach to each tribe during each naming process.

Mayor Sullivan said she is acquainted with several tribal members who live within the City who could also be involved in the naming process.

Councilmember Cathey commented that although there is nothing inherently wrong with the park naming process, she believes the last naming process for Kindred Park at the Preserve was not successful. She believes the name is not representative of the City’s process. The Council should have returned the naming suggestion to the Commission as the community is unfamiliar with the name. Park naming procedures have been successful in the past but the previous process was unsuccessful.

Councilmember Jefferson questioned the prohibition of naming a park if the person is living. Director Denney explained that when the policy was developed, staff reviewed other policies from other jurisdictions. Naming a park after a person who had been deceased acknowledged the value of the person’s service over time. However, following adoption of the naming process, the Council approved naming a park, Jim Brown Park. Mr. Brown was alive at that time.

Councilmember Cathey commented that the preference for naming a park is

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for someone who has some historical significance and/or the cultural/geographical area of the park. For example, Isabella Bush Park was named after her because she was a pioneer farmer and the name represents the park, which is the site of the Tumwater FRESH Farm.

Director Denney pointed out that the Kindred family financially sponsored the trip by the Bush-Simmons party to Tumwater, which was discussed by the Parks and Recreation Commission. The Kindred family also housed the area's first school in their home.

Mayor Sullivan supported pursuing the park naming process prior to construction and completion of any park.

Director Denney said staff has completed an extensive public process for the master planning of the park at the former Tails End Arena site. Prior to moving forward on construction of the site, staff will initiate a park naming process for the new facility.

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

City Administrator Parks reported Water Resources and Sustainability staff member Grant Gilmore recently collaborated with the Tumwater School District and the Pacific Education Institute to support the school district's forest and streams summer ecology field course. The course hosted 16 high school students, which included 180 hours of exposure to forest management practices for mapping, stream preservation, restoration, and wetland delineation. The program was initiated based on an objective within Tumwater's Urban Forestry Management Plan to maintain a community and urban forestry education program. The students earned hands-on science experience in natural resources and a biology lab credit. Students also had the opportunity to network with professionals within the industry and each student received a \$1,800 stipend. On Friday, July 28, 2023, the students are presenting their projects at 11 a.m. at New Market Skills Center. She encouraged the Council to contact Director Smith if they are interested in attending the event.

The state recently declared a statewide drought advisory across the state. In Thurston County, local jurisdictions have not been upgraded to an emergency status that has affected 12 other counties. Water Resources staff continue to monitor daily production and consumption recognizing water levels in the aquifer are lower than normal this time of year because of the lack of rainfall. City Administrator Parks encouraged everyone to conserve water and check for leaks. If conditions change, staff will review the Water Shortage Response Plan and follow up with appropriate actions as necessary.

The Israel Road Water Main project is scheduled to begin next week and will be completed at the end of October. Some interruptions will be required along transportation corridors over the next several months. The

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pavement maintenance program is progressing well. The closure of the I-5 ramp netted better results than anticipated.

Mayor Sullivan reminded the Council of the next meeting on July 31, 2023 because of the primary election on August 1, 2023. National Night Out will also be celebrated on July 31, 2023. At least 18 different neighborhood events have been scheduled. The City will publish all event locations.

Councilmember Cathey asked whether the water shortage affects any commitments to new development. Director Smith said no commitments to customers would be affected unless actions in the Water Shortage Response Plan are implemented, such as curtailing non-essential irrigation. Staff continues to monitor water usage daily. The City has not reached any trigger points that would require warning notices. Should the City reach any of the peak limits of the City's capacity to serve customers, staff would contact internal customers (City) to seek ways to save water through irrigation followed by contacting the school district and commercial customers.

Director Smith reviewed the City's water capacity to serve existing and future customers, efforts to develop supplies to ensure water capacity, and redundancy systems in place to serve customers and respond to future drought conditions.

Councilmember Cathey asked whether recent state requirements for clearance of trees and vegetation around structures to reduce fire risk pertains to the county's exemption of an emergency declaration. City Administrator Parks explained that the statewide drought advisory has affected 12 counties. The advisory in those counties was upgraded to an emergency status as most of the counties are located in Eastern Washington and have experienced serious drought conditions. The City maximizes the efficiency of existing sources, seeks opportunities to conserve water, and continue to search for new sources of water. The City continually relies on the Comprehensive Water System Plan, which projects future growth and includes estimates for future need based on land use identified for the urban growth area. As developments occur, water use is approved in the context of future planning.

**ADJOURNMENT:**      **With there being no further business, Mayor Sullivan adjourned the meeting at 6:52 p.m.**

Prepared by Valerie L. Gow, Recording Secretary/President  
Puget Sound Meeting Services, [psmsoly@earthlink.net](mailto:psmsoly@earthlink.net)

**TUMWATER CITY COUNCIL MEETING  
MINUTES OF HYBRID MEETING  
July 31, 2023 Page 1**

**CONVENE:** 7:00 p.m.

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

Excused: Councilmember Michael Althausen.

Staff: City Administrator Lisa Parks, City Attorney Karen Kirkpatrick, Finance Director Troy Niemeyer, Water Resources and Sustainability Director Dan Smith, Communications Manager Ann Cook, and City Clerk Melody Valiant.

**SPECIAL ITEMS:**

**PROCLAMATION:  
OVERDOSE  
AWARENESS DAY -  
AUGUST 31, 2023:** Councilmember Dahlhoff read a proclamation declaring August 31, 2023 as *Overdose Awareness Day*. The proclamation urges community members to join with the City to raise awareness around drug overdose by reducing stigma through initiatives related to education, prevention, treatment, and recovery support for substance use disorder.

Katie Strozyk, Opioid Response Coordinator, Thurston County Public Health and Social Services, thanked the City of Tumwater and the Council for issuing the proclamation for 2023. She stressed the importance of increasing awareness of the issue and continuing to have Overdose Awareness Day as a priority. She thanked Councilmember Dahlhoff for her service and participation on the Thurston County Opioid Response Task Force as well as for participating in the Prevention Workgroup tasked with efforts on primary prevention of different substances in the community with a focus on opioids. On August 31, 2023, the annual Overdose Awareness Day event is scheduled at Heritage Park in downtown Olympia from 1 p.m. to 7 p.m. The event features a resource fair with different providers in the community, training for naloxone on how to reverse an opioid-related overdose, and free naloxone kits for community members. Memorial crafts and arts will be featured to recognize individuals who have survived or for those who were lost to a fatal overdose.

**TUMWATER  
TIMBERLAND  
LIBRARY UPDATE:**

Lily Grant, Tumwater Library Manager, provided an update on programs activities offered by the Tumwater Library.

Currently, 2023-2024 strategic planning efforts are underway focusing on local communities, equity, diversity, inclusion, and children from birth to 5 years of age. Timberland Regional Library provides service to five counties with each library serving its respective community. The library focuses on equity, diversity, and inclusion in all activities to ensure all members of the community feel welcome at libraries.

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The library focuses on all ages with special emphasis on younger children because of the crucial learning age and ongoing brain development in young children. The library offers services that support families with small children to ensure children have access to learning and social activities to provide them with a good start in their lives.

Timberland Regional Library's service area encompasses 7,000 square miles providing a number of resources in each library. Items not necessarily available in Tumwater would likely be available at one of the other library branches. The district is comprised of 29 library locations and a new mobile service similar to a book mobile but equipped with Wi-Fi and other services. The mobile service was launched in Thurston County and serves the communities of Rainier and Rochester at this time. Mobile service is scheduled for launch in the remaining four counties later in the year.

Additionally, the library expanded services by offering checkout Washington kits with binoculars, guidebooks, and other items to help patrons learn about the outdoor environment in the state. Plankton kits feature a microscope to explore insects and animals living in local waters. Timberland Regional Library also provides kitchen tools at other branches. The Tumwater Library will begin offering kitchen tool kits if the program is successful at other branches. Fishing kits are available for checkout at the library with fishing rods for all ages and tackle box stocked with hooks and bait. Other outdoor kits include Explore Your Forest Backpack, Environmental Backpack, and a Birding Backpack with different items to help people learn about the outdoors and nature. The library offers light therapy lamps for checkout. Musical instruments are available for checkout at the Tumwater Library for guitars, ukuleles, violins, percussion instruments, and other musical instruments. The library offers 3D printing at no charge. Patrons submit the items and library staff print the item for pickup. The library also offers a seed library. Brand new to the library is a program for lending Discover Passes to state parks for a visit of one week.

Learning opportunities for younger children include math backpacks designed for early learning mathematics, accounting, addition, measuring, learning shapes, and games. The library offers checkout of iPads. The library offers free Wi-Fi throughout the building. The library lends devices preloaded with an assortment of apps to read books, magazines, and watch movies. New to Thurston County is expanded access hours. The Tumwater Library currently does not offer this program; however, the Tenino branch offers expanded access. Patrons can sign up to receive a special access card to access the library outside of normal hours. Patrons are able to use library printers, browse books, or use computers. The service is currently offered at the



**TUMWATER CITY COUNCIL MEETING**  
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Hoodsport, McCleary, Tenino, Ocean Park, Naselle, and Packwood branches.

Other services at the library include free Wi-Fi, free computers, free printing, scanning, and faxing. The library offers remote printing enabling a patron to send a print job from home to the library cloud queue to hold for 24 hours. The patron visits the library and enters a number to print the document.

Special new formats for children include Launchpad, a kid-friendly tablet loaded with games that do not require a Wi-Fi connection, new audiobook formats for children, Playaway, a preloaded MP3 player, and VOX books, which are read-along books with a MP3 component.

The summer library program includes activities and book reading with participants able to win a free book. The program runs through August 31, 2023. Online library resources include audiobooks, e-books, movies, genealogy databases for research, language learning, and other activities geared to children and adults.

Councilmember Jefferson questioned the lack of expanded access at the Tumwater library. Ms. Grant explained that the service is resource intensive and is a long-term option under consideration for different branches. The service was offered to the smaller branches because of the financial investment for cameras and special locks, and possible modifications to the building depending on the particular branch.

Councilmember Jefferson inquired about any programs the library offers for special needs children and adults. Ms. Grant said she recently visited the Shelton library to observe a new program, which the Tumwater Library would like to replicate. The program is activity-based tailored to everyone regardless of ability as well as those with special needs. She is working with several groups to develop a program for the Tumwater Library for a possible launch this fall or early next year.

Several Councilmembers and Mayor Sullivan thanked Ms. Grant and library staff for their great work and service to the community.

**PUBLIC COMMENT:** There were no public comments.

**CONSENT**  
**CALENDAR:**

- a. Approval of Amended Minutes: City Council, June 6, 2023
- b. Approval of Minutes: City Council Worksession, July 11, 2023
- c. Approval of Minutes: City Council, July 18, 2023
- d. Payment of Vouchers
- e. Service Provider Agreement with Stantec for the Pioneer Park Riparian Restoration Project Amendment 2

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f. Heritage Tree Nomination - Japanese Bigleaf Magnolia

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

Mayor Sullivan reviewed the items approved on the consent calendar.

**COMMITTEE  
REPORTS:**

**PUBLIC HEALTH & SAFETY:** The next meeting scheduled on August 9, 2023 has been cancelled.  
*Leatta Dahlhoff*

**GENERAL GOVERNMENT:** The next meeting is scheduled on August 9, 2023 at 8 a.m.  
*Michael Althausen*

**PUBLIC WORKS:** At the last meeting, the committee recommended approval of the Service Provider Agreement with Stantec for the Pioneer Park Riparian Restoration Project Amendment 2. The next meeting is scheduled on August 3, 2023 at 8 a.m. to consider Agreement with Clearcreek Contractors for the Palermo Lagoon Dredging & Maintenance Project Amendment #1 and to receive an update on the Tumwater Climate Work Program.  
*Eileen Swarthout*

**BUDGET AND FINANCE:** There was no meeting and no report.  
*Debbie Sullivan*

**MAYOR/CITY ADMINISTRATOR'S REPORT:** City Administrator Parks shared feedback the City has received for several City employees recognizing them for their efforts and work in support of the community.

Mayor Sullivan reminded the community and the Council of National Night Out scheduled on August 1, 2023. Activities are planned in 12 different locations. Mayor Sullivan said she plans to visit as many of the neighborhoods as possible.

The next Council worksession is a Port tour with the Council to meet at City Hall at 5:30 p.m. to board buses. Port staff members are participating in the tour as well.

The City Council's annual summer recess is scheduled during the latter half of August. The next Council meeting is scheduled on September 5, 2023.

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**COUNCILMEMBER  
REPORTS:**

***Angela Jefferson:***

At the July 19, 2023 Thurston County Emergency Medical Services Council meeting, members discussed disposal options for ambulance service. All agencies are in compliance for response times. An Advanced Life Support Training Coordinator was hired following a nationwide search. The new employee is from Florida and currently serves as a college instructor who recently completed a Masters Degree in EMS Service Management. Members approved the proposed budget.

At the July 20, 2023 Thurston County Law and Justice Council meeting, members reviewed some of the challenges encountered by the jail. An update was provided by the Chief of Corrections focusing on the lack of staffing resources. Open positions at the jail total 23 of an authorized staffing level of 41 positions. The jail plans to contract with Lewis County, reduce the number of arrests, and review shifts and schedules to ensure appropriate staffing levels at the jail.

A new drug detection canine program will be implemented in response to fentanyl overdoses to decrease the amount of illegal fentanyl entering the jail. As many inmates are addicted to fentanyl, a program has been established to distribute naloxone to inmates discharged from the jail. The program is a self-service option with the dispenser located in the lobby area of the jail.

Members discussed the Blake response bill by the Legislature and the possibility of creating guidance and diversions programs.

Tumwater HOPES is releasing a community survey. All partners have been asked to assist in ensuring maximum participation. Tumwater HOPES seeks to collaborate to reduce youth substance abuse and self-harm in Tumwater. Tumwater HOPES is working to become a more inclusive and engaged community where everyone belongs. Access to the survey is online at [www.tumwaterhopes.org](http://www.tumwaterhopes.org) or scanning the QR code published on the website. City staff has been asked to include the QR code on the City's Facebook page and during August movie nights at the golf course.

The Senior Rib Cook-off is scheduled at Tumwater Historical Park on Thursday, August 3, 2023 at 11:30 a.m. The community is invited to attend and participate, as the event will provide a wide variety of ribs and food. Judges are needed to vote on the best ribs. Councilmember Schneider won the category last year.

Councilmember Jefferson encouraged those who are in need of food to join the Commodities Supplemental Food Program (CSFP) at Thurston

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County Food Bank by calling 360-352-8597 and letting them know of their interest in the CSFP, a USDA program for seniors over 60 to receive nutritious food. If unable to pick up food, seniors can designate another person to pick up food. Additionally if unable to pick up food, the food bank often has drivers who can deliver food to a home.

***Peter Agabi:***

Councilmember Agabi reported on his recent meeting with Michael Cade with the Thurston Economic Development Council to discuss economic activities in the City of Tumwater.

***Leatta Dahlhoff:***

The Law Enforcement Assisted Diversion Task Force updated its dashboard reflecting 111 referrals received to date including referrals received from the Tumwater Police Department and Tumwater Fire Department. Approximately 150 individuals were served with 1,410 total services provided. The Task Force is working on the ability to extract data specific to Tumwater to identify the referral agencies, such as nonprofits, individuals, first responders or other organizations.

***Charlie Schneider:***

There was no report.

***Joan Cathey:***

Councilmember Cathey reported she plans to attend the next meeting of the Thurston County Solid Waste Advisory Committee meeting on Wednesday, August 2, 2023, and the Tumwater General Government Committee meeting.

***Eileen Swarthout:***

At the last meeting of the Thurston Climate Mitigation Collaborative Executive Committee on July 24, 2023, members reviewed the interlocal agreement covering the period from September 2023 through December 2024 and received an update on the status of regional initiatives.

