

CITY OF TUMWATER

PALERMO LAGOON DREDGING AND MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this _____ day of _____, 20___, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the “CITY”, and Clearcreek Contractors, a division of Holt Services Inc.; 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 WORK.

The SERVICE PROVIDER shall perform such work 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 Work attached hereto and incorporated herein (the “Project” or “Work”).

2. TERM.

This Agreement is effective upon execution by all parties and shall terminate on July 31, 2023. 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 One Hundred Twenty-Six Thousand Six Hundred Fifty Dollars and 00/100 (\$126,650.00) as reflected in Exhibit "A", Scope of Work.

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.

F. If Prevailing Wages are required, the invoice must bear the following signed statement:

I certify that wages paid under this contract are equal or greater than the applicable wage rates set forth in the Washington State Prevailing Wage rates for Public Works Contracts issued by the State of Washington Department of Labor & Industries.

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 Agreement term or the end of the calendar year, whichever is earlier.

H. Changes to the services to be performed, or the amount of the Agreement sum, or in the time for completion of the Project, shall be accomplished

only by a written Change Order, signed by the SERVICE PROVIDER and the City, in advance of the proposed change. Once effective, the SERVICE PROVIDER shall proceed promptly with the services as modified, unless otherwise provided in the executed amendment.

5. WARRANTIES/GUARANTY.

5.1 The SERVICE PROVIDER warrants that all Work conforms to the requirements of the Agreement and is free from any defect in equipment, material, design, or workmanship performed by the SERVICE PROVIDER or its subcontractors and suppliers. The warranty period shall be for the longer period of: one year from the date of the CITY's final acceptance of the entire Work or the duration of any special extended warranty offered by SERVICE PROVIDER or its subcontractors and suppliers.

5.2 With respect to all warranties, express or implied, for Work performed or materials furnished according to the Agreement, SERVICE PROVIDER shall:

- a) Obtain all warranties that would be given in normal commercial practice from the supplier and/or manufacturer;
- b) Prior to final acceptance require all warranties be executed, in writing, for the benefit of the CITY;
- c) Enforce all warranties for the benefit of the CITY; and,
- d) Be responsible to enforce any warranty of a subcontractor, manufacturer, or supplier, should they extend beyond the period specified in the Agreement.

5.3 If, within an applicable warranty period, any part of the Work is found not to conform to the Agreement, the SERVICE PROVIDER shall correct it promptly after receipt of written notice from the CITY to do so. In the event the CITY determines that SERVICE PROVIDER corrective action is not satisfactory and/or timely performed, then the CITY has the right to either correct the problem itself or procure the necessary services, recommendations, or guidance from a third party. All damages incurred by the CITY and all costs for the CITY's remedy shall be reimbursed by the SERVICE PROVIDER.

5.4 The warranties provided in this Section shall be in addition to any other rights or remedies provided elsewhere in the Agreement or by applicable law.

6. INDEPENDENT CONTRACTOR RELATIONSHIP.

For all purposes, the SERVICE PROVIDER shall be deemed an independent contractor and shall not be deemed an employee or agent of the CITY for any purpose.

7. PREVAILING WAGES

7.1 The Work under the Agreement is subject to the prevailing wage requirements of Chapter 39.12 RCW, as amended or supplemented. The SERVICE PROVIDER agrees that all laborers, workers or mechanics employed by it or by any subcontractor in the Work of this Agreement will be paid not less than the prevailing rate of wage for an hour's work in accordance with the provisions of Chapter 39.12 RCW and all such rules and regulations as may be promulgated thereto by the Washington Department of Labor and Industries.

7.2 The rules and regulations of the Department of Labor and Industries and the schedule of the prevailing wage rates for the Industrial Statistician of the Department of Labor and Industries are by reference made a part of this Agreement as though fully set forth herein. These rates may be accessed on the internet at <https://secure.lni.wa.gov/wagelookup/>

7.3 In case any dispute arises as to what the prevailing rate of wage for work of a similar nature is and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the Director of the Department of Labor and Industries of the State of Washington for arbitration and the Director's decision therein shall be final and conclusive and binding on all parties involved in the dispute.

7.4 The SERVICE PROVIDER shall file an Intent to Pay Prevailing Wage form ("Intent Form"). SERVICE PROVIDER shall submit the Intent Form, approved by the Department of Labor and Industries of the State of Washington, to the CITY with payment request. No payment will be issued to the SERVICE PROVIDER until the CITY receives approved forms.

7.5 If progress payments are made on this project, an approved Intent Form must be received prior to issuing the first payment. An approved Affidavit of Wages Paid form must be received prior to issuing the final payment.

7.6 SERVICE PROVIDER shall be responsible for all costs associated with filing the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid with the Department of Labor and Industries.

8. 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.

9. 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. Pollution Liability insurance covering losses caused by pollution conditions that arise from the operations of the SERVICE PROVIDER. SERVICE PROVIDER's Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000. SERVICE PROVIDER's Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

If the SERVICE PROVIDER's Pollution Liability insurance is written on a claims-made basis, the SERVICE PROVIDER warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that Work under the Agreement is completed.

If the scope of work as defined in this Agreement includes the disposal of any hazardous materials from the job site, the SERVICE PROVIDER must furnish to the CITY evidence of Pollution Liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this Agreement. Coverage certified to the CITY under this paragraph must be maintained in minimum amounts of \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

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.

G. Subcontractors' Insurance. The SERVICE PROVIDER shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of the SERVICE PROVIDER-provided insurance as set forth herein, except the SERVICE PROVIDER shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. The SERVICE PROVIDER shall ensure that the CITY 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.

10. PERFORMANCE AND PAYMENT BONDS

Pursuant to RCW 39.08.010, SERVICE PROVIDER shall post a Performance and Payment Bond, attached to this Agreement as Exhibit "B" in favor of the CITY, and incorporated by this reference, in a dollar amount satisfactory to the CITY; to guarantee SERVICE PROVIDER's performance of the Work to the CITY's satisfaction; to insure SERVICE PROVIDER's performance of all of the provisions of this Agreement; and to guarantee SERVICE PROVIDER's payment of all laborers, mechanics, subcontracts and material persons. SERVICE PROVIDER's obligations under this Agreement shall not be limited to the dollar amount of the bonds.

11. 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.

12. TITLE VI COMPLIANCE.

During the performance of this Agreement, the SERVICE PROVIDER, for itself, its assignees, and successors in interest, and including its subcontractors and consultants (hereinafter referred to as the "SERVICE PROVIDER"), agrees as follows:

12.1 Compliance with Regulations: The SERVICE PROVIDER will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

12.2 Non-discrimination: The SERVICE PROVIDER, with regard to the Work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The SERVICE PROVIDER will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

12.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the SERVICE PROVIDER for Work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the SERVICE PROVIDER of the SERVICE PROVIDER's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

12.4 Information and Reports: The SERVICE PROVIDER will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a SERVICE PROVIDER is in the exclusive possession of another who fails or refuses to furnish the information, the SERVICE PROVIDER will so certify to the CITY or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.

12.5 Sanctions for Noncompliance: In the event of SERVICE PROVIDER's noncompliance with the Non-discrimination provisions of this Agreement, the CITY

will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:

- a) withholding payments to the SERVICE PROVIDER under the Agreement until the SERVICE PROVIDER complies; and/or
- b) cancelling, terminating, or suspending the Agreement, in whole or in part.

12.6 Incorporation of Provisions: The SERVICE PROVIDER will include the provisions of Sections 12.1 through 12.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The SERVICE PROVIDER will take action with respect to any subcontract or procurement as the CITY or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the SERVICE PROVIDER becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the SERVICE PROVIDER may request the CITY to enter into any litigation to protect the interests of the CITY. In addition, the SERVICE PROVIDER may request the United States to enter into the litigation to protect the interests of the United States.

13. TITLE VI ASSURANCES.

During the performance of this Agreement, the SERVICE PROVIDER, for itself, its assignees, and successors in interest, and including its subcontractors and consultants (hereinafter referred to as the "SERVICE PROVIDER"), agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

Pertinent Non-Discrimination Authorities:

A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;

B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

C. Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

D. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

E. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

F. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

G. The Civil Rights Restoration Act of 1987 (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

H. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

I. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, SERVICE PROVIDER must take reasonable steps to ensure that LEP persons have meaningful access to SERVICE PROVIDER's programs (70 Fed. Reg. at 74087 to 74100); and

L. Title IX of the Education Amendments of 1972, as amended, which prohibits SERVICE PROVIDER from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

14. 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.

15. 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.

16. CHANGES.

No modification to this Agreement shall be valid or binding upon either party unless it is in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

17. 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.

18. 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.

19. PROHIBITED INTEREST.

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

20. 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.

21. 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.

22. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington. 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.

23. 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.

24. SAFETY.

SERVICE PROVIDER shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state and municipal safety and health laws and codes, including without limitation, all OSHA/WISHA requirements, Safety and Health Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), and General Occupational Health Standards (Chapter 296-62 WAC). SERVICE PROVIDER shall erect and properly maintain, at all times, all necessary guards, barricades, signals and other safeguards at all unsafe places at or near the Work for the protection of its employees and the public, safe passageways at all road crossings, crosswalks, street intersections, post danger signs warning against any known or unusual hazards and do all other things necessary to prevent accident or loss of any kind. SERVICE PROVIDER shall protect from danger all water, sewer, gas, steam or other pipes or conduits, and all hydrants and all other property that is likely to become displaced or damaged by the execution of the Work. The SERVICE PROVIDER shall, at its own expense, secure and maintain a safe storage place for its materials and equipment and is solely responsible for the same.

25. CLEAN UP.

At any time ordered by the CITY and immediately after completion of the Work, the SERVICE PROVIDER shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. In the event the SERVICE PROVIDER fails to perform the necessary clean up, the CITY may, but in

no event is it obligated to, perform the necessary clean up and the costs thereof shall be immediately paid by the SERVICE PROVIDER to the CITY and/or the CITY may deduct its costs from any remaining payments due to the SERVICE PROVIDER.

26. 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.

27. NON-COLLUSION.

By signature below, the SERVICE PROVIDER acknowledges that the person, firm, association, co-partnership or corporation herein named has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in the preparation and submission of a proposal to the CITY for consideration in the award of a contract on the specifications contained in this Agreement.

****Signatures on the following page***

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:
Clearcreek Contractors
3203 15th Street
Everett, WA 98201
UBI #: 602-116-881
Phone Number: 253-604-4878

Debbie Sullivan, Mayor

Signature (Notarized – see below)
Printed Name:
Title:

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

STATE OF WASHINGTON

COUNTY OF THURSTON

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 Washington,
My appointment expires:_____

EXHIBIT A - SCOPE OF WORK

CITY OF TUMWATER PALERMO LAGOON DREDGING AND MAINTENANCE

Project Background:

The U.S. Environmental Protection Agency (EPA) constructed the Palermo Aeration Lagoon as one component of the remedy selected for the Palermo Wellfield Superfund Site. The surrounding area has shown to contain levels of Tetrachloroethylene (PCE) and Trichloroethylene (TCE) in the ground water supply. In spring 1999, the EPA began operation of an air-stripping treatment system to remove PCE and TCE contamination from the water supply. The EPA concluded that this air-stripping system would eventually remediate the contaminated groundwater at the site. Periodic maintenance of the lagoon is required to keep the system functioning properly. This scope of work is intended to help guide the contractor through bidding and execution of the project. The accompanying diagrams are profiles of the sediment pond to aid in estimating the volume of sediment to be removed from the pond.

Task #	Description	Responsible Party	Desired Outcome
Task 1	Secure SEPA Permit	City of Tumwater	Determination of Non-significance
Task 2	Develop written Health and Safety Plan <ul style="list-style-type: none"> • chemical and physical hazards • PPE • health and safety monitoring • decontamination protocols • emergency procedures 	Contractor	Documented HASP approved by City of Tumwater
Task 3	Develop work plan <ul style="list-style-type: none"> • construction procedures • environmental protection procedures • fish moving • turbidity monitoring and control • sediment sampling plan • sediment disposal plan 	Contractor	Documented work plan approved by City of Tumwater
Task 4	Dredge aeration lagoon	Contractor	Restore lagoon capacity to original design
<p><i>Dredging note: During construction, creosote-treated pilings and associated creosote-containing soil were found below the floor of the lagoon at the southern end. These materials must not be exposed during dredging operations. The dredging depth must not exceed the as-built depth shown on the record drawings. A cobble-rich soil zone is present at the depth of the creosote soil and pilings. If this zone is exposed by dredging, dredging should stop.</i></p>			
Task 5	Dewater sediment tailings	Contractor	Dewatering system that returns water to lagoon
Task 6	Test sediment for Chemicals of Concern as required for disposal method.	material testing lab	Sampling methods based on lab recommendations
Task 7	Dispose of sediment properly	Contractor	Disposal method and location will depend on materials testing results.

Exhibit B

**CITY OF TUMWATER
PERFORMANCE BOND**

KNOW ALL PEOPLE BY THESE PRESENTS:

We, the undersigned _____, (“Principal”) and _____, the undersigned corporation organized and existing under the laws of the State of _____ and legally doing business in the State of Washington as a surety (“Surety”), are held and firmly bonded unto the City of Tumwater, a Washington municipal corporation (“City”) in the penal sum of _____ Dollars and no/100 (\$ _____) for the payment of which we firmly bind ourselves and our legal representatives, heirs, successors and assigns, jointly and severally.

This obligation is entered into pursuant to the statutes of the State of Washington and the ordinances, regulations, standards and policies of the City, as now existing or hereafter amended or adopted.

The Principal has entered into a Contract with the City dated _____, 2023 for the Water Infrastructure Solar Panel Installation.

NOW, THEREFORE, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and shall indemnify and hold the City harmless from any damage or expense by reason of failure of performance as specified in the Agreement within a period of one (1) year after its final acceptance thereof by the City, then this obligation shall be void; but otherwise, if such performance obligations have not been fulfilled, this bond shall remain in full force and effect.

And the Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alterations or additions to the terms of the Contract or to the Work.

The Surety hereby agrees that modifications and changes may be made in terms and provisions of the Contract without notice to Surety, and any such modifications or changes increasing the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this Performance Bond in a like amount, such increase, however, not to exceed twenty-five percent (25%) of the original amount of this bond without the consent of the Surety.

Within forty-five (45) days of receiving notice that the Principal has defaulted on all or part of the terms of the Contract, the Surety shall make a written commitment to the City that it will either: (a) cure the default itself within a reasonable time period, or (b) tender to the

City, the amount necessary for the City to remedy the default, including legal fees incurred by the City, or (c) in the event that Surety's evaluation of the dispute is not complete or in the event the Surety disputes the City's claim of default, the Surety shall notify the City of its finding and its intent, if any, to interplead. The Surety shall then fulfill its obligations under this bond, according to the option it has elected. Should Surety elect option (a) to cure the default, the penal sum of the Bond shall be reduced in an amount equal to the costs actually incurred by the Surety in curing the default. If the Surety elects option (b), then upon completion of the necessary work, the City shall notify the Surety of its actual costs. The City shall return, without interest, any overpayment made by the Surety and the Surety shall pay to the City any actual costs which exceed the City estimate, limited to the bond amount. Should the Surety elect option (c), the Parties shall first complete participation in mediation, described in the below paragraph, prior to any interplead action.

In the event a dispute should arise between the Parties to this Bond with respect to the City's declaration of default by the Principal, the Parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of Washington Arbitration and Mediation Services - Tacoma ("WAMS"). The Parties shall proportionately share in the cost of the mediation. The mediation shall be administered by the Tacoma WAMS office, 3600 Port of Tacoma Road, Suite 304, Tacoma, WA 98424, www.usamwa.com. The Surety shall not interplead prior to completion of the mediation.

DATED this _____ day of _____, 2023.

CORPORATE SEAL OF PRINCIPAL: [PRINCIPAL]

By

Type/Print Name

Title

Address

CERTIFICATE AS TO CORPORATE SEAL

I hereby certify that I am the (Assistant) Secretary of the Corporation named as Principal in the within bond; that _____, who signed the said bond on behalf of the Principal, was _____ of the said Corporation; that I know his or her signature thereto is genuine, and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

Type/Print Name

Secretary or Assistant Secretary

CORPORATE SEAL OF SURETY: [SURETY]

By: _____
Attorney-in-Fact
(Attach Power of Attorney)

Name of Person Executing Bond

Address

Phone

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

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**CITY OF TUMWATER
PAYMENT BOND**

KNOW ALL PEOPLE BY THESE PRESENTS:

We, the undersigned _____, (“Principal”) and _____, the undersigned corporation organized and existing under the laws of the State of _____ and legally doing business in the State of Washington as a surety (“Surety”), are held and firmly bonded unto the City of Tumwater, a Washington municipal corporation (“City”) in the penal sum of _____ Dollars and no/100 (\$ _____) for the payment of which we firmly bind ourselves and our legal representatives, heirs, successors and assigns, jointly and severally.

This obligation is entered into pursuant to the statutes of the State of Washington and the ordinances, regulations, standards and policies of the City, as now existing or hereafter amended or adopted.

The Principal has entered into a Contract with the City dated _____, 2023 for the Deschutes Valley Trail Segment A1 Project.

NOW, THEREFORE if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and all taxes incurred on said Contract under Titles 50 and 51 RCW and all taxes imposed on the Principal under Title 82 RCW in the manner and within the time period prescribed by the City, or within such extensions of time as may be granted under the Contract, this statutory Payment Bond shall become null and void, and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

And the Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alterations or additions to the terms of the Contract or to the Work.

The Surety hereby agrees that modifications and changes may be made in terms and provisions of the Contract without notice to Surety, and any such modifications or changes increasing the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this Performance Bond in a

like amount, such increase, however, not to exceed twenty-five percent (25%) of the original amount of this bond without the consent of the Surety.

Within forty-five (45) days of receiving notice that the Principal has defaulted on all or part of the terms of the Contract, the Surety shall make a written commitment to the City that it will either: (a) cure the default itself within a reasonable time period, or (b) tender to the City, the amount necessary for the City to remedy the default, including legal fees incurred by the City, or (c) in the event that Surety's evaluation of the dispute is not complete or in the event the Surety disputes the City's claim of default, the Surety shall notify the City of its finding and its intent, if any, to interplead. The Surety shall then fulfill its obligations under this bond, according to the option it has elected. Should Surety elect option (a) to cure the default, the penal sum of the Bond shall be reduced in an amount equal to the costs actually incurred by the Surety in curing the default. If the Surety elects option (b), then upon completion of the necessary work, the City shall notify the Surety of its actual costs. The City shall return, without interest, any overpayment made by the Surety and the Surety shall pay to the City any actual costs which exceed the City estimate, limited to the bond amount. Should the Surety elect option (c), the Parties shall first complete participation in mediation, described in the below paragraph, prior to any interplead action.

In the event a dispute should arise between the Parties to this Bond with respect to the City's declaration of default by the Principal, the Parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of Washington Arbitration and Mediation Services - Tacoma ("WAMS"). The Parties shall proportionately share in the cost of the mediation. The mediation shall be administered by the Tacoma WAMS office, 3600 Port of Tacoma Road, Suite 304, Tacoma, WA 98424, www.usamwa.com. The Surety shall not interplead prior to completion of the mediation..

DATED this _____ day of _____, 2023.

CORPORATE SEAL OF PRINCIPAL: [PRINCIPAL]

By

Type/Print Name

Title

Address

CERTIFICATE AS TO CORPORATE SEAL

I hereby certify that I am the (Assistant) Secretary of the Corporation named as Principal in the within bond; that _____, who signed the said bond on behalf of the Principal, was _____ of the said Corporation; that I know his or her signature thereto is genuine, and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

Type/Print Name

Secretary or Assistant Secretary

CORPORATE SEAL OF SURETY: [SURETY]

By: _____
Attorney-in-Fact
(Attach Power of Attorney)

Name of Person Executing Bond

Address

Phone

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney