



City of Tukwila
**Community Services
 and Safety Committee**

- ◆ **Mohamed Abdi, Chair**
- ◆ **Thomas McLeod**
- ◆ **Tosh Sharp**

<u>Distribution:</u>	
M. Abdi	Mayor Ekberg
T. McLeod	D. Cline
T. Sharp	R. Bianchi
C. Delostrinos Johnson	C. O'Flaherty
K. Hougardy	A. Youn
	L. Humphrey

AGENDA

MONDAY, AUGUST 28, 2023 – 5:30 PM

THIS MEETING WILL BE CONDUCTED BOTH ON-SITE AT TUKWILA CITY HALL AND ALSO VIRTUALLY.

**ON-SITE PRESENCE WILL BE IN THE HAZELNUT CONFERENCE ROOM
 (6200 SOUTHCENTER BOULEVARD)**

**THE PHONE NUMBER FOR THE PUBLIC TO LISTEN TO THIS
 MEETING IS: 1-253-292-9750, Access Code 944274640#**

Click here to: [Join Microsoft Teams Meeting](#)

For Technical Support during the meeting call: 1-206-433-7155.

Item	Recommended Action	Page
1. BUSINESS AGENDA		
a. Grant acceptance for "Planning for Recreation Access" from the Washington Recreation and Conservation Office (RCO). <i>Pete Mayer, Acting Deputy City Administrator/ Parks & Recreation Director</i>	a. Forward to 9/18 Regular Meeting Consent Agenda.	Pg.1
b. A grant agreement for the Mental Health Professional Co-Responder Program from Association of Washington Cities. <i>Eric Drever, Police Chief</i>	b. Forward to 9/18 Regular Meeting Consent Agenda	Pg.21
c. An ordinance adopting amendments to Tukwila Municipal Code Chapter 8.07 regarding drug possession (<i>Reference: Blake Decision</i>). <i>Eric Lund, Deputy Police Chief</i>	c. Forward to 8/28 C.O.W. Meeting and 8/28 Special Meeting Consent Agenda.	Pg.47
2. MISCELLANEOUS		

Next Scheduled Meeting: *September 11, 2023*



The City of Tukwila strives to accommodate individuals with disabilities.

Please contact the City Clerk's Office at **206-433-1800** (TukwilaCityClerk@TukwilaWA.gov) for assistance.



INFORMATIONAL MEMORANDUM

TO: **Community Services & Safety Committee**

FROM: **Pete Mayer, Parks & Recreation Director**

BY: **David Rosen, Parks & Recreation Fiscal Analyst**

DATE: **August 21, 2023**

SUBJECT: **Planning for Recreation Access (PRA) Grant Award Acceptance**

ISSUE

The Tukwila Parks & Recreation Department has been awarded a Planning for Recreation Access Grant by the Washington Recreation & Conservation Office (RCO) in the amount of \$197,300. City procurement and council policies require staff to receive approval from the full council before fully executing this grant agreement and accepting the award.

BACKGROUND

The PRA grant program was created in 2022 by RCO to “provide grants for recreation planning, predesign, and technical assistance to communities that lack access to outdoor recreation facilities and resources” with the goal of aiding communities in defining outdoor recreation needs and developing plans for recreation access. Collaboration with residents and community-based organizations was strongly encouraged for all projects that sought funding. Parks & Recreation applied for funding in November 2022, received notice of grant award in June 2023, and is now ready to accept the award. The period of performance for this grant ends on December 31, 2024.

DISCUSSION

Tukwila Parks & Recreation’s proposed project is the *Playbook for Inclusive Park Design*. The goal of this project is to engage the Tukwila community in developing a park design toolkit that reflects our city’s diverse ethnic, racial, religious, and cultural dimensions. Primary items funded by the grant include project management and community engagement through consultant services, interns, and public meetings. The toolkit generated by this project will provide guiding principles and actionable tactics for planning, designing, and developing parks, trails, and opens spaces so they are more welcoming and foster belonging amongst our residents. The playbook will also provide tangible examples of landscape designs, treatments, furnishing, and functionality most desired by our residents to guide future design and improvements across the parks system.

FINANCIAL IMPACT

The PRA program is a reimbursement grant that does not require any funding match. Acceptance of this grant therefore does not create any general fund net inflows or outflows.

RECOMMENDATION

Staff recommends the committee forward the attached grant agreement for approval on the City Council Regular Meeting Consent Agenda on September 18, 2023.

ATTACHMENTS

RCO Planning for Recreation Access Proposed Grant Agreement for Project #22-2506P

Project Sponsor: Tukwila Parks & Recreation Department**Project Number:** 22-2506P**Project Title:** Tukwila Playbook for Inclusive Parks**Approval Date:** 07/01/2023

PARTIES OF THE AGREEMENT

This Recreation and Conservation Office Agreement (Agreement) is entered into between the State of Washington Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917, and by and through the Tukwila Parks & Recreation Department (Sponsor, and primary Sponsor), 12424 - 42nd Ave S, Tukwila, WA 98168, and shall be binding on the agents and all persons acting by or through the parties.

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, the identified Authorized Representative(s)/Agent(s) (Sponsor's signatory to this Agreement) have full authority to legally bind 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 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 (Sponsor signatory to this Agreement) Sponsor's governing body must provide RCO a written delegation of authority to sign in lieu of originally authorized Representative/Agency(s).
- 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 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 Recreation and Conservation Office (RCO) of the State of Washington. The grant is administered by RCO.

RCO seeks to fund, through this Agreement, construction predesign, general jurisdictional or regional comprehensive planning, and feasibility studies and processes in furtherance of the Planning for Recreation Access (PRA) grant program.

PUBLIC USE

Upon completion of any construction/renovation or land acquisition (the purchase of real property or the purchase of term limited property rights) the planned facilities (per this agreement) must be open to the general public.

DESCRIPTION OF PROJECT

The Tukwila Parks and Recreation Department will use this grant to engage the community in developing a playbook for inclusive park design that reflects the diverse ethnic, racial, religious, and cultural dimensions of city residents. The grant will fund project management and community engagement including consultant services, interns, and public meetings. The toolkit will provide guiding principles and actionable tactics for planning, designing, and developing parks, trails, and open spaces so they are more welcoming and foster belonging. The playbook will provide tangible examples of landscape designs, treatments, furnishings, and functionality that are most desired by residents. Once developed, the playbook will guide design of improvements and new investments across the park system. The primary recreational opportunity supported by this project is active recreation.

PERIOD OF PERFORMANCE

The period of performance begins on July 1, 2023 (PROJECT START DATE) and ends on December 31, 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.

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 are attached hereto and incorporated by reference as part of this Agreement.

PROJECT FUNDING

The total grant award provided for this project shall not exceed \$197,300.00. 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:

	Percentage	Dollar Amount	Source of Funding
Office - Planning for Recreation Access	100.00%	\$197,300.00	State
Total Project Cost	100.00%	\$197,300.00	

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

- Development Projects - Manual 4
- Planning for Recreation Access Grant Guidelines
- Planning Guidelines - Manual 2
- Reimbursements - Manual 8

SPECIAL CONDITIONS

CULTURAL RESOURCES SPECIAL CONDITION

If no ground disturbance, site-specific planning, or construction related activities are associated with this project, RCO recommends it proceed as planned without further Cultural Resources work needed. If this is not the case or changes during the course of the project, the OGM will be notified as soon as possible as the changes will need to be reviewed and additional Cultural Resources work may be required.

