

**INTERLOCAL AGREEMENT  
BETWEEN  
CITY OF FIRCREST AND CITY OF TACOMA  
FOR  
LEACH CREEK HOLDING BASIN**

THIS INTERLOCAL AGREEMENT (**Agreement**) is made and entered into this day by and between the CITY OF TACOMA ("**Tacoma**") and the CITY OF FIRCREST ("**Fircrest**") this \_\_\_\_ day of \_\_\_\_\_, 2021 (**Effective Date**) for the purposes set forth herein. Tacoma and Fircrest may be individually referred to as "Party" and collectively referred to as "Parties".

**RECITALS**

- A. Chapter 39.34 RCW, the Interlocal Cooperation Act, authorizes agreements between jurisdictions.
- B. Tacoma is a Washington state municipal corporation operating as a first class charter city under the laws of the state of Washington and is authorized to enter into interlocal agreements pursuant to Chapter 39.34 RCW.
- C. Fircrest is a Washington state municipal corporation operating as code city under the laws of the state of Washington and is authorized to enter into interlocal agreements pursuant to Chapter 39.34 RCW.
- D. Tacoma is the sole owner in fees simple of real property known and referred to as the Leach Creek Holding Basin (the "**Property**" or "**Leach Creek Holding Basin**") located in Tacoma, Washington legally described on **Exhibit A** (legal description) attached hereto, and depicted on **Exhibit B** (depiction of Fircrest Outfalls) attached hereto. The Property covers 31.81 acres comprised of 16.06 acres of Category I forested wetland, and 15.75 acres of adjacent buffer (150-foot wide), that possesses natural, open space, and ecological values.
- E. The Property is currently undeveloped except to the extent that it has been improved by Tacoma for use as a stormwater flow control facility and water quality treatment (**Stormwater Use**) for stormwater collected in the City of Tacoma and discharged to the Leach Creek Holding Basin Preservation Area.
- F. The Property is subject to a restrictive covenant, recorded under Pierce County Auditor's Recording No. A-1143 (the "**Restrictive Covenant**"), for the benefit of the State of Washington Department of Ecology (**Ecology**) and the United States Army Corps of Engineers (**USACE**), to ensure that the Property, subject to the Stormwater Use, will be retained forever in an otherwise undeveloped open space

condition and to prevent any Property use not consistent with the terms and conditions of the Restrictive Covenant.

- G. Fircrest is located almost entirely in the Leach Creek Drainage basin. Fircrest collects stormwater through its municipal separate storm sewer system for discharge to the Leach Creek Holding Basin. Fircrest owns, operates and maintains as part of its storm sewer utility, six outfalls between 12” and 24” in diameter (**Fircrest Outfalls**) that discharge a portion of stormwater collected in Fircrest directly to the Leach Creek Holding Basin. The Fircrest Outfalls are depicted on Exhibit B. Each of the Fircrest Outfalls are located in part, in, on or upon the Property.
- H. Tacoma and Fircrest desire to enter into this agreement to, among other things, provide a grant of access to the Property for Fircrest’s maintenance and operation of the Fircrest Outfalls and to ensure Fircrest’s activities on the Property are in conformance with the Restrictive Covenant, Fircrest’s, stormwater NPDES permit, and applicable federal, state and local laws.

**NOW, THEREFORE**, it is agreed by and between the parties as follows:

1. **PURPOSE.** The purposes of this Agreement are set forth in the recitals above which are incorporated herein by this reference as though fully set forth herein.
2. **TERM AND TERMINATION.** The term of this Agreement shall be indefinite, and this Agreement shall continue from year to year until terminated by notice of termination, in writing, given by one Party to the other. Notice of termination must be given to the other Party no less than one hundred and eighty (180) days prior to the termination date.
3. **GRANT OF ACCESS.** Tacoma grants to Fircrest a non-exclusive limited right of access to and use of the Property for the purpose of maintenance, operation and repair of the Fircrest Outfalls, subject to the terms and conditions hereof. Such rights are subject to the continuing right of Tacoma to use the Property for Stormwater uses, the terms and conditions of the Restrictive Covenant, and the rights of Ecology and USACE under the Restrictive Covenant.
4. **OBLIGATIONS OF FIRCREST.** Fircrest agrees to the following:
  - 4.1 Compliance with Stormwater NPDES Permit. Fircrest agrees to maintain and operate its storm sewer utility in compliance with its stormwater NPDES permit and to enforce Fircrest’s stormwater/water quality regulations to protect against illicit discharges to the Leach Creek Holding Basin.
  - 4.2 Compliance with Restrictive Covenant. Fircrest agrees that its activities, and the activities of its officials, employees, agents, volunteers and contractors, upon the Property are subject to and will conform to and be consistent with the Restrictive Covenant, that it will not engage in activities or uses, or permit

other persons to engage in activities or uses, prohibited under the Restrictive Covenant, that it is subject to the rights of the Beneficiaries under the Restrictive Covenant, in particular the right under Section 3(d) to prevent any activity on or use of the property inconsistent with the Restrictive Covenant, and that its compliance with the Restrictive Covenant will be at its sole cost and expense.

- 4.3 Maintenance of Fircrest Outfalls. Fircrest agrees to routine inspection and cleaning of the Fircrest Outfalls, to maintain the Fircrest Outfalls in good condition and repair, and to promptly repair any damage or defects to the Fircrest Outfalls following discovery of such damage or defects, all in conformance with the terms and conditions of the Restrictive Covenant. Fircrest will maintain records of inspection and maintenance of the Fircrest Outfalls and agrees to provide such records to Tacoma promptly upon request.
  - 4.4 Notice. Fircrest agrees to provide notice to Tacoma, Ecology, and the USACE prior to conducting any activities upon or new uses of the Property. Such notice shall conform to the requirements of Section 11(a) of the Restrictive Covenant and shall afford Tacoma, Ecology and the USACE sufficient time to review the description of the proposed activity to determine if the proposed activity is designed and carried out in a manner consistent with the purpose, terms and conditions of the Restrictive Covenant. In the event of an emergency involving the imminent threat of harm to persons or property that necessitates Fircrest's access to a Fircrest Outfall, Fircrest agrees to provide notice to Tacoma as soon as practical, and in conformance with established emergency procedures, and shall propose only the minimum work necessary to address the emergency.
  - 4.5 Alterations, Modifications and Construction. In the event that Fircrest proposes alterations or modifications to an existing Fircrest Outfall or construction of a new or replacement outfall, such proposal shall be subject to review and approval of the City of Tacoma, Ecology and USACE, shall comply with applicable provisions of the Tacoma Municipal Code, federal and state law and regulations, including permit requirements, shall be consistent with uses and activities authorized under the Restrictive Covenant, shall not interfere with the uses of the Property by the City of Tacoma, and shall be subject to the right of the Beneficiaries under section 3(d) of the Restrictive Covenant to prevent any activity or use of the Property that is inconsistent with the purpose of the Restrictive Covenant and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.
5. **REVIEW.** Tacoma and Fircrest agree to periodically review the effectiveness of this Agreement no less frequently than every five years following the Effective Date as set forth above.

- 6. NOTICES.** Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses, or such other addresses and representatives as the Parties may designate in writing from time to time:

<b>TACOMA</b>	<b>FIRCREST</b>
John Burk Division Manager Science & Engineering Division Environmental Services 326 East D Street Tacoma, WA 98421	Tyler Bemis Public Works Director Public Works 120 Ramsdell Street Fircrest, WA 98466
Phone: 253-495-8737	Phone: 253-238-4134
E-mail: jburk@cityoftacoma.org	E-mail: tbemis@cityoffircrest.net

**7. INDEMNITY AND RELEASE.**

- 7.1 To the maximum extent permitted by law, Tacoma and Fircrest shall defend, indemnify and hold harmless the other Party, and its officers, officials, employees, contractors and agents, from any and all claims, demands, suits, actions, fines, penalties and liability of any kind (collectively “Liabilities”), including injuries to persons or damages to property, which arise out of or are related to any negligent acts, errors, omissions of the indemnifying party and its officers, officials, employees, contractors and agents in performing obligations under this Agreement, including by way of example and not limitation, compliance with the Restrictive Covenant. However, if any such damages and injuries to persons or property are caused by or result from the concurrent negligence of Tacoma or its officers, officials, employees, contractors and agents, and Fircrest or its officers, officials, employees, contractors, and agents, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its officers, officials, employees, contractors or agents.
- 7.2 The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Industrial Insurance, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.
- 7.3 In the event that any suit based on such a claim, demand, suit, action, fine, penalty or liability is brought against either Party, each Party retains the right to participate in said suit if any principle of public law is involved.

8. **AMENDMENTS.** This Agreement may be amended at any time by the mutual written consent of Tacoma and Fircrest.
9. **FINANCING.** Each party will bear its own cost of performing under this Agreement.
10. **JOINT BOARD.** There will be no joint board created to administer this Agreement.
11. **NO SEPARATE LEGAL ENTITY.** It is not the intention of Tacoma or Fircrest, nor shall this Agreement be interpreted, to create a separate legal entity for the performance of this Agreement. Tacoma shall remain responsible for administering its obligations under this Agreement and Fircrest shall be responsible for administering its obligations under this Agreement. The Parties shall have no obligation to provide any labor, services, equipment or materials to the other Party in connection with this Agreement.
12. **PROPERTY.** No property will be acquired or held pursuant to this Agreement.
13. **FILING AND AUTHORITY.** By the signatures of their authorized representatives below, Tacoma and Fircrest confirm that they approve of and are authorized to enter into this Agreement pursuant to RCW Chapter 39.34. A copy of this Agreement shall be listed by subject on each Party's web site or other electronically retrievable public source.
14. **FAILURE TO COMPLY.** In the event either of the Parties defaults on the performance of any terms of this Agreement, or either Party places the enforcement of this Agreement in the hands of an attorney, or is required to file a judicial or administrative appeal, or files a lawsuit, the prevailing party shall be entitled to be reimbursed its reasonable attorney's fees, costs and expenses.
15. **GENERAL PROVISIONS.** This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreement shall be effective for any purpose. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
16. **GOVERNING LAW AND VENUE.** Washington law shall govern the interpretation of this Agreement. Pierce County shall be the venue of any mediation, arbitration, or litigation arising out of this Agreement.
17. **EXECUTION IN COUNTERPARTS.** This Agreement, and any amendments thereto, may be executed in counterparts, each of which shall constitute an original, but all of which together constitute a single agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

**TACOMA**

**FIRCREST**

\_\_\_\_\_  
Elizabeth A. Pauli,  
City Manager

\_\_\_\_\_  
Scott Pingel,  
City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Michael P. Slevin, III, P.E.,  
Environmental Services Director

\_\_\_\_\_  
Jayne Westman,  
City Clerk

Attest:

Approved as to form:

\_\_\_\_\_  
Doris Sorum,  
City Clerk

\_\_\_\_\_  
Michael B. Smith,  
City Attorney

Approved as to form:

\_\_\_\_\_  
Christopher D. Bacha,  
Chief Deputy City Attorney

Exhibit A – Legal Description of Property  
Exhibit B – Depiction of Fircrest Outfalls

## EXHIBIT A

### *(Legal Description of Property)*

A portion of the North Half of the Northeast Quarter of Section 14, Township 20 North, Range 2 East of the W.M. lying in the Plat called The Keystone Addition to the City of Tacoma W.T., recorded March 1, 1889 in Volume 2 at page 146 of plat records of Pierce County Auditor, also known as the Leach Creek Holding Basin;

A Wetlands Buffer Area and a Wetlands Preservation Area 150 feet inside the Wetlands Buffer Area more particularly described as follows;

#### **Wetland Buffer Area**

Commencing at the monumented Northeast Corner of the Northeast Quarter of said section;

Thence along the monumented north line of said section North  $89^{\circ}06'04''$  West a distance of 1088.40 feet to the True Point of Beginning;

Thence South  $00^{\circ}54'53''$  West a distance of 385.00 feet;

Thence South  $89^{\circ}06'15''$  East a distance of 459.01 feet;

Thence South  $00^{\circ}54'49''$  West a distance of 551.71 feet;

Thence South  $69^{\circ}10'15''$  West a distance of 637.52 feet;

Thence North  $89^{\circ}05'31''$  West a distance of 478.81 feet;

Thence North  $00^{\circ}54'47''$  East a distance of 187.53 feet;

Thence North  $89^{\circ}06'29''$  West a distance of 305.93 feet;

Thence North  $00^{\circ}54'30''$  East a distance of 325.04 feet;

Thence North  $89^{\circ}06'23''$  West a distance of 119.95;

Thence North  $00^{\circ}54'15''$  East a distance of 615.10 feet;

Thence South  $89^{\circ}06'04''$  East a distance of 136.99 feet;

Thence North  $00^{\circ}53'56''$  East a distance of 45.00 feet plus or minus to the North line of said section;

Thence along the North line of said section South  $89^{\circ}06'04''$  East a distance of 901.02 plus or minus to the Point of Beginning.

Situate in County of Pierce, State of Washington.

## **Wetland Preservation Area**

Commencing at the monumented Northeast Corner of the Northeast Quarter of said section;

Thence along the monumented north line of said section, North 89°06'04" West a distance of 1,238.40 feet;

Thence South 00°54'53" West a distance of 150.00 feet to the True Point of Beginning, point being a 150.00 offset inside the Wetland Buffer Area;

Thence continuing South 00°54'53" West a distance of 385.01 feet;

Thence South 89°06'15" East a distance of 459.01 feet;

Thence South 00°54'49" West a distance of 300.00 feet;

Thence South 69°10'15" West a distance of 507.06 feet;

Thence North 89°05'31" West a distance of 300.00 feet;

Thence North 00°54'47" East a distance of 187.57 feet;

Thence North 89°06'29" West a distance of 305.94 feet;

Thence North 00°54'30" East a distance of 325.04 feet;

Thence North 89°06'23" West a distance of 119.96 feet;

Thence North 00°54'15" East a distance of 315.08 feet;

Thence South 89°06'04" East a distance of 137.00 feet;

Thence North 00°53'56" East a distance of 45.00 feet to a point 150.00 feet South of the North line of said section;

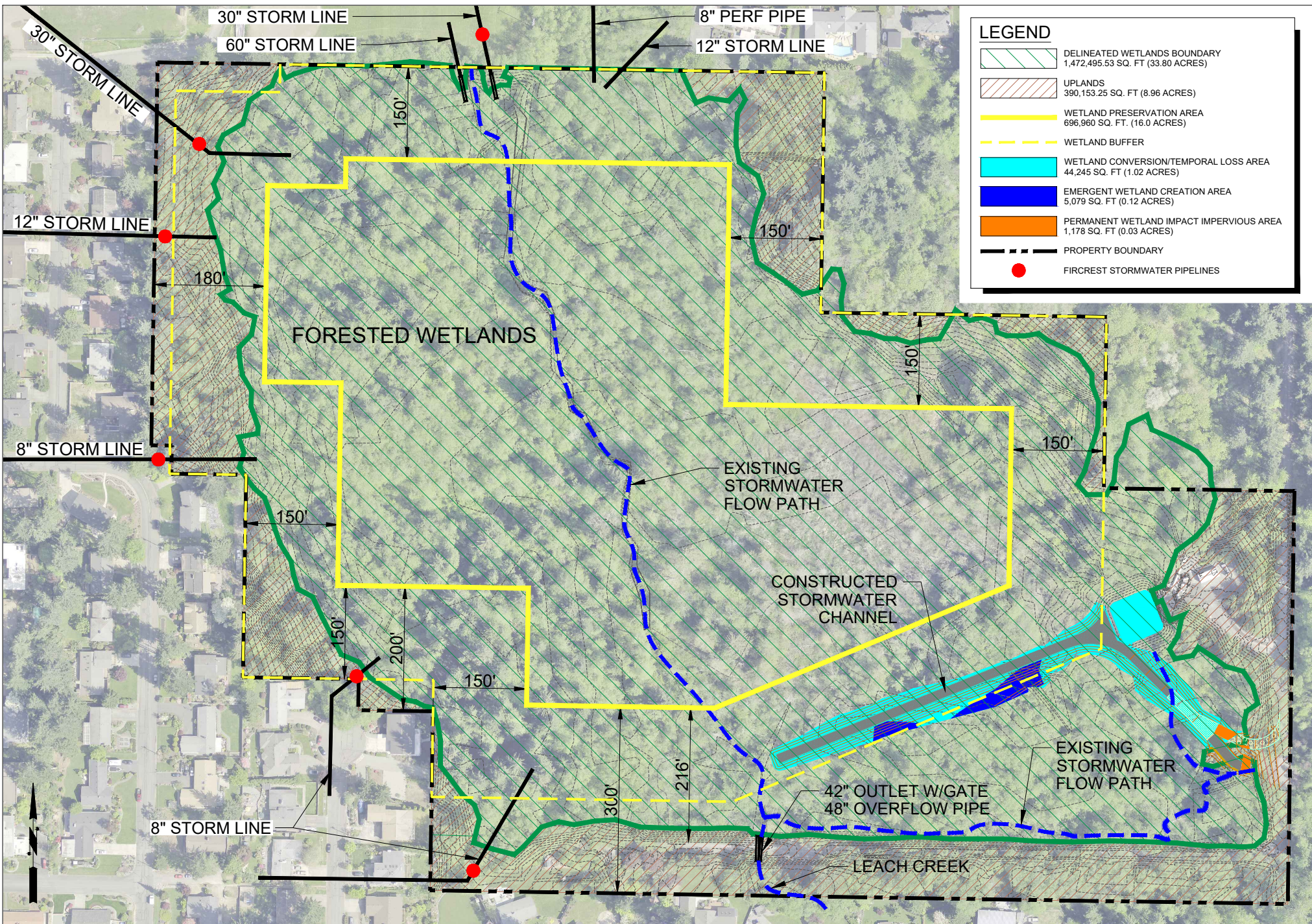
Thence on a line parallel and 150.00 feet South of the North line of said section South 89°06'04" East a distance of 600.98 feet, more or less, to the Point of Beginning.

Situate in the County of Pierce, State of Washington.

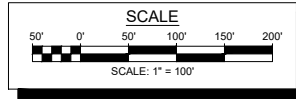


**EXHIBIT B**

*(Depiction of Fircrest Outfalls)*



LEGEND	
	DELINEATED WETLANDS BOUNDARY 1,472,495.53 SQ. FT (33.80 ACRES)
	UPLANDS 390,153.25 SQ. FT (8.96 ACRES)
	WETLAND PRESERVATION AREA 696,960 SQ. FT. (16.0 ACRES)
	WETLAND BUFFER
	WETLAND CONVERSION/TEMPORAL LOSS AREA 44,245 SQ. FT (1.02 ACRES)
	EMERGENT WETLAND CREATION AREA 5,079 SQ. FT (0.12 ACRES)
	PERMANENT WETLAND IMPACT IMPERVIOUS AREA 1,178 SQ. FT (0.03 ACRES)
	PROPERTY BOUNDARY
	FIRCREST STORMWATER PIPELINES



CITY OF TACOMA  
ENVIRONMENTAL SERVICES DEPARTMENT

Wetland Preservation Area  
Leach Creek Holding Basin