

**CITY OF TUMWATER
SERVICE PROVIDER AGREEMENT**

DAVIS MEEKER GARRY OAK LEVEL 3 TREE RISK ASSESSMENT

THIS AGREEMENT is made and entered into in duplicate this 21st day of August, 2024, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the “CITY”, and TODD PRAGER & ASSOCIATES, an Oregon Limited Liability Company, 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 attached hereto and incorporated herein (the “Project”).

2. TERM.

The Project shall begin no earlier than August 21, 2024, and shall be completed

no later than December 31, 2024. 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 **FORTY-EIGHT THOUSAND DOLLARS (\$48,000.00)** as reflected in Exhibit "A" Scope of Services.

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. 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, except professional liability, 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.

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 Contractors / Subcontractors. The City of Tumwater, in accordance with RCW 49.60.530 requires all covered contractors or subcontractors to actively pursue a diverse and inclusive workforce. Contractors and subcontractors are prohibited from all forms of discrimination listed in RCW 49.60.530.

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. 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.

EXHIBIT A – SCOPE OF WORK

Davis Meeker Garry Oak, Level 3 Tree Risk Assessment, Tumwater, WA

The following is the proposed scope and fee for the Davis Meeker Garry Oak, Level 3 Tree Risk Assessment, Tumwater, WA.

Scope of Work

- I. **Kickoff Meeting:** Meet with City of Tumwater staff to understand the project background and history.
- II. **Background Review:** Review background materials including but not limited to maintenance history, prior impacts, and past tree risk assessment reports.
- III. **Proposed Approach:** Develop proposed approach for risk assessment for City staff consideration (e.g. sonic tomography, aerial inspection, pneumatic excavation, lab testing, resistance recording drilling, etc.) Technical support will be provided for any permit applications or approvals required and prepared by the City of Tumwater.
- IV. **Prepare for Site Visit:** Receive approval/modification of proposed approach from City staff and prepare for site visit. If work such as sonic tomography or pneumatic excavation will occur, coordinate with subcontractors to schedule work.
- V. **Initial Site Visit and Tree Assessment:** Visit the site and tree to collect assessment data including but not limited to site information, tree information, tree defects and target information. Aerial inspections will be performed to collect information on subject tree parts that cannot be assessed from the ground. Detailed notes and photos will be taken to record data. The initial site visit will include up to nine sonic tomography readings at selected locations along the trunk and main stems. Hand removal of cobble at the root crown will be completed to visually assess the condition of the root crown. Exact locations of advanced assessments will be recorded with detailed measurements and photos.
- VI. **Secondary Site Visit and Tree Assessment (if needed):** If after the initial site visit and assessment, a second site visit and assessment is recommended and approved, additional data will be collected which may include additional aerial inspections, up to five additional sonic tomography readings, static pull testing, additional root crown excavation, resistance

drilling, or core sampling. Detailed notes and photos will be taken to record data. Exact locations of advanced assessments will be recorded with detailed measurements and photos.

- VII. **Tree Appraisal (if needed):** If requested by the City of Tumwater, Todd Prager & Associates will provide the appraised value of the subject tree based on the most appropriate methodology outlined in the *Guide for Plant Appraisal, 10th Edition*. The tree appraisal will be documented in a tree appraisal report.
- VIII. **Data Analysis and Risk Categorization:** Site and tree information collected via background research and during the site visit will be analyzed to determine 1) likelihood of failure, 2) likelihood of impact, 3) likelihood of failure and impact, and 4) consequences of failure for each tree part, condition of concern, and assessed target. This will be used to determine the overall risk rating of the tree from low, moderate, high, to extreme.
- IX. **Mitigation Options:** Based on the risk categorization results and risk ratings for each tree part and target of concern, risk mitigation options will be provided to reduce risk. Risk mitigation options may include but not be limited to cabling, bracing, reduction pruning, periodic future inspection intervals, target protection, target restrictions, and soil, pest, or disease treatments. An overall residual risk rating for the tree will then be provided on a scale of low, moderate, high, to extreme based on the mitigation options. Specifications and cost estimates for mitigation options will be determined in collaboration with other professionals that can complete the work.
- X. **Level 3 Advanced Tree Risk Assessment Report:** An arborist report will be the final deliverable provided and will include a detailed summary of the project background and history, data collection, tree and site conditions, tree parts and conditions of concern, target information, risk categorization for each tree part and target of concern, risk rating for each tree part and target of concern, mitigation options, residual risk after mitigation is applied, and specifications and cost estimates for each risk mitigation treatment. The report will be organized in a clear and concise format, include photos and maps as supplemental exhibits, and include additional detailed data such as sonic tomography reading results as attachments to the report. Todd Prager & Associates will also meet with City staff to review and discuss the report in detail to answer any questions and review feedback. If required, revisions based on feedback

from City staff will be incorporated into a final draft of the report deliverable.

- XI. **Additional General and Professional Liability Insurance Coverage:** Todd Prager & Associates will increase current insurance coverage by \$1 million to achieve insurance coverage listed in SPA provided by the City of Tumwater.

The following work will not be performed, but may be provided for an additional fee if requested by the Client:

1. Survey work.
2. Traffic control (assumes traffic control will be provided by the City of Tumwater).
3. Obtaining rights of entry to any property required for the risk assessment (assumes rights of entry will be obtained from the City of Tumwater).
4. Preparation and/or submittal of any required permit applications or other approvals from the Washington Department of Archaeology and Historic Preservation, Washington Department of Wildlife, City of Tumwater, Port of Olympia, or any other government agency.
5. Obtaining engineering specifications or cost estimates. This may be provided by professional engineers on staff with the City of Tumwater or by a professional engineer hired by the City of Tumwater.
6. Preparation for and attendance of City or community meetings or hearings.
7. Soliciting input from any other arborists, tree care professionals, members of the public or advocacy community, or others not specifically identified in this scope of work document.
8. Pruning, cabling, soil amendments, or any other treatments that may be recommended in the tree risk assessment report.
9. Providing testimony, depositions, discovery, or attending mediation, arbitration, court proceedings, or providing any other legal support unless a separate contract and compensation is agreed upon by both Todd Prager & Associates and the City of Tumwater.

10. Any work not specifically listed in the above scope of work.

Assumes all permit fees and any lab testing fees will be covered by the City of Tumwater.

Fee Proposal

This scope of work will be performed on a time and materials basis at the rate of \$210.00 per hour. Mileage will be charged at the current IRS rate. If additional work is required following delivery of work product, work will be charged at the hourly rate described in this section of the engagement letter.

The estimated fees for the scope of work are estimated not to exceed the following without written approval from the City of Tumwater:

I.	Kickoff Meeting:	\$840 (R. Till & T. Prager)
II.	Background Review:	\$1,050 (R. Till)
III.	Proposed Approach:	\$840 (R. Till & T. Prager)
IV.	Prepare for Site Visit:	\$1,050 (R. Till)
V.	Initial Site Visit and Tree Assessment:	\$4,200 (sonic tomography) \$1,200 (R. Bundy) \$2,690 (R. Till) \$750 (lab test & shipping)
VI.	Second Site Visit and Tree Assessment:	\$2,200 (sonic tomography) \$1,000 (drill & core) \$1,800 (root crown ex.) \$3,000 (static pull test) \$1,200 (R. Bundy) \$2,690 (R. Till) \$750 (lab test & shipping)
VII.	Tree Appraisal:	\$4,200 (T. Prager & C. Johnson)
VIII.	Data Analysis and Risk Categorization:	\$2,520 (R. Till & T. Prager)
IX.	Mitigation Options:	\$3,150 (R. Till & T. Prager)
X.	Risk Assessment Report:	\$6,300 (R. Till & T. Prager)
XI.	Additional Insurance:	\$4,000 (premium increase)
	Total Budget:	\$45,430
	Total Budget (w/o 2nd visit):	\$32,790
	Total Budget (w/o 2nd visit or appraisal):	\$28,590

Note that while separate estimates are provided for each scope item, the tasks overlap to some extent so the budget for each scope item should not be viewed in isolation from the other scope items.

Services will be performed at such locations and times as Todd Prager & Associates, LLC deems most efficient and necessary and coordinated with your schedule where possible.

Additional Limitations of Tree Risk Assessments

- Only visible or detectable tree conditions will be considered;
- The assessment only represents the condition of the tree and site at the time of the assessment;
- Any tree, whether it has visible weakness or not, will fail if the forces applied exceed the strength of the tree or its parts;
- The assessment only considers normal weather conditions that might occur during the stated timeframe; it does not consider unusual or extreme weather events that historically do not occur in the area;
- The stated likelihood of failure is not a guarantee of tree stability or instability;
- The timeframe for risk categorization should not be considered a guarantee period for the risk assessment; and,
- The assessment is restricted to the tree(s) specifically addressed in this inspection report and does not include any other nearby trees that may present potential hazards to people or property.

