



# City of Tukwila Transportation and Infrastructure Services Committee

- ❖ Kate Kruller, Chair
- ❖ Mohamed Abdi
- ❖ Tosh Sharp

<b>Distribution:</b> K. Kruller C. Hougardy T. Sharp H. Ponnekanti S. Kim (email) G. Lerner (email)	City Attorney (email) Clerk File Copy  Place pkt pdf on SharePoint Z Trans & Infra Agendas  email cover to: F. Ayala, A. Le, C. O'Flaherty, A. Youn, B. Saxton, S. Norris, L. Humphrey
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## AGENDA

**MONDAY, NOVEMBER 7, 2022 – 5:30 PM**

**HYBRID MEETING – ONSITE AND VIRTUAL**


**DUWAMISH CONFERENCE ROOM, 6300 BUILDING, 2<sup>ND</sup> FLR**

**MS Teams: [Click here to join the meeting](#)**

**Virtual Meeting - Members of the public may listen by dialing 1-253-292-9750 and entering conference ID 799017451#  
6300 BUILDING, SUITE 100)**

Item	Recommended Action	Page
<b>1. PRESENTATIONS</b>		
<b>2. BUSINESS AGENDA</b>		
a) Public Works Campus, Phase 2 (B. Miles)	a) Discussion only	Pg. 1
b) Tukwila Municipal Code 11.08 Ordinance Amendment (S. Kim)	b) Forward to the 11/14/22 Committee of the Whole and 11/21/22 Regular Consent Agenda	Pg. 13
c) Nelsen Side Channel, Gilliam Creek, Riverton Creek KCFCO CWM Grant Award (B. Robinson)	c) Forward to the 11/21/22 Regular Consent Agenda	Pg. 47
d) Nelsen Side Channel KC OSRC Grant Award (B. Robinson)	d) Forward to the 11/21/22 Regular Consent Agenda	Pg. 61
e) Gilliam Creek and S 131st Street KCFCO Flood Reduction Grant Award (B. Robinson)	e) Forward to the 11/21/22 Regular Consent Agenda	Pg. 65
f) Gilliam Creek Fish Barrier Removal RCO SRFB Grant Award (B. Robinson)	f) Forward to the 11/21/22 Regular Consent Agenda	Pg. 75
g) South King County TDM FHWA CMAQ Grant Award (Alison Turner)	g) Forward to the 11/21/22 Regular Consent Agenda	Pg. 101
h) Via to Transit & Free Youth Transit (Alison Turner)	h) Discussion only	Pg. 105
<b>3. MISCELLANEOUS</b>		

**Next Scheduled Meeting: November 21, 2022**

 *The City of Tukwila strives to accommodate individuals with disabilities. Please contact the Public Works Department at **206-433-0179** for assistance.*





## **INFORMATIONAL MEMORANDUM**

**TO: Transportation and Infrastructure Services Committee**  
**FROM: Brandon Miles, Business Relations Manager**  
**CC: Mayor Ekberg**  
**DATE: November 4, 2022**  
**SUBJECT: Public Works Campus, Phase 2**  
**Project No. 92230601**

### **ISSUE**

Update on the City of Tukwila Public Works Campus, Phase 2.

### **BACKGROUND**

On September 19 the City Council authorized the Mayor to execute an agreement with Miller Hayashi Architects to conduct a “Test-to-Fit Analysis” for Phase 2 of the Public Works Campus.

The following provides a brief update on the work since the Committee was last briefed on the Test to Fit on October 17, 2022:

- All hand meetings were held with the Public Works rank and file staff to solicit their input on site layout and functions. These meetings have provided significant data that the design team is using on proposed concepts for the layout. A word map showing some of the important goals and visions from staff regarding the facility is attached with this memo.
- King County provided a letter to the City (see attached) expressing interest in exploring a shared decant facility. King County currently operates a decant facility at its south Metro base, but this will be closed and King County is in need of a replacement. Staff is also reaching to adjacent cities and private companies to inquire about interest in using a decant facility. A shared facility will bring additional partners in who can help with capital costs and operational costs.
- Staff has had preliminary discussions with the City of SeaTac about the City of Tukwila providing fleet maintenance services. This could provide additional revenue for capital and operational costs.
- Staff is looking at ways to connect the community to the space. The location near the Duwamish River provides a possible opportunity to connect the community to the water. Staff would like to conduct an open house with the community in the area to solicit community feedback and input.

### **FINANCIAL IMPACT**

The City Council has already authorized the test to fit work. There is no immediate funding request at this time.

### **RECOMMENDATION**

Discussion only.

### **ATTACHMENTS**

- All Hands Meeting Information on space, vision, and goals.
- Photos from All Hands Meeting of Shop Crews.
- Letter from King County (RE: Decant facility).

# TUKWILA PUBLIC WORKS Maintenance and Engineering Building

Test-to-Fit Phase - Work Sessions

October 25-26, 2022



**Introductions**

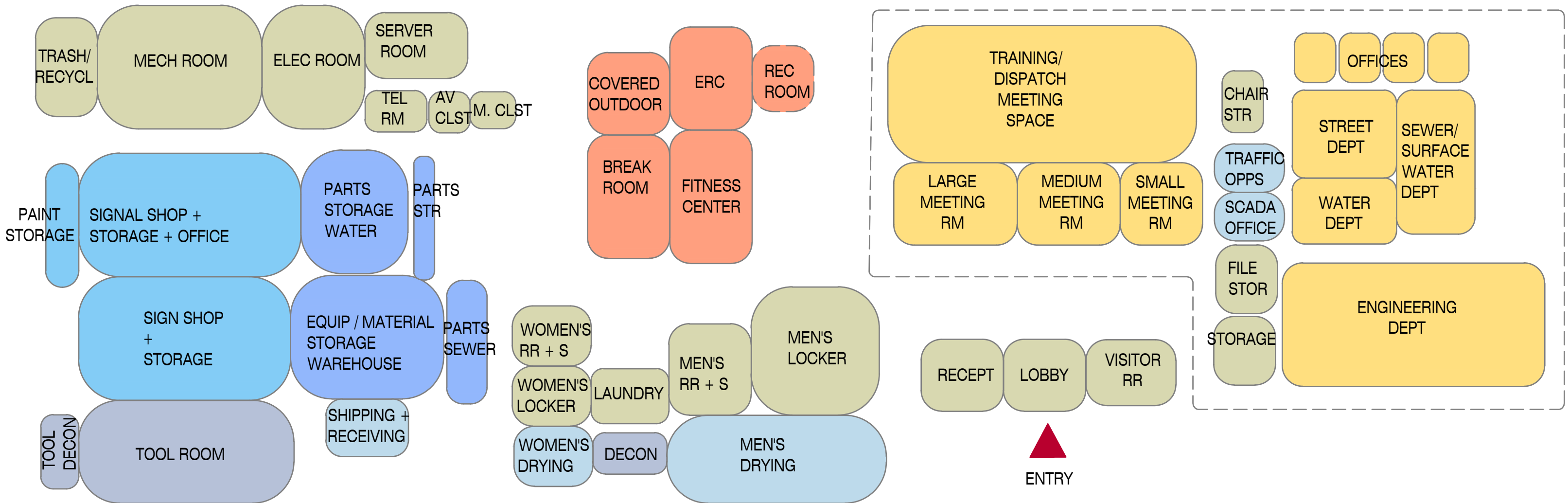
**Visual Program Summary**

**Review Vision and Goals**

**Test-to-fit Concept Plans**

**Feedback and direction on refining schemes**

# VISUAL PROGRAM SUMMARY



- OFFICE
- HEALTH & WELLBEING
- SHOP
- EQUIPMENT/ STORAGE/ WAREHOUSE
- TOOL ROOM / DECON
- LAUNDRY / DRYING ROOM
- BUILDING SUPPORT
- SECOND STORY

Good Lighting

Secure Perimeter

Fence Height

Concerns about adjacency to trail  
Support for connection to trail

Clear separation between work area  
and public area

# Safety

Reinforced Entrance Gate

Operations private from public view

Security Cameras

Signs and Pavement Markings

Secure Controlled Access

Yard Lighting, especially at snow / ice equipment





Permeable pavement

EV charging

Low maintenance landscaping

Team Work

Public Works is the backbone of the City. This is an opportunity to highlight this to the public.

# Forward Looking

Public Works keeps the City in good working order

Low-maintenance and long useful life

Flood protection from the river

# Identity

Assign electric vehicles for staff

Making people happy and keeping people safe

Working as a team

Clearing the snow - when no one else is in the city, Public Works is on the job.

We keep public safety vehicles on the road

Incorporating the river and improving the shoreline is important and would be great to utilize

Too much differentiation between groups is not good, all part of the same team

Celebrate successes, sharing stories and pictures of past projects









## King County

Capital Division – Capital Planning  
Fixed Asset Program Management –  
Facilities and State of Good Repair  
Metro Transit Department  
201 S. Jackson Street  
Seattle, WA 98104-3856

October 24, 2022

**Hari Ponnekanti, Public Works Director**

[Hari.Ponnekanti@TukwilaWA.gov](mailto:Hari.Ponnekanti@TukwilaWA.gov)

**City of Tukwila**

**6300 Southcenter Blvd.**

**Tukwila, WA 98188**

**RE: May 2, 2022 King County Metro and City of Tukwila meeting response. King County Metro review of interdepartmental interest in new decant facility**

This letter includes information we pulled together this summer. Apologies we did not finalize our draft sooner to send to you.

We understand the City is moving forward with plans to design and build a vector decant facility at your new public works facility, and you are interested in King County Metro as a potential partner in sharing the cost of development. King County Metro has significant interest in exploring this option as we seek options to relocate our enviroshed facility currently housed at our South Annex Base site.

As discussed, the County contacted departments internally to solicit interest in King County using Tukwila's proposed new facility. Departments with interest are the Roads, Parks, and Airport Divisions. Most of our other departments use the King County Roads Division decant facility in Renton for stormwater solid waste treatment and disposal of other unsuitable waste, so there is minimal interest from other King County entities at this time.

King County Metro does not use the Roads Division facility in Renton due to our specific decanting needs, including contaminated solids that would not be permitted at the County facility. Our Environmental Scientist, Talon Swanson, estimates that Metro generates 260 tons of solids annually - this is comprised of 65% contaminated solids and 35% stormwater solids. Approximately 5% of this solid waste is highly contaminated and in need of specific contract disposal bypassing at our decant facility. These solids are a result of approximately 80,000 gallons we process annually. Depending on the specific load and the ability to decant, loads vary in contaminant level and range of free liquids (from 0-90%). These materials are collected by the same two trucks, servicing our entire system of bases and facilities.

King County Metro maintains its interest in the City of Tukwila's proposed decanting facility for its waste disposition needs. We propose further discussion with the City and its design consultants to assess how Metro's needs could be accommodated at the proposed facility. We can also share our current practices

for collecting, treating, and disposing of liquids and solids to explore what changes may make sense to implement while considering a new shared facility.

Our own planning to build a replacement facility is on hold while we work with you to explore this potential partnership agreement. Please let us know what additional information you may need. Your contact on this project is Ken Young, and Talon Swanson will be looped in as needed for expertise on current permits and practices at King County Metro.

Thanks for your interest in exploring this partnership.

*Michelle Anderson*

Michelle Anderson  
Interim Supervisor, Capital Planning - Facilities and Fixed Assets

Cc:

Brandon Miles

Tina Rogers

Liz Krenzel

Jeff Arbuckle

Ken Young



## **INFORMATIONAL MEMORANDUM**

**TO:** Transportation and Infrastructure Services Committee  
**FROM:** Nora Gierloff, Community Development Director  
Hari Ponnekanti, Public Works Director  
**BY:** Kerry Murdock, Development Review Engineer  
Seong Kim, Deputy Utilities Engineer  
**CC:** Mayor Ekberg  
**DATE:** November 4, 2022  
**SUBJECT:** Tukwila Municipal Code 11.08 Ordinance Amendment

### **ISSUE**

Amend sections of the Tukwila Municipal Code (TMC) Chapter 11.08 Permits (Right-of-Way Use) to improve permitting procedures and to align with the proposed Consolidated Permit Fee Ordinance for 2023-2024.

### **BACKGROUND**

The City of Tukwila owns and is responsible for the property under, on, or above the streets, roadways, and sidewalks. This typically extends 10 to 20 feet beyond the roadway pavement and often will extend into what appears to be private property. Assets within the right-of-way may include the street, curb, gutter, sidewalks, vegetation, sewer and water lines, telephone, power, and other utility infrastructure.

The City requires a right-of-way permit for all activities that disrupt traffic, restrict access, or modify any infrastructure within the right-of-way or for private use of the public right-of-way. Right-of-way permits are also required for private use of the public right-of-way including replacement of, or modifications to driveways, sidewalk repairs, water or sewer main taps, utility line installations and utility pole installations or modifications and blanket activities.

Entities that hold a franchise with Tukwila, such as Water Districts and telecommunication companies, can obtain a blanket activities permit. "Blanket Activities" means work that does not include cutting, removing, or disturbing the pavement surface that include routine maintenance of existing utility owned infrastructure within the right-of-way. Blanket Activity permits are obtained on an annual basis and are intended to streamline the permitting requirements for routine maintenance work.

As part of the submittal for a right-of-way permit, a Traffic Control Plan (TCP) is required when the applied for activity modifies existing traffic or pedestrian patterns, e.g., closing a roadway lane or closing a sidewalk. The TCP ensures contractor, pedestrian, and motorist safety is ensured during the approved work hours of the project. When applicable, Temporary Erosion & Sediment Control Plans (TESC) & restoration plans are required when any hard surface disturbance (cuts) occurs within the right-of-way. This may include asphalt or concrete replacement, utility excavation, and trenching. The TESC ensures that sediment does not enter into the City's drainage system and that City assets such as asphalt are fully restored back to their original condition, extending the life of the pavement for long term use. In sum, requiring entities using the City's rights-of-way to obtain permits ensures that the right-of-way is maintained appropriately for its intended use – public access.

**DISCUSSION**

Existing TMC chapter governing right-of-way permits (TMC Chapter 11.08) lacked clarity and created a convoluted set of permit requirements that made it hard for City staff to implement and applicants to follow. City staff is in agreement that Chapter 11.08 needs to be updated to facilitate a successful permit experience for the applicant and the assigned reviewer. Additionally, engineering industry practices are constantly changing and are ever evolving; these revisions seek to align with and improve upon current industry standards.

Proposed updates to Chapter 11.08 Permits (Right-of-Way) look to consolidate the right-of-way permit subtypes into two categories – Right-of-Way Use Permit (ROWUP), and an Annual Activities Blanket Permit (AABP). Currently there are six different types of rights-of-way permits (A – F). The (ROWUP) would be required for both franchise holders and non-franchise holders performing any kind of work in the right-of-way. The (AABP) may be issued to franchise holders on an annual basis to undertake blanket activities as defined by the updated Chapter 11.08. Consolidating the number of permit types will reduce complexity and streamline the way permit applications are reviewed will ensuring the City’s ROWs are still adequately protected. Additionally, these revisions ensure all permit fees are captured.

**FINANCIAL IMPACT**

There is no direct financial impact to the City. The proposed revisions will ensure that permit fees are being collected for all permit types issued by the City and will reduce staff time related to reviewing and administering right-of-way permits.

**RECOMMENDATION**

Council is being asked to approve the Ordinance amending TMC Chapter 11.08 and consider this item at the November 14, 2022 Committee of the Whole and subsequent November 21, 2022, Regular Council Meeting.

**Attachments:** Draft Ordinance TMC 11.08 Revisions



**DRAFT**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON; REPEALING ORDINANCE NO. 2253 AND AMENDING ORDINANCE NO. 1995 §1 (PART), AS CODIFIED AT TUKWILA MUNICIPAL CODE (TMC) CHAPTER 11.08, "PERMITS," TO RETITLE TMC CHAPTER 11.08 AS "RIGHT-OF-WAY USE PERMITS," AND ESTABLISH NEW REGULATIONS RELATED TO ACTIVITIES WITHIN THE RIGHT-OF-WAY, PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City is engaged in an ongoing effort to streamline code processes and improve permitting procedures; and

**WHEREAS**, the City desires to provide clarification on regulations related to Right-of-Way Use Permits and Annual Activities Blanket Permits; and

**WHEREAS**, the proposed revisions to Tukwila Municipal Code (TMC) Chapter 11.08 will align the TMC with current engineering industry standards and practices;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Repealer.** Ordinance No 2253 as codified in Tukwila Municipal Code (TMC) Chapter 11.08, is hereby repealed in its entirety.

**Section 2. Chapter Title.** Ordinance No. 1995 §1 (part), as codified at TMC Chapter 11.08, is hereby amended to read as follows:

**CHAPTER 11.08**  
**RIGHT-OF-WAY USE PERMITS**

**Sections:**

- 11.08.010 ~~Permit Requirements~~Purpose
- 11.08.020 ~~Right-of-Way Use Permits~~Definitions
- 11.08.030 ~~Application Contents~~Administration and Enforcement

- 11.08.040 ~~Permit—No Transfer or Assignment~~ [Permit Required](#)
- 11.08.050 ~~Emergency Work~~ [Right-of-Way Use Permits](#)
- 11.08.060 ~~Permit Fees and Charges~~ [Application Contents](#)
- 11.08.070 ~~Permit Exception~~ [Preconstruction Meeting Required](#)
- 11.08.080 ~~Revocation of Permits~~ [Permit Approval and Conditions](#)
- 11.08.090 ~~Renewal of Permits~~ [No Permit Transfer or Assignment](#)
- 11.08.100 ~~Insurance~~ [Emergency Work](#)
- 11.08.110 ~~Deposits, Fees and Bonds~~ [Permit Fees and Charges](#)
- 11.08.120 ~~Hold Harmless~~ [Permit Exception](#)
- 11.08.130 ~~Compliance with Specifications, Standards, and Traffic-Control Regulations~~ [Revocation or Suspension of Permits](#)
- 11.08.140 ~~Inspections~~ [Renewal of Permits](#)
- 11.08.150 ~~Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions~~ [Insurance](#)
- 11.08.160 ~~Failure to Conform to Design Standards~~ [Deposits, Fees and Bonds](#)
- 11.08.170 ~~Warning and Safety Devices~~ [Hold Harmless](#)
- 11.08.180 ~~Clearance for Fire Equipment~~ [Compliance with Specifications, Standards, and Traffic-Control Regulations](#)
- 11.08.190 ~~Protection of Adjoining Property—Access~~ [Inspections](#)
- 11.08.200 ~~Preservation of Monuments~~ [Violations and Unsafe Conditions](#)
- 11.08.210 ~~Protection from Pollution and Noise~~ [Warning and Safety Devices](#)
- 11.08.220 ~~Impact of Work on Existing Improvements~~ [Clearance for Fire Equipment](#)
- 11.08.230 ~~Restoration of the Public Right-of-Way~~ [Protection of Adjoining Property – Access](#)
- 11.08.240 ~~Recently Improved Streets~~ [Preservation of Monuments](#)
- 11.08.250 ~~Coordination of Right-of-Way Construction~~ [Protection from Pollution](#)
- 11.08.260 ~~Relocation of Structures in the Public Right-of-Way~~ [Impact of Work on Existing Improvements](#)
- [11.08.270 Restoration of the Right-of-Way](#)
- [11.08.280 Recently Improved Streets](#)
- [11.08.290 Coordination of Construction and Notification](#)
- [11.08.300 Relocation](#)
- [11.08.310 Abandonment and Removal of Facilities](#)
- [11.08.320 Record Drawings](#)
- [11.08.330 Joint Excavation](#)
- [11.08.340 Additional Ducts or Conduits](#)
- [11.08.350 Undergrounding](#)
- [11.08.360 Hazardous Substances](#)
- [11.08.370 Utility Locates](#)
- [11.08.380 Moving of Building\(s\) and/or Equipment](#)
- [11.08.390 Tree Trimming](#)

**Section 3. Regulations Established.** TMC Section 11.08.010 is hereby established to read as follows:

**11.08.010 Purpose**

A. The purpose of this chapter is to establish minimum rules and regulations to govern activities within the right-of-way in the City of Tukwila; and to provide for the fees, charges, warranties, and procedures required to administer the permit process. To the extent the provision of any current franchise or other written agreement conflicts with any provision of this chapter, the applicable provision of the franchise or other written agreement shall prevail.

B. This code is enacted to protect and preserve the public health, safety, and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.

C. It is expressly the purpose of this code and any procedures adopted hereunder to provide for and promote the health, safety, and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code or any procedures adopted hereunder.

**Section 4. Regulations Established.** TMC Section 11.08.020 is hereby established to read as follows:

**11.08.020 Definitions**

A. “Applicant” means a person who has submitted a complete application pursuant to the terms and conditions of this Chapter.

B. “Blanket Activities” means work that does not include cutting, removing, or disturbing the pavement surface including:

1. Simple service disconnects for customers;
2. Repair or replacement of standard crossarms, insulators, and/or other existing equipment on poles or bundles;
3. Replacement of blown fuses or limiters on cutouts;
4. Replacement of existing faulted, broken, or damages overhead service drops;
5. Repairs or splices to existing overhead primary and secondary wires;
6. Replacement of damaged poles with similar dimensioned stock;
7. Operation of existing overhead primary switches, i.e. the open and closing of overhead primary switches as necessary;
8. Disconnection of existing services due to non-payment;
9. Changing wire type;

10. Installation of secondary conductors;

11. Accessing existing vaults;

12. Maintaining hydrants/vaults;

13. Raising or adjusting valves;

14. Vegetation management;

15. Replacing above-ground meters;

16. Installing water sampling stations;

17. Flushing activities, and lining pipes.

C. **“City”** means the City of Tukwila.

D. **“Department”** means the City of Tukwila’s Public Works Department

E. **“Director”** means the City of Tukwila Public Works Director or designee.

F. **“Emergency”** shall mean any unforeseen circumstance or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of utility or public services.

G. **“Facility”** or **“Facilities”** means any plant, equipment and/or property, including but not limited to, overhead and underground water, gas, electric, and telecommunication facilities and appurtenances such as cables, wires, conduits, transformers, conduit, substation, pad-mounted J boxes, switch cabinets, ducts, pedestals, antennas, electronics, vaults, poles, meter boxes, sewers, pipes, drains, and tunnels.

H. **“Franchise Holder”** means a person that was issued a franchise agreement by the City and which franchise is not expired.

I. **“Permittee”** means a person that has applied for and received a permit pursuant to TMC Chapter 11.08.

J. **“Person”** means any individual, association, partnership, corporation or legal entity, public or private, and includes the agents, contractors, and assigns of such person, including registered agents thereof.

K. **“Preconstruction Meeting”** means a meeting between the designated City staff and the applicant’s contractor or designee prior to beginning any construction activity on the site or within the right-of-way to discuss project approval conditions and preliminary requirements.

L. **“Public Improvement”** means any capital improvement, maintenance, or repair that is undertaken by or on behalf of the City within the franchise area and is funded by the City (either directly or indirectly), including any capital improvement within the City’s adopted Transportation Improvement Plan or Capital Improvement Program.

M. **“Right-of-Way”** or **“Rights-of-Way”** means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways and horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto.

N. “Right-of-Way Use Permit” means any permit issued pursuant to TMC Chapter 11.08.

O. “Right-of-Way User” means any person with any facility in the Right-of-Way.

**Section 5. Regulations Established.** TMC Section 11.08.030 is hereby established to read as follows:

#### **11.08.030 Administration and Enforcement**

A. The Director, under the authority of the City Administrator, shall have the following administrative and enforcement powers:

1. Prepare and adopt procedures as needed to implement this chapter and to carry out the responsibilities of the Department. Such procedures do not require approval of the City Council to be initially implemented; however, the Council may take Council action directing that procedures, guidelines, fees, or other aspects of the permitting system be amended or modified to the satisfaction of the Council.

2. Administer and coordinate the enforcement of this chapter and all procedures adopted under this chapter relating to the use of rights-of-way.

3. Carry out such other responsibilities as required by this chapter or other codes, ordinances, resolutions, or procedures of the City.

4. Request the assistance of other City departments to administer and enforce this chapter, as necessary.

5. Render interpretations of this chapter or assign the responsibility for interpretation and application of specified procedures to such designees as may be deemed appropriate.

**Section 6.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.010, “Permit Requirements,” is hereby amended to recodify this section as TMC Section 11.08.040, which shall read as follows:

#### **~~11.08.010~~11.08.040 Permit ~~Requirements~~Required**

A. It is unlawful for ~~anyone~~any person, except the Department or its agent, to perform work of any kind in ~~a public~~the right-of-way, or to make private use of any ~~public~~ right-of-way without obtaining a right-of-way use permit ~~issued by the City~~pursuant to this chapter.

B. The decision by the City to issue a permit shall include, among other factors determined by the City, the following:

1. The capacity of the ~~public~~ right-of-way to accommodate the facilities or structures proposed to be installed in the ~~public~~ right-of-way.

2. The capacity of the ~~public~~ right-of-way to accommodate wire, ~~in addition to~~ cables, conduits, pipes or other facilities or structures of other existing users of the ~~public~~ right-of-way, such as electrical power, telephone, gas, surface water, sewer, and water.

3. The damage or disruption, if any, of public or private facilities, improvements, or landscaping previously existing in the ~~public~~-right-of-way.

4. The public interest in minimizing the cost and disruption of construction ~~caused by numerous excavations of~~in the ~~public~~-right-of-way.

C. The issuance of a permit for use of a right-of-way is subject to the use and needs of the City and the general public, whether such needs are temporary or permanent, or for public or private purposes (i.e., utility construction work in the right-of-way by private service provider), and is a grant of a temporary revocable privilege to use a portion of the ~~public~~-right-of-way to serve and benefit the general public. The applicant shall have the burden to prove that any proposed use will enhance and further the public interest consistent and not in conflict with the use of the right-of-way by the general public and the City for other authorized uses and activities.

**Section 7.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.020, “Right-of-Way Use Permits,” is hereby amended to recodify this section as TMC Section 11.08.050, which shall read as follows:

#### ~~11.08.020~~11.08.050 **Right-of-Way Use Permits**

A. The following classes of right-of-way use permits are hereby established:

1. **Public Works Permit.** These permits may be issued to applicants who do not hold a current franchise with the City.

2. **Public Works Franchise Permit.** These permits may be issued to applicants who do not hold a current franchise with the City.

3. **Annual Blanket Activities Permit.** These permits may be issued to franchise holders on an annual basis to undertake blanket activities as defined by this chapter.