**ADJOURNMENT:**

**With there being no further business, Mayor Sullivan adjourned the meeting at 8:39 p.m.**

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

## **TUMWATER SPECIAL CITY COUNCIL**

### **MINUTES OF MEETING**

**August 8, 2023 Page 1**

**CONVENE:** 6:00 p.m.

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

Excused: Councilmember Angela Jefferson

Staff: City Administrator Lisa Parks, Community Development Director Mike Matlock, Communications Manager Ann Cook and Parks & Recreation Director Chuck Denney

Port of Olympia Commissioners Amy Evans Harding and Bob Iyall, Port of Olympia Staff and members of the general public.

#### **TOUR OF NEWMARKET INDUSTRIAL CAMPUS**

At 5:30 p.m., everyone met at Tumwater City Hall to board a tour bus. From there the bus departed to do a tour of the NewMarket Industrial Campus.

**ADJOURNMENT:** The tour commenced and the bus returned to Tumwater City Hall at 7:00 p.m..

Prepared by Melody Valiant, City Clerk

TO: City Council  
 FROM: Shelly Carter, Assistant Finance Director  
 DATE: September 5, 2023  
 SUBJECT: Payment of Vouchers

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1) Recommended Action:

Staff is seeking City Council ratification of:

- July 28, 2023, payment of Eden vouchers 173546 to 173570 in the amount of \$405,292.39 and electronic payments 902797 to 902804 in the amount of \$72,018.21 and wire payments of \$234,786.18; and Munis vouchers 180865 to 180972 in the amount of \$2,366,035.94 and electronic payments 903359 to 903395 in the amount of \$1,685,485.63 and wire payments of \$95,084.56.
  - August 4, 2023, payment of Eden vouchers 173571 to 173579 in the amount of \$1,691.69; and Munis vouchers 180973 to 181051 in the amount of \$367,879.45 and electronic payments 903396 to 903417 in the amount of \$39,038.28.
  - August 11, 2023, payment of Eden vouchers 173580 to 173594 in the amount of \$278,650.80 and electronic payments 902805 to 902817 in the amount of \$151,530.86 and wire payments of \$218,718.18; and Munis vouchers 181052 to 181106 in the amount of \$189,411.12 and electronic payments 903418 to 903442 in the amount of \$112,375.60.
  - August 18, 2023, payment of Eden vouchers 173595 to 173610 in the amount of \$28,881.82; and Munis vouchers 181107 to 181168 in the amount of \$162,927.79 and electronic payments 903443 to 903465 in the amount of \$739,420.46.
  - August 25, 2023, payment of Eden vouchers 173611 to 173619 in the amount of \$180,951.20 and electronic payments 902818 to 902825 in the amount of \$70,264.13 and wire payments of \$221,573.50; and Munis vouchers 181169 to 181236 in the amount of \$3,292,850.13 and electronic payments 903466 to 903496 in the amount of \$131,885.08 and wire payments of \$79,988.72.
- 

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:

<b>Vendor</b>		
AWC Employee Benefit Trust	140,662.36	Aug 2023 Premiums
Active Construction, Inc	1,141,267.59	PE#4 I5/Trosper/Capital Blvd Project
Hadronex Inc	22,765.38	Sewer Telemetry Service & Covers
Miles Resources, LLC	711,042.46	PE#1 2023 Pavement Maint
Nisqually Indian Tribe	33,920.00	June Incarceration & Booking Fees
Stantec Consulting Svcs, Inc	38,978.25	Deschutes River Flood Reduction Study
LEOFF Health & Welfare Trust	57,157.97	Aug 2023 Premiums
LOTT Wastewater Alliance	1,522,130.35	June LOTT Fees Collected
Holt Services Inc	132,349.25	Palermo Lagoon Dredging & Maint

Vendor		
ICF Jones & Stokes, Inc	39,453.52	Prof. Svcs. 5/27-6/30/23 – Bush Prairie HCP
Rex Motors, Inc	34,214.72	2023 Nissan Leaf for WRS
Northwest Cascade Inc	40,085.21	PE#1 Golf Course Septic
Bobbie & Amanda's Cleaning Svc	22,229.15	Janitorial Services
City of Olympia	45,200.00	Bi-annual payment for Fire Training Center per ILA
Nisqually Indian Tribe	35,480.00	July Incarceration & Booking Fees
LOTT Wastewater Alliance	682,644.57	July LOTT Fees Collected
Moody Properties LLC	26,500.00	Bond Deposit Returned
AWC Employee Benefit Trust	140,809.98	Sept 2023 Premiums
Active Construction, Inc	1,195,911.86	PE#7 I5/Troster/Capital Blvd Project
Core & Main LP	30,191.33	Water Shop Inventory
Miles Resources, LLC	1,667,087.72	PE#2 2023 Pavement Maint
TCF Architecture, PLLC	78,184.87	Design work for Maint & Ops Facility
Thurston County	53,710.55	Qtr2 2023 Indigent Defense
LEOFF Health & Welfare Trust	58,263.39	Sept 2023 Premiums

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

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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.

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4) Alternatives:

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

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5) Fiscal Notes:

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

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6) Attachments:

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

## EXHIBIT "A"

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

Munis

Voucher/Check Nos 180865 through 180972 in the amount of \$2,366,035.94

Electronic payment No 903359 through 903395 in the amount of \$1,685,485.63

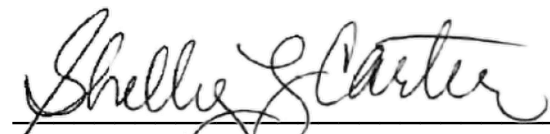
Wire payments of \$95,084.56

Eden

Voucher/Check Nos 173546 through 173570 in the amount of \$405,292.39

Electronic payment No 902797 through 902804 in the amount of \$72,018.21

Wire payments of \$234,786.18



Asst. Finance Director, on behalf of the Finance Director

Checks dated 07/28/2023



## EXHIBIT "B"

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

Munis

Voucher/Check Nos 180973 through 181051 in the amount of \$367,879.45

Electronic payment No 903396 through 903417 in the amount of \$39,038.28

Eden

Voucher/Check Nos 173571 through 173579 in the amount of \$1,691.69



Asst. Finance Director, on behalf of the Finance Director

Checks dated 08/04/2023

## EXHIBIT "C"

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

Munis

Voucher/Check Nos 181052 through 181106 in the amount of \$189,411.12

Electronic payment No 903418 through 903442 in the amount of \$112,375.60

Eden

Voucher/Check Nos 173580 through 173594 in the amount of \$278,650.80

Electronic payment No 902805 through 902817 in the amount of \$151,530.86

Wire payments of \$218,718.18

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

Asst. Finance Director, on behalf of the Finance Director

Checks dated 08/11/2023

## EXHIBIT "D"

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

Munis

Voucher/Check Nos 181107 through 181168 in the amount of \$162,927.79

Electronic payment No 903443 through 903465 in the amount of \$739,420.46

Eden

Voucher/Check Nos 173595 through 173610 in the amount of \$28,881.82



Asst. Finance Director, on behalf of the Finance Director

Checks dated 08/18/2023

## EXHIBIT "E"

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

Munis

Voucher/Check Nos 181169 through 181236 in the amount of \$3,292,850.13

Electronic payment No 903466 through 903496 in the amount of \$131,885.08

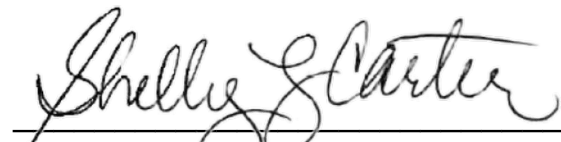
Wire payments of \$79,988.72

Eden

Voucher/Check Nos 173611 through 173619 in the amount of \$180,951.20

Electronic payment No 902818 through 902825 in the amount of \$70,264.13

Wire payments of \$221,573.50



Asst. Finance Director, on behalf of the Finance Director

Checks dated 08/25/2023

TO: City Council  
FROM: Bill Lindauer, Engineering Services Manager  
DATE: September 5, 2023  
SUBJECT: Falls Terrace Right-of-Way License Agreement

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1) Recommended Action:

Staff recommends the City Council approve and authorize the mayor to sign the Falls Terrace Right-of-Way Agreement, which allows private parking and a loading area in the City Right-of-Way.

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2) Background:

The Falls Terrace Restaurant has applied for a right-of-way permit to reconstruct parking and sidewalk in front of their building. Portions of the parking and building were originally constructed within City right-of-way. The City typically requires a right-of-way license agreement for private utilities and structures located in City right-of-way. This Agreement allows the property owner to use and maintain those private utilities and structures in City right-of-way and provides conditions and requirements for that use.

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3) Policy Support:

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

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4) Alternatives:

☐ Do not approve the Right-of-Way Agreement.

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5) Fiscal Notes:

None.

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6) Attachments:

A. Right-of-Way License Agreement  
B. Area Exhibit

## CITY OF TUMWATER RIGHT-OF-WAY LICENSE

THIS LICENSE is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as “Licensor” and Deschutes 106 LLC, a Washington Limited Liability Company, hereinafter referred to as “Licensee.”

### WITNESSETH:

In consideration of the covenants, promises and terms contained herein, the parties hereby agree as follows:

1. **Licensed Premises.** The Licensor hereby licenses to Licensee and Licensee hereby licenses from Licensor the following described real property and attached Area Exhibit A, hereinafter referred to as the “Property”:

Section 26 Township 18 Range 2W Quarter NW SW Donation Land Claim  
CROSBY DLC COM SE COR CUSTER & DESCHUTES WAY S03-29-10W  
180F, S86-30-50E 55F, NLY ON DAVIDSON TRACT 80F, N86-30-50W 14F,  
NLY

2. **Term.** The term of this license shall be five (5) years, commencing on the 1st day of August 2023 and terminating five (5) years thereafter on July 31, 2028, unless sooner terminated according to the provisions herein.

3. **Fee.** Licensee shall pay the Licensor for the use of said Property the sum of Four Hundred Sixty-Five dollars (\$465.00) total, for the five-year license period, to be paid in advance.

4. **Use of Property.** Licensee shall use the Property for the following purposes only:

Parking, dumpster access, loading and unloading of deliveries.

Prior to commencement of work to modify or change improvements within the licensed area, Licensee shall present, for City approval, a plan of the proposed modification or change to the improvements within the licensed area.

5. **Repairs and Maintenance.** Licensee agrees to accept all responsibility for maintenance of all improvements placed on the licensed Property by the Licensee and to keep the licensed premises and any such improvements thereon in a state of good repair and to maintain them at all times so as not to cause any safety hazard nor visual blight on the Property.

6. **Ownership of Improvements.** All improvements erected by Licensee on the property shall remain the property of the Licensee, and shall be removed by Licensee at the

termination of the license, at Licensee's cost and expense. It shall also be Licensee's obligation to return the Property to the condition in which it was received at the beginning of the license term.

7. **Compliance with Law.** In the use of the Property, Licensee shall fully comply with all applicable federal, state, county and municipal laws, ordinances and regulations.

8. **Assignment and Sublicense.** Licensee shall not assign or transfer its interest in this Property, or sublet the Property or any parts thereof, or permit the Property to be used for any purpose not permitted by this license, without prior written consent of the Licensors.

9. **Indemnification – Liability.** The Licensee shall defend, indemnify and hold the Licensors, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with activities or operations performed by the Licensee or on the Licensee's behalf out of issuance of this License, except for injuries and damages caused by the sole negligence of the Licensors.

10. **Insurance.**

**A. Insurance Term**

The Licensee shall procure and maintain for the duration of the License Term, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by or on the Licensee's behalf with the issuance of this License.

**B. No Limitation**

The Licensee's maintenance of insurance as required by the License shall not be construed to limit the liability of the Licensee to the coverage provided by such insurance, or otherwise limit the Licensors' recourse to any remedy available at law or in equity.

**C. Minimum Scope of Insurance**

The Licensee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Licensors shall be named as an additional insured under the Licensee's Commercial General Liability insurance policy using

ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

**D. Minimum Amounts of Insurance**

The Licensee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products- completed operations aggregate limit.

**E. Other Insurance Provision**

The Licensee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the Licensor. Any insurance, self-insurance, or self-insured pool coverage maintained by the Licensor shall be excess of the Licensee's insurance and shall not contribute with it.

**F. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

**G. Verification of Coverage**

The Licensee shall furnish the Licensor with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Licensee before issuance of the License.

**H. Notice of Cancellation**

The Licensee shall provide the Licensor with written notice of any policy cancellation, within two business days of Licensee's receipt of such notice.

**I. Failure to Maintain Insurance**



Failure on the part of the Licensee to maintain the insurance as required shall constitute a material breach of the License, upon which the Licensors may, after giving five business days' notice to the Licensee to correct the breach, immediately terminate the License or, at Licensors' discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Licensors on demand.

**J. Public Entity Full Availability of Licensee Limits**

If the Licensee maintains higher insurance limits than the minimums shown above, the Licensors shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Licensee, irrespective of whether such limits maintained by the Licensee are greater than those required by this License or whether any certificate of insurance furnished to the Licensors evidences limits of liability lower than those maintained by the Licensee.

11. **Termination.** Either party may terminate this license by furnishing to the other party, by registered mail, a notice of termination at least ninety (90) days prior to the intended date of termination. Licensee also acknowledges that Licensors hold the right-of-way in trust for the benefit of the public and Licensors may require full use of the right-of-way at any time for any reason. If Licensors require the removal of Licensee's improvements for any reason, at Licensors' sole discretion, Licensee shall remove its improvements with ninety (90) days of receipt of written notification from Licensors. If Licensee defaults in the payment of the license fee, or breaches any other covenant or condition of this license, Licensors may immediately declare a forfeiture of this license for such default, reenter the Property, and take possession of all property.

\*\*\* Signatures on Following Page \*\*\*

IN WITNESS WHEREOF, the parties hereto have executed this license as of the date first hereinabove written.

LESSOR:  
CITY OF TUMWATER

LICENSEE:  
(name)

\_\_\_\_\_  
Debbie Sullivan, Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_

Attest:

STATE OF WASHINGTON )  
) ss.  
COUNTY OF \_\_\_\_\_)

\_\_\_\_\_  
Melody Valiant, City Clerk

Approved as to Form:

\_\_\_\_\_  
Karen Kirkpatrick, City Attorney

On this \_\_\_\_\_ day of \_\_\_\_\_,  
2023, before me personally appeared \_\_\_\_\_,  
to me known to be the individual described herein and who executed the within and foregoing instrument and acknowledged to me that he/she signed the same as his/her free and voluntary act and deed for the purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.



AREA EXHIBIT





TO: City Council  
FROM: Steve Craig, Utilities Operations Manager  
DATE: September 5, 2023  
SUBJECT: Agreement with Clearcreek Contractors for the Palermo Lagoon Dredging & Maintenance Project Amendment #1

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1) Recommended Action:

Authorize the Mayor to sign Amendment #1 for the Palermo Lagoon Dredging & Maintenance Project in the amount of \$21,702.80.

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2) Background:

The U.S. Environmental Protection Agency constructed the Palermo Lagoon in 2000 as one of the treatments selected for the Palermo Wellfield Superfund Site. The system treats surface water runoff and groundwater contamination via aeration pumps in the lagoon. Over time, the lagoon has become inundated with sediments, decreasing its capacity, and affecting the treatment process. This project removed sediments from the lagoon to improve treatment of the water and stabilize the lagoon slope. This agreement was originally approved by City Council on April 18, 2023 as part of interlocal agreement C2022-039.

This amendment addresses the increased volume of sediment removed to effectively de-water and stabilize the material for transport and disposal off site. Additional efforts were necessary to stabilize and restore a portion of the lagoon slope that failed during the project.

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3) Policy Support:

Interlocal Agreement between the City of Tumwater and the Washington State Department of Transportation (WSDOT) for Maintenance of the Palermo Treatment Lagoon, C2022-039.

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4) Alternatives:

☐ None

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5) Fiscal Notes:

This amendment increases the project cost by \$21,702.80, bringing the total to \$148,352.80. This project is fully funded by WSDOT through interlocal agreement, C2022-039.

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6) Attachments:

- A. Agreement with Clearcreek Contractors for the Palermo Lagoon Dredging & Maintenance Project Amendment #1
- B. Original Agreement

**FIRST AMENDMENT  
TO  
PALERMO LAGOON DREDGING AND MAINTENANCE AGREEMENT**

This First Amendment ("Amendment") is dated effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and is entered into by and between the CITY OF TUMWATER, a Washington municipal corporation ("CITY"), and Clearcreek Contractors, a division of Holt Services Inc., a Washington corporation ("SERVICE PROVIDER").

A. The CITY and the SERVICE PROVIDER entered into an Agreement dated effective April 28, 2023, whereby the SERVICE PROVIDER agreed to provide dredging and maintenance services ("Agreement").

B. Section 16 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 the additional services and increase the compensation paid to the SERVICE PROVIDER for the additional services.

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-1," attached hereto and incorporated herein.

2. COMPENSATION.

In consideration of the SERVICE PROVIDER providing the additional services described in Exhibit "A-1", Section 4.C. shall be amended to increase the compensation paid to the SERVICE PROVIDER by an additional amount of TWENTY ONE THOUSAND SEVEN HUNDRED TWO and 80/100 Dollars (\$21,702.80). The total amount payable to the SERVICE PROVIDER pursuant to the original Agreement and this First Amendment shall be an amount not to exceed ONE HUNDRED FORTY-EIGHT THOUSAND THREE HUNDRED FIFTY TWO and 80/100 Dollars (\$148,352.80).

3. 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:

Holt Services  
10621 Todd Road East  
Edgewood, WA 98372  
UBI #: 602-690-511  
Phone Number: 253-604-4878

Debbie Sullivan  
Mayor

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

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

State of Washington )  
 ) ss  
County of \_\_\_\_\_)

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 \_\_\_\_\_

**CITY OF TUMWATER****PALERMO LAGOON DREDGING AND MAINTENANCE AGREEMENT**

THIS AGREEMENT is made and entered into in duplicate this 28th day of April, 2023, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the "CITY", and Clearcreek Contractors, a division of Holt Services Inc.; a Washington corporation, hereinafter referred to as the "SERVICE PROVIDER".

**WITNESSETH:**

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

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

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

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

**1. SCOPE OF WORK.**

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

**2. TERM.**

This Agreement is effective upon execution by all parties and shall terminate on July 31, 2023. This Agreement may be extended for additional periods of time upon mutual written agreement of the parties.

3. TERMINATION.

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

4. COMPENSATION AND METHOD OF PAYMENT.

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

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

C. The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement a total sum not to exceed One Hundred Twenty-Six Thousand Six Hundred Fifty Dollars and 00/100 (\$126,650.00) as reflected in Exhibit "A", Scope of Work.

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

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

F. If Prevailing Wages are required, the invoice must bear the following signed statement:

***I certify that wages paid under this contract are equal or greater than the applicable wage rates set forth in the Washington State Prevailing Wage rates for Public Works Contracts issued by the State of Washington Department of Labor & Industries.***

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

H. Changes to the services to be performed, or the amount of the Agreement sum, or in the time for completion of the Project, shall be accomplished



only by a written Change Order, signed by the SERVICE PROVIDER and the City, in advance of the proposed change. Once effective, the SERVICE PROVIDER shall proceed promptly with the services as modified, unless otherwise provided in the executed amendment.

5. WARRANTIES/GUARANTY.

5.1 The SERVICE PROVIDER warrants that all Work conforms to the requirements of the Agreement and is free from any defect in equipment, material, design, or workmanship performed by the SERVICE PROVIDER or its subcontractors and suppliers. The warranty period shall be for the longer period of: one year from the date of the CITY's final acceptance of the entire Work or the duration of any special extended warranty offered by SERVICE PROVIDER or its subcontractors and suppliers.

5.2 With respect to all warranties, express or implied, for Work performed or materials furnished according to the Agreement, SERVICE PROVIDER shall:

- a) Obtain all warranties that would be given in normal commercial practice from the supplier and/or manufacturer;
- b) Prior to final acceptance require all warranties be executed, in writing, for the benefit of the CITY;
- c) Enforce all warranties for the benefit of the CITY; and,
- d) Be responsible to enforce any warranty of a subcontractor, manufacturer, or supplier, should they extend beyond the period specified in the Agreement.

5.3 If, within an applicable warranty period, any part of the Work is found not to conform to the Agreement, the SERVICE PROVIDER shall correct it promptly after receipt of written notice from the CITY to do so. In the event the CITY determines that SERVICE PROVIDER corrective action is not satisfactory and/or timely performed, then the CITY has the right to either correct the problem itself or procure the necessary services, recommendations, or guidance from a third party. All damages incurred by the CITY and all costs for the CITY's remedy shall be reimbursed by the SERVICE PROVIDER.

5.4 The warranties provided in this Section shall be in addition to any other rights or remedies provided elsewhere in the Agreement or by applicable law.

6. INDEPENDENT CONTRACTOR RELATIONSHIP.

For all purposes, the SERVICE PROVIDER shall be deemed an independent contractor and shall not be deemed an employee or agent of the CITY for any purpose.

7. PREVAILING WAGES

7.1 The Work under the Agreement is subject to the prevailing wage requirements of Chapter 39.12 RCW, as amended or supplemented. The SERVICE PROVIDER agrees that all laborers, workers or mechanics employed by it or by any subcontractor in the Work of this Agreement will be paid not less than the prevailing rate of wage for an hour's work in accordance with the provisions of Chapter 39.12 RCW and all such rules and regulations as may be promulgated thereto by the Washington Department of Labor and Industries.

7.2 The rules and regulations of the Department of Labor and Industries and the schedule of the prevailing wage rates for the Industrial Statistician of the Department of Labor and Industries are by reference made a part of this Agreement as though fully set forth herein. These rates may be accessed on the internet at <https://secure.lni.wa.gov/wagelookup/>

7.3 In case any dispute arises as to what the prevailing rate of wage for work of a similar nature is and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the Director of the Department of Labor and Industries of the State of Washington for arbitration and the Director's decision therein shall be final and conclusive and binding on all parties involved in the dispute.

7.4 The SERVICE PROVIDER shall file an Intent to Pay Prevailing Wage form ("Intent Form"). SERVICE PROVIDER shall submit the Intent Form, approved by the Department of Labor and Industries of the State of Washington, to the CITY with payment request. No payment will be issued to the SERVICE PROVIDER until the CITY receives approved forms.

7.5 If progress payments are made on this project, an approved Intent Form must be received prior to issuing the first payment. An approved Affidavit of Wages Paid form must be received prior to issuing the final payment.

7.6 SERVICE PROVIDER shall be responsible for all costs associated with filing the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid with the Department of Labor and Industries.

8. HOLD HARMLESS INDEMNIFICATION.

A. SERVICE PROVIDER Indemnification. The SERVICE PROVIDER agrees to indemnify, defend and hold the CITY, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the SERVICE PROVIDER, its partners, shareholders, agents, employees, or by the SERVICE PROVIDER'S breach of this Agreement. The SERVICE PROVIDER expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The SERVICE PROVIDER'S indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefit acts or programs. This waiver has been mutually negotiated by the parties.

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

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

9. INSURANCE.

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

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



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

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

3. Pollution Liability insurance covering losses caused by pollution conditions that arise from the operations of the SERVICE PROVIDER. SERVICE PROVIDER's Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000. SERVICE PROVIDER's Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

If the SERVICE PROVIDER's Pollution Liability insurance is written on a claims-made basis, the SERVICE PROVIDER warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that Work under the Agreement is completed.

If the scope of work as defined in this Agreement includes the disposal of any hazardous materials from the job site, the SERVICE PROVIDER must furnish to the CITY evidence of Pollution Liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this Agreement. Coverage certified to the CITY under this paragraph must be maintained in minimum amounts of \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

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

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

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

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

G. Subcontractors' Insurance. The SERVICE PROVIDER shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of the SERVICE PROVIDER-provided insurance as set forth herein, except the SERVICE PROVIDER shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. The SERVICE PROVIDER shall ensure that the CITY is an additional insured on each and every subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

#### 10. PERFORMANCE AND PAYMENT BONDS

Pursuant to RCW 39.08.010, SERVICE PROVIDER shall post a Performance and Payment Bond, attached to this Agreement as Exhibit "B" in favor of the CITY, and incorporated by this reference, in a dollar amount satisfactory to the CITY; to guarantee SERVICE PROVIDER's performance of the Work to the CITY's satisfaction; to insure SERVICE PROVIDER's performance of all of the provisions of this Agreement; and to guarantee SERVICE PROVIDER's payment of all laborers, mechanics, subcontracts and material persons. SERVICE PROVIDER's obligations under this Agreement shall not be limited to the dollar amount of the bonds.

#### 11. COMPLIANCE WITH LAWS.

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

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



## 12. TITLE VI COMPLIANCE.

During the performance of this Agreement, the SERVICE PROVIDER, for itself, its assignees, and successors in interest, and including its subcontractors and consultants (hereinafter referred to as the "SERVICE PROVIDER"), agrees as follows:

12.1 Compliance with Regulations: The SERVICE PROVIDER will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

12.2 Non-discrimination: The SERVICE PROVIDER, with regard to the Work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The SERVICE PROVIDER will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

12.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the SERVICE PROVIDER for Work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the SERVICE PROVIDER of the SERVICE PROVIDER's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

12.4 Information and Reports: The SERVICE PROVIDER will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a SERVICE PROVIDER is in the exclusive possession of another who fails or refuses to furnish the information, the SERVICE PROVIDER will so certify to the CITY or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.

12.5 Sanctions for Noncompliance: In the event of SERVICE PROVIDER's noncompliance with the Non-discrimination provisions of this Agreement, the CITY

will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:

- a) withholding payments to the SERVICE PROVIDER under the Agreement until the SERVICE PROVIDER complies; and/or
- b) cancelling, terminating, or suspending the Agreement, in whole or in part.

12.6 Incorporation of Provisions: The SERVICE PROVIDER will include the provisions of Sections 12.1 through 12.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The SERVICE PROVIDER will take action with respect to any subcontract or procurement as the CITY or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the SERVICE PROVIDER becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the SERVICE PROVIDER may request the CITY to enter into any litigation to protect the interests of the CITY. In addition, the SERVICE PROVIDER may request the United States to enter into the litigation to protect the interests of the United States.

### 13. TITLE VI ASSURANCES.

During the performance of this Agreement, the SERVICE PROVIDER, for itself, its assignees, and successors in interest, and including its subcontractors and consultants (hereinafter referred to as the "SERVICE PROVIDER"), agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

#### Pertinent Non-Discrimination Authorities:

A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;

B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

C. Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

D. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

E. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

F. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

G. The Civil Rights Restoration Act of 1987 (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

H. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

I. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, SERVICE PROVIDER must take reasonable steps to ensure that LEP persons have meaningful access to SERVICE PROVIDER's programs (70 Fed. Reg. at 74087 to 74100); and

L. Title IX of the Education Amendments of 1972, as amended, which prohibits SERVICE PROVIDER from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



14. ASSIGNMENT/SUBCONTRACTING.

A. The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

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

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

15. NON-APPROPRIATION OF FUNDS.

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

16. CHANGES.

No modification to this Agreement shall be valid or binding upon either party unless it is in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

17. MAINTENANCE AND INSPECTION OF RECORDS.

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

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

representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

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

18. POLITICAL ACTIVITY PROHIBITED.

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

19. PROHIBITED INTEREST.

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

20. NOTICE.

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

21. ATTORNEYS FEES AND COSTS

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

22. JURISDICTION AND VENUE.

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

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

## 23. SEVERABILITY.

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

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

## 24. SAFETY.

SERVICE PROVIDER shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state and municipal safety and health laws and codes, including without limitation, all OSHA/WISHA requirements, Safety and Health Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), and General Occupational Health Standards (Chapter 296-62 WAC). SERVICE PROVIDER shall erect and properly maintain, at all times, all necessary guards, barricades, signals and other safeguards at all unsafe places at or near the Work for the protection of its employees and the public, safe passageways at all road crossings, crosswalks, street intersections, post danger signs warning against any known or unusual hazards and do all other things necessary to prevent accident or loss of any kind. SERVICE PROVIDER shall protect from danger all water, sewer, gas, steam or other pipes or conduits, and all hydrants and all other property that is likely to become displaced or damaged by the execution of the Work. The SERVICE PROVIDER shall, at its own expense, secure and maintain a safe storage place for its materials and equipment and is solely responsible for the same.

## 25. CLEAN UP.

At any time ordered by the CITY and immediately after completion of the Work, the SERVICE PROVIDER shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. In the event the SERVICE PROVIDER fails to perform the necessary clean up, the CITY may, but in



no event is it obligated to, perform the necessary clean up and the costs thereof shall be immediately paid by the SERVICE PROVIDER to the CITY and/or the CITY may deduct its costs from any remaining payments due to the SERVICE PROVIDER.

26. ENTIRE AGREEMENT.

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

27. NON-COLLUSION.

By signature below, the SERVICE PROVIDER acknowledges that the person, firm, association, co-partnership or corporation herein named has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in the preparation and submission of a proposal to the CITY for consideration in the award of a contract on the specifications contained in this Agreement.

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

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

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

SERVICE PROVIDER:  
Holt Services, Inc.  
10621 Todd Road East  
Edgewood, WA 98372  
UBI #: 602-690-511  
Phone Number: 253-604-4878

DocuSigned by:  
Debbie Sullivan  
Debbie Sullivan, Mayor

[Signature]  
Signature (Notarized – see below)  
Printed Name: Dale M Abernathy  
Title: COO / CFO

ATTEST:

DocuSigned by:  
Melody Valiant  
Melody Valiant, City Clerk

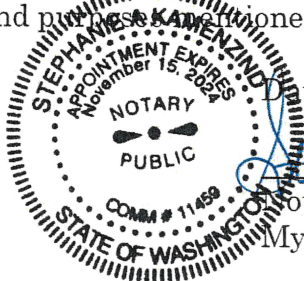
APPROVED AS TO FORM:

DocuSigned by:  
Karen Kirkpatrick  
Karen Kirkpatrick, City Attorney

STATE OF WASHINGTON

COUNTY OF THURSTON

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



Dated: 4-28-23  
[Signature]  
Notary Public in and for the State of Washington,  
My appointment expires: 11-15-24

## EXHIBIT A - SCOPE OF WORK

### CITY OF TUMWATER PALERMO LAGOON DREDGING AND MAINTENANCE

#### Project Background:

The U.S. Environmental Protection Agency (EPA) constructed the Palermo Aeration Lagoon as one component of the remedy selected for the Palermo Wellfield Superfund Site. The surrounding area has shown to contain levels of Tetrachloroethylene (PCE) and Trichloroethylene (TCE) in the ground water supply. In spring 1999, the EPA began operation of an air-stripping treatment system to remove PCE and TCE contamination from the water supply. The EPA concluded that this air-stripping system would eventually remediate the contaminated groundwater at the site. Periodic maintenance of the lagoon is required to keep the system functioning properly. This scope of work is intended to help guide the contractor through bidding and execution of the project. The accompanying diagrams are profiles of the sediment pond to aid in estimating the volume of sediment to be removed from the pond.

Task #	Description	Responsible Party	Desired Outcome
Task 1	Secure SEPA Permit	City of Tumwater	Determination of Non-significance
Task 2	Develop written Health and Safety Plan <ul style="list-style-type: none"> <li>chemical and physical hazards</li> <li>PPE</li> <li>health and safety monitoring</li> <li>decontamination protocols</li> <li>emergency procedures</li> </ul>	Contractor	Documented HASP approved by City of Tumwater
Task 3	Develop work plan <ul style="list-style-type: none"> <li>construction procedures</li> <li>environmental protection procedures</li> <li>fish moving</li> <li>turbidity monitoring and control</li> <li>sediment sampling plan</li> <li>sediment disposal plan</li> </ul>	Contractor	Documented work plan approved by City of Tumwater
Task 4	Dredge aeration lagoon	Contractor	Restore lagoon capacity to original design
Dredging note: <i>During construction, creosote-treated pilings and associated creosote-containing soil were found below the floor of the lagoon at the southern end. These materials must not be exposed during dredging operations. The dredging depth must not exceed the as-built depth shown on the record drawings. A cobble-rich soil zone is present at the depth of the creosote soil and pilings. If this zone is exposed by dredging, dredging should stop.</i>			
Task 5	Dewater sediment tailings	Contractor	Dewatering system that returns water to lagoon
Task 6	Test sediment for Chemicals of Concern as required for disposal method.	material testing lab	Sampling methods based on lab recommendations
Task 7	Dispose of sediment properly	Contractor	Disposal method and location will depend on materials testing results.



**Exhibit B**

Bond No. 4190728

**CITY OF TUMWATER  
PERFORMANCE BOND**

KNOW ALL PEOPLE BY THESE PRESENTS:

We, the undersigned Clearcreek Contractors, a division of Holt Services, Inc., ("Principal") and Great American Insurance Company, the undersigned corporation organized and existing under the laws of the State of Ohio and legally doing business in the State of Washington as a surety ("Surety"), are held and firmly bonded unto the City of Tumwater, a Washington municipal corporation ("City") in the penal sum of \*\*One Hundred Thirty Eight Thousand Six Hundred Eighty One and 75/100ths Dollars and no/100 (\$138,681.75) for the payment of which we firmly bind ourselves and our legal representatives, heirs, successors and assigns, jointly and severally.

This obligation is entered into pursuant to the statutes of the State of Washington and the ordinances, regulations, standards and policies of the City, as now existing or hereafter amended or adopted.

The Principal has entered into a Contract with the City May 1, 2023 for the dated Palermo Lagoon Dredging & Maintenance Project.

NOW, THEREFORE, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and shall indemnify and hold the City harmless from any damage or expense by reason of failure of performance as specified in the Agreement within a period of one (1) year after its final acceptance thereof by the City, then this obligation shall be void; but otherwise, if such performance obligations have not been fulfilled, this bond shall remain in full force and effect.

And the Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alterations or additions to the terms of the Contract or to the Work.

The Surety hereby agrees that modifications and changes may be made in terms and provisions of the Contract without notice to Surety, and any such modifications or changes increasing the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this Performance Bond in a like amount, such increase, however, not to exceed twenty-five percent (25%) of the original amount of this bond without the consent of the Surety.

Within forty-five (45) days of receiving notice that the Principal has defaulted on all or part of the terms of the Contract, the Surety shall make a written commitment to the City that it will either: (a) cure the default itself within a reasonable time period, or (b) tender to the

PALERMO LAGOON DREDGING AND MAINTENANCE AGREEMENT- Exhibit B

City, the amount necessary for the City to remedy the default, including legal fees incurred by the City, or (c) in the event that Surety's evaluation of the dispute is not complete or in the event the Surety disputes the City's claim of default, the Surety shall notify the City of its finding and its intent, if any, to interplead. The Surety shall then fulfill its obligations under this bond, according to the option it has elected. Should Surety elect option (a) to cure the default, the penal sum of the Bond shall be reduced in an amount equal to the costs actually incurred by the Surety in curing the default. If the Surety elects option (b), then upon completion of the necessary work, the City shall notify the Surety of its actual costs. The City shall return, without interest, any overpayment made by the Surety and the Surety shall pay to the City any actual costs which exceed the City estimate, limited to the bond amount. Should the Surety elect option (c), the Parties shall first complete participation in mediation, described in the below paragraph, prior to any interplead action.

In the event a dispute should arise between the Parties to this Bond with respect to the City's declaration of default by the Principal, the Parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of Washington Arbitration and Mediation Services - Tacoma ("WAMS"). The Parties shall proportionately share in the cost of the mediation. The mediation shall be administered by the Tacoma WAMS office, 3600 Port of Tacoma Road, Suite 304, Tacoma, WA 98424, [www.usamwa.com](http://www.usamwa.com). The Surety shall not interplead prior to completion of the mediation.

DATED this 1st day of May, 2023.

CORPORATE SEAL OF PRINCIPAL: [PRINCIPAL]

Clearcreek Contractors, a division of Holt Services, Inc.

By 

Type/Print Name

C O O I C F O

Title

10621 Todd Road East

Address

Edgewood, WA 98372



CERTIFICATE AS TO CORPORATE SEAL

I hereby certify that I am the (Assistant) Secretary of the Corporation named as Principal in the within bond; that Dale Abernathy, who signed the said bond on behalf of the Principal, was COO/CFO of the said Corporation; that I know his or her signature thereto is genuine, and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

Dale Abernathy  
Type/Print Name

Karmen Holt  
Secretary or Assistant Secretary

CORPORATE SEAL OF SURETY:

[SURETY] Great American Insurance Company

By: Guida McClain  
Attorney-in-Fact  
(Attach Power of Attorney)

Guida McClain

Name of Person Executing Bond

P O Box 2925

Tacoma, WA 98401-2925

Address

253-627-7183

Phone

APPROVED AS TO FORM:

DocuSigned by:  
Karen Kirkpatrick  
5011BA0DE4C45C  
Karen Kirkpatrick, City Attorney

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# CITY OF TUMWATER PAYMENT BOND

Bond No.4190728

KNOW ALL PEOPLE BY THESE PRESENTS:

We, the undersigned Clearcreek Contractors, ("Principal") and a division of Holt Services, Inc. Great American Insurance Company, the undersigned corporation organized and existing under the laws of the State of Ohio and legally doing business in the State of Washington as a surety ("Surety"), are held and firmly bonded unto the City of Tumwater, a Washington municipal corporation ("City") in the penal sum of One Hundred Thirty Eight Thousand Six Hundred Eighty One and 75/100ths Dollars and no/100 (\$ 138,681.75\*\*) for the payment of which we firmly bind ourselves and our legal representatives, heirs, successors and assigns, jointly and severally.

This obligation is entered into pursuant to the statutes of the State of Washington and the ordinances, regulations, standards and policies of the City, as now existing or hereafter amended or adopted.

The Principal has entered into a Contract with the City dated May 1, 2023 for the Palermo Lagoon Dredging & Maintenance Project.

NOW, THEREFORE if and when the Principal, its heirs, executors, ~~administrators, successors, or assigns shall pay all persons in accordance with~~ RCW 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and all taxes incurred on said Contract under Titles 50 and 51 RCW and all taxes imposed on the Principal under Title 82 RCW in the manner and within the time period prescribed by the City, or within such extensions of time as may be granted under the Contract, this statutory Payment Bond shall become null and void, and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

And the Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alterations or additions to the terms of the Contract or to the Work.

The Surety hereby agrees that modifications and changes may be made in terms and provisions of the Contract without notice to Surety, and any such modifications or changes increasing the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this Performance Bond in a

like amount, such increase, however, not to exceed twenty-five percent (25%) of the original amount of this bond without the consent of the Surety.

Within forty-five (45) days of receiving notice that the Principal has defaulted on all or part of the terms of the Contract, the Surety shall make a written commitment to the City that it will either: (a) cure the default itself within a reasonable time period, or (b) tender to the City, the amount necessary for the City to remedy the default, including legal fees incurred by the City, or (c) in the event that Surety's evaluation of the dispute is not complete or in the event the Surety disputes the City's claim of default, the Surety shall notify the City of its finding and its intent, if any, to interplead. The Surety shall then fulfill its obligations under this bond, according to the option it has elected. Should Surety elect option (a) to cure the default, the penal sum of the Bond shall be reduced in an amount equal to the costs actually incurred by the Surety in curing the default. If the Surety elects option (b), then upon completion of the necessary work, the City shall notify the Surety of its actual costs. The City shall return, without interest, any overpayment made by the Surety and the Surety shall pay to the City any actual costs which exceed the City estimate, limited to the bond amount. Should the Surety elect option (c), the Parties shall first complete participation in mediation, described in the below paragraph, prior to any interplead action.

In the event a dispute should arise between the Parties to this Bond with respect to ~~the City's declaration of default by the Principal, the Parties agree to participate~~ in at least four hours of mediation in accordance with the mediation procedures of Washington Arbitration and Mediation Services - Tacoma ("WAMS"). The Parties shall proportionately share in the cost of the mediation. The mediation shall be administered by the Tacoma WAMS office, 3600 Port of Tacoma Road, Suite 304, Tacoma, WA 98424, [www.usamwa.com](http://www.usamwa.com). The Surety shall not interplead prior to completion of the mediation..

DATED this 1st day of May, 2023.

CORPORATE SEAL OF PRINCIPAL: [PRINCIPAL]

Clearcreek Contractors, a division of Holt Services, Inc.

By

Type/Print Name

Title

10621 Todd Road East

Address

Edgewood, WA 98372



CERTIFICATE AS TO CORPORATE SEAL

I hereby certify that I am the (Assistant) Secretary of the Corporation named as Principal in the within bond; that Dale Abernathy, who signed the said bond on behalf of the Principal, was COO/CFO of the said Corporation; that I know his or her signature thereto is genuine, and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

<u><del>Dale M Abernathy</del></u>	<u>Karmen Holt</u>
Type/Print Name	
<u><del>[Signature]</del></u>	<u>Karmen Holt</u>
Secretary or Assistant Secretary	

CORPORATE SEAL OF SURETY: [SURETY] Great American Insurance Company

By: Guida McClain  
 Attorney-in-Fact  
 (Attach Power of Attorney)

Guida McClain

Name of Person Executing Bond

P O Box 2925

Tacoma, WA 98401-2925

Address

253-627-7183

Phone

APPROVED AS TO FORM:

DocuSigned by:  
Karen Kirkpatrick

Karen Kirkpatrick, City Attorney

**GREAT AMERICAN INSURANCE COMPANY®**

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by  
this power of attorney is not more than **ELEVEN**

No. 0 21770

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

	Name	Address	Limit of Power
STUART A. O'FARRELL	KRISTEN LOOK	ALL OF	ALL
GUIDA McCLAIN	STEPHEN ERNI	TACOMA, WASHINGTON	UNLIMITED
DARIN M. PURYEAR	VIRGINIA M. BREWER		
JILL A. WALLACE	LAUREN FREY		
BLAIR PATJENS	DEBORAH HAYES		
DEBRA POWELL			

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 17TH day of MARCH, 2022



*Stephen C. Beraha*  
Assistant Secretary

GREAT AMERICAN INSURANCE COMPANY

*Mark V. Vicario*  
Divisional Senior Vice President

MARK VICARIO (877-377-2405)

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this 17TH day of MARCH, 2022, before me personally appeared MARK VICARIO, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



SUSAN A KOHORST  
Notary Public  
State of Ohio  
My Comm. Expires  
May 18, 2025

*Susan A. Kohorst*

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

**RESOLVED:** That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

**RESOLVED FURTHER:** That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

**CERTIFICATION**

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this 1st day of May, 2023



*Stephen C. Beraha*  
Assistant Secretary

TO: City Council  
 FROM: Bill Lindauer, Engineering Services Manager  
 DATE: September 5, 2023  
 SUBJECT: Electrical Easement with Puget Sound Energy for Parcels 82700300300, 82700200000, and 82700100100

1) Recommended Action:

Staff recommends the City Council approve and authorize the Mayor to sign an Electrical Easement with Puget Sound Energy (PSE) for Parcels 82700300300, 82700200000 and 82700100100 and ratify actions taken prior to approval, which allow for utility undergrounding conversion for the Israel Road and Linderson Way Water Main project.

2) Background:

The Israel Road and Linderson Way Watermain project includes underground conversion of overhead utilities (power, telecommunications, etc.).

The proposed Easement outlines locations on City property to place electrical equipment in the following areas: southeast of Tumwater Timberland Library parking lot; northwest corner of Tumwater City Hall; northeast corner of Tumwater City Hall; and an area northwest of the Tumwater Parks & Maintenance Facilities. All equipment will be below ground, except for one vault at the Library and one transformer at the northwest corner of City Hall. This Easement is required by PSE to complete the work.

The utility work was separated into a standalone project due to project timeline and scope limitations with federal dollars.

3) Policy Support:

C. Create and Maintain a Transportation System Safe for All Modes of Travel - Complete roadway maintenance to enhance vehicle, bicycle, and pedestrian safety.

4) Alternatives:

- ☐ Do not authorize the Mayor to sign the Agreements and allow overhead power and utilities to remain overhead within the project limits.

5) Fiscal Notes:

None. The City is providing the Easement to PSE in order to underground existing overhead power along the Israel Road corridor.

6) Attachments:

A. PSE Electrical Easement

**RETURN ADDRESS:**

Puget Sound Energy, Inc.  
 Real Estate  
 3130 South 38<sup>th</sup> Street  
 Tacoma, WA 98409  
 SRG/CEB

**EASEMENT**

REFERENCE #: 3570820  
 GRANTOR: CITY OF TUMWATER  
 GRANTEE: PUGET SOUND ENERGY, INC.  
 SHORT LEGAL: PCL A and B BLA-977359 PTN SE 03-17N-02W  
 ASSESSOR'S TAX #: 8270-03-00300, 8270-02-00000, 8270-01-00100

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **CITY OF TUMWATER, a Municipal Corporation** ("Owner"), hereby grants and conveys to **PUGET SOUND ENERGY, INC.**, a Washington corporation ("PSE"), for the purposes hereinafter set forth, a nonexclusive perpetual easement over, along, across and through the following described real property in **THURSTON** County, Washington (the "Property"):

**PARCEL A:**

**PARCEL B OF BOUNDARY LINE ADJUSTMENT NO. BLA-977359 AS RECORDED JUNE 12<sup>TH</sup> 1997 UNDER AUDITOR'S FILE NO. 3092993, IN THURSTON COUNTY, WASHINGTON.**

**PARCEL B:**

**PARCEL A OF BOUNDARY LINE ADJUSTMENT BLA 99 7391 TW AS RECORDED DECEMBER 22, 1999 UNDER RECORDING NO. 3271456 AND AMENDED 3287606, IN THURSTON COUNTY, WASHINGTON.**

**PARCEL C:**

**PARCEL B OF BOUNDARY LINE ADJUSTMENT BLA 99 7391 TW AS RECORDED DECEMBER 22, 1999 UNDER RECORDING NO. 3271456 AND AMENDED 3287606, IN THURSTON COUNTY, WASHINGTON.**

Except as may be otherwise set forth herein, PSE's rights shall be exercised upon that portion of the Property the ("Easement Area") described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART THEREOF FOR EASEMENT DESCRIPTIONS HEREIN.**

**1. Purpose.** PSE shall have the right to use the Easement Area to construct, operate, maintain, repair, replace, improve, remove, upgrade and extend one or more utility systems for purposes of distribution and sale of electricity. Such systems may include, but are not limited to:

**Underground facilities.** Conduits, lines, cables, vaults, switches and transformers for electricity; fiber optic cable and other lines, cables and facilities for communications; semi-buried or ground-mounted facilities and pads, manholes, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of the foregoing.



Following the initial construction of all or a portion of its systems, PSE may, from time to time, construct such additional facilities as it may require for such systems.

**2. Access.** PSE shall have a reasonable right of access to the Easement Area over and across the Property to enable PSE to exercise its rights granted in this easement.

**3. Easement Area Clearing and Maintenance.** PSE shall have the right to cut, remove and dispose of any and all brush, trees or other vegetation in the Easement Area. PSE shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees or other vegetation in the Easement Area.

**4. Restoration.** Following the initial installation, repair or extension of its facilities, PSE shall, to the extent reasonably practicable, restore landscaping and surfaces and portions of the Property affected by PSE's work to the condition existing immediately prior to such work. PSE shall use good faith efforts to perform its restoration obligations under this paragraph as soon as reasonably possible after the completion of PSE's work.

**5. Owner's Use of Easement Area.** Owner reserves the right to use the Easement Area for any purpose not inconsistent with the rights herein granted, provided, however, Owner shall not perform the following activities without prior notice to PSE: (1) excavate within or otherwise change the grade of the Easement Area; (2) construct or maintain any buildings, structures or other objects on the Easement Area; and/or (3) conduct any blasting within 300 feet of PSE's facilities.

**6. Indemnity.** PSE agrees to indemnify Owner from and against liability incurred by Owner as a result of PSE's negligence, or the negligence of PSE's employees, agents or contractors in the exercise of the rights herein granted to PSE, but nothing herein shall require PSE to indemnify Owner for that portion of any such liability attributable to the negligence of Owner, its employees, agents or contractors or the negligence of third parties.

**7. Attorneys' Fees.** The prevailing party in any lawsuit brought to enforce or interpret the terms of this Easement shall be entitled to recover its reasonable attorneys' fees and costs incurred in said suit, including on appeal.

**8. Successors and Assigns.** This Easement is binding upon and will inure to the benefit of the successors and permitted assigns of the parties. PSE may not assign or otherwise transfer any of its rights, obligations or interest under this Easement without the prior written consent of Owner, which consent may not be unreasonably withheld. Notwithstanding the foregoing, PSE may assign this Easement to an affiliate or in connection with a merger, acquisition, corporate reorganization, sale of assets or other change in control.

**9. Complete Agreement; Amendment; Counterparts.** This Easement contains the entire agreement of the parties with respect to this subject matter and supersedes all prior writings or discussions relating to the Easement. This Easement may not be amended except by a written document executed by the authorized representatives of Owner and PSE. This Easement may be executed in counterparts, each of which shall be treated as an original for all purposes and all executed counterparts shall constitute one agreement.

**10. Warranty and Representation of Authority.** The parties each represent to the other that the person or persons executing this Easement have authority to do so and to bind the parties hereunder. All consents, permissions and approvals related to this Easement, and the obligations hereunder, have been obtained. Owner further warrants to PSE that it has the necessary right, title and interests in the Property to grant the easement rights set forth herein.

**11. Severability.** Invalidity of any of the provisions contained in this Easement, or of the

application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions thereof or the application thereof to any other person and the same shall remain in full force and effect. If a provision is found to be unenforceable or invalid, that provision shall be modified or partially enforced to the maximum extent permitted by law to effectuate the purpose of this agreement.

**12. Non-Waiver.** The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

**13. Termination.** The rights herein granted shall continue until such time as the parties agree to terminate such right by written instrument. If terminated, all improvements shall be removed by PSE at the owner's expense unless abandonment in place is authorized in writing by Owner. Any improvements authorized to remain in the Easement Area shall become the property of Owner. No termination shall be deemed to have occurred by PSE's failure to install its systems on the Easement Area.

DATED this 22nd day of August, 2023

OWNER: **CITY OF TUMWATER**

BY: Debbie Sullivan

Title: Mayor

STATE OF WASHINGTON )  
 )SS  
COUNTY OF )

On this 22nd day of August, 2023, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Debbie Sullivan, to me known to be the person who signed as Mayor of **CITY OF TUMWATER** that executed the within and foregoing instrument, and acknowledged said instrument to be their free and voluntary act and deed and the free and voluntary act and deed of **CITY OF TUMWATER** for the uses and purposes therein mentioned; and on oath stated that they were authorized to execute the said instrument on behalf of said **CITY OF TUMWATER**.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Cathy Nielsen  
**NOTARY PUBLIC** in and for the State of Washington,  
Residing at: Tumwater  
My Appointment Expires: 3-1-2024

Notary seal, text and all notations must not be placed within 1" margins

**EXHIBIT "A"**

(EASEMENT DESCRIPTIONS)

**EASEMENT AREA 1:**

**AN EASEMENT AREA LYING WITHIN PARCEL A DESCRIBED ABOVE; BEING THE SOUTH FIFTEEN (15) FEET OF THE NORTH FOUR HUNDRED AND THIRTY-SEVEN (437) FEET OF THE EAST TEN (10) FEET OF THE ABOVE DESCRIBED REAL PROPERTY. (SW2)**

**EASEMENT AREA 2:**

**AN EASEMENT AREA LYING WITHIN PARCEL B DESCRIBED ABOVE; BEING THE WEST THIRTY (30) FEET OF THE NORTH FIFTY (50) FEET OF THE ABOVE DESCRIBED REAL PROPERTY. (PV2, JO6)**

**EASEMENT AREA 3:**

**AN EASEMENT AREA LYING WITHIN PARCEL B DESCRIBED ABOVE; BEING THE NORTH EIGHT (8) OF THE EAST FORTY-FOUR (44) FEET OF THE ABOVE DESCRIBED REAL PROPERTY ABUTTING ISRAEL ROAD SW. (PV3, JO7, VO3)**

**EASEMENT AREA 4:**

**AN EASEMENT AREA LYING WITHIN PARCEL C DESCRIBED ABOVE; BEING TWENTY-FIVE (25) FEET IN WIDTH WITH TWELVE AND A HALF (12.5) FEET OF SUCH WIDTH ON EACH SIDE OF A CENTERLINE DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE SOUTH RIGHT OF WAY BOUNDARY OF ISRAEL RD SW AND GRANTEE'S UNDERGROUND CABLES AS CONSTRUCTED OR TO BE CONSTRUCTED;**

**THENCE SOUTHEASTERLY ALONG GRANTEE'S FACILITIES A DISTANCE OF THIRTY-FIVE (35) FEET MORE OR LESS TO CONNECT TO THE EASEMENT AREA UNDER AFN: 3570820 AND THE TERMINUS OF THIS CENTERLINE DESCRIPTION. (TO SW3 AND J10)**

TO: City Council  
FROM: Hanna Miles, Executive Assistant/Deputy City Clerk  
DATE: September 5, 2023  
SUBJECT: Barnes Lake Management District Steering Committee Reappointment of Dana Day, Jody Keys, Linnea Madison, Lalani Shelton, and Tom Sparks

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1) Recommended Action:

Confirm the Mayor's reappointment of Dana Day, Jody Keys, Linnea Madison, Lalani Shelton and Tom Sparks to the Barnes Lake Management District (BLMD) Steering Committee.

---

2) Background:

In 2005, Council appointed representatives to the Barnes Lake Management District Steering Committee for purposes of advising the Council on recommended lake management activities to insure a high-level of lake health while balancing the recreational, wildlife, water quality, and aesthetic needs of Barnes Lake.

Upon Council confirmation, the two-year terms will expire September 30, 2025.

---

3) Policy Support:

Vision | Mission | Beliefs

- Partnership | We work collaboratively with residents, businesses and community organizations.
  - Environment | We act to preserve and enhance the natural environment and the social fabric of our community.
- 

4) Alternatives:

- ☐ Approve some of the reappointments.
  - ☐ Do not approve any of the reappointments.
- 

5) Fiscal Notes:

There is no fiscal impact associated with this report.

---

6) Attachments:

- A. Background information for Barnes Lake Management District Steering Committee volunteers.



**City of Tumwater  
Barnes Lake Management District**

**Submit by Email**

**Print Form**

**Steering Committee Membership Application**

Thank you for your interest in joining the Barnes Lake Steering Committee. If a vacancy exists for representation of your neighborhood, your application will be considered at the next Steering Committee meeting. If no vacancy exists, the Steering Committee will consider your application as an "alternate" until a position opens up. As always, you are more than welcome to attend any Barnes Lake Steering Committee. Please check the website for dates and times of the meetings.

Please fill in all the required information below. You can submit this form electronically by pressing the button above, or print the document and send it to:

**Dan Smith, Water Resources Program Manager  
Barnes Lake Management District  
555 Israel Road SW  
Tumwater, WA 98501**

If you have any questions, please contact Dan Smith at (360) 754-4140.

Name:

Dana Day

Address:

[Redacted Address]

City:

[Redacted City]

State:

[Redacted State]

Zip Code:

[Redacted Zip Code]

Site Address (if different):

\_\_\_\_\_

Please include a statement reflecting your interest and goals for becoming a Steering Committee Member. Attached additional sheets if necessary.

My reason for wanting to be an Alternate on the Barnes Lake Steering Committee is very simple, I love our Barnes Lake. I moved to Lark Street 5 years ago and during these 5 years, I have seen the Lake's water depth diminish greatly and I have observed more mud islands appearing around the lake. I love the many varieties of wild life and plants this Lake brings to us. I feel that if we work together we can accomplish a cleaner, deeper Lake and still have room for all the wild life and native plants. My goal is see all of our neighbors and their families enjoy Barnes Lake by swimming, fishing, observing the wild life and rowing around the lake. This Lake is a perfect place for children to learn about nature and the simplicity of life. Please consider my application. Thank you.

Signature:

[Signature]

Date:

4/8/08

# APPLICATION

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

Name: Jody Keys

Address:

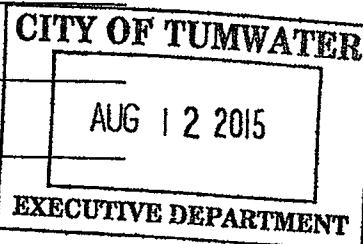
Telephone:

(Home)

(Cell)

Date: August 10, 2015

Email:



## BOARD, COMMITTEE OR COMMISSION

PREFERENCE  
NUMBER:

Barnes Lake Management District Steering Committee

1# \_\_\_\_\_

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

Board of Parks Commissioners:

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

\_\_\_\_\_

Building Board of Appeals / Building Code Advisory Committee:

Seven members; Mayoral appointment; two-year terms

\_\_\_\_\_

Civil Service Commission:

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

\_\_\_\_\_

August 10, 2015

Dear Mr. Mayor,

Please consider this a combination letter of interest/resume.

I am interested in serving on the Barnes Lake Management District (LMD) Steering Committee. I live within the boundaries of the LMD, and have lived in the same house for 35 years. Barnes Lake is an important part of our neighborhood and I would like to be more involved with managing it. I have some experience with the committee as I've attended several meetings over the years, and my husband, John Swander, has served on the committee in the past.

I retired from the State of Washington in 2010 with more than 30 years of service. Most of my work was as an administrative law judge and manager with the Employment Security Department and the Office of Administrative Hearings. I've been a member of the Washington State Bar Association since 1979, and am currently in inactive status.

Thank you for considering me for appointment to the Barnes Lake Management District Steering Committee.

Jody Keys





**City of Tumwater  
Barnes Lake Management District**

[Submit by Email](#)
[Print Form](#)

## Steering Committee Membership Application

Thank you for your interest in joining the Barnes Lake Steering Committee. If a vacancy exists for representation of your neighborhood, your application will be considered at the next Steering Committee meeting. If no vacancy exists, the Steering Committee will consider your application as an "alternate" until a position opens up. As always, you are more than welcome to attend any Barnes Lake Steering Committee. Please check the website for dates and times of the meetings.

Please fill in all the required information below. You can submit this form electronically by pressing the button above, or print the document and send it to:

**Dan Smith, Water Resources Program Manager  
Barnes Lake Management District  
555 Israel Road SW  
Tumwater, WA 98501**

If you have any questions, please contact Dan Smith at (360) 754-4140.

Name: Linnea Madison

Address: [REDACTED]

City: [REDACTED]

State: [REDACTED]

Zip Code: [REDACTED]

Site Address (if different):

Please include a statement reflecting your interest and goals for becoming a Steering Committee Member. Attached additional sheets if necessary.

I have lived on Barnes Lake since 1998 and recognize that the lake is a special and unique place. We have blue herons, majestic bald eagles, swimming raccoons, giant bullfrogs, dragonflies and an assortment of ducks within blocks of a major commercial district and freeway. Because Barnes Lake is such a gem, we need to preserve the lake for both people and wildlife. I hope that someday, my children will be able to watch birds, count frogs, fish and swim from our backyard.

Before I had children (and when I had more free time!) I was involved in the Lake Management District. Over the years, I have supported the decisions of the LMD and I appreciate the hard work of everyone involved. I realize that we now have the significant challenge of dealing with the "floating mats" and I hope to help with the decision-making process. My focus will be to find long-term, cost effective decisions that make the lake more aesthetically pleasing and more inviting to both wildlife and people too!

Signature: J. Linnea Madison

Date: 25-10-2010



CITY OF TUMWATER

A

MAY 22 2019

## APPLICATION

EXECUTIVE DEPARTMENT

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:

Lalani Shelton

Address:



Telephone:



(Home)


(Cell)

(Work)

Date:

May 5, 2019

Email:

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

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

#1Board 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

To the Barnes Lake Management District Steering Committee Application Panel

May 2019

This letter serves as my letter of interest to participate on the Barnes Lake Management District Steering Committee. I moved to Barnes Lake in June 2008. At that time, the lake was completely covered with Lillie pads during the summer months. I participated in annual meetings for Barnes Lake to learn more about the lake that I was living on. These were very informative with Dan explaining the issues with the lake and current plans to address those issues. I purchased an additional home on Barnes Lake in January 2019, making my interest in the long-term health of the lake increasingly vested.

My professional field is in the medical field. I am a pediatric physical therapist that works with neurologically impaired infants and children. Thus, I bring little professional experience to lake management. My partner works in water quality for the department of ecology. He is on a task force to clean the Puget Sound in partnership with the Environmental Protection Agency. So I can always lean on him for any professional expertise. My lack of professional expertise is made up in my years of personal outdoor experience. I have been a part of Boy Scouts for over 15 years. I take the troop backpacking and kayaking every year. I love the outdoors and spend a good deal of my leisure time exploring our beautiful Pacific NW. Taking care of the environment is critical to me, not only to preserve the recreational opportunities I cherish, but to decrease the effect that humans have on the environment so that my children and their children have a healthy planet in which to live and thrive. The more time that I spend in nature, the more I appreciate all of the players – animals, plants, insects, fungus, water, etc – that must co-exist to create a healthy environment. Maintaining the environment in my own backyard, literally, is important to me. I participated in a “green lawn” program put on by the City of Tumwater several years ago. It educated me on what not to use on my landscaping and how to maintain my yard naturally so that it would not harm the lake. It is in this vein that I want to give back to the place that I call home.

Please consider me for a position on the Barnes Lake Management District Steering Committee. Thank you for your time and consideration.

Sincerely,



Lalani Shelton

# APPLICATION

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

Name:

Tom Sparks

Address:

Telephone:

(Home)

(Cell)

(Work)

Date:

25 JAN 2013

Email:

## BOARD, COMMITTEE OR COMMISSION

PREFERENCE  
NUMBER:

### Barnes Lake Management District Steering Committee

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

1

### Board of Parks and Recreation Commissioners:

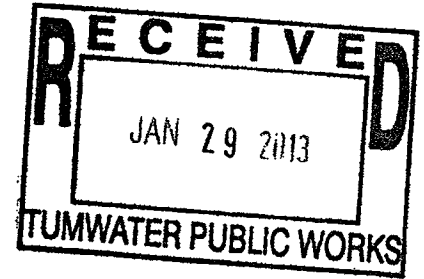
Seven members; Mayoral appointment with Council confirmation; three-year terms; active

### Civil Service Commission:

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

[REDACTED]  
25 Jan 2013

Dan Smith  
City of Tumwater  
555 Israel Rd. SW  
Tumwater, WA 98501



Dear Mr. Smith, As we recently discussed, I'm interested in joining the Barnes Lake Management District Steering Committee. I live in the Barnes Lake Park condos on the south side of the lake, and have a view of the lake from several rooms of my home. During my 29 years in the Coast Guard, environmental protection was always on our work list, and I gained a great deal of enjoyment from working on our nation's waterways.

I am currently a member of the Barnes Lake Condo Owner's Association Board, with a term expiring in February 2014. As such, by joining the Lake Management District Steering Committee I'd be able to represent the interests of Barnes Lake Park condo owners during Steering Committee proceedings. At the same time I'd be able to present information from the Steering Committee during Barnes Lake Park condo events, including Board meetings and our annual owner's meeting.

I have reviewed much of the information available on the Lake Management District's website, and understand the efforts that have brought us to the present position. I would like to participate in the process to keep moving forward on maintaining Barnes Lake. It is a very valuable part of our neighborhood, and adds greatly to the desirability of our small piece of Tumwater.

Thanks very much for letting me join the effort to preserve Barnes Lake.

Sincerely,

A handwritten signature in black ink that reads "Tom Sparks".

Tom Sparks  
[REDACTED]

TO: City Council  
 FROM: Brad Medrud, Planning Manager  
 DATE: September 5, 2023  
 SUBJECT: Letter of Commitment with Department of Commerce for 2025 Comprehensive Plan Periodic Update Middle Housing Grant Application

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1) Recommended Action:

Authorize the Mayor to sign the Letter of Commitment with Department of Commerce for 2025 Comprehensive Plan Periodic Update Middle Housing Grant Application

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2) Background:

On a ten-year cycle, the City is required to conduct a Growth Management Act periodic update of its Comprehensive Plan and related development regulations. For the current cycle, the City is required to complete work on the periodic update by June 30, 2025. Work on the periodic update started last fall.

The Department of Commerce Missing Middle Grant is for \$75,000. The grant would allow the City to hire a consultant to help develop the necessary amendments to Title 18 Zoning to address the new state legislation (HC 1110, 2023) requiring jurisdictions to update their development codes to allow for middle housing throughout the City.

Because of the timing of the grant announcement and the due date for submitting the grant application, as well as City Council recess, staff was unable to bring this item to the General Government Committee or City Council for discussion before it was placed on the consent calendar.

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3) Policy Support:

Goal LPP-1: Provide sufficient and efficient services to Tumwater and the Urban Growth Area.

Goal LU-1: Ensure the Land Use Element is implementable and coordinated with all applicable City plans and the plans of other jurisdictions in the Thurston region.

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4) Alternatives:

☐ None.

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5) Fiscal Notes:

This is primarily an internally funded work program task. The City will be filing an application for a Washington State Department of Commerce grant funding for \$75,000 before September 15, 2023 to support the update of Title 18 Zoning as part of the 2025 Comprehensive Plan.

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6) Attachments:

A. Letter of Commitment – Middle Housing Grant Application



September 5, 2023

Dave Osaki, AICP  
Washington State Department of Commerce  
1011 Plum Street SE  
Olympia, WA 98504

Dear Recipient:

I, Debbie Sullivan, Mayor of Tumwater, authorize the City to propose the attached scope of work and budget request for grant funding to prepare and adopt development regulation amendments to implement the requirements of HB 1110 related to middle housing in our community.

We understand we are required under the Growth Management Act to adopt policies related to moderate density housing options including, but not limited to, duplexes, triplexes, and townhomes. These policies will be considered and adopted as part of our scheduled periodic review update to our Comprehensive Plan, which is due June 30, 2025 and we acknowledge this precedes the deadline for compliance with HB 1110.

The City intends to use the funds provided by the Middle Housing Grant to offset the costs of consultants needed to assist City staff with the update of the City's development code.

Work on the City's Growth Management Act periodic update started last fall. The updated Comprehensive Plan will address diversity, equity, and inclusion throughout the Plan and incorporate a number of state required changes addressing housing, climate change, and other topics.

I urge the State Department of Commerce to support the City's Comprehensive Plan update by providing funds to support our work on the requirements of HB 1110. Please feel free to

---

Tumwater City Hall  
555 Israel Road SW  
Tumwater WA 98501

[www.ci.tumwater.wa.us](http://www.ci.tumwater.wa.us)

contact me at (360) 754-5855 or by emailing [dsullivan@ci.tumwater.wa.us](mailto:dsullivan@ci.tumwater.wa.us) if you have questions regarding my comments and support.

Warm regards,

Debbie Sullivan  
Mayor, City of Tumwater

Cc: Tumwater City Council  
Lisa Parks, City Administrator  
Michael Matlock, Community Development Director



TO: City Council

FROM: Erika Smith-Erickson, Land Use and Housing Planner, and Brad Medrud, Planning Manager

DATE: September 5, 2023

SUBJECT: Preliminary Docket for 2023 Annual Housekeeping Amendments

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1) Recommended Action:

Make the determination that all the amendments in the preliminary docket should be included in the TMC 18.60.025(A) final docket.

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2) Background:

TMC 18.60.025(A) establishes a process by which the preliminary docket of annual development code housekeeping amendments undergoes an initial review by the Planning Commission for recommendation to the City Council. The City Council will make the final determination on which of the proposed amendments will be included in the final docket.

Once the docket becomes final, staff will review and analyze the proposed amendments as part of our long range planning work program and come back to the Planning Commission and City Council for the final review and recommendation process in the fall of 2023.

The staff report contains summaries of the four proposed amendments.

The Planning Commission was briefed on the preliminary docket at their June 27, 2023. The Planning Commission continued their discussion at their July 11, 2023 meeting and recommended that the General Government Committee include all the items in the preliminary docket in the final docket of amendments. The General Government Committee was briefed on the preliminary docket at their August 9, 2023 and recommended that the City Council include all the items in the preliminary docket in the final docket of amendments.

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3) Policy Support:

Economic Development Plan Goal 1: "Establish a development climate that stimulates economic activity and desirable investment."

Economic Development Plan Strategy 1.D: "Ensure a predictable and efficient experience for business owners and developers seeking to invest in Tumwater."

Land Use Element Implementation Policy 11 of Section 3.3: "Modify the land use regulatory review, permitting, and approval system for consistency with the Growth Management Act and adopted plans to ensure predictability and allow processing of development permits in a timely and fair manner."

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3) Alternatives:

☐ None

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5) Fiscal Notes:

This is an internally funded work program task.

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6) Attachments:

A. Staff Report

# MEMORANDUM

Date: September 5, 2023

To: City Council

From: Erika Smith-Erickson, Land Use and Housing Planner and Brad Medrud,  
Planning Manager



## Preliminary Docket for 2023 Annual Housekeeping Amendments

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During 2022 and 2023, staff gathered information on proposed minor housekeeping amendments to the development code in the Tumwater Municipal Code to be considered collectively in 2023. TMC 18.60.025(A) establishes a process for such development code amendments that is similar to the one the City follows for annual Comprehensive Plan amendments.

A preliminary docket of proposed amendments will be reviewed in the summer for consideration as part of the final docket that would be reviewed by the Planning Commission and approved by the City Council in the fall of 2023 and winter of 2024.

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### Summary

The proposed four amendments are intended make minor corrections to the City's development regulations.

## **Background**

TMC 18.60.025(A) establishes a process by which the preliminary docket of annual development code housekeeping amendments undergoes an initial review by the Planning Commission for recommendation to the City Council. The City Council will then make the final determination on which of the proposed amendments will be included in the final docket.

After the docket is final, staff will review and analyze the proposed amendments and come back to the Planning Commission with a draft ordinance to start the final review and recommendation process on October 24, 2023.

The amendments are a part of the approved 2023 Long Range Planning work program.

## **Development Code Housekeeping Preliminary Docket**

The following is a summary of the proposed amendments that make up the development code housekeeping preliminary docket:

### **A. Manufactured Home Parks Required Open Space**

Clarify the open space requirements for manufactured home parks that are not subject to the land division process under Title 17 *Land Division*.

The intent of Ordinance No. O2020-015, which the City Council approved in 2021, was that new or redeveloped manufactured home parks would provide park and open space. TMC 18.49.060(F) Park and Open Space Area states:

*New development in the MHP zone district shall set aside land for park and open space area as specified in TMC 17.12.210 and 18.42.130 and the citywide design guidelines.*

If land division were not required pursuant to TMC 17.12.210, then the requirements of TMC 18.42.130 would apply. TMC 18.42.130(A) states:

*For new residential developments in which the majority of the dwelling units will be multifamily dwellings or roominghouses, or five or more dwelling units as rowhouses or townhomes, and the land is not being divided, a minimum of fifteen percent of the gross site area shall be set aside for park and open space area.*

As the code is written currently, manufactured home parks that are not subject to the land division process under Title 17 *Land Division* would not be required to provide 15% open space.

Code Section to be amended:

- 18.42.130 – General Land Use Regulations – Park and open space area standards for development without divisions of land

### **B. Undergrounding Utilities Requirements**

Clarify the requirement that new and existing electrical power, telephone, cable television, fiber optics and other transmission lines shall be installed underground and establishing an appeals process through the Engineering Services Manager in the Transportation & Engineering Department.

Code Section to be amended:

- TMC 17.12.200 – General Design Standards – Underground Utilities

C. Town Center Mixed Use Subdistrict First Floor Uses

Clarify the uses that would be allowed on the first floor of commercial and residential developments along main streets in the Town Center Mixed Use subdistrict.

The intent of the Town Center Mixed Use subdistrict is to create a pedestrian environment with first floor land uses that generate pedestrian activity which complement the wide sidewalks, street trees, pedestrian-level streetlights, street furniture, and mid-block crossings that characterize the pedestrian-oriented streetscape.

As the code is written currently, it is unclear what uses would be allowed in this situation.

Code Section to be amended:

- TMC 18.23.050 – TC Town Center Zone District – Development and design standards – Specific to properties fronting main streets

D. Building Heights Over Sixty-Five Feet for Specific Industrial Uses

Establish a conditional use permit process for specific industrial uses that exceed sixty-five feet in the LI Light Industrial and HI Heavy Industrial zone districts.

Prior to the approval of Ordinance No. O2017-006 by the City Council in 2017, “buildings or structures over permitted height restrictions” were allowed subject to conditional use permit approval in the GC General Commercial, MU Mixed Use, LI Light Industrial, and HI Heavy Industrial zone districts. In addition to the general conditional use permit requirements, solar access and articulation conditions had to be addressed.

To partially address the need for taller structures in the LI Light Industrial zone district, the maximum height in the LI Light Industrial zone district was raised by Ordinance No. O2016-037 in 2017 from 50 feet to 65 feet.

Code Section to be amended:

- TMC 18.24.040 – LI Light Industrial Zone District – Conditional uses

- TMC 18.25.040 – HI Heavy Industrial Zone District – Conditional uses
- TMC 18.56.110 – Conditional Use Permits – “B” uses

### **Public Approval Process**

Consistent with TMC 18.60.025, the Planning Commission held a briefing on the preliminary docket on June 27, 2023 and a worksession on July 11, 2023. At the end of the worksession, the Planning Commission recommended that all the items on the preliminary docket to go forward to the final docket for more review.

The General Government Committee discussed the Planning Commission’s recommendation on the items to go forward to the final docket for more review at their August 9, 2023 meeting. The General Government Committee recommended that all the items on the preliminary docket to go forward to the final docket for more review on the City Council’s consent agenda for their September 5, 2023 meeting.

An Environmental Checklist for a non-project action will be prepared in September 2023 under the State Environmental Policy Act (Chapter 43.21C RCW), pursuant to Chapter 197-11 WAC, and a Determination of Non-Significance will be issued later in September 2023.

The ordinance expected to be sent to the Washington State Department of Commerce in September 2023 for the required 60-day review before the proposed text amendments were adopted, in accordance with RCW 36.70A.106.

The Planning Commission is expected to receive a briefing on the final docket of proposed code amendments on October 24, 2023 and hold a worksession on the final docket November 14, 2023.

A Notice of Public Hearing for the Planning Commission is expected to be issued on November 17, 2023 prior to a public hearing. The notice will be posted, published as a press release, distributed to interested individuals and entities that have requested such notices, and published in The Olympian.

The Planning Commission is expected to hold a public hearing for the final docket of proposed amendments on November 28, 2023. Following the public hearing and deliberations, the Planning Commission will make a recommendation that Council on the proposed amendments.

The General Government Committee is scheduled to review the final docket of proposed amendments in a briefing on January 10, 2024 and recommend that the ordinance be discussed at a City Council worksession. The City Council is scheduled to review the final docket of amendments at a worksession on January 23, 2024 and consider the amendments on February 6, 2024.

### **Public Notification**

A Notice of Public Hearing for the November 28, 2023 the Planning Commission public hearing is expected to be issued, posted, mailed to interested parties, and published in The Olympian

on November 17, 2023, after the Planning Commission is expected to set the public hearing date on November 14, 2023.

### **Staff Conclusions**

Based on the above review and analysis, staff will need to conclude that the proposed text amendments are consistent with the requirements of the Washington State Growth Management Act and the Tumwater Comprehensive Plan.

### **Staff Recommendation**

Staff recommends that the City Council make the determination that all the amendments in the preliminary docket should be included in the TMC 18.60.025(A) final docket.

### **Effects of the Proposed Amendments**

The proposed text amendments would necessitate changes to the Tumwater Municipal Code.

### **Staff Contacts**

Erika Smith-Erickson, Land Use and Housing Planner  
City of Tumwater Community Development Department  
360-754-4180  
esmith-erickson@ci.tumwater.wa.us

Brad Medrud, Planning Manager  
City of Tumwater Community Development Department  
360-754-4180  
bmedrud@ci.tumwater.wa.us



TO: City Council  
 FROM: Dan Smith, Water Resources & Sustainability Director  
 DATE: September 5, 2023  
 SUBJECT: Offsite Lease with South Puget Sound Community College

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1) Recommended Action:

Authorize the Mayor to sign a lease agreement, as amended, with South Puget Sound Community College for new office space supporting Water Resources & Sustainability staff for a five (5) year term.

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2) Background:

Due to limited office space available locally, South Puget Sound Community College (SPSCC) offered vacant classrooms that may be remodeled to serve City needs. A partnership with SPSCC and the City will result in expanded space for City at both sites, and increased parking for staff, fleet, and public vehicles.

City Council approved a previous version of this lease on June 6, 2023; however, SPSCC requested minor administrative changes to the language, such as indemnification and clarifying rental aspects of the building considered for lease. Regardless, the changed language requires Council to reauthorize the agreement. There have been no changes substantive to the needs of the Water Resources & Sustainability Department, and its acceptance is recommended.

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3) Policy Support:

- We believe in People, Excellence, Opportunity, Partnership, Learning, Environment
  - Be a leader in Environmental Sustainability
    - Recruit green employers and jobs
  - Refine and Sustain a Great Organization
    - Explore trades training with LOTT, SPSCC and Olympia
- 

4) Alternatives:

- ☐ Reject the lease agreement and direct staff to consider other options.
- 

5) Fiscal Notes:

Lease costs for the initial five years term are approximately \$281,420.00. Support equipment and necessary tenant improvements add about \$500,000.00 over the lease term. Lease and office costs are funded by the Drinking Water (40%), Storm Drain (40%), and Sanitary Sewer utilities (20%).

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6) Attachments:

- A. Agreement of Lease, South Puget Sound Community College

## AGREEMENT OF LEASE

THIS LEASE, dated \_\_\_\_\_, is by and between, SOUTH PUGET SOUND COMMUNITY COLLEGE, hereinafter called "Lessor", and CITY OF TUMWATER, hereinafter called "Lessee".

### 1. NONSTANDARD PROVISIONS

The following entries constitute the nonstandard provisions of this Lease and are referred to elsewhere herein:

(a) Premises:

Building Name: Building 32, 2011 Mottman Road SW, Olympia WA 98512  
Room Numbers: 107, 108, 109, 110, and 111.

(b) Approximate floor area of Premises: 2,450 Square Feet excluding Common Area

(c) The term of this Lease shall be five (5) years and shall commence on (Commencement Date) and end on \_\_\_\_\_, inclusive. Any amendments to the contract must be made by mutual written consent of Parties.

(d) The Lease amount for the first two (2) years shall be Sixty-One Thousand Two Hundred Ninety-Nine Dollars and no cents (\$61,299.00) annually, payable in monthly installments. Beginning September 15, 2025, and in each successive year, the annual Lease amount shall be Increased by the Seattle-Tacoma-Bellevue Consumer Price Index (CPI-W, 1982-84=100, Half 1), but in no case by an amount greater than three percent (3%) per year.

(e) Uses permitted on Premises:

Lessee shall operate an office including administrative and managerial activities, consultant and client meetings, document, equipment, and material storage, staff dining, and limited public presentations, networking and business events.

(f) Attached hereto, *Exhibit A: Memorandum of Lease between the City of Tumwater, Water Resources and Sustainability /South Puget Sound Community College Regarding Leasing of Building 32 Facility*, is hereby incorporated into this Lease and made a part hereof. In the case of conflict between Exhibit A and the terms of this Lease, this Lease shall take precedence.

### 2. PREMISES

Lessor hereby Leases to Lessee, and Lessee hereby leases from Lessor, upon the terms and conditions hereinafter set forth, those certain Premises, described in Article 1 (a) and (b) and shown outlined on the standard floor plan attached hereto marked Exhibit "B" and made a part hereof, in that certain Building to be known as SPSCC Mottman Campus Building 32, situated in the City of Olympia, County of Thurston, State of Washington, located at 2011 Mottman Road SW, hereinafter referred to as the "Building" and located on the following real property:

**Mottman Campus parcel description:** Parcel Number 12828110500

**Abbreviated Legal Description:** Section 28 / 27 Township 18 Range 2W Quarter NE / NW LYING WLY OF THE C/L OF PERCIVAL CREEK AND LYING ELY OF A LINE DESCRIBED AS: BAP ON THE N LINE OF SD SUBDIVISION 88-33-37E 800FT FROM NW COR,

**Full Legal Description:** Section 28 / 27 Township 18 Range 2W Quarter NE / NW LYING WLY OF THE C/L OF PERCIVAL CREEK AND LYING ELY OF A LINE DESCRIBED AS: BAP ON THE N LINE OF SD SUBDIVISION 88-33-37E 800FT FROM NW COR, THENCE S01-26-23W TO S LINE OF SD SUBDIVISION EXCEPTING PTN OF SD NE LYING NLY OF THE SLY LINE OF PLAT OF PERCIVAL CREEK DIV 1 AND SLY OF THE NLY LINE OF PLAT OF SOMERSET HILL, Parcels involved in project to administratively combine parcels for appraisal purposes ALSO for appraisal purposes only 28-18-2W NE4 Plat SECOND CAPITOL ADDITION TO OLYMPIA GLA090016OL PTN TR A Document 4092906 LYING IN OLYMPIA TCA, OTHER PTN TR A 73406100100 LYING IN TUMWATER TCA and for appraisal purposes only 27-18-2W NW4 Plat SECOND ADDITION TO OLYMPIA BLDG G Document 2408/0866 LESS CROSBY BLVD ROW3228527

### 3. USE

Premises may be used and occupied only for the purpose set forth in Article 1 (e) and for no other purpose or purposes without the written consent of Lessor. No use shall be made of Premises, no act done in or about Premises, which is illegal, unlawful, or which will increase the existing rate of insurance upon Building. Lessee shall not commit or allow to be committed any waste upon Premises, or any public or private nuisance or other act or thing which disturbs the quiet enjoyment of any other Lessee in Building, nor shall Lessee, without the written consent of Lessor, use any apparatus, machinery, or device in or about Premises which shall cause any substantial noise or vibration. If any of Lessee's office machines and equipment (other than normal small office equipment such as office equipment, computers, printers, and the like) should disturb the quiet enjoyment of any other occupants in Building, then Lessee shall provide adequate insulation, or take such other action as may be necessary to eliminate the disturbance. Lessee shall observe such reasonable rules and regulations as may be adopted and published by Lessor for the safety, care and cleanliness of Premises or Building and the preservation of good order therein. Lessee shall be entitled to the same right of quiet enjoyment from other occupants of the Building. Normal accessible Building hours are 7:00 a.m. to 10:00 p.m., Monday through Friday, with access on weekends as needed.

Lessor shall make available such areas and facilities for the common use of all tenants of the Building including lobbies, restrooms, parking areas, driveways, loading areas, access and egress, and walkways. Lessee and its employees, agents and invitees shall have the non-exclusive right to use the Common Areas as it pertains to the first floor as indicated in Exhibit B subject to reasonable rules and regulations of the Lessor.

Lessor represents that:

Lessor has authority to execute this Lease;

Lessor has title to the Premises free and clear of any encumbrances, liens or mortgages, except those encumbrances, liens and mortgages and matters of record, and these and any other matters disclosed and/or otherwise apparent to Lessee;

There is legal ingress and egress to the Premises from a public right of way; and Execution and performance of this Lease will not violate any laws or agreements binding the Lessor.

Lessor covenants and agrees with Lessee that upon Lessee paying the rent agreed and observing and performing all the terms, covenants and conditions of the Lease, Lessee may peacefully and quietly enjoy the Premises.

#### 4. TERM

The term of this Lease shall be five (5) years and shall commence on (Commencement Date) and end on \_\_\_\_\_, inclusive. This Lease may be terminated by either party at any time with six months written notice. Additional provisions within this lease identify specific circumstances in which the lease may be Terminated.

Option or options to extend this Lease for any additional terms after the initial term shall be by mutual written agreement of the parties. The Lessee will give written notice to the Lessor at least three months before the end of the Lease Term if Lessee wants to extend the lease. It is the intention that renewals will be negotiated.

#### 5. RENT

Lessee shall pay Lessor the monthly rental which is set forth in Article 1 (d) in United States currency of the present standard of value in advance of the first (1st) working day of each calendar month during said term, at the office of Lessor in Building or at such other place as Lessor may from time to time designate in writing. The installment of rent payable for any portion, less than all, of a calendar month shall be a pro rata portion of the installment payable for a full calendar month. Late rent penalty of five percent (5%) of the monthly rent shall be immediately due for any rent paid later than the fifth (5th) of any month.

The monthly rental rate shall include water, sewer, stormwater, natural gas and electric utilities, garbage and recycling collection, and janitorial services. Lessee shall timely pay directly for telephone and cable services.

#### 6. SECURITY DEPOSIT

No security deposit shall be required.

#### 7. SERVICES

Lessor, at its sole cost, shall provide the services described in Exhibit "C" attached.

Lessor shall not be liable for damages, nor shall the rental herein reserved be abated for failure to furnish or delay in furnishing any of the foregoing services, when such failure or delay is caused by accident or conditions beyond the control of Lessor, or by labor disturbances or labor disputes of any character, or by inability to secure fuel, supplies, machinery, equipment or labor after reasonable efforts to do so, or by the making of necessary repairs or improvements to Premises or to Building. Nor shall a temporary failure of not more than 30-days to furnish any of such services because of an inability to secure labor or other means to provide such services be construed as an eviction of Lessee or relieve Lessee from the duty of observing and performing any of the provisions of this Lease.

## 8. REPAIRS AND ALTERATIONS

Lessee agrees by taking possession of Premises that Premises are then in a tenantable and good condition; that Lessee will take good care of Premises, and that Premises will not be altered or changed without the written consent of Lessor. Lessor specifically authorizes:

Lessee will complete tenant improvement activities, which include (but not limited to) internal remodel from two classrooms into an open space concept for 10 work stations and meeting space, construction of two walled offices, new carpet and paint, and other electrical, plumbing, or other work necessary to support the office spaces.

All damage or injury done to Premises by Lessee shall be paid for by Lessee and Lessee shall pay for all damage to the Building caused by Lessee's misuse to Premises or the appurtenances thereto. All repairs to Premises necessary to maintain Premises in a tenantable and good condition shall be done by or under the direction of Lessor and at Lessor's expense except as otherwise specifically provided herein. Lessee shall be responsible for the expense of repair and replacement to Lessee's installed equipment and improvements. Lessee shall pay for the replacement and maintenance of doors or windows of Premises which are cracked or broken by Lessee, its employees, agents or invitees. Lessee shall not make changes to locks on doors or add, disturb or in any way change any plumbing or wiring without first obtaining written consent of Lessor. Lessee shall not put any curtains, draperies or other hangings other than those coordinated with the Lessor on or beside the windows in Premises. Lessor may make any alterations or improvements which Lessor may deem necessary for the preservation, safety or improvements of the Premises except fixtures installed by Lessee and which are removable without damage to Building. Access to the Building for said work shall be coordinated between the Parties except for life safety and emergency conditions which require immediate attention. Lessee shall, at the termination of this Lease by the expiration of time or otherwise, surrender and deliver Premises to Lessor in as good condition as when received by Lessee from Lessor, reasonable use and wear and damage by fire or other casualty excepted.

## 9. ENTRY AND INSPECTION

Upon advance notice, Lessee will permit Lessor and its agents to enter into and upon Premises at all reasonable times for the purpose of inspecting the same or for the purpose of cleaning, repairing, altering or improving Premises or Building. When reasonably and actually necessary for such purposes, and in coordination with the Lessee, Lessor may temporarily close entrances, doors, corridors, elevators or other facilities without liability to Lessee by reason of such closure and without such action by Lessor being construed as an eviction of Lessee or relieve the Lessee from the duty of observing and performing any of the provisions of this Lease. Lessor shall have the right to enter Premises upon notice to Lessee during the hours of typical office use for the purpose of showing Premises to prospective Lessees for a period of ninety (90) days prior to the expiration of the Lease term.

## 10. DAMAGE OR DESTRUCTION

If Premises or Building are damaged by fire or other casualty which was not caused by the Lessee or the officers, equipment, contractors, licensees, agents, servants, employees, guests, invitees, or visitors of the Lessee, the damage shall be repaired by and at the expense of Lessor, provided such repairs can be made within sixty (60) days after the occurrence of such damage without the payment of overtime or other premiums. Until such repairs are completed, the rent shall be abated in proportion to the part of Premises which is unusable by Lessee in the conduct of its business (but there shall be no abatement of rent by reason of any portion of Premises being unusable for a period

equal to one day or less). If such repairs cannot be made within sixty (60) days, then either party may, by written notice to the other, cancel this Lease. A total destruction of Building shall automatically terminate this Lease. Rent shall not be abated if fire or other casualty was caused by the Lessee, or the officers, equipment, contractors, licensees, agents, servants, employees, guests, invitees, or visitors of Lessee.

#### 11. ADVERTISING

Lessor shall have the right to prohibit any advertising by Lessee which, in its opinion, tends to impair the reputation of the Building as a first class business or professional area.

#### 12. SIGNS

Lessee will not inscribe, any inscription or post, place, or in any manner display any permanent exterior sign anywhere in or about the Leased Premises of Building, without first obtaining Lessor's written consent thereto. Lessee shall be responsible for the maintenance of all exterior signage to satisfaction of Lessor.

#### 13. ACCIDENTS, INDEMNITY AND WAIVER OF SUBROGATION

Lessee shall defend, ~~and~~ indemnify, and hold harmless Lessor (including authorized agents and employees) from and against any and all liability, damages, costs, or expenses, including reasonable attorneys' fees and costs, rising from any act, omission, or sole negligence of Lessee, or the officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors of Lessee in or about the Premises, or arising from any accident, injury, or damage, howsoever and by whomsoever caused, to any person or property, occurring in or about the Premises, provided that the foregoing provision shall not be construed to make Lessee responsible for loss, damage, liability or expense resulting from injuries to third Parties caused by the negligence of Lessor (including authorized agents and employees).

Lessee and Lessor each hereby waive any right of recovery or subrogation against the other due to loss of or damage to the real or personal property of either party, and any business interruption loss or rental loss, when such loss or damage arises out of the Acts of God or any of the property perils whether or not such perils have been insured, self-insured or non-insured against.

#### 14. INSURANCE

Lessee, at its sole expense, shall procure and maintain in full force and effect. Commercial general liability coverage in responsible companies qualified to do business in the State of Washington, which shall insure Lessee and his agents and employees against all claims for injuries or death to persons occurring in or about the leased Premises in the amount of at least \$2,000,000 for any one person and in the amount of \$2,000,000 for any one occurrence, and against all claims for damages to loss of property occurring in or about the leased Premises in the amount of \$2,000,000 or such other amounts as Lessor shall deem necessary, based on periodic insurance reviews, in respect to injury or damage to persons or property.

Lessee agrees to furnish Lessor with policies or certificates of such insurance naming Lessor as an additional insured prior to the commencement of the term hereof. Each such policy shall be non-cancelable without at least thirty (30) days written notice to Lessor. At Lessee's option Lessee may



elect to self-insure under the same terms as set forth above. Lessee shall maintain any Worker's Compensation insurance as required by the state of Washington.

Lessee covenants and agrees that it will not do or permit anything to be done on the leased Premises during the term hereof, which will increase the risk of damage to the Building which the leased Premises form a part.

Lessor employees, officers, and agents are protected against claims based on their negligence while acting as agents of the state and/or South Puget Sound Community College. This protection is provided by the State of Washington Self-Insurance Program and the Tort Claims Act (RCW 4.92.070). Claims or judgments against the state, its employees, and/or its agents will be paid from the Revolving Trust Fund as provided in RCW 4.92.130.

#### 15. LIENS AND INSOLVENCY

Lessee shall keep Premises and Building free from any liens or encumbrances arising out of any work performed by Lessee, materials furnished by Lessee, or obligations incurred by Lessee.

#### 16. DEFAULT AND RE-ENTRY

If Lessee fails to pay any installment of rent within ten (10) days after written notice, or to perform any other covenant under this Lease within thirty (30) days after written notice from Lessor stating the nature of the default, Lessor may cancel this Lease and re-enter and take possession of Premises using all necessary force to do so; provided, however, that if the nature of such default other than for non-payment of rent is such that the same cannot reasonably be cured within such thirty-day period, Lessee shall not be deemed to be in default if Lessee shall within such period commence such cure and thereafter diligently prosecute the same to completion. Notwithstanding such re-entry by Lessor, the liability of Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee covenants and agrees to make good to the Lessor any deficiency arising from a re-entry and reletting of the Premises at a lesser rental than agreed to herein. Lessee shall pay such deficiency each month as the amount thereof is ascertained by Lessor.

In the event of any such retaking of possession of Premises by Lessor as herein provided, Lessee shall remove all personal property located thereon and, upon failure to do so upon demand of Lessor, Lessor may reasonably remove and store the same in any place selected by Lessor, including but not limited to a public warehouse, at the expense and risk of Lessee. If Lessee shall fail to pay any sums due hereunder or the cost of storing any such property after it has been stored for a period of thirty (30) days or more, after ten (10) days notice to the Lessee, Lessor may sell any or all of such property at public or private sale and shall apply the proceeds of such sale first to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money which may be due from Lessee to Lessor under the terms of this Lease, and the balance, if any, to Lessee. Lessee hereby waives all claims for damages that may be caused by Lessor's lawfully re-entering and taking possession of Premises or lawfully removing and storing the property of Lessee as herein provided, and will save Lessor harmless from loss, costs or damages occasioned Lessor thereby, and no such lawful re-entry shall be considered or construed to be a forcible entry.

#### 17. SURRENDER OF POSSESSION

Upon expiration of the term of this Lease, whether by lapse of time or otherwise, Lessee shall promptly and peacefully surrender Premises to Lessor.

## 18. COSTS, ATTORNEYS' FEES AND VENUE

If Lessee or Lessor shall bring any action or proceeding for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Lessor for the recovery of rent or possession of Premises, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in the action or proceeding. Venue for any proceeding involving this agreement shall be in Thurston County, Washington.

## 19. NON-WAIVER

Waiver by Lessor or Lessee of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

## 20. ASSIGNMENT AND SUBLETTING

Lessee shall not assign this Lease or sublet Premises or any part thereof without first obtaining Lessor's written consent, which consent shall not be unreasonably withheld. Lessee shall remain liable for the payment of all sums agreed to be paid under the terms of this Lease despite any such assignment. However, if at the time of any such assignment Lessee establishes to the reasonable satisfaction of Lessor that its assignee is of financial responsibility equal to or superior to Lessee, Lessee shall be released from all such liability by an instrument in writing signed by Lessor. Consent to any such assignment or subletting shall not operate as a waiver of the necessity for a consent to any subsequent assignment or subletting, and the terms of such consent shall be binding upon any person holding by, under or through Lessee. In the event of an assignment or subletting which requires Lessor's time and/or expense, Lessee shall reasonably compensate Lessor for such expenses. If Lessee is a corporation, then any transfer of this Lease by merger, consolidation or liquidation or any change in the ownership of, or power to vote, the majority of its outstanding voting stock shall constitute an assignment for the purposes of this article.

## 21. SUCCESSORS

All of the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Lessor and Lessee and their respective heirs, executors, administrators, successors and assigns.

## 22. TAX ON RENTAL

If any governmental authority or unit under any present or future law effective at any time during the term of this Lease shall in any manner levy a tax on rentals payable under this Lease or on rentals accruing from use of Premises under this Lease or a tax in any form against Lessor because of or measured by income derived from the Lease or rental of Premises, the amount of the next succeeding month's rent following payment of such tax by Lessor shall be increased by an amount equal to such tax paid by Lessor, and for Lessee's default in paying the rent thus revised, Lessor shall have the same remedies as upon failure to pay rent. Lessee shall not be liable to pay any amount because of income

tax of a general nature applicable to Lessor's various interests or sources of income or tax imposed on Lessor for inheritance, gift or succession taxes imposed or measured by rentals or otherwise. In the event that it shall not be lawful for Lessee to pay such tax, the rent payable to Lessor under this Lease shall be revised to net Lessor the same net rental after imposition of any such tax as would have been payable to Lessor prior to the imposition of any such tax.

### 23. SUBORDINATION

So long as Lessor has fully performed under the terms of this Lease, Lessee agrees to execute, within ten (10) days of written request by Lessor, the state's standard Tenant Estoppel and Subordination Agreements which have been approved as to form by the Office of the Attorney General. A \$400.00 processing fee will be assessed for processing these documents.

### 24. CONDEMNATION

If the whole of Premises, or if such portion of either Premises or the facilities in Building as may be required for the reasonable use of Premises, shall be taken by virtue of any condemnation or eminent domain proceeding, this lease shall automatically terminate as of the date of such condemnation, or as of the date possession is taken by the condemning authority, whichever is earlier. Current rent and payments for Lessee's improvements shall be apportioned as of the date of such termination. In case of a taking of a part of Premises or a portion of the facilities in Building not required for the reasonable use of Premises, then this Lease shall continue in full force and effect and the rental shall be equitably reduced based on the proportion by which the rentable area of Premises is reduced, such rent reduction to be effective on the date of such partial taking. No award for any partial or entire taking shall be apportioned, and Lessee hereby assigns to Lessor any award which may be made in such taking or condemnation together with any and all rights of Lessee now or hereafter arising in or to the same or any part thereof, provided, however, that nothing herein shall be deemed to give Lessor any interest in or to require Lessee to assign to Lessor any award made to Lessee for the taking of personal property or fixtures belonging to Lessee, for the interruption of or damage to Lessee's business or for Lessee's moving expenses.

### 25. PARKING

Lessor shall provide Lessee access to regular college parking spaces for its fleet vehicles until the termination of this Lease. A minimum of six (6) parking spaces shall be reserved and available for Lessee's fleet vehicles 24-hours per day, seven days per week. General parking is available for Lessee's employees on a first come, first served basis during periods of typical office use from 7:00 a.m. through 10:00 p.m., Monday through Friday.

Fleet vehicles (currently 3) shall have dedicated parking spots with appropriate signage, and the Parties will cooperate to acquire and construct electric vehicle charging facilities in the parking area.

Lessee agrees to support and coordinate with Lessor to the extent practical to seek funding packages to advance electric vehicle charging stations in support of both Lessor and Lessee needs. Any applications or agreements pursuant to this section are required to be considered through the routine administrative processes for each organization.

## 26. NOTICES

All notices under this Lease shall be in writing and delivered in person or sent by registered or certified mail to at the address below, or to such other place as may be designated by either party in writing.

Lessor:	Lessee:
South Puget Sound Community College	City of Tumwater
Tysha Tolefree	Dan Smith
Vice President of Finance and Operations	Water Resources & Sustainability Director
2011 Mottman Road SW	555 Israel Road SW
Olympia, WA 98512	Tumwater, WA 98501

## 27. CONSTRUCTION

The titles to paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part thereof. This Lease shall be construed and governed by the laws of the State of Washington.

## 28. TIME OF ESSENCE

Time is of the essence of this Lease.

## 29. RECORDING

Prior to entry into force, the Memorandum of Lease attached hereto as Exhibit A shall be filed with the Thurston County Auditor's Office.

30. The Parties respectively represent that their signatory is dully authorized and has full right, power, and authority to execute this Lease.

## 31. ENTIRE AGREEMENT

It is expressly understood and agreed by Lessor and Lessee that there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein set forth and that this Lease shall not be modified in any manner except by an instrument in writing and executed by the Parties.

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

WHEREAS, Lessor and Lessee have executed this Lease.

Lessor:

South Puget Sound Community College

Lessee:

City of Tumwater

\_\_\_\_\_  
Tysha Tolefree

Vice President of Finance and Operations

Date signed: \_\_\_\_\_

\_\_\_\_\_  
Debbie Sullivan

Mayor

Date signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Melody Valiant, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Kirkpatrick, City Attorney

State of Washington     )

) ss

County of \_\_\_\_\_)

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 \_\_\_\_\_.

State of Washington     )

) ss

County of \_\_\_\_\_)

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 \_\_\_\_\_.

**EXHIBIT "A"****MEMORANDUM OF LEASE****CITY OF TUMWATER /SOUTH PUGET SOUND COMMUNITY COLLEGE REGARDING LEASING  
OF BUILDING 32 FACILITY**

This Memorandum of Lease is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the City of Tumwater, a municipal corporation (hereinafter referred to as "CITY"), located at 555 Israel Rd SW, Tumwater, WA 98501, and South Puget Sound Community College, (hereinafter referred to as "SPSCC"), located at \_\_\_\_\_, together referred to as the "Parties".

**This memorandum is summarized as follows:**

1. City and SPSCC entered into a Lease Agreement for office space as detailed in the Lease Agreement which provisions are incorporated by reference herein with an effective date of \_\_\_\_\_.
2. SPSCC is the owner of the PREMISES legally described in Exhibit A.
3. SPSCC has leased to CITY and City has leased from SPSCC approximately 2,450 square-feet of the PREMISES for a term of five (5) years, commencing on the Commencement Date as defined by the Lease Agreement. The City shall have the right to extend the term of the Agreement by an additional term of five (5) years. If all options to renew are exercised, the Lease Agreement will have a term of ten (10) years from the Commencement Date.
4. SPSCC and City possess duplicate copies of the originals of the Lease Agreement at the addresses set forth above and reference should be made thereto for a more detailed description thereof.
5. It is expressly understood and agreed by all Parties that the sole purpose of this Memorandum is to give record notice of the Lease Agreement; it being distinctly understood and agreed that the Lease Agreement constitutes the entire agreement between the Parties with respect to the Premises and is hereby incorporated by reference. The Lease Agreement contains and sets forth additional rights, terms, conditions, and obligations not enumerated within this Memorandum which govern the Lease Agreement. This Memorandum is for information purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease Agreement. In the event of any inconsistency between the terms of the Lease Agreement and this Memorandum, the terms of the Lease Agreement shall control. The rights and obligations set forth in the Lease Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors, and assigns.
6. The Parties mutually agree to defend, indemnify and hold the other, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including reasonable attorney fees, to the extent caused by each entity's respective negligence in performance of its responsibilities under this Agreement.
7. Prior to entry into force, this Agreement shall be filed with the Thurston County Auditor's Office.



8. This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The Parties hereby agree that venue for enforcement of the Agreement shall be the Superior Court of Thurston County.

**IN WITNESS THEREOF**, the Parties hereto have entered into this Memorandum of Understanding this \_\_\_\_ day of \_\_\_\_\_, 2023.

City of Tumwater

South Puget Sound Community College

\_\_\_\_\_  
Debbie Sullivan

Mayor

Date signed:

\_\_\_\_\_  
Tysha Tolefree

Vice President of Finance and Operations

Date signed:

ATTEST:

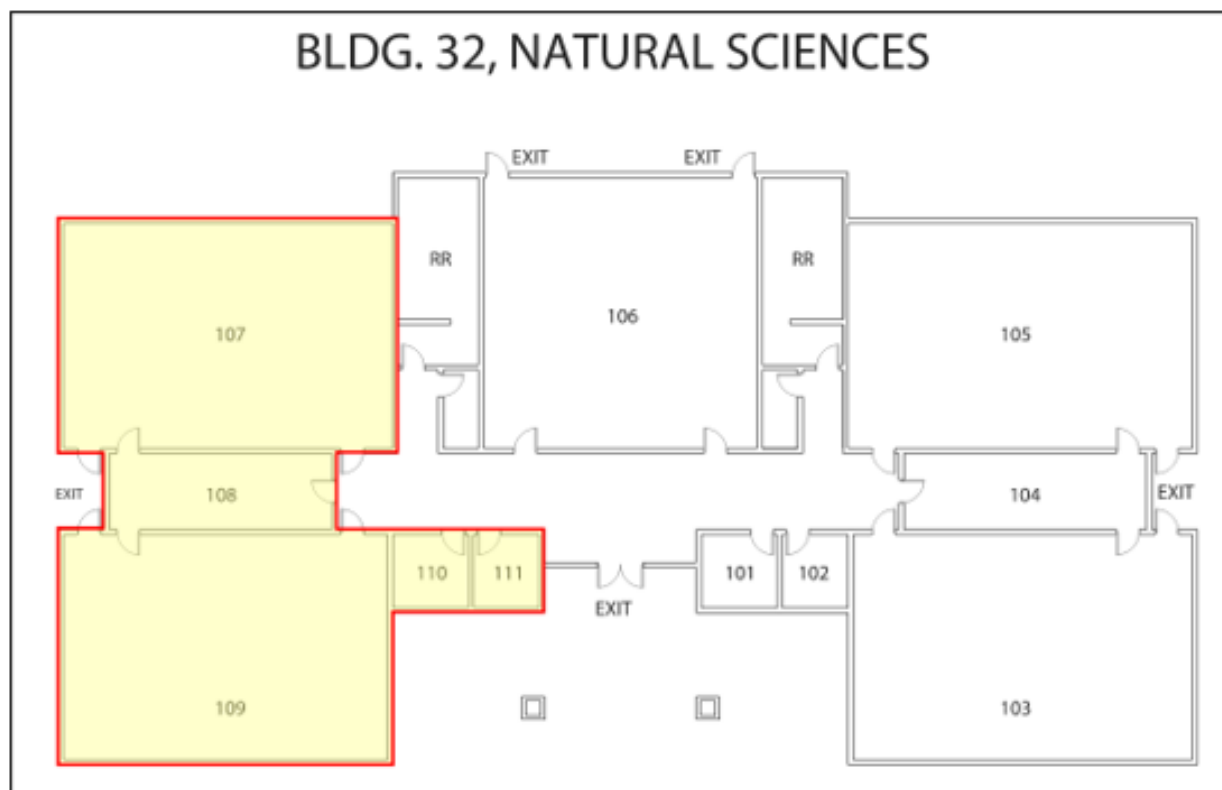
\_\_\_\_\_  
Melody Valiant, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Kirkpatrick, City Attorney

**EXHIBIT "B"****LEASE AREA FLOOR PLAN****Building 32 (Space allocations)**

Room	Square Ft	Capacity	Used By	Function
107	1,000		City of Tumwater	Offices/work room
108	250		City of Tumwater	Storage/break room
109	1,000		City of Tumwater	Offices
110	100		City of Tumwater	Meeting
111	100		City of Tumwater	Meeting
<b>Total</b>	<b>2,450</b>		City of Tumwater	Various



FIRST FLOOR AREAS  
CITY OF TUMWATER LEASE AREA

**EXHIBIT "C"**

**SERVICES TO BE PROVIDED - LEASE AGREEMENT BETWEEN  
SOUTH PUGET SOUND COMMUNITY COLLEGE AND THE CITY OF TUMWATER**

**TAXES AND INSURANCE**

Lessor	Lessee	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Real Estate Taxes
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Owner Property Assessments
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Real Property Insurance
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Personal Property Insurance

**UTILITIES**

Lessor	Lessee	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Water and Sewer
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stormwater
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Garbage Collection
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Electricity
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Natural Gas
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Recycling Collection
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Telephone Service – <i>paid directly by tenant</i>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cable Service – <i>paid directly by the tenant</i>

**JANITORIAL**

Lessor	Lessee	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Janitorial Service –Lessee Premises
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Janitorial Service – Common Areas
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Interior Window Washing
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exterior Window Washing

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Restroom Supplies
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Light Bulbs – Lessee Premises
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Light Bulbs – Common Areas
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Carpet Cleaning – Lessee Premises

### Services provided by Lessor:

**Daily.** Empty trash receptacles. Sweep entrances, lobbies, and corridors. Spot sweep floors, and spot vacuum carpets. Clean drinking fountains. Sweep and damp mop or scrub restrooms. Clean all restroom fixtures, and replenish restroom supplies. Dispose of all trash and garbage generated in or about the Building. Wash inside and out or steam clean cans used for collection of food remnants from snack bars and vending machines. Dust horizontal surfaces that are readily available and visibly require dusting. Spray buff resilient floors in main corridors, entrances, and lobbies. Clean elevators and escalators. Remove carpet stains. Police sidewalks, parking areas, and driveways.

Sweep loading dock areas and platforms. Clean glass entry doors to the spaces identified in Exhibit B.

**Every two weeks.** Spray buff resilient floors in secondary corridors, entrance, and lobbies. Damp mop and spray buff hard and resilient floors in office space.

**Monthly.** Thoroughly dust furniture. Completely sweep and/or vacuum carpets. Sweep storage space. Spot-clean all wall surfaces within 70 inches of the floor.

**Every two months.** Damp wipe restroom wastepaper receptacles, stall partitions, doors, window sills, and frames.

**Annually.** Vacuum or dust all surfaces in the Building more than 70 inches from the floor, including light fixtures. Vacuum all draperies in place. Strip and refinish floors in offices and secondary lobbies and corridors. Shampoo carpets in corridors and lobbies. Clean balconies, ledges, courts, areaways, and flat roofs.

Wash all interior and exterior windows and other glass surfaces. Strip and apply four coats or finish to resilient floors in restrooms. Strip and refinish main corridors and other heavy traffic areas. Deep clean floors in all offices.

**As required.** Properly maintain plants and lawns. Provide initial supply, installation, and replacement of light bulbs, tubes, ballasts, and starters. Provide and empty exterior ash cans and clean area of any discarded cigarette butts.

Pest control. Control pests as appropriate, using Integrated Pest Management techniques, as specified in the GSA Environmental Management Integrated Pest Management Technique Guide.

**INTERIOR MAINTENANCE**

Lessor    Lessee

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Equipment and Business Property Maintenance - fire extinguishers, annunciators and Building structure            |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Equipment and Business Property Maintenance - office equipment, portable equipment, and other Lessee owned items |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Interior Lights – Lessee Premises  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Interior Lights – Common Areas   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Replacement of Ballasts – Lessee Premises  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Replacement of Ballasts – Common Areas   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Repair of Floor Coverings  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Repair of Window Coverings   |

**STRUCTURAL**

Lessor    Lessee

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Plumbing   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Ventilating & Air Conditioning Systems   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Replacement of Filters as Recommended in Equipment   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Tenant Installed Improvements  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | All Structural Portions of Building Including the roof and the water light integrity of the same |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Exterior Windows   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Fire Extinguishers<br>(Maintenance/Repairs/Replacement/Furnishes)                                |

**EXTERIOR MAINTENANCE**

Lessor	Lessee	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sidewalks
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exterior
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lighting
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Remove Snow from Sidewalk(s) & Parking Lot(s) when accumulation exceeds 2"
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Parking Lot Cleaning
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Landscaping

Landscape maintenance shall be performed during the growing season at not less than a weekly cycle and shall consist of watering, weeding, mowing, and policing the area to keep free of debris. Pruning and fertilization shall be done on an as-needed basis. In addition, dead, dying, or damaged plants shall be replaced.