



Meeting Location:
Council Chambers, 3rd Floor
216 Prospect Street
Port Orchard, WA 98366

Contact us:
Phone (360) 876-4407
cityhall@portorchardwa.gov
www.portorchardwa.gov

**City of Port Orchard City Council
Regular Meeting Agenda
March 12, 2024
6:30 p.m.**

Pursuant to the Open Public Meetings Act, Chapter 42.30 RCW, the City Council is conducting its public meeting in a hybrid format with options for in-person attendance in the Council Chambers at City Hall or remote viewing and participation via Zoom (link below). The meeting is streamed live on the City's YouTube channel, click [here](#).

Remote access

Link: <https://us02web.zoom.us/j/89335119388>

Zoom Meeting ID: 893 3511 9388

Zoom Call-In: 1.253.215.8782

Guiding Principles

- Are we raising the bar?
- Are we honoring the past, but not living in the past?
- Are we building connections with outside partners?
- Is the decision-making process positively impacting diversity, equity, and inclusion?

1. CALL TO ORDER

- A.** Pledge of Allegiance

2. APPROVAL OF AGENDA

3. CITIZENS COMMENTS ON AGENDA ITEMS

*(This is an opportunity for citizens to address the City Council on agenda items that are not associated with a Public Hearing on this agenda. Comments are limited to **3 minutes**. Please approach the podium or raise your Zoom hand if viewing remotely and wait to be recognized by the Mayor. Then, state your name for the official record. If you are attending remotely by Zoom via telephone, enter *9 from your keypad to raise your hand.)*

4. CONSENT AGENDA

(Items listed are to be considered routine in nature and are grouped together in a single motion. A Councilmember may remove an item for separate consideration upon request. In the event of such request, the item is placed under Business Items.)

- A.** Approval of Vouchers and Electronic Payments
- B.** Approval of Payroll and Direct Deposits
- C.** Adoption of a Resolution Approving an Agreement with the WA State Department of Ecology for FY2023-2025 Stormwater Capacity Grant and Ratifying the Mayor's Signature (Ryan) **Page 4**
- D.** Adoption of a Resolution Approving an Interlocal Agreement with Kitsap County Public Works Regarding Traffic Signal, Street Lights Repair and Maintenance (Ryan) **Page 25**
- E.** Approval of the February 27, 2024, City Council Regular Meeting Minutes **Page 34**

5. PRESENTATION

- A. Police Commission Ceremony (M. Brown)

6. PUBLIC HEARING

(Accepting public testimony from citizens limited to the specific item listed)

7. BUSINESS ITEMS

- A. Adoption of a Resolution for the New National Opioids Settlements (Johnson & Johnson) Regarding State of Washington v. Johnson & Johnson, et al., King County Superior Ct. Cause No. 20-2-00184-8SEA (Crocker) Page 39
- B. Adoption of a Resolution Approving a Contract with Baumwelt for the Givens Park Sport Court Remodel Project (Ryan) Page 85
- C. Approval of Change Orders No. 1 and 2 to Contract No. 059-23 with Stellar J Corporation for the Marina Pump Station (Ryan) Page 122

8. DISCUSSION ITEMS (No Action to be Taken)

- A. Sewer and Water Projects and Funding (J. Brown/Crocker)
- B. Bethel Phase I, Preliminary Plans (Ryan)

9. REPORTS OF COUNCIL COMMITTEES

10. REPORT OF MAYOR

11. REPORT OF DEPARTMENT HEADS

12. CITIZEN COMMENTS ON ANY ITEM

*(This is an opportunity for citizens to address the City Council on any items that are not associated with a Public Hearing on this agenda. Comments are limited to **3 minutes**. Please approach the podium or raise your Zoom hand if viewing remotely and wait to be recognized by the Mayor. Then, state your name for the official record. If you are attending remotely by Zoom via telephone, enter *9 from your keypad to raise your hand.)*

13. CITY COUNCIL GOOD OF THE ORDER

14. EXECUTIVE SESSION: Pursuant to RCW 42.30.110, the City Council WILL hold an executive session. The topic(s) and the session duration will be announced prior to the executive session.

15. ADJOURNMENT

CITY COUNCIL ADVISORY COMMITTEES

(Three council members serve on the committee with staff to make collaborative recommendations about work product. Staff then prepares the items for full Council consideration based on the Committee's discussion.)

STANDING COMMITTEE	Date & Time	Location
Economic Development and Tourism	April 8, 2024; 2pm – 2 nd Monday of the month	Remote Access
Utilities	March 12, 2024; 5:00pm – 2 nd Tuesday of the month	Remote Access
Finance	March 19, 2024; 4:00pm – 3 rd Tuesday of the month	Remote Access
Transportation	March 26, 2024; 4:30pm- 4 th Tuesday of the month	Remote Access
Land Use	March 20; 2024; 4:30pm – 3 rd Wednesday of the month	Remote Access
Lodging Tax Advisory	TBD 2024	Remote Access

Sewer Advisory	March 19, 2024, 3PM	West Sound Utility District
Outside Agency Committees	Varies	Varies

ADA Requirements: In compliance with the Americans with Disabilities Act, if you need accommodations to participate in this meeting, please contact the City Clerk's office at (360) 876-4407. Notification at least 48 hours in advance of meeting will enable the City to make arrangements to assure accessibility to this meeting.

REMINDER: Please silence all electronic devices while City Council is in session.

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Robert (Rob) Putaansuu Mayor Administrative Official	Mark Trenary Councilmember Position 1 Finance Committee (Chair) Transportation Committee KRCC PSRC-alt	Jay Rosapepe Councilmember Position 2 Utilities/Sewer Advisory Committee Land Use Committee KEDA-alt	Scott Diener Councilmember Position 3 Land Use Committee Transportation Committee Kitsap Public Health District
Eric Worden Councilmember Position 4 Land Use Committee Utilities/Sewer Advisory Committee KRCC-alt	Heidi Fenton Councilmember Position 5 Utilities/Sewer Advisory Committee E/D & Tourism Committee Transportation Committee	Fred Chang Councilmember Position 6 (Mayor Pro-Tempore) E/D & Tourism Committee Finance Committee	John Morrissey Councilmember Position At-Large Finance Committee E/D & Tourism Committee (Chair) Lodging Tax, Chair Kitsap Economic Development Alliance
Brandy Wallace, MMC, CPRO City Clerk Matt Brown Police Chief	Debbie Lund, CEBS SPHR SHRM-SCP Human Resources Director Nicholas Bond, AICP Community Development Director	Noah Crocker, M.B.A. Finance Director Denis Ryan, CPWP-M, CPRP Public Works Director	Tim Drury Municipal Court Judge



Agenda Staff Report

Agenda Item No.: Consent Agenda 4C

Meeting Date: March 12, 2024

Subject: Adoption of a Resolution Approving an Agreement with the WA State Department of Ecology for FY2023-2025 Stormwater Capacity Grant and Ratifying the Mayor's Signature

Prepared By: Denis Ryan
Public Works Director

Summary: The City of Port Orchard's Public Works Department applied for a Water Quality Stormwater Capacity Grant offered by the Washington State Department of Ecology (Ecology) under Ecology's FY2023-2025 Biennial Stormwater Capacity Grants Program. The City was notified that it has been awarded funding in the amount of \$130,000, from the FY2023-2025 Biennial Stormwater Capacity Grants Program. This State funded grant requires no local matching funds. Staff anticipates using the grant funding to fund Stormwater operation and maintenance program activities.

Recommendation: Staff recommends that City Council adopt a Resolution, thereby approving and ratifying the Mayor's execution of an Agreement with the Washington State Department of Ecology for Water Quality Stormwater Capacity Grant funding Agreement No. WQSWCAP-2325-PoOrPW-00057, in the amount of \$130,000.

Relationship to Comprehensive Plan: Ch 7 - Utilities

Motion for consideration: I move to adopt a Resolution, approving and ratifying the Mayor's execution of an Agreement with the Washington State Department of Ecology for Water Quality Stormwater Capacity Grant funding Agreement No. WQSWCAP-2325-PoOrPW-00057, in the amount of \$130,000.

Fiscal Impact: Funding is 100% grant funded; no match required.

Alternatives: Do not authorize and provide alternative direction.

Attachments: Resolution
Ecology Agreement WQSWCAP-2325-PoOrPW-00057

RESOLUTION NO. **

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE WASHINGTON STATE DEPARTMENT OF ECOLOGY THEREBY ACCEPTING A CAPACITY GRANT FROM THE FY2023-2025 BIENNIAL STORMWATER CAPACITY GRANTS PROGRAM.

WHEREAS, the City of Port Orchard's Public Works Department applied for a Water Quality Stormwater Capacity Grant offered by the Washington State Department of Ecology (Ecology) under Ecology's FY2023-2025 Biennial Stormwater Capacity Grants Program; and

WHEREAS, the City has been notified that Ecology had awarded funding in the amount of \$130,000, from the FY2023-2025 Biennial Stormwater Capacity Grants Program; and

WHEREAS, this is a State funded grant which requires no local matching funds; and

WHEREAS, the Port Orchard City Council has determined it to be in the best interest of the City to accept the Capacity grant funding from Ecology; now, therefore,

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

THAT: It is the intent of the Port Orchard City Council that the recitals set forth above are hereby adopted and incorporated as findings in support of this Resolution.

THAT: The City Council authorizes the Mayor to Execute the Agreement with the Washington State Department of Ecology for Water Quality Stormwater Capacity Grant funding, attached hereto as Exhibit A and incorporated herein by this reference.

THAT: The Resolution shall take full force and effect upon passage and signatures hereon.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 12th day of March 2024.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

Agreement No. WQSWCAP-2325-PoOrPW-00057**WATER QUALITY STORMWATER CAPACITY AGREEMENT****BETWEEN****THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY****AND****CITY OF PORT ORCHARD**

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and City of Port Orchard, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	2023-2025 Biennial Stormwater Capacity Grants
Total Cost:	\$130,000.00
Total Eligible Cost:	\$130,000.00
Ecology Share:	\$130,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2023
The Expiration Date of this Agreement is no later than:	03/31/2025
Project Type:	Capacity Grant

Project Short Description:

This project will assist Phase I and II Permittees in implementation or management of municipal stormwater programs.

Project Long Description:

N/A

Overall Goal:

This project will improve water quality in the State of Washington by reducing stormwater pollutants discharged to state water bodies.

Agreement No: WQSWCAP-2325-PoOrPW-00057
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Port Orchard

RECIPIENT INFORMATION

Organization Name: City of Port Orchard

Federal Tax ID: 91-6001487
UEI Number: EA6VQLNKKKF7

Mailing Address: 216 Prospect Street
Port Orchard, WA 98366

Organization Email: kcain@portorchardwa.gov

Contacts

Project Manager	Jacki Brown Utility Manager 216 Prospect Street Port Orchard, Washington 98366 Email: jbrown@cityofportorchard.us Phone: (360) 876-4991
Billing Contact	Kathy Cain Admin Asst III 321 E. Fifth St Port Angeles, Washington 98362 Email: kcain@portorchardwa.gov Phone: (360) 417-4750
Authorized Signatory	Robert B Putaansuu Mayor 216 Prospect Street Port Orchard, Washington 98366 Email: rputaansuu@cityofportorchard.us Phone: (360) 876-4991

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Water Quality
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Water Quality
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	<div>Kyle Graunke</div> <div>PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 628-3890</div>
Financial Manager	<div>Kyle Graunke</div> <div>PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 628-3890</div>

Agreement No: WQSWCAP-2325-PoOrPW-00057
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Port Orchard

SCOPE OF WORK

Task Number: 1 **Task Cost:** \$4,500.00

Task Title: Project Administration/Management

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: Maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and the EAGL (Ecology Administration of Grants and Loans) recipient closeout report (including photos, if applicable). In the event that the RECIPIENT elects to use a contractor to complete project elements, the RECIPIENT shall retain responsibility for the oversight and management of this funding agreement.

B. The RECIPIENT shall keep documentation that demonstrates the project is in compliance with applicable procurement, contracting, and interlocal agreement requirements; permitting requirements, including application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items. This documentation shall be available upon request.

C. The RECIPIENT shall maintain effective communication with ECOLOGY and maintain up-to-date staff contact information in the EAGL system. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY's grant and loan administrative requirements.

Task Expected Outcome:

- * Timely and complete submittal of requests for reimbursement, quarterly progress reports, and Recipient Closeout Report.
- * Properly maintained project documentation.

Recipient Task Coordinator: Zack Holt

Project Administration/Management

Deliverables

Number	Description	Due Date
1.1	Progress Reports that include descriptions of work accomplished, project challenges or changes in the project schedule. Submitted at least quarterly.	
1.2	Recipient Closeout Report (EAGL Form).	

Agreement No: WQSWCAP-2325-PoOrPW-00057
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Port Orchard

SCOPE OF WORK

Task Number: 2 Task Cost: \$125,500.00

Task Title: Permit Implementation

Task Description:

Conduct work related to implementation of municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit requirements. If the RECIPIENT is out of compliance with the Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) permit, the RECIPIENT will use funds to attain compliance where applicable. The following is a list of elements projects may include:

- 1) Public education and outreach activities, including stewardship activities.
- 2) Public involvement and participation activities.
- 3) Illicit discharge detection and elimination (IDDE) program activities, including:
 - a) Mapping of municipal separate storm sewer systems (MS4s).
 - b) Staff training.
 - c) Activities to identify and remove illicit stormwater discharges.
 - d) Field screening procedures.
 - e) Complaint hotline database or tracking system improvements.
- 4) Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
 - a) Development of an ordinance and associated technical manual or update of applicable codes.
 - b) Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
 - c) Training for plan review or inspection staff.
 - d) Participation in applicable watershed planning effort.
- 5) Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
 - a) Inspecting and/or maintaining the MS4 infrastructure.
 - b) Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
- 6) Annual reporting activities.
- 7) Establishing and refining stormwater utilities, including stable rate structures.
- 8) Water quality monitoring to implement permit requirements for a Water Cleanup Plan (Total Maximum Daily Load (TMDL)). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan (QAPP) that ECOLOGY approves prior to awarding funding for monitoring. Monitoring must directly meet a Phase I or II permit requirement.
- 9) Structural stormwater controls program activities (Phase I permit requirement).
- 10) Source control for existing development (Phase I permit requirement), including:
 - a) Inventory and inspection program.
 - b) Technical assistance and enforcement.
 - c) Staff training.
- 11) Equipment purchases that result directly in improved permit compliance. Equipment purchases must be specific to implementing a permit requirement (such as a vector truck) rather than general use (such as a pick-up truck). Equipment purchases over \$5,000.00 must be pre-approved by ECOLOGY.

Documentation of all tasks completed is required. Documentation may include field reports, dates and number of inspections

Agreement No: WQSWCAP-2325-PoOrPW-00057
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Port Orchard

conducted, dates of trainings held and participant lists, number of illicit discharges investigated and removed, summaries of planning, stormwater utility or procedural updates, annual reports, copies of approved QAPPs, summaries of structural or source control activities, summaries of how equipment purchases have increased or improved permit compliance.

Ineligible expenses include capital construction projects, incentives or give-a-ways, grant application preparation, Technology Assessment Protocol - Ecology (TAPE) review for proprietary treatment systems, or tasks that do not support Municipal Stormwater Permit implementation.

Task Goal Statement:

This task will improve water quality in the State of Washington by reducing the pollutants delivered by stormwater to lakes, streams, and the Puget Sound by implementing measures required by Phase I and II NPDES permits.

Task Expected Outcome:

RECIPIENTS will implement measures required by Phase I and II NPDES permits.

Recipient Task Coordinator: Zack Holt

Permit Implementation

Deliverables

Number	Description	Due Date
2.1	Documentation of tasks completed	

BUDGET

Funding Distribution EG240306

NOTE: The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.

Funding Title: 2023-25 Stormwater Capacity Grant

Funding Effective Date: 07/01/2023

Funding Type: Grant

Funding Expiration Date: 03/31/2025

Funding Source:

Title: Model Toxics Control Stormwater Account (MTCSA)

Fund: FD

Type: State

Funding Source %: 100%

Description: MTCSA

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? No

2023-25 Stormwater Capacity Grant	Task Total
Grant and Loan Administration	\$ 4,500.00
Permit Implementation	\$ 125,500.00

Total: \$ 130,000.00

Agreement No: WQSWCAP-2325-PoOrPW-00057
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Port Orchard

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
2023-25 Stormwater Capacity Grant	0.00 %	\$ 0.00	\$ 130,000.00	\$ 130,000.00
Total		\$ 0.00	\$ 130,000.00	\$ 130,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.

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Recipient Name: City of Port Orchard

7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING

REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$30,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required Unique Entity Identifier in www.sam.gov <http://www.sam.gov> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov>.

For more details on FFATA requirements, see www.fsrs.gov <http://www.fsrs.gov>.

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](https://sam.gov/SAM) <https://sam.gov/SAM> exclusion list.

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Agreement No: WQSWCAP-2325-PoOrPW-00057
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Port Orchard

GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

07/01/2023 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/2301002.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
 - * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.
 - For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).

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b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
- Make the IDP readily available to anyone working at the project site.
- Discuss the IDP with staff, volunteers, and contractors working at the project site.
- Implement the IDP when Cultural Resources or human remains are found at the project site.

c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.

- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.

d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.

- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.

e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

7. COMPENSATION

a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.

b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.

c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.

d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.

e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.

f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.

g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk.

To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.

h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.

i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and

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other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review. The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such

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decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

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16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to

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ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.

b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.

c) RECIPIENT shall use ECOLOGY's provided progress report format.

d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.

e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines.

RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.

b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.

2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

22. RECORDS, AUDITS, AND INSPECTIONS

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RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
 - b) Be kept in a common file to facilitate audits and inspections.
 - c) Clearly indicate total receipts and expenditures related to this Agreement.
 - d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.
- RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

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27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,

<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments.

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If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

End of General Terms and Conditions



Agenda Staff Report

Agenda Item No.: Consent Agenda 4D

Meeting Date: March 12, 2024

Subject: Adoption of a Resolution Approving an
Interlocal Agreement with Kitsap County
Public Works Regarding Traffic Signal, Street
Lights Repair and Maintenance

Prepared By: Denis Ryan
Public Works Director

Summary: The City of Port Orchard owns and operates electric streetlights, street light systems, traffic signals, traffic control devices and flashers situated within the City of Port Orchard. These require specialized repair and maintenance. Kitsap County has personnel skilled in maintaining this equipment. The City had an Interlocal agreement with Kitsap County KC-562-21 (Port Orchard Contract C092-21) for these services which reached the end of its duration. This new Agreement would continue the longstanding cooperation between the Parties whereby the County will provide maintenance services for the City's equipment as described in the Agreement. For financial consideration, a monthly fee of Three Hundred Eighty five dollars and eighty cents (\$385.80) for each signal shall be paid, along with Time and Materials compensation for the repair, maintenance and replacement of all other Traffic Control Devices from a \$7,500.00 Reserve Fund (to be replenished as needed.)

Recommendation: Staff recommends that the City Council adopt a Resolution authorizing the Mayor to execute an Interlocal Agreement with Kitsap County Public Works for traffic signal, street lights repair and maintenance.

Relationship to Comprehensive Plan: Chapter 8 – Transportation

Motion for consideration: I move to adopt a Resolution authorizing the Mayor to execute an Interlocal Agreement with Kitsap County Public Works for traffic signal, street lights repair and maintenance in a form approved by the City Attorney.

Fiscal Impact: This service is budgeted in the 2023-2024 Budget in GL Code 002.05.542.64.40

Alternatives: Do not approve and provide further guidance.

Attachments: Resolution
Contract

RESOLUTION NO. **

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN KITSAP COUNTY, AND THE CITY OF PORT ORCHARD FOR TRAFFIC SIGNAL, STREET LIGHTS REPAIR AND MAINTENANCE.

WHEREAS, The City of Port Orchard owns and operates electric streetlights, street light systems, traffic signals, traffic control devices and flashers situated within the City of Port Orchard that require specialized repair and maintenance; and

WHEREAS, Kitsap County has personnel skilled in maintaining streetlights, street light systems, traffic signals, traffic control devices, and flashers; and

WHEREAS, the City has had an Interlocal agreement with Kitsap County KC-562-21 (Port Orchard Contract C092-21) for these services which has reached the end of its duration; and

WHEREAS, This Agreement would continue the longstanding cooperation between the Parties whereby the County will provide maintenance services for the City's equipment as described in the Agreement; and

WHEREAS, the City Council deems it to be in the best interest of the City and its residents to enter into the attached Agreement with Kitsap County; now, therefore,

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

THAT: It is the intent of the Port Orchard City Council that the recitals set forth above are hereby adopted and incorporated as findings in support of this Resolution.

THAT: The City Council approves of and authorizes the Mayor to execute the Interlocal Agreement with Kitsap County, attached hereto as Exhibit A and incorporated herein by this reference, and in a form approved by the City Attorney.

THAT: The Resolution shall take full force and effect upon passage and signatures hereon.

THAT: Pursuant to RCW 39.34.040, once this Agreement has been executed by both Port Orchard and WSDOT, the City Clerk is directed to post a copy of this Agreement on the City's website as required by law.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 12th day of March 2024.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

**INTERLOCAL AGREEMENT KC-160-24 BETWEEN
KITSAP COUNTY AND THE CITY OF PORT ORCHARD**

FOR

**REIMBURSABLE WORK PERFORMED BY KITSAP
COUNTY PUBLIC WORKS**

This Interlocal Agreement is made and entered into pursuant to the provisions of Chapter 39.34 RCW by and between Kitsap County (hereinafter the "COUNTY") and the City of Port Orchard (hereinafter the "CITY"), collectively the "Parties."

RECITALS

A. WHEREAS, the City of Port Orchard owns and operates electric streetlights, street light systems, traffic signals, traffic control devices and flashers situated within the City of Port Orchard;

B. WHEREAS, Kitsap County has personnel skilled in maintaining streetlights, street light systems, traffic signals, traffic control devices, and flashers, and Kitsap County wants to provide maintenance services to the street lighting and traffic control equipment owned and operated by the City of Port Orchard;

AGREEMENT

NOW.THEREFORE in consideration for the foregoing recitals, which are incorporated herein by reference, and the mutual promises and covenants, contained herein, it is hereby agreed as follows:

Section 1. PURPOSE.

This Agreement continues the longstanding cooperation between the Parties whereby the COUNTY will provide maintenance services for traffic signals, as identified in Exhibit A, (hereinafter "Traffic Signals"), incorporated in full by this reference. The COUNTY will repair radar speed signs, lighted crosswalk and warning flashers located in the CITY, (hereinafter "Traffic Control Devices") as identified in EXHIBIT Band incorporated in full by this reference. The COUNTY will repair the Traffic Control Devices on a time and materials basis and only when expressly requested by the CITY. The Parties may amend the number and locations of Traffic Signals and Traffic Control Devices from time to time and may revise the Exhibits on an annual basis.

Section 2. TERM.

This Agreement shall become effective on January 1, 2024, for a two (2) year term ending December 31, 2026, with two one-year options to renew following prior notice and written consent of the parties.

Section 3. CONSIDERATION.

Commencing January 1, 2024, the CITY shall pay the COUNTY three hundred eighty- five dollars and eighty cents (\$385.80) per month for each Traffic Signal. Such payment shall apply to the first year of this¹s Agreement and Is payable to the COUNTY in quarterly installments due thirty (30) days after receipt of an invoice from the COUNTY ("Base Year"). The CITY shall pay the COUNTY on a time and materials basis for repair of Traffic Control Devices.

In the event the CITY adds additional Traffic Signals requiring maintenance, the CITY shall pay the sum of three hundred eighty-five dollars and eighty cents (\$385.80) per month per Traffic Signal which shall be paid quarterly thirty (30) days after receipt of an invoice and pro-rated to

the date of activation.

At the beginning of each successive year thereafter, all charges shall automatically adjust in an amount equal to the percentage change in the "all items" category of the Consumer Price Index for All Urban Consumers ("CPI-U") as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the Seattle-Tacoma-Bellevue metropolitan statistical area for the month of June. If at any time during the term of this Agreement the practice of computing the CPI-U is abandoned or altered by the U.S. Department of labor, this Agreement shall be revised by mutual agreement of the parties to identify a substitute standard.

Section 4. ORGANIZATION. No separate legal or administrative entity is created by this Agreement nor do the Parties intend to create through this Agreement a separate legal or administrative entity subject to suit.

Section 5. ACQUISITION OF PROPERTY. Any tools, equipment, vehicles or other personal property owned or acquired by the County with its own funds, and used in providing services under this Agreement shall remain the personal property of the County. The County may repair or replace County owned personal property at its sole discretion providing such expenditures are within the then applicable County budget.

Section 6. SERVICES PROVIDED.

A. This Agreement shall cover the annual maintenance of all Traffic Signals and Traffic Control Devices described in the Agreement. In addition, the CITY shall create a reserve which shall be administered by the COUNTY in the amount of seven thousand five hundred dollars (\$7,500.00) (the "Reserve"). The Reserve shall be used to cover the cost of time and materials for the repairs not included in the annual maintenance. The CITY shall replenish the Reserve immediately upon receipt of notice from the COUNTY that the Reserve has become exhausted such that the Reserve is restored to \$7,500.00. Once the Reserve has been exhausted, the CITY shall pay additional cost on a time and materials basis for work requested by the CITY. The CITY shall be required to replace any major piece of equipment with a cost of over \$1,000.00, and upon the CITY's request, the COUNTY will assist the CITY in the ordering and acquisition of such replacement equipment.

B. The COUNTY shall provide annual maintenance of the Traffic Signals listed in EXHIBIT A. The annual maintenance will consist of a complete inspection of the traffic signal, conflict monitor testing, cleaning the cabinet and electronic components, and complete overhead inspection and cleaning. The COUNTY will perform a monthly visual operation analysis of the signal covered by the contract to detect any malfunctions and failures.

C. Annual maintenance does not include signal coordination and timing, locates or consulting services. The City shall be responsible for signal coordination and timing, locates and obtaining consulting services.

D. The CITY may provide LED modules to change out lamps or outdated LEDs at the CITY's sole expense. The COUNTY will provide labor at no extra cost while performing retrofit heads to LEDs, but conversion replacement LEDs shall be conducted at the CITY's expense.

E. The COUNTY shall coordinate and inspect the replacement and installation of failed traffic signal loops by a contractor when requested to do so by the CITY.

This is part of the County's role as consultant as described below in subsection F below, and will be charged against the Reserve.

F. At the request of the City, the County at its discretion may provide services to the City as a construction management consultant for the purpose of assisting in the design and inspection of new traffic signal and lighting systems. Consulting services are not considered annual maintenance and shall be charged against the Reserve.

G. In the event that the repair Reserve has been exhausted, and the County provides services before the Reserve is replenished, the City shall immediately reimburse the County on a time and

materials basis.

Section 7. EQUIPMENT.

The COUNTY shall provide services described in Section 6 for the street lighting, and traffic signal equipment located within the CITY. The equipment includes and is limited to:

- A. Traffic Signal Controllers
- B. Load Switches
- C. Detection Equipment
- D. Conflict Monitor Units
- E. Pre-exemption Equipment
- F. Auxiliary Cabinet Wiring
- G. Traffic Signal Loops
- H. Traffic Signal Circuit Wiring
- I. Signal Heads, Pedestrian Heads, LEDs
- J. Street Lighting Equipment
- K. Street Light Circuit Wiring
- L. Traffic Signal Timing: install and maintain City provided plans from data provided by City.
- M. Flashers, school flashers, and fire station flashers.

Section 8. TIME OF SERVICE.

The COUNTY shall provide additional coverage 24 hours a day, 7 days a week for all Traffic Signal failures and malfunctions, and Traffic Control Devices, including and not limited to damage caused to traffic signals by traffic accidents and weather conditions. The CITY shall have the option at the CITY's sole expense to secure services from another agency for emergency response situations if the COUNTY is unable to respond in a timely manner. Failures, malfunctions and damages shall not be considered annual maintenance and will be charged against the Reserve.

Section 9. TEMPORARY TRAFFIC CONTROL. When requesting County services under this Agreement for emergency repair, the City shall secure the site with temporary traffic control ("TTC") for the safety of the travelling public and County staff. The City shall follow then current Manual on Uniform Traffic Control Devices Manual ("MUTCD") standards for temporary traffic control. The City may also at its discretion request the assistance of law enforcement to secure the site.

Section 10. INDEMNIFICATION.

To the fullest extent allowed by law, the City shall defend, indemnify and hold harmless at the City's sole expense, Kitsap County, its elected and appointed officers, officials, employees, and agents from and against any and all claims, injuries, damages, liabilities and costs including but not limited to, attorney fees and litigation costs, arising out of or in connection with the this Agreement¹, whether the demand, loss or claim is due to the negligence of the County, its elected and appointed officials, officers, employees, agents, or third parties except that the City shall not be liable for injury or damages caused by the sole negligence or willful misconduct of the County, its elected or appointed officials, officers, employees, agents. Neither party assumes responsibility to the other party for the consequences of any act or omission of any person, firm or corporation not a party to this Agreement.

The COUNTY accepts no responsibility for the performance or suitability of any good or service to be provided by third party vendors.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE

INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE PARTIES' WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Agreement.

Section 11. TERMINATION.

This Agreement may be terminated by either party, with or without cause, with sixty (60) days prior written notice to the other. In the event of such termination, the County shall be compensated for any outstanding actual costs incurred by the County up to the time of notification of contract termination.

Section 12. GENERAL PROVISIONS.

12.1 Governing Law and Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any judicial action to resolve disputes arising out of this Agreement shall be brought in Kitsap County Superior Court. In the event of litigation to enforce any of the terms or provisions herein, each party shall pay all its own costs and attorney's fees.

12.2 Amendment. This Agreement may be amended from time to time as deemed appropriate by the Parties, provided, any such amendment shall become effective only after it has been adopted in writing by the authorized representatives of the Parties.

12.3 Entire Agreement. This Agreement contains the entire understanding of the Parties and supersedes any other agreement or understanding between the Parties relating to the subject matter of this Agreement.

12.3 Compliance with Laws. The Parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

12.4 Severability. The provisions of this Agreement are severable. Any term or condition of this Agreement or application thereof deemed to be illegal, invalid or unenforceable, in whole or in part, shall not affect any other term or condition of the Agreement and the Parties' rights and obligations will be construed and enforced as if the Agreement did not contain the particular provision. Implied Contract Terms. Each provision of law and any terms required by law to be in the Agreement are made a part of the Agreement as if fully stated in it.

12.5 Assignment. The rights or obligations under this Agreement, and any claims arising thereunder, are not assignable or delegable, in whole or in part, by any party to this Agreement.

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

12.7 Headings. Headings of this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.8 Recording. This Agreement shall be recorded with the Kitsap County Auditor's Office in compliance with RCW 39'.34.040.

12.9 Further Acts. Each party shall execute and deliver all such documents and perform all

such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

12.10 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, with each counterpart deemed an original.

12.11 Authorization. Each person signing below warrants that they have full power and authority to execute this Agreement on behalf of the party for whom they sign.

12.12 No Third-Party Beneficiary. No provision of this Agreement is intended to, nor shall it be construed to, create any third- party beneficiary or provide any rights or benefits to any person or entity other than the COUNTY and the CITY.

12.13 Administration: No Separate Entity Created. The CITY Public Works Director shall serve as the administrator of this Agreement. No separate legal entity is formed by this Agreement.

12.14 Ownership and Disposition of Property. Each party shall retain ownership of all real and personal property used in connection with this Agreement.

12.15 No Employment Relationship Created. The parties agree that nothing in this Agreement shall be construed to create an employment relationship between any party and any employee, agent, representative or contractor of the other party.

Section 13. NOTICE.

All communications and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the Parties at the addresses listed below by registered or 1st class mail, or by personal service, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

City of Port Orchard:
City Hall
216 Prospect Street
Port Orchard, WA 98366

County:
Christine DeGeus
614 Division St. MS-26
Port Orchard, WA 98366

APPROVED:

KITSAP COUNTY

BOARD OF COUNTY COMMISSIONERS

CITY OF PORT ORCHARD
ROBERT PUTAANSUU, Mayor

KATHERINE T. WALTERS, CHAIR

Brandy Rinearson, MMC, City Clerk

CHRISTINE ROLFES, Commissioner

CHARLOTTE GARRIDO, Commissioner

EXHIBIT A
TRAFFIC SIGNAL INVENTORY

LOCATION	#
Tremont & Sidney	1
Tremont & Port Orchard Blvd.	1
Tremont & Pottery (Flasher Controlled Roundabout)	1
Sidney & Sedgwick	1
Bethel & Lund	1
Bethel & Wal-Mart	1

EXHIBIT B

TRAFFIC CONTROL DEVICES

SOLAR POWERED SPEED RADAR SIGNS	#
SW Sedgwick Rd Speed Limit Radar Sign	1
McCormick Woods Dr. SW Speed Limit Radar Sign	1
SE Lund Ave Speed Limit Radar Sign	1
Beach Dr E Speed Limit Radar Sign	1

FLASHERS	#
Sidney Glen Elementary School Flashers	2
South Kitsap High School Flashers	2
Cedar Heights Junior High School Flashers	4

RECTANGULAR RAPID FLASHING BEACONS RRFB	#
Tremont St W between S. Kitsa Blvd & Potte Ave	3



1. CALL TO ORDER AND ROLL CALL

Mayor Putaansuu called the meeting to order at 6:31 p.m.

Roll call was taken by the City Clerk as follows:

Mayor Pro-Tem Chang	Present
Councilmember Diener	Present
Councilmember Fenton	Present
Councilmember Morrissey	Present
Councilmember Rosapepe	Present
Councilmember Trenary	Present
Councilmember Worden	Present
Mayor Putaansuu	Present via Zoom

Staff present: Public Works Director Ryan, Community Development Director Bond, Finance Director Crocker, Police Chief Brown, City Clerk Wallace, and Deputy City Clerk Floyd.

Staff present via Zoom: City Attorney Reitan.

The meeting streamed live on YouTube.

A. PLEDGE OF ALLEGIANCE (Time Stamp 00:26)

Mayor Pro-Tem Chang led the audience and Council in the Pledge of Allegiance.

2. APPROVAL OF AGENDA (Time Stamp: 00:53)

MOTION: By Councilmember Rosapepe, seconded by Councilmember Trenary, to approve the agenda as presented.

The motion carried.

3. CITIZENS COMMENTS ON AGENDA ITEMS (Time Stamp 01:26)

Rick Feeney introduced himself to Council, stating he is on the Kitsap County Non-Motorized Committee, part of West Sound Cycling Club, and the lead steward of the South Kitsap Regional Park. He explained he is available if needed for the Pottery Avenue Non-Motorized project.

4. CONSENT AGENDA (Time Stamp: 03:40)

- A.** Approval of Voucher Nos. 87326 through 87359 and 87366 through 87416 including bank drafts in the amount of \$296,862.63 and EFT's in the amount of \$2,023,071.93 totaling \$2,319,934.56.
- B.** Approval of Payroll Check Nos. 87360 through 87365 including bank drafts and EFT's in the amount of \$265,500.18 and Direct Deposits in the amount of \$252,14.71 totaling \$517,624.89.
- C.** Adoption of a Resolution Approving Amendment No. 1 to Contract No. 034-23 with 4Leaf, Inc. for Building/Fire Code Plan Review and Building/Fire Code Inspection Services **(Resolution No. 009-24)**
- D.** Adoption of a Resolution Approving Amendment No. 3 to Contract No. 094-20 with Grette Associates LLC for On-Call Consulting Services **(Resolution No. 010-24)**
- E.** Adoption of a Resolution Approving a Tree Conservation Easement with JL Group, LLC **(Resolution No. 011-24)**
- F.** Adoption of a Resolution Approving the Purchase of Equipment for the Equipment Rental and Revolving Fund 500 **(Resolution No. 012-24 and Purchase Order No. 013-24)**
- G.** Approval of the February 13, 2024, City Council Regular Meeting Minutes

MOTION: By Councilmember Morrissey, seconded by Councilmember Diener, to approve the Consent Agenda as presented.

The motion carried.

5. PRESENTATION

There were no presentations.

6. PUBLIC HEARING

There were no public hearings.

7. BUSINESS ITEMS

- A. Adoption of a Resolution Approving a Contract with Washington State Public Works Board for the Bay Street Lift Station Replacement Project and Ratifying the Mayor's Signature (Time Stamp 04:10)**

MOTION: By Councilmember Morrissey, seconded by Councilmember Rosapepe, to adopt a resolution, approving and ratifying the Mayor's execution of a Contract with the Washington State Public Works Board for the Sewer Lift Station Controls Upgrades Project in the loan/grant amount of \$1,000,000.

The motion carried.

(Resolution No. 013-24 and Contract No. 028-24)

- B. Adoption of a Resolution Approving a Contract with Miles Resources, LLC for the Pottery Ave Non-Motorized Improvements Project (Time Stamp: 07:04)**

MOTION: By Councilmember Worden, seconded by Councilmember Fenton, to adopt a resolution authorizing the Mayor to execute a contract in a form acceptable to the City Attorney with Miles Resources, LLC for Schedules A and B for the Pottery Ave Non-Motorized Improvements Project in the amount of \$2,009,727.61 (applicable tax included).

The motion carried.

(Resolution No. 014-24 and Contract No. 029-24)

8. DISCUSSION ITEMS (No Action to be Taken)

A. Transportation Funding (Time Stamp 11:22)

Finance Director Crocker provided a presentation, 'Transportation Funding 101' which included discussion overview, local transportation funding options, motor vehicle fuel tax, Transportation Benefit District Fee, Transportation Benefit District (TBD) sales tax, Phase 1 Bethel Road-Salmonberry Road to Blueberry Road, Transportation Impact Fees, Real Estate Excise Tax (REET), other sources, Fund 002 City Streets-Operations, and Fund 304 Street Capital Construction.

Additional discussion included Tremont funding, Office of Finance Management (OFM) numbers and formula, and property tax.

9. REPORTS OF COUNCIL COMMITTEES (Time Stamp 33:30)

Councilmember Morrissey reported on the February 26th Economic and Development Tourism Committee meeting. The next meeting is scheduled for April 8th.

Councilmember Rosapepe, in connection with the Utilities Committee, spoke about a tour on March 5th at the Wastewater Treatment Facility. The first meeting is tentatively scheduled for March 12th. The Sewer Advisory Committee is scheduled to meet March 19th. He also reported on the February 21st Land Use Committee meeting.

Councilmember Trenary reported on the February 20th Finance Committee meeting. The next meeting is scheduled for March 19th.

Councilmember Diener reported on the February 27th Transportation Committee meeting.

10. REPORT OF THE MAYOR (Time Stamp: 54:18)

The Mayor reported on the following:

- Council Retreat.
- In accordance with Ordinance 008-20 "Delegating Authority to the Mayor for Creating and Modification of Job Descriptions," he reported his approval of the revised job description for the GIS/Asset Management Coordinator and Accounting Assistant II.
- Community Clean-Up Day.
- Survey for Police training facility in Kitsap County.

- Gave an update on the Association of Washington Cities Mayor's Exchange.
- Naloxone training.
- Read into record portions of minutes from 50, 75, and 95 years ago.

11. REPORT OF DEPARTMENT HEADS (Time Stamp 1:01:30)

Public Works Director Ryan reported on the City Hall renovations project, and they are also preparing for possible wild weather.

Finance Director Crocker reported on the Finance Department vacating the 2nd floor of City Hall.

Community Development Director Bond reported on an upcoming Comprehensive Plan Policy Workshop on February 28th.

Police Chief Brown reported on 2023 statistics, workload, and recruitment.

City Clerk Wallace reported that the Clerk's and HR office have been temporarily moved to the 3rd floor, and a quorum notice was sent out for the Comprehensive Plan Policy Workshop.

City Attorney Reitan spoke about the legalities of a quorum/special meeting.

12. CITIZEN COMMENTS ON ANY ITEM (Time Stamp 1:21:05)

Robert McGee said the new director of South Kitsap Chamber of Commerce is Cody Clark. He also voiced concerns about the 3-minute limit for citizen comments, and advocated for his friend who has property rights violations with the City.

Chuck Huck voiced concerns with the City and explained that people matter and we need good people.

13. EXECUTIVE SESSION

No executive session was held.

14. CITY COUNCIL GOOD OF THE ORDER (Time Stamp: 1:27:50)

Councilmember Rosapepe said while he was working elections at the county, there was a situation and he commended police and especially Sergeant Main for their involvement in deescalating the situation.

Councilmember Worden reminded everyone about Coffee with Council on March 2nd, and spoke about Anthony Lewis, a paraeducator at the high school, who was shot while on I-5.

Councilmember Morrissey stated there is a Go Fund Me for Mr. Lewis.

Councilmember Chang spoke about an upcoming invitation for a social, and also a Northwest Hospitality cleanup on Bethel Avenue.

15. ADJOURNMENT

MOTION: By Councilmember Rosapepe, seconded by Councilmember Morrissey, to adjourn the meeting.

The motion carried.

The meeting adjourned at 8:04 p.m. No other action was taken. Audio/Visual was successful.

Brandy Wallace, MMC, City Clerk

Robert Putaansuu, Mayor



Agenda Staff Report

Agenda Item No.: Business Item 7A

Meeting Date: March 12, 2024

Subject: Adoption of a Resolution for the New National Opioids Settlements (Johnson & Johnson) Regarding *State of Washington v. Johnson & Johnson, et al.*, King County Superior Ct. Cause No. 20-2-00184-8SEA

Prepared By: Jennifer Robertson, City Attorney's, 366922-005

Summary: In 2020, the State of Washington filed a lawsuit against Johnson & Johnson and other related entities that are manufacturers and distributors of prescription opioids. The State alleged that the manufacturers of prescription opioids grossly misrepresented the risks of long-term use of those drugs for persons with chronic pain, and distributors failed to properly monitor suspicious orders of those prescription drugs—all of which contributed to the current opioid epidemic. The State has reached a settlement in the amount of \$149.5 million, of which \$123.3 million will be dedicated to abating the opioid crisis in Washington. Counties, as well as cities in Washington with a population of over 10,000 will receive distributions of these funds if they sign onto the settlement. The first distribution will be \$61.67 million (half of the abatement amount), shortly after the sign-on process is complete. Port Orchard's allocation is 0.1009497162 percent. This amounts to approximately \$62,255.25 for the first distribution. The uses of the funds are limited by the settlement agreement primarily for purposes of responding to, dealing with, or helping people recover from the impacts of opioid addiction. (See Exhibit A of the One Washington Memorandum of Understanding between Washington Municipalities.)

To participate in this settlement, the City must opt in by executing a participation form by **May 11, 2024**. This will not infringe the City's ability to participate in future litigation or settlements as they may relate to other manufacturers or distributors.

Recommendation: Take action to authorize execution of participation form.

Relationship to Comprehensive Plan: N/A

Motion for consideration: Motion to authorize the Mayor to Execute the Participation Form for settlement of claims with the State of Washington for the *State of Washington v. Johnson & Johnson, et al.* matter (King County Superior Court Cause No. 20-2-00184-8SEA) and to authorize implementation of the same.

Fiscal Impact: This will result in Port Orchard receiving approximately \$62,255.25 for the first distribution of this settlement with a similar amount likely expected later.

Alternatives: N/A

Attachments: Press Release on Settlement, One Washington Memorandum of Understanding between Washington Municipalities, Settlement Participation Form (Exhibit A to Resolution)

RESOLUTION NO. **

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE THE PARTICIPATION FORM TO ALLOW PORT ORCHARD TO PARTICIPATE IN RECEIPT OF PROCEEDS FROM THE OPIOID LAWSUIT AGAINST JOHNSON & JOHNSON BROUGHT BY THE STATE OF WASHINGTON.

WHEREAS, In 2020, the State of Washington filed a lawsuit against Johnson & Johnson and other related entities that are manufacturers and distributors of prescription opioids. The State has reached a settlement in the amount of \$149.5 million, of which \$123.3 million will be dedicated to abating the opioid crisis in Washington; and

WHEREAS, Port Orchard is eligible to receive 0.1009497162 of the proceeds if it executes a participation form by May 11, 2024 to participate in the settlement; and

WHEREAS, the settlement funds may be used for opioid abatement, including opioid education, treatment and remediation of impacts that opioids have had in the Port Orchard community; and

WHEREAS, the City Council finds that it is in the public interest to have the City execute the participation form in order to secure more funds for use in responding to the opioid crisis consistent with the uses outlined in the settlement agreement with the State of Washington; now, therefore;

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

THAT: It is the intent of the Port Orchard City Council that the recitals set forth above are hereby adopted and incorporated as findings in support of this Resolution.

THAT: The Mayor is authorized to execute the Participation Form similar to the form attached hereto as Exhibit A, in a form acceptable to the City Attorney.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 12th day of March 2024.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

ONE WASHINGTON MEMORANDUM OF UNDERSTANDING BETWEEN WASHINGTON MUNICIPALITIES

Whereas, the people of the State of Washington and its communities have been harmed by entities within the Pharmaceutical Supply Chain who manufacture, distribute, and dispense prescription opioids;

Whereas, certain Local Governments, through their elected representatives and counsel, are engaged in litigation seeking to hold these entities within the Pharmaceutical Supply Chain of prescription opioids accountable for the damage they have caused to the Local Governments;

Whereas, Local Governments and elected officials share a common desire to abate and alleviate the impacts of harms caused by these entities within the Pharmaceutical Supply Chain throughout the State of Washington, and strive to ensure that principals of equity and equitable service delivery are factors considered in the allocation and use of Opioid Funds; and

Whereas, certain Local Governments engaged in litigation and the other cities and counties in Washington desire to agree on a form of allocation for Opioid Funds they receive from entities within the Pharmaceutical Supply Chain.

Now therefore, the Local Governments enter into this Memorandum of Understanding (“MOU”) relating to the allocation and use of the proceeds of Settlements described.

A. Definitions

As used in this MOU:

1. “Allocation Regions” are the same geographic areas as the existing nine (9) Washington State Accountable Community of Health (ACH) Regions and have the purpose described in Section C below.
2. “Approved Purpose(s)” shall mean the strategies specified and set forth in the Opioid Abatement Strategies attached as Exhibit A.
3. “Effective Date” shall mean the date on which a court of competent jurisdiction enters the first Settlement by order or consent decree. The Parties anticipate that more than one Settlement will be administered according to the terms of this MOU, but that the first entered Settlement will trigger allocation of Opioid Funds in accordance with Section B herein, and the formation of the Opioid Abatement Councils in Section C.
4. “Litigating Local Government(s)” shall mean Local Governments that filed suit against any Pharmaceutical Supply Chain Participant pertaining to the Opioid epidemic prior to September 1, 2020.

5. “Local Government(s)” shall mean all counties, cities, and towns within the geographic boundaries of the State of Washington.

6. “National Settlement Agreements” means the national opioid settlement agreements dated July 21, 2021 involving Johnson & Johnson, and distributors AmerisourceBergen, Cardinal Health and McKesson as well as their subsidiaries, affiliates, officers, and directors named in the National Settlement Agreements, including all amendments thereto.

7. “Opioid Funds” shall mean monetary amounts obtained through a Settlement as defined in this MOU.

8. “Opioid Abatement Council” shall have the meaning described in Section C below.

9. “Participating Local Government(s)” shall mean all counties, cities, and towns within the geographic boundaries of the State that have chosen to sign on to this MOU. The Participating Local Governments may be referred to separately in this MOU as “Participating Counties” and “Participating Cities and Towns” (or “Participating Cities or Towns,” as appropriate) or “Parties.”

10. “Pharmaceutical Supply Chain” shall mean the process and channels through which controlled substances are manufactured, marketed, promoted, distributed, and/or dispensed, including prescription opioids.

11. “Pharmaceutical Supply Chain Participant” shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, and/or dispensing of a prescription opioid, including any entity that has assisted in any of the above.

12. “Qualified Settlement Fund Account,” or “QSF Account,” shall mean an account set up as a qualified settlement fund, 468b fund, as authorized by Treasury Regulations 1.468B-1(c) (26 CFR §1.468B-1).

13. “Regional Agreements” shall mean the understanding reached by the Participating Local Counties and Cities within an Allocation Region governing the allocation, management, distribution of Opioid Funds within that Allocation Region.

14. “Settlement” shall mean the future negotiated resolution of legal or equitable claims against a Pharmaceutical Supply Chain Participant when that resolution has been jointly entered into by the Participating Local Governments. “Settlement” expressly does not include a plan of reorganization confirmed under Title 11 of the United States Code, irrespective of the extent to which Participating Local Governments vote in favor of or otherwise support such plan of reorganization.

15. “Trustee” shall mean an independent trustee who shall be responsible for the ministerial task of releasing Opioid Funds from a QSF account to Participating Local Governments as authorized herein and accounting for all payments into or out of the trust.

16. The “Washington State Accountable Communities of Health” or “ACH” shall mean the nine (9) regions described in Section C below.

B. Allocation of Settlement Proceeds for Approved Purposes

1. All Opioid Funds shall be held in a QSF and distributed by the Trustee, for the benefit of the Participating Local Governments, only in a manner consistent with this MOU. Distribution of Opioid Funds will be subject to the mechanisms for auditing and reporting set forth below to provide public accountability and transparency.

2. All Opioid Funds, regardless of allocation, shall be utilized pursuant to Approved Purposes as defined herein and set forth in Exhibit A. Compliance with this requirement shall be verified through reporting, as set out in this MOU.

3. The division of Opioid Funds shall first be allocated to Participating Counties based on the methodology utilized for the Negotiation Class in *In Re: National Prescription Opiate Litigation*, United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP. The allocation model uses three equally weighted factors: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. The allocation percentages that result from application of this methodology are set forth in the “County Total” line item in Exhibit B. In the event any county does not participate in this MOU, that county’s percentage share shall be reallocated proportionally amongst the Participating Counties by applying this same methodology to only the Participating Counties.

4. Allocation and distribution of Opioid Funds within each Participating County will be based on regional agreements as described in Section C.

C. Regional Agreements

1. For the purpose of this MOU, the regional structure for decision-making related to opioid fund allocation will be based upon the nine (9) pre-defined Washington State Accountable Community of Health Regions (Allocation Regions). Reference to these pre-defined regions is solely for the purpose of

drawing geographic boundaries to facilitate regional agreements for use of Opioid Funds. The Allocation Regions are as follows:

- King County (Single County Region)
- Pierce County (Single County Region)
- Olympic Community of Health Region (Clallam, Jefferson, and Kitsap Counties)
- Cascade Pacific Action Alliance Region (Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Thurston, and Wahkiakum Counties)
- North Sound Region (Island, San Juan, Skagit, Snohomish, and Whatcom Counties)
- SouthWest Region (Clark, Klickitat, and Skamania Counties)
- Greater Columbia Region (Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla, Whitman, and Yakima Counties)
- Spokane Region (Adams, Ferry, Lincoln, Pend Oreille, Spokane, and Stevens Counties)
- North Central Region (Chelan, Douglas, Grant, and Okanogan Counties)

2. Opioid Funds will be allocated, distributed and managed within each Allocation Region, as determined by its Regional Agreement as set forth below. If an Allocation Region does not have a Regional Agreement enumerated in this MOU, and does not subsequently adopt a Regional Agreement per Section C.5, the default mechanism for allocation, distribution and management of Opioid Funds described in Section C.4.a will apply. Each Allocation Region must have an OAC whose composition and responsibilities shall be defined by Regional Agreement or as set forth in Section C.4.

3. King County's Regional Agreement is reflected in Exhibit C to this MOU.

4. All other Allocation Regions that have not specified a Regional Agreement for allocating, distributing and managing Opioid Funds, will apply the following default methodology:

- a. Opioid Funds shall be allocated within each Allocation Region by taking the allocation for a Participating County from Exhibit B and apportioning those funds between that Participating County and its Participating Cities and Towns. Exhibit B also sets forth the allocation to the Participating Counties and the Participating Cities or Towns within the Counties based on a default allocation formula. As set forth above in Section B.3, to determine the allocation to a county, this formula utilizes: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. To determine the allocation within a county, the formula utilizes historical federal data showing how the specific Counties and the Cities and Towns within the Counties have

made opioids epidemic-related expenditures in the past. This is the same methodology used in the National Settlement Agreements for county and intra-county allocations. A Participating County, and the Cities and Towns within it may enter into a separate intra-county allocation agreement to modify how the Opioid Funds are allocated amongst themselves, provided the modification is in writing and agreed to by all Participating Local Governments in the County. Such an agreement shall not modify any of the other terms or requirements of this MOU.

b. 10% of the Opioid Funds received by the Region will be reserved, on an annual basis, for administrative costs related to the OAC. The OAC will provide an annual accounting for actual costs and any reserved funds that exceed actual costs will be reallocated to Participating Local Governments within the Region.

c. Cities and towns with a population of less than 10,000 shall be excluded from the allocation, with the exception of cities and towns that are Litigating Participating Local Governments. The portion of the Opioid Funds that would have been allocated to a city or town with a population of less than 10,000 that is not a Litigating Participating Local Government shall be redistributed to Participating Counties in the manner directed in C.4.a above.

d. Each Participating County, City, or Town may elect to have its share re-allocated to the OAC in which it is located. The OAC will then utilize this share for the benefit of Participating Local Governments within that Allocation Region, consistent with the Approved Purposes set forth in Exhibit A. A Participating Local Government's election to forego its allocation of Opioid Funds shall apply to all future allocations unless the Participating Local Government notifies its respective OAC otherwise. If a Participating Local Government elects to forego its allocation of the Opioid Funds, the Participating Local Government shall be excused from the reporting requirements set forth in this Agreement.

e. Participating Local Governments that receive a direct payment maintain full discretion over the use and distribution of their allocation of Opioid Funds, provided the Opioid Funds are used solely for Approved Purposes. Reasonable administrative costs for a Participating Local Government to administer its allocation of Opioid Funds shall not exceed actual costs or 10% of the Participating Local Government's allocation of Opioid Funds, whichever is less.

f. A Local Government that chooses not to become a Participating Local Government will not receive a direct allocation of Opioid Funds. The portion of the Opioid Funds that would have been allocated to a Local Government that is not a Participating Local Government shall be

redistributed to Participating Counties in the manner directed in C.4.a above.

g. As a condition of receiving a direct payment, each Participating Local Government that receives a direct payment agrees to undertake the following actions:

- i. Developing a methodology for obtaining proposals for use of Opioid Funds.
- ii. Ensuring there is opportunity for community-based input on priorities for Opioid Fund programs and services.
- iii. Receiving and reviewing proposals for use of Opioid Funds for Approved Purposes.
- iv. Approving or denying proposals for use of Opioid Funds for Approved Purposes.
- v. Receiving funds from the Trustee for approved proposals and distributing the Opioid Funds to the recipient.
- vi. Reporting to the OAC and making publicly available all decisions on Opioid Fund allocation applications, distributions and expenditures.

h. Prior to any distribution of Opioid Funds within the Allocation Region, The Participating Local Governments must establish an Opioid Abatement Council (OAC) to oversee Opioid Fund allocation, distribution, expenditures and dispute resolution. The OAC may be a preexisting regional body or may be a new body created for purposes of executing the obligations of this MOU.

i. The OAC for each Allocation Region shall be composed of representation from both Participating Counties and Participating Towns or Cities within the Region. The method of selecting members, and the terms for which they will serve will be determined by the Allocation Region's Participating Local Governments. All persons who serve on the OAC must have work or educational experience pertaining to one or more Approved Uses.

j. The Regional OAC will be responsible for the following actions:

- i. Overseeing distribution of Opioid Funds from Participating Local Governments to programs and services within the Allocation Region for Approved Purposes.

- ii. Annual review of expenditure reports from Participating Local Jurisdictions within the Allocation Region for compliance with Approved Purposes and the terms of this MOU and any Settlement.
- iii. In the case where Participating Local Governments chose to forego their allocation of Opioid Funds:
 - (i) Approving or denying proposals by Participating Local Governments or community groups to the OAC for use of Opioid Funds within the Allocation Region.
 - (ii) Directing the Trustee to distribute Opioid Funds for use by Participating Local Governments or community groups whose proposals are approved by the OAC.
 - (iii) Administrating and maintaining records of all OAC decisions and distributions of Opioid Funds.
- iv. Reporting and making publicly available all decisions on Opioid Fund allocation applications, distributions and expenditures by the OAC or directly by Participating Local Governments.
- v. Developing and maintaining a centralized public dashboard or other repository for the publication of expenditure data from any Participating Local Government that receives Opioid Funds, and for expenditures by the OAC in that Allocation Region, which it shall update at least annually.
- vi. If necessary, requiring and collecting additional outcome-related data from Participating Local Governments to evaluate the use of Opioid Funds, and all Participating Local Governments shall comply with such requirements.
- vii. Hearing complaints by Participating Local Governments within the Allocation Region regarding alleged failure to (1) use Opioid Funds for Approved Purposes or (2) comply with reporting requirements.

5. Participating Local Governments may agree and elect to share, pool, or collaborate with their respective allocation of Opioid Funds in any manner they choose by adopting a Regional Agreement, so long as such sharing, pooling, or collaboration is used for Approved Purposes and complies with the terms of this MOU and any Settlement.

6. Nothing in this MOU should alter or change any Participating Local Government's rights to pursue its own claim. Rather, the intent of this MOU is to join all parties who wish to be Participating Local Governments to agree upon an allocation formula for any Opioid Funds from any future binding Settlement with one or more Pharmaceutical Supply Chain Participants for all Local Governments in the State of Washington.

7. If any Participating Local Government disputes the amount it receives from its allocation of Opioid Funds, the Participating Local Government shall alert its respective OAC within sixty (60) days of discovering the information underlying the dispute. Failure to alert its OAC within this time frame shall not constitute a waiver of the Participating Local Government's right to seek recoupment of any deficiency in its allocation of Opioid Funds.

8. If any OAC concludes that a Participating Local Government's expenditure of its allocation of Opioid Funds did not comply with the Approved Purposes listed in Exhibit A, or the terms of this MOU, or that the Participating Local Government otherwise misused its allocation of Opioid Funds, the OAC may take remedial action against the alleged offending Participating Local Government. Such remedial action is left to the discretion of the OAC and may include withholding future Opioid Funds owed to the offending Participating Local Government or requiring the offending Participating Local Government to reimburse improperly expended Opioid Funds back to the OAC to be re-allocated to the remaining Participating Local Governments within that Region.

9. All Participating Local Governments and OAC shall maintain all records related to the receipt and expenditure of Opioid Funds for no less than five (5) years and shall make such records available for review by any other Participating Local Government or OAC, or the public. Records requested by the public shall be produced in accordance with Washington's Public Records Act RCW 42.56.001 *et seq.* Records requested by another Participating Local Government or an OAC shall be produced within twenty-one (21) days of the date the record request was received. This requirement does not supplant any Participating Local Government or OAC's obligations under Washington's Public Records Act RCW 42.56.001 *et seq.*

D. Payment of Counsel and Litigation Expenses

1. The Litigating Local Governments have incurred attorneys' fees and litigation expenses relating to their prosecution of claims against the Pharmaceutical Supply Chain Participants, and this prosecution has inured to the benefit of all Participating Local Governments. Accordingly, a Washington

Government Fee Fund (“GFF”) shall be established that ensures that all Parties that receive Opioid Funds contribute to the payment of fees and expenses incurred to prosecute the claims against the Pharmaceutical Supply Chain Participants, regardless of whether they are litigating or non-litigating entities.

2. The amount of the GFF shall be based as follows: the funds to be deposited in the GFF shall be equal to 15% of the total cash value of the Opioid Funds.

3. The maximum percentage of any contingency fee agreement permitted for compensation shall be 15% of the portion of the Opioid Funds allocated to the Litigating Local Government that is a party to the contingency fee agreement, plus expenses attributable to that Litigating Local Government. Under no circumstances may counsel collect more for its work on behalf of a Litigating Local Government than it would under its contingency agreement with that Litigating Local Government.

4. Payments from the GFF shall be overseen by a committee (the “Opioid Fee and Expense Committee”) consisting of one representative of the following law firms: (a) Keller Rohrback L.L.P.; (b) Hagens Berman Sobol Shapiro LLP; (c) Goldfarb & Huck Roth Riojas, PLLC; and (d) Napoli Shkolnik PLLC. The role of the Opioid Fee and Expense Committee shall be limited to ensuring that the GFF is administered in accordance with this Section.

5. In the event that settling Pharmaceutical Supply Chain Participants do not pay the fees and expenses of the Participating Local Governments directly at the time settlement is achieved, payments to counsel for Participating Local Governments shall be made from the GFF over not more than three years, with 50% paid within 12 months of the date of Settlement and 25% paid in each subsequent year, or at the time the total Settlement amount is paid to the Trustee by the Defendants, whichever is sooner.

6. Any funds remaining in the GFF in excess of: (i) the amounts needed to cover Litigating Local Governments’ private counsel’s representation agreements, and (ii) the amounts needed to cover the common benefit tax discussed in Section C.8 below (if not paid directly by the Defendants in connection with future settlement(s), shall revert to the Participating Local Governments *pro rata* according to the percentages set forth in Exhibits B, to be used for Approved Purposes as set forth herein and in Exhibit A.

7. In the event that funds in the GFF are not sufficient to pay all fees and expenses owed under this Section, payments to counsel for all Litigating Local Governments shall be reduced on a *pro rata* basis. The Litigating Local Governments will not be responsible for any of these reduced amounts.

8. The Parties anticipate that any Opioid Funds they receive will be subject to a common benefit “tax” imposed by the court in *In Re: National Prescription Opiate Litigation*, United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP (“Common Benefit Tax”). If this occurs, the Participating Local Governments shall first seek to have the settling defendants pay the Common Benefit Tax. If the settling defendants do not agree to pay the Common Benefit Tax, then the Common Benefit Tax shall be paid from the Opioid Funds and by both litigating and non-litigating Local Governments. This payment shall occur prior to allocation and distribution of funds to the Participating Local Governments. In the event that GFF is not fully exhausted to pay the Litigating Local Governments’ private counsel’s representation agreements, excess funds in the GFF shall be applied to pay the Common Benefit Tax (if any).

E. General Terms

1. If any Participating Local Government believes another Participating Local Government, not including the Regional Abatement Advisory Councils, violated the terms of this MOU, the alleging Participating Local Government may seek to enforce the terms of this MOU in the court in which any applicable Settlement(s) was entered, provided the alleging Participating Local Government first provides the alleged offending Participating Local Government notice of the alleged violation(s) and a reasonable opportunity to cure the alleged violation(s). In such an enforcement action, any alleging Participating Local Government or alleged offending Participating Local Government may be represented by their respective public entity in accordance with Washington law.

2. Nothing in this MOU shall be interpreted to waive the right of any Participating Local Government to seek judicial relief for conduct occurring outside the scope of this MOU that violates any Washington law. In such an action, the alleged offending Participating Local Government, including the Regional Abatement Advisory Councils, may be represented by their respective public entities in accordance with Washington law. In the event of a conflict, any Participating Local Government, including the Regional Abatement Advisory Councils and its Members, may seek outside representation to defend itself against such an action.

3. Venue for any legal action related to this MOU shall be in the court in which the Participating Local Government is located or in accordance with the court rules on venue in that jurisdiction. This provision is not intended to expand the court rules on venue.

4. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Participating Local Governments approve the use of electronic signatures for execution of this MOU. All use of electronic signatures

shall be governed by the Uniform Electronic Transactions Act. The Parties agree not to deny the legal effect or enforceability of the MOU solely because it is in electronic form or because an electronic record was used in its formation. The Participating Local Government agree not to object to the admissibility of the MOU in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

5. Each Participating Local Government represents that all procedures necessary to authorize such Participating Local Government's execution of this MOU have been performed and that the person signing for such Party has been authorized to execute the MOU.

[Remainder of Page Intentionally Left Blank – Signature Pages Follow]

This One Washington Memorandum of Understanding Between Washington Municipalities is signed this _____ day of _____, 2022 by:

Name & Title _____

On behalf of _____

4894-0031-1574, v. 2

EXHIBIT A

OPIOID ABATEMENT STRATEGIES

PART ONE: TREATMENT

A. TREAT OPIOID USE DISORDER (OUD)

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including all forms of Medication-Assisted Treatment (MAT) approved by the U.S. Food and Drug Administration.
2. Support and reimburse services that include the full American Society of Addiction Medicine (ASAM) continuum of care for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to:
 - a. Medication-Assisted Treatment (MAT);
 - b. Abstinence-based treatment;
 - c. Treatment, recovery, or other services provided by states, subdivisions, community health centers; non-for-profit providers; or for-profit providers;
 - d. Treatment by providers that focus on OUD treatment as well as treatment by providers that offer OUD treatment along with treatment for other SUD/MH conditions, co-usage, and/or co-addiction; or
 - e. Evidence-informed residential services programs, as noted below.
3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.
4. Improve oversight of Opioid Treatment Programs (OTPs) to assure evidence-based, evidence-informed, or promising practices such as adequate methadone dosing.
5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction and for persons who have experienced an opioid overdose.
6. Support treatment of mental health trauma resulting from the traumatic experiences of the opioid user (e.g., violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (e.g., surviving family members after an overdose

or overdose fatality), and training of health care personnel to identify and address such trauma.

7. Support detoxification (detox) and withdrawal management services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including medical detox, referral to treatment, or connections to other services or supports.
8. Support training on MAT for health care providers, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
10. Provide fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (DATA 2000) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.
12. Support the dissemination of web-based training curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service-Opioids web-based training curriculum and motivational interviewing.
13. Support the development and dissemination of new curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service for Medication-Assisted Treatment.

B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY

Support people in treatment for and recovery from OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Provide the full continuum of care of recovery services for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including supportive housing, residential treatment, medical detox services, peer support services and counseling, community navigators, case management, and connections to community-based services.
2. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.

3. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including supportive housing, recovery housing, housing assistance programs, or training for housing providers.
4. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
5. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
6. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
7. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
8. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to manage the opioid user in the family.
9. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to current and recovering opioid users, including reducing stigma.
10. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.

**C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED
(CONNECTIONS TO CARE)**

Provide connections to care for people who have – or are at risk of developing – OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Support Screening, Brief Intervention and Referral to Treatment (SBIRT) programs to reduce the transition from use to disorders.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.

4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Support training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.
6. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or persons who have experienced an opioid overdose, into community treatment or recovery services through a bridge clinic or similar approach.
7. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or persons that have experienced an opioid overdose.
8. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
9. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to persons who have experienced an opioid overdose.
10. Provide funding for peer navigators, recovery coaches, care coordinators, or care managers that offer assistance to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to persons who have experienced on opioid overdose.
11. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
12. Develop and support best practices on addressing OUD in the workplace.
13. Support assistance programs for health care providers with OUD.
14. Engage non-profits and the faith community as a system to support outreach for treatment.
15. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
16. Create or support intake and call centers to facilitate education and access to treatment, prevention, and recovery services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.

17. Develop or support a National Treatment Availability Clearinghouse – a multistate/nationally accessible database whereby health care providers can list locations for currently available in-patient and out-patient OUD treatment services that are accessible on a real-time basis by persons who seek treatment.

D. ADDRESS THE NEEDS OF CRIMINAL-JUSTICE-INVOLVED PERSONS

Address the needs of persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are involved – or are at risk of becoming involved – in the criminal justice system through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support pre-arrest or post-arrest diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including established strategies such as:
 - a. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (PAARI);
 - b. Active outreach strategies such as the Drug Abuse Response Team (DART) model;
 - c. “Naloxone Plus” strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;
 - d. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (LEAD) model;
 - e. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative;
 - f. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise and to reduce perceived barriers associated with law enforcement 911 responses; or
 - g. County prosecution diversion programs, including diversion officer salary, only for counties with a population of 50,000 or less. Any diversion services in matters involving opioids must include drug testing, monitoring, or treatment.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to evidence-informed treatment, including MAT, and related services.
3. Support treatment and recovery courts for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, but only if these courts provide referrals to evidence-informed treatment, including MAT.

4. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are incarcerated in jail or prison.
5. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are leaving jail or prison have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.
6. Support critical time interventions (CTI), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.
7. Provide training on best practices for addressing the needs of criminal-justice-involved persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, case management, or other services offered in connection with any of the strategies described in this section.

E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and the needs of their families, including babies with neonatal abstinence syndrome, through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support evidence-based, evidence-informed, or promising treatment, including MAT, recovery services and supports, and prevention services for pregnant women – or women who could become pregnant – who have OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.
2. Provide training for obstetricians or other healthcare personnel that work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
3. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with Neonatal Abstinence Syndrome get referred to appropriate services and receive a plan of safe care.
4. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.

5. Offer enhanced family supports and home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to parent skills training.
6. Support for Children's Services – Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION

F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
2. Academic counter-detailing to educate prescribers on appropriate opioid prescribing.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Support enhancements or improvements to Prescription Drug Monitoring Programs (PDMPs), including but not limited to improvements that:
 - a. Increase the number of prescribers using PDMPs;
 - b. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs or by improving the interface that prescribers use to access PDMP data, or both; or
 - c. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD.
6. Development and implementation of a national PDMP – Fund development of a multistate/national PDMP that permits information sharing while providing appropriate safeguards on sharing of private health information, including but not limited to:
 - a. Integration of PDMP data with electronic health records, overdose episodes, and decision support tools for health care providers relating to OUD.

- b. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database.
7. Increase electronic prescribing to prevent diversion or forgery.
8. Educate Dispensers on appropriate opioid dispensing.

G. PREVENT MISUSE OF OPIOIDS

Support efforts to discourage or prevent misuse of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Corrective advertising or affirmative public education campaigns based on evidence.
2. Public education relating to drug disposal.
3. Drug take-back disposal or destruction programs.
4. Fund community anti-drug coalitions that engage in drug prevention efforts.
5. Support community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction – including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA).
6. Engage non-profits and faith-based communities as systems to support prevention.
7. Support evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
8. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
9. Support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
10. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
11. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses or other school staff, to

address mental health needs in young people that (when not properly addressed) increase the risk of opioid or other drug misuse.

H. PREVENT OVERDOSE DEATHS AND OTHER HARMS

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Increase availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, opioid users, families and friends of opioid users, schools, community navigators and outreach workers, drug offenders upon release from jail/prison, or other members of the general public.
2. Provision by public health entities of free naloxone to anyone in the community, including but not limited to provision of intra-nasal naloxone in settings where other options are not available or allowed.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, and other members of the general public.
4. Enable school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.
5. Expand, improve, or develop data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.
7. Public education relating to immunity and Good Samaritan laws.
8. Educate first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Expand access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
10. Support mobile units that offer or provide referrals to treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
11. Provide training in treatment and recovery strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
12. Support screening for fentanyl in routine clinical toxicology testing.

PART THREE: OTHER STRATEGIES

I. FIRST RESPONDERS

In addition to items C8, D1 through D7, H1, H3, and H8, support the following:

1. Current and future law enforcement expenditures relating to the opioid epidemic.
2. Educate law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.

J. LEADERSHIP, PLANNING AND COORDINATION

Support efforts to provide leadership, planning, and coordination to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Community regional planning to identify goals for reducing harms related to the opioid epidemic, to identify areas and populations with the greatest needs for treatment intervention services, or to support other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
2. A government dashboard to track key opioid-related indicators and supports as identified through collaborative community processes.
3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
4. Provide resources to staff government oversight and management of opioid abatement programs.

K. TRAINING

In addition to the training referred to in various items above, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Invest in infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or implement other

strategies to abate the opioid epidemic described in this opioid abatement strategy list (e.g., health care, primary care, pharmacies, PDMPs, etc.).

L. RESEARCH

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, and evaluation of programs and strategies described in this opioid abatement strategy list.
2. Research non-opioid treatment of chronic pain.
3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.
4. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
5. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (e.g. Hawaii HOPE and Dakota 24/7).
6. Research on expanded modalities such as prescription methadone that can expand access to MAT.

EXHIBIT B

County	Local Government	% Allocation
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Adams County

Adams County	0.1638732475%
Hatton	
Lind	
Othello	
Ritzville	
Washtucna	
County Total:	0.1638732475%

Asotin County

Asotin County	0.4694498386%
Asotin	
Clarkston	
County Total:	0.4694498386%

Benton County

Benton County	1.4848831892%
Benton City	
Kennewick	0.5415650564%
Prosser	
Richland	0.4756779517%
West Richland	0.0459360490%
County Total:	2.5480622463%

Chelan County

Chelan County	0.7434914485%
Cashmere	
Chelan	
Entiat	
Leavenworth	
Wenatchee	0.2968333494%
County Total:	1.0403247979%

Clallam County

Clallam County	1.3076983401%
Forks	
Port Angeles	0.4598370527%
Sequim	
County Total:	1.7675353928%

EXHIBIT B

County	Local Government	% Allocation
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Clark County

Clark County	4.5149775326%
Battle Ground	0.1384729857%
Camas	0.2691592724%
La Center	
Ridgefield	
Vancouver	1.7306605325%
Washougal	0.1279328220%
Woodland***	
Yacolt	
County Total:	6.7812031452%

Columbia County

Columbia County	0.0561699537%
Dayton	
Starbuck	
County Total:	0.0561699537%

Cowlitz County

Cowlitz County	1.7226945990%
Castle Rock	
Kalama	
Kelso	0.1331145270%
Longview	0.6162736905%
Woodland***	
County Total:	2.4720828165%

Douglas County

Douglas County	0.3932175175%
Bridgeport	
Coulee Dam***	
East Wenatchee	0.0799810865%
Mansfield	
Rock Island	
Waterville	
County Total:	0.4731986040%

Ferry County

Ferry County	0.1153487994%
Republic	
County Total:	0.1153487994%

EXHIBIT B

County	Local Government	% Allocation
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Franklin County

Franklin County	0.3361237144%
Connell	
Kahlotus	
Mesa	
Pasco	0.4278056066%
County Total:	0.7639293210%

Garfield County

Garfield County	0.0321982209%
Pomeroy	
County Total:	0.0321982209%

Grant County

Grant County	0.9932572167%
Coulee City	
Coulee Dam***	
Electric City	
Ephrata	
George	
Grand Coulee	
Hartline	
Krupp	
Mattawa	
Moses Lake	0.2078293909%
Quincy	
Royal City	
Soap Lake	
Warden	
Wilson Creek	
County Total:	1.2010866076%

EXHIBIT B

County	Local Government	% Allocation
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Grays Harbor County

Grays Harbor County	0.9992429138%
Aberdeen	0.2491525333%
Cosmopolis	
Elma	
Hoquiam	
McCleary	
Montesano	
Oakville	
Ocean Shores	
Westport	
County Total:	1.2483954471%

Island County

Island County	0.6820422610%
Coupeville	
Langley	
Oak Harbor	0.2511550431%
County Total:	0.9331973041%

Jefferson County

Jefferson County	0.4417137380%
Port Townsend	
County Total:	0.4417137380%

EXHIBIT B

County	Local Government	% Allocation
<u>King County</u>		
	King County	13.9743722662%
	Algona	
	Auburn***	0.2622774917%
	Beaux Arts Village	
	Bellevue	1.1300592573%
	Black Diamond	
	Bothell***	0.1821602716%
	Burien	0.0270962921%
	Carnation	
	Clyde Hill	
	Covington	0.0118134406%
	Des Moines	0.1179764526%
	Duvall	
	Enumclaw***	0.0537768326%
	Federal Way	0.3061452240%
	Hunts Point	
	Issaquah	0.1876240107%
	Kenmore	0.0204441024%
	Kent	0.5377397676%
	Kirkland	0.5453525246%
	Lake Forest Park	0.0525439124%
	Maple Valley	0.0093761587%
	Medina	
	Mercer Island	0.1751797481%
	Milton***	
	Newcastle	0.0033117880%
	Normandy Park	
	North Bend	
	Pacific***	
	Redmond	0.4839486007%
	Renton	0.7652626920%
	Sammamish	0.0224369090%
	SeaTac	0.1481551278%
	Seattle	6.6032403816%
	Shoreline	0.0435834501%
	Skykomish	
	Snoqualmie	0.0649164481%
	Tukwila	0.3032205739%
	Woodinville	0.0185516364%
	Yarrow Point	
	County Total:	26.0505653608%

EXHIBIT B

County	Local Government	% Allocation
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Kitsap County

Kitsap County	2.6294133668%
Bainbridge Island	0.1364686014%
Bremerton	0.6193374389%
Port Orchard	0.1009497162%
Poulsbo	0.0773748246%
County Total:	3.5635439479%

Kittitas County

Kittitas County	0.3855704683%
Cle Elum	
Ellensburg	0.0955824915%
Kittitas	
Roslyn	
South Cle Elum	
County Total:	0.4811529598%

Klickitat County

Klickitat County	0.2211673457%
Bingen	
Goldendale	
White Salmon	
County Total:	0.2211673457%

Lewis County

Lewis County	1.0777377479%
Centralia	0.1909990353%
Chehalis	
Morton	
Mossyrock	
Napavine	
Pe Ell	
Toledo	
Vader	
Winlock	
County Total:	1.2687367832%

EXHIBIT B

County	Local Government	% Allocation
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Lincoln County

Lincoln County	0.1712669645%
Almira	
Creston	
Davenport	
Harrington	
Odessa	
Reardan	
Sprague	
Wilbur	
County Total:	0.1712669645%

Mason County

Mason County	0.8089918012%
Shelton	0.1239179888%
County Total:	0.9329097900%

Okanogan County

Okanogan County	0.6145043345%
Brewster	
Conconully	
Coulee Dam***	
Elmer City	
Nespelem	
Okanogan	
Omak	
Oroville	
Pateros	
Riverside	
Tonasket	
Twisp	
Winthrop	
County Total:	0.6145043345%

Pacific County

Pacific County	0.4895416466%
Ilwaco	
Long Beach	
Raymond	
South Bend	
County Total:	0.4895416466%

EXHIBIT B

County	Local Government	% Allocation
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Pend Oreille County

Pend Oreille County	0.2566374940%
Cusick	
Ione	
Metaline	
Metaline Falls	
Newport	
County Total:	0.2566374940%

Pierce County

Pierce County	7.2310164020%
Auburn***	0.0628522112%
Bonney Lake	0.1190773864%
Buckley	
Carbonado	
DuPont	
Eatonville	
Edgewood	0.0048016791%
Enumclaw***	0.0000000000%
Fife	0.1955185481%
Fircrest	
Gig Harbor	0.0859963345%
Lakewood	0.5253640894%
Milton***	
Orting	
Pacific***	
Puyallup	0.3845704814%
Roy	
Ruston	
South Prairie	
Steilacoom	
Sumner	0.1083157569%
Tacoma	3.2816374617%
University Place	0.0353733363%
Wilkeson	
County Total:	12.0345236870%

San Juan County

San Juan County	0.2101495171%
Friday Harbor	
County Total:	0.2101495171%

EXHIBIT B

County	Local Government	% Allocation
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Skagit County

Skagit County	1.0526023961%
Anacortes	0.1774962906%
Burlington	0.1146861661%
Concrete	
Hamilton	
La Conner	
Lyman	
Mount Vernon	0.2801063665%
Sedro-Woolley	0.0661146351%
County Total:	1.6910058544%

Skamania County

Skamania County	0.1631931925%
North Bonneville	
Stevenson	
County Total:	0.1631931925%

Snohomish County

Snohomish County	6.9054415622%
Arlington	0.2620524080%
Bothell***	0.2654558588%
Brier	
Darrington	
Edmonds	0.3058936009%
Everett	1.9258363241%
Gold Bar	
Granite Falls	
Index	
Lake Stevens	0.1385202891%
Lynnwood	0.7704629214%
Marysville	0.3945067827%
Mill Creek	0.1227939546%
Monroe	0.1771621898%
Mountlake Terrace	0.2108935805%
Mukilteo	0.2561790702%
Snohomish	0.0861097964%
Stanwood	
Sultan	
Woodway	
County Total:	11.8213083387%

EXHIBIT B

County	Local Government	% Allocation
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Spokane County

Spokane County	5.5623859292%
Airway Heights	
Cheney	0.1238454349%
Deer Park	
Fairfield	
Latah	
Liberty Lake	0.0389636519%
Medical Lake	
Millwood	
Rockford	
Spangle	
Spokane	3.0872078287%
Spokane Valley	0.0684217500%
Waverly	
County Total:	8.8808245947%

Stevens County

Stevens County	0.7479240179%
Chewelah	
Colville	
Kettle Falls	
Marcus	
Northport	
Springdale	
County Total:	0.7479240179%

Thurston County

Thurston County	2.3258492094%
Bucoda	
Lacey	0.2348627221%
Olympia	0.6039423385%
Rainier	
Tenino	
Tumwater	0.2065982350%
Yelm	
County Total:	3.3712525050%

Wahkiakum County

Wahkiakum County	0.0596582197%
Cathlamet	
County Total:	0.0596582197%

EXHIBIT B

County	Local Government	% Allocation
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Walla Walla County

Walla Walla County	0.5543870294%
College Place	
Prescott	
Waitsburg	
Walla Walla	0.3140768654%
County Total:	0.8684638948%

Whatcom County

Whatcom County	1.3452637306%
Bellingham	0.8978614577%
Blaine	
Everson	
Ferndale	0.0646101891%
Lynden	0.0827115612%
Nooksack	
Sumas	
County Total:	2.3904469386%

Whitman County

Whitman County	0.2626805837%
Albion	
Colfax	
Colton	
Endicott	
Farmington	
Garfield	
LaCrosse	
Lamont	
Malden	
Oakesdale	
Palouse	
Pullman	0.2214837491%
Rosalia	
St. John	
Tekoa	
Uniontown	
County Total:	0.4841643328%

EXHIBIT B

County	Local Government	% Allocation
<u>Yakima County</u>		
	Yakima County	1.9388392959%
	Grandview	0.0530606109%
	Granger	
	Harrah	
	Mabton	
	Moxee	
	Naches	
	Selah	
	Sunnyside	0.1213478384%
	Tieton	
	Toppenish	
	Union Gap	
	Wapato	
	Yakima	0.6060410539%
	Zillah	
	County Total:	2.7192887991%

Exhibit C

KING COUNTY REGIONAL AGREEMENT

King County intends to explore coordination with its cities and towns to facilitate a Regional Agreement for Opioid Fund allocation. Should some cities and towns choose not to participate in a Regional Agreement, this shall not preclude coordinated allocation for programs and services between the County and those cities and towns who elect to pursue a Regional Agreement. As contemplated in C.5 of the MOU, any Regional Agreement shall comply with the terms of the MOU and any Settlement. If no Regional Agreement is achieved, the default methodology for allocation in C.4 of the MOU shall apply.

Johnson & Johnson Opioid Settlement



On January 24, 2024, Attorney General Bob Ferguson announced that Washington entered into a \$149.5 million settlement with Johnson & Johnson payable this year. Of this amount, \$123.3 million will be dedicated to abating the opioid crisis in Washington.

As with the prior distributor settlement (<https://www.atg.wa.gov/distributors-washington-settlement>) and Pharmacy & Manufacturer Settlements (<https://www.atg.wa.gov/opioid-pharmacy-manufacturer-settlements>), this new settlement is contingent on eligible cities and counties joining the settlement. If not enough cities and counties join, the settlement is void. Check the current status of local governments who have signed on here (https://agportal-s3bucket.s3.us-west-2.amazonaws.com/uploadedfiles/Status%20of%20Local%20Government%20Sign-On_Y_N.docx).

The deadline for cities and counties to join the settlement is May 11, 2024.

If all eligible cities and counties join as they did for the prior settlements, cities and counties will receive \$61.67 million, which is half of the abatement amount, shortly after the sign-on process is complete.

The One Washington Memorandum of Understanding (https://agportal-s3bucket.s3.us-west-2.amazonaws.com/uploadedfiles/One%20Memorandum%20of%20Understanding.pdf?VersionId=3Z73N843gxvAV8HlwuERyZ8JlmYSlwu_) between the Washington Municipalities splits the city and county settlement share. Exhibit B lists each local government's percentage share. This amount must be spent on opioid remediation to abate the opioid crisis (<https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Approved%20Uses.pdf>) in their communities. The sooner all eligible cities and counties join the settlement, the sooner Johnson & Johnson will pay.

How to join the settlement

A city or county can join the settlement by signing and returning the Participation Form document on the DocuSign platform using the link that each will be receiving.

Sample Participation Form (<https://agportal-s3bucket.s3.us-west-2.amazonaws.com/uploadedfiles/JNJ%20WA%20Participation%20Form.pdf?VersionId=DJkdsf3i.NBTpz6LQT4wX9GVgMcfw9Hn>) **for the Johnson & Johnson settlement.**

While the DocuSign platform is strongly preferred, if the city or county prefers, the fully completed Participation Form can be returned to the Settlement Administrator via email. This website will be updated to add the appropriate email address when it is available.

The deadline for cities and counties to join the settlement is May 11, 2024.

The settlement documents

The *Participation Form* requires the local governments to abide by the terms of the settlement agreement, which can be found here: Washington-Johnson & Johnson settlement agreement (<https://agportal-s3bucket.s3.us-west-2.amazonaws.com/uploadedfiles/JNJ%20WA%20Settlement%20%282-5-24%29%20-%20JNJ%20WA%20signed%20with%20Exhibit%20I.pdf?VersionId=yenN8yjasWleJvbK3OomntgpiLRkhfRv>). Exhibit H of the settlement agreement is the *"One Washington Memorandum of Understanding between the Washington Municipalities,"* which explains the apportionment of the settlement proceeds between the state and local governments.

Contacting the AGO

If you have questions about the settlement or the process to join the settlement, please contact Jeff Rupert, the Division Chief for the AGO's Complex Litigation Division at Jeffrey.Rupert@atg.wa.gov (mailto:Jeffrey.Rupert@atg.wa.gov) **and** comopioidscases@atg.wa.gov (mailto:comopioidscases@atg.wa.gov). The AGO will be monitoring the sign-on progress and encouraging all eligible local governments in Washington to join.

All opioid settlements

This settlement does not affect the amounts that Washington will receive from past settlements.

The estimated \$149.5 million in resolutions from Johnson & Johnson as well as others like Purdue (<https://www.atg.wa.gov/news/news-releases/result-ag-ferguson-s-challenge-sacklers-purdue-settlement-washington-will-receive>), McKinsey (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-will-direct-135-million-mckinsey-lawsuit-toward-treatment-prevention>), Mallinckrodt (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-recovers-more-17-million-opioid-manufacturer-mallinckrodt-will-be>), the three major opioid distributors (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-opioid-distributors-pay-518-million-washington>), and five pharmacy and manufacturer settlement (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuits-against-three-national-pharmacy-chains-their-roles>) will bring Washington state's overall total to more than \$1.3 billion to help fund the state's opioid abatement and recovery programs.

J&J Opioids Settlement

Press Release (</news/news-releases/ag-ferguson-johnson-johnson-pay-nearly-150m-over-its-role-fueling-opioid>)

Washington Settlement Agreement (<https://agportal-s3bucket.s3.us-west-2.amazonaws.com/uploadedfiles/JNJ%20WA%20Settlement%20282-5-24%29%20-%20JNJ%20WA%20signed%20with%20Exhibit%20I.pdf?VersionId=yenN8yjasWleJvbK3OomntgpiLRkhfRv>)

Approved Uses (<https://agportal-s3bucket.s3.us-west-2.amazonaws.com/uploadedfiles/JNJ%20WA%20Approved%20Uses.pdf?VersionId=4r6XJ9KrL0l4e.KTwMwxt1A11ynGrLA5>)

One Washington Memorandum of Understanding (<https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/One%20Washington%20Memorandum%20of%20Understanding%20between%20the%20Washington%20Municipalities.pdf>)

Status of Local Government Sign On (https://agportal-s3bucket.s3.us-west-2.amazonaws.com/uploadedfiles/Status%20of%20Local%20Government%20Sign-On_Y_N.docx)

Opioid Distributors Settlement (</distributors-washington-settlement>)

Pharmacy & Manufacturers Settlement (</opioid-pharmacy-manufacturer-settlements>)

EXHIBIT B

Settlement Participation Form

Governmental Entity: City of Port Orchard	State: Washington
Authorized Official: Mayor Putaansuu	
Address 1: 216 Prospect Street	
Address 2:	
City, State, Zip: Port Orchard, WA 98366	
Phone: 360-876-4407	
Email: rputaansuu@portorchardwa.gov	

The governmental entity identified above (“Governmental Entity”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Janssen Washington State-Wide Opioid Settlement Agreement dated January 22, 2024 (“Janssen Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Janssen Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Janssen Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Janssen Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall, within 30 days of the filing of the Consent Judgment, secure the dismissal with prejudice of any Released Claims that it has filed.
3. The Governmental Entity agrees to the terms of the Janssen Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Janssen Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Janssen Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Janssen Settlement.
7. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Janssen Settlement, including but not limited to all provisions of Section IV (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity

elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Janssen Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Janssen Settlement shall be a complete bar to any Released Claim.

8. In connection with the releases provided for in the Janssen Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Janssen Settlement.

9. This Settlement Participation Form shall be deemed effective as of the Effective Date of the Janssen Settlement.
10. Nothing herein is intended to modify in any way the terms of the Janssen Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Janssen Settlement in any respect, the Janssen Settlement controls.

I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



Agenda Staff Report

Agenda Item No.: Business Item 7B

Meeting Date: March 12, 2024

Subject: Adoption of a Resolution Approving a
Contract with Baumwelt for the Givens
Park Sport Court Remodel Project

Prepared By: Denis Ryan (for Nick Bond)
Public Works Director

Summary: The City of Port Orchard has determined that improvements are required for the Givens Park Sport Court Remodel Project ("Project"). The project includes resurfacing the tennis court to accommodate pickleball, reconstructing the basketball court to accommodate futsal, replacement of the courts fencing, adding a seating area, upgrading lighting, and adding an accessible path. The City's Department of Community Development staff ("DCD") applied for and was awarded a Washington State Recreation and Conservation Office (RCO) grant in the amount of \$294,000 (50% RCO-\$147,000 and 50% local funds-\$147,000). On October 26, 2023, an amendment to the grant contract was approved to modify the grant funding to 60% RCO (\$176,400) and 40% local match (\$117,600).

Due to limited staff resources and expertise in this field, the City desires the assistance of a consultant with expertise in landscape architect design services to provide plans, specification, and estimate of probable costs to renovate and convert the existing tennis and basketball sports courts to multisport courts. The contract includes meeting the timelines outlined in the RCO Youth Facilities Grant received by the City for the Project and additional services during construction.

Accordingly, the City's DCD staff utilized the procurement process for this professional service set out in state law and in the City's Procurement Policies Resolution No. 072-23, as amended. On December 19, 2023, DCD established a list of qualified consultants for the project from the MRSC 2023 Consultant Roster for the Main Category – Landscape Architecture and Sub-Category – Landscape Architecture, Sports Field Planning and Design. DCD selected four (4) qualified consultants from the MRSC 2023 Consultant roster. After reviewing the Statement of Qualifications and independently scoring the four (4) selected consultants, DCD staff verified the consultant's information and determined Baumwelt met the requirements and criteria for the project and was a qualified, responsible and responsive consultant for the project. DCD Staff met with Baumwelt to discuss, clarify and develop the project understanding and the associated contract terms. On March 5, 2024, the City received a defined Scope of Work, Budget and Project Timeline from Baumwelt for the project in an amount not to exceed \$63,300.00.

Recommendation: Staff recommends adoption of a Resolution, authorizing the Mayor to execute a Contract with Baumwelt for Givens Park Sport Court Remodel Project in an amount not to exceed \$63,300 and documenting the Professional Services procurement procedures.

Relationship to Comprehensive Plan:

Motion for consideration: I move to adopt a Resolution, authorizing the Mayor to execute a Contract with Baumwelt for Givens Park Sport Court Remodel Project

Fiscal Impact: This project is budgeted in the 2023-2024 Budget in GL Account 302.05.594.76.60. The project received funding from an RCO grant. The City anticipates entering into an ILA with Port Orchard Rotary for a portion of the local match. Additional funding may need to be provided from the general fund through a future budget amendment.

Alternatives: Do not authorize and provide alternative guidance.

Attachments: Resolution, Contract

RESOLUTION NO. **

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH BAUMWELT FOR ARCHITECTURE AND ENGINEERING SERVICES FOR GIVENS PARK SPORT COURT REMODEL PROJECT AND DOCUMENTING PROFESSIONAL SERVICES PROCUREMENT PROCEDURES.

WHEREAS, the City of Port Orchard has determined that improvements are necessary for the Givens Park Sport Court Remodel Project (the “Project”); and

WHEREAS, the City’s Department of Community Development (“DCD”) applied for and received a grant from the Washington State Recreation and Conservation Office (“RCO”); and

WHEREAS, on August 1, 2023, a grant agreement between the City and the RCO to fund the project with 50% grant funds and 50% local match funds became effective; and

WHEREAS, on October 26, 2023, a request for an amendment to the grant agreement was requested and by the City of Port Orchard and subsequently approved by the RCO to update the funding sources for the grant to provide 60% funding and 40% local match; and

WHEREAS, the assistance of a consultant with professional architecture and engineering expertise in street design, sanitary sewer design, and construction phase consulting is vital to the Project; and

WHEREAS, on December 19, 2023, pursuant to state law and the City’s Procurement Policies Resolution No. 072-23, as amended, the DCD established a list of qualified consultants for the project from the MRSC 2023 Consultant Roster for the Main Category – Landscape Architecture and Sub-Category – Landscape Architecture, Sports Field Planning and Design; and

WHEREAS, on December 19, 2023, the City’s DCD selected four (4) qualified consultants from the 2023 MRSC Consultant Roster; and

WHEREAS, after reviewing the Statement of Qualifications and independently scoring the four (4) selected consultants based upon the overall qualifications, DCD selected Baumwelt (the “Consultant”), as the responsible and responsive consultant for the project; and

WHEREAS, on March 5, 2024, Baumwelt provided the City with a viable Proposal; and

WHEREAS, the City’s Department of Community Development and Public Works Department recommend the City Council approve a contract with Baumwelt, for the Givens Park Sport Court Remodel Project; and

WHEREAS, the Port Orchard City Council, at the 2015 recommendation of the State Auditor’s Office, wishes to document their consultant selection process as described above for this particular contract by Resolution; now, therefore,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, HEREBY RESOLVES
AS FOLLOWS:**

THAT: It is the intent of the Port Orchard City Council that the recitals set forth above are hereby adopted and incorporated as findings in support of this Resolution.

THAT: The City Council approves and authorizes the Mayor to sign a Contract with Baumwelt for the Givens Park Sport Court Remodel Project as attached hereto as Exhibit A and incorporated herein by this reference.

THAT: The Resolution shall take full force and effect upon passage and signatures hereon.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the Clerk in authentication of such passage this 12th day of March 2024.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

Port Orchard Contract #: _____
Authorized Amount: \$63,300
Date Start: March 12, 2024
Date End: June 30, 2025

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into by and between the City of Port Orchard, Washington, a municipal corporation organized under the laws of the State of Washington ("City") and Baumwelt ("Consultant") organized under the laws of the State of Washington, located and doing business at 919 MLK Way, Tacoma WA 98405 (hereinafter the "Consultant").

RECITALS:

WHEREAS, the City desires to have certain services performed for its residents; and

WHEREAS, the City has selected the Consultant to perform such services pursuant to certain terms and conditions; and

WHEREAS, the City complied with the requirements for hiring Consultant contained in Chapter 39.80 RCW;

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties agree as follows:

AGREEMENT:

1. Scope of Services to be Performed by Consultant.

The Consultant shall perform those services described on Exhibit "A," which is attached hereto and incorporated herein by this reference as if set forth in full. In performing such services, the Consultant shall at all times comply with all federal, state, and local statutes, rules and ordinances applicable to the performance of such services and the handling of any funds used in connection therewith. The Consultant shall perform the services diligently and completely and in accordance with professional standards of conduct and performance. The Consultant shall request and obtain prior written approval from the City if the scope or schedule is to be modified in any way.

If the services provided hereunder are funded in whole or in part under a Grant Funding Agreement, then Consultant will comply with the terms of such Grant Funding Agreement to ensure that the City is able to obtain the maximum funding under such Grant Funding Agreement. If this applies, the City will provide the Consultant with a copy of the Grant Funding Agreement.

2. Compensation.

The City shall pay the Consultant for services rendered according to the rates and methods set forth below.

- ☐ **LUMP SUM.** Compensation for these services set forth in Exhibit A shall be a Lump Sum of \$_____.
- ☒ **TIME AND MATERIALS NOT TO EXCEED.** Compensation for these services shall not exceed \$63,300 without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "A".
- ☒ **TIME AND MATERIALS.** Compensation for these services shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "A".
- ☐ **OTHER** _____

3. Payment.

A. The Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within thirty (30) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the Parties shall immediately make every effort to settle the disputed portion.

C. The Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors, including, but not limited to, the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to Revised Code of Washington (RCW) 51.08.195, as required by law, to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties, which is subject to Title 51 RCW, Industrial Insurance.

E. If the services rendered do not meet the requirements of the Agreement, the Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement. The City shall pay the Consultant for services rendered within ten (10) days after City Council voucher approval. However, if the City objects to all or any portion of an invoice, it shall notify Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the Parties will immediately make every effort to settle the disputed portion.

F. The City reserves the right to direct the Consultant's compensated services before reaching the maximum amount.

4. Duration of Agreement.

A. This Agreement shall be in full force and effect for a period commencing on March 12, 2024 and ending June 30, 2025 unless sooner terminated under the provisions of this Agreement. The City reserves the right to offer two (2) one-year extensions prior to expiration of the Agreement to retain the Consultant's services.

B. Time is of the essence of this Agreement in each and all of its provisions in which performance is required. If delays beyond the Consultant's reasonable control occur, the Parties will negotiate in good faith to determine whether an extension is appropriate.

C. The Consultant shall obtain a City of Port Orchard business license prior to commencing work pursuant to a written Notice to Proceed.

D. The Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

5. Standard of Care.

The Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by the Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

6. Ownership and Use of Documents.

A. *Ownership.* Any records, files, documents, drawings, specifications, data, or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not.

B. *Records preservation.* Consultant understands that this Agreement is with a government agency and thus all records created or used in the course of Consultant's work for the City are considered "public records" and are subject to disclosure by the City under the Public Records Act, Chapter 42.56 RCW ("the Act"). Consultant agrees to safeguard and preserve records in accordance with the Act. The City may be required, upon request, to disclose the Agreement, and the documents and records submitted to the City by Consultant, unless an exemption under the Public Records Act applies. If the City receives a public records request and asks Consultant to search its files for responsive records, Consultant agrees to make a prompt and thorough search through its files for responsive records and to promptly turn over any responsive records to the City's public records officer at no cost to the City.

7. Relationship of the Parties; Independent Consultant.

The Parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of

the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives, and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

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8. Indemnification.

Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorneys' fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

The provisions of this section shall survive the expiration or termination of this Agreement.

9. Insurance.

The Consultant 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 Consultant, its agents, representatives, or employees.

A. *Minimum Scope of Insurance.* Consultant shall obtain insurance of the types described below:

- i. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

- ii. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent Consultants and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
- iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- iv. Professional Liability insurance appropriate to the Consultant's profession.

B. *Minimum Amounts of Insurance.* Consultant shall maintain the following insurance limits:

- i. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- ii. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- iii. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. *Other Insurance Provision.* The Consultant's Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

D. *Acceptability of Insurers.* Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-VII.

E. *Verification of Coverage.* The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

F. *Notice of Cancellation.* The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

G. *Failure to Maintain Insurance.* Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

H. *No Limitation.* Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

10. Record Keeping and Reporting.

A. The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

B. The foregoing records shall be maintained for a period of seven (7) years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14 RCW and by the City.

11. City's Right of Inspection and Audit.

A. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

B. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by the City during the performance of this Agreement. All work products, data, studies, worksheets, models, reports, and other materials in support of the performance of the service, work products, or outcomes fulfilling the contractual obligations are the products of the City.

12. Work Performed at the Consultant's Risk.

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

13. Termination.

A. *Termination without cause.* This Agreement may be terminated by the City at any time for public convenience, for the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors.

B. *Termination with cause.* This Agreement may be terminated upon the default of the Consultant and the failure of the Consultant to cure such default within a reasonable time after receiving written notice of the default.

C. *Rights Upon Termination.*

i. With or Without Cause. Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to the City, and the Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. The Consultant shall not be entitled to any reallocation of cost, profit or overhead. The Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. The Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

ii. Default. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained, by the City by reason of such default.

D. *Suspension.* The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

E. *Notice of Termination or Suspension.* If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to the Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in the "Notices" Section herein.

F. Nothing in this Subsection shall prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

14. Discrimination Prohibited.

A. The Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Violation of this Section shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

15. Force Majeure.

Notwithstanding anything to the contrary in this Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, governmental laws, regulations or restrictions, civil commotions, casualty, actual or threatened public health emergency (including, without limitation, epidemic, pandemic, famine, disease, plague, quarantine, and other significant public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization, breaches in cybersecurity, and other causes beyond the reasonable control of the Party obligated to perform, regardless of whether such other causes are (i) foreseeable or unforeseeable or (ii) related to the specifically enumerated events in this paragraph (collectively, a "**Force Majeure**"), shall excuse the performance of such Party for a period equal to any such prevention, delay or stoppage. To the extent this Agreement specifies a time period for performance of an obligation of either Party, that time period shall be extended by the period of any delay in such Party's performance caused by a Force Majeure. Provided however, that the current COVID-19 pandemic shall not be considered a Force Majeure unless constraints on a Party's performance that result from the pandemic become substantially more onerous after the effective date of this Agreement.

16. Assignment and Subcontract.

The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City. Any assignment made without the prior approval of the City is void.

17. Conflict of Interest.

The Consultant represents to the City that it has no conflict of interest in performing any of the services set forth in Exhibit "A." In the event that the Consultant is asked to perform services for a project with which it may have a conflict, Consultant will immediately disclose such conflict to the City.

18. Confidentiality.

All information regarding the City obtained by the Consultant in performance of this Agreement shall be considered confidential. Breach of confidentiality by the Consultant shall be grounds for immediate termination.

19. 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 so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. 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 that the terms of the provision are effectuated.

20. Employment of State Retirees.

The City is a “DRS-covered employer” which is an organization that employs one or more members of any retirement system administered by the Washington State Department of Retirement Systems (DRS). Pursuant to RCW 41.50.139(1) and WAC 415-02-325(1), the City is required to elicit on a written form if any of the Contractor’s employees providing services to the City retired using the 2008 Early Retirement Factors (ERFs), or if the Contractor is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. Failure to make this determination exposes the City to significant liability for pension overpayments. As a result, before commencing work under this Agreement, Contractor shall determine whether any of its employees providing services to the City or any of the Contractor’s owners retired using the 2008 ERFs, and shall immediately notify the City and shall promptly complete the form provided by the City after this notification is made. This notification to DRS could impact the payment of retirement benefits to employees and owners of Contractor. Contractor shall indemnify, defend, and hold harmless the City from any and all claims, damages, or other liability, including attorneys’ fees and costs, relating to a claim by DRS of a pension overpayment caused by or resulting from Contractor’s failure to comply with the terms of this provision. This provision shall survive termination of this Agreement.

21. Entire Agreement.

This Agreement contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the parties. If there is a conflict between the terms and conditions of this Agreement and the attached exhibits, then the terms and conditions of this Agreement shall prevail over the exhibits. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

22. Non-waiver of Breach.

The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

23. Modification.

No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

24. Notices.

All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered, in which case the notice or communication shall be deemed given on the date of receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, in which case the notice or communication shall be deemed given three (3)

business days after the date of deposit in the United States mail; or (c) sent by overnight delivery using a nationally recognized overnight courier service, in which case the notice or communication shall be deemed given one business day after the date of deposit with such courier. In addition, all notices shall also be emailed, however, email does not substitute for an official notice. Notices shall be sent to the following addresses:

Notices to the City of Port Orchard shall be sent to the following address:

City Clerk
City of Port Orchard
216 Prospect Street
Port Orchard, Washington 98366
Bwallace@portorchardwa.gov
Phone: 360.876.4407 Fax: 360.895.9029

Notices to the Consultant shall be sent to the following address:

Baumwelt
919 MLK Way, Tacoma WA 98405
Phone No.: 253.345.1400
Email: derrick@thebaumwelt.com

25. Resolution of Disputes; Governing Law.

A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor, who shall determine the term or provision's true intent or meaning. The Mayor shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor's determination in a reasonable time, or if the Consultant does not agree with the Mayor's decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in Kitsap County Superior Court, Kitsap County, Washington.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys' fees from the other Party.

26. Compliance with Laws.

The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

27. Title VI.

The City of Port Orchard, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42

U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, must affirmatively insure that its contracts comply with these regulations.

Therefore, during the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest agrees as follows:

A. *Compliance with Regulations.* The Consultant will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

B. *Nondiscrimination.* The Consultant, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix A, attached hereto and incorporated herein by this reference, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.

C. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment.* In all solicitations, either by competitive bidding, or negotiation made by the Consultant 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 Consultant of the Consultant's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.

D. *Information and Reports.* The Consultant 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 FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the City or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

E. *Sanctions for Noncompliance.* In the event of the Consultant's noncompliance with the non-discrimination provisions of this Agreement, the City will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- i. withholding payments to the Consultant under the Agreement until the contractor complies; and/or
- ii. cancelling, terminating, or suspending the Agreement, in whole or in part.

F. *Incorporation of Provisions.* The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will

take action with respect to any subcontract or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the City to enter into any litigation to protect the interests of the City. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

28. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement.

29. Severability.

Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

IN WITNESS WHEREOF, the City and the Consultant have executed this Agreement as of the dates listed below.

CONSULTANT

By: _____
Title: _____
Date: _____

CITY OF PORT ORCHARD

By: _____
Robert Putaansuu, Mayor

Date: _____

ATTEST/AUTHENTICATE

Brandy Wallace, MMC, City Clerk

APPROVED AS TO FORM

Port Orchard City Attorney’s Office

EXHIBIT A

Scope of Services to be Provided by Consultant. The Consultant shall furnish services including, but not limited to, the items outlined in the attached Scope of Services (Exhibit A).

Rates for Services to be Provided by Consultant. The Consultant shall furnish the services in accordance with the rates outlined in the Scope of Services (Exhibit A).

APPENDIX A

During the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- 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 C.F.R. Part 21.
- 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);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- 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 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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);
- 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.P.R. parts 37 and 38;
- 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);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures 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;
- 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, you must take reasonable steps to -ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

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

SCOPE OF WORK

BAUMWELT

Givens Park Sport Court Remodel
City of Port Orchard
Landscape Architecture Services
Scope of Work
March 5, 2024

A. Description

In general the scope of work is to provide plans, specifications, and an estimate of probable construction cost to renovate the tennis and basketball courts at Givens Park in Port Orchard, Washington. The existing courts contain numerous cracks and in general are in a worn condition. The existing fence material is deformed and rusted in parts. Work will include resurfacing the tennis court to accommodate pickleball on-site, reconstructing the basketball court to accommodate futsal, replacement of the courts fencing, adding a seating area, upgrading lighting, and installing a new paved accessible route to the courts. The Client is City of Port Orchard (Client). The project is located at approximately the 1000 block of Tacoma Avenue in Port Orchard, WA 98366.

Work performed by subconsultants is as follows:

*Electrical Engineering - Cross Engineers
 Cultural Resources – Other (By Client)
 Civil Engineering – By Client (if required)*

B. Program & Maximum Allowable Construction Cost**Program**

Program elements to be designed include:

1. Tennis Court Resurfacing
 - a. Crack Repair & resurfacing of both courts
 - b. Include new posts and nets
 - c. Accommodate pickleball and tennis on new courts
2. Basketball Court Replacement
 - a. Pulverize existing court surfacing
 - b. Reuse crushed asphalt as base for new court
 - c. Accommodate futsal and basketball on new court
3. Fencing
 - a. Replacement of tennis court fence
 - b. New fence around basketball/futsal court
 - c. Possible consideration to reuse existing posts
4. Access to Courts
 - a. ADA paved route to the north
 - i. Connect courts to existing ADA parking stall along Tacoma Avenue
 - b. Stair access from Tacoma Avenue down to courts
 - c. Paved connection to sidewalk along Soufre Street (either maintain existing or provide new)
5. Spectator Seating
 - a. Approximately 30' in length
 - b. Along west edge of basketball court
 - c. Approximately two concrete terraced seating areas, built into hillside
6. Court Lighting (alternate bid item)
 - a. Conversion of tennis lighting to LED
 - b. Basketball/Futsal Court LED Lights

MACC

A Maximum Allowable Construction Cost (MACC) of \$235,200.00 has been established for the project.

C. Scope of Work

I. PRELIMINARY DESIGN (60% CONSTRUCTION DOCUMENTS)

In the Preliminary Design phase, Baumwelt will finalize and describe the size and character of the entire project for approval by the Client. Consideration shall be given to availability of materials, equipment and labor, construction sequencing and scheduling, user safety and maintenance requirements. The specific scope of work is as follows:

Background Data Collection:

- Review the goals, objectives, and program of activities and facilities with the Client
- Review existing drawings provide by Client
- Review site conditions
- Electrical: coordinate with Client to understand functionality of existing system

Preliminary Plans:

Develop Preliminary Design plans and details and estimated construction costs to address the program, site constraints, and background information.

- Disciplines Coordination: Coordination of the work with other involved consultants for the project.
- Document Checking: Review and coordination of documents prepared for the project.
- Permitting Authority Consulting: With input of Client, identify critical applicable regulations, applicable laws, statutes, regulations, and codes.
- Site Design: Establishment of the relationships, forms, size, and appearance of the project through plans, sections and elevations, typical construction details, materials selections, and equipment layouts.
- Cost Estimating: Development of a probable construction cost. Costs shall reflect the level of design elements presented in the documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Baumwelt will analyze scope, schedule and budget options to stay within the MACC (if established).

Meetings:

- Meet with the client at the beginning and again at the end of Preliminary Design for review.

Deliverables:

- 22" x 34" drawings and specifications (digital)
- Catalog cut sheets for equipment and written description of materials
- Estimate of probable construction cost
- Minutes from all meetings

II. 100% CONSTRUCTION DOCUMENTS

Based on the preliminary design decisions, final construction plans will be prepared. Design standards will comply with City of Port Orchard. The contractor performing the work (Contractor) will be selected from a roster of qualified companies. Construction drawings will be developed as follows.

Construction Documents:

Composite Site Plan: This plan will provide an overall view of the entire project area with specific items required by City permitting highlighted.

Demolition, Clearing, & Grubbing Plans: This plan will show the extent of the clearing and grubbing for the site. It will also show any demolition items.

Erosion Control Plan: This plan will show erosion control measures for the site, along with details and notes required by City permitting. Civil engineer will prepare a basic abbreviated erosion and sediment control plan that meets the current City or DOE SWPPP Permit requirements. See attached 3J Scope of Work.

Layout and Materials Plans: These plans will be developed on an overall grid of the site at an appropriate scale. It will show materiality of different components and allow layout of all facilities by critical dimensions.

Grading: These plans will be developed at an appropriate scale. They will show overall site grading, including spot elevations. No drainage infrastructure is envisioned at this time and is not included in this proposal.

Site Sections and Details: These plans will show cross sections for earthwork and various site details. Details will be referenced from the plans, and plans will also reference the details.

Electrical (Alternate Bid Item): These plans will show the electrical design for the new futsal court and LED upgrades to the tennis court. See attached Electrical scope of work.

Specifications and Project Manual:

Specifications for the field work will be developed in the CSI (Construction Specification Institute) format. The project manual will utilize the Client's boilerplate as needed. The overall estimated cost of construction will be updated at this point.

Cost Estimate:

A final probable cost of construction will be prepared prior to finalizing construction documents. This estimate will be based on actual quantities and will be developed in conjunction with the Contractor to ensure accuracy.

Meetings:

- Meet with Client at the beginning and end of the construction documents phase for review.

Deliverables:

- 22" x 34" drawings and specifications (digital)
- Estimate of probable construction cost

Permits:

- Baumwelt will complete the SEPA Checklist and city of Port Orchard required permit applications, and will coordinate the permit review process with the city of Port Orchard. All permit fees to be paid directly by the Client.
- 3J (Civil Engineer) will prepare and submit the Stormwater Pollution Prevention Plan (SWPPP) permit application. See attached 3J Scope of Work.

III. CONSTRUCTION CONTRACT ADMINISTRATION

Baumwelt will provide periodic construction review. It is anticipated that construction will be completed within a 4-month period. Construction review will include:

Construction Review:

1. Review for approval or disapproval materials and equipment submittals required by the Contractors.
2. Conduct surveillance of construction to include periodic visits to the site to observe the progress and quality of the work. Owner's representative to attend where feasible.
3. Conduct weekly construction progress meetings. Generate and issue minutes to appropriate parties.

4. Monitor construction progress and quality with decisions relative to contract performance. Document progress with reports as appropriate.
5. Issue instructions for and of the Owner to the Contractor, respond to Contractor RFI's and prepare field directives and change orders, if applicable.
6. Review the Contractor's work and approve or disapprove work in conformance with the contract documents.
7. Keep the Owner advised as to the progress of the work.
8. Review the completed project conformance to the requirements of the contract documents.
9. Process contract payment requests.

IV. PROJECT CLOSE-OUT

Project Close-Out:

1. Conduct a final review and prepare punch list.
2. Conduct a final review of punch list items and recommend acceptance.
3. All project closeout documents will be assembled in a bound notebook by the contractor.
4. Conduct a one-year warranty review.

D. Project Schedule

Tentative Schedule for Design and Construction:

60% plans to RCO	March 29, 2024 – TBD pending project start
Local Permits	March 29, 2024 – TBD pending project start
SEPA Submitted	June 30, 2024
Bid Docs to RCO	June 30, 2024
Bid Award	July 15, 2024
Construction Start	August 31, 2024

E. Design Fee

To be paid on a lump-sum basis established by percentage of work complete.

Landscape Design Fee: \$47,790.00

Includes Tasks:

I. 60% Design	\$18,500.00
II. 100% Design	\$21,790.00
III. Construction Administration	\$6,500.00
IV. Project Closeout	\$1,000.00

Subconsultants:

Cross Engineers (through design only)	\$4,100.00
3J Consulting (scope items listed only)	\$10,000.00
Civil/TESS/Stormwater	BY CLIENT
Cultural Resources	BY CLIENT

10% Markup on Subconsultants \$1,410.00

Total \$63,300.00

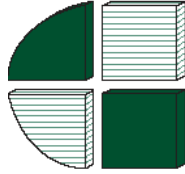
Provided by Client

- 1. Site Access**
Rights-of-entry upon all lands necessary for the performance of the above-described Scope of Services.
- 2. Preliminary CAD Base Drawings**
The Client will provide a geotechnical study if needed and any testing that may be required for design or during construction.
- 3. Geotechnical Investigation (if required)**
Though not anticipated at this time, the Client will provide a geotechnical study if needed and any testing that may be required for design or during construction.
- 4. Special Inspection/Testing**
The Client will obtain and pay for any special inspections for existing or proposed utilities compaction and concrete during construction.

EXTRA WORK

- 1. Expanded Scope of Work**
If during the course of the project, the Client elects to expand the Scope of Work design fees for the additional work shall be negotiated.
- 2. Civil Engineering Work Beyond Work Stated in this Proposal**
No work pertaining to civil engineering beyond the Basic Abbreviated Erosion Control Plan and the SWPPP permit application, including stormwater subdrainage or a drainage report, are included in this proposal. It is envisioned that the Client will provide these services as needed. If civil engineering is required, fees for the additional work shall be negotiated.
- 3. Schedule**
In the event the schedule through the construction document phase is extended by the Client, fees for additional time shall be negotiated.
- 4. Additional Construction Review**
In the event the time of completion is extended requiring additional work for Baumwelt, fees for the additional time and expenses shall be increased proportionately to the time extension.
- 5. Record Drawings**
The contract documents will require the contractor to maintain marked up prints as record drawings. If the client would like those record changes made as electronic changes to the original drawings the fees for the additional time and expenses shall be negotiated.

If this proposal is acceptable to you, please sign and return this document or respond via email at your earliest convenience. Thank you.



February 9, 2024

Baumwelt
Attn: Derrick Eberle
919 MLK Jr. Way
Tacoma, WA 98405

Re: Givins Park Court Restorations – Electrical Design Fee Proposal

Mr. Derrick Eberle,

We welcome the opportunity to offer our engineering services for your consideration. We understand the scope is for the existing sport court restoration at Givens Park.

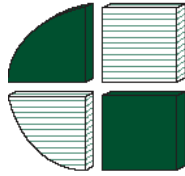
Electrical Scope -

- Visit site to review existing site lighting and power service location.
- Prepare electrical site plan with new lighting at Futsal court and upgrading of existing tennis court lighting.
- Prepare site lighting energy budget compliance form to be submitted with building department submittal.
- Prepare site lighting photometric plan for sports courts.
- Coordinate with owner and provide electrical connections to additional owner requested equipment.
- Prepare electrical cost estimate.
- Prepare Division 26 electrical specifications.
- Attend design team coordination meeting via online conference call software. Anticipate two (2) meetings.
- Attend owner review meeting in Port Orchard or via online conference call software. Anticipate one (1) meeting.
- Additional design review coordination is assumed to be via electronic correspondence with Design Team and Owner.
- All drawings will be prepared in AutoCAD.
- Prepare Division 26 specifications.
- One set of electronic PDF electrical drawings will be provided for each submittal phase (Building Department, Owner Review, and Bid) for reproduction and distribution by Baumwelt to others for coordination and review. This proposal assumes Baumwelt will provide Cross Engineers with AutoCAD compatible backgrounds of the site. Baumwelt will provide electronic PDF copies of complete project plans for each design group to Cross Engineers at each submittal phase.

Additional Services

We anticipate the following activities to be outside the normal workscope. If requested separate fee proposals for these items as related to Electrical can be provided.

- LEED Documentation for buildings.
- Life cycle cost analysis.
- Commissioning participation.
- BIM 3D Modeling and Conflict Resolution Coordination
- Assisting owner with grant requests related to electrical equipment.
- Construction Administration
- Transfer of red-line field record drawings to AutoCAD.



CROSS ENGINEERS, INC.

Design Fee:

We propose a lump sum electrical fee of \$4,100.00 through design.

Billing will be on a monthly a percentage complete basis.

Please contact my office if there are additional workscope items or questions. Our office has permanent staff available for this project with your notice to proceed.

Sincerely,

Scott Kelly
Cross Engineers, Inc.

Notice to Proceed

By providing the signature below Baumwelt acknowledges this fee proposal and directs Cross Engineers to proceed with consulting as outlined herein.

Signature

Date

March 6, 2024

Derrick Eberle, PLA
Landscape Architect
Baumwelt PLLC
919 MLK Way
Tacoma, WA 98405

3J CONSULTING

9600 SW NIMBUS AVENUE, SUITE 100
BEAVERTON, OREGON 97008
PH: (503) 946.9365
WWW.3JCONSULTING.COM

Givens Park Court Restorations
Port Orchard, WA
Scope of Services

Dear Derrick,

3J Consulting has prepared the attached Scope of Services to provide Civil Engineering for the Givens Park Court Restