



INFORMATIONAL MEMORANDUM

TO: Community Services & Safety Committee

FROM: Rick Still, Parks & Recreation Director

BY: Kris Kelly, Acting Parks and Recreation Manager

CC: Mayor Ekberg

DATE: August 18, 2020

SUBJECT: RCO Grant Application Resolution & Parks & Recreation Capital Improvement Budget Update

ISSUE

Resolution to apply for RCO funding and update on Capital Improvement projects and budget

BACKGROUND

Parks and Recreation staff presented updated Capital Improvement Project (CIP) budget sheets to the Community Safety and Services Committee in February 2020. Capital project budgets were updated to reflect recommendations outlined in the Parks, Recreation, and Open Space Plan (PROS) update, which occurred from May 2019 through March 2020. The updated budget sheets were approved at the March 2, 2020 City Council meeting and the PROS plan was adopted by ordinance on April 6, 2020. Since that time, staff have started implementing PROS plan initiatives, including capital project implementation in 2020.

DISCUSSION

Due to the Coronavirus pandemic and staffing changes, the schedule for performing capital improvements have been modified. 2020 projects will focus on increasing activation by replacing, renovating, adding, or improving amenities in various parks throughout the city. 2020 initiatives include:

- **Open Space Improvements:** Staff applied for a Washington State Recreation Conservation Office (RCO) grant to support the development of the 116th St open space. If awarded, development will begin in 2021 and will include walking paths, lookouts, seating areas, and interpretive signs. As part of the application review process the City will need to adopt a resolution in support of the application and subsequent award. Acquisition of the property with Conservation Futures Trust Funds will be utilized as a match for the grant, no financial match is required.
- **Park Improvements:** The 2020 PROS plan recommended park improvement projects that aligned with community engagement feedback. Staff were eager to accomplish significant smaller projects in 2020 however some projects will be moved to 2021. Staff have identified the following to be completed in 2020:
 - **Foster Park Improvements:**
 - **Sport Court:** During the 42nd Ave. street/utility improvement project the sport court/tennis courts were removed. A new sport court will be installed on the upper part of the park near the playground and restrooms.
 - **Walking path:** The existing walking path is gravel and will be paved and extended to circle the entire park.
 - **Crestview Park Improvements:**

- Dog Park Picnic Shelter: a shelter will be installed in the dog park area for dog owners to provide respite from weather.
- Walking path: the existing walking path will be extended to new picnic shelter located in the dog park area.
- Bicycle Safety Course: A safety course will be installed for new bike riders to learn the safety rules and protocols. The course will be installed in the NW corner near the existing basketball court.
- Tukwila Pond: A request for proposals seeking a Master Plan Design for Tukwila Pond occurred this past spring. A review team is currently scoring proposals, will conduct interviews, and staff will present a recommendation at a future Community Services and Safety Committee meeting.
- Trail resurfacing: Sections of the Green River Trail and Interurban Trail need to be repaired by replacing pavement.

FINANCIAL IMPACT

Open Space Improvements: No financial match is required for the 116th open space RCO grant application. Acquisition of the property will be utilized to meet the match requirements for the grant if awarded. The park improvements projects will not use General Fund monies. A combination of King County Levy funds, Park Impact Fees and REET funds will be utilized to implement these projects.

Park Improvements:	
Crestview Park improvements include a shelter, paving, and bicycle safety course:	\$65,000
Foster Park improvements include a sport court, and walking path improvements:	\$55,000
Misc. Park Improvements: Crystal Springs fitness station	
Art Mural various locations	
Community Message boards various locations	\$20,000
Tukwila Pond Master Plan Design is being paid through LTAC	\$125,000
Trail Improvements: repairing and replacing pavement	\$75,000

RECOMMENDATION

Staff is recommending the adoption of a resolution to complete the RCO grant application; and seeking approval to move forward with Park and Trail improvements by authorizing the Mayor to execute the construction contract with Evergreen Asphalt for \$155,000 for the paving of the trails and parks sports courts. Note: the Tukwila Design Master Plan Design contract will be presented in a future meeting.

ATTACHMENTS

- A. Draft Resolution
- B. Parks CIP approved March 2020.
- C. Construction Contract for Evergreen Asphalt

DRAFT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AUTHORIZING SUBMISSION OF AN APPLICATION FOR GRANT FUNDING ASSISTANCE FOR THE DUWAMISH NEIGHBORHOOD TRAIL PARK PROJECT (#91930102), TO THE RECREATION AND CONSERVATION OFFICE, AS PROVIDED IN RCW 79.105.150, RCW 79A.15.030, WAC 286-13, AND OTHER APPLICABLE AUTHORITIES.

Organization Name (sponsor)..... **City of Tukwila, Washington**

Resolution No. **No.**

Project Number, Name, and RCO Project Number:

Project #91930102..... Duwamish Neighborhood Trail Park ... RCO # 20-1319

This resolution/authorization authorizes the person identified below (in Section 2) to act as the authorized representative/agent on behalf of our organization and to legally bind our organization with respect to the above Project for which we seek grant funding assistance managed through the Recreation and Conservation Office (“the Office”).

WHEREAS, state grant assistance is requested by our organization to aid in financing the cost of the Project(s) referenced above; and

WHEREAS, under the provisions of the Aquatic Lands Enhancement Account (ALEA), RCW 79.105.150, state grant assistance is requested to aid in financing the cost of the Duwamish Neighborhood Trail Park Project; and

WHEREAS, under the provisions of the Washington Wildlife and Recreation Program’s Outdoor Recreation Account, RCW 79A.15.030 and Title 286 WAC, state grant assistance is requested to aid in financing the cost of developing the Duwamish Neighborhood Trail Park Project; and

WHEREAS, the City Council of the City of Tukwila considers it in the best public interest to complete the Duwamish Neighborhood Trail Park capital improvement project, as described in the applications;

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

Section 1. Our organization has applied for or intends to apply for funding assistance managed by the Office for the above “Project(s).”

Section 2. The Mayor of the City of Tukwila is authorized to act as a representative/agent for our organization with full authority to bind the organization regarding all matters related to the Project(s), including but not limited to, full authority to: (1) approve submittal of a grant application to the Office, (2) enter into a project agreement(s) on behalf of our organization, (3) sign any amendments thereto on behalf of our organization, (4) make any decisions and submissions required with respect to the Project(s), and (5) designate a project contact(s) to implement the day-to-day management of the grant(s).

Section 3. Our organization has reviewed the sample project agreement on the Recreation and Conservation Office’s website at: <https://rco.wa.gov/wp-content/uploads/2019/06/SampleProjAgreement.pdf>. We understand and acknowledge that if offered a project agreement to sign in the future, it will contain an indemnification and legal venue stipulation (applicable to any sponsor) and a waiver of sovereign immunity (applicable to Tribes) and other terms and conditions substantially in the form contained in the sample project agreement and that such terms and conditions of any signed project agreement shall be legally binding on the sponsor if our representative/agent enters into a project agreement on our behalf. The Office reserves the right to revise the project agreement prior to execution and shall communicate any such revisions with the above authorized representative/agent before execution.

Section 4. Our organization acknowledges and warrants, after conferring with its legal counsel, that its authorized representative/agent has full legal authority to enter into a project agreement(s) on its behalf, that includes indemnification, waiver of sovereign immunity (as may apply to Tribes), and stipulated legal venue for lawsuits and other terms substantially in the form contained in the sample project agreement or as may be revised prior to execution.

Section 5. Grant assistance is contingent on a signed project agreement. Entering into any project agreement with the Office is purely voluntary on our part.

Section 6. Our organization understands that grant policies and requirements vary depending on the grant program applied to, the grant program and source of funding in the project agreement, the characteristics of the project, and the characteristics of our organization.

Section 7. Our organization further understands that *prior to* our authorized representative/agent executing the project agreement(s), the RCO may make revisions to its sample project agreement and that such revisions could include the indemnification, the waiver of sovereign immunity, and the legal venue stipulation. Our organization accepts the legal obligation that we shall, prior to execution of the project agreement(s), confer with our authorized representative/agent as to any revisions to the project agreement from that of the sample project agreement. We also acknowledge and accept that if our authorized representative/agent executes the project agreement(s) with any such revisions, all terms and conditions of the executed project agreement (including but not limited to the indemnification, the waiver of sovereign immunity, and the legal venue stipulation) shall be conclusively deemed to be executed with our authorization.

Section 8. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.

Section 9. Our organization acknowledges and warrants, after conferring with its legal counsel, that no additional legal authorization beyond this authorization is required to make the indemnification, the waiver of sovereign immunity (as may apply to Tribes), and the legal venue stipulation substantially in form shown on the sample project agreement or as may be revised prior to execution legally binding on our organization upon execution by our representative/agent.

Section 10. If match is required for the grant, we understand our organization must certify the availability of match at least one month before funding approval. In addition, our organization understands it is responsible for supporting all non-cash matching share commitments to this project should they not materialize.

Section 11. Our organization acknowledges that if it receives grant funds managed by the Office, the Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Office after we incur grant eligible and allowable costs and pay them. The Office may also determine an amount of retainage and hold that amount until the Project is complete.

Section 12. Our organization acknowledges that any property acquired with grant assistance must be dedicated for the purposes of the grant in perpetuity unless otherwise agreed to in writing by our organization and the Office. We agree to dedicate the property in a signed “Deed of Right” for fee acquisitions, or an “Assignment of Rights” for other than fee acquisitions (which documents will be based upon the Office’s standard versions of those documents), to be recorded on the title of the property with the county auditor.

Section 13. Our organization acknowledges that any property acquired in fee title must be immediately made available to the public unless otherwise provided for in policy, the project agreement, or authorized in writing by the Office Director.

Section 14. Our organization acknowledges that any property owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity unless otherwise allowed by grant program policy, or Office in writing and per the project agreement or an amendment thereto.

Section 15. Our organization acknowledges that any property not owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant as required by grant program policies unless otherwise provided for per the project agreement or an amendment thereto.

Section 16. Our organization certifies the following: the Project does not conflict with the *Puget Sound Action Agenda* developed by the Puget Sound Partnership under RCW 90.71.310.

Section 17. This resolution/authorization is deemed to be part of the formal grant application to the Office.

Section 18. Our organization warrants and certifies, after conferring with its legal counsel, that this resolution/authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that our organization has full legal authority to commit our organization to the warranties, certifications, promises and obligations set forth herein.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Special Meeting thereof this _____ day of _____, 2020.

ATTEST/AUTHENTICATED:

Christy O'Flaherty, MMC, City Clerk

De'Sean Quinn, Council President

APPROVED AS TO FORM BY:

Filed with the City Clerk: _____
Passed by the City Council: _____
Resolution Number: _____

Office of the City Attorney

City of Tukwila
CAPITAL IMPROVEMENT PROGRAM
 for
 2019 - 2024

**PARKS & RECREATION
 301 Fund**

CIP Page #	PROJECT TITLE	2020	2021	2022	2023	2024	2025	TOTAL	**Other Sources	After Six Years
28	Lake to Sound Trail	0	0	0	0	0	0	0	0	0
29	<u>Park Acquisition</u>	* 1,525	0	0	0	0	0	1,525	1,525	1525
30	Multipurpose Trails	0	0	0	0	0	0	0	0	150
31	<u>Park Improvements</u>	* 800	0	0	0	0	0	800	0	800
32	Fort Dent Park	0	0	0	0	0	0	0	0	0
33	Municipal Arts Fund	50	50	50	50	50	50	300	294	50
34	Duwamish Hill Preserve	* 0	0	0	0	0	0	0	0	8,018
35	Parks, Recreation & Open Space Plan	0	0	0	0	0	0	0	0	145
36	<u>Tukwila Pond</u>	* 125	0	0	0	0	0	125	0	7,250
37	Tukwila South Trail	* 0	0	0	0	0	0	0	0	6,525
38	Hand Boat Launches	0	0	0	0	0	0	0	0	1,801
39	Macadam Winter Garden & Wetland	* 0	0	0	0	0	0	0	0	1,450
40	<u>Open Space Improvements</u>	* 180	600	0	0	0	0	780	600	5,800
41	Synthetic Turf Field	* 0	0	0	0	0	0	0	0	2,900
Grand Total		2,680	650	50	50	50	50	3,530	2,419	36,414

* Park Impact Fee List Projects (fees must be used within 10 years).
 ** Denotes other funding sources, grants or King County parks levy.
 Park Impact Fees were effective January 1, 2009, per Ordinance 2366
 Updated in 2018 per Ordinance No. 2572

Changes from 2017 to 2019 CIP:

New:

41 Synthetic Turf Field

Deleted:

Dog Park Projects, Crestview and Foster were completed in 2018.

CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2020 to 2025

PROJECT: Park Acquisition

Project No. 91730103

DESCRIPTION: Acquisition of land to help meet needs of those that live, work, and play in Tukwila.

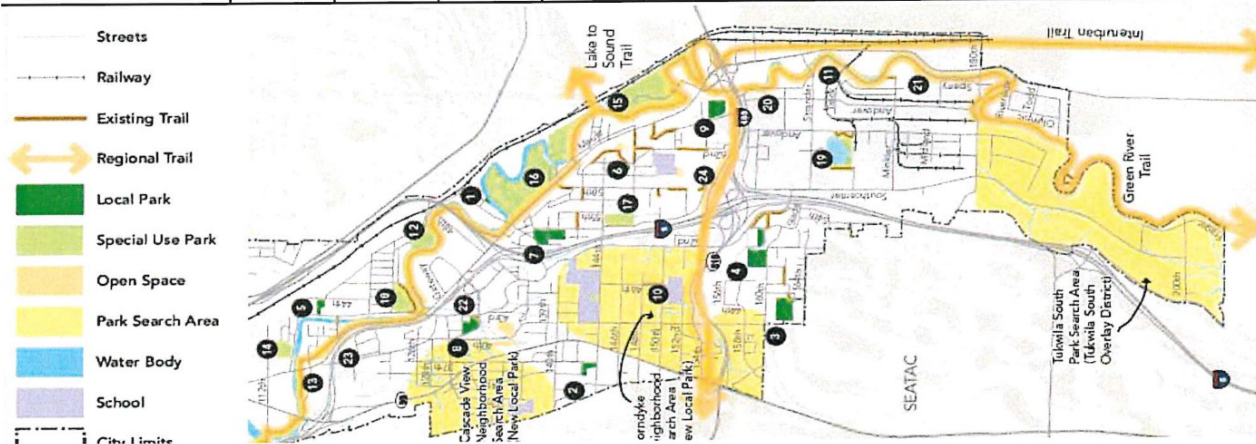
JUSTIFICATION: There are recreational deserts within Tukwila, defined as areas more than a 10-Minute walk away from a quality park. The city desires to provide equitable access to a quality park for all Tukwila residents and acquisition of key properties can help address this. Additionally, open spaces are continually being developed and need to be preserved for future generations. To support new development within the city, and the increase of population associated with development (housing, work, or liesure), additional recreational spaces need to be provided to support those that live, work, and play in Tukwila.

STATUS: 2020 Parks, Recreation, and Open Space (PROS) Plan completed and identifies park search areas to address recreational deserts within the city. This project will help implement the PROS Plan and meet the goal of a 10-Minute walk for any resident to a quality park. One parcel was acquired in 2019, on 116th St in Duwamish neighborhood, via King County CFT Grant Funds (CFT). Additional \$25K CFT Funds available for "Equitable Access Initial Acquisition Work" project in 2020.

MAINT. IMPACT: To be determined.

COMMENT: Project is on Park Impact Fee list @ 100%.

FINANCIAL (in \$000's)	Through Estimated									TOTAL
	2018	2019	2020	2021	2022	2023	2024	2025	BEYOND	
EXPENSES										
Design										0
Land (R/W)	151	650	1,525							2,326
Const. Mgmt.										0
Construction										0
TOTAL EXPENSES	151	650	1525	0	0	0	0	0	0	2,326
FUND SOURCES										
Proposed Grant			1,500							1500
Awarded Grant		650	25							675
KC Parks Levy										0
Park Impact Fees										0
REET 1 Funds										0
City Oper. Revenue	151	0	0	0	0	0	0	0	0	151
TOTAL SOURCES	151	650	1525	0	0	0	0	0	0	2326



CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2020 to 2025

PROJECT: Park Improvements Project No. 91730101

DESCRIPTION: Replacement, renovation, addition, and/or improvement of amenities in various parks throughout the city. Projects will focus on increasing activation and overall capacity of parks.

JUSTIFICATION: The 6-Year, 2020 Parks, Recreation, and Open Space (PROS) Plan identifies a variety of park improvement projects to be completed based on input from the community engagement efforts. There is not sufficient funding for all projects however some smaller projects can be completed immediately with existing funding. These projects will focus on increasing activation of parks and addressing the results of deferred maintenance of the aging park system, by replacing, renovating, adding, or improving amenities in various parks throughout the city.

STATUS: The 2020 PROS Plan identifies the challenges resulting from deferred maintenance of the aging park system that has caused a significant need of capital infusion. Multiple smaller-sized capital projects can be completed in 2020 in response to the community's input in the PROS Plan.

MAINT. IMPACT: To be determined.

COMMENT: 1% Municipal Arts Fund for City funded costs to be included. Project is on Park Impact Fee list @ 25%.

FINANCIAL (in \$000's)	Through Estimated									TOTAL
	2018	2019	2020	2021	2022	2023	2024	2025	BEYOND	
EXPENSES										
Design			42							42
ARTS 1%			8							
Land (R/W)										0
Const. Mgmt.										0
Construction			750							750
TOTAL EXPENSES	0	0	800	0	0	0	0	0	-	792
FUND SOURCES										
Proposed Grant										0
Awarded Grant										0
KC Parks Levy										0
Park Impact Fees			200							200
REET 1 Funds			600							600
City Oper. Revenue	0	0	0	0	0	0	0	0	0	-
TOTAL SOURCES	0	0	800	0	0	0	0	0	0	800



CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2020 to 2025

PROJECT: Tukwila Pond

Project No. 90930101

DESCRIPTION: Master planning, designing, and developing the Tukwila Pond Park in coordination with surrounding property developments and in response to the community.

JUSTIFICATION: There have been a variety of conceptual plans, preliminary studies, and small Public Works projects on site over the last 15 years including a water quality improvements preliminary feasibility study with design, and buffer enhancements along the east side. Through the 2020 Parks, Recreation, and Open Space (PROS) Plan, the community identified this location as a hidden gem in Tukwila and expressed great interest in seeing the site developed and made accessible. Additionally, there is great support from several surrounding property owners to pursue developing this site further.

STATUS: The current site is difficult to access, hidden from view, has significant challenges resulting from deferred maintenance, and receives significant vandalism. There has been no capital infusion at this site in over ten years.

MAINT. IMPACT: To be determined.

COMMENT: Council approved expending Lodging Tax funds towards hiring a consultant to develop a whole site Master Plan as it relates to the Southcenter area and surrounding properties. 1% Municipal Arts Fund for City funded construction included. Project is on Park Impact Fee list @ 75%.

FINANCIAL (in \$000's)	Through Estimated		2020	2021	2022	2023	2024	2025	BEYOND	TOTAL
	2018	2019								
EXPENSES										
Design			125						1,250	1,375
ARTS 1%										0
Land (R/W)									1,000	1000
Const. Mgmt.									5,000	5,000
Construction										
TOTAL EXPENSES	0	0	125	0	0	0	0	0	7,250	7,375
FUND SOURCES										
Proposed Grant										0
Awarded Grant										0
KC Parks Levy										0
Park Impact Fees										0
REET 1 Funds										0
Lodging Tax Funds			125							125
City Oper. Revenue	0	0	0	0	0	0	0	0	7250	7,250
TOTAL SOURCES	0	0	125	0	0	0	0	0	7250	7375



CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2020 to 2025

PROJECT: Open Space Improvements Project No. 91930102

DESCRIPTION: Development of new and future acquired properties and open spaces to meet community needs.

JUSTIFICATION: The city desires to provide equitable access to a quality park for all Tukwila residents. Developing existing, and potential future acquired properties, into a quality park will help meet this goal. There are multiple open spaces in the Tukwila Park System that are not promoted as public parks or supportive of public use for various reasons (wetlands, steep slopes, vegetation, etc.). Various sites have developable opportunities that would enable them to be promoted as open public use spaces and could help meet the needs of the community while still maintaining the ecological benefits of preserved green space.

STATUS: Many sites exist within the current Tukwila Park System with potential for more sites in the future via the Park Acquisition plan, grants, and property donations. The recently acquired 116th Parcel in the Duwamish Neighborhood, borders the Green River Trail, has 150ft of riverbank and needs preliminary site demo work. A grant through the Washington State Recreation and Conservation Office (RCO) can be applied for future passive use development; this is a 2-year grant cycle with applications due in May 2020.

MAINT. IMPACT: To be determined.

COMMENT: 1% Municipal Arts Fund for City funded construction costs included. Project is on Park Impact Fee list @ 75%.

FINANCIAL (in \$000's)	Through Estimated									TOTAL
	2018	2019	2020	2021	2022	2023	2024	2025	BEYOND	
EXPENSES										
Design			25	124						149
ARTS 1%				6						
Land (R/W)	150									150
Const. Mgmt.										0
Construction			155	470						625
TOTAL EXPENSES	150	0	180	600	0	0	0	0	-	924
FUND SOURCES										
Proposed Grant				600						600
Awarded Grant										0
KC Parks Levy										0
Park Impact Fees			135							135
REET 1 Funds			45							45
City Oper. Revenue	150	0	0	0	0	0	0	0	0	150
TOTAL SOURCES	150	0	180	600	0	0	0	0	0	930





City of Tukwila

6200 Southcenter Boulevard, Tukwila WA 98188

Contract Number:

CITY OF TUKWILA Short Form Contract

Contractor/

Vendor Name: Evergreen Asphalt

Project No. 92030102

Address: P.O. Box 867

Ravensdale, Wa 98051

Budget Item: 301.98.576.800.41.00

Telephone: 425-584-7890

Project Name: Park trail Improvements

Please initial all attachments, then sign and return copies one and two to:

City of Tukwila, _____ Department, 6200 Southcenter Boulevard, Tukwila, Washington 98188. Retain copy three for your records until a fully executed copy is returned to you.

AGREEMENT

This Agreement, made and entered into this 18th day of August 2020, by and between the City of Tukwila, hereinafter referred to as "City", and Evergreen Asphalt, hereinafter referred to as "Contractor."

The City and the Contractor hereby agree as follows:

1. **SCOPE AND SCHEDULE OF SERVICES TO BE PERFORMED BY CONTRACTOR.** The Contractor shall perform those services described on Exhibit A attached hereto and incorporated herein by this reference as if fully set forth. In performing such services, the Contractor shall at all times comply with all Federal, State, and local statutes, rules and ordinances applicable to the performance of such services and the handling of any funds used in connection therewith. The Contractor shall request and obtain prior written approval from the City if the scope or schedule is to be modified in any way.
2. **TIME OF COMPLETION.** The work shall be commenced on 9/1/2020 and be completed no later than 12/31/2020.
3. **COMPENSATION AND METHOD OF PAYMENT.** The City shall pay the Contractor for services rendered according to the rate and method set forth on Exhibit B attached hereto and incorporated herein by this reference. The total amount to be paid shall not exceed \$155,000, except by written agreement of the parties.
4. **CONTRACTOR BUDGET.** The Contractor shall apply the funds received under this Agreement within the maximum limits set forth in this Agreement. The Contractor shall request prior approval from the City whenever the Contractor desires to amend its budget in any way.
5. **PAYMENTS.** The City shall make payments on account of the contract at completion of the project.
6. **ACCEPTANCE AND FINAL PAYMENT.** Final payment shall be due 10 days after completion of the work, provided the contract is fully performed and accepted.
7. **CONTRACT DOCUMENTS.**
 - The contract includes this Agreement, Scope of Work and Payment Exhibit.
 - The intent of these documents is to include all labor, materials, appliances and services of every kind necessary for the proper execution of work, and the terms and conditions of payment therefore.

- The documents are to be considered as one, and whatever is called for by any one of the documents shall be as binding as if called for by all.
- The Contractor agrees to verify all measurements set forth in the above documents and to report all differences in measurements before commencing to perform any work hereunder.

8. MATERIALS, APPLIANCES AND EMPLOYEES.

- Except as otherwise noted, the Contractor shall provide and pay for all materials, labor, tools, water, power and other items necessary to complete the work.
- Unless otherwise specified, all material shall be new, and both workmanship and materials shall be of good quality.
- Contractor warrants that all workmen and subcontractors shall be skilled in their trades.

9. SURVEYS, PERMITS AND REGULATIONS. The City shall furnish all surveys unless otherwise specified. Permits and licenses necessary for the execution of the work shall be secured and paid for by the Contractor. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the City unless otherwise specified. The Contractor shall comply with all laws and regulations bearing on the conduct of the work and shall notify the City in writing if the drawings and specifications are at variance therewith.

10. PROTECTION OF WORK, PROPERTY AND PERSONS. The Contractor shall adequately protect the work, adjacent property and the public and shall be responsible for any damage or injury due to any act or neglect.

11. ACCESS TO WORK. The Contractor shall permit and facilitate observation of the work by the City and its agents and public authorities at all times.

12. CHANGES IN WORK. The City may order changes in the work, the contract sum being adjusted accordingly. All such orders and adjustments shall be in writing. Claims by the Contractor for extra cost must be made in writing before executing the work involved.