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

Peter Mayer
Interim Director
12424 42nd Avenue S
Tukwila, WA 98168
pete.mayer@tukwilawa.gov

RCO Contact

Hayley Edmonston
Outdoor Grants Manager
PO Box 40917
Olympia, WA 98504-0917
hayley.edmonston@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 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 22-2506, shall become effective and binding on the date signed by both Sponsor and 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.

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 RECREATION AND CONSERVATION OFFICE. The signatories listed below represent and warrant their authority to bind the parties to this Agreement.

Tukwila Parks & Recreation Department

By: _____

Date: _____

Name (printed): _____

Title: _____

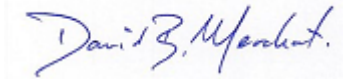
State of Washington Recreation and Conservation Office

By: _____

Megan Duffy
Director
Recreation and Conservation Office

Date: _____

Pre-approved as to form:

By: 
Assistant Attorney General

Date: 05/01/2023

Project Sponsor: Tukwila Parks & Recreation Department

Project Number: 22-2506P

Project Title: Tukwila Playbook for Inclusive Parks

Approval Date: 07/01/2023

Eligible Scope Activities

ELIGIBLE SCOPE ACTIVITIES

Planning Metrics

Worksite #1, City of Tukwila

Recreation Facility Planning

Comprehensive plan development

Project Sponsor: Tukwila Parks & Recreation Department

Project Number: 22-2506P

Project Title: Tukwila Playbook for Inclusive Parks

Approval Date: 07/01/2023

Project Milestones

PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
	Project Start	07/01/2023	
	Data Gathering Started	08/31/2023	
	RFP Complete/Consultant Hired	09/30/2023	
	Annual Project Billing Due	10/31/2023	
	Progress Report Due	12/31/2023	
	Progress Report Due	04/30/2024	
	Draft Plan to RCO	07/31/2024	
	Progress Report Due	08/31/2024	
	Final Plan to RCO	11/30/2024	
	Final Billing Due	12/15/2024	
	Final Report Due	12/20/2024	
	Agreement End Date	12/31/2024	

Project Sponsor: Tukwila Parks & Recreation Department
Project Title: Tukwila Playbook for Inclusive Parks

Project Number: 22-2506P
Approval Date: 07/01/2023

Standard Terms and Conditions of the Recreation and Conservation Office

Table of Contents

STANDARD TERMS AND CONDITIONS EFFECTIVE DATE	8
CITATIONS, HEADINGS AND DEFINITIONS	8
PERFORMANCE BY SPONSOR	10
ASSIGNMENT	10
RESPONSIBILITY FOR PROJECT	10
INDEMNIFICATION	11
INDEPENDENT STATUS OF SPONSOR	11
CONFLICT OF INTEREST	11
COMPLIANCE WITH APPLICABLE LAW	12
ARCHAEOLOGICAL AND CULTURAL RESOURCES	12
RECORDS	13
PROJECT FUNDING	14
PROJECT REIMBURSEMENTS	14
RECOVERY OF PAYMENTS	15
COVENANT AGAINST CONTINGENT FEES	15
PROCUREMENT REQUIREMENTS	15
RIGHT OF INSPECTION	15
STEWARDSHIP AND MONITORING	15
PREFERENCES FOR RESIDENTS	16
ORDER OF PRECEDENCE	16
LIMITATION OF AUTHORITY	16
WAIVER OF DEFAULT	16
APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH	16
SPECIFIC PERFORMANCE	16
TERMINATION AND SUSPENSION	16
DISPUTE HEARING	17
ATTORNEYS’ FEES	18
GOVERNING LAW/VENUE	18
SEVERABILITY	18
END OF STANDARD TERMS AND CONDITIONS	18

STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This document sets forth the Standard Terms and Conditions of the Recreation and Conservation Office as of 06/27/2023.

CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the version current as of 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 – This document accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of this 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 RCO has contracted to or been delegated to administer the grant program in question.

applicant – Sponsor that applied for the grant(s) funding this Agreement.

application – The documents and other materials that an applicant submits to RCO to support the applicant’s request for grant funds; this includes materials required for the “Application” in 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 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 RCO and 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 Sponsor and RCO and have been delivered to 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 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 if required by context.

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, or a mixture of the listed sources.

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 Sponsor.

match or matching share – The portion of the total project cost provided by 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 – Sponsor that 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 - A geographic area that delineates a grant assisted site which is subject to project Agreement requirements.

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 RCO and 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 Sponsor and RCO and have been delivered to 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.

RCFB – Recreation and Conservation Funding Board

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 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 – Any signatory to this Agreement other than RCO by doing so agrees to all obligations of a Sponsor as described in 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 Sponsor to this Agreement, grant, and project.

subaward – Funds allocated to RCO from another organization, 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, 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 request from such tribes and considering recommendations from such tribes 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, provided that RCO shall retain final approval authority.

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 SPONSOR

Sponsor shall undertake the project as described in this Agreement.

Sponsor's timely completion of the project and submission of required documents, including progress and final reports, is important. Sponsor's 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 Sponsor without prior written approval of RCO.

RESPONSIBILITY FOR PROJECT

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

Sponsor is solely responsible for implementing the project and is solely responsible 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.

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 Sponsor and others with expertise or authority. In this respect, 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

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 Sponsor or Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom 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 acting within the scope of their employment or agency 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) Sponsor or 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 Sponsor's fault or the fault of its agents, or employees.

As part of its obligations provided above, Sponsor specifically assumes potential liability for actions brought by Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, 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 Sponsor. This shall not apply to a contractor or subcontractor donating its services to the project without compensation or other substantial consideration.

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 Sponsor or Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom 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 Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom 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 STATUS OF SPONSOR

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

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 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 Sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated pursuant to this section, RCO shall be entitled to pursue the same remedies against Sponsor as it could pursue in the event of a breach of the Agreement by 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, 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.** 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 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 Sponsor may be declared ineligible for further grant awards from RCO or Funding Entity. Sponsor is responsible for any and all costs or liability arising from Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, 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.** 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. 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. 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 Sponsor with an affirmative statement of the contractor's or subcontractor's intent. Unless required by law, 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, 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, Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

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. 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 owning or managing 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, Sponsor must provide RCO all documentation acknowledging and demonstrating that 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 archaeological and/or 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, repair work, or any other ground-disturbing activity, 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, 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. Sponsor shall 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 grant amount shall be the responsibility of Sponsor as set forth in RCO's Inadvertent Discovery Plan (IDP). Sponsor shall request, review, and is bound by RCORCOIDP, and shall:
 - 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, 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, Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by RCO.
- B. **Maintenance and Retention.** 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. **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 Sponsor's reports, including computer models and methodology for those models.
- D. **Public Records.** Sponsor acknowledges that RCO is subject to RCW 42.56 and that this Agreement and records associated with this project may be public records as defined in RCW 42.56, including records submitted to, reviewed by, or used by RCO. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, 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. Sponsor understands that under the state public records law, currently codified at RCW 42.56, the State may be requested to disclose or copy records associated with this Project, to include in certain circumstances records retained by Sponsor. Sponsor agrees to cooperate with RCO in responding to public records requests, and acknowledges that it may be responsible for objecting or responding to such requests. Sponsor warrants that it possesses such legal rights as are necessary to permit the State to comply with state public records laws. Sponsor hereby agrees to release the State from any claims arising out of a public records act request related to project-related records in Sponsor's possession or control, and to indemnify the State against any claims arising from such request 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 RCO.
- B. **Additional Amounts.** 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 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. **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 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) 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 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 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.

