

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF TUMWATER
AND
THE WASHINGTON DEPARTMENT OF TRANSPORTATION (GMB 1076)
FOR MAINTENANCE OF THE PALERMO TREATMENT LAGOON**

THIS AGREEMENT is made and entered into by the City of Tumwater, a municipal corporation of the State of Washington ("CITY") and the Washington Department of Transportation, a governmental agency of the State of Washington ("WSDOT") individually the "Party" and collectively the "Parties."

WHEREAS, the CITY is responsible for routine maintenance of the Palermo Treatment Lagoon per the Cooperative Agreement and Scope of Work for the Palermo Wellfield Superfund Site Subdrain/Aeration Lagoon System ("Aeration Lagoon") dated December 16, 2002; and

WHEREAS, the WSDOT and the CITY acknowledge that the Work considered under this Agreement is not considered to be routine maintenance given the complexity, cost, and scope of the project; and

WHEREAS, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, pursuant to RCW 39.34.080, each Party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each Party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties

NOW THEREFORE, pursuant to chapter 39.34 RCW the above recitals that are incorporated herein as if fully set forth below, in consideration of the mutual terms, provisions, and obligations contained herein, it is agreed by and between the CITY and WSDOT as follows:

1. Purpose/Objective

The purpose of this Agreement is to allow the CITY, through its Water Resources & Sustainability Department, to provide and solicit services to restore the aeration lagoon to its original designed condition through the dredging, removal and disposal of accumulated sediments, as identified in Exhibit A, Scope of Services and herein after referred to as Work. The CITY does not have sufficient resources to provide such services and desires to have such services performed by a third-party vendor, to be paid for by WSDOT.

2. Scope of Agreement

A. Responsibilities of CITY shall be as follows:

1. Project Management: CITY shall provide sufficient resources to effectively implement, maintain, and oversee the project as described in Exhibit A.
2. Vendor Contracts: CITY shall manage all third-party vendors in support of the Agreement. CITY shall provide WSDOT thirty (30) days' notice prior to Work being

performed and shall provide all documentation as requested by WSDOT regarding the execution of this project.

3. Permitting: CITY shall prepare and submit all necessary permit applications.
4. Maintenance and Repair Limitations: CITY agrees to attempt to complete all maintenance and repair request within the time WSDOT requests or has scheduled with CITY. WSDOT is aware that there may be times when CITY cannot meet the desired timeline.
5. Hours of Work: CITY's normal working hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays.

B. Responsibilities of WSDOT shall be as follows:

1. Notification of Repair and/or Maintenance: WSDOT agrees to notify CITY via CITY designated contacts below when the Aeration Lagoon needs repair and/or maintenance
2. Water and Sediment Quality Assessment: Prior to any requested maintenance Work on the Aeration Lagoon, WSDOT agrees to analyze the treatment lagoon sediment to determine public health and disposal needs.
3. Funding: WSDOT shall pay for all permit fees and third party dredging and disposal costs, as invoiced by CITY.
4. WSDOT may, if it desires, furnish an inspector on the project. Any costs for such inspection will be borne solely by WSDOT. All contact between said inspector and the CITY's contractor shall be through the CITY's representative.

3. Payment (Funding/Costs/etc.)

WSDOT, in consideration of the faithful performance of the Work to be performed by the CITY, agrees to reimburse the actual direct and related indirect costs of the Work. The parties have estimated that the cost of accomplishing the Work herein will not exceed \$100,000. Payment for satisfactory performance of the Work shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any Work that will cause the maximum payment to be exceeded. Costs shall include, but not be limited to the following:

- A. CITY will provide labor and other CITY resources necessary to manage and oversee the project.
- B. WSDOT will pay all permit fees and third-party invoices for the removal and disposal of sediments.

4. Method of Payment

- A. CITY will submit a monthly itemized invoice to WSDOT for third-party services related to the Work defined in Exhibit A as provided under this Agreement.
- B. WSDOT will make payment to the CITY within thirty (30) days of receipt of an invoice.

5. Amendments

Either Party to this Agreement may request an amendment or term extension. Any amendment shall be negotiated and agreed to by both Parties prior to implementation. Any amendments to

this Agreement shall be made in writing and shall be presented to each Party's designated contract authority for approval and signature prior to implementation.

6. Indemnification

6.1 To the extent permitted under the law, each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials or employees.

6.2 The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees or agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

6.3 This indemnification and waiver will survive the termination of this Agreement.

7. Insurance

The CITY shall 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 City or its employees. Before beginning the Work described in this Agreement, the City and its selected contractor shall provide proof of coverage to WSDOT that includes:

- A. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and
- B. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence and aggregate.
- C. Excess Liability insurance shall be written with limits no less than \$1,000,000 each occurrence and aggregate.

8. Duration of Agreement

This Agreement for maintenance of the Palermo Treatment Lagoon is hereby entered into between the City of Tumwater and the Washington Department of Transportation and shall take effect on the date of the last authorizing signature affixed hereto. This Agreement shall be effective until December 31, 2023, unless otherwise terminated in the manner described under the Termination of Agreement section.

9. Termination of Agreement

Should either Party choose to terminate this Agreement, the Party desiring to terminate the Agreement must provide a thirty (30) day advance written notice to the other Party, unless otherwise set forth in this Agreement.

10. Notice of Default

In the event WSDOT is dissatisfied with the CITY's performance of its responsibilities under this Agreement, WSDOT shall provide CITY with a written notice of dissatisfaction that specifically identifies the details of the CITY's alleged performance deficiencies. CITY shall have ninety (90) days from the date of the notice of dissatisfaction to remedy the performance deficiencies specifically noted. In the event WSDOT remains dissatisfied at the end of the ninety (90) day period, WSDOT may terminate the Agreement by providing CITY with an additional ninety (90) days written notice.

11. Dispute Resolution

The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process shown below shall be a prerequisite to the filing of litigation concerning any dispute between the Parties:

A. The designated representative in this Agreement shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. They shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. They shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.

B. A Party's representative shall notify the other Party in writing, with email being acceptable of any dispute or issue that they believe may require formal resolution contained herein. They shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.

C. In the event the CITY and WSDOT's respective designees, cannot resolve the dispute or issue, the CITY and WSDOT shall each appoint a member to a Dispute Board. These two members shall then select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and fees.

12. Interpretation and Venue

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. Venue for any action that cannot be resolved through mediation may be brought only in the Superior Court of Thurston County, Washington.

13. Independent Capacity

The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.

14. Legal Relations

It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other Party. No joint venture or partnership is formed as a result of this Agreement.

15. Waiver

A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the waiving Party and attached to the original Agreement.

16. Severability

If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

17. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the City and WSDOT and supersedes any and all prior agreements oral or otherwise with respect to the subject matter addressed herein.

18. Filing

Prior to its entry into force, this Agreement shall be posted upon the websites or other electronically retrievable public source as required by RCW 39.34.040.

19. Notice

Any notice required under this Agreement shall be provided in writing, with email being acceptable to the Party at the address listed below. The contacts below for each Party are the Agreement representatives.

CITY OF TUMWATER

Dan Smith, Director
Water Resources & Sustainability Department
555 Israel Road SW
Tumwater, WA 98501

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION

Norm Payton, Environmental Policy Manager
Maintenance Operations Division
310 Maple Park Ave SE
Olympia, WA 98501
Phone: 360-705-7848
Email: paytonn@wsdot.wa.gov

20. Records and Audit

All records related to the Work performed under this Agreement shall be held and kept available for inspection and audit for a period of six (6) years from the date of termination of this Agreement or any final payment authorized under this Agreement, whichever is later. Each Party shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. In the event of litigation or claim arising from the performance of this Agreement, the CITY and WSDOT agree to maintain the records and accounts until such litigation, appeal or claims are finally resolved. This section shall survive the termination of this Agreement.

21. Counterparts and Electronic Signature

This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each party, for all purposes. Electronic signatures or signatures transmitted via e-mail in a "PDF" may be used in place of original signatures on this Agreement. Each party intends to be bound by its electronic or "PDF" signature on this Agreement and is aware that the other parties are relying on its electronic or "PDF" signature.

CITY OF TUMWATER

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION

Debbie Sullivan, Mayor

Dated:

Pasco Bakotich III, State Maintenance
Engineer

Dated:

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM on Behalf of
WSDOT:

Karen Kirkpatrick, City Attorney

Assistant Attorney General