13. CORRECTION OF WORK. The Contractor shall re-execute any work that fails to conform to the requirements of the contract and that appears during the progress of the work, and shall remedy any defects due to faulty materials or workmanship which appear within a period of one year from date of completion of the contract and final acceptance of the work by the City unless the manufacturer of the equipment or materials has a warranty for a longer period of time, which warranties shall be assigned by Contractor to City. The provisions of this article apply to work done by subcontractors as well as to work done by direct employees of the Contractor.

14. OWNER'S RIGHT TO TERMINATE CONTRACT. Should the Contractor neglect to execute the work properly, or fail to perform any provision of the contract, the City, after seven days' written notice to the contractor, and his surety, if any, may without prejudice to any other remedy the City may have, make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contract or, at the City's option, may terminate the contract and take possession of all materials, tools, appliances and finish work by such means as the City sees fit, and if the unpaid balance of the contract price exceeds the expense of finishing the work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the City.

15. PAYMENTS. Payments shall be made as provided in the Agreements. Payments otherwise due may be withheld on account of defective work not remedied, liens filed, damage by the Contractor to others not adjusted, or failure to make payments properly to the subcontractors.

16. INSURANCE. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Contractor shall obtain insurance of the types and with the limits described below:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Automobile liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
 2. Commercial General Liability insurance with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit. Commercial General Liability insurance shall be as least at broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
 3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- B. Public Entity Full Availability of Contractor Limits.** If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Contractor.
- C. Other Insurance Provision.** The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and shall not contribute with it.
- D. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- E. Verification of Coverage.** Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.
- F. Subcontractors.** The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the Public Entity is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.
- G. Notice of Cancellation.** The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.
- H. Failure to Maintain Insurance.** Failure on the part of the Contractor to maintain insurance as required shall constitute a material breach of contract, upon which the City may, after giving five

business-days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

17. **PERFORMANCE BOND.** The Contractor shall furnish to the City prior to start of construction a performance bond at 100% of the amount of the contract and in a form acceptable to the City. In lieu of bond for contracts less than \$25,000, the City may, at the Contractor's option, hold 5% of the contract amount as retainage for a period of 30 days after final acceptance or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens, whichever is later.
18. **LIENS.** The final payment shall not be due until the Contractor has delivered to the City a complete release of all liens arising out of this contract or receipts in full covering all labor and materials for which a lien could be filed, or a bond satisfactory to the City indemnifying the City against any lien.
19. **SEPARATE CONTRACTS.** The City has the right to execute other contracts in connection with the work and the Contractor shall properly cooperate with any such other contracts.
20. **ATTORNEYS FEES AND COSTS.** In the event of legal action hereunder, the prevailing party shall be entitled to recover its reasonable attorney fees and costs.
21. **CLEANING UP.** The Contractor shall keep the premises free from accumulation of waste material and rubbish and at the completion of the work, shall remove from the premises all rubbish, implements and surplus materials and leave the premises clean.
22. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.
23. **PREVAILING WAGES.** The Contractor shall pay all laborers, workmen and mechanics the prevailing wage and shall file the required "Statement of Intent to Pay Prevailing Wages" in conformance with RCW 39.12.040.
24. **DISCRIMINATION PROHIBITED.** The Consultant, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, religion, creed, color, national origin, age, veteran status, sex, sexual orientation, gender identity, marital status, political affiliation or the presence of any disability in the selection and retention of employees or procurement of materials or supplies.
25. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements written or oral. No amendment or modification of this Agreement shall be of any force or effect unless it is in writing and signed by the parties.
26. **SEVERABILITY AND SURVIVAL.** If any term, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.
27. **NOTICES.** Notices to the City of Tukwila shall be sent to the following address:
City Clerk, City of Tukwila

6200 Southcenter Blvd.
Tukwila, Washington 98188

Notices to the Contractor shall be sent to the address provided by the Contractor upon the signature line below.

28. APPLICABLE LAW; VENUE; ATTORNEY'S FEES. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in King County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit.

IN WITNESS WHEREOF, the parties hereto executed this Agreement the day and year first above written.

CITY OF TUKWILA

By: _____

Signature

Printed Name: Allan Ekberg, Mayor

Date: _____

By: _____

Signature

Printed Name: Shane Gilbrater

Title: President

Date: 8-18-20

ATTEST/AUTHENTICATED:

City Clerk, Christy O'Flaherty

APPROVED AS TO FORM:

BY: _____

Office of the City Attorney