RECOVERY OF PAYMENTS

- A. **Recovery for Noncompliance.** If 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 has 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.** Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by 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 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 Sponsor receives the overpayment from 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.

COVENANT AGAINST CONTINGENT FEES

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 Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by 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.

PROCUREMENT REQUIREMENTS

- A. **Procurement Requirements.** If 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, 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;
 - 4) Contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected; and
 - 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 RCO. Sponsors may be required to certify to 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.

RIGHT OF INSPECTION

Sponsor shall provide all RCO requested materials, plans, and documents produced in furtherance of the project, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

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, to properties where ground disturbing or land clearing activities occur in furtherance of the project. However, 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 Sponsor to perform any such stewardship and monitoring as may be adequate for such purposes.

PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of the grant assisted project on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities. The foregoing shall only apply to projects constructed, or properties purchased including term-limited property rights, under the planning project funded in this Agreement.

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 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 application may, at RCO's discretion, be deemed a breach of this Agreement.

SPECIFIC PERFORMANCE

RCO may, at its discretion, enforce this Agreement by the remedy of specific performance, defined as Sponsor's completion of the project and/or Sponsor's completion of long-term obligations as described in this Agreement. However, the remedy of specific performance is not the sole or exclusive remedy available to RCO. No remedy available to RCO is exclusive, and 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

RCO requires strict compliance by 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 Sponsor in its application for a grant as finally approved by RCO. If Sponsor fails to comply as required, RCO may terminate the Agreement in accordance with this section. 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 Sponsor under this Agreement:
 - a) If Sponsor breaches any of Sponsor's obligations under this Agreement;
 - b) If 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, RCO shall notify 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, 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 Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by Sponsor, or a decision by 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 RCO determines such termination 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) 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) If, after any portion of the grant amount has been paid to Sponsor under this Agreement, the Agreement is terminated by the director 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 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 Sponsor.

- 1) **Suspension:** The obligation of 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 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 Sponsor and 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. 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 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 Sponsor and director shall be dismissed and one alternate person chosen by Sponsor, and one alternate person chosen 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 dispute 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 dispute 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 exclusively 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. 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.



INFORMATIONAL MEMORANDUM

TO: Community Services & Safety Committee

FROM: Eric Drever, Chief of Police

BY: Jake Berry, Police Department Budget Analyst

CC: Mayor Ekberg

DATE: August 22nd 2023

SUBJECT: Grant to Provide MHP Co-Responder Services

ISSUE

The Police Department has been awarded a no-match grant through the Association of Washington Cities (AWC) that provides funding for a Mental Health Professional (MHP) to respond in-field to assist those in crisis and/or experiencing traumatic events. This grant replaces the 2022 MHP grant which expired in June of 2023. Because this grant agreement exceeds the Mayor's signing authority, the Police Department is asking Council to authorize the Mayor to execute the agreement.

BACKGROUND

The 2022 AWC MHP Co-Responder grant was AWC's first foray into funding police department-level MHP programs. Funded by Senate Bill 5693, the purpose was to assist cities with the documented costs to create co-responder programs within different alternative diversion models including law enforcement assisted diversion programs, community assistance referral and education programs, and as part of mobile crisis teams.

The 2022 grant was to fund programs that were in the start-up phase and was written to fund Tukwila's second MHP Co-Responder. The 2023 AWC grant provides funding for the PD's MHP Co-Responder contractual agreement with Sound Mental Health (rather than just the costs of the *second* Co-Responder).

DISCUSSION

The Police Department's MHP Co-Responder program has been serving the community for over a year now with a great deal of success. Through this no-match grant-funded partnership with AWC, the program will receive funding to continue the good work.

FINANCIAL IMPACT

This is a no-match grant with a maximum value of \$105,000, a start date of July 1st 2023 and an end date of June 30th 2024. The grant will reimburse the Police Department for the contracted services of the Sound Mental Health-provided Co-Responder, which are currently \$8,500 per month. If Sound Mental Health raises the cost of the contract to exceed the grant's \$105,000 the Police Department will fund the remaining costs using Drug Seizure Funds.

RECOMMENDATION

The Council is being asked to authorize the Mayor to execute this no-match grant and forward this item to the September 18th 2023 Regular Meeting consent agenda for consideration.

ATTACHMENTS

AWC Co-Responder Grant Agreement

**Association of Washington Cities
Grant (“Grant”) with**

The City of Tukwila
through

The Alternative Response Team Grant.
A program funded under Senate Bill 5187, Section 215-69a

For

Jurisdiction Name	City of Tukwila
Program Description	Alternative Response Co-Responder Program

Start date: July 1, 2023

End date: June 30, 2024

FACE SHEET

Grant Number: ART23-12

Association of Washington Cities (AWC)

Alternative Response Team Grant (ARTG)

Senate Bill 5187, Section 215-69a went into effect on July 1, 2023. The purpose of this grant is to assist cities with the documented costs to create co-responder programs within different alternative diversion models including law enforcement assisted diversion programs, community assistance referral and education programs, and as part of mobile crisis teams. AWC has determined that entering into a Contract with the City of Tukwila will meet the goals of these funds.

1. Grantee City of Tukwila Police Department		2. Grantee Doing Business As (optional)	
3. Grantee Representative Jake Berry Tukwila Police Department Budget Analyst		4. AWC Representative Jacob Ewing 1076 Franklin Street SE Special Projects Coordinator Olympia, WA (360) 753-4137 98501 jacobe@awcnet.org	
5. Grant Amount \$105,000	6. Start Date July 1, 2023	7. End Date June 30, 2024	8. Tax ID #
9. Grant Purpose Establish an alternative response team program as described in Attachment A.			
AWC and the Grantee, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grantee General Terms and Conditions including Attachment "A" – Scope of Work; Attachment "B" – Budget & Budget Narrative; Attachment "C" – Grantee Data Collection; Attachment (D) – Grantee Agent(s).			
FOR GRANTEE _____ _____ Date		FOR Association of Washington Cities _____ _____ Date	

Last revision 11/23/2021

Alternative Response Team Grant Grantee Funding Agreement

1. **GRANT MANAGEMENT**

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

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

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

2. **TERM**

The initial term of the Contract shall be July 1, 2023, and continue through June 30, 2024, unless terminated sooner as provided herein. The term of the contract may be extended by an amendment signed by both parties.

3. **PAYMENT**

AWC shall pay an amount not to exceed \$105,000 for the performance of all things necessary for or incidental to the performance of work as set forth in the ARTG Application and described in Attachment A. Grantee's compensation for services rendered shall be based on the completion of duties as outlined in the ARTG application, in Attachment A, in accordance with the following sections.

4. **BILLING PROCEDURES AND PAYMENT**

AWC will reimburse Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for AWC not more often than monthly. Grantee will use the invoice form provided by AWC to request reimbursement.

The invoices shall describe and document, to AWC's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the **Grant Number ART23-12**. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

If errors are found in the submitted invoice or supporting documents, AWC will notify the Grantee to make corrections in a timely manner, resubmit the invoice and/or supporting documentation as requested, and notify AWC.

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

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

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

Duplication of Billed Costs

The Grantee shall not bill AWC for services performed under this Grant, and AWC shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service. This does not include fees charged for summer recreation programs.

