

**CITY OF TUMWATER  
SERVICE PROVIDER AGREEMENT**

**BUSH PRAIRIE HABITAT CONSERVATION PLAN PHASE 3**

THIS AGREEMENT is made and entered into in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the “CITY” and the ICF Jones & Stokes, LLC, a Washington corporation, hereinafter referred to as the “SERVICE PROVIDER.”

WITNESSETH:

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the SERVICE PROVIDER represents that the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES.

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit "A" Scope of Services and Exhibit "B" Schedule attached hereto and incorporated herein (the “Project”).

2. TERM.

The Project shall begin no earlier than May 1, 2023, and shall be completed no later than September 1, 2025. This Agreement may be extended for additional periods of time upon mutual written agreement of the parties.

3. TERMINATION.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause, by the CITY.

4. COMPENSATION AND METHOD OF PAYMENT.

A. Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.

B. No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

C. The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement a total sum not to exceed Three Hundred Three Thousand Seven Hundred Eighty Three and 00/100 Dollars (\$303,783) as reflected in Exhibit "C" Budget.

D. Upon execution of this Agreement, the SERVICE PROVIDER must submit IRS Form W-9 Request for Taxpayer Identification Number (TIN) and Certification, unless a current Form W-9 is already on file with the CITY.

E. The SERVICE PROVIDER shall submit an invoice to the CITY for services rendered during the contract period. The CITY shall initiate authorization for payment after receipt of said invoice and shall make payment to the SERVICE PROVIDER within approximately thirty (30) days thereafter.

E. When subcontracting services or purchasing goods from third parties, as identified and approved in this Agreement, the SERVICE PROVIDER must submit written documentation establishing that the goods and/or services have been provided and the third party has been paid in order to receive payment for such goods and/or services.

G. Invoices may be submitted immediately following performance of services, but in no event shall an invoice be submitted more than twenty (20) business days following the end of the contract term or the end of the calendar year, whichever is earlier.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent contractor relationship will be created by this Agreement. Subject to paragraphs herein, the implementation of services pursuant to this Agreement will lie solely within the

discretion of the SERVICE PROVIDER. No agent, employee, servant, or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant, or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

C. As an independent contractor, the SERVICE PROVIDER shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.

D. It is recognized that the SERVICE PROVIDER may or will be performing services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with the SERVICE PROVIDER'S ability to perform the Services. The SERVICE PROVIDER agrees to resolve any such conflicts of interest in favor of the CITY.

## 6. SERVICE PROVIDER EMPLOYEES/AGENTS.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee, agent, or servant from employment on this Project. The SERVICE PROVIDER may however employ that individual on other non-CITY related projects.

## 7. HOLD HARMLESS INDEMNIFICATION.

A. SERVICE PROVIDER Indemnification. The SERVICE PROVIDER agrees to indemnify, defend and hold the CITY, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the SERVICE PROVIDER, its partners, shareholders, agents, employees, or by the SERVICE PROVIDER'S breach of this Agreement. The SERVICE PROVIDER

expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The SERVICE PROVIDER'S indemnification shall not be limited in any way by any limitation on the amount of damages, compensation, or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefit acts or programs. This waiver has been mutually negotiated by the parties.

B. CITY Indemnification. The CITY agrees to indemnify, defend and hold the SERVICE PROVIDER, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the CITY, its employees or agents. No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

C. Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

## 8. INSURANCE.

A. The SERVICE PROVIDER 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 SERVICE PROVIDER, their agents, representatives, employees, or subcontractors.

B. The SERVICE PROVIDER shall provide a Certificate of Insurance evidencing:

1. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage.

2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$2,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

3. Professional Liability insurance written on a claims made

basis with limits of no less than \$2,000,000 per claim, and \$2,000,000 policy aggregate limit.

C. The CITY shall be named as an additional insured on the insurance policy, as respect to work performed by or on behalf of the SERVICE PROVIDER and a copy of the endorsement naming the CITY as additional insured shall be attached to the Certificate of Insurance. The CITY reserves the right to request certified copies of any required policies.

D. The SERVICE PROVIDER'S insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

E. Any payment of deductible or self-insured retention shall be the sole responsibility of the SERVICE PROVIDER.

F. The SERVICE PROVIDER'S insurance shall be primary insurance as respect to the CITY and the CITY shall be given written notice of any cancellation, suspension, or material change in coverage within two (2) business days of SERVICE PROVIDER'S receipt of such notice.