~~A. **Type A – Short-Term Nonprofit.**~~

~~1. Type A permits may be issued for use of a right-of-way for 72 or less continuous hours for nonprofit purposes, which do not involve any physical disturbance of the right-of-way.~~

~~2. This type of use may involve disruption of pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance. For periods longer than 72 hours, these uses will be considered Type D, long-term. If any of these uses are for profit, they are considered Type B.~~

~~3. Type A permits include but are not limited to the following, when for nonprofit purposes:~~

~~a. Assemblies.~~

~~b. Bike races.~~

~~c. Block parties.~~

~~d. Parades.~~

~~e. Parking.~~

~~f. Processions.~~

~~g. Nonmotorized vehicle races.~~

~~\_\_\_\_\_ h. Street dances.~~

~~\_\_\_\_\_ i. Street runs.~~

~~\_\_\_\_\_ **B. Type B – Short-Term Profit.**~~

~~\_\_\_\_\_ 1. Type B permits may be issued for use of right-of-way for 72 or less continuous hours for profit purposes, which do not involve the physical disturbance of the right-of-way.~~

~~\_\_\_\_\_ 2. This type of use may involve disruption to pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance. For periods longer than 72 consecutive hours, these uses will be considered Type D, long-term.~~

~~\_\_\_\_\_ 3. Type B permits include, but are not limited to the following when they are for profit purposes:~~

~~\_\_\_\_\_ a. Fairs;~~

~~\_\_\_\_\_ b. House or large structure moves other than those, which require a Type E permit.~~

~~\_\_\_\_\_ c. Temporary sale of goods.~~

~~\_\_\_\_\_ d. Temporary street closures.~~

~~\_\_\_\_\_ **C. Type C – Infrastructure and Grading on Private Property and City Right-of-Way and Disturbance of City Right-of-Way.**~~

~~\_\_\_\_\_ 1. Type C1 permits shall be required for on-site development including, but not limited to, infrastructure work and grading performed on private property.~~

~~Type C2 permits shall be required for infrastructure work and grading within the public right-of-way. Type C1 and C2 permits may be issued for a period not in excess of 180 continuous days, for activities that may alter the appearance of or disturb the surface or subsurface of the City right-of-way.~~

~~\_\_\_\_\_ 2. Type C1 and C2 permits include, but are not limited to:~~

~~\_\_\_\_\_ a. Boring.~~

~~\_\_\_\_\_ b. Culverts.~~

~~\_\_\_\_\_ c. Curb cuts.~~

~~\_\_\_\_\_ d. Paving.~~

~~\_\_\_\_\_ e. Drainage facilities.~~

~~\_\_\_\_\_ f. Driveways.~~

~~\_\_\_\_\_ g. Fences.~~

~~\_\_\_\_\_ h. Landscaping.~~

~~\_\_\_\_\_ i. Painting/Striping.~~

~~\_\_\_\_\_ j. Sidewalks.~~

~~\_\_\_\_\_ k. Street trenching.~~

~~\_\_\_\_\_ i. Utility installation, repair, replacement.~~

~~\_\_\_\_\_ **D. Type D – Long-Term**~~

~~\_\_\_\_\_ 1. Type D permits may be issued for use of a right-of-way, for any period in excess of 72 hours, for activities occurring for extended periods of time but which will not physically disturb the right-of-way.~~

~~\_\_\_\_\_ 2. The use of the right-of-way for structures, facilities, and uses that involve capital expenditures and long-term commitments of use require this type of permit.~~

~~\_\_\_\_\_ 3. Type D permits include, but are not limited to:~~

~~\_\_\_\_\_ a. Air rights and aerial facilities.~~

~~\_\_\_\_\_ b. Bus shelters and stops.~~

~~\_\_\_\_\_ c. Access to construction sites and haul roads.~~

~~\_\_\_\_\_ d. Loading zones.~~

~~\_\_\_\_\_ e. Newspaper sale, distribution, and storage facilities.~~

~~\_\_\_\_\_ f. Recycling facilities.~~

~~\_\_\_\_\_ g. Sales structures.~~

~~\_\_\_\_\_ h. Sidewalk cafes.~~

~~\_\_\_\_\_ i. Special and unique structures, such as awnings, benches, clocks, decorations, flagpoles, fountains, kiosks, marquees, private banners, public mailboxes, and street furniture.~~

~~\_\_\_\_\_ j. Underground rights.~~

~~\_\_\_\_\_ k. Utility facilities.~~

~~\_\_\_\_\_ l. Waste facilities.~~

~~\_\_\_\_\_ **E. Type E – Potential Disturbance of City Right-of-Way.**~~

~~\_\_\_\_\_ 1. Type E permits may be issued for use of a right-of-way, for a period not in excess of 180 continuous days, for those activities that have the potential of altering the appearance of, or disturbing the surface or subsurface of, the right-of-way.~~

~~\_\_\_\_\_ 2. Type E permits include, but are not limited to:~~

~~\_\_\_\_\_ a. Frequent use hauling involving an average of six loaded vehicles per hour during any eight-hour period in one day, for two or more consecutive days.~~

~~\_\_\_\_\_ b. Any hazardous waste hauling.~~

~~\_\_\_\_\_ 3. Type E permits may be issued to a general contractor to authorize construction and fill activities by the said general contractor and by subcontractors.~~

~~\_\_\_\_\_ **F. Type F – Blanket permits.**~~

~~\_\_\_\_\_ The Director may issue blanket permits to any person to make utility service connections, to locate trouble in utility conduits or pipes, for making repairs thereto, or for~~



~~emergency purposes. Blanket permits shall be issued for a period of 365 days (one year), and shall only authorize work referred to in this chapter.~~

**Section 8.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.030, “Application Contents,” subparagraphs A and B, are hereby amended to recodify this section as TMC Section 11.08.060, which shall read as follows:

~~11.08.030~~11.08.060 **Application Contents**

A. To obtain a right-of-way use permit, the applicant shall submit, in the format and manner specified by the Director, an application ~~with the City’s Permit Center~~ to the City.

B. Every application shall contain, as applicable:

1. The name, address, telephone ~~and facsimile~~-number, and email address of the applicant. Where an applicant is not the owner of the facility to be installed, maintained or repaired in the ~~public~~-right-of-way, the application shall also include the name, address, telephone ~~and facsimile~~-number, and email address of the owner. Where the applicant is not the owner of the facility or facilities to be installed, maintained, or repaired, the applicant must demonstrate in a form and manner specified by the Director their authorization to act on behalf of the owner.

2. A description of the location, including the address and GPS coordinates, nature and extent of the work proposed, ~~proposed use of the public right-of-way, method of excavation, surface and subsurface area of the proposed excavation, and method of restoration.~~

3. A site plan showing the ~~proposed~~ location of the proposed work ~~and dimensions of the excavation; the facilities to be installed, maintained, or repaired in connection with the excavation; and such other details as the Department may require.~~

4. ~~A copy or other documentation of the~~ If the applicant holds a franchise, easement, encroachment permit, license or other legal instrument with the City that authorizes the applicant or owner to use or occupy the ~~public~~-right-of-way for the purpose described in the application, the applicant shall attach a copy of that document to the application. ~~Where the applicant is not the owner of the facility or facilities to be installed, maintained or repaired, the applicant must demonstrate in a form and manner specified by the Director their authorization to act on behalf of the owner.~~

5. The proposed start date and duration of the ~~use or excavation~~ work, which shall include the restoration of the right-of-way physically disturbed by the work.

~~6. The proposed duration of the use or excavation, which shall include the duration of the restoration of the public right of way physically disturbed by the excavation.~~

7~~6~~. Written acknowledgment that the applicant ~~and owner are in compliance~~ will comply with all terms and conditions of this title, the orders, regulations, and standard plans and specifications as promulgated by the Director; and that the applicant ~~and owner are~~ is not subject to any outstanding assessments, fees or penalties that have been finally determined by the City or a court of competent jurisdiction.

~~87.~~ A current business license ~~issued by~~ through the Washington State Department of Revenue with an endorsement for the City of Tukwila.

~~98.~~ Evidence of insurance as required by TMC Section 11.08.100 ~~11.08.150~~.

~~109.~~ A ~~deposit~~ financial guarantee as required by TMC Section 11.08.110 ~~11.08.160~~.

~~110.~~ A traffic control plan to be approved by the ~~Department~~ Director.

~~111.~~ Any other information that may be reasonably required by the ~~Department~~ Director.

~~112.~~ An estimate of the value of the project. The Director may also require an applicant to submit separate cost estimates for each item of improvement.

13. An application fee as required by TMC Section 11.08.060 ~~11.08.110~~.

C. The Director may allow an applicant to maintain documents complying with TMC Sections 11.08.030 ~~11.08.060~~ B. subparagraphs 4, ~~B-8~~, ~~B-9~~ and ~~B-10~~ on file with the Department, rather than requiring submission of such documents with each separate application.

**Section 9. Regulations Established.** TMC Section 11.08.070 is hereby established to read as follows:

#### 11.08.070 Preconstruction Meeting Required

A preconstruction meeting may be required at the Director's discretion.

**Section 10.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.030, "Application Contents," subparagraphs C and D, are hereby amended to recodify this section as TMC Section 11.08.080, subparagraphs A and B, which shall read as follows:

#### Section 11.08.080 Permit Approval and Conditions

~~C. The Director or his/her designee shall examine each application submitted for review and approval to determine if it complies with the applicable provisions and procedures of this chapter. Other departments that have authority over the proposed use or activity may be requested to review and approve or disapprove the application.~~

A. If the Director finds that the application conforms to the requirements and procedures of this chapter and ~~the procedures adopted under this chapter and title~~, that the proposed use of such right-of-way will not unduly interfere with the rights and safety of the public, and if the application has not been disapproved by another department with authority, the Director may approve the permit, and may impose such conditions thereon as are reasonably necessary to protect the public health, welfare and safety, and to mitigate any impacts resulting from the use. Such conditions may include but are not limited to:

1. Compliance with all applicable provisions of TMC Title 11;

2. Compliance with applicable provisions of the Infrastructure Design and Construction Standards Manual;

3. Limitations on the hour, the day and the period of the year in which the work may be performed;

4. Requirement of a traffic control supervisor onsite during approved working hours;

5. Installation and maintenance of temporary erosion control measures, as applicable;

6. Pre-construction storm drainage patterns shall be met during and after construction; and

7. Compliance with all applicable provisions of TMC Chapters 8.45 and 14.30.

B. Additionally, if at any time conditions unforeseen at the time of issuance of the permit are discovered which could, in the opinion of the Director, cause unforeseen damage to public or private property or a hazard to life or property or become a public nuisance, the Director may stop any further work under the permit until the permit conditions have been modified by the Director in such a manner as to protect from or eliminate the potential damages, hazards or nuisances enumerated in this chapter.

~~— D. All applications for permits will be submitted at least 30 days before the planned need for the permit. If unforeseen conditions require expedited processing, the City will attempt to cooperate, but additional fees to cover additional costs to the City may be charged to the applicant.~~

**Section 11.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.040, “Permit – No Transfer or Assignment,” is hereby amended to recodify this section as TMC Section 11.08.090, which shall read as follows:

~~11.08.040~~11.08.090 **Permit—No Permit Transfer or Assignment**

Permits issued pursuant to this chapter shall not be transferable or assignable unless prior written consent is received from the City, and work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a permittee from subcontracting the work to be performed under a permit; provided, ; however, ~~that~~ the holder of the permit shall be and remains responsible for the performance of the work under the permit, and responsible for all bonding, insurance and other requirements of this title and under said permit.

**Section 12.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.050, “Emergency Work,” is hereby amended to recodify this section as TMC Section 11.08.100, which shall read as follows:

~~11.08.050~~11.08.100 **Emergency Work**

A. ~~Any authorized permit or franchise holder maintaining pipes, lines, or facilities in the public right-of-way may proceed with work upon existing facilities without a permit when emergency circumstances demand that work be done immediately, provided that a permit cannot be reasonably and practicably obtained beforehand.~~ In the event that an emergency necessitates work in the right-of-way for the protection of public or private property, a person may conduct the work after the person performing the work has notified the City's Police and Fire Departments of such work and an application for a permit as provided in this chapter shall be made on the next succeeding business day whether or not the emergency work has been completed.

B. ~~In the event that emergency work is commenced on or within any public right-of-way of the City during regular business hours, the Director or City Engineer shall be notified within ½ hour from the time the work commences. The permit or franchise holder~~ The person commencing and conducting such emergency work shall take all necessary safety precautions for the protection of the public, the direction and control of traffic, and shall insure that work is accomplished according to City standards, regulations, the Manual on Uniform Traffic Control Devices, and other applicable laws, regulations or generally recognized practices in the industry.

C. Nothing contained in this chapter shall be construed to prevent any ~~permit or franchise holder~~ person from taking any action necessary for the preservation of life or property or for the restoration of interrupted service ~~provided by a municipal or utility excavator~~ when such necessity arises during days or times when the City is closed. ~~Department is closed. In the event that any permit or franchise holder takes action to excavate or cause to be excavated the public right-of-way, such permit or franchise holder shall apply for an emergency permit within 24 hours after the Department's offices first open. The applicant for an emergency permit shall submit a written statement that addresses the basis of the emergency action, and describes the excavation performed and work remaining to be performed.~~

**Section 13.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.060, "Permit Fees and Charges," is hereby amended to recodify this section as TMC Section 11.08.110, which shall read as follows:

~~11.08.060~~ 11.08.110 **Permit Fees and Charges**

A. ~~The Director shall be responsible for the plan review, plan approval, inspection and acceptance of all construction within any public right-of-way and all public works improvement projects, such as streets, sidewalks and walkways, street lighting systems, storm drainage systems (public and private), water systems (public and private), sewer systems (public and private), and utilities; and shall make a charge therefor to the developer.~~

~~B. The fee for these services.~~ The permit and inspection fees for any permit issued pursuant to this chapter shall be set forth in a fee schedule to be adopted by motion or resolution of the Tukwila City Council and as amended from time to time.

~~C. Type A, B, D, E and F permit fees will be a flat rate.~~

~~— D. Type C1 permits shall be required for on-site development including, but not limited to, infrastructure work and grading performed on private property. The total fees for Type C1 permits shall consist of the following parts:~~

~~—— 1. An Application Base Fee, which is associated with establishing the necessary files;~~

~~—— 2. A fee associated with the plan review and approval of the construction plans;~~

~~—— 3. A fee associated with the issuance of the permit and the required inspection of the construction, the fee amount to be determined from the value of the construction on private property; and~~

~~—— 4. A Grading Plan Review.~~

~~— For Type C1 permits, the developer shall submit separate cost estimates for each item of improvement. The Department will check the accuracy of these estimates.~~

~~— E. Type C2 permits shall be required for infrastructure work and grading performed within the City right-of-way. The total fees for Type C2 permits shall consist of the following parts:~~

~~—— 1. An Application Base Fee, which is associated with establishing the necessary files;~~

~~—— 2. A fee associated with the plan review and approval of the construction plans, the fee amount determined from the value of the construction within the public right-of-way;~~ B. As applicable, additional fees may be imposed as follows:

31. A fee associated with the issuance of the permit and the required inspection of the construction (Permit Issuance and Inspection Fee), which is, ~~the fee amount to be determined from the value of the construction within the public right-of-way;~~

42. A Grading Plan Review fee.

3. A pavement mitigation fee associated with the loss of pavement life from ~~the~~ any proposed excavation in the ~~public~~-right-of-way, the fee amount determined from the square footage of excavation being performed and the age of the pavement; ~~and~~

~~—— 5. A Grading Plan Review.~~

F4. ~~A non-refundable deposit, equal to the fee associated with an application base fee and the review and approval of construction plans, is due and payable prior to starting the review, with the balance of the total fee due and payable prior to issuance of the permit. Two reviews of the construction plans are included in the above referenced fee, an original review and a follow-up review associated with a correction letter. Each additional re-review~~ revision review, which is attributed to the developer's action or inaction, shall be charged as a separate ~~transaction~~ fee in accordance with the fee schedule adopted by resolution of the City Council. ~~Should additional fees for re-review be imposed, they~~ These fees will be added to the balance due and be payable prior to issuance or final of the permit.

**Section 14.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.070, “Permit Exception,” is hereby amended to recodify this section as TMC Section 11.08.120, which shall read as follows:

~~11.08.070~~11.08.120 **Permit Exception**

Permits under this chapter shall not be required for public use; i.e., persons using the right-of-way as pedestrians or while operating motor and non-motorized vehicles for routine purposes such as travel, commuting, or personal business.

**Section 15.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.080, “Revocation of Permits,” is hereby amended to recodify this section as TMC Section 11.08.130, which shall read as follows:

~~11.08.080~~11.08.130 **Revocation or Suspension of Permits**

A. The Director may revoke or suspend any permit issued under this chapter whenever:

1. The activity or work does not proceed in accordance with the permit~~plans~~ as approved, in accordance with conditions of approval, or is not in compliance with the requirements of this chapter or procedures, or other City ordinances, or State laws;

2. The City has been denied access to investigate and inspect how the right-of-way is being used;

3. The permittee has misrepresented a material fact in applying for a permit (a material fact is a fact which, had the truth been known at the time of the issuance of the permit, the permit would not have been granted);

4. The City believes the permitted activity is, or will be, endangering the public, adjoining property, the street, or infrastructure in the street.~~The progress of the permitted activity indicates that it is — or will be — inadequate to protect the public and adjoining property or the street or utilities in the street, or any excavation or fill endangers — or appears reasonably likely to endanger — the public, the adjoining property or street, or utilities in the street.~~

B. Upon suspension or revocation of a permit, all use of the right-of-way shall cease, except as authorized by the Director.

C. Continued activity following revocation or suspension under this section shall be subject to the enforcement provisions in TMC Chapter 8.45.~~subject each and every violator to the maximum penalties provided by this chapter, with every day constituting a new violation.~~

**Section 16.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.090, “Renewal of Permits,” is hereby amended to recodify this section as TMC Section 11.08.140, which shall read as follows:

~~11.08.090~~11.08.140 **Renewal of Permits**

Each permit shall be of a duration as specified on the permit. A permit may be renewed at the discretion of the Director, if requested by the permit holder before expiration of the permit; provided, however, that the use or activity is progressing in a satisfactory manner as reasonably determined by the Director.

**Section 17.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.100, "Insurance," is hereby amended to recodify this section as TMC Section 11.08.150, which shall read as follows:

~~11.08.100~~11.08.150 **Insurance**

A. Unless the Director determines that there is not a probability of injury, damage, or expense to the City arising from an applicant's proposed use of the right-of-way or public place, ~~the permittee or the applicant holds a current franchise with the City, the applicant shall obtain and~~ maintain in full force and effect, throughout the term of the permit, ~~or as long as the permittee has facilities in the right-of-way,~~ an insurance policy ~~or policies~~ issued by an insurance company ~~or companies~~ satisfactory to the Director, ~~having a policyholders' surplus of at least \$20,000,000, or if insurance is written by more than one company, each company shall have policyholders' surplus of at least 10 times the amount insured. Policy or policies shall afford insurance covering all operations, vehicles, and employees with the following limits and provisions:~~insuring both the applicant and the City against claims for injuries to persons, death or damages to property that may arise from, or in connection with, the exercise of the rights, privileges and authority granted to the applicant under this chapter:

1. ~~Comprehensive~~Commercial general liability insurance written on an occurrence basis. The insurance policy shall be endorsed to provide a per project general aggregate and there shall be no exclusive for liability arising from explosion, collapse, or underground property damage. The policy shall have limits not less than:~~with limits of not less than \$2,000,000 each occurrence combined single limit for bodily injury and property damage, including contractual liability; personal injury; explosion hazard, collapse hazard, and underground property damage hazard; products; and completed operations.~~

a. \$3,000,000 for bodily injury, property damage, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract;

b. \$6,000,000 general aggregate, per project aggregate and products-completed operations aggregate.

2. Business automobile liability insurance with limits not less than ~~\$1,000,000~~\$2,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, non-owned, and hired auto coverage, as applicable.

3. ~~Contractors' pollution~~Pollution liability insurance, on an occurrence form, with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, and \$2,000,000 in the aggregate.~~and any deductible not to exceed \$25,000 each occurrence.~~

4. Worker's compensation within statutory limits and employer's liability insurance, with limits of not less than \$1,000,000.

5. Excess or umbrella liability policy shall be excess over and at least as broad in coverage as the commercial general liability and automobile liability insurance, with limits not less than \$5,000,000 per occurrence and annual aggregate.

~~46.~~ Said policy or policies shall include the City and its officers, officials (appointed and elected), ~~and~~ employees, and agents jointly and severally as additional insureds, shall apply as primary insurance, shall stipulate that no insurance affected by the City will be called on to contribute to a loss covered there under, and shall provide for severability of interests.

~~57.~~ Underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

~~68.~~ The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy

~~79.~~ Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its employees, officers, officials, agents, volunteers, and assigns.

~~810.~~ Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits, except after 30 days' prior written notice by certified mail, return receipt requested sent to the City.

~~911.~~ Each policy shall be endorsed to indemnify, save harmless and defend the City and its officers, officials (appointed and elected), ~~and~~ employees, and agents against any claim or loss, damage or expense sustained on account of damages to persons or property occurring by reason of permit work done by ~~Permittee~~permittee, his/her subcontractor or agent, whether or not the work has been completed and whether or not the right-of-way has been opened to public travel.

~~1012.~~ Each policy shall be endorsed to indemnify, hold harmless and defend the City, and its officers, officials (appointed and elected), ~~and~~ employees, and agents against any claim or loss, damage or expense sustained by any person occurring by reason of doing any work pursuant to the permit including, but not limited to, falling objects or failure to maintain proper barricades and/or lights as required from the time work begins until the work is completed and the right-of-way is opened for public use.

B. The permittee shall furnish the City with certificates of insurance and original endorsements affecting coverage required by the permit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, the permittee shall be prepared to provide such copies prior to the issuance of the permit.



C. If any of the required policies are, or at any time become, unsatisfactory to the City as to form or substance, or if a company issuing any such policy is, or at any time becomes, unsatisfactory to the City, the permittee shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit verification of coverage as required by the City. Upon failure to furnish, deliver and maintain such insurance as provided herein, the City may declare the permit to be in default and pursue any and all remedies the City may have at law or in equity, including those actions outlined in this chapter.

D. The permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all ~~of~~ the requirements stated herein.

E. A property owner performing work adjacent to his/her residence may submit proof of a homeowner's insurance policy in lieu of the insurance requirements of this section.

**Section 18.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.110, "Deposits, Fees and Bonds," is hereby amended to recodify this section as TMC Section 11.08.160, which shall read as follows:

~~11.08.110~~11.08.160 **Deposits, Fees, and Bonds**

A. ~~Except as noted in this chapter, each applicant, before being issued a permit, shall provide the City with an acceptable security (this may include a corporate surety bond, cash deposit or letter of credit) in the amount of 150% of the value of the work being performed within the public right-of-way in order to guarantee faithful performance of the work authorized by the permit granted pursuant to this chapter. The amount of the security required may be increased or decreased at the discretion of the Director whenever it appears that the amount and cost of the work to be performed may vary from the amount of the security otherwise required under this chapter.~~Before a permit pursuant to the provisions of this chapter may be issued, the applicant may be required, unless otherwise provided in a current franchise, to execute to the City a financial guarantee in a form as approved by the City for the proper protection of the City and conditioned that obligors of the financial guarantee will pay to the City the costs and expenses incurred by the City should the person obtaining the permit fail, neglect or refuse to properly complete the work authorized by the permit within the time limit specified by said permit. Such financial guarantees are as follows:

1. **Performance Financial Guarantee** – In a sum as shall be designated by the Director (but not less than 150% of the estimated cost of the improvements within the right-of-way). This financial guarantee shall be released upon acceptance of the work and the receipt of a maintenance financial guarantee. Otherwise, it will be released under the same time frame as outlined in TMC Section 11.08.160.A.2.

2. **Right-of-Way Occupation Financial Guarantee** – In a sum of not less than \$5,000. Permits allowing right-of-way obstructions, not including the take up, breaking, excavating, tunneling, undermining, or cutting in any right-of-way in the City, may be allowed to provide a financial guarantee pursuant to this subsection. The Director may

release the financial guarantee, without requiring a subsequent maintenance financial guarantee per TMC Section 11.08.160.A.3, once the work has been accepted as complete by a city inspector and the permit is finalized and closed.

3. Maintenance Financial Guarantee – In a sum as shall be designated by the Director (but not less than \$5,000 or 10% of the estimated cost of the improvements within the right-of-way, whichever is greater). This financial guarantee will be in force for 2 years after the City accepts the work if no repair work is identified within that 2-year period. If the City identifies any repair work, the financial guarantee will extend to either 1 year after the repair is accepted by the City or the end of the original 2-year time period, whichever is longer. At the Director’s discretion, this maintenance financial guarantee may be waived if the Director documents in writing a decision that a financial guarantee is not necessary to protect the interests of the City.

4. The amount of the ~~security~~ financial guarantees required above may be increased or decreased at the discretion of the Director whenever it appears that the amount and cost of the work to be performed may vary from the amount of the security otherwise required under this chapter.

B. Public utilities ~~franchised holding a current City franchise by the City~~ shall not be required to file any ~~security~~ right-of-way financial guarantee if such requirement is expressly waived in the franchise documents, however public utilities franchisees shall guarantee workmanship and materials through a maintenance financial guarantee.

~~C. The applicant shall provide a Maintenance Bond that guarantees workmanship and materials for a period of two years following the completion of the work, with reasonable wear and tear excepted. Notwithstanding the foregoing, utilities shall guarantee workmanship and materials;~~

~~D.~~ The security required by this section shall be conditioned as follows:

1. That the permittee shall fully comply with the requirements of the City ordinances and regulations, specifications and standards promulgated by the Department relative to work in the ~~Public~~ right-of-way, and respond to the City in damages for failure to conform therewith;

2. That after work is commenced, the permittee shall proceed with diligence and shall promptly complete such work and restore the ~~public~~ right-of-way to City standards, so as not to obstruct the public place or travel thereon more than is reasonably necessary;

3. That unless authorized by the Director on the permit, all paving, resurfacing or replacement of street facilities on principal arterial, major or collector streets shall be done in conformance with the regulations contained herein within three calendar days, and within seven calendar days from the time the excavation commences on all other streets, except as provided for during excavation in winter or during weather conditions which do not allow paving according to City standards. In winter, a temporary patch must be provided. In all excavations, restoration or pavement surfaces shall be made immediately after backfilling is completed or concrete is cured. If work is expected to exceed the above duration, the permittee shall submit a detailed construction schedule

for approval. The schedule will address means and methods to minimize traffic disruption and complete the construction as soon as reasonably possible.

D. In lieu of a financial guarantee to cover particular work, an applicant may maintain with the City a general bond in the sum of \$100,000 conditioned and used for the same purpose as the financial guarantee described in TMC Section 11.08.160.A and covering all work to be done rather than any particular work, provided, however, that the total work being performed shall not exceed a cumulative total of \$100,000. The applicant shall track and submit with each new permit the applicant's approved permits that are covered by this financial guarantee and include: permit number, date of approval, and date work is complete.

**Section 19.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.120, "Hold Harmless," is hereby amended to recodify this section as TMC Section 11.08.170, which shall read as follows:

~~11.08.120~~**11.08.170** **Hold Harmless**

Unless the permittee holds a current franchise with the City, Asas a condition to the issuance of any permit under this chapter, the permittee shall be required to execute a written agreement to forever hold and save the City free and harmless from any and all claims, actions or damages of every kind and description that may accrue to or be suffered by any person by reason of the use of such public place or the construction, existence, maintenance, use or occupation of any such structure, services, fixtures, equipment and/or facilities on or in a public place pursuant to this chapter. In addition, such agreement shall contain a provision that the permit is wholly of a temporary nature, and that it vests no permanent right whatsoever.

**Section 20.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.130, "Compliance with Specifications, Standards, and Traffic-Control Regulations," is hereby amended to recodify this section as TMC Section 11.08.180, which shall read as follows:

~~11.08.130~~**11.08.180** **Compliance with Specifications, Standards, and Traffic-Control Regulations**

A. The work performed in the ~~public~~-right-of-way shall conform to the requirements of the Department's Infrastructure Design and Construction Standards, Manual on Uniform Traffic Control Devices, King County Surface Water Design Manual, Part VIII, "Regulations for Use of Public Streets and Projections over Public Property," Uniform International Building Code, and the City's Tukwila Municipal Code as currently exists and as hereafter amended, ~~copies of which shall be available from the Department, kept on file in the office of the City Clerk and at the Permit Center for public inspection during office hours.~~

B. When a job is left unattended, before completion of the work, signage with minimum two-inch high letters shall be attached to a barricade or otherwise posted and maintained at the site, indicating the permittee's name, or company name, telephone number, and after-hours telephone number.

**Section 21.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.140, “Inspections,” is hereby amended to recodify this section as TMC Section 11.08.190, which shall read as follows:

~~11.08.140~~11.08.190 **Inspections**

As a condition of issuance of any permit or authorization that requires approval of the Department, each ~~applicant~~permittee shall be required to consent to inspections by the Department or any other City department. Additionally, the permittee is obligated to request a final inspection to close out the permit.

**Section 22.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.150, “Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions,” is hereby amended to recodify this section as TMC Section 11.08.200, which shall read as follows:

~~11.08.150~~11.08.200 ~~Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized~~Violations and Unsafe **Conditions**

A. Whenever the Director determines that any condition on any right-of-way is in violation of, ~~or any right-of-way is being used contrary to any provision of, (i) this chapter, or (ii) procedures adopted under this chapter or other applicable codes or standards, or without a right-of-way use permit,~~ the Director may order the correction or discontinuance ~~of such condition or any activity causing such condition~~pursuant to this section.

B. The Director is authorized to use any or all of the following methods in ordering correction or discontinuance ~~of any such conditions, or activities as the Director determines appropriate:~~

1. Service of oral or written directives to the permittee or other responsible person requesting immediate correction or discontinuance of the specified condition;

2. Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within five days of notice, or such other reasonable period the Director may determine;

3. ~~Revocation of previously granted permits where the permittee or other responsible person has failed or refused to comply with requirements imposed or notices served~~Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work;

4. ~~Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work~~Revocation of previously granted permits where the permittee or other responsible person has failed or refused to comply with requirements imposed or notices served;

5. Service of notice and order or service of a criminal citation to appear by a law enforcement officer upon the permittee or other responsible person who is in violation of this chapter or other City ordinances.

C. Any object that shall occupy any right-of-way without a permit is declared a nuisance. The ~~Department~~Director may attach a notice to any such object stating that if it is not removed from the right-of-way within 24 hours of the date and time stated on the notice, the object may be taken into custody and stored at the owner's expense. The notice shall provide an address and telephone number where additional information may be obtained. If the object is a hazard to public safety, the ~~City~~Director may remove it summarily. Notice of such removal shall be thereafter given to the owner, if known. This section shall not apply to motor vehicles.

D. All expenses incurred by the City in abating any violation or condition shall constitute a civil debt owing to the City jointly and severally by such persons who have been given notice or who own the object or who placed it in the right-of-way, which debt shall be collectible in the same manner as any other civil debt.

E. The City shall also have all powers and remedies whether legal or equitable that may be available under law or ordinance including but not limited to TMC Chapter 8.45, this chapter TMC Chapter 11.08, and procedures adopted under this chapter for securing the correction or discontinuance of any conditions specified by the City.

**Section 23.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.160, "Failure to Conform to Design Standards," is hereby repealed.

~~— For failure to conform to the Design Standards and Regulations as identified in Section 11.08.130, the Director may:~~

- ~~1. Suspend or revoke the permit;~~
- ~~2. Issue a stop work order;~~
- ~~3. Order removal and replacement of faulty work;~~
- ~~4. Require an extended warranty period; and/or~~
- ~~5. Negotiate a cash settlement to be applied toward future maintenance costs.~~

**Section 24.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.170, "Warning and Safety Devices," is hereby amended to recodify this section as TMC Section 11.08.210, which shall read as follows:

#### ~~11.08.170~~11.08.210 **Warning and Safety Devices**

A. Warning lights, safety devices, signs, and barricades shall be provided on all rights-of-way when there might be an obstruction or hazard to vehicular or pedestrian traffic. All obstructions on rights-of-way shall have sufficient barricades and signs posted in such a manner as to indicate plainly the danger involved. Warning and safety devices may be removed when the work for which the right-of-way use permit has been granted is complete and the right-of-way restored to the conditions directed by the Department.

B. As a condition of the issuance of any ~~right-of-way use~~ permit issued pursuant to this chapter, the Director ~~or his/her designee~~ may require an applicant to submit a traffic ~~detour~~control plan showing ~~the~~any proposed detour routing and location and the type of

warning lights, safety devices, signs, and barricades intended to protect vehicular or pedestrian traffic at the site for which the right-of-way use permit is requested. If a traffic [control](#) plan is required, no ~~right-of-way use~~ permit shall be issued until after the traffic [control](#) plan is approved.

~~C. Unless otherwise specified in adopted right-of-way use procedures, the following standards manuals — as they currently exist and as hereafter amended — shall apply to the selection, location and installation of required warning and safety devices; provided, that the Director or designee may impose additional requirements if site conditions warrant such enhanced protection of pedestrian or vehicular traffic:~~

- ~~1. Manual of Uniform Traffic Control Devices for Streets and Highways;~~
- ~~2. City of Tukwila Infrastructure Design and Construction Standards;~~
- ~~3. Part VIII, “Regulations for Use of Public Streets and Projections over Public Property,” Uniform Building Code.~~

~~DC.~~ Any ~~right-of-way use~~ permit [issued pursuant to this chapter](#) that requires a partial lane or street closure may require a [traffic control supervisor](#); certified flag person, properly attired~~;~~, or an off-duty police officer for the purpose of traffic control during ~~the~~ construction.

~~ED.~~ All decisions of the Director ~~or his/her designee~~ shall be final in all matters pertaining to the number, type, locations, installation and maintenance of warning and safety devices in the ~~public~~ right-of-way during any actual work or activity for which a duly authorized ~~right-of-way use~~ permit has been issued [pursuant to this chapter](#).

~~F. Any failure of a permit holder to comply with the oral or written directives of the Director or his/her designee related to the number, type, location, installation, or maintenance of warning and safety devices in the public right-of-way shall be cause for correction or discontinuance as provided in this chapter.~~

**Section 25.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.180, “Clearance for Fire Equipment,” is hereby amended to recodify this section as TMC Section 11.08.220, which shall read as follows:

#### ~~11.08.180~~[11.08.220](#) **Clearance for Fire Equipment**

Unless when specifically authorized by the Director, all excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants. Passageways leading to fire escapes or firefighting equipment shall be kept free from obstructions at all times.

**Section 26.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.190, “Protection of Adjoining Property – Access,” is hereby amended to recodify this section as TMC Section 11.08.230, which shall read as follows:

#### ~~11.08.190~~[11.08.230](#) **Protection of Adjoining Property – Access**

~~The permittee~~ Right-of-way users shall at all times, and at the ~~permittee's~~ right-of-way user's expense, preserve and protect from injury adjoining property by complying with such measures as the Director ~~or designee~~ may deem reasonably suitable for such purposes. ~~The permittee~~ Right-of-way users shall at all times maintain access to all property adjoining the excavation or work site.

**Section 27.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.200, "Preservation of Monuments," is hereby amended to recodify this section as TMC Section 11.08.240, which shall read as follows:

~~11.08.200~~ 11.08.240 **Preservation of Monuments**

~~The permittee~~ Right-of-way users shall not disturb any survey monuments or markers found on the line of excavation work until ordered to do so by the Director. All street monuments, property corners, benchmarks, and other monuments disturbed during the progress of the work shall be replaced by a licensed surveyor, at the expense of the ~~permittee~~ right-of-way user, to the satisfaction of the Director ~~or his/her designee~~.

**Section 28.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.210, "Protection from Pollution and Noise," is hereby amended to recodify this section as TMC Section 11.08.250, which shall read as follows:

~~11.08.210~~ 11.08.250 **Protection from Pollution ~~and Noise~~**

~~The permittee~~ Right-of-way users shall comply with all State laws, City ordinances, and procedures adopted hereunder by the Director to protect the public from air and water pollution ~~and excessive noise~~. ~~The permittee~~ Right-of-way users shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work, and shall replace the same in as good or better condition as the ~~permittee~~ right-of-way user found them. ~~The permittee~~ Right-of-way users shall not obstruct the gutter of any street, but shall use all proper measures to provide for the free passage of surface water. ~~The permittee~~ Right-of-way users shall make provision to take care of all surplus water, muck, silt, or other runoff pumped from excavations or resulting from sluicing or other operations, and shall be responsible for any damage resulting from ~~permittee's~~ their failure to so provide.

**Section 29.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.220, "Impact of Work on Existing Improvements," is hereby amended to recodify this section as TMC Section 11.08.260, which shall read as follows:

~~11.08.220~~ 11.08.260 **Impact of Work on Existing Improvements**

A. If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel, convenient for users, and consistent with City standards.

B. Each ~~permittee~~ right-of-way user shall cover an open excavation with non-skid steel plates ramped to the elevation of the contiguous street, pavement, or other ~~public~~ right-of-way, or otherwise protected in accordance with City standards.

C. All excavated material that is piled adjacent to any excavation shall be maintained in such a manner so as not to endanger those working in the excavation, pedestrians, or users of the right-of-way. When the confines of the area being excavated are too small to permit the piling of excavated material next to the excavation, the Director shall have the authority to require the ~~permittee~~ right-of-way user to haul the excavated material to a storage site and then return the excavated material to the excavation at the time of backfilling. It is the responsibility of the ~~permittee~~ right-of-way user to secure the necessary permission and make all arrangements for any required storage and disposal of excavated material.

D. At any time a ~~permittee~~ right-of-way user disturbs the yard, residence or the real or personal property of a private property owner or the City, such ~~permittee~~ right-of-way user shall insure, at the ~~permittee's~~ right-of-way user's expense, that such property is returned, replaced and/or restored to a condition that is comparable to or better than the condition that existed prior to the commencement of the work, as determined by the private property owner or the City.

E. Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for approval by the Director prior to the blockage of the channel.

**Section 30.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.230, "Restoration of the Public Right-of-Way," is hereby amended to recodify this section as TMC Section 11.08.270, which shall read as follows:

#### ~~11.08.230~~ 11.08.270 **Restoration of the ~~Public~~ Right-of-Way**

A. **Restoration.** ~~In any case in which the sidewalk, street, or other public right-of-way is or is caused to be excavated, the owner and permittee~~ If work is undertaken in the right-of-way, the right-of-way user shall restore ~~or cause to be restored such excavation~~ the right-of-way in the manner prescribed by the orders, regulations, and ~~Department~~ City standards.

B. ~~**Backfill, and replacement of pavement base.**~~ Backfilling in a right-of-way ~~opened or~~ excavated pursuant to a permit issued under the provisions of this chapter shall be compacted to a degree equivalent to that of the undisturbed ground in which the excavation was begun, unless the Director determines a greater degree of compaction is necessary to produce a satisfactory result. All backfilling shall be accomplished according to City standards and specifications. All backfills shall be inspected and approved by the Director ~~or his/her designee~~ prior to any overlaying or patching.

C. ~~**Pavement restoration.**~~ The ~~permittee~~ right-of-way user shall restore the surface of any ~~public~~ right-of-way to ~~its original condition~~ City standards, and replace any removed or damaged pavement with the same type and depth of pavement as that which is



adjoining, including the gravel base material. All restoration ~~shall conform to the City Standards and~~ shall be accomplished within the time limits set forth in the permit.

**Section 31.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.240, “Recently Improved Streets,” is hereby amended to recodify this section as TMC Section 11.08.280, which shall read as follows:

~~11.08.240~~11.08.280 **Recently Improved Streets**

The ~~Department~~City shall not issue any permit to excavate in any recently improved street as defined at TMC Chapter 11.04; provided, however, that the Director may grant a waiver for good cause. The Director is specifically authorized to grant a waiver for an excavation that facilitates deployment of new technology as directed pursuant to official City policy. The Director may place additional conditions on a permit subject to a waiver. The Director’s decision regarding a waiver shall be final.

**Section 32.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.250, “Coordination of Right-Of-Way Construction,” is hereby amended to recodify this section as TMC Section 11.08.290, which shall read as follows:

~~11.08.250~~11.08.290 **Coordination of ~~Right-Of-Way Construction~~ and Notification**

A. The permittee, at the time of receiving a Type C right-of-way use permit~~At the time of submitting an application for a permit, the applicant~~ shall notify all other ~~public and private utilities~~entities known to be using or proposing to use the same right-of-way as the applicant’s proposed construction, and the proposed timing of such construction. ~~A utility so~~Any such entity notified may, within seven days of such notification, request ~~of the Director~~a reasonable delay in the commencement of ~~any such~~ proposed construction for the purpose of coordinating other right-of-way construction with that proposed by the ~~permittee~~applicant.

B. The Director shall coordinate the approval of permits with City street improvements and maintenance and may defer or ~~may~~ delay the commencement date ~~of~~ for the permittee’s applicant’s right-of-way construction, until such time as such official deems proper. In all cases, any work of the City, its contractors, or employees for municipal purposes shall have precedence over all work of every other kind. except in emergencies, if the Director finds that such a delay will reduce the inconvenience to City right-of-way uses and if the Director finds that delay of the construction activities will not create undue economic hardship on the applicant.

C. Before commencing construction, the permittee shall provide notice to all adjoining properties that access onto the roadway work location, or are within 200 linear feet from the roadway work location. Notification shall be done no less than 3 days prior to the work commencing and shall be in the form of signage, door hangers, or door-to-door distribution of flyers. Notifications shall include contact information for the applicant or contractor doing the work.

**Section 33.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.260, “Relocation of Structures in the Public Right-Of-Way,” is hereby amended to recodify this section as TMC Section 11.08.300, which shall read as follows:

**~~11.08.260~~11.08.300 Relocation of Structures in the Public Right-Of-Way**

A. ~~Unless otherwise provided for in a current franchise, The~~the Director may direct any ~~permit or franchise holder or any other entity~~right-of-way user owning or maintaining facilities ~~or structures~~ in the ~~public~~ right-of-way to alter, modify, or relocate such facilities or ~~structures~~ as may be required herein. ~~These facilities include, but are not limited to, sewers, pipes, drains, tunnels, conduits, vaults, trash receptacles, newspaper dispensers, overhead and underground gas, electric, telephone, telecommunication and communication facilities. The City shall notify the permit or franchise holder or other entity in writing no less than 60 days and no greater than 120 days in advance, except in the case of emergencies, of Tukwila’s intention to perform or have such work performed.~~

B. Within 30 days following written notice from the Director, the right-of-way user shall provide a schedule to the City indicating the estimated completion date for temporarily or permanently removing, relocating, changing, or altering (collectively the “relocation work”) the position of any facilities within the right-of-way whenever the Director shall have determined that such removal, relocation, change, or alteration is reasonably necessary for:

1. A public improvement; or
2. The construction, repair, maintenance, or installation of any improvement in or upon the right-of-way as required by development approval; or
3. The operations of the City or other governmental entity in or upon the right-of-way.

C. ~~The permit or franchise holder or other entity~~right-of-way user owning or maintaining the facilities ~~or structures~~ shall, at their own cost and expense, promptly protect or promptly alter or relocate such facilities ~~or structures~~, or part thereof, ~~but in no event later than three working~~within 90 days following the original notice by the Director, unless a different duration is specifically authorized by the Director. ~~prior to the date Tukwila has notified the permittee, franchise holder or other entity, that it intends to commence its work, or immediately in the case of emergencies.~~

D. ~~In the event that such permit or franchise holder~~the right-of-way user refuses or neglects to conform to the directive of the City, the City shall have the right to break through, remove, alter or relocate such part of the facilities ~~or structures~~ without liability to ~~such person~~the right-of-way user. ~~Such person~~The right-of-way user shall pay to the City all costs incurred by the City in connection with such work performed by the City, including ~~also, but not limited to,~~ design, engineering, construction, materials, insurance, court costs, and attorney fees. Upon the ~~permittee, franchise holder or other entity’s~~right-of-way user’s failure to accomplish such work or reimburse the City of such costs, and after ~~three~~3 working days’ notice, all other ~~work~~ permits held by ~~permittee, franchise holder, or other entity,~~the right-of-way user may be ~~summarily~~ suspended, except in only

an emergency, until such time as the work required under this section is completed or the City has been reimbursed ~~form~~for work performed.

~~B. Any directive by the Director shall be based upon one or more of the following:~~

~~1. The facility or structure was installed, erected, or is being maintained contrary to law, or determined by the Director to be structurally unsound or defective.~~

~~2. The facility or structure constitutes a nuisance as defined under this chapter, the TMC or State statute.~~

~~3. The permit under which the facility or structure was installed has expired or has been revoked.~~

~~4. The public right-of-way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction.~~

~~5. The grades or lines of the public right-of-way are to be altered or changed.~~

~~C. Any directive of the Director under this section shall be under and consistent with the City's police power. Unless an emergency exists, the Director shall make a good faith effort to consult with the permit or franchise holder regarding any condition that may result in a removal or relocation of facilities in the public right-of-way, to consider possible avoidance or minimization of removal or relocation requirements; and the Director shall provide the directive as far enough in advance of the required removal or relocation to allow the permit or franchise holder a reasonable opportunity to plan and minimize cost associated with the required removal or relocation.~~

~~D. This obligation does not apply to facilities or structures originally located on private property pursuant to a private easement, which property was later incorporated into the public right-of-way, if that prior private easement grants a superior vested right.~~

E. The City may, at any time, in case of fire, disaster or other emergency as determined by the City, cut or move any parts of the system and appurtenances on, over or under the ~~public~~ right-of-way, in which event the City shall not be liable therefore to a ~~permit or franchise holder~~the right-of-way user.

**Section 34.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.270, "Abandonment and Removal of Facilities," is hereby amended to recodify this section as TMC Section 11.08.310, which shall read as follows:

#### ~~11.08.270~~11.08.310 **Abandonment and Removal of Facilities**

A. ~~**Notification of Abandoned Facilities.** Any permittee, franchise holder, or other entity~~Any right-of-way user that intends to discontinue use of any facilities within the ~~public~~ rights-of-way shall notify the Director, in writing, of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, a date of discontinuance of use (the date shall not be less than 30 days from the date such notice is submitted), and the method of removal and restoration of the rights-of-way. The ~~permittee, franchise holder, or other entity~~right-of-way user may not remove, destroy, or permanently disable any such facilities during said 30-day period without written approval of the Director. After ~~30~~60 days from the date of such ~~notice~~written approval from the

~~Director, the permittee, franchise holder, or other entity~~ the right-of-way user shall remove and dispose of such facilities as set forth in the notice ~~and shall complete such removal and disposal within six months,~~ unless additional time is requested from and approved by the Director. The Director may place conditions upon the removal and restoration in order to protect public health and safety and the ~~public~~ rights-of-way.

B. ~~Conveyance of Facilities.~~ At the discretion of ~~Tukwila~~ the City, and upon written notice from the Director within 30 days of the notice of abandonment, the ~~permittee, franchise holder, or other entity~~ right-of-way user may abandon the facilities in place, and shall further convey full title and ownership of such abandoned facilities to ~~Tukwila~~ the City. The consideration for the conveyance is ~~Tukwila's~~ the City's permission to abandon the facilities in place. The ~~permittee, franchise holder, or other entity~~ right-of-way user is responsible for all obligations as owner of the facilities, or other liabilities associated therewith, until conveyance to ~~Tukwila~~ the City is completed. Conveyance of the abandoned facilities shall also automatically include all record information, including GIS data as available, or as agreed upon with the Director.

**Section 35. Regulations Established.** TMC Section 11.08.320 is hereby established to read as follows:

#### 11.08.320 Record Drawings

Upon request by the City, a right-of-way user shall, within 10 business days, submit to the City, at no cost to the City, the right-of-way user's most current and accurate record drawings in use by the right-of-way user showing the location specified by the City in its request before final permit approval. Record drawings shall show all facilities including but not limited to power poles, guy poles and anchors, overhead transformers, pad-mounted transformers, submersible transformers, conduit, substation (with its name) pedestals, pad-mounted J boxes, vaults, switch cabinets, and meter boxes.

**Section 36. Regulations Established.** TMC Section 11.08.330 is hereby established to read as follows:

#### 11.08.330 Joint Excavation

A. If an applicant submits a permit application to excavate for installation of its facilities, the City may request in writing that such applicant provide an opportunity to install City facilities within the excavation; provided, that:

1. Such joint use shall not unreasonably delay the work of the applicant's excavation; and

2. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.

B. To the extent reasonably possible, the applicant shall, at the direction of the City, cooperate with the City and provide other private utility companies with the opportunity to

utilize joint or shared excavations in order to minimize disruption and damage to the right-of-way as well as to minimize traffic-related impacts.

**Section 37. Regulations Established.** TMC Section 11.08.340 is hereby established to read as follows:

#### **11.08.340 Additional Ducts or Conduits**

Any right-of-way user shall upon written request of the City, provide the City with additional duct or conduit space over and above the conduit or conduits planned to be constructed for the right-of-way user. Such additional ducts or conduits shall be of a size and configuration specified by the City and shall be dedicated to the City. The City shall have the right to use the ducts and conduits for any purpose including, but not limited to, leasing them to other entities. Except as otherwise applicable under RCW 35.99.070, the incremental costs of adding the specified ducts and conduits for the City shall be borne by the City.

**Section 38. Regulations Established.** TMC Section 11.08.350 is hereby established to read as follows:

#### **11.08.350 Undergrounding**

A. Subject to and in accordance with any applicable rates and tariffs on file with the Washington Utilities and Transportation Commission (WUTC) (or such other regulatory agency having jurisdiction), the right-of-way user shall cooperate with the City in promoting a policy of undergrounding facilities within the right-of-way.

B. If the City directs the right-of-way user to underground its facilities, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable rates and tariffs on file with the WUTC (or such other regulatory agency having jurisdiction).

C. In the event that the City undertakes any public improvement that would otherwise require, at the discretion of the Director, the relocation of the right-of-way user's aboveground facilities, the Director may, by written notice to the right-of-way user, direct that any such facilities be converted to underground facilities. Any such conversion shall be done subject to and in accordance with applicable schedules and tariffs on file with the WUTC (or such other regulatory agency having jurisdiction).

D. All new facilities installed within the City during the term of any permit or franchise shall be located underground to the extent technologically feasible as determined at the discretion of the Director.

**Section 39. Regulations Established.** TMC Section 11.08.360 is hereby established to read as follows:

#### **11.08.360 Hazardous Substances**

Right-of-way users shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and the right-of-way user shall not allow any of its agents, contractors, or any person under its control to do the same.

**Section 40. Regulations Established.** TMC Section 11.08.370 is hereby established to read as follows:

#### **11.08.370 Utility Locates**

Prior to doing any work in the rights-of-way, right-of-way users shall follow established procedures, including contacting the Utility Notification Center in Washington and complying with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request by the City or a third party, the right-of-way user shall promptly locate its facilities in order for them to be surveyed or as required by Chapter 19.122 RCW. The right-of-way user shall provide enough detail to verify the vertical (depth) and horizontal location of its facilities. The City shall not be liable for any damages to the right-of-way user's facilities or for interruptions in service to right-of-way user's customers that are a direct result of the right-of-way user's failure to locate its facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

**Section 41. Regulations Established.** TMC Section 11.08.380 is hereby established to read as follows:

#### **11.08.380 Moving of Building(s) and/or Equipment**

Right-of-way users shall, upon 7 days' notice, disconnect or move their facilities to allow for the moving of building(s) and/or equipment across or along any such street, alley or other public place; provided, that the advance notice may be reduced to 24 hours if the facilities are below the minimum clearance set by law or regulation or in the case of an emergency. The cost of the right-of-way user moving their facilities shall be borne as follows: (i) by the right-of-way user if the facilities are below the minimum vertical clearance required by State statutes, City ordinance, or rules of the Director; above the surface of the right-of-way, and no adjustment would be necessary if the minimum clearance had been maintained; and (ii) by the person desiring to move the building(s) and/or equipment under other circumstances.

**Section 42. Regulations Established.** TMC Section 11.08.390 is hereby established to read as follows:

#### **11.08.390 Tree Trimming**

Any right-of-way user required by State statute or regulation to trim or remove trees that may interfere with their facilities shall first obtain a permit and ensure that the work is accomplished in accordance with TMC Chapter 11.20, "Right-of-Way Vegetation," and TMC Section 18.52.100, "Maintenance and Pruning," as applicable.

**Section 43. Corrections by City Clerk or Code Reviser Authorized.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

**Section 44. Severability.** If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

**Section 45. Effective Date.** This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Christy O'Flaherty, MMC, City Clerk

\_\_\_\_\_  
Allan Ekberg, Mayor

APPROVED AS TO FORM BY:

Filed with the City Clerk: \_\_\_\_\_

Passed by the City Council: \_\_\_\_\_

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_

\_\_\_\_\_  
Office of the City Attorney

Ordinance Number: \_\_\_\_\_







# INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**  
 FROM: **Hari Ponnekanti, Public Works Director/ City Engineer**  
 BY: **Brittany Robinson, Public Works Grant Analyst**  
 CC: **Mayor Ekberg**  
 DATE: **November 4, 2022**  
 SUBJECT: **Surface Water Fund – Nelsen Side Channel, Gilliam Creek, Riverton Creek**  
**Project No. 91641203, 99830105, 99830103,**  
**King County Cooperative Watershed Management Grant Award**

### ISSUE

Accept a King County Cooperative Watershed Management (CWM) grant award to fund the Gilliam Creek Fish Barrier Removal, Nelsen Side Channel, and Riverton Creek Projects.

### BACKGROUND

#### Nelsen Side Channel

The project will open up one acre of off-channel floodplain habitat and restore another acre of riparian forest by setting back a levee and reconnecting the river with its historic channel.

#### Gilliam Creek Fish Barrier Removal

The project will create fish passage between Gilliam Creek and the Green River in Tukwila. Gilliam Creek is mostly inaccessible to aquatic species due to the presence of a 1960s era 108”-diameter flapgate at the outlet of a 207-foot-long culvert beneath 66th Ave. S.

#### Riverton Creek Flapgate Removal

The project was completed in 2021. This project restored fish access to Riverton Creek and reestablished previously inaccessible rearing habitat at the confluence with the Duwamish River. 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

The City recently received notification that it was awarded King County CWM grant funding for design of both the Nelsen Side Channel and Gilliam Creek Fish Barrier Removal projects, as well as vegetation maintenance for the Riverton Creek project.

### FISCAL IMPACT

The City has been awarded \$390,000 from the King County CWM. King County requires leverage to ensure that there is full project funding. Leverage can come from other grant match or local City match. The majority of the leverage for these projects will come from other grant sources, with the exception of \$17,032 in match for the Riverton Creek Project. The City match for the Riverton Creek project will come from the Green the Green CIP budget, which supports ongoing maintenance of vegetation. The \$55,000 budgeted in 2023 is sufficient to cover the City match.

<u>Project</u>	<u>Grant Award</u>	<u>Leverage</u>	<u>Source: Grants</u>	<u>Source: City</u>
Gilliam Creek	\$250,000	\$1,161,000	\$1,161,000	\$0
Nelsen Side Channel	100,000	47,000	47,000	0
Riverton Creek	<u>40,000</u>	<u>17,032</u>	<u>0</u>	<u>17,032</u>
<b>Total</b>	<b>\$390,000</b>	<b>\$1,225,032</b>	<b>\$1,208,000</b>	<b>\$17,032</b>

**RECOMMENDATION**

Council is being asked to formally accept the King County (KC) Cooperative Watershed Management (CWM) grant award in the amount of \$390,000 to fund the Gilliam Creek Fish Barrier Removal, Nelsen Side Channel, and Riverton Creek Projects and consider this item on the Consent Agenda at the November 21, 2022 Regular Council Meeting.

**Attachments:** 2021 CIP Page 82, 85, 87, 90  
Grant Contract

# CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

**PROJECT:** Green the Green Program

Project No. 91641202

**DESCRIPTION:** Interdepartmental effort to provide trees along the Green River and its tributaries in order to provide shade and cooler water temperatures to threatened salmon and steelhead.

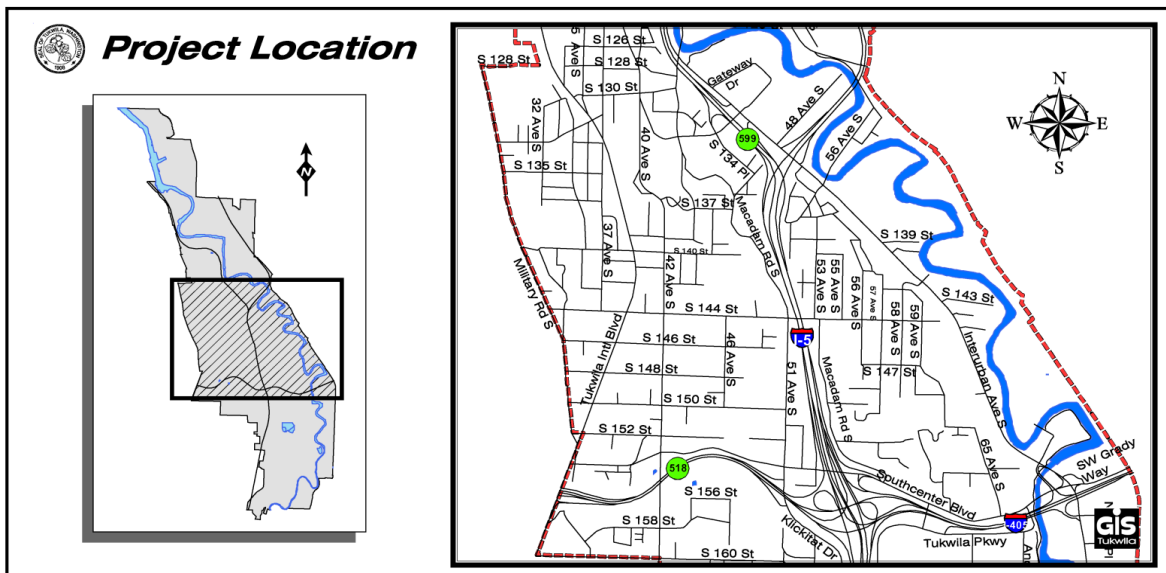
**JUSTIFICATION:** WRIA 9 has identified warm water temperatures as an impediment to salmon recovery, and has also started a funding program called, "ReGreen the Green" which aims to support revegetation projects along the river.

**STATUS:** CIP utilized for restoration at NC Machinery & Southcenter Plaza. Planting completed and maintenance began in 2020. Other opportunities are being identified in a collaborative effort between Public Works and DCD.

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

**COMMENT:** Grant funding ongoing. Funding to date has come from WRIA9, King Co., and the Rose Foundation.

FINANCIAL (in \$000's)	Through		Estimated							
	2019	2020	2021	2022	2023	2024	2025	2026	BEYOND	TOTAL
<b>EXPENSES</b>										
Design	30	5	20	5	20	5	20	5	30	140
Land (R/W)			5		5				3	18
Monitoring		10	20	20	30	30	20	45	45	220
Const. Mgmt.	2	7		20		20		20	20	89
Construction	45	136		100		100		100	100	581
<b>TOTAL EXPENSES</b>	<b>77</b>	<b>158</b>	<b>45</b>	<b>145</b>	<b>55</b>	<b>155</b>	<b>40</b>	<b>173</b>	<b>200</b>	<b>1,048</b>
<b>FUND SOURCES</b>										
Awarded Grants KC	19	113								132
Proposed Grants				50		50		50	50	200
Rose Foundation	13	12								25
Mitigation Expected										0
City Oper. Revenue	45	33	45	95	55	105	40	123	150	691
<b>TOTAL SOURCES</b>	<b>77</b>	<b>158</b>	<b>45</b>	<b>145</b>	<b>55</b>	<b>155</b>	<b>40</b>	<b>173</b>	<b>200</b>	<b>1,048</b>



## CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

**PROJECT:** Gilliam Creek Fish Barrier Removal Project No. 99830105

**DESCRIPTION:** Construct fish passage improvements at existing flap gate and restore salmonid habitat; replace flap gate which may include a self-regulating tide gate or flood wall.

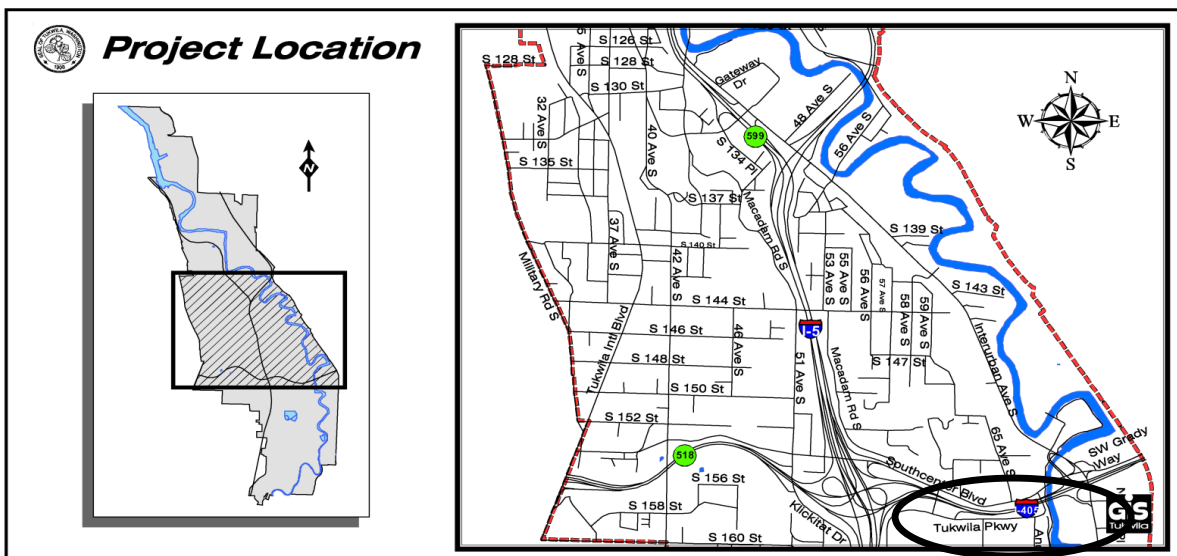
**JUSTIFICATION:** Enable fish access to lower Gilliam Creek under wider range of flow conditions; fish barrier per WDFW and City; WRIA 9 salmon habitat project.

**STATUS:** Analysis of lower Gilliam Creek is being conducted in 2018 to determine the best solution for fish passage and to address potential flooding.

**MAINT. IMPACT:** Likely a shift in maintenance commitments with potential elimination of flapgate maintenance.

**COMMENT:** In 2020, SRFB listed as Project of Concern, WRIA pulling funding from this cycle; BA Fish Barrier Board - scored 63 of 94; outcomes yet to be determined; \$100K allocated in CWM via WRIA 9.

FINANCIAL (in \$000's)	Through		Estimated							BEYOND	TOTAL
	2019	2020	2021	2022	2023	2024	2025	2026			
<b>EXPENSES</b>											
Design	60		936	536	405						1,937
Land (R/W)											0
Monitoring											0
Const. Mgmt.						752	400				1,152
Construction						5,200	2,000				7,200
<b>TOTAL EXPENSES</b>	<b>60</b>	<b>0</b>	<b>936</b>	<b>536</b>	<b>405</b>	<b>5,952</b>	<b>2,400</b>	<b>0</b>	<b>0</b>		<b>10,289</b>
<b>FUND SOURCES</b>											
Awarded Grant											0
Proposed Grant			708	350	258	4,760	1,000				7,076
Mitigation Actual											0
Mitigation Expected											0
City Oper. Revenue	60	0	228	186	147	1,192	1,400	0	0		3,213
<b>TOTAL SOURCES</b>	<b>60</b>	<b>0</b>	<b>936</b>	<b>536</b>	<b>405</b>	<b>5,952</b>	<b>2,400</b>	<b>0</b>	<b>0</b>		<b>10,289</b>



# CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

**PROJECT:** Nelsen Salmon Habitat Side Channel Project No. 91641203

**DESCRIPTION:** Create an off-channel salmon rearing habitat side channel by connecting a segment of historic river channel with the Green River.

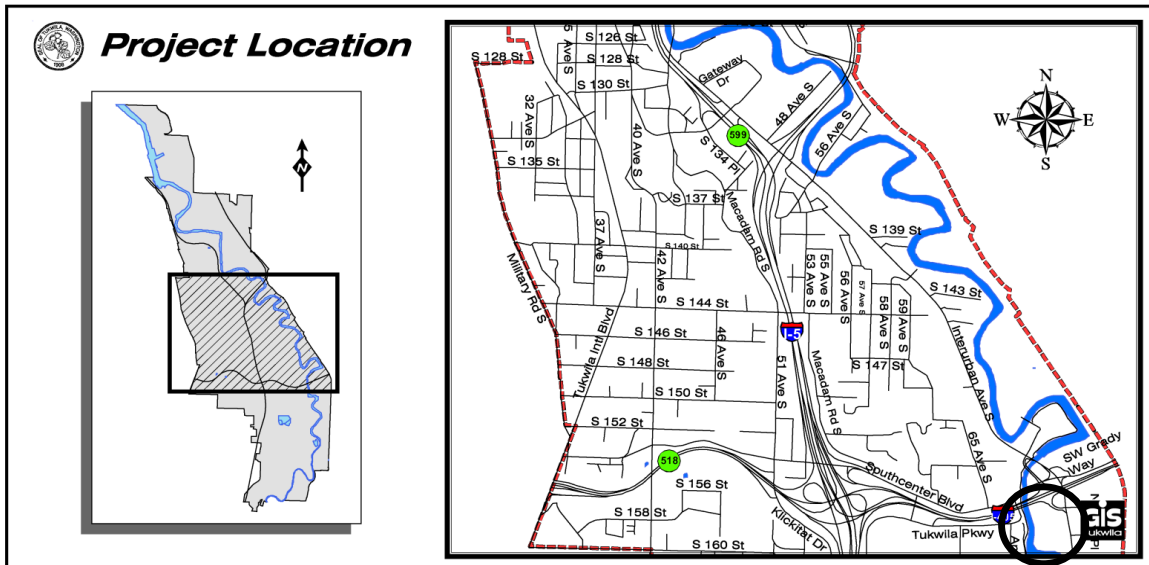
**JUSTIFICATION:** WRIA 9 has identified this project a proposed action in the Salmon Habitat Plan.

**STATUS:** The project area is primarily within State lands, but the intent is to transfer to City. The project may take place under an aquatic lease (DNR), depending on timing. Grant application for design funding submitted to Floodplains in 2020 with a low probability of success.

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

**COMMENT:** Property acquisition to the north could create the opportunity for a side channel and additional flood storage, or potentially combine this with Gilliam Creek Fish Barrier project depending on funding source feedback.

FINANCIAL (in \$000's)	Through Estimated									TOTAL
	2019	2020	2021	2022	2023	2024	2025	2026	BEYOND	
<b>EXPENSES</b>										
Design		50	220	240						510
Land (R/W)		5	5							10
Monitoring										0
Const. Mgmt.					385					385
Construction					1,440					1,440
<b>TOTAL EXPENSES</b>	<b>0</b>	<b>55</b>	<b>225</b>	<b>240</b>	<b>1,825</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,345</b>
<b>FUND SOURCES</b>										
Awarded Grant										0
Proposed Grant			100	218	1,232					1,550
Mitigation Actual										0
Mitigation Expected										0
City Oper. Revenue	0	55	125	22	593	0	0	0	0	795
<b>TOTAL SOURCES</b>	<b>0</b>	<b>55</b>	<b>225</b>	<b>240</b>	<b>1,825</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,345</b>



# 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 property.

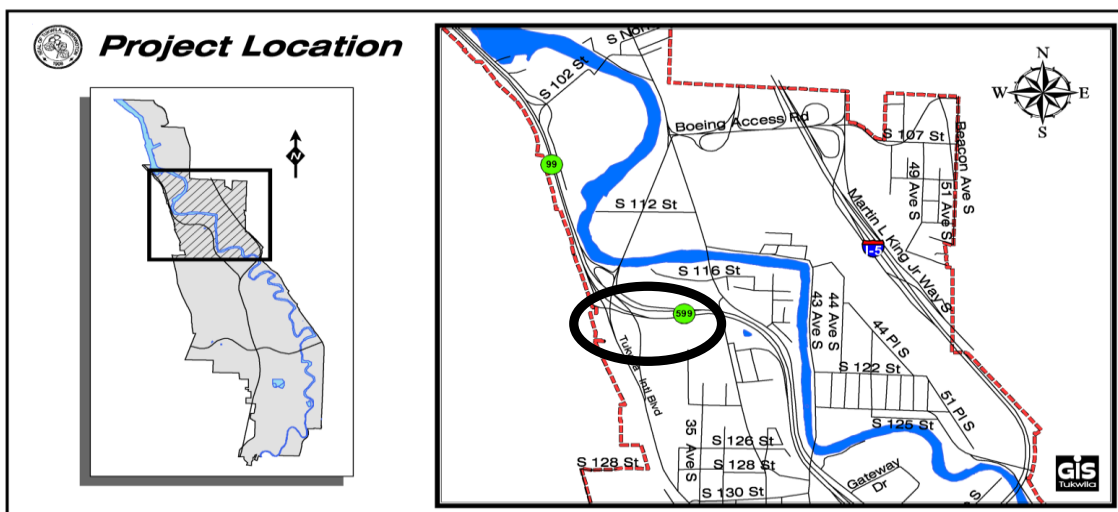
**JUSTIFICATION:** Increase available salmonid rearing habitat and increase flood refuge in lower Duwamish River. Improve fish access to Riverton Creek and enhance salmon rearing and resting area.

**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								TOTAL
	2019	2020	2021	2022	2023	2024	2025	2026	BEYOND		
<b>EXPENSES</b>											
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>	
<b>FUND SOURCES</b>											
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>	



Project Names:  
Project No. 1: Gilliam Creek Fish Barrier Removal and Habitat Enhancement  
Project No. 2: Nelsen Side Channel  
Project No. 3: Riverton Creek Flapgate Removal

Award Numbers:  
4.9.22.010  
4.9.22.011  
4.9.22.021

**AGREEMENT FOR AWARD OF  
COOPERATIVE WATERSHED MANAGEMENT GRANT FUNDS  
BETWEEN THE CITY OF TUKWILA AND KING COUNTY**

This Agreement is made between King County, a municipal corporation, and the City of Tukwila (“Recipient”), for the purposes set forth herein. This Agreement shall be in effect from the date of execution to **December 31, 2025**.

Primary Contact for King County: Kim Harper, Grant Administrator, 206-477-6079,  
[Kim.harper@kingcounty.gov](mailto:Kim.harper@kingcounty.gov).

Primary Contact for Recipient: Mike Perfetti, Surface Water Senior Project Manager, 206-550-4930, [Mike.perfetti@tukwila.gov](mailto:Mike.perfetti@tukwila.gov).

**SECTION 1. RECITALS**

- 1.1 Whereas, the King County Flood Control District (“District”) is a quasi-municipal corporation of the State of Washington, authorized to provide funding for cooperative watershed management arrangements and actions for purposes of water quality, water resource, and habitat protection and management;
- 1.2 Whereas King County is the service provider to the District under the terms of an interlocal agreement ("ILA") by and between King County and the District, dated February 17, 2009, as amended, and as service provider implements the District's annual work program and budget;
- 1.3 Whereas, the Board of Supervisors of the District (the “Board”), the District’s governing body, passed Resolution FCD 2021-12 on November 9, 2021, authorizing the King County executive or his designee to develop and administer a grant award program of up to \$10,309,697 in 2022 for water quality, water resources and habitat restoration and management projects and activities in King County, provided that the project list is approved by the Board;
- 1.4 Whereas, in accordance with Resolution FCD2012-07.2 and in its capacity as service provider to the District, King County has established a grant award program, called the Cooperative Watershed Management Award Program, to fund water quality, water resources and habitat restoration and management projects and activities;
- 1.5 Whereas, the Recipient submitted applications to its respective WRIA forum or committee for the Projects, as described in Exhibit A attached hereto and incorporated herein by this reference, and that body has recommended the Projects for funding under the Cooperative Watershed Management Grant Program in accordance with King County’s Cooperative Watershed Management Grant Program Policies and Procedures, a copy of which has been furnished by King County to the Recipient and which are

Project Names:	Award Numbers:
Project No. 1: Gilliam Creek Fish Barrier Removal and Habitat Enhancement	4.9.22.010
Project No. 2: Nelsen Side Channel	4.9.22.011
Project No. 3: Riverton Creek Flapgate Removal	4.9.22.021

incorporated herein by this reference (“Grant Policies and Procedures”);

- 1.6 Whereas the District’s Board of Supervisors has received a list of proposed projects that includes the Projects, and the Board of Supervisors has approved the Projects, in Resolution FCD2022-09, for funding up to the amount of **\$390,000** as follows: \$250,000 for the Project titled “Gilliam Creek Fish Barrier Removal and Habitat Enhancement”, \$100,000 for the Project titled “Nelsen Side Channel”, and \$40,000 for the Project titled “Riverton Creek Flapgate Removal”;
- 1.7 Whereas King County has received Scopes of Work and Budgets for the Projects from the Recipient and has determined that the Scopes of Work, attached hereto and incorporated herein as Exhibit B-1, B-2 and B-3, collectively referred to as “Scopes of Work”, and the Budgets, attached hereto and incorporated herein as Exhibit C (“Budget Summary”), are consistent with the Grant Policies and Procedures;
- 1.8 Whereas, King County and the Recipient desire to enter into this Agreement for the purpose of establishing the terms and conditions under which King County will provide funding from the District in accordance with the Policies and Procedures, and the Recipient will implement the Projects.

**SECTION 2. AGREEMENT**

- 2.1. The Recitals are an integral part of this Agreement and are incorporated herein by this reference.
- 2.2. King County agrees to award the Recipient an award in the total amount of **\$390,000** from District funds (the Award). The Award shall be used by the Recipient solely for the performance of the Projects. King County shall pay the Recipient in accordance with the Grant Policies and Procedures.
- 2.3. The Recipient represents and warrants that it will only use the Award for the Scopes of Work of this Agreement and in accordance with the Project Budgets. The Recipient shall be required to refund to King County that portion of the Award which is used for work or tasks not included in the Scope of Work. Further, the Recipient agrees that King County may retain any portion of the Award that is not expended or remains after completion of the Scopes of Work and issuance of the Final Reports, as further described below.
- 2.4. Activities carried out for these Projects and expenses incurred by the Recipient may predate the execution date of this Agreement provided that 1) they have been identified by Recipient as being within the scopes of numbers 2) and 3) below, and have been approved by King County as being within such scopes; 2) The activities are specified in the Scopes of Work of this Agreement; 3) the expenses are incurred in carrying out the Scopes of Work and are authorized by the Award as identified in the Budgets of this Agreement; 4) such activities and expenses otherwise comply with all other terms of this Agreement; and 5) such activities and expenses do not occur prior to the date the grants



Project Names:  
Project No. 1: Gilliam Creek Fish Barrier Removal and Habitat Enhancement  
Project No. 2: Nelsen Side Channel  
Project No. 3: Riverton Creek Flapgate Removal

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were approved by the District and reimbursements shall be paid to the Recipient only after this Agreement has been fully executed.

- 2.5. The Recipient shall invoice King County for incurred expenses for each project separately using the Request for Payment form and Progress Report form, or online equivalents to these forms upon the County's implementation of an online reporting database, for those documented and allowable expenses identified in the Budgets and according to the rules set forth in the Grant Policies and Procedures. Requests for payment shall be made no less frequently than every six months after the effective date of this Agreement nor more frequently than every three months after the aforementioned date. A Progress Report form shall be submitted with all payment requests. A one-time advance may be allowed, in the discretion of King County, for expenses anticipated to be incurred in the three months following the date of submission of the advance Request for Payment only for work that is included in the Scopes of Work of this Agreement, and identified as such in the Request for Payment. The amount of the advance may not exceed 25% of the total award amount. Documentation of payments made from advances shall be submitted to King County prior to any further requests for payment.
- 2.6. The Recipient shall be required to submit to King County a final report for each Project which documents the Recipient's completion of the work in conformance with the terms of this Agreement within thirty (30) days after the completion of the work. The final reports may be submitted on the Close-out Report form or online equivalent to this form upon the County's implementation of an online reporting database. Each final report shall include a summary of each Project's successes and shall address the watershed benefits accomplished by the work.
- 2.7. The Recipient's expenditures of Award funds shall be separately identified in the Recipient's accounting records. If requested, the Recipient shall comply with other reasonable requests made by King County with respect to the manner in which Project expenditures are tracked and accounted for in the Recipient's accounting books and records. The Recipient shall maintain such records of expenditures as may be necessary to conform to generally accepted accounting principles as further described in Section 2.8 below, and to meet the requirements of all applicable state and federal laws.
- 2.8. The Recipient shall be required to track project expenses using the Budget Accounting and Reporting System for the State of Washington ("BARS") or Generally Accepted Accounting Principles set forth by the Financial Accounting Standards Board or by the Governmental Accounting Standards Board.
- 2.9. King County or its representative, and the District or its representative shall have the right from time to time, at reasonable intervals, to audit the Recipient's books and records in order to verify compliance with the terms of this Agreement. The Recipient shall cooperate with King County and the District in any such audit.

Project Names:  
Project No. 1: Gilliam Creek Fish Barrier Removal and Habitat Enhancement  
Project No. 2: Nelsen Side Channel  
Project No. 3: Riverton Creek Flapgate Removal

Award Numbers:  
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4.9.22.011  
4.9.22.021

- 2.10. The Recipient shall retain all accounting records and project files relating to this Agreement in accordance with criteria established by the Washington State Archivist Local Government Common Records Retention Schedule (CORE) as revised.
- 2.11. The Recipient shall ensure that all work performed by its employees, agents, contractors or subcontractors is performed in a manner which protects and safeguards the environment and natural resources and which is in compliance with local, state and federal laws and regulations. The Recipient shall implement an appropriate monitoring system or program to ensure compliance with this provision.
- 2.12. The Recipient agrees to indemnify, defend and hold harmless King County, and the District, their elected or appointed officials, employees and agents, from all claims, alleged liability, damages, losses to or death of person or damage to property arising out of any acts or omissions of the Recipient, its employees, agents, contractors or subcontractors in performing its obligations under the terms of this Agreement, except to the extent that the claim arises from the negligent acts or omissions of King County and the District.
- 2.13. The Recipient agrees to acknowledge the District as a source of funding, and the WRIA as a funding partner, for the Projects on all printed, online, and electronic documents; signage or press releases; audio-visual materials; or any other materials produced in association with the Projects. Grant recipients shall submit documentation of acknowledgement activities with their final reporting documents.

### **SECTION 3. GENERAL PROVISIONS**

- 3.1. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
- 3.2. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No prior or contemporaneous representation, inducement, promise or agreement between or among the parties which relate to the subject matter hereof which are not embodied in this Agreement shall be of any force or effect.
- 3.3. No amendment to this Agreement shall be binding on any of the parties unless such amendment is in writing and is executed by the parties. The parties contemplate that this Agreement may from time to time be modified by written amendment which shall be executed by duly authorized representatives of the parties and attached to this Agreement.
- 3.4. Each party warrants and represents that such party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a party warrants and represents that he/she has been fully authorized to execute this Agreement on behalf of such party and that such party is bound by the signature of such representative.

Project Names:  
Project No. 1: Gilliam Creek Fish Barrier Removal and Habitat Enhancement  
Project No. 2: Nelsen Side Channel  
Project No. 3: Riverton Creek Flapgate Removal

Award Numbers:  
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4.9.22.011  
4.9.22.021

- 3.5. The Projects shall be completed by no later than **December 31, 2025**. In the event that the Projects are not completed by this date, King County has the discretion, but not the obligation to terminate this Agreement and retain any unexpended Award funds.
- 3.6. This Agreement may be signed in multiple counterparts.
- 3.7. If any provision of this Agreement shall be wholly or partially invalid or unenforceable under applicable law, such provision will be ineffective to that extent only, without in any way affecting the remaining parts or provision of this Agreement, and the remaining provisions of this Agreement shall continue to be in effect.
- 3.8. The amount of the Award has been fully funded by the District. To the extent that funding of the Award requires future appropriations by the King County Council, King County's obligations are contingent upon the appropriation of sufficient funds by the King County Council to complete the Scope of Work. If no such appropriation is made, this Agreement will terminate at the close of the appropriation year for which the last appropriation that provides funds under this Agreement was made.

**KING COUNTY:**

**RECIPIENT:**

**By** \_\_\_\_\_

**By** \_\_\_\_\_

**Name** \_\_\_\_\_

**Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**Title** \_\_\_\_\_

**Date** \_\_\_\_\_

**Date** \_\_\_\_\_

Project Names:  
 Project No. 1: Gilliam Creek Fish Barrier Removal and Habitat Enhancement  
 Project No. 2: Nelsen Side Channel  
 Project No. 3: Riverton Creek Flapgate Removal

Award Numbers:  
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 4.9.22.021

**EXHIBIT A: Project Descriptions**

WRIA	Project	Recipient	Description	Leverage	Award
9	Gilliam Creek Fish Barrier Removal and Habitat Enhancement	City of Tukwila	Create fish passage between Gilliam Creek and the Green River in Tukwila. Gilliam Creek is mostly inaccessible to aquatic species due to the presence of a 1960s era 108"-diameter flapgate at the outlet of a 207-foot-long culvert beneath 66th Ave. S.	\$1,161,000	\$250,000
9	Nelsen Side Channel		Open up one acre of off-channel floodplain habitat and restore another acre of riparian forest by setting back a levee and reconnecting the river with its historic channel.	\$47,000	\$100,000
9	Riverton Creek Flapgate Removal		Provide two years of maintenance of the Re-green the Green funded revegetation portion of the project that was completed in 2021.	\$17,032	\$40,000
<b>TOTALS</b>				<b>\$1,225,032</b>	<b>\$390,000</b>

**Project Locations:**

**Project No. 1:** The project is located on the Green River at the confluence with Gilliam Creek in the highly developed Southcenter area of Tukwila. The project will improve the following habitats: mainstem edge, confluence, and tributary. Within the Green-Duwamish watershed, this project is located within the lower Green River, upstream of the salt wedge, but still tidally influenced. The lower Green River watershed is characterized by its levee-restricted banks and massive warehousing district. The primary limiting factor for Chinook salmon recovery in the lower Green is rearing habitat. The site has a narrow buffer of mixed vegetation, with a mature cottonwood canopy; there are two local road stormwater outlets in the project area.

**Project No. 2:** The project is located on the right bank of the lower Green River at river mile 12.5-12.6, within the highly developed Southcenter area of Tukwila. The project will improve mainstem edge habitat, off channel rearing and restore adjacent riparian areas. This project lies within the tidally-influenced reach of Puget Sound, but upstream of the salt wedge. The lower Green River watershed is characterized by its levee-restricted banks and massive warehousing district. The primary limiting factors for Chinook salmon recovery in the lower Green are rearing habitat and water quality, especially temperature. The site has a narrow buffer of mixed vegetation, with a mature cottonwood canopy.

**Project No. 3:** The site is across the river from the Duwamish Gardens and Chinook Wind habitat restoration projects, and adjacent to the SR 599 off ramp to Tukwila International Boulevard. It is located at Duwamish River Mile 6.5, left bank.

Project Names:  
 Project No. 1: Gilliam Creek Fish Barrier Removal and Habitat Enhancement  
 Project No. 2: Nelsen Side Channel  
 Project No. 3: Riverton Creek Flapgate Removal

Award Numbers:  
 4.9.22.010  
 4.9.22.011  
 4.9.22.021

**EXHIBIT B-1: Scope of Work for Gilliam Creek Fish Barrier Removal and Habitat Enhancement**

Task Title	Task Description (Include Activities and Deliverables)	Estimated Percent of Grant Budget	Month/Year Task will be Completed
<b>Task 1: Project Administration (Required)</b>	Submit reimbursement request forms, backup documentation for billing, and progress reports at least every 6 months. Submit a Fiscal Closeout form and a Closeout Report form with the final reimbursement request.	1%	October 2023
<b>Task 2:</b>	Site survey and investigations	12%	December 2022
<b>Task 3:</b>	Concept Design	5%	March 2023
<b>Task 4:</b>	Preliminary Design/30%	12%	June 2023
<b>Task 5:</b>	60% Design	15%	May 2024
<b>Task 6:</b>	Design Permit Applications and Coordination	15%	June 2024
<b>Task 7:</b>	Stakeholder Coordination	10%	January 2025
<b>Task 8:</b>	90% Design	20%	January 2025
<b>Task 9:</b>	Final Design	10%	December 2025

**EXHIBIT B-2: Scope of Work for Nelsen Side Channel**

Task Title	Task Description (Include Activities and Deliverables)	Estimated Percent of Grant Budget	Month/Year Task will be Completed
<b>Task 1: Project Administration (Required)</b>	Submit reimbursement request forms, backup documentation for billing, and progress reports at least every 6 months. Submit a Fiscal Closeout form and a Closeout Report form with the final reimbursement request.	2%	December 2025
<b>Task 2:</b>	Site analysis including survey, geotechnical, cultural, hydrologic/hydraulic and critical area reports	15%	December 2023
<b>Task 3:</b>	Stakeholder coordination including property acquisitions, stakeholder outreach and engagement	14%	September 2024
<b>Task 4:</b>	Preliminary design – including alternative designs, preferred design and design development to 30%.	14%	March 2024
<b>Task 5:</b>	Plans, Specifications & Estimate – develop final project plans, specifications and cost estimates with check-ins at 60% and 90% and 100%.	40%	September 2025
<b>Task 6:</b>	Permitting – develop permit application materials and supporting documents; hold a pre-application meeting and coordinate with permitting agencies through the application and approval process.	15%	July 2025

Project Names:  
 Project No. 1: Gilliam Creek Fish Barrier Removal and Habitat Enhancement  
 Project No. 2: Nelsen Side Channel  
 Project No. 3: Riverton Creek Flapgate Removal

Award Numbers:  
 4.9.22.010  
 4.9.22.011  
 4.9.22.021

**EXHIBIT B-3: Scope of Work for Riverton Creek Flapgate Removal**

Task Title	Task Description (Include Activities and Deliverables)	Estimated Percent of Total Budget	Month/Year Task will be Completed
<b>Task 1: Project Administration (Required)</b>	Submit reimbursement request forms, backup documentation for billing, and progress reports at least every 6 months. Submit a Fiscal Closeout form and a Closeout Report form with the final reimbursement request.	5%	May 2025
<b>Task 2:</b>	Watering and weeding for 2 years: a contractor will weed and water the restoration site for 2 years.	95%	March 2025

**EXHIBIT C: Budget Summary**

Budget Item	Grant Award Amount			
	Gilliam Creek Fish Barrier Removal and Habitat Enhancement	Nelsen Side Channel	Riverton Creek Flapgate Removal	Totals
<b>Staffing</b>	\$10,000	\$2,110	\$1,793	\$13,903
<b>Project Supplies</b>			\$6,852	\$6,852
<b>Commercial Services &amp; Crew Time</b>	\$240,000	\$97,890	\$31,355	\$369,245
<b>Total</b>	<b>\$250,000</b>	<b>\$100,000</b>	<b>\$40,000</b>	<b>\$390,000</b>



## INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**  
 FROM: **Hari Ponnekanti, Public Works Director/ City Engineer**  
 BY: **Brittany Robinson, Public Works Grant Analyst**  
 CC: **Mayor Ekberg**  
 DATE: **November 4, 2022**  
 SUBJECT: **Surface Water Fund – Nelsen Side Channel**  
**Project No. 91641203**  
**King County Open Spaces River Corridors Grant Award**

### **ISSUE**

Accept a King County (KC) Open Spaces River Corridors (OSRC) grant award to fund the Nelsen Side Channel Project.

### **BACKGROUND**

The Nelsen side channel is a remnant section of the Green River as it existed prior to the construction of the I-405 in the 1960s. The remnant channel is separated from the mainstem of the river by a constructed levee but offers potential as off-channel rearing habitat for threatened Puget Sound Chinook salmon and other aquatic species. This project will set the levee back to create a ±1.2-acre side channel, restore an acre of riparian forest, provide additional flood storage and provide public access to the river. Currently, there is a concept design in place for this project and property transfer arrangements are underway between the City, WDNR and WSDOT.

### **DISCUSSION**

In December 2021, Council approved staff to apply for OSRC funding. The OSRC program goal is to deliver projects that help restore the natural functions of rivers and the benefits they provide to our environment and communities. The City recently received notification that it was awarded an OSRC grant award to fund Nelsen Side Channel project design and permitting.

### **FISCAL IMPACT**

The City has been awarded \$250,000 from the King County OSRC, which requires a 20% local city match of \$62,500. The City received \$100,000 in grant funding from King County’s Cooperative Watershed Management fund, which can act as match for this grant.

	<b><u>Grant Award</u></b>	<b><u>Fund Source</u></b>	<b><u>Budget</u></b>
OSRC Grant	\$ 250,000	KC CWM Grant	\$100,000
Required Match	<u>62,500</u>		
<b>Total</b>	<b>\$ 312,500</b>		

### **RECOMMENDATION**

Council is being asked to formally accept the King County OSRC grant award in the amount of \$250,000 for the Nelsen Side Channel Project and consider this item on the Consent Agenda at the November 21, 2022 Regular Council Meeting.

Attachments: 2021 CIP Page 87

# CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

**PROJECT:** Nelsen Salmon Habitat Side Channel Project No. 91641203

**DESCRIPTION:** Create an off-channel salmon rearing habitat side channel by connecting a segment of historic river channel with the Green River.

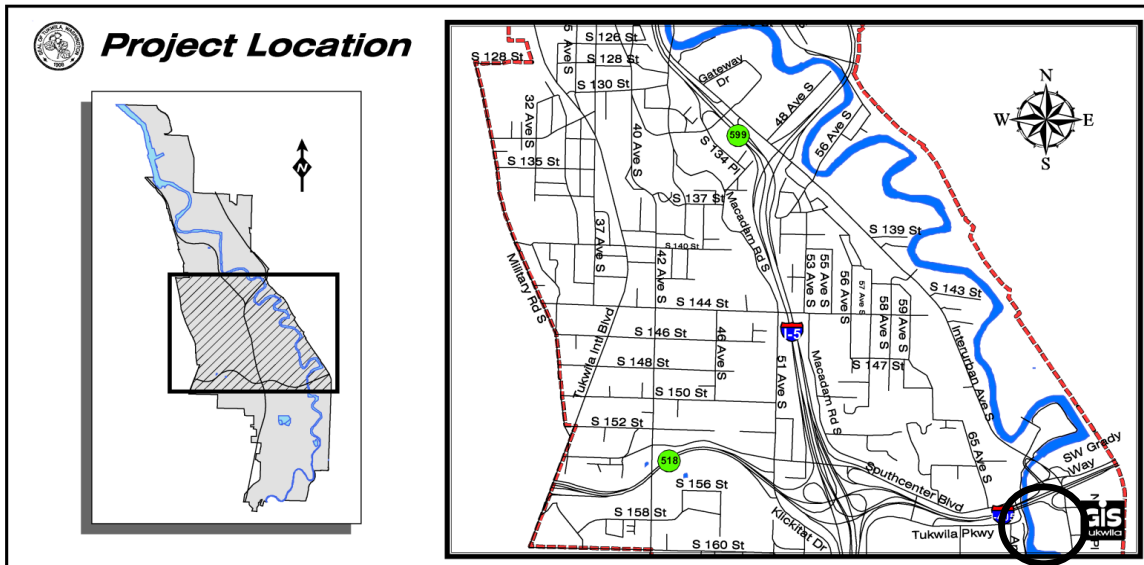
**JUSTIFICATION:** WRIA 9 has identified this project a proposed action in the Salmon Habitat Plan.

**STATUS:** The project area is primarily within State lands, but the intent is to transfer to City. The project may take place under an aquatic lease (DNR), depending on timing. Grant application for design funding submitted to Floodplains in 2020 with a low probability of success.

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

**COMMENT:** Property acquisition to the north could create the opportunity for a side channel and additional flood storage, or potentially combine this with Gilliam Creek Fish Barrier project depending on funding source feedback.

FINANCIAL (in \$000's)	Through Estimated									TOTAL
	2019	2020	2021	2022	2023	2024	2025	2026	BEYOND	
<b>EXPENSES</b>										
Design		50	220	240						510
Land (R/W)		5	5							10
Monitoring										0
Const. Mgmt.					385					385
Construction					1,440					1,440
<b>TOTAL EXPENSES</b>	<b>0</b>	<b>55</b>	<b>225</b>	<b>240</b>	<b>1,825</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,345</b>
<b>FUND SOURCES</b>										
Awarded Grant										0
Proposed Grant			100	218	1,232					1,550
Mitigation Actual										0
Mitigation Expected										0
City Oper. Revenue	0	55	125	22	593	0	0	0	0	795
<b>TOTAL SOURCES</b>	<b>0</b>	<b>55</b>	<b>225</b>	<b>240</b>	<b>1,825</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,345</b>





## Brittany Robinson

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**From:** King County Parks Levy <administrator@grantinterface.com>  
**Sent:** Tuesday, August 16, 2022 5:20 PM  
**To:** Brittany Robinson  
**Cc:** rmilholland@kingcounty.gov  
**Subject:** Open Space – River Corridors Program Grant Award  
**Attachments:** KC-W9.pdf; ACH\_Agreement.pdf

08/16/2022

**To:** Brittany Robinson, City of Tukwila  
**From:** Rusty Milholland, Program Manager, King County Parks

Dear Brittany,

Congratulations, your Open Space – River Corridors grant award has been approved by the King County Council! City of Tukwila was approved for Nelsen Side Channel in the amount of \$250,000.00. Your project is one of 14 grants totaling over \$5 million in investments!

Please feel free to share our King County Parks [press release](#) with your community partners.

We appreciate your patience and support through our first Open Space – River Corridors grant process. This grant program is supported by the voter-approved [2020-2025 Parks, Recreation, Trails and Open Space Levy](#) which generates about \$110 million over six years for grants for parks, recreation, and open space throughout King County.

To prepare for the contracting process, please complete the following next steps by **August 31, 2022**:

- Provide us with the name and email of **signing authority**: representative authorized to sign the contract with King County

- For organizations that have not previously received funding from King County:
  - Complete and sign **W9**: required to set-up your organization within our contracting system
  - Complete and sign **ACH Form**: required for direct deposit of grant reimbursements

Once we receive this information, we will contact you to preview the next steps in developing the contract. If you have questions or need additional information, please contact Rusty Milholland, Program Manager, at [rmilholland@kingcounty.gov](mailto:rmilholland@kingcounty.gov) or 206.848.0299.

Thank you for your commitment and partnership to restore the natural functions of rivers and the benefits they provide to our natural environment and communities.

Sincerely,  
Rusty Milholland

**CAUTION:** This email originated from outside the City of Tukwila network. Please **DO NOT** open attachments or click links from an unknown or suspicious origin.



# INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**  
 FROM: **Hari Ponnekanti, Public Works Director/ City Engineer**  
 BY: **Brittany Robinson, Public Works Grant Analyst**  
 CC: **Mayor Ekberg**  
 DATE: **November 4, 2022**  
 SUBJECT: **Surface Water Fund – Gilliam Creek and S 131<sup>st</sup> Street**  
**Project No. 99830105, 91641204**  
**King County Flood Control District Flood Reduction Grant Award**

### ISSUE

Accept a King County Flood Control District (KCFCD) Flood Reduction grant award to fund the Gilliam Creek Fish Barrier Removal and S 131<sup>st</sup> Drainage Improvements projects.

### BACKGROUND

#### Gilliam Creek Fish Barrier Removal

The project will create fish passage between Gilliam Creek and the Green River in Tukwila. Gilliam Creek is mostly inaccessible to aquatic species due to the presence of a 1960s era 108”-diameter flapgate at the outlet of a 207-foot-long culvert beneath 66th Ave. S.

#### S 131<sup>st</sup> Street Drainage Improvements

The primary goals of this project are to address local flooding of roadway and adjacent private properties and address upstream issues that contribute to flooding, water quality concerns and present fish barriers and habitat degradation.

### DISCUSSION

The City recently received notification that it was awarded the KCFCD Flood Reduction grant to fund design for both the Gilliam Creek Fish Barrier Removal and S 131<sup>st</sup> Street Drainage Improvements projects. KCFCD provides funding to improve the County’s aging and inadequate flood protection facilities.

### FISCAL IMPACT

The City has been awarded \$350,000 from the KCFCD Flood Reduction grant. King County requires leverage to ensure that there is full project funding. Leverage can come from other grant match and local City match. No City match will be required as all match will come from other grant sources.

<u>Project</u>	<u>Grant Award</u>	<u>Leverage</u>	<u>Grant Match</u>	<u>City Match</u>
Gilliam Creek	\$250,000	\$1,161,000	\$1,161,000	\$0
S 131 <sup>st</sup> Street	<u>100,000</u>	<u>127,720</u>	<u>127,720</u>	<u>0</u>
<b>Total</b>	<b>\$350,000</b>	<b>\$1,288,720</b>	<b>\$1,288,720</b>	<b>\$0</b>

### RECOMMENDATION

Council is being asked to formally accept the King County Flood Control District Flood Reduction grant award in the amount of \$350,000 to fund the Gilliam Creek Fish Barrier Removal and S 131<sup>st</sup> Drainage Improvements projects and consider this item on the Consent Agenda at the November 21, 2022 Regular Council Meeting.

Attachments: 2021 CIP Page 85, 89  
Grant Contract

# CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

**PROJECT:** Gilliam Creek Fish Barrier Removal Project No. 99830105

**DESCRIPTION:** Construct fish passage improvements at existing flap gate and restore salmonid habitat; replace flap gate which may include a self-regulating tide gate or flood wall.

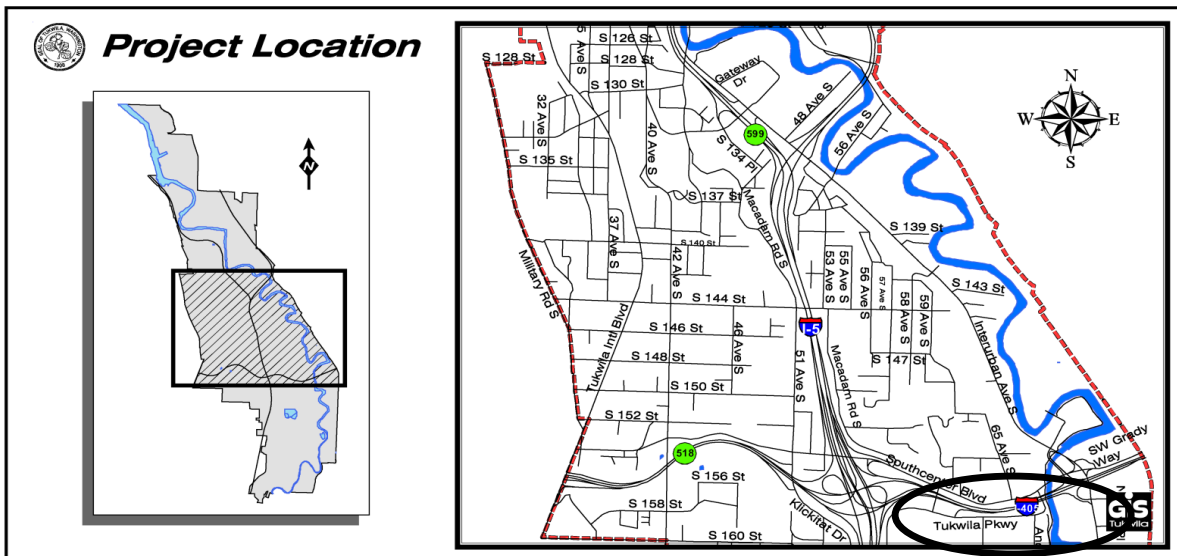
**JUSTIFICATION:** Enable fish access to lower Gilliam Creek under wider range of flow conditions; fish barrier per WDFW and City; WRIA 9 salmon habitat project.

**STATUS:** Analysis of lower Gilliam Creek is being conducted in 2018 to determine the best solution for fish passage and to address potential flooding.

**MAINT. IMPACT:** Likely a shift in maintenance commitments with potential elimination of flapgate maintenance.

**COMMENT:** In 2020, SRFB listed as Project of Concern, WRIA pulling funding from this cycle; BA Fish Barrier Board - scored 63 of 94; outcomes yet to be determined; \$100K allocated in CWM via WRIA 9.

FINANCIAL (in \$000's)	Through		Estimated							BEYOND	TOTAL
	2019	2020	2021	2022	2023	2024	2025	2026			
<b>EXPENSES</b>											
Design	60		936	536	405					1,937	
Land (R/W)										0	
Monitoring										0	
Const. Mgmt.						752	400			1,152	
Construction						5,200	2,000			7,200	
<b>TOTAL EXPENSES</b>	<b>60</b>	<b>0</b>	<b>936</b>	<b>536</b>	<b>405</b>	<b>5,952</b>	<b>2,400</b>	<b>0</b>	<b>0</b>	<b>10,289</b>	
<b>FUND SOURCES</b>											
Awarded Grant										0	
Proposed Grant			708	350	258	4,760	1,000			7,076	
Mitigation Actual										0	
Mitigation Expected										0	
City Oper. Revenue	60	0	228	186	147	1,192	1,400	0	0	3,213	
<b>TOTAL SOURCES</b>	<b>60</b>	<b>0</b>	<b>936</b>	<b>536</b>	<b>405</b>	<b>5,952</b>	<b>2,400</b>	<b>0</b>	<b>0</b>	<b>10,289</b>	



## CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

**PROJECT:** **S 131st Place Drainage Improvements** Project No. 91641204

**DESCRIPTION:** Design and replace an existing 36" culvert under S. 131st Pl. Raise the roadway approximately 18" and/or provide a concrete wall or other means to keep Southgate Creek within its banks during storm events.

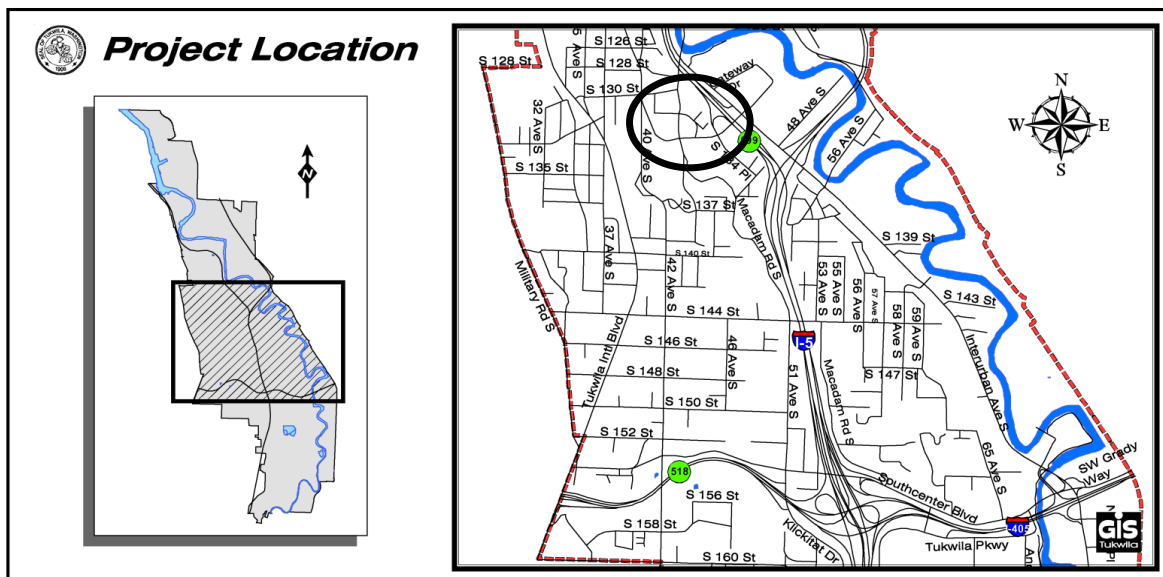
**JUSTIFICATION:** Southgate Creek overtops its bank several times per year during storm events and runs through private property. Debris is deposited within a private driveway and storm system.

**STATUS:** Maintenance is performed annually on the creek to remove excess sedimentation to reduce the likelihood of flooding.

**MAINT. IMPACT:** Reduce the frequency of stream sediment removal and storm cleanup.

**COMMENT:** Project will require an HPA. Will consider combining with a future overlay project to reduce overall costs. A grant request for \$200K was submitted to the KCFCFD in 2020.

FINANCIAL (in \$000's)	Through Estimated									TOTAL
	2019	2020	2021	2022	2023	2024	2025	2026	BEYOND	
<b>EXPENSES</b>										
Design		100	150							250
Land (R/W)										0
Const. Mgmt.				150						150
Construction				850						850
<b>TOTAL EXPENSES</b>	<b>0</b>	<b>100</b>	<b>150</b>	<b>1,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,250</b>
<b>FUND SOURCES</b>										
Awarded Grant										0
Proposed Grant			100	150						250
Mitigation Actual										0
Mitigation Expected										0
City Oper. Revenue	0	100	50	850	0	0	0	0	0	1,000
<b>TOTAL SOURCES</b>	<b>0</b>	<b>100</b>	<b>150</b>	<b>1,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,250</b>



Project Name: Award Number:  
Project No. 1: Gilliam Creek Fish Passage and Habitat Enhancement 4.22.35  
Project No. 2: S 131st Street Drainage Improvements /DUW 19- Southgate Creek Restoration 4.22.49

**AGREEMENT FOR AWARD OF  
FLOOD REDUCTION GRANT FUNDS  
BETWEEN THE CITY OF TUKWILA AND KING COUNTY**

This Agreement is made between King County, a municipal corporation, and the **City of Tukwila** (“Recipient”) (collectively referred to as the “parties” and in the singular “party”), for the purposes set forth herein. This Agreement shall be in effect from the date of execution to **December 31, 2025**.

Project Contacts:

Contact for King County: Kim Harper, Grant Administrator, 206-477-6079,  
[Kim.harper@kingcounty.gov](mailto:Kim.harper@kingcounty.gov).

Primary Contact for Recipient: Mike Perfetti, Surface Water Senior Program Manager, 206-550-4930, [Mike.perfetti@tukwilawa.gov](mailto:Mike.perfetti@tukwilawa.gov).

**SECTION 1. RECITALS**

- 1.1 Whereas, the King County Flood Control District (“District”) is a quasi-municipal corporation of the State of Washington, authorized to provide funding for flood control and stormwater protection projects and activities; and
- 1.2 Whereas King County is the service provider to the District under the terms of an interlocal agreement (“ILA”) by and between King County and the District, dated February 17, 2009, as amended, and as service provider implements the District’s annual work program and budget; and
- 1.3 Whereas, on November 12, 2013, the District’s Board of Supervisors passed Resolution FCD2013-14 which established a Flood Reduction Grant Program and criteria for awarding grant funding for projects, and on November 9, 2021, the Board passed Resolution FCD2021-12, which authorized an allocation of \$12,000,000 from the District’s 2022 budget to fund flood reduction projects; and
- 1.4 Whereas, on October 11, 2022, the District’s Board of Supervisors passed Resolution FCD2022-12, which approved the flood reduction projects described in Attachment A to that Resolution; and
- 1.5 Whereas, in accordance with the terms of these Resolutions, and in its capacity as service provider to the District, King County has established policies and procedures for administering the flood reduction grant program, a copy of which has been furnished to Recipient and which is incorporated herein by this reference (hereinafter “Grant Policies and Procedures”); and

Project Name:	Award Number:
Project No. 1: Gilliam Creek Fish Passage and Habitat Enhancement	4.22.35
Project No. 2: S 131st Street Drainage Improvements /DUW 19- Southgate Creek Restoration	4.22.49

- 1.6 Whereas, the Recipient submitted an application to receive funds for projects to be funded by the Flood Reduction Grant Program; and
- 1.7 Whereas the District’s Board of Supervisors approved funding of Recipient’s application for the projects (“Projects”), as described in Attachment A to Resolution FCD2022-12 in the amount of **\$350,000** (“Award”) as follows: \$250,000 for the Project titled “Gilliam Creek Fish Passage and Habitat Enhancement”, and \$100,000 for the Project titled “S 131st Street Drainage Improvements /DUW 19- Southgate Creek Restoration”; and
- 1.8 Whereas King County has received a Scope of Work and a Budget for the Project from the Recipient and has determined that the Scopes of Work, attached hereto and incorporated herein as Exhibit B-1 and B-2, collectively referred to as “Scopes of Work”, and the Budgets, attached hereto and incorporated herein as Exhibit C (“Budget”), are consistent with the Grant Policies and Procedures, the Recipient’s application for the Project, and the Resolution approving funding for the Project; and
- 1.9 Whereas, King County and the Recipient desire to enter into this Agreement for the purpose of establishing the terms and conditions under which King County will provide funding from the District in accordance with Resolution FCD2022-12, and the Grant Policies and Procedures, and under which the Recipient will implement the Projects.

**SECTION 2. AGREEMENT**

- 2.1. The Recitals are an integral part of this Agreement and are incorporated herein by this reference.
- 2.2. King County agrees to pay the Award amount to Recipient in the total amount of **\$350,000** from District funds. The Award shall be used by the Recipient solely for the performance of the Projects, as described in Exhibit A to this Agreement. Exhibit A, attached hereto and incorporated herein by this reference, contains a description of the Projects as described in Attachment A to Resolution FCD2022-12. King County shall pay the Recipient in accordance with the terms of the Grant Policies and Procedures.
- 2.3. The Recipient represents and warrants that it will only use the Award for the Scope of Work of this Agreement and in accordance with the Project Budgets. The Recipient shall be required to refund to King County that portion of the Award which is used for work or tasks not included in the Scopes of Work. Further, the Recipient agrees that King County may retain any portion of the Award that is not expended or remains after completion of the Scopes of Work and issuance of the Final Reports, as further described below.
- 2.4. Activities carried out for these Projects and expenses incurred by the Recipient may predate the execution date of this Agreement provided that 1) they have been identified

Project Name:	Award Number:
Project No. 1: Gilliam Creek Fish Passage and Habitat Enhancement	4.22.35
Project No. 2: S 131st Street Drainage Improvements /DUW 19- Southgate Creek Restoration	4.22.49

by Recipient as being within the scopes of numbers 2) and 3) below, and have been approved by King County as being within such scopes; 2) the activities are specified in the Scopes of Work of this Agreement; 3) the expenses are incurred in carrying out the Scope of Work and are authorized by the Award as identified in the Budgets of this Agreement; 4) the activities occur after the District passes a resolution approving an award for the Projects; 5) such activities and expenses otherwise comply with all other terms of this Agreement; and 6) reimbursements shall be paid to the Recipient only after this Agreement has been fully executed.

- 2.5. The Recipient shall invoice King County for incurred expenses for each project using the Request for Payment form and Progress Report form, or online equivalents to these forms upon the County's implementation of an online reporting database, for those documented and allowable expenses identified in the Budgets and according to the rules set forth in the Grant Policies and Procedures. A request for payment shall be made no less frequently than every six months after the effective date of this Agreement nor more frequently than every three months after the aforementioned date. A Progress Report form and backup documentation of claimed expenses shall be submitted with all payment requests. A one-time advance of no more than 25% of the Award amount may be allowed, in the discretion of King County, for expenses anticipated to be incurred in the three months following the date of submission of the advance Request for Payment only for work that is included in the Scopes of Work of this Agreement, and identified as such in the Request for Payment. Documentation of payments made from the advance payment shall be submitted to King County prior to any further requests for payment.
- 2.6. The Recipient shall be required to submit to King County a final report for each Project which documents the Recipient's completion of the work in conformance with the terms of this Agreement within thirty (30) days after the completion of the work. The final report may be submitted on the Closeout Report form, or online equivalent to this form upon the County's implementation of an online reporting database. Each final report shall include a summary of each Project's successes and shall address the flood reduction benefits accomplished by the work.
- 2.7. The Recipient's expenditures of Award funds shall be separately identified in the Recipient's accounting records. If requested, the Recipient shall comply with other reasonable requests made by King County with respect to the manner in which Project expenditures are tracked and accounted for in the Recipient's accounting books and records. The Recipient shall maintain such records of expenditures as may be necessary to conform to generally accepted accounting principles as further described in Section 2.8 below, and to meet the requirements of all applicable state and federal laws.
- 2.8. The Recipient shall be required to track project expenses using the Budget Accounting and Reporting System for the State of Washington ("BARS") or Generally Accepted Accounting Principles set forth by the Financial Accounting Standards Board or by the Governmental Accounting Standards Board.



Project Name:	Award Number:
Project No. 1: Gilliam Creek Fish Passage and Habitat Enhancement	4.22.35
Project No. 2: S 131st Street Drainage Improvements /DUW 19- Southgate Creek Restoration	4.22.49

- 2.9. King County or its representative, and the District or its representative, shall have the right from time to time, at reasonable intervals, to audit the Recipient's books and records in order to verify compliance with the terms of this Agreement. The Recipient shall cooperate with King County and the District in any such audit.
- 2.10. The Recipient shall retain all accounting records and project files relating to this Agreement in accordance with criteria established by the Washington State Archivist Local Government Common Records Retention Schedule (CORE) as revised.
- 2.11. The Recipient shall ensure that all work performed by its employees, agents, contractors or subcontractors is performed in a manner which protects and safeguards the environment and natural resources and which is in compliance with local, state and federal laws and regulations. The Recipient shall implement an appropriate monitoring system or program to ensure compliance with this provision.
- 2.12. The Recipient agrees to indemnify, defend and hold harmless King County, and the District, their elected or appointed officials, employees and agents, from all claims, alleged liability, damages, losses to or death of person or damage to property arising out of any acts or omissions of the Recipient, its employees, agents, contractors or subcontractors in performing its obligations under the terms of this Agreement.
- 2.13. The Recipient agrees to acknowledge the District as a source of funding for the Projects on all literature, signage or press releases related to the Project. The Recipient may obtain from King County a District logo that may be used in the acknowledgement.

### **SECTION 3. GENERAL PROVISIONS**

- 3.1. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
- 3.2. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No prior or contemporaneous representation, inducement, promise or agreement between or among the parties which relate to the subject matter hereof which are not embodied in this Agreement shall be of any force or effect.
- 3.3. No amendment to this Agreement shall be binding on any of the parties unless such amendment is in writing and is executed by the parties. The parties contemplate that this Agreement may from time to time be modified by written amendment which shall be executed by duly authorized representatives of the parties and attached to this Agreement.
- 3.4. Each party warrants and represents that such party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a party warrants and represents that he/she has been fully authorized to execute this Agreement

Project Name:	Award Number:
Project No. 1: Gilliam Creek Fish Passage and Habitat Enhancement	4.22.35
Project No. 2: S 131st Street Drainage Improvements /DUW 19- Southgate Creek Restoration	4.22.49

on behalf of such party and that such party is bound by the signature of such representative.

- 3.5. The Projects shall be completed by no later than **December 31, 2025**. In the event that the Projects are not completed by this date, King County has the discretion, but not the obligation, to terminate this Agreement and retain any unexpended Award funds.
- 3.6. This Agreement may be signed in multiple counterparts.
- 3.7. If any provision of this Agreement shall be wholly or partially invalid or unenforceable under applicable law, such provision will be ineffective to that extent only, without in any way affecting the remaining parts or provision of this Agreement, and the remaining provisions of this Agreement shall continue to be in effect.
- 3.8. The amount of the Award has been fully funded by the District. To the extent that funding of the Award requires future appropriations by the District, King County’s obligations are contingent upon the appropriation of sufficient funds by the Board of Supervisors of the District to complete the Scope of Work. If no such appropriation is made, this Agreement will terminate at the close of the appropriation year for which the last appropriation that provides funds under this Agreement was made.

**KING COUNTY:**

**RECIPIENT:**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Project Name:

Award Number:

Project No. 1: Gilliam Creek Fish Passage and Habitat Enhancement

4.22.35

Project No. 2: S 131st Street Drainage Improvements /DUW 19- Southgate Creek Restoration

4.22.49

**EXHIBIT A: PROJECT DESCRIPTION**

PROJECT NAME	RECIPIENT	DESCRIPTION	LEVERAGE	AWARD
Gilliam Creek Fish Passage and Habitat Enhancement	City of Tukwila	Restore fish passage between Gilliam Creek and the Green River and improve habitat conditions within lower Gilliam Creek. Gilliam Creek is mostly inaccessible to aquatic species due to the presence of a 1960s era 108" diameter flapgate at the outlet of a 207-foot-long culvert beneath 66th Ave. S.	\$600,000	\$250,000
S 131st Street Drainage Improvements /DUW 19- Southgate Creek Restoration		Southgate Creek overtops its banks approximately twice annually and flows down a private driveway resulting in flooding, debris cleanup, and minor property damage. The scope of the design work will be to analyze options and develop a design that would replace an undersized 48" culvert under S. 131 <sup>st</sup> Street and potentially raise the roadway. In addition, the City will analyze upstream conditions to identify sources of sedimentation and erosion that contribute to flooding issues within the S 131 <sup>st</sup> Street project area; this effort will also identify conveyance, fish passage, water quality and habitat issues and develop a project list that will improve conditions within Southgate Creek.	\$327,720	\$100,000
<b>TOTALS</b>			<b>\$927,720</b>	<b>\$350,000</b>

**EXHIBIT B-1: Scope of Work for Gilliam Creek Fish Passage and Habitat Enhancement**

TASKS	ACTIVITIES AND DELIVERABLES	APPROX. PERCENT OF AWARD REQUEST	MONTH/YEAR TASK WILL BE COMPLETED
<b>Task 1: Project Administration (Required task)</b>	Submit reimbursement request forms, backup documentation for billing, and progress reports at least every 6 months. Submit a Fiscal Closeout form and a Closeout Report form with the final reimbursement request.	1%	December 2025
<b>Task 2: Permitting</b>	The City will hire a professional design consulting team to execute permitting for the preferred alternative up to 100% design. Deliverables will be the permits for design and construction.	39%	March 2025
<b>Task 3: Design</b>	The City will hire a professional design consulting team to execute design for the preferred alternative up to 100% design. Deliverable will be plans, specifications, and cost estimates to prepare the project for the construction phase.	60%	December 2025

Project Name:  
 Project No. 1: Gilliam Creek Fish Passage and Habitat Enhancement  
 Project No. 2: S 131st Street Drainage Improvements /DUW 19- Southgate Creek Restoration

Award Number:  
 4.22.35  
 4.22.49

**EXHIBIT B-2: Scope of Work for S 131st Street Drainage Improvements /DUW 19- Southgate Creek Restoration**

TASKS	ACTIVITIES AND DELIVERABLES	APPROX. PERCENT OF AWARD REQUEST	MONTH/YEAR TASK WILL BE COMPLETED
<b>Task 1: Project Administration (Required task)</b>	Submit reimbursement request forms, backup documentation for billing, and progress reports at least every 6 months. Submit a Fiscal Closeout form and a Closeout Report form with the final reimbursement request.	5%	December 2025
<b>Task 2: Design &amp; Permitting</b>	Design and permitting for the S 131 <sup>st</sup> Street drainage project. Deliverables will include site survey, studies and reports; alternative analysis, permitting, and 30%, 60%, 90% plans, specifications and estimate.	65%	December 2024
<b>Task 3: Analysis</b>	Watershed-scale analysis identifying urban stream issues related to flooding, flow, erosion, water quality, habitat and fish passage. Develop a report and prioritized list of potential projects.	30%	December 2025

**EXHIBIT C: BUDGET**

Budget Item	Grant Award Amount		
	Gilliam Creek Fish Passage and Habitat Enhancement	S 131st Street Drainage Improvements /DUW 19- Southgate Creek Restoration	Totals
Staffing	\$5,000	\$2,500	\$7,500
Commercial Services & Crew Time	\$95,000	\$247,500	\$342,500
<b>Total</b>	<b>\$100,000</b>	<b>\$250,000</b>	<b>\$350,000</b>



## INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**  
 FROM: **Hari Ponnekanti, Public Works Director/ City Engineer**  
 BY: **Brittany Robinson, Public Works Grant Analyst**  
 CC: **Mayor Ekberg**  
 DATE: **November 4, 2022**  
 SUBJECT: **Surface Water Fund – Gilliam Creek Fish Barrier Removal**  
**Project No. 99830105**  
**Recreation and Conservation Office Salmon Recovery Fund Board Grant Award**

### **ISSUE**

Accept a Recreation and Conservation Office (RCO) Salmon Recovery Fund Board (SRFB) grant award to fund the Gilliam Creek Fish Barrier Removal project.

### **BACKGROUND**

The primary goals of this project are to restore fish passage between Gilliam Creek and the Green River, restore salmon habitat, and maintain or improve flood protection. The 108” flapgate would be removed and replaced with flood protection more conducive to fish passage.

### **DISCUSSION**

In December 2021, Council approved staff to apply for RCO funding. The SRFB program funds elements necessary to achieve overall salmon recovery, including habitat projects and other activities that result in sustainable and measurable benefits for salmon and other fish species. The City recently received notification that it was awarded an SRFB grant award to fund Gilliam Creek Fish Barrier Removal project design and permitting.

### **FISCAL IMPACT**

The City has been awarded \$250,000 from the King County OSRC, which requires a local match of \$50,000. The City also received \$250,000 in grant funding from King County’s Cooperative Watershed Management fund, which can act as match for this grant.

	<b><u>Grant Award</u></b>	<b><u>Fund Source</u></b>	<b><u>Budget</u></b>
OSRC Grant	\$ 250,000	KC CWM Grant	\$250,000
Required Match	<u>50,000</u>		
<b>Total</b>	<b>\$ 300,000</b>		

### **RECOMMENDATION**

Council is being asked to formally accept the Recreation and Conservation Office SRFB grant award in the amount of \$250,000 for the Gilliam Creek Fish Barrier Removal project and consider this item on the Consent Agenda at the November 21, 2022 Regular Council Meeting.

Attachments: 2021 CIP Page 85  
Grant Agreement

# CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

**PROJECT:** Gilliam Creek Fish Barrier Removal Project No. 99830105

**DESCRIPTION:** Construct fish passage improvements at existing flap gate and restore salmonid habitat; replace flap gate which may include a self-regulating tide gate or flood wall.

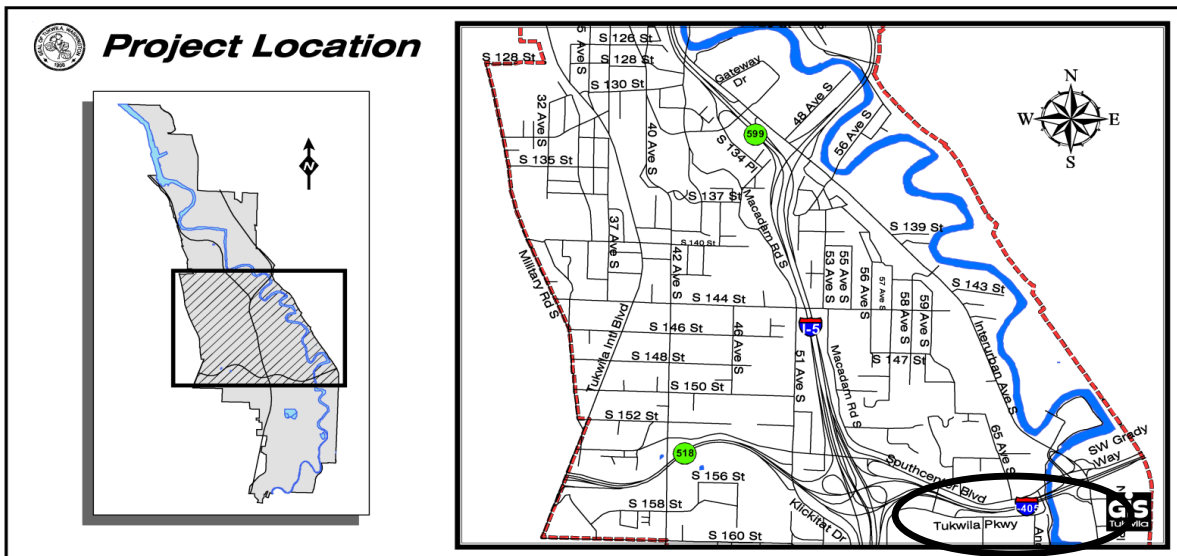
**JUSTIFICATION:** Enable fish access to lower Gilliam Creek under wider range of flow conditions; fish barrier per WDFW and City; WRIA 9 salmon habitat project.

**STATUS:** Analysis of lower Gilliam Creek is being conducted in 2018 to determine the best solution for fish passage and to address potential flooding.

**MAINT. IMPACT:** Likely a shift in maintenance commitments with potential elimination of flapgate maintenance.

**COMMENT:** In 2020, SRFB listed as Project of Concern, WRIA pulling funding from this cycle; BA Fish Barrier Board - scored 63 of 94; outcomes yet to be determined; \$100K allocated in CWM via WRIA 9.

FINANCIAL (in \$000's)	Through		Estimated							BEYOND	TOTAL
	2019	2020	2021	2022	2023	2024	2025	2026			
<b>EXPENSES</b>											
Design	60		936	536	405						1,937
Land (R/W)											0
Monitoring											0
Const. Mgmt.						752	400				1,152
Construction						5,200	2,000				7,200
<b>TOTAL EXPENSES</b>	<b>60</b>	<b>0</b>	<b>936</b>	<b>536</b>	<b>405</b>	<b>5,952</b>	<b>2,400</b>	<b>0</b>	<b>0</b>		<b>10,289</b>
<b>FUND SOURCES</b>											
Awarded Grant											0
Proposed Grant			708	350	258	4,760	1,000				7,076
Mitigation Actual											0
Mitigation Expected											0
City Oper. Revenue	60	0	228	186	147	1,192	1,400	0	0		3,213
<b>TOTAL SOURCES</b>	<b>60</b>	<b>0</b>	<b>936</b>	<b>536</b>	<b>405</b>	<b>5,952</b>	<b>2,400</b>	<b>0</b>	<b>0</b>		<b>10,289</b>



**Project Sponsor:** City of Tukwila  
**Project Title:** Gilliam Creek Fish Passage Prelim Des

**Project Number:** 22-1049P  
**Approval Date:** 09/22/2022

## **PARTIES OF THE AGREEMENT**

This Recreation and Conservation Office Grant Agreement (Agreement) is entered into between the State of Washington by and through the Salmon Recovery Funding Board (SRFB or funding board) and the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and City of Tukwila (Sponsor, and primary Sponsor), 6200 Southcenter Blvd, Tukwila, WA 98188, and shall be binding on the agents and all persons acting by or through the parties.

The Sponsor's Unique Entity ID (UEID) Number is UEQNM26C8T3.

All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.

Prior to and during the Period of Performance, per the Applicant Resolution/Authorizations submitted by all Sponsors (and on file with the RCO), the identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project identified above, including but not limited to, full authority to: (1) sign a grant application for grant assistance, (2) enter into this Agreement on behalf of the Sponsor(s), including indemnification, as provided therein, (3) enter any amendments thereto on behalf of Sponsor(s), and (4) make any decisions and submissions required with respect to the project. Agreements and amendments must be signed by the Authorized Representative/Agent(s) of all Sponsors, unless otherwise allowed in the AMENDMENTS TO AGREEMENT Section.

- A. During the Period of Performance, in order for a Sponsor to change its Authorized Representative/Agent as identified on the original signed Applicant Resolution/Authorization the Sponsor must provide the RCO a new Applicant Resolution/Authorization signed by its governing body or a written delegation of authority to sign in lieu of originally authorized Representative/Agency(s). Unless a new Applicant Resolution/Authorization has been provided, the RCO shall proceed on the basis that the person who is listed as the Authorized Representative in the last Resolution/Authorization that RCO has received is the person with authority to bind the Sponsor to the Agreement (including any amendments thereto) and decisions related to implementation of the Agreement.
- B. Amendments After the Period of Performance. RCO reserves the right to request and Sponsor has the obligation to provide, authorizations and documents that demonstrate any signatory to an amendment has the authority to legally bind the Sponsor as described in the above Sections.

For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (See PROJECT REIMBURSEMENTS Section).

## **PURPOSE OF AGREEMENT**

This Agreement sets out the terms and conditions by which a grant is made from the General Fund - Federal of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO).

## **DESCRIPTION OF PROJECT**

The City of Tukwila proposes to complete preliminary design for the Gilliam Creek Fish Barrier Removal and Habitat Enhancement project to create fish passage between Gilliam Creek and the Green River in Tukwila and enhance habitat near the confluence. Gilliam Creek is mostly inaccessible to aquatic species due to the presence of a 1960s era 108"-diameter flapgate and concrete splash pad at the outlet of a 207-foot long culvert beneath 66th Ave. S. The flapgate is listed as a total fish passage barrier on the Washington State fish passage data base and is chronically closed or near-closed with plunges to the splash pad below and again from the sill of the pad to the riverbed during lower water conditions. The City identified three restoration alternatives; Alt 1 and 2 retrofit the existing culvert and Alt 3 abandons the culvert and creates a new fish passage route utilizing a contemporary box culvert or other fish passable structure(s). As a first step in this project, the city will survey the site and evaluate in further detail the technical feasibility of the 3 alternatives and select a preferred alternative that will advance to preliminary design (per Manual 18 Appendix D-2).

## **PERIOD OF PERFORMANCE**

The period of performance begins on September 22, 2022 (project start date) and ends on September 22, 2024 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any applicable RCO manuals as of the effective date of this Agreement.

The RCO reserves the right to summarily dismiss any request to amend this Agreement if not made at least 60 days before the project end date.

### STANDARD TERMS AND CONDITIONS INCORPORATED

The Standard Terms and Conditions of the Recreation and Conservation Office attached hereto are incorporated by reference as part of this Agreement.

### LONG-TERM OBLIGATIONS

For this planning project, the sponsor's on-going obligation shall be the same as the period of performance identified in the Period of Performance section.

### PROJECT FUNDING

The total grant award provided for this project shall not exceed \$250,000.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	<u>Percentage</u>	<u>Dollar Amount</u>	<u>Source of Funding</u>
<b>SRFB - Salmon State Supplemental Sm</b>	61.42%	\$184,246.00	State
<b>SRFB - Salmon Federal Projects</b>	21.92%	\$65,754.00	Federal
<b>Project Sponsor</b>	16.67%	\$50,000.00	
<b>Total Project Cost</b>	100.00%	\$300,000.00	

### FEDERAL FUND INFORMATION

If federal funding information is included in this section, this project is funded by, matched by, and/or funded in part by the following federal award, or subaward:

Federal Agency: US Dept of Commerce  
Assistance Listing Number and Name: 11.438 - PCSRF  
Federal Award Identification Number: NA22NMF4380227  
Federal Fiscal Year: 2022  
Federal Award Date: 07/19/2022  
Total Federal Award: \$23,280,000  
Federal Award Project Description: FY2022 Pacific Coastal Salmon Recovery

This funding is not research and development (R&D).

If the Sponsor's total federal expenditures are \$750,000 or more during the Sponsor's fiscal-year, the Sponsor is required to have a federal single audit conducted for that year in compliance with 2 C.F.R. Part 200 (as updated). The Sponsor must provide a copy of the final audit report to RCO within nine months of the end of the Sponsor's fiscal year, unless a longer period is agreed to in advance by the federal agency identified in this section.

Sponsor shall comply with the federal "Omni-circular" (2 C.F.R. Part 200).

RCO may suspend all reimbursements if the Sponsor fails to timely provide a single federal audit; further the RCO reserves the right to suspend any and all RCO Agreement(s) with the Sponsor if such noncompliance is not promptly cured.

### RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved and/or amended as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with the Agreement, such information shall not be used to vary the terms of the Agreement, unless the terms in the Agreement are shown to be subject to an unintended error or omission. "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions.



## AMENDMENTS TO AGREEMENT

Except as provided herein, no amendment (including without limitation, deletions) of this Agreement will be effective unless set forth in writing signed by all parties. Exception: extensions of the Period of Performance and minor scope adjustments need only be signed by RCO's director or designee and consented to in writing (including email) by the Sponsor's Authorized Representative/Agent or Sponsor's designated point of contact for the implementation of the Agreement (who may be a person other than the Authorized Agent/Representative), unless otherwise provided for in an amendment. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so.

Unless otherwise expressly stated in an amendment, any amendment to this Agreement shall be deemed to include all current federal, state, and local government laws and rules, and policies applicable and active and published in the applicable RCO manuals or on the RCO website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone. However, any such amendment, unless expressly stated, shall not extend or reduce the long-term obligation term.

## COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, Exhibits, and any applicable federal program and accounting rules effective as of the date of this Agreement or as of the effective date of an amendment, unless otherwise provided in the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone unless otherwise expressly stated in the amendment.

For the purpose of this Agreement, WAC Title 420, SRFB policies shall apply as terms of this Agreement.

For the purpose of this Agreement, the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

- Reimbursements - Manual 8
- Restoration Projects - Manual 5
- Salmon Recovery Grants - Manual 18

## SPECIAL CONDITIONS

Special Condition #1: Cultural Resources-Survey Required. This agreement requires compliance with Executive Order 21-02. RCO has completed the initial consultation for this project and a cultural resources survey is required. The cultural resources survey must include documentation of any above or below ground archaeological resources as well as any possible historic structures or buildings that may be affected by the project. Archaeological monitoring of any proposed geotechnical borings, investigations, or test pits may be included as part of the cultural resources survey. This project may receive a USACE permit in future, RCO will defer to the Corps for their permitted project actions. The Sponsor must submit the results of the cultural resources survey to RCO and receive a notice of cultural resources completion. Ground disturbance started without approval will be considered a breach of contract. If archaeological or historic materials are discovered while conducting ground disturbing activities, work in the immediate vicinity must stop and the Sponsor must ensure compliance with the provisions found in this agreement. All cultural resources work must meet reporting guidelines outlined by the Department of Archaeology and Historic Preservation.

## AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to either or both the mail address and/or the email address listed below:

### Sponsor Project Contact

Mike Perfetti

6300 Southcenter Blvd, Ste 100  
Tukwila, WA 98188  
Mike.Perfetti@TukwilaWA.gov

### RCO Contact

Bridget Kaminski  
Outdoor Grants Manager  
PO Box 40917  
Olympia, WA 98504-0917  
bridget.kaminski@rco.wa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Unless otherwise provided for in this Agreement, decisions relating to the Agreement must be made by the Authorized 79

Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

**ENTIRE AGREEMENT**

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

**EFFECTIVE DATE**

Unless otherwise provided for in this Agreement, this Agreement, for Project 22-1049, shall become effective and binding on the date signed by both the sponsor and the RCO's authorized representative, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE Section are allowed only when this Agreement is fully executed and an original is received by RCO.

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE RCO GRANT AGREEMENT. The signatories listed below represent and warrant their authority to bind the parties to this Agreement.

**City of Tukwila**

By: \_\_\_\_\_

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

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

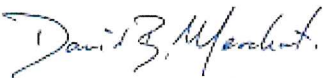
**State of Washington Recreation and Conservation Office  
On behalf of the Salmon Recovery Funding Board (SRFB or funding board)**

By: \_\_\_\_\_

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

Megan Duffy  
Director  
Recreation and Conservation Office

Pre-approved as to form:

By:  \_\_\_\_\_  
Assistant Attorney General

Date: 09/15/2022

**Project Sponsor:** City of Tukwila  
**Project Title:** Gilliam Creek Fish Passage Prelim Des

**Project Number:** 22-1049P  
**Approval Date:** 09/22/2022

## Eligible Scope Activities

### ELIGIBLE SCOPE ACTIVITIES

#### Planning Metrics

##### Worksite #1, Gilliam Creek

Targeted salmonid ESU/DPS (A.23):	Chinook Salmon-Puget Sound ESU, Steelhead-Puget Sound DPS
Targeted species (non-ESU species):	None
Area Encompassed (acres) (B.0.b.1):	1.3
Miles of Stream and/or Shoreline Affected (B.0.b.2):	0.18 0.18 mi Gilliam Cr + .02 mi Green River.

##### Design for Salmon restoration

###### Preliminary design (B.1.b.11.a RCO)

Project Identified in a Plan or Watershed Assessment. (1220) (B.1.b.11.a):	Shared Strategy Development Committee. 2007. Puget Sound Salmon Recovery Plan. Seattle, WA. <a href="https://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domain_s/puget_sound/chinook/pugetsoundchinookrecoveryplan_wo_exec_summary.pdf">https://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domain_s/puget_sound/chinook/pugetsoundchinookrecoveryplan_wo_exec_summary.pdf</a> WRIA 9. (2005, August). Green/Duwamish and Central Puget Sound Watershed Salmon Habitat Plan: Making Our Watershed Fit for a King. <a href="https://www.govlink.org/watersheds/9/plan-implementation/HabitatPlan.aspx">https://www.govlink.org/watersheds/9/plan-implementation/HabitatPlan.aspx</a> Puget Sound Partnership's 2018-2022 Near Term Action Agenda
Priority in Recovery Plan (1222) (B.1.b.11.b):	The project is listed as project # LG-16 in the Habitat Plan; it protects and improves riparian vegetation; protects and improves access to tributaries and creates/restores habitat that provides refuge, habitat and complexity (page 7-73).

#### Cultural Resources

##### Cultural resources

**Project Sponsor:** City of Tukwila  
**Project Title:** Gilliam Creek Fish Passage Prelim Des

**Project Number:** 22-1049P  
**Approval Date:** 09/22/2022

## Project Milestones

**PROJECT MILESTONE REPORT**

Complete	Milestone	Target Date	Comments/Description
	Project Start	09/22/2022	
	Cultural Resources Complete	11/30/2022	Cultural resources survey and historic structures documentation required prior to ground disturbance, may proceed concurrently with geotech/soils investigations,
	Progress Report Due	03/15/2023	
	Progress Report Due	09/15/2023	
	Preliminary Design to RCO	09/15/2023	As described in RCO Manual 18, App D-2.
	Annual Project Billing Due	09/21/2023	
	Progress Report Due	03/15/2024	
	Progress Report Due	09/15/2024	
	Final Report Due	09/15/2024	This is the RCO final report in PRISM.
	Agreement End Date	09/22/2024	Project Closing. All expenditures must be prior to this date.
	Final Billing Due	11/22/2024	

**Project Sponsor:** City of Tukwila  
**Project Title:** Gilliam Creek Fish Passage Prelim Des

**Project Number:** 22-1049P  
**Approval Date:** 09/22/2022

## Standard Terms and Conditions of the Recreation and Conservation Office

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## STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This document sets forth the Standard Terms and Conditions of the Recreation and Conservation Office as of 10/20/2022.

### CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

**Agreement, terms of the Agreement, or project agreement** – The document entitled “RCO GRANT AGREEMENT” accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of the RCO Grant Agreement, all exhibits, attachments, addendums, amendments, and applicable manuals, and any intergovernmental agreements, and/or other documents that are incorporated into the Agreement subject to any limitations on their effect under this Agreement.

**applicable manual(s), manual** – A manual designated in this Agreement to apply as terms of this Agreement, subject (if applicable) to substitution of the “RCO director” for the term “board” in those manuals where the project is not approved by or funded by the referenced board, or a predecessor to the board.

**applicable WAC(s)** – Designated chapters or provisions of the Washington Administrative Code that apply by their terms to the type of grant in question or are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the “RCO director” for the term “board” or “agency” in those cases where the RCO has contracted to or been delegated to administer the grant program in question.

**applicant** – Any party, prior to becoming a Sponsor, who meets the qualifying standards/eligibility requirements for the grant application or request for funds in question.

**application** – The documents and other materials that an applicant submits to the RCO to support the applicant's request for grant funds; this includes materials required for the “Application” in the RCO's automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

**Authorized Representative/Agent** – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor's signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

**C.F.R.** – Code of Federal Regulations

**completed project or project completion** – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been delivered to and paid by RCO.
- Documents affecting property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

**contractor** – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

**Cultural Resources** – Archaeological or historic archaeological sites, historic buildings/structures, and cultural or sacred places.

**director** – The chief executive officer of the Recreation and Conservation Office or that person's designee.

**effective date** – The date when the signatures of all parties to this agreement are present in the agreement.

**equipment** – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level

established by the Sponsor or \$5,000 (2 C.F.R. Part 200 (as updated)).

**funding board or board** – The Washington State Recreation and Conservation Funding Board, or the Washington State Salmon Recovery Funding Board. Or both as may apply.

**Funding Entity** – the entity that approves the project that is the subject to this Agreement.

**grant program** – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

**indirect cost** – Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. 200 as updated).

**long-term obligations** – Sponsor's obligations after the project end date, as specified in the Agreement and manuals and other exhibits as may apply.

**landowner agreement** – An agreement that is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor.

**match or matching share** – The portion of the total project cost provided by the Sponsor.

**milestone** – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

**Office** – Means the Recreation and Conservation Office or RCO.

**pass-through entity** – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 CFR 200 (as updated)). If this Agreement is a federal subaward, RCO is the pass-through entity.

**period of performance** – The period beginning on the project start date and ending on the project end date.

**planning project** - A project that results in one or more of the following: 1) a study, a plan, assessment, project design, inventory, construction plans and specifications, and permits; or 2) a project that provides money to facilitate the work of an organization engaged in planning and coordination, or resource stewardship.

**pre-agreement cost** – A project cost incurred before the period of performance.

**primary Sponsor** – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. Administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

**project** – The undertaking that is funded by this Agreement either in whole or in part with funds administered by RCO.

**project area** – The area consistent with the geographic limits of the scope of work of the project and subject to project agreement requirements. For restoration projects, the project area must include the physical limits of the project's final site plans or final design plans. For acquisition projects, the project area must include the area described by the legal description of the properties acquired for or committed to the project.

**project completion or completed project** – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been delivered to and paid by RCO.
- Documents affecting property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

**project cost** – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (see also 2 C.F.R. Part 200 (as updated)) for federally funded projects).

**project end date** – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

**project start date** – The specific date identified in the Agreement on which the period of performance starts.

**RCO** – Recreation and Conservation Office – The state agency that administers the grant that is the subject of this Agreement. RCO includes the director and staff.

**RCW** – Revised Code of Washington

**reimbursement** – RCO's payment of funds from eligible and allowable costs that have already been paid by the Sponsor per the terms of the Agreement.

**renovation project** – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

**secondary Sponsor** – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

**Sponsor** – A Sponsor is an organization that is listed in and has signed this Agreement.

**Sponsor Authorized Representative/Agent** – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

**SRFB** – Salmon Recovery Funding Board

**subaward** – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. Part 200 (as updated). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. Part 200 (as updated)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in the Project Funding Section.

**subrecipient** – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. Part 200 (as updated)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

**tribal consultation** – Outreach, and consultation with one or more federally recognized tribes (or a partnership or coalition or consortium of such tribes, or a private tribal enterprise) whose rights will or may be significantly affected by the proposed project. This includes sharing with potentially-affected tribes the scope of work in the grant and potential impacts to natural areas, natural resources, and the built environment by the project. It also includes responding to any tribal request from such tribes and considering tribal recommendations for project implementation which may include not proceeding with parts of the project, altering the project concept and design, or relocating the project or not implementing the project, all of which RCO shall have the final approval of.

**useful service life** – Period during which a built asset, equipment, or fixture is expected to be useable for the purpose it was acquired, installed, developed, and/or renovated, or restored per this Agreement.

**WAC** – Washington Administrative Code.

## PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the RCO (to include any RCO approved changes or amendments thereto). All submitted documents are incorporated by this reference as if fully set forth herein.

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.



## **ASSIGNMENT**

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written approval of the RCO. Sponsor shall not sell, give, or otherwise assign to another party any property right, or alter a conveyance (see below) for the project area acquired with this grant without prior approval of the RCO.

## **RESPONSIBILITY FOR PROJECT**

Although RCO administers the grant that is the subject of this Agreement, the project itself remains the sole responsibility of the Sponsor. The RCO and Funding Entity (if different from the RCO) undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project has more than one Sponsor, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.

The RCO, its employees, assigns, consultants and contractors, and members of any funding board or advisory committee or other RCO grant review individual or body, have no responsibility for reviewing, approving, overseeing or supervising design, construction, or safety of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO, its employees, assigns, consultants and contractors, and any funding board or advisory committee or other RCO grant review individual or body will act only to confirm at a general, lay person, and nontechnical level, solely for the purpose of project eligibility and payment and not for safety or suitability, that the project apparently is proceeding or has been completed as per the Agreement.

## **INDEMNIFICATION**

The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents for whom the State is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents or employees, and (b) the State, or its employees or agents the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or its agents, or employees.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51. Sponsor's waiver of immunity under this provision extends only to claims against Sponsor by Indemnitee RCO, and does not include, or extend to, any claims by Sponsor's employees directly against Sponsor.

Sponsor shall ensure that any agreement relating to this project involving any contractors, subcontractors and/or vendors of any tier shall require that the contracting entity indemnify, defend, waive RCW 51 immunity, and otherwise protect the State as provided herein as if it were the Sponsor. This shall not apply to a contractor or subcontractor is solely donating its services to the project without compensation or other substantial consideration.

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

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

## INDEPENDENT CAPACITY OF THE SPONSOR

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the RCO or Funding Entity. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of the RCO or the Funding Entity, or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

## CONFLICT OF INTEREST

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

In the event this Agreement is terminated as provided herein, RCO shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

## COMPLIANCE WITH APPLICABLE LAW

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

- A. **Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Employment Act (if applicable). In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project: "During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."
- B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.
  - 1) Pursuant to RCW 39.12.040(1)(a), all contractors and subcontractors shall submit to Sponsor a statement of intent to pay prevailing wages if the need to pay prevailing wages is required by law. If a contractor or subcontractor intends to pay other than prevailing wages, it must provide the Sponsor with an affirmative statement of the contractor's or subcontractor's intent. Unless required by law, the Sponsor is not required to investigate a statement regarding prevailing wage provided by a contractor or subcontractor.
- D. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature. No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.
- E. **Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party

## ARCHAEOLOGICAL AND CULTURAL RESOURCES

- A. Project Review. RCO facilitates the review of projects for potential impacts to archaeology and cultural resources, except as those listed below. The Sponsor shall follow RCO guidance and directives to assist it with such review as may apply.
- 1) **Projects occurring on State/Federal Lands:** Archaeological and cultural resources compliance for projects occurring on State or Federal Agency owned or managed lands, will be the responsibility of the respective agency, regardless of sponsoring entity type. Prior to ground disturbing work or alteration of a potentially historic or culturally significant structure, or release of final payments on an acquisition, the Sponsor must provide RCO all documentation acknowledging and demonstrating that the applicable archaeological and cultural resources responsibilities of such state or federal landowner or manager has been conducted.
- B. Termination. RCO retains the right to terminate a project due to anticipated or actual impacts to archaeology and cultural resources.
- C. Notice To Proceed. No work shall commence in the project area until RCO has provided a notice of cultural resources completion. RCO may require on-site monitoring for impacts to archaeology and cultural resources during any demolition, construction, land clearing, restoration, or repair work, and may direct that work stop to minimize, mitigate, or avoid impacts to archaeology and cultural resource impacts or concerns. All cultural resources requirements for non ground disturbing projects (such as acquisition or planning projects) must be met prior to final reimbursement.
- D. Compliance and Indemnification. At all times, the Sponsor shall take reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic resources in the project area, and comply with any RCO direction for such minimization and mitigation. All federal or state cultural resources requirements under Governor's Executive Order 21-02 and the National Historic Preservation Act, and the State Environmental Policy Act and the National Environmental Policy Act, and any local laws that may apply, must be completed prior to the start of any work on the project site. The Sponsor must agree to indemnify and hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the project funded under this Agreement. Sponsor shall comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.
- E. Costs associated with project review and evaluation of archeology and cultural resources are eligible for reimbursement under this agreement. Costs that exceed the budget grant amount shall be the responsibility of the Sponsor Inadvertent Discovery Plan. The Sponsor shall request, review, and be bound by the RCO Inadvertent Discovery Plan, and:
- 1) Keep the IDP at the project site.
  - 2) Make the IDP readily available to anyone working at the project site.
  - 3) Discuss the IDP with staff and contractors working at the project site.
  - 4) Implement the IDP when cultural resources or human remains are found at the project site.
- F. Discovery
- 1) If any archaeological or historic resources are found while conducting work under this Agreement, the Sponsor shall immediately stop work and notify RCO, the Department of Archaeology and Historic Preservation at (360) 586-3064, and any affected Tribe, and stop any activity that may cause further disturbance to the archeological or historic resources.
  - 2) If any human remains are found while conducting work under this Agreement, Sponsor shall immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then RCO, all in the most expeditious manner, and stop any activity that may cause disturbance to the remains. Sponsor shall secure the area of the find will and protect the remains from further disturbance until the State provides a new notice to proceed.
    - a) Any human remains discovered shall not be touched, moved, or further disturbed unless directed by RCO or the Department of Archaeology and Historic Preservation (DAHP).
    - b) The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or ~~Non-~~

Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

## RECORDS

- A. **Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- B. **Maintenance and Retention.** The Sponsor shall maintain books, records, documents, data and other records relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of nine years from the date RCO deems the project complete, as defined in the PROJECT REIMBURSEMENTS Section. If any litigation, claim or audit is started before the expiration of the nine (9) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. In order to satisfy 15 CFR 24.42(b) & (c) and 2 CFR 200 (as updated), for projects that contain Pacific Coast Salmon Recovery Funds or are used as match to Pacific Coast Salmon Recovery Funds the sponsor shall retain records for a period of nine years from the date RCO deems the project complete as defined in the PROJECT REIMBURSEMENTS Section.
- D. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- E. **Public Records.** Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such record to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

## PROJECT FUNDING

- A. **Authority.** This Agreement and funding is made available to Sponsor through the RCO.
- B. **Additional Amounts.** The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and incorporated by written amendment into this Agreement.
- C. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by the RCO director, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- D. **Requirements for Federal Subawards.** Pre-Agreement costs before the federal award date in the FEDERAL FUND INFORMATION Section are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).
- E. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

## PROJECT REIMBURSEMENTS

- A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, whichever has been designated to apply. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may request reimbursement only

after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in the PROJECT FUNDING Section. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor, or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.

- B. Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements.
- C. Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.
- D. Conditions for Payment of Retainage.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the following has occurred:
- 1) RCO has accepted the project as a completed project, which acceptance shall not be unreasonably withheld.
  - 2) On-site signs are in place (if applicable); Any other required documents and media are complete and submitted to RCO; Grant related fiscal transactions are complete, and
- E. Requirements for Federal Subawards: Match.** The Sponsor's matching share must comply with 2 C.F.R. Part 200 (as updated). Any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, can be accepted as part of the Sponsor's matching share when such contributions meet all of the following criteria:
- 1) Are verifiable from the non-Federal entity's (Sponsor's) records;
  - 2) Are not included as contributions for any other Federal award;
  - 3) Are necessary and reasonable for accomplishment of project or program objectives;
  - 4) Are allowable under 2 C.F.R. Part 200 as updated;
  - 5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
  - 6) Are provided for in the approved budget when required by the Federal awarding agency identified in the FEDERAL FUND INFORMATION Section of this Agreement; and
  - 7) Conform to other provisions of 2 C.F.R. Part 200 (as updated) as applicable.
- F. Requirements for Federal Subawards: Close out.** Per 2 C.F.R § 200.343 (2013), the non-Federal entity (Sponsor) must:
- 1) Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the Sponsor.
  - 2) Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
  - 3) Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (Sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.
  - 4) Account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property (2013).

## RECOVERY OF PAYMENTS

- A. Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, fails to meet its percentage of the project total, and/or fails to comply with any of the terms and conditions of the Agreement, RCO reserves the right to

recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.

- B. **Return of Overpayments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time the Sponsor received such overpayment. Unless the overpayment is due to an error of RCO, the payment shall be due and owing on the date that the Sponsor receives the overpayment from the RCO. If the payment is due to an error of RCO, it shall be due and owing 30 days after demand by RCO for refund.
- C. **Requirements for Federal Subawards.** RCO, acting as a pass-through entity, may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

### COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement and to be reimbursed by Sponsor for any grant funds paid to Sponsor (even if such funds have been subsequently paid to an agent), without liability to RCO or, in RCO's discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

### INCOME (AND FEES) AND USE OF INCOME

- A. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any applicable manuals, RCWs, and WACs.
- B. **Use of Income.** Subject to any limitations contained in applicable state or federal law, any needed approvals of RCO, and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, rent, franchise fees, ecosystem services, carbon offsets sequestration, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:
  - 1) The Sponsor's matching resources;
  - 2) The project's total cost;
  - 3) The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the grant funding;
  - 4) The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;
  - 5) Capital expenses for similar acquisition and/or development and renovation; and/or
  - 6) Other purposes explicitly approved by RCO or otherwise provided for in this agreement.
- C. **Requirements for Federal Subawards.** Requirements for Federal Subawards. Sponsors must also comply with program income requirements (see 2 C.F.R. Part 200 (as updated) for federal awards).

### PROCUREMENT REQUIREMENTS

- A. **Procurement Requirements.** If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists, the Sponsor must follow these minimum procedures:
  - 1) Publish a notice to the public requesting bids/proposals for the project;
  - 2) Specify in the notice the date for submittal of bids/proposals;
  - 3) Specify in the notice the general procedure and criteria for selection; and
  - 4) Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
  - 5) Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

#### **B. Requirements for Federal Subawards.**

- 1) For all Federal subawards, non-Federal entities (Sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).

#### **TREATMENT OF EQUIPMENT AND ASSETS**

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in the applicable manuals, or approved by RCO in writing.

- A. **Discontinued Use.** Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.
- B. **Loss or Damage.** The Sponsor shall be responsible for any loss or damage to equipment.
- C. **Requirements for Federal Subawards.** Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award or match for the award, until disposition takes place will, at a minimum, meet the following requirements (2 C.F.R § 200.313 (2013) as updated and amended):
  - 1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
  - 2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  - 3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
  - 4) Adequate maintenance procedures must be developed to keep the property in good condition.
  - 5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

#### **RIGHT OF INSPECTION**

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement. If a landowner agreement or other form of control and tenure limits access to the project area, it must include (or be amended to include) the RCO's right to inspect and access lands acquired or developed with this funding assistance.

#### **STEWARDSHIP AND MONITORING**

Sponsor agrees to perform monitoring and stewardship functions as stated in the applicable WACs and manuals, this Agreement, or as otherwise directed by RCO consistent with the existing laws and applicable manuals. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the RCO; provided that RCO does not represent that any monitoring it may recommend will be adequate to reasonably assure project performance or safety. It is the sole responsibility of the Sponsor to perform such additional monitoring as may be adequate for such purposes.

#### **ACKNOWLEDGMENT AND SIGNS**

- A. **Federally Funded Projects.** When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant,

Sponsors shall clearly state:

- 1) The fund source;
- 2) The percentage of the total costs of the project that is financed with federal money;
- 3) The dollar amount of federal funds for the project; and
- 4) The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

#### PROVISIONS FOR FEDERAL SUBAWARDS

The following provisions shall be in force for this agreement:

- A. **Sub-Recipient** (Sponsor) must comply with the cost principles of 2 C.F.R. Part 200 (as updated). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement to include match and any in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.
- B. **Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, Build America, Buy America Act, Pub. L. No. 117-58, Section 70901-52.** Subrecipients must comply with section 70914 of the Act, including by the incorporation of a Buy America preference in the terms and conditions of each award with an infrastructure project. The Act requires the following Buy America preference:
  - 1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - 2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
  - 3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.
  - 4) Subject to subsequent approved federal agency specific waivers.
- C. **Binding Official.** Per 2 CFR 200 (as updated), as updated, Sponsor certifies through its actions or those of authorized staff, at the time of a request for reimbursement, the following: "To the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."
- D. **Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200 (as updated).
  - 1) **Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
  - 2) **Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.



- E. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities (Sponsors) must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity (Sponsor) must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity (Sponsor) must report all suspected or reported violations to the federal awarding agency identified in the Federal Fund Information Section.

The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U. S. C. 3145), as supplemented by Department of Labor regulations (29 C.F.R Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient (Sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (Sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section H: Federal Fund Information.

- F. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity (Sponsor) in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- G. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 C.F.R § 401.2(a) and the recipient or subrecipient (Sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient (Sponsor) must comply with the requirements of 37 C.F.R Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- H. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in Section H: Federal Fund Information and the Regional Office of the Environmental Protection Agency (EPA).
- I. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** By signing this Agreement, the Sponsor certifies (per the certification requirements of 31 U.S.C.) that none of the funds that the Sponsor has (directly or indirectly) received or will receive for this project from the United States or any agency thereof, have been used or shall be used to engage in the lobbying of the Federal Government or in litigation against the United States. Such lobbying includes any influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this project. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- J. **Procurement of Recovered Materials.** A non-federal entity (Sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year

exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- K. **Required Insurance.** The non-federal entity (Sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).
- L. **Debarment and Suspension (Executive Orders 12549 and 12689).** The Sponsor must not award a contract to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- M. **Conflict of Interest.** Sponsor agrees to abide by the conflict of interest policy and requirements of the federal funding agency established pursuant to 2 C.F.R 200.

### **PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS**

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the Sponsor shall not commence with clearing of riparian trees or in-water work unless either the Sponsor has complied with 50 C.F.R. § 223.203 (b)(8) (2000), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

### **ORDER OF PRECEDENCE**

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

- A. Federal law and binding executive orders;
- B. Code of federal regulations;
- C. Terms and conditions of a grant award to the state from the federal government;
- D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
- E. State Constitution, RCW, and WAC;
- F. Agreement Terms and Conditions and Applicable Manuals;
- G. Applicable deed restrictions, and/or governing documents.

### **LIMITATION OF AUTHORITY**

Only RCO's Director or RCO's delegate authorized in writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

### **WAIVER OF DEFAULT**

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

### **APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH**

The Funding Entity (if different from RCO) and RCO rely on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the g6

application may be deemed a breach of this Agreement.

## **SPECIFIC PERFORMANCE**

RCO may, at its discretion, enforce this Agreement by the remedy of specific performance, which means Sponsors' completion of the project and/or its completion of long-term obligations as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the RCO shall be deemed exclusive. The RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

## **TERMINATION AND SUSPENSION**

The RCO requires strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules, and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200 (as updated).

### **A. For Cause.**

- 1) The RCO director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
  - a) If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
  - b) If the Sponsor fails to make progress satisfactory to the RCO director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
  - c) If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;
- 2) Prior to termination, the RCO shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
- 3) RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

**B. For Convenience.** Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

- 1) The Sponsor was not in default; or
- 2) Failure to perform was outside Sponsor's control, fault or negligence.

### **C. Rights and Remedies of the RCO.**

- 1) The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
- 2) In the event this Agreement is terminated by the director, after any portion of the grant amount has been paid to the Sponsor under this Agreement due to Sponsor's breach of the Agreement or other violation of law, the director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent repayment would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

**D. Non Availability of Funds.** The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a

continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

- 1) **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.
- 2) **No Waiver.** The failure or neglect of RCO to require strict compliance with any term of this Agreement or to pursue a remedy provided by this Agreement or by law shall not act as or be construed as a waiver of any right to fully enforce all rights and obligations set forth in this Agreement and in applicable state or federal law and regulations.

## **DISPUTE HEARING**

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the RCO, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the persons chosen by the Sponsor and director shall be dismissed and an alternate person chosen by the Sponsor, and one by the director shall be appointed and they shall agree on a third person. This process shall be repeated until a three person panel is established.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the majority decision of the dispute panelists, unless the remedy directed by that panel is beyond the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

## **ATTORNEYS' FEES**

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

## **GOVERNING LAW/VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in the Superior Court of a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington and agrees to venue as set forth above.

## **SEVERABILITY**

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

**END OF STANDARD TERMS AND CONDITIONS**

This is the end of the Standard Terms and Conditions of the Agreement.





**TO: Transportation & Infrastructure Services Committee**

**FROM: Nora Gierloff, AICP, DCD Director**

**BY: Alison Turner, Sustainable Transportation Program Manager  
Chris Andree, Sustainable Transportation Outreach Coordinator  
Timothy Phung, Sustainable Transportation Communications Specialist**

**CC: Mayor Ekberg**

**DATE: November 7, 2022**

**SUBJECT: FHWA CMAQ Grant Award – South King County TDM**

## **ISSUE**

The Transportation Demand Management (TDM) Program is asking for approval to accept a Federal Highway Administration Congestion Mitigation and Air Quality Improvement (CMAQ) Program award. The City has been awarded \$450,000 by Puget Sound Regional Council (PSRC) for 2023 to 2024.

## **BACKGROUND**

Tukwila's TDM Program provides transportation outreach, education, and resources to improve air quality, reduce congestion, and help people get around Tukwila and south King County. The Program started with the Commute Trip Reduction (CTR) Program, working with large employers in Tukwila to reduce employee trips to worksites. Since 2013, the City of Tukwila has implemented TDM projects that expand upon the CTR program funded by state and federal grants. The Program has evolved to a regional "all trips" focus, in recognition that most trips are non-commute trips, and provides TDM services to employers, workers, residents, and visitors.

## **DISCUSSION**

In 2020, staff successfully applied during PSRC's project selection process for a 2-year "South King County TDM" project. This new funding award will enable the TDM Program to continue providing regional TDM services in Tukwila and partner cities in South King County including Burien, Des Moines, Kent, Renton, and SeaTac. The project is to be implemented January 1, 2023, through December 31, 2024. The Program will conduct outreach at activity centers such as community hubs, commercial areas, multifamily housing complexes, and educational institutions.

**FINANCIAL IMPACT**

There will be no impact to the general fund. Local match (13.5% of the project budget, \$60,750) will be provided by the City’s WSDOT TDM Allocation and/or local in-kind funding should there be any.

**RECOMMENDATION**

The Council is being asked to accept the FHWA CMAQ Program Award and consider this item on the Consent Agenda at the November 21, 2022, Regular Meeting.

**ATTACHMENTS**

Attachment A: Award Letter





# Puget Sound Regional Council

1011 WESTERN AVENUE, SUITE 500 \ \ \ SEATTLE, WA 98104-1035 \ \ \ psrc.org \ \ \ 206-464-7090

October 29, 2020

The Honorable Allan Ekberg  
City of Tukwila  
6200 Southcenter Blvd.  
Tukwila, WA 98188

Dear Mayor Ekberg:

*Allan,*

Congratulations! I'm pleased to let you know that the City of Tukwila is receiving \$450,000 in PSRC funding for the following project(s):

PROJECT	AWARD AMOUNT	FUNDING SOURCE	FUNDING DEADLINE
South King County TDM	\$450,000	FHWA	June 1, 2023

The PSRC Executive Board voted in October to award federal funds to priority projects that will improve local and regional mobility. Final approval by the Governor and federal funding agencies is expected in early 2021.

The projects are part of a \$ 4.3 billion Regional Transportation Improvement Program for 2021-2024. This program includes transit expansion and maintenance projects, state highway improvements, bicycle and pedestrian facilities, and investments in city and county roads.

Your project(s) performed well in PSRC's merit-based project selection process, which identifies priority projects that will improve local and regional mobility and help achieve our long-range Regional Transportation Plan. Kudos to you and your staff for securing this funding.

I also wanted to acknowledge the difficult times we're all living through and thank you and your team for continuing to provide essential services to your community and keep everyone safe during this public health emergency. I look forward to continuing to partner with you on efforts to help the region recover and thrive for the long term.

Sincerely,

*Congrats!*

Josh Brown  
Executive Director, Puget Sound Regional Council

cc: Hari Ponnekanti, Interim Public Works Director





**TO: Transportation & Infrastructure Services Committee**

**FROM: Nora Gierloff, AICP, DCD Director**

**BY: Alison Turner, Sustainable Transportation Program Manager  
Chris Andree, Sustainable Transportation Outreach Coordinator**

**CC: Mayor Ekberg**

**DATE: November 7, 2022**

**SUBJECT: Via to Transit & Free Youth Transit**

## **ISSUE**

Via to Transit provides on-demand first/last-mile transportation to and from the Tukwila Community Center and the Tukwila International Boulevard Light Rail Station. As of September 1, 2022, transit is free for youth, so youth can get free rides to the Tukwila Community Center on Via to Transit.

## **BACKGROUND**

During discussion at the 10/3 T&I meeting, the Committee stated an interest in having staff provide more information about Via to Transit to better understand how the service works. The Committee highlighted the need for bus service to Allentown and transit to the mall.

## **DISCUSSION**

In 2018/2019, Metro conducted a Tukwila Community Connections outreach process with the goal to provide mobility options that better serve the residents and residential areas of Tukwila. Three concept solutions were identified:

1. Expand Via to Transit (the pilot service at that time only served the light rail station as a hub, and only during peak commute hours),
2. Community Van, and
3. Bike/Scooter Share to Transit.

The stakeholder group recommended moving forward with the Via to Transit and Community Van concept solutions.

## **Transit Service & Allentown**

Staff asked KC Metro about the lack of bus service to the Allentown neighborhood in Tukwila. Many of the streets in Allentown are narrow and may not be able to easily support transit operations. Any new bus stops created must abide by Americans with Disabilities Act regulations, including ensuring a safe walking path to a crossing point, which can be expensive or impossible due to the steep slopes and limited right of way available. Insufficient density can also be a limiting factor. The constrained nature of the neighborhood between the Duwamish River and the railroad can make it difficult to generate enough demand as the pedestrian facilities in this area are incomplete. All of these challenges support the decision to deploy Via service in Allentown. The smaller vehicles can easily navigate the neighborhood streets and are able to use more informal stops that do not have the same infrastructure

requirements, and the flexible nature of the service is perfect for areas with diffuse demand like those in Allentown.

### Via to Transit

Via to Transit is a pilot on-demand service developed to make it easier to connect to transit, offer more ways to get around in communities that need it most, and connect riders to jobs and community services. The service is not designed to duplicate existing transit service but rather to complement it.

How does Via to Transit work? Riders can request a ride from within the service area using the Via app or by calling (206) 258-7739. One end of the trip must be a hub in the service area, either Tukwila International Boulevard Link Light Rail Station or Tukwila Community Center. Riders may need to walk up to 5 minutes to a pick-up spot. A Via van will pick up the rider within 10 to 20 minutes. Rides are the same cost as bus fare: \$2.75 for adults, free for youth; \$1 for low income (ORCA LIFT), and Regional Reduced Fare Permit (RRFP is for seniors, riders with disabilities and Medicare card holders). Riders can pay with ORCA card, Transit Go app, or debit/credit card in the Via app or call center. Riders paying with ORCA can transfer to bus or light rail, making their ride on Via to Transit free.

Via to Transit launched as a pilot in April 2019 with a focus on connecting to transit. In Tukwila, it connected riders to the light rail station and only ran during peak commute hours. Service was suspended due to COVID in March 2020 and resumed in July 2020. In September 2020, Via Point-to-Point launched for Access-eligible disabled customers who are unable to ride standard buses. This service provides on-demand rides rather than having to schedule ahead with King County's Access transportation service. In August 2021, Via to Transit expanded to all-day service and the Tukwila Community Center was added as a hub. While still a pilot, Metro's proposed budget includes continuing Via to Transit and Metro will continue to evaluate and improve service. Ridership on Via to Transit is high and recovered relatively quickly compared to overall transit ridership.

### Community Van

Community Van, a concept solution recommended to move forward by Tukwila Community Connections stakeholders, is coming to Tukwila in 2023. Metro provides a van, and community members schedule trips as a volunteer driver or passenger. The service is tailored to local community needs.

### Free Youth Transit

As of September 1, transit is free for youth. Thus, Via to Transit is free for youth, too. For example, students can get free rides from Foster High to the Tukwila Community Center. To ride free, youth age 13 and older are encouraged to tap their Youth ORCA Card or show their student ID to the driver. Youth who do not have one of these can still ride free. Youth can extend the expiration date on their card to their 19th birthday by completing the form at [FreeYouthTransitPass.com](http://FreeYouthTransitPass.com).

### **FINANCIAL IMPACT**

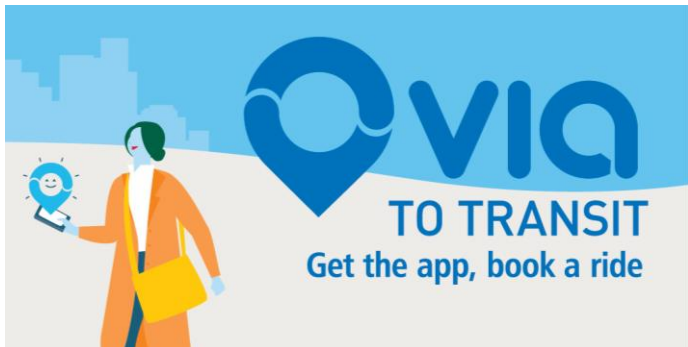
None

### **RECOMMENDATION**

Discussion Only

### **ATTACHMENTS**

Attachment A: Via to Transit Tukwila Flyer



# Via to Transit & Free Youth Transit



Transportation & Infrastructure Services Committee  
November 7, 2022

# How does Metro plan services?

## Policies:

- [Strategic Plan for Public Transportation](#)  
outlines Metro's goals, strategies and the objectives necessary to achieve them, as well as measures for success
- [Metro's Service Guidelines](#)  
provides the framework for evaluation and reporting on existing services, and guidance for planning and designing service
- [Metro Connects](#)  
long-range vision for service based on the priorities in the Strategic Plan and prioritization factors in the Service Guidelines
- [Policy Update Overview](#) (1.27.21)  
Metro is in the process of updating several key policy documents to reflect the principles and recommendations co-created with community and reported in Metro's [Mobility Framework](#)



# Tukwila Community Connections

**Goal:** Provide mobility options that better serve the residents and residential areas of Tukwila

Outreach process:

- Phase 1: Needs Assessment – Fall 2018/Winter 2019
- Phase 2: Concept Solutions – Summer/Fall 2019
- Phase 3: Report Back and Discussion – Fall 2019

**My community needs transportation options which...**

*are available when I need it, for example, during evening, weekend, and off-peak hours*

*... consider all users (English language learners, those unable to read, no/low income, people with disabilities, etc.)*

*...connect to community destinations*

*... are easy to understand and use*

*... provide a safe environment*

**Concept solutions:**

- Expand Via to Transit – prioritized investments as follows:
  1. Expand weekday span
  2. Add a second “hub” location
  3. Expand the service area
- Community Van Network
- Bike/Scooter Share to Transit

The stakeholder group recommended moving forward with the Expand Via to Transit and Community Van concept solutions.



# Transit Service & Allentown

- The roads must be able to support transit service operations. Many of the streets in Allentown are narrow and may not be able to easily support transit operations.
- Along S 115<sup>th</sup> St and 42<sup>nd</sup> Ave S, there is intermittent sidewalk infrastructure. Any new bus stops created must abide by ADA regulations, including ensuring a safe walking path to a crossing point, which can be expensive or impossible due to the steep slopes and limited right of way available.
- Insufficient density can also be a limiting factor. The constrained nature of the neighborhood between the Duwamish River and the railroad can make it difficult to generate enough demand.
- All of these challenges support the decision to deploy Via service in Allentown. The smaller vehicles can easily navigate the neighborhood streets and are able to use more informal stops, and the flexible nature of the service is perfect for areas with diffuse demand like those in Allentown.





# How Via to Transit works


- **Download Via app**
- **Request ride** from within service area using app or call (206) 258-7739
- **One end of trip must be a hub** (to/from Tukwila International Boulevard Link Light Rail Station or Tukwila Community Center)
- **Walk** up to 5 minutes (unless disabled)
- **Get picked up** within ~10-20 minutes
- **Payment** – same cost as riding a bus: \$2.75 for adults, \$1.00 ORCA LIFT and Regional Reduced Fare Permit (RRFP), and free for youth 18 and under

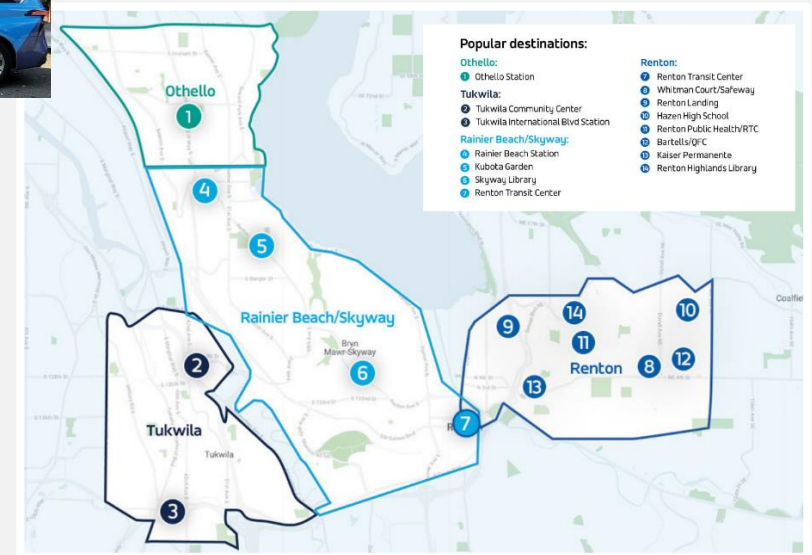
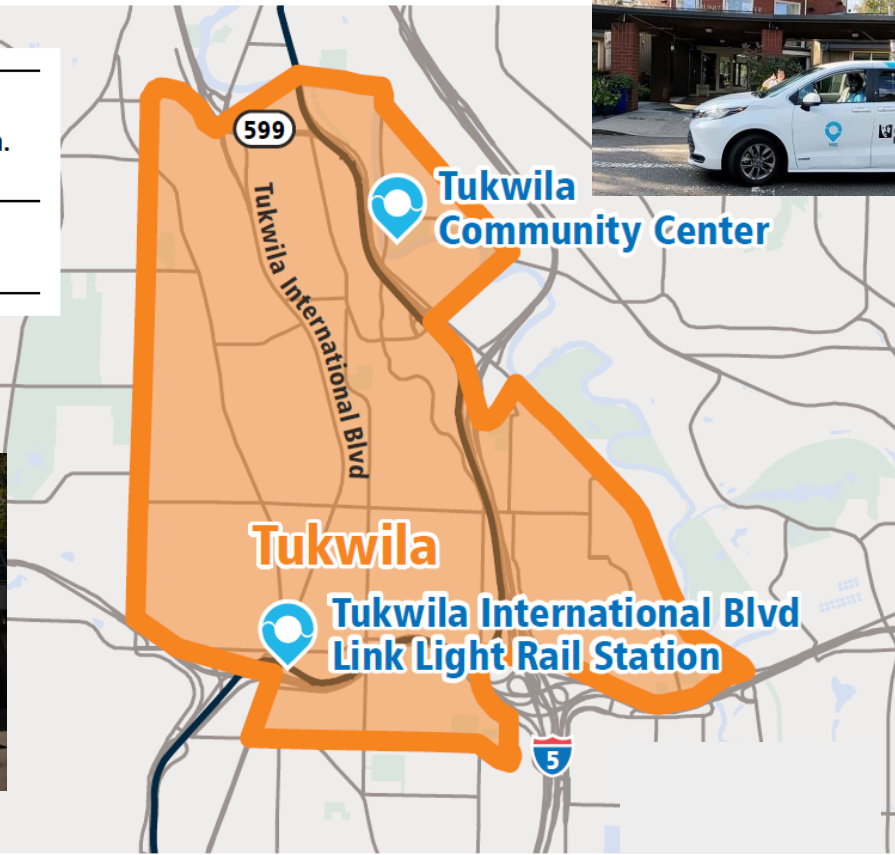


# Via to Transit in Tukwila



**Service Hours**  
 Monday–Saturday: 5 a.m.–1 a.m.  
 Sunday: 6 a.m.–12 a.m.

 **Community Hub**



# Via to Transit history

## April 2019

Launched as 12-month pilot using FTA Mobility On Demand Sandbox Grant – focus on connecting to transit; peak commute hours only

## March – June 2020

Service suspended temporarily due to COVID.

## September 2020

Via Point-to-Point launched for Accessible customers

## August 2021

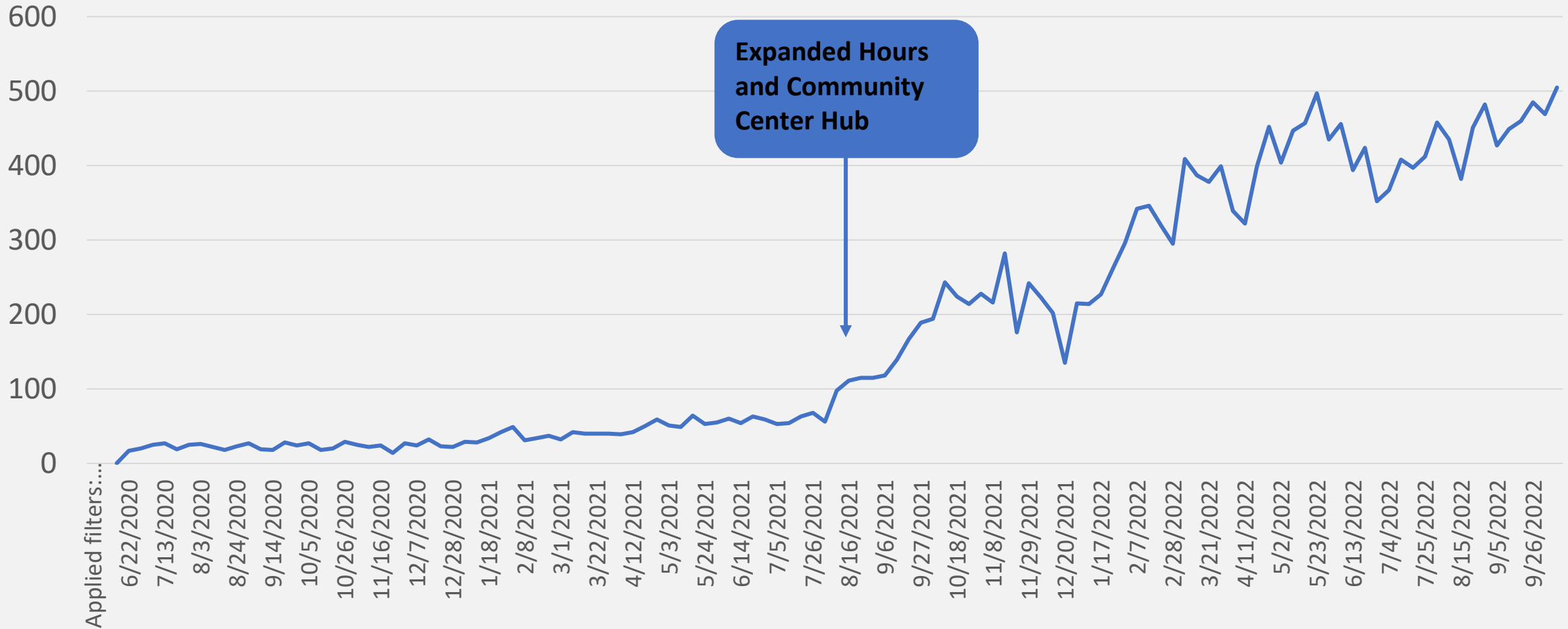
Expanded to all-day service, inclusion of Tukwila Community Center as a hub

## 2023-24

Metro's proposed budget includes continuing flexible service in Tukwila. Metro will continue to evaluate and improve service in partnership with Tukwila and the community.



# Via to Transit Weekly Ridership in Tukwila



# Community Van – coming in 2023

- Local, shared community-based trips
- Community Transportation Coordinator
  - Recruits volunteer drivers
  - Manages trips and vehicles
  - Promotes, maintains info hub
- Metro provides vehicles, fuel, maintenance, insurance, staff funding, monitoring
- Available 24 / 7, flexible to meet community need



# Free Youth Transit

- As of September 1, 2022, riders 18 and younger can take transit for free thanks to Move Ahead Washington.
- Via to Transit is free for youth, too! For example, students can ride Via from Foster High to the Tukwila Community Center.
- To ride free, youth riders are encouraged to tap their Youth ORCA Card or show their student ID to the driver. Youth who do not have one of these can still ride free.
- Youth can extend the expiration date on their card to their 19th birthday by completing the form at [FreeYouthTransitPass.com](https://www.orca.wa.gov/free-youth-transit-pass).



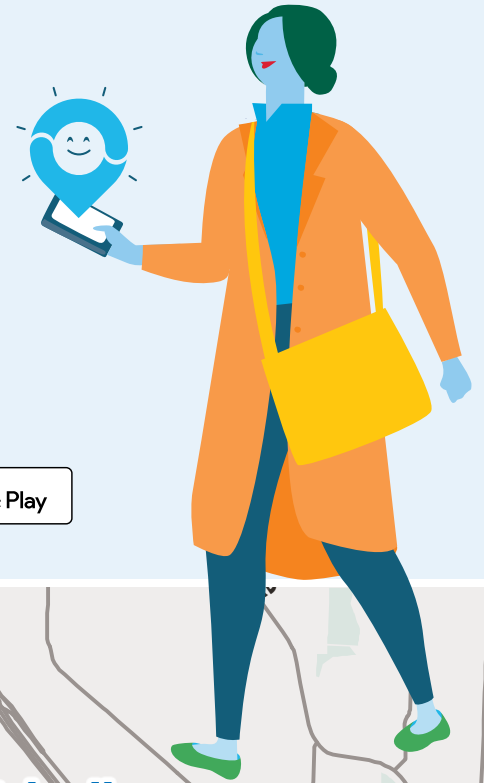


Fast, easy, affordable rides throughout Tukwila.

Via to Transit is public transportation that comes to you. Book rides straight from your phone and travel to/from community hubs without needing a car.

Download the Via app or call (206) 258-7739 to get started.

[kingcounty.gov/metro/via](http://kingcounty.gov/metro/via)



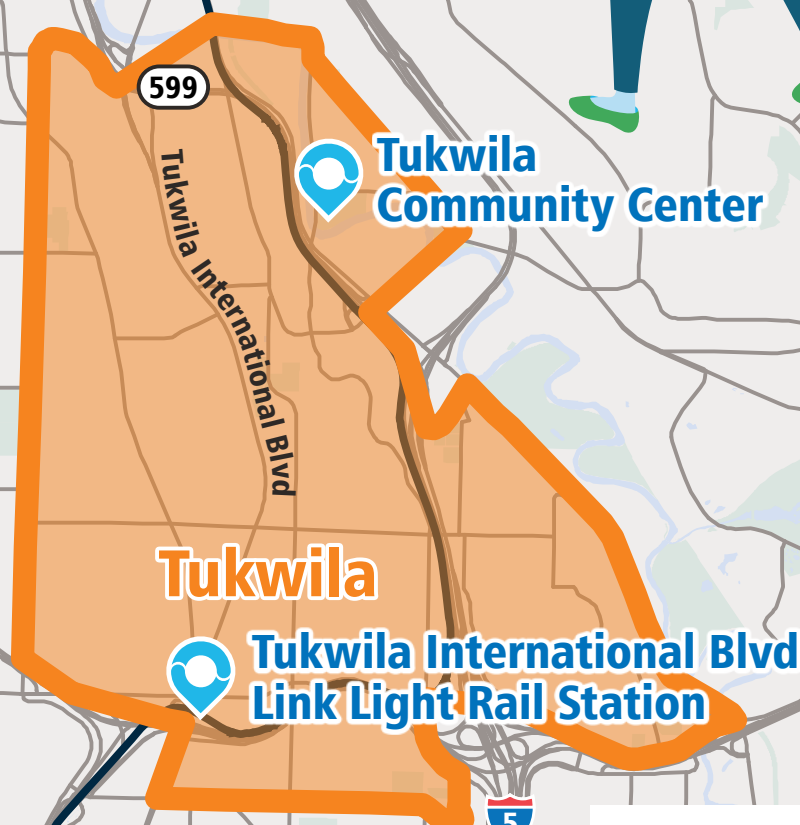
**Service Hours**

Monday–Saturday: 5 a.m.–1 a.m.

Sunday: 6 a.m.–12 a.m.



Community Hub



Interpreter - 206-553-3000  
Interprete 口譯員 переводчик  
مترجم Thông dịch viên 통역관  
Перекладач Soomaali 𐤀𐤃𐤁𐤃𐤁𐤃𐤁



King County  
**METRO**

Moving forward together