Disallowed Costs

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

Final Reimbursement and Reporting Deadline

When the project is completed the Grantee must submit a final report and supporting documents needed to close out the project no later than July 31, 2024.

AWC shall withhold 10 percent (10%) from each payment until acceptance by AWC of the final reporting from the Grantee has been submitted and verified.

Alternative Response Team Grant Grantee Funding Agreement

Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to AWC within thirty (30) calendar days after the Contract expiration date. AWC is under no obligation to pay any claims that are submitted thirty-one (31) or more calendar days after the Contract expiration date ("Belated Claims"). AWC will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

5. **GRANTEE DATA COLLECTION/REPORTING REQUIREMENTS**

Grantee will submit reports, in a form and format to be provided by AWC (See Attachment C). Data must be provided to AWC along with final billing.

6. **AGENT(S)**

Agent(s) in this contract refers to any third-party entity and its employees that the Grantee has subcontracted with to provide services funded through this agreement. The Grantee is responsible for ensuring that any agent complies with the provision herein.

Any of the Grantee's agent(s) that will provide services under this contract must be listed in Attachment D – Grantee Agent(s) and must provide proof of insurance per Section 6 of this document.

7. **INSURANCE**

a. **Workers' Compensation Coverage.** The Grantee shall at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the fullest extent applicable. This requirement includes the purchase of industrial insurance coverage for the Grantee's employees, as may now hereafter be required of an "employer" as defined in Title 51 RCW. Such workers' compensation and occupational disease requirements shall include coverage for all employees of the Grantee, and for all employees of any subcontract retained by the Grantee, suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Grant. Satisfaction of these requirements shall include, but shall not be limited to:

- i. Full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such a program is mandatory in any jurisdiction;
- ii. Purchase workers' compensation and occupational disease insurance benefits to employees in full compliance with all applicable laws, statutes, and regulations, but only to the extent such coverage is not provided under mandatory governmental program in "a" above, and/or;
- iii. Maintenance of a legally permitted and governmentally approved program of self-insurance for workers' compensation and occupational disease.

Except to the extent prohibited by law, the program of the Grantee's compliance with workers' compensation and occupational disease laws, statutes, and regulations in 1), 2), and 3) above shall provide for a full waiver of rights of subrogation against AWC, its directors, officers, and employees.

If the Grantee, or any agent retained by the Grantee, fails to effect and maintain a program of compliance with applicable workers' compensation and occupational disease laws, statutes, and regulations and AWC incurs fines or is required by law to provide benefits to such employees, to obtain coverage for such employees, the Grantee will indemnify AWC for such fines, payment of benefits to Grantee or Grantee employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount owed AWC by the Grantee pursuant to the indemnity may be deducted from any payments owed by AWC to the Grantee for the performance of this Grant.

Alternative Response Team Grant Grantee Funding Agreement

b. Automobile Insurance. In the event that services delivered pursuant to this Grant involve the use of vehicles, owned or operated by the Grantee, automobile liability insurance shall be required. The minimum limit for automobile liability is:

\$1,000,000 per accident, using a Combined Single Limit for bodily injury and property damage.

c. Business Automobile Insurance. In the event that services performed under this Grant involve the use of vehicles or the transportation of clients, automobile liability insurance shall be required. If Grantee-owned personal vehicles are used, a Business Automobile policy covering a minimum Code 2 “owned autos only” must be secured. If the Grantee’s employees’ vehicles are used, the Grantee must also include under the Business Automobile policy Code 9, coverage for “non-owned autos.” The minimum limits for automobile liability is:

\$1,000,000 per accident, using a Combined Single Limit for bodily injury and property damage.

d. Public Liability Insurance (General Liability). The Grantee shall at all times during the term of this Grant, at its cost and expense, carry and maintain general public liability insurance, including contractual liability, against claims for bodily injury, personal injury, death, or property damage occurring or arising out of services provided under this Grant. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Grantee or its officers, agents, representatives, assigns or servants. The limits of liability insurance, which may be increased from time to time as deemed necessary by AWC, with the approval of the Grantee (which shall not be unreasonably withheld), shall not be less than as follows:

Each Occurrence	\$1,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Fire Damage Limit (any one fire)	\$ 50,000

e. Local Governments that Participate in a Self-Insurance Program.

Alternatively, Grantees may maintain a program of self-insurance or participate in a property/liability pool with adequate limits to comply with the Grant insurance requirements or as is customary to the contractor or Grantee’s business, operations/industry, and the performance of its respective obligations under this Grant.

f. Additional Insured. The Association of Washington Cities, shall be specifically named as an additional insured on all policies, including Public Liability and Business Automobile, except for liability insurance on privately-owned vehicles, and all policies shall be primary to any other valid and collectible insurance.

AWC may waive the requirement to be specially named as an additional insured on policies, including Public Liability and Business Automobile, provided that the Grantee provides: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pools must comply with RCW 48.62, the requirements of the Office of Risk Management and Local Government Self Insurance Program, the Washington State Auditor’s reporting requirements and all related federal and state regulations. Grantees participating in a joint risk pool shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. AWC, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Alternative Response Team Grant Grantee Funding Agreement

- g. Proof of Insurance.** Certificates and or evidence satisfactory to the AWC confirming the existence, terms and conditions of all insurance required above shall be delivered to AWC within five (5) days of the Grantee's receipt of Authorization to Proceed.
- h. General Insurance Requirements.** Grantee shall, at all times during the term of the Grant and at its cost and expense, buy and maintain insurance of the types and amounts listed above. Failure to buy and maintain the required insurance may result in the termination of the Grant at AWC's option. By requiring insurance herein, AWC does not represent that coverage and limits will be adequate to protect Grantee and such coverage and limits shall not limit Grantee's liability under the indemnities and reimbursements granted to AWC in this Grant.

Grantee shall include all agents of the Grantee as insureds under all required insurance policies, or shall furnish proof of insurance and endorsements for each agent. Agent(s) must comply fully with all insurance requirements stated herein. Failure of agent(s) to comply with insurance requirements does not limit Grantee's liability or responsibility.

7. ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Grant and Grantee General Terms and Conditions
- Attachment A – ARTG Application & Scope of Work
- Attachment B – Budget & Budget Narrative
- Attachment C – Grantee Reporting Requirements
- Attachment D – Grantee Agent(s)

GRANTEE GENERAL TERMS AND CONDITIONS

1. **Access to Data.** In compliance with Chapter 39.26 RCW, the Grantee shall provide access to data generated under this Grant to AWC, and to the extent necessary to comply with RCW 39.26, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Grantee's reports, including computer models and methodology for those models.
2. **Alterations and Amendments.** This Grant may be amended only by mutual agreement of the parties in writing. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
3. **Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35.** In relation to this Grant, the Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
4. **Assignment.** Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of AWC.
5. **Assurances.** AWC and the Grantee agree that all activity pursuant to this Grant will be in accordance with all applicable current federal, state and local laws, rules and regulations.
6. **Attorney's Fees.** In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.
7. **Budget Revisions.** Any monetary amount budgeted by the terms of this Grant for various activities and line item objects of expenditure, as outlined in Attachment B – Budget & Budget Narrative, may be revised without prior written approval of AWC, so long as the revision is no more than ten percent (10%) of the original line item amount and the increase in an amount is offset by a decrease in one or more other amounts equal to or greater than the increase. All other budget revisions exceeding ten percent (10%) shall only be made with the prior written approval of AWC. Grantee will use the funding change request form provided by AWC to request these budget revisions.
8. **Certification Regarding Wage Violations.** The Grantee certifies that within three (3) years prior to the date of execution of this Grant, Grantee has not been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of RCW chapters 49.46, 49.48, or 49.52.

The Grantee further certifies that it will remain in compliance with these requirements during the term of this Grant. Grantee will immediately notify AWC of any finding of a willful violation entered by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction entered during the term of this Grant.
9. **Change in Status.** In the event of substantive change in the legal status, organizational structure, or fiscal reporting responsibility of the Grantee, Grantee agrees to notify AWC of the change. Grantee shall provide notice as soon as practicable, but no later than thirty (30) days after such a change takes effect.
10. **Copyright Provisions.** Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and copyright shall be owned by the AWC. AWC shall be considered the author of such Materials. If Materials are not considered "works for hire", Grantee hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to AWC effective from the moment of creation of such Materials.

Alternative Response Team Grant Grantee Funding Agreement

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

Grantee understands that, except where otherwise agreed to in writing or approved by the AWC or designee, all original works of authorship produced under this Contract shall carry a [Creative Commons Attribution License](#), version 4.0 or later.

All Materials the Grantee has adapted from others' existing openly licensed resources must be licensed with the least restrictive open license possible that is not in conflict with existing licenses.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Grantee will license the materials to allow others to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. If the Grantee would like to limit these pre-existing portions of the work to [non-commercial use](#), the [Creative Commons Attribution-NonCommercial-ShareAlike](#) license, version 4.0 or later, is acceptable for these specific sections.

The Grantee warrants and represents that Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to apply such a license.

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

- 11. Covenant Against Contingent Fees.** The Grantee warrants that no person or selling agent has been employed or retained to solicit or secure this Grant upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Grantee for the purpose of securing business. AWC shall have the right, in the event of breach of this clause by the Grantee, to annul this Grant without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.
- 12. Disputes.** In the event that a dispute arises under this Grant, the parties will use their best efforts to amicably resolve any dispute, including use of alternative dispute resolution options.
- 13. Duplicate Payment.** AWC shall not pay the Grantee, if the Grantee has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.
- 14. Entire Agreement.** This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.
- 15. Ethical Conduct.** Neither the Grantee nor any employee or agent of the Grantee shall participate in the performance of any duty or service in whole or part under this Grant in violation of, or in a manner that violates any provision of the Ethics in Public Service law at Chapter 42.52 RCW, RCW 42.17A.550, RCW 42.17A.555, and 41.06.250 prohibiting the use of public resources for political purposes.
- 16. Governing Law and Venue.** This Grant shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

Alternative Response Team Grant Grantee Funding Agreement

17. Indemnification. To the fullest extent permitted by law, Grantee shall indemnify, defend and hold harmless AWC and all officials, agents, and employees of AWC, from and against all claims for injuries or death arising out of or resulting from the performance of this Grant. "Claim" as used in this Grant, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Additionally, "claims" shall include but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice or in unlawful restraint of competition. Grantee's obligation to indemnify, defend and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless AWC for any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines out of or incident to Grantee's or its agent's performance or failure to perform the Grant. Grantee's obligation to indemnify, defend, or hold harmless AWC shall not be eliminated or reduced by any actual or alleged concurrent negligence by AWC, or their agents, employees, or officials.

Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless AWC, and their agents, employees, or officials.

18. Independent Capacity of the Grantee. The parties intend that an independent Grantee relationship will be created by this Grant. The Grantee and his/her employees or agents performing under this Grant are not employees or agents of AWC. The Grantee will not hold itself out as nor claim to be an officer or employee of AWC, nor will the Grantee make any claim or right, privilege, or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Grantee.

19. Licensing and Accreditation Standards. The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary to the performance of this Grant.

20. Limitation of Authority. Only AWC or AWC's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Grant is not effective or binding unless made in writing and signed by AWC.

21. Non-Discrimination. The Grantee shall comply with all the federal and state non-discrimination laws, regulations and policies, which are otherwise applicable to AWC. Accordingly, no person shall, on the ground of sex, race, creed, religion, color, national origin, marital status, families with children, age, veteran or military status, sexual orientation, gender expression, gender identity, disability, or the use of a trained dog guide or service animal, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed by the Grantee and its agents under this Grant. The Grantee shall notify AWC immediately of any allegations, claims, disputes, or challenges made against it under non-discrimination laws, regulations, or policies, or under the Americans with Disabilities Act. In the event of the Grantee's noncompliance or refusal to comply with this nondiscrimination provision, this Grant may be rescinded, cancelled or terminated in whole or part, and the Grantee may be declared ineligible for further contracts with AWC.

22. Overpayments. Grantee shall refund to AWC the full amount of any overpayment under this Grant within thirty (30) calendar days of written notice. If Grantee fails to make a prompt refund, AWC may charge Grantee one percent (1%) per month on the amount due until paid in full.

Alternative Response Team Grant Grantee Funding Agreement

- 23. Public Disclosure.** Grantee acknowledges that AWC is subject to the Washington State Public Records Act, Chapter 42.56 RCW, and AWC acknowledges that the Grantee is subject to the Washington State Public Records Act, Chapter 42.56 RCW, and that this Grant shall be a public record as defined in RCW 42.56. Any specific information that is claimed by either party to be confidential or proprietary must be clearly identified as such by that party. To the extent consistent with chapter 42.56 RCW, each party shall attempt reasonably to maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view such information, the party receiving the public records request will notify the other party of the request and the date that such records will be released to the requester unless the other party obtains a court order enjoining that disclosure. If such party fails to obtain the court order enjoining disclosure, the party receiving the records request will release the requested information on the date specified.
- 24. Publicity.** The Grantee agrees to submit to AWC all advertising and publicity matters relating to this Grant which in the AWC's judgment, AWC's name can be implied or is specifically mentioned. The Grantee agrees not to publish or use such advertising and publicity matters without the prior written consent of AWC.
- 25. Registration with Department of Revenue.** The Grantee shall complete registration with the Department of Revenue and be responsible for payment of all taxes due on payments made under this Grant.
- 26. Records Maintenance.** The Grantee shall maintain all books, records, documents, data and other evidence relating to this Grant 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 Grant. Grantee shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Grant, shall be subject at all reasonable times to inspection, review or audit by the AWC, personnel duly authorized by AWC, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.
- If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- 27. Right of Inspection.** The Grantee shall provide right of access to its facilities utilized under this Grant to AWC or any of its officers responsible for executing the terms of this Grant at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Grant on behalf of AWC. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the Grantee's business or work hereunder.
- 28. Severability.** The provisions of this Grant are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.
- 29. Subcontracting.** Neither the Grantee nor any agent of the Grantee shall enter into subcontracts for any of the work contemplated under this Grant without obtaining prior written approval of AWC. Grantee is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Grant are included in any and all Subcontracts. In no event shall the existence of the subcontract operate to release or reduce liability of the Grantee to the AWC for any breach in the performance of the Grantee's duties. This clause does not include contracts of employment between the Grantee and personnel assigned to work under this Grant.

If, at any time during the progress of the work, AWC determines in its sole judgment that any agent of the Grantee is incompetent, AWC shall notify the Grantee, and the Grantee shall take immediate steps to terminate the agent's involvement in the work. The rejection or approval by AWC of any agent or the termination of an agent shall not relieve the Grantee of any of its responsibilities under the Grant, nor be the basis for additional charges to AWC.

Alternative Response Team Grant Grantee Funding Agreement

30. Taxes. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

31. Technology Security Requirements. The security requirements in this document reflect the applicable requirements of Standard 141.10 (<https://ocio.wa.gov/policies>) of the Office of the Chief Information Officer for the state of Washington, which by this reference are incorporated into this agreement.

The Grantee acknowledges it is required to comply with WaTech Office of Chief Information Officer (OCIO) IT Security Policy 141 and OCIO IT Security Standard 141.10, Securing Information Technology Assets. OCIO IT Security Standard 141.10, Securing Information Technology Assets, applies to all AWC assets stored as part of a service, application, data, system, portal, module, components or plug-in product(s) that are secured as defined by the WaTech OCIO's IT Security Policy 141 and OCIO IT Security Standard 141.10, Securing Information Technology Assets.

As part of OCIO IT Security Standard 141.10, a design review checklist and/or other action may be required. These activities will be managed and coordinated between AWC and the Grantee. Any related costs to performing these activities shall be at the expense of the Grantee. Any such activities and resulting checklist and/or other products must be shared with AWC.

32. Termination for Convenience. Except as otherwise provided in this Grant, AWC may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Grant in whole or in part. The notice shall specify the date of termination and shall be conclusively deemed to have been delivered to and received by the Grantee as of midnight the second day of mailing in the absence of proof of actual delivery to and receipt by the Grantee. If this Grant is so terminated, AWC shall be liable only for payment required under the terms of the Grant for services rendered or goods delivered prior to the effective date of termination.

33. Termination for Default. In the event AWC determines the Grantee has failed to comply with the conditions of this Grant in a timely manner, AWC has the right to suspend or terminate this Grant. AWC shall notify the Grantee in writing of the need to take corrective action. If corrective action is not taken within thirty (30) days, the Grant may be terminated. AWC reserves the right to suspend all or part of the Grant, withhold further payments, or prohibit the Grantee from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Grantee or a decision by AWC to terminate the Contract. In the event of termination, the Grantee shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Grantee: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the AWC provided in this Grant are not exclusive and are in addition to any other rights and remedies provided by law.

34. Termination Due to Funding Limitations or Contract Renegotiation, Suspension. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion of this Grant, with the notice specified below and without liability for damages:

- a. At AWC's discretion, AWC may give written notice of intent to renegotiate the Grant under the revised funding conditions.
- b. At AWC's discretion, AWC may give written notice to Grantee to suspend performance when AWC determines there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Grantee's performance to be resumed.

Alternative Response Team Grant Grantee Funding Agreement

- (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
- (2) When AWC determines that the funding insufficiency is resolved, it will give the Grantee written notice to resume performance, and Grantee shall resume performance.
- (3) Upon the receipt of notice under b. (2), if Grantee is unable to resume performance of this Grant or if the Grantee's proposed resumption date is not acceptable to AWC and an acceptable date cannot be negotiated, AWC may terminate the Grant by giving written notice to the Grantee. The parties agree that the Grant will be terminated retroactive to the date of the notice of suspension. AWC shall be liable only for payment in accordance with the terms of this Grant for services rendered prior to the retroactive date of termination.

c. AWC may immediately terminate this Grant by providing written notice to the Grantee. The termination shall be effective on the date specified in the termination notice. AWC shall be liable only for payment in accordance with the terms of this Grant for services rendered prior to the effective date of termination. No penalty shall accrue to AWC in the event the termination option in this section is exercised.

d. For purposes of this section, "written notice" may include email.

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

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

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

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

- a. Stop work under this Grant on the date and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the Grant that is not terminated;
- c. Assign to AWC, in the manner, at the times, and to the extent directed by the AWC, all rights, title, and interest of the Grantee under the orders and subcontracts in which case AWC has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of AWC to the extent the AWC may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to AWC and deliver, in the manner, at the times and to the extent as directed by AWC, any property which, if the Grant had been completed, would have been required to be furnished to AWC;
- f. Complete performance of such part of the work not terminated by AWC; and

Alternative Response Team Grant Grantee Funding Agreement

- g. Take such action as may be necessary, or as AWC may direct, for the protection and preservation of the property related to this Grant which, in is in the possession of the Grantee and in which AWC has or may acquire an interest.

36. Waiver. A failure by either part to exercise its rights under this Grant shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

ARTG Application & Scope of Work

PURPOSE

The purpose of this grant is to assist cities with the documented costs to create co-responder programs within different alternative diversion models including law enforcement assisted diversion programs, community assistance referral and education programs, and as part of mobile crisis teams.

CONTRACTOR RESPONSIBILITIES

GRANTEE is required to implement the Alternative Response Team Grant (ARTG) Program as described in their application for funding, with no unapproved substantive derivations. Requests for changes to this scope of work, or services laid out in the applicant's application can be made to Jacob Ewing, Special Projects Coordinator at jacobe@wacities.org.

This program shall include the following elements as central features of their program:

- Grant recipients must establish a co-responder team using an alternative diversion model including law enforcement assisted diversion program, community assistance referral and education program, or a mobile crisis team.

In the event that there is a change in the contract or program management staff paid for by this grant, it is expected that GRANTEE will notify AWC of the change to include the name and contact information for the new staff member.

If GRANTEE fails to perform to the standards set forth above, AWC remains able to remedy noncompliance as outlined in the grant document, including provisions for suspension, termination and/or recapture of funds already paid to the grantee.

SCOPE & GOALS OF ARTG PROGRAM

The City of Tukwila has established a co-responder program in partnership with Sound Health. The goal of this program is to put troubled non-violent people in the hands of behavioral health professionals and divert them from hospitalization or jail into support services. This work is intended to lower re-offense rates, reduce the incidence of incarceration, and result in fewer emergency department or psychiatric hospital visits. Additionally, this program creates a path for non-emergency health and safety calls to be redirected to a specialized team made up of a Tukwila Police Officer and a Mental Health Professional. This team will provide de-escalation, diversions, and referrals to appropriate services.

ARTG Budget & Narrative

GRANT FUNDED PROGRAM BUDGET

Category	Cost
Staffing	\$0
Supplies & Equipment	\$0
Transportation	\$0
Professional Services	\$0
Contracted Services	\$105,000
Other	\$0
TOTAL	\$105,000

PROGRAM BUDGET NARRATIVE

Contracted Services: Grant funds will be used to contract with Sound Health to provide a qualified mental health professional co-responder for the Tukwila Police Department.

Grantee Reporting Requirements

FINAL REPORT

A final program report is due to AWC by July 31, 2024. The final report must contain the following information:

- Describe program participants including:
 - Number of individuals served
 - Gender (Male, Female, Nonbinary, etc.) of individuals served
 - Age of individuals served
 - Veteran status of individuals served
 - Substance abuse or mental health issues of individuals served
 - Reason for contact
 - Outcome of contact (No outcome, referral to services, involuntary transport, etc.)
 - Long-term outcome of individual receiving services (No outcome, permanent housing, shelter, etc.)
- Describe the type of program funded and the geographic area served.
- Explain how the program targeted vulnerable individuals.
- Explain how the program created greater access for vulnerable individuals to available programs and services.
- Discuss program successes and challenges.

MONTHLY REPORT

Additionally, Grantees will submit monthly status reports to AWC. Monthly reports will be due the five business days following the end of the previous month. The monthly reports will address the following questions:

- Briefly describe the work accomplished over the past month?
- What successes has your program seen this past month?
- What challenges has your program seen this past month?
- Do you have any challenges or issues you need to discuss with AWC?

Grantee Agent(s)

List any Agent(s) that will provide program services in a program funded through the ARTG Program.

Name of Agent	Address



INFORMATIONAL MEMORANDUM

TO: **Community Services and Safety Committee**

FROM: **Police Chief Eric Drever**

BY: **Deputy Chief of Police Eric Lund
City Attorney Kari Sand
City Prosecutor Karen Lentz**

CC: **Mayor Ekberg**

DATE: **August 22, 2023**

SUBJECT

An Ordinance adopting provisions of 2E2SSB 5536, the so-called "*Blake* fix," to allow city prosecution of drug possession consistent with Washington state law.

ISSUE

To adopt by reference new state statutes in chapter 69.50 RCW, prohibiting the possession of controlled, counterfeit, and legend drugs without a prescription, enabling City prosecution of those violations in Tukwila Municipal Court.

BACKGROUND

In 2021, the Washington State Supreme Court decided the case of *State v. Blake*, which struck down Washington's criminal statute prohibiting possession of a controlled substance. Prior to the Blake decision, possession was a class C felony. The court reasoned that the lack of a requirement to prove knowledge of possession did not force the state to prove criminal intent, violating the defendant's right to due process.

In response to the *State v. Blake* decision, the Legislature passed ESB 5476, which in part modified statutes prohibiting the possession of a controlled substance, counterfeit substance, legend drug, or 40 grams or less of cannabis, to require proof of knowing possession of the prohibited substances. These offenses are classified as misdemeanor crimes, punishable by up to 90 days in jail, a \$1,000 fine, or both. Prosecutors are encouraged to divert such cases for assessment, treatment, and other services. The modifications to these possession statutes were set to expire on July 1, 2023.

In May 2023, during a special session, the Washington Legislature passed 2E2SSB 5536, establishing a permanent "*Blake* fix." Pursuant to the bill, simple possession of controlled, counterfeit, and legend drugs without a prescription is prohibited. Violations of the new simple possession statutes are classified as either misdemeanors or gross misdemeanors.

ANALYSIS

Pursuant to Article XI, Section 11 of the Washington Constitution and RCW 35A.11.020, the city is authorized to enact ordinances and may impose penalties of fines not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor. It is common throughout the Tukwila Municipal Code for the City to adopt existing state statutes for both misdemeanors and gross misdemeanors violations.

By function of state law, simple possession of controlled, counterfeit, and legends drugs is prohibited within the City. Adopting the prohibitions from 2E2SSB 5536 will enable the City Prosecutor to prosecute these violations in Tukwila Municipal Court.

FINANCIAL IMPACT

No financial impact is expected from the adoption of the Ordinance.

RECOMMENDATION

The Council is being asked to approve the Ordinance and consider this item at the August 28, 2023 Committee of the Whole meeting and subsequent August 28, 2023 Special Meeting. In order for the Ordinance to be effective immediately, a majority plus one (5 “yes” votes) of the whole membership of the Council is required consistent with RCW 35A.12.130.

ATTACHMENTS

Draft ordinance

DRAFT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING ORDINANCE NOS. 1363 §1 (PART), 1568 §2, AND 2049 §1, AS CODIFIED AT TUKWILA MUNICIPAL CODE (TMC) SECTION 8.07.010, "STATE STATUTES ADOPTED BY REFERENCE"; REPEALING ORDINANCE NO. 1363 §1 (PART), AS CODIFIED AT TMC SECTION 8.07.020, "POSSESSION PROHIBITED"; REPEALING ORDINANCE NOS. 1621 §1, 1808 §1, AND 2369 §1, AS CODIFIED AT TMC SECTION 8.07.040, "DRUG FREE ZONE – ENHANCED PENALTIES"; REENACTING TMC SECTION 8.07.020; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, pursuant to Article XI, Section 11 of the Washington Constitution and RCW 35A.11.020, the City of Tukwila ("City"), a non-charter optional code city, is authorized to enact ordinances of all kinds relating to and regulating its local or municipal affairs, and may impose penalties of fines not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor; and

WHEREAS, in 2021, the Washington State Supreme Court struck down RCW 69.50.4013 in *State v. Blake*, 197 Wn.2d. 170, 481 P.3d 521 (2021), holding that strict liability for drug possession is unconstitutional. Prior to the *Blake* decision, possession was a class C felony. The *Blake* court reasoned that the lack of a requirement to prove knowledge of possession did not force the state to prove criminal intent, violating the defendant's right to due process; and

WHEREAS, after *Blake*, the Washington State Legislature passed Engrossed Senate Bill ("ESB") 5476, which in part modified statutes prohibiting the possession of a controlled substance, counterfeit substance, legend drug, or 40 grams or less of cannabis, to require proof of knowing possession of the prohibited substances. These offenses were classified as misdemeanor crimes, punishable by up to 90 days in jail, a \$1,000 fine, or both. Prosecutors were encouraged to divert such cases for assessment, treatment, and other services; and

WHEREAS, ESB 5476 contained a sunset clause whereupon the bill's provisions would expire on July 1, 2023, unless the Washington State Legislature took further action; and

WHEREAS, on May 16, 2023, the Washington State Legislature passed Second Engrossed Second Substitute Senate Bill ("2E2SSB") 5536, which criminalized drug possession as either a misdemeanor or gross misdemeanor; and

WHEREAS, the City Council now considers it in the best interest of the community to adopt certain provisions of 2E2SSB 5536 by reference to align the Tukwila Municipal Code ("TMC") with State law to prohibit the knowing possession of the prohibited substances. Possession of a controlled substance and possession of a counterfeit substance are classified as gross misdemeanor crimes and carry a potential maximum sentence of 364 days in jail, a \$1,000 fine, or both. Possession of a legend drug and possession of an ounce or more of cannabis, or possession of any amount of cannabis for individuals under 21 years of age, remain misdemeanor crimes and carry a maximum sentence of 90 days in jail, a \$1,000 fine, or both; and

WHEREAS, the City Council also considers that rehabilitation and treatment are critical components to combating illicit drug use and desires to give those suffering from substance use disorders an opportunity to access that treatment in lieu of prosecution; and

WHEREAS, the City Council now desires to adopt the amendments to TMC Chapter 8.07, "Controlled Substances, Paraphernalia, Poisons and Toxic Fumes," as set forth in this ordinance to harmonize the chapter with changes to state law effectuated by enactment of 2E2SSB 5536, and to adopt by reference all misdemeanor crimes identified in State law as necessary to protect the public health, safety, and welfare, and the City Council finds that a public emergency exists requiring these amendments to become effective immediately upon adoption in order for the City to effectively enforce the changes made by the Washington State Legislature;

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

Section 1. Adoption of Findings of Fact. The City Council hereby adopts the foregoing recitals and incorporates them herein as support for these amendments.

Section 2. TMC Section 8.07.010 Amended. Ordinance Nos. 1363 §1 (part), 1568 §2, and 2049 §1, as codified at TMC Section 8.07.010, "State Statutes Adopted by Reference," are hereby amended to read as follows:

8.07.010 State Statutes Adopted By Reference

The following statutes of the State of Washington, as now in effect or as may be subsequently amended, are hereby adopted by reference as if set forth in full herein [as to non-felonies](#):

RCW 69.41.030	Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty.
RCW 69.50.101	Definitions.
RCW 69.50.102	Drug Paraphernalia—Definitions.
RCW 69.50.204(d)(13)	Schedule I—Marijuana.
RCW 69.50.309	Containers.
RCW 69.50.4011	Counterfeit substances – Penalties.
RCW 69.50.4013	Possession of controlled substance – Penalty – Possession of useable cannabis, cannabis concentrates, or cannabis-infused products – Delivery.
RCW 69.50.4014	Possession of Forty Grams or Less of Marijuana—Penalty.
RCW 69.50.4016	Provisions not applicable to offenses under RCW 69.50.410.
RCW 69.50.412	Prohibited Acts: E—Penalties.
RCW 69.50.4121	Drug paraphernalia – Selling or giving – Penalty.
RCW 69.50.420	Violations – Juvenile driving privileges.
RCW 69.50.425	Misdemeanor Violations—Minimum Imprisonment.
RCW 69.50.435	Violations committed in or on certain public places or facilities – Additional penalty – Defenses – Construction – Definitions.
RCW 69.50.505	Seizure and Forfeiture.
RCW 69.50.506	Burden of Proof.
RCW 69.50.509	Search and Seizure of Controlled Substances.

Section 3. TMC Section 8.07.020 Repealed. Ordinance No. 1363 §1 (part), as codified at TMC Section 8.07.020, "Possession Prohibited," is hereby repealed, thereby eliminating this section.

~~**8.07.020—Possession Prohibited.**~~

~~No person shall possess any drug paraphernalia as defined in RCW 69.50.102 with the intent to use or employ the same for manufacturing and/or consuming controlled substances.~~

Section 4. TMC Section 8.07.040 Repealed. Ordinance Nos. 1621 §1, 1808 §1, and 2369 §1, as codified at TMC Section 8.07.040, "Drug Free Zone – Enhanced Penalties," are hereby repealed, thereby eliminating this section.

~~**8.07.040 Drug Free Zone – Enhanced Penalties.**~~

~~A. Any person who, in the drug free zones described in this section, violates TMC 8.07.020 or any subsequent amendment thereto by using or possessing drug paraphernalia, or who delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia, or who violates TMC 8.07.010 or any subsequent amendment thereto, by possessing 40 grams or less of marijuana, and any such violation occurs in or at any school or community center listed in TMC 8.07.040G, or within 1,000 feet of the perimeter of any such school or community center grounds, or in any public park listed in TMC 8.07.040G, may be punished by a fine of up to twice the fine or twice the imprisonment authorized by TMC 8.01.050 or any subsequent amendment thereto, or by both such doubled fine and imprisonment.~~

~~B. It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school, or within 1,000 feet of the school, or in a public park.~~

~~C. It is not a defense to a prosecution for a violation of this section that persons under the age of 18 were not present in the school, the public park, or at the time of the offense, or that school was not in session.~~

~~D. It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under 18 years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401(a) for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for any offense defined in any other section of this chapter or in any other law.~~

~~E. In a prosecution under this section, a map produced or reproduced by any school district or the City of Tukwila for the purpose of depicting the location and boundaries of the area on or within 1,000 feet of the perimeter of any property used for a school or community center, or the location of any park, or a true copy of such a map, shall be admissible and shall constitute prima facie evidence of the location and boundaries of those areas. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram if such map or diagram is otherwise admissible.~~

~~F. As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:~~

~~—1. "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;~~

~~—2. “Public park” means land, including any facilities or improvements on the land, that is operated as a park by the State or local government.~~

~~—3. “Community center” means the City of Tukwila Community Center located at 12424—42nd Avenue South.~~

~~—4. “Library” means a free public library supported in whole or in part with money derived from taxation.~~

~~G.—As described in this section, the following areas are designated as drug free zones, subject to the provisions of this section:~~

~~—1. Schools (includes 1,000-foot buffer zone):~~

a	Foster High School	4242 S. 144th
b	Showalter Middle School	4628 S. 144th St.
c	Tukwila Elementary	5939 S. 149th St.
d	Cascade View Elementary	13601—32nd Ave. S.
e	Thorndyke Elementary	4415 S. 150th St.
f	Aviation High School	9229 East Marginal Way S.
g	Academy Schools/ Children’s Academy	14601 Interurban Ave. S.

~~—2. Parks:~~

a	Duwamish Park	42nd Ave. S./S. 116th St.
b	Codiga Park	12535 50th Pl. S.
c	Riverton Mini Park	45th Ave. S./S. 133rd St.
d	57th Avenue Park	57th Ave. S./S. 133rd St.
e	Hazelnut Park	59th Ave. S./S. 147th St.
f	Fort Dent Park	Southcenter Blvd./Interurban Ave. S.
g	Tukwila Park	65th Ave. S./S. 153rd St.
h	Ikawa Park	6200 Southcenter Blvd.
i	Bicentennial Park	Christensen Rd./Strander Blvd.
j	Duwamish/Green River Trail	Part of valley river trail system along shores of the Duwamish/Green River
k	Interurban Trail	S. 180th to north City limits
l	Crestview Park	42nd Ave. S./S. 162nd St.
m	Crystal Springs Park	51st Ave. S./S. 158th St.
n	Joseph Foster Memorial Park	53rd Ave. S./S. 137th St.
o	Southgate Park	40th Ave. S./S. 133rd St.
p	Community Center Park	42nd Ave. S./S. 124th
q	Riverton Park	4101 S. 131st St.
r	Tukwila Pond Park	S. 168th/Strander Blvd.
s	Designated park trails	
t	Cascade View Community Park	37th Ave S. & S. 142nd St.
u	Duwamish Hill Preserve	3800 S. 115th St.
v	Macadam Wetlands Park	S. 144th St./Macadam Rd.
w	Cecil Moses Park	11013 W. Marginal Pl.

~~—3. Community Centers:~~

a	Tukwila Community Center	12424—42nd Ave. S.
b	Tukwila Heritage and Cultural Center	14475 59th Ave. S.

~~—4. Libraries:~~

a	Foster Library	4060 S. 144th
b	Library Connection @ Southcenter	1115 Southcenter Mall

Section 5. Section Reenacted. TMC Section 8.07.020 is hereby reenacted to read as follows:

8.07.020 Crimes and penalties not specifically referenced.

Any act or omission defined as a misdemeanor or gross misdemeanor in State law and not specifically identified in this chapter is also adopted by reference, as now enacted or hereafter amended. Any penalty in Article IV of chapter 69.50 RCW for a non-felony violation not specifically identified in this chapter is also adopted by reference, as now enacted or hereafter amended.

Section 6. 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 scrivener’s errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 7. 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 8. Declaration of Emergency; Effective Date. Pursuant to RCW 35A.12.130, this ordinance shall take effect and be in full force immediately as a public emergency ordinance necessary for the protection of public health, public safety, and the public peace, if approved by a majority plus one of the whole membership of the Council. A non-exhaustive list of facts supporting this emergency declaration are included in the recitals above, which are adopted by reference as findings of fact as if fully set forth herein. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Special Meeting thereof this _____ day of _____, 2023.

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: _____

Ordinance Number: _____

Office of the City Attorney