#### 9. TREATMENT OF ASSETS.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

#### 10. COMPLIANCE WITH LAWS.

A. The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including being licensed to do business in the City of Tumwater by obtaining a Tumwater business license and any additional regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The SERVICE PROVIDER specifically agrees to pay any applicable CITY business and occupation (B&O) taxes which may be due on account of this Agreement.

#### 11. NONDISCRIMINATION.

A. The CITY is an equal opportunity employer.

B. Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, religion, color, national origin, citizenship or immigration status, families with children status, sex, marital status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, sexual orientation, genetic information, age or other basis prohibited by state or federal law; provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the proper performance of the particular worker involved. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists. It is not an unfair practice when a distinction or differential treatment on the basis of citizenship or immigration status is authorized by federal or state law, regulation, and rule or government contract.

C. Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, religion, color, national origin, citizenship or immigration status, families with children status, sex, marital status, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability, sexual orientation, genetic information, age or other basis prohibited by state or federal law. "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists. It is not an unfair practice when a distinction or differential treatment on the basis of citizenship or immigration status is authorized by federal or state law, regulation, rule or government contract.

D. If any assignment and/or subcontract have been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

E. Nondiscrimination in Benefits. Pursuant to Tumwater Municipal Code (TMC) Chapter 3.46, the SERVICE PROVIDER shall provide employee benefits or an equivalent sum to the domestic partners of their employees involved in the SERVICE PROVIDER'S operations applicable to this Agreement if such benefits are provided to employees' spouses as more particularly set forth in Chapter 3.46 of the TMC, a copy of which is attached hereto if applicable and as detailed in Exhibit "D" City Contracts – Nondiscrimination in Benefits attached hereto.

12. ASSIGNMENT/SUBCONTRACTING.

A. The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state, and/or federal statutes, ordinances and guidelines.

C. Any technical service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. NON-APPROPRIATION OF FUNDS.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the CITY will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the CITY in the event this provision applies.

14. CHANGES.

Either party may request changes to the Scope of Services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

15. MAINTENANCE AND INSPECTION OF RECORDS.

A. The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.

B. The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

C. To ensure the CITY's compliance with the Public Records Act, RCW 42.56, the SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

16. POLITICAL ACTIVITY PROHIBITED.

None of the funds, materials, property, or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

17. PROHIBITED INTEREST.

No member, officer, or employee of the CITY shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

18. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the signature page of this Agreement.

19. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or

proceeding.

20. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained in the superior court of Thurston County, Washington.

21. SEVERABILITY.

A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

22. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:  
CITY OF TUMWATER  
555 Israel Road SW  
Tumwater, WA 98501

SERVICE PROVIDER:  
ICF Jones & Stokes, Inc.  
Address: 1200 6th Avenue, Suite 1800  
City/State/Zip: Seattle, WA 98101  
Tax ID: 94-1730361  
Phone: (703) 934-3461

\_\_\_\_\_  
DEBBIE SULLIVAN  
Mayor

\_\_\_\_\_  
Signature  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Melody Valiant, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Kirkpatrick, City Attorney

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_(name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_(title) of \_\_\_\_\_(company) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

Exhibit "A" Scope of Services

## SCOPE OF SERVICES

| Task       | Task Summary  | Deliverables  |
|------------|---|---|
| <b>1.0</b> | <b>Build and Sustain the Public Engagement Process</b>  |   |
| <b>1.1</b> | <b>Continue Public Engagement Process from Phases 1 and 2.</b> Continue to work with public, stakeholders, and local, state, and federal partners to inform the development of the Bush Prairie HCP.  | <ul style="list-style-type: none"> <li>– Plan and participate in up to 2 stakeholder meetings</li> <li>– Provide meeting agendas, presentations, and notes</li> <li>– Public Engagement Appendix in HCP</li> </ul>  |
| <b>2.0</b> | <b>Complete the Bush Prairie HCP and NEPA/SEPA Process<sup>1</sup></b>  |   |
| <b>2.1</b> | <b>HCP Project Management and Meetings.</b>   | <ul style="list-style-type: none"> <li>– Plan and participate in regular meetings</li> <li>– Provide meeting agenda, presentations, and notes</li> </ul>  |
| <b>2.2</b> | <b>Complete Public Draft HCP.</b> Finalize the public draft HCP based on comments on 3 <sup>rd</sup> Admin Draft. Use an in person on-screen review and editing meeting to resolve remaining final comments. a  | <ul style="list-style-type: none"> <li>– 3<sup>rd</sup> administrative draft of HCP</li> <li>– Comment responses to 3<sup>rd</sup> administrative draft of HCP</li> <li>– Screen-check draft of HCP</li> <li>– Public draft HCP for public review</li> </ul>        |
| <b>2.3</b> | <b>Complete Final HCP.</b> Review the public comments on the HCP to assess if any changes are necessary; discuss recommended changes with the City, Port, and FWS; assist FWS with comment responses specific to the HCP; and prepare the Final HCP.  | <ul style="list-style-type: none"> <li>– Screen-check final HCP for final review</li> <li>– Final HCP for publication</li> </ul>  |
| <b>2.4</b> | <b>NEPA/SEPA Project Management and Meetings.</b> Project management, communication, and meeting facilitation associated with the preparation and publication of the EA.  | <ul style="list-style-type: none"> <li>– Action items for NEPA and SEPA meetings.</li> <li>– Monthly progress report and budget summary</li> </ul>  |
| <b>2.5</b> | <b>NEPA Scope of Analysis.</b> Collect and review data and information to support NEPA determination and scope of analysis of the NEPA document. Prepare Preliminary Draft EA Chapter 1, Purpose and Need, Chapter 2, Proposed Action and Alternatives.   | <ul style="list-style-type: none"> <li>– EA outline</li> <li>– List of environmental issues and analysis methods</li> <li>– Preliminary Draft EA Chapter 1, Purpose and Need</li> <li>– Preliminary Draft EA Chapter 2, Proposed Action and Alternatives</li> </ul> |
| <b>2.6</b> | <b>Prepare Draft EA.</b> Prepare Administrative Draft EA evaluating the environmental effects of the proposed action and no action alternative for agency review. Respond to agency comments and prepared Revised Administrative for final review. Respond to final comments and prepare Public Draft EA for publication. | <ul style="list-style-type: none"> <li>– Administrative Draft EA</li> <li>– Revised Administrative Draft EA</li> <li>– Public Draft EA</li> </ul>   |

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<sup>1</sup> Task 2 is partially funded with the funds associated with this RFQ and proposal and partially through previous funding already contracted with ICF. If needed ICF will support the City in identifying future funding sources (e.g., Section 6 grant).

| Task | Task Summary   | Deliverables   |
|------|--|--|
| 2.7  | <b>Prepare Final EA.</b> Respond to public comments on the Draft EA and make updates to the Draft EA as needed in response to public comments. Prepare the Administrative Final EA for agency review. Response to agency comments and prepare the Revised Administrative Final EA for final comments. Address final comments and prepare the Final EA for publication. | <ul style="list-style-type: none"> <li>– Administrative Final EA</li> <li>– Revised Administrative Final EA Public</li> <li>– Final EA</li> </ul>  |
| 2.8  | <b>Support SEPA Compliance.</b> Coordinate with the City during development of the EA to support adoption of the NEPA EA for SEPA compliance. Support the City with preparation of additional documentation.   | <ul style="list-style-type: none"> <li>– Supporting SEPA documentation</li> </ul>  |
| 3.0  | <b>Support Development and Update Development Plans and Codes</b>  |  |
| 3.1  | <b>Support Local Approvals and Ordinances.</b> Assist the City and Port with preparation, presentation, and completion of local ordinances and approvals. Make presentations or attend working meetings with the City Council or the Port Commission, to explain and provide necessary information on the HCP and EA for informed approvals.                           | <ul style="list-style-type: none"> <li>– Prepare for and attend up to one City Council and one Commission meeting.</li> <li>– Meeting agendas, presentations, and notes</li> </ul>   |
| 3.2  | <b>Assist in Updating Development Plans and Codes</b> Identify and update City plans, development codes, guides and guidelines, including those addressing existing procedures or developing cultural resource procedures equivalent to support FWS NHPA Section 106 procedures, to support enacting the regulatory and incentive-based HCP.                           | <ul style="list-style-type: none"> <li>– Assist with outlining code changes completed to implement HCP, which may include: <ul style="list-style-type: none"> <li>○ Adopted City ordinance(s) amending City regulations</li> <li>○ Amendments to City Development Guide</li> <li>○ Adopted City ordinance(s) for other City Plans and Guidelines as needed.</li> </ul> </li> </ul>   |
| 4.0  | <b>Support Development of Manuals, Forms, Checklists, and Training Program</b>   |  |
| 4.1  | <b>Support Preparation of Administrator’s Guide, Template Forms, and Annual Report Outline</b> Several tools will need to be developed to be used by City and Port staff for implementation of the HCP.  | <ul style="list-style-type: none"> <li>– Assist with preparation of: <ul style="list-style-type: none"> <li>○ Administrator’s Guide or Desk Reference Manual in Appendix of HCP</li> <li>○ HCP Templates in Appendix of HCP</li> <li>○ Annual Report Outline in Appendix of HCP</li> </ul> </li> </ul>   |
| 4.2  | <b>Support Preparation of User’s Manual, Template Forms, and Checklists</b> Several tools will need to be developed to be used by City and Port staff for implementation of HCP.   | <ul style="list-style-type: none"> <li>– Assist with preparation of: <ul style="list-style-type: none"> <li>○ Additional details for draft HCP Chapter 7, Plan Implementation</li> <li>○ User’s Manual for Applicants</li> <li>○ HCP Project Application Template Forms in Appendix of HCP</li> <li>○ Checklists for Avoidance Requirements and Survey Requirements for Applicants in Appendix of HCP</li> <li>○ Fee Calculators for Applicant Documentation in Appendix of HCP</li> </ul> </li> </ul> |
| 4.3  | <b>Support Development of Training Program</b> Training is essential for City and Port staff, consultants, project applicants and developers, and any other individuals involved with the HCP.   | <ul style="list-style-type: none"> <li>– Assist with preparation of training Summary and providing as Appendix of HCP</li> </ul>   |

| Task | Task Summary   | Deliverables   |
|------|--|--|
| 4.4  | <b>Support Development of Geobrowser or Similar Web-Based Application</b> A geobrowser is a web-based data visualization, analysis, and reporting platform for use by the City and Port.   | – Assist with preparation of Geobrowser or Similar Web-Based Application and Support Documentation in Appendix of HCP  |
| 5.0  | <b>Support Development of Administrative Systems to Support the HCP</b>  |  |
| 5.1  | <b>Support Development of Property Acquisition and Maintenance Financial Accounting and Administrative System</b> Develop a property acquisition and maintenance financial accounting and administrative system with necessary legal agreements to support the management of conservation lands for HCP. | – Assist with preparation of: <ul style="list-style-type: none"> <li>○ Property acquisition and maintenance financial accounting and administrative system appendix to the draft Bush Prairie HCP</li> <li>○ Draft Memorandum of Agreement between the City and Port in Appendix of HCP.</li> <li>○ Other draft legal materials as needed in an appendix of HCP</li> </ul> |
| 5.2  | <b>Support Early Screening of Potential Mitigation Lands</b> Early screening would allow the city to be proactive in planning for acquisitions as part of the Reserve System and is an important step toward estimating and building the funding assurances within the HCP before the ITP can be issued. | – Assist with preparation of Early Screening Summary and providing as Appendix to the draft HCP  |
| 5.3  | <b>Support Preparation Covered Activity Tracker</b> A covered activity tracker is needed to meet the HCP compliance requirements to track covered activities such that annual reports can be made, stay-ahead provisions demonstrated, and compliance with take limits ensured.                          | – Assist with preparation of Covered Activity Tracker Summary in an Appendix to HCP  |
| 6.0  | <b>Support Development of Habitat Management Plan and Monitoring Program</b>   | –  |
| 6.1  | <b>Support Development of Habitat Management Plan</b> Develop an umbrella Habitat Management Plan for the Reserve System that will be used as a template and informational resource during the development of specific habitat management plans for acquisitions.  | – Assist with preparation of Habitat Management Plan Templates in Appendix to draft HCP  |
| 6.2  | <b>Support Development of Monitoring Program</b> Develop standardized monitoring field sheets, developed for use on smartphones or tablets, that can be linked to the geobrowser and database for ease in tracking the species covered by the Bush Prairie HCP.  | – Assist with preparation of Monitoring Program Summary in Appendix to draft HCP   |





**Chapter 3.46**  
**CITY CONTRACTS – NONDISCRIMINATION IN BENEFITS**

Sections:

- 3.46.010 Definitions.
- 3.46.020 Nondiscrimination in benefits.
- 3.46.030 Limitations.
- 3.46.040 Powers and duties of the city administrator.
- 3.46.050 Appeals.
- 3.46.060 Effective date.

**3.46.010 Definitions.**

For the purpose of this chapter:

- A. “Contract” means a contract for public works, consulting, or supplies, material, equipment or services estimated to cost \$50,000 or more;
- B. “Contract awarding authority” means the city officer, department, commission, employee, or board authorized to enter into or to administer contracts on behalf of the city;
- C. “Domestic partner” means any person who is registered with his/her employer as a domestic partner or, in the absence of such employer-provided registry, is registered as a domestic partner with a governmental body pursuant to state or local law authorizing such registration. Any internal employer registry of domestic partnership must comply with criteria for domestic partnerships specified by rule by the city administrator;
- D. “Employee benefits” means the provision of bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefits given to employees; provided, that it does not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state law.

(Ord. O2000-028, Added, 02/06/2001)

**3.46.020 Nondiscrimination in benefits.**

- A. No contractor on a city contract shall discriminate in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. The contractor shall not be deemed to discriminate in the provision of employee benefits if, despite taking reasonable measures to do so, the contractor is unable to extend a particular employee benefit to domestic partners, so long as the contractor provides the employee with a cash equivalent.

B. Other Options for Compliance Allowed. Provided that a contractor does not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, a contractor may:

1. Elect to provide benefits to individuals in addition to employees' spouses and employees' domestic partners;
2. Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent benefits; or
3. Provide benefits neither to employees' spouses nor to employees' domestic partners.

C. Requirements Inapplicable Under Certain Conditions. The city administrator may waive the requirements of this chapter where:

1. Award of a contract or amendment is necessary to respond to an emergency;
2. The contractor is a sole source;
3. No compliant contractors are capable of providing goods or services that respond to the city's requirements;
4. The contractor is a public entity;
5. The requirements are inconsistent with a grant, subvention or agreement with a public agency;
6. The city is purchasing through a cooperative or joint purchasing agreement.

D. Requests for waivers of the terms of this chapter are to be made to the city administrator by the contract awarding authority. Decisions by the city administrator to issue or deny waivers are final unless appealed pursuant to TMC 3.46.050.

E. The city administrator shall reject an entity's bid or proposal, or terminate a contract, if the city administrator determines that the entity was set up, or is being used, for the purpose of evading the intent of this chapter.

F. No contract awarding authority shall execute a contract with a contractor unless such contractor has agreed that the contractor will not discriminate in the provision of employee benefits as provided for in this chapter.

G. All contracts awarded by the city shall contain provisions prohibiting discrimination in the provision of employee benefits, including provisions containing appropriate remedies for the breach thereof as prescribed by this chapter, except as exempted by this chapter or rule.

(Ord. O2000-028, Added, 02/06/2001)

### **3.46.030 Limitations.**

The requirements of this chapter only shall apply to those portions of a contractor's operations that occur:

- A. Within the city;
- B. On real property outside of the city if the property is owned by the city or if the city has a right to occupy the property, and if the contractor's presence at that location is connected to a contract with the city; and

C. Elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor.  
(Ord. O2000-028, Added, 02/06/2001)

**3.46.040 Powers and duties of the city administrator.**

The city administrator shall have the power to:

A. Adopt rules and regulations in accordance with this chapter establishing standards and procedures for effectively carrying out this chapter;

B. Determine and impose appropriate sanctions and/or liquidated damages for violation of this chapter by contractors including, but not limited to:

1. Disqualification of the contractor from bidding on or being awarded a city contract for a period of up to five years; and

2. Contractual remedies, including, but not limited to, liquidated damages and termination of the contract;

C. Examine contractor's benefit programs covered by this chapter;

D. Impose other appropriate contractual and civil remedies and sanctions for violations of this chapter;

E. Allow for remedial action after a finding of noncompliance, as specified by rule;

F. Perform such other duties as may be required by ordinance or which are necessary to implement the purposes of this chapter.

(Ord. O2000-028, Added, 02/06/2001)

**3.46.050 Appeals.**

Any aggrieved party may appeal a decision of the city administrator to the mayor by the submittal of a written request to the city attorney within ten working days of the decision to be appealed. The mayor's decision will be in writing with findings identified upon which the decision was made. Subsequent appeal will be to the Thurston County superior court.

(Ord. O2000-028, Added, 02/06/2001)

**3.46.060 Effective date.**

The provisions of this chapter shall apply to any contract awarded on or after January 2, 2002.

(Ord. O2000-028, Added, 02/06/2001)