



# INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**  
 FROM: **Hari Ponnekanti, Public Works Director/ City Engineer**  
 BY: **Mike Perfetti, Habitat Project Manager**  
 CC: **Mayor Ekberg**  
 DATE: **August 20, 2021**  
 SUBJECT: **Surface Water Fund - Riverton Creek Flapgate Removal Project**  
**Project Number 99830103**  
**Maintenance Agreement Authorization with WSDOT**

## ISSUE

Approve a 10-year maintenance agreement with the Washington State Department of Transportation (WSDOT) for the Riverton Creek Flapgate Removal Project.

## BACKGROUND

The City’s Riverton Creek Flapgate Removal Project, which is due to be completed in the fall of 2021, is being executed in accordance with a local agency construction agreement between the City and WSDOT since part of the area lies within WSDOT right of way (ROW). In the early months of 2021, plants were installed to restore vegetation at the project site. Actively managing the restored vegetation during the plant establishment period is critical to ensuring that the restoration is successful, our investments are protected, and grantee obligations are met.

## DISCUSSION

Approximately two acres of native plant restoration are within WSDOT ROW. As part of the grant agreement with the State Recreation and Conservation Office (RCO) and the Salmon Recovery Funding Board (SRFB), the City has an on-going obligation to maintain the restoration project for a minimum of ten (10) years.

## FISCAL IMPACT

Over a period of 10 years, maintenance costs are expected to be professionally contracted for a total of approximately \$100,000-\$150,000 over the life of the agreement. The overall project budget is sufficient to fund the additional maintenance costs. Grant funding opportunities to cover maintenance expenses will also be examined. By way of example, the City has been awarded grant funding for the last two years of plant maintenance at the Green the Green pilot CIP project through WRIA 9’s *Regreen the Green* grant program.

	<u>Project Expenses</u>	<u>Budget</u>
Encumbered Expenses	\$ 2,428,891.16	
Maintenance	150,000.00	
Utility Revenue		1,083,000.00
Funding from 205 Levee Certification		336,699.86
Awarded Grants (CWM, Opp, RCO)		<u>1,166,965.00</u>
Total	<u>\$ 2,578,891.16</u>	<u>\$2,586,664.86</u>

## RECOMMENDATION

Council is being asked to approve a 10-year maintenance agreement with WSODT and consider this item on the Consent Agenda at the September 13, 2021, Special Council Meeting.

**Attachments:** Maintenance Agreement between the City of Tukwila and WSDOT  
Riverton Creek – SR 599/SR 99 Vicinity Map  
2021 CIP, Page 90

**Maintenance Agreement between  
The City of Tukwila  
and the  
Washington State Department of Transportation (GMB 1201)  
Riverton Creek - SR 599/SR 99 Vicinity**

This Agreement is made and entered into between the Washington State Department of Transportation, hereinafter “WSDOT,” and the City of Tukwila, Washington, hereinafter the “City,” collectively the “Parties” and individually the “Party.”

**RECITALS**

1. The City is constructing the Riverton Creek Flapgate Removal Project, hereinafter the “Project,” which includes, but is not limited to, the removal of culverts and flapgates at the confluence of Riverton Creek and the Duwamish River, fish habitat improvements, planting, and associated roadway improvements.
2. Some Project construction is taking place in WSDOT limited access right of way pursuant to the terms of GCB 3352, including Amendment No. 1. The City agrees it is responsible for the maintenance of roadway shoulder restoration landscaping and all Large Woody Debris in the Riverton Creek channel, hereinafter “Landscaping,” in the Maintenance Area shown in Exhibit A.
3. WSDOT and the City wish to define maintenance responsibilities within WSDOT’s right of way jurisdiction.

NOW THEREFORE, pursuant to RCW 47.28.140, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants and performances contained herein, and the attached Exhibit A that is incorporated herein by this reference, **IT IS MUTUALLY AGREED AS FOLLOWS:**

**1. CITY MAINTENANCE RESPONSIBILITIES**

- 1.1 The City, at the City’s sole cost and expense, shall maintain and provide all materials and labor associated with the replacement, repair, and any other incidentals for the Landscaping in the Maintenance Area shown in Exhibit A. The City’s obligations for Landscaping shall include plant replacement as needed and weed control at least once per year.
- 1.2 The City shall ensure the Landscaping is maintained in a safe and operable condition and prevent premature deterioration. The City shall use best management practices developed as part of the Washington State Aquatic Habitat Guidelines Program (available at <https://wdfw.wa.gov/publications/00046>) and best management practices developed by the Washington Invasive Species Council (available at <https://invasivespecies.wa.gov>).
- 1.3 In performing any work covered by this Agreement, the City shall comply with all federal and state nondiscrimination laws, regulations and policies.
- 1.4 Modification, Replacement or Relocation of the Landscaping:
  - 1.4.1 If the City, in its sole discretion, determines that it is necessary to replace or modify the Landscaping, the replacement or modification shall require prior written approval of WSDOT.
  - 1.4.2 The City agrees to relocate and/or remove the Landscaping within thirty (30) calendar days of receipt of WSDOT’s written notice to perform such work in the event a state highway project

requires removal or relocation. If the City does not relocate or remove the Landscaping, the Landscaping shall be removed by WSDOT, and the City agrees to pay WSDOT the actual direct and related indirect costs in accordance with Section 2.5.

## 1.5 Traffic Control

- 1.5.1 The City shall not perform any work authorized under this Agreement in such a manner as to conflict with, impede or disrupt in any way state highway construction, operation or maintenance, or interfere with or endanger the safety of the traveling public. If it is likely that the City's work shall conflict with, impede or disrupt in any way state highway construction, operation or maintenance, or interfere with or endanger the safety of the travelling public, then the City shall submit traffic control plans to the WSDOT Construction Traffic Control Operations Manager for the Northwest Region, for review and approval prior to the start of the City's work. WSDOT shall review and approve, modify, or reject the City's traffic control plans within fifteen (15) business days after receipt of the plans. If WSDOT rejects the plans, WSDOT shall work cooperatively with the City to develop acceptable plans.
- 1.5.2 The City agrees that all traffic control for any work authorized pursuant to Section 1.5.1 shall be in compliance with the Manual on Uniform Traffic Control Devices (MUTCD).

## 1.6 Third Party Damage

- 1.6.1 The City shall be responsible for repairing all third-party damage to the Landscaping at the City's expense.
- 1.6.2 If WSDOT has information concerning third party damage to the Landscaping it shall provide the information to the City as soon as practicable after receipt of request for records from the City.

## 2. **DEFICIENT MAINTENANCE**

- 2.1 In the event the City does not perform the work identified in Section 1, WSDOT reserves the right to perform the necessary work to the extent necessary for the safe operation and maintenance of WSDOT right of way. Should WSDOT perform such work, the City agrees to pay WSDOT the actual direct and related indirect costs in accordance with Section 2.5.
- 2.2 Should the City fail to perform its maintenance responsibilities which do not directly impact the construction, operation and maintenance of WSDOT right of way, or adversely affect the safety of the traveling public pursuant to this Agreement, WSDOT shall provide written notification to the City to perform the work to cure the identified deficiencies within thirty (30) calendar days after receipt of said notification.
- 2.3 If, in the case of a deficiency that the City cannot with due diligence cure within a period of thirty (30) calendar days, the City shall request in writing for the approval of a time extension to remedy those deficiencies. After approval, the City shall proceed in good faith cure the deficiency as agreed.
- 2.4 WSDOT may perform or begin planning for the needed work at the end of the thirty (30) calendar day notice period. Should WSDOT perform such work, the City agrees to pay WSDOT the actual direct and related indirect costs in accordance with Section 2.5.
- 2.5 The City shall reimburse WSDOT for the actual direct and related indirect costs of WSDOT's work authorized by this Agreement. Upon receipt of a detailed, itemized invoice from WSDOT, the City shall

make payment within thirty (30) calendar days. All sums due from the City to WSDOT and not paid within thirty (30) calendar days of the date of invoice shall bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater; provided that, if the highest rate allowable by law is less than twelve percent (12%), interest charged hereunder shall not exceed that amount. Interest shall be calculated from the thirty-first calendar day until the date paid. If the City objects to all or any portion of an invoice it shall notify WSDOT within twenty (20) calendar days from the date of receipt and shall pay only that portion of the invoice not in dispute. WSDOT and the City shall make every effort to settle the disputed portion, and if necessary, utilize dispute resolution as provided for in Section 7 of this Agreement. No interest shall be due on any portion of an invoice the City is determined not to owe following settlement between the Parties or completion of dispute resolution process.

**3. EMERGENCY MAINTENANCE**

- 3.1 In the event of an emergency involving the Landscaping that has damaged or is likely to imminently damage WSDOT right of way, the City shall perform emergency maintenance and/or repair to rectify the problem within one (1) working day of notification, email being acceptable, from WSDOT.
- 3.2 If the City is not available to perform the emergency maintenance and/or repair work to address the identified problem, WSDOT reserves the right to perform the emergency work. Such emergency work may be accomplished by WSDOT personnel or its authorized contractor and the City agrees to reimburse WSDOT for its actual direct and related indirect costs in accordance with Section 2.5.

**4. RIGHT OF ENTRY**

- 4.1 WSDOT hereby grants to the City and its authorized agents, contractors, subcontractors, and employees a right of entry upon all WSDOT right of way for the purpose of accomplishing the work authorized by this Agreement, subject to the traffic control provisions of Section 1.5.

**5. PARTY REPRESENTATIVES**

- 5.1 Unless otherwise stated herein, for all communications under this Agreement the Parties designate the following representatives:

<b>City of Tukwila</b>	<b>Washington State Department of Transportation</b>
Hari Ponnekanti Public Works Director City of Tukwila 6300 Southcenter Blvd, Suite 100 Tukwila, WA 98188 (206) 433-0179 <a href="mailto:Hari.Ponnekanti@TukwilaWA.gov">Hari.Ponnekanti@TukwilaWA.gov</a>	Gordon Elley Superintendent Area 5 Maintenance Washington State Dept. of Transportation 10833 Northup Way NE Bellevue, WA 98004 Phone: (425) 739-3730 <a href="mailto:ElleyGK@wsdot.wa.gov">ElleyGK@wsdot.wa.gov</a>

- 5.2 A Party may designate an alternative representative and, in this event, shall notify the other Party in writing, which includes communication by email.

**6. DAMAGE TO PROPERTY**

- 6.1 The City and its authorized agents, contractors, subcontractors, and/or employees shall not damage WSDOT property while performing maintenance, operation and/or repair of the Landscaping. If the City, its authorized agents, contractors, subcontractors and/or employees damages WSDOT property, the City

agrees to be directly responsible to WSDOT for the cost of reasonable repairs; provided that, prior to either the City or WSDOT commencing any such repairs, the Parties shall meet and confer regarding the nature and scope of repairs that are needed and shall allocate responsibility for the work.

- 6.2 WSDOT and its authorized agents, contractors, subcontractors, and/or employees shall not damage City property while performing maintenance, operation and/or repair of the Landscaping. If WSDOT, its authorized agents, contractors, subcontractors, and/or employees damages City property, WSDOT agrees to be directly responsible to the City for the cost of reasonable repairs; provided that, prior to either the City or WSDOT commencing any such repairs, the Parties shall meet and confer regarding the nature and scope of repairs that are needed and shall allocate responsibility for the work.

## 7. GENERAL PROVISIONS

- 7.1 Amendment: This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

- 7.2 Term: The Term of this Agreement shall commence as of the date this Agreement is executed and shall continue for a period of ten (10 years).

- 7.3 Start of Work: The City agrees that its maintenance and/or repair work obligations pursuant to this agreement shall start as soon as there has been construction and acceptance by WSDOT of the Landscaping as defined in GCB 3352.

- 7.4 Termination:

7.4.1 This Agreement may be terminated by the mutual written agreement of the Parties.

7.4.2 This Agreement shall terminate ten (10) years after the date this Agreement is executed.


7.4.3 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

- 7.5 Indemnification and Waiver: Each of the Parties shall protect, defend, indemnify, and hold harmless the other Party and its officers, officials, employees, and/or authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgements, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, that Party's obligations performed or to be performed pursuant to the provisions of this Agreement. No Party shall be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their officers, officials, employees, and/or authorized agents, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the indemnifying Party, its officers, officials, employees, and/or authorized agents. The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees, and/or authorized agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. This indemnification and waiver shall survive the termination of this Agreement.

- 7.6 Disputes: The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process in Sections 7.6.1 through 7.6.4 shall be a prerequisite to the filing of litigation concerning any dispute between the Parties:
- 7.6.1 The Representatives designated in this Agreement shall use their best efforts to resolve disputes and issues arising out of, or related to, this Agreement. The Representatives shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. The Representatives shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.
- 7.6.2 A Party's Representative shall notify the other Party in writing of any dispute or issue that the Representative believes may require formal resolution according to Section 7.6.4. The Representatives shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.
- 7.6.3 In the event the Representatives cannot resolve the dispute or issue, the City's Mayor, and WSDOT's Northwest Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.
- 7.6.4 In the event the City's Mayor and WSDOT's Northwest Region Administrator, or their respective designees, cannot resolve the dispute or issue, the City and WSDOT shall each appoint a member to a dispute board. These two members shall then select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the dispute board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and fees.
- 7.7 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that each shall be solely responsible for payment of its own attorney's fees, witness fees, and costs.
- 7.8 Records and Audit: All records for maintenance, operation and/or repair work done pursuant to this Agreement shall be held and kept available for inspection and audit by WSDOT, the City and the Federal government for a period of six (6) years from the date of termination of this Agreement or any final payment authorized under this Agreement, whichever is later. Each Party shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should a Party require copies of any records from the other Party, the requesting Party agrees to pay the reasonable costs thereof. In the event of litigation or claim arising from the performance of this Agreement, the City and WSDOT agree to maintain the records and accounts until such litigation, appeal or claims are finally resolved. This section shall survive the termination of this Agreement.
- 7.9 Severability: Should any section, term or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected and the same shall continue in full force and effect.
- 7.10 Calendar Day: Calendar day means any day on the calendar including Saturday, Sunday or a legal local, state, or federal holiday.
- 7.11 Working Day: Working day means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

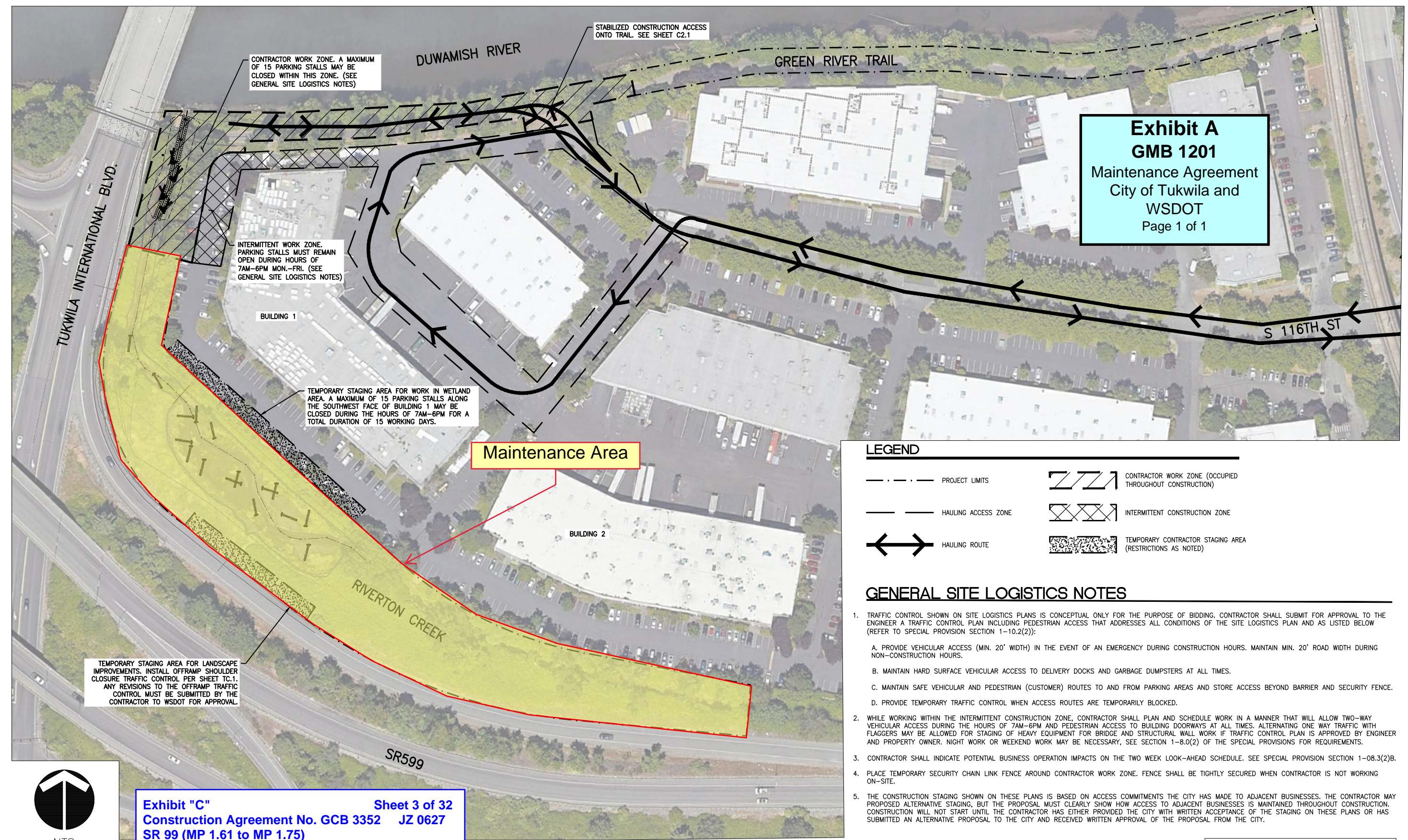
7.12 Independent Contractor: Parties shall be deemed an independent contractor for all purposes, and the employees of each Party or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date last signed below.

<b>City of Tukwila</b>	<b>Washington State Department of Transportation</b>
<u>Sign and Date:</u>	<u>Sign and Date:</u>
Allan Ekberg Mayor	Morgan Balogh Assistant Regional Administrator Maintenance, Northwest Region
<b>Approved as to Form City of Tukwila</b>	<b>Approved as to Form Washington State Department of Transportation</b>
<u>Sign and Date:</u>	<u>Sign and Date:</u>  7/28/21
Name: City Attorney	Name: Assistant Attorney General



**Exhibit A**  
**GMB 1201**  
 Maintenance Agreement  
 City of Tukwila and  
 WSDOT  
 Page 1 of 1



**LEGEND**

- PROJECT LIMITS
- HAULING ACCESS ZONE
- ↔ HAULING ROUTE
- ▨ CONTRACTOR WORK ZONE (OCCUPIED THROUGHOUT CONSTRUCTION)
- ▩ INTERMITTENT CONSTRUCTION ZONE
- ▨ TEMPORARY CONTRACTOR STAGING AREA (RESTRICTIONS AS NOTED)

**GENERAL SITE LOGISTICS NOTES**

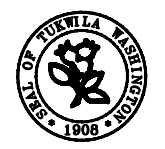
- TRAFFIC CONTROL SHOWN ON SITE LOGISTICS PLANS IS CONCEPTUAL ONLY FOR THE PURPOSE OF BIDDING. CONTRACTOR SHALL SUBMIT FOR APPROVAL TO THE ENGINEER A TRAFFIC CONTROL PLAN INCLUDING PEDESTRIAN ACCESS THAT ADDRESSES ALL CONDITIONS OF THE SITE LOGISTICS PLAN AND AS LISTED BELOW (REFER TO SPECIAL PROVISION SECTION 1-10.2(2)):
  - PROVIDE VEHICULAR ACCESS (MIN. 20' WIDTH) IN THE EVENT OF AN EMERGENCY DURING CONSTRUCTION HOURS. MAINTAIN MIN. 20' ROAD WIDTH DURING NON-CONSTRUCTION HOURS.
  - MAINTAIN HARD SURFACE VEHICULAR ACCESS TO DELIVERY DOCKS AND GARBAGE DUMPSTERS AT ALL TIMES.
  - MAINTAIN SAFE VEHICULAR AND PEDESTRIAN (CUSTOMER) ROUTES TO AND FROM PARKING AREAS AND STORE ACCESS BEYOND BARRIER AND SECURITY FENCE.
  - PROVIDE TEMPORARY TRAFFIC CONTROL WHEN ACCESS ROUTES ARE TEMPORARILY BLOCKED.
- WHILE WORKING WITHIN THE INTERMITTENT CONSTRUCTION ZONE, CONTRACTOR SHALL PLAN AND SCHEDULE WORK IN A MANNER THAT WILL ALLOW TWO-WAY VEHICULAR ACCESS DURING THE HOURS OF 7AM-6PM AND PEDESTRIAN ACCESS TO BUILDING DOORWAYS AT ALL TIMES. ALTERNATING ONE WAY TRAFFIC WITH FLAGGERS MAY BE ALLOWED FOR STAGING OF HEAVY EQUIPMENT FOR BRIDGE AND STRUCTURAL WALL WORK IF TRAFFIC CONTROL PLAN IS APPROVED BY ENGINEER AND PROPERTY OWNER. NIGHT WORK OR WEEKEND WORK MAY BE NECESSARY, SEE SECTION 1-8.0(2) OF THE SPECIAL PROVISIONS FOR REQUIREMENTS.
- CONTRACTOR SHALL INDICATE POTENTIAL BUSINESS OPERATION IMPACTS ON THE TWO WEEK LOOK-AHEAD SCHEDULE. SEE SPECIAL PROVISION SECTION 1-08.3(2)B.
- PLACE TEMPORARY SECURITY CHAIN LINK FENCE AROUND CONTRACTOR WORK ZONE. FENCE SHALL BE TIGHTLY SECURED WHEN CONTRACTOR IS NOT WORKING ON-SITE.
- THE CONSTRUCTION STAGING SHOWN ON THESE PLANS IS BASED ON ACCESS COMMITMENTS THE CITY HAS MADE TO ADJACENT BUSINESSES. THE CONTRACTOR MAY PROPOSED ALTERNATIVE STAGING, BUT THE PROPOSAL MUST CLEARLY SHOW HOW ACCESS TO ADJACENT BUSINESSES IS MAINTAINED THROUGHOUT CONSTRUCTION. CONSTRUCTION WILL NOT START UNTIL THE CONTRACTOR HAS EITHER PROVIDED THE CITY WITH WRITTEN ACCEPTANCE OF THE STAGING ON THESE PLANS OR HAS SUBMITTED AN ALTERNATIVE PROPOSAL TO THE CITY AND RECEIVED WRITTEN APPROVAL OF THE PROPOSAL FROM THE CITY.

CALL BEFORE YOU DIG 1-800-424-5555

**Exhibit "C"** Sheet 3 of 32  
**Construction Agreement No. GCB 3352 JZ 0627**  
**SR 99 (MP 1.61 to MP 1.75)**  
**Riverton Flapgate Removal**



Plotted: Apr 28, 2020 - 7:14pm Teddy Thorson K:\Project\32700\32700\CADD\ACAD\DWG\C1.2.dwg Layout Name: C1.2

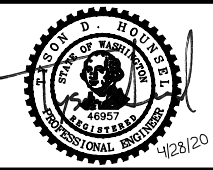


**PUBLIC WORKS DEPT.**

**-ENGINEERING-STREETS-WATER-SEWER-PARKS-BUILDING-**

	by	date
designed	SJ	4/28/20
drawn	TT	4/28/20
checked	TH	4/28/20
proj eng	TH	4/28/20
proj dir	MP	4/28/20
field bk no		

**Otak**  
 11241 Willows Road NE, Suite 200  
 Redmond, WA 98052  
 425-822-4446  
 www.otak.com



**RIVERTON CREEK FLAP GATE REMOVAL**  
**SITE LOGISTICS PLAN**

no	date	revisions

3  
 32  
 C1.2  
 AS SHOWN  
 22  
 04/28/2020



## CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

**PROJECT:** Riverton Creek Flap Gate Removal

Project No. 99830103

**DESCRIPTION:** Remove two culverts and flap gates that confluence with the Duwamish River; daylight creek, install trail bridge over creek, habitat improvements and planting for 1,200 lineal feet of creek, inc 1/4 acre backwater wetland habitat and 400 ft of river; associated structural improvements for TIB roadway and adjacent commercial

**JUSTIFICATION:** Increase available salmonid rearing habitat and increase flood refuge in lower Duwamish River. Improve fish access to Riverton Creek and enhance salmon rearing and resting area.

**STATUS:** Project construction began in 2020.

**MAINT. IMPACT:** Expected to increase maintenance.

**COMMENT:** Construction funding from the State RCO Salmon Recovery Funding Board, King County Cooperative Watershed Management, King County Opportunity Funds, the WRIA 9 Re-green the Green Program and City Surface Water Funds.

FINANCIAL (in \$000's)	Through Estimated		2021	2022	2023	2024	2025	2026	BEYOND	TOTAL
	2019	2020								
EXPENSES										
Design	391									391
Land (R/W)										0
Monitoring			25							25
Const. Mgmt.		200	5							205
Construction		1,654	25							1,679
<b>TOTAL EXPENSES</b>	<b>391</b>	<b>1,854</b>	<b>55</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,300</b>
FUND SOURCES										
Awarded Grant RCO	116	781								897
King County Grant		240	50							290
People for Puget S	30									30
Mitigation Expected										0
Utility Revenue	245	833	5	0	0	0	0	0	0	1,083
<b>TOTAL SOURCES</b>	<b>391</b>	<b>1,854</b>	<b>55</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,300</b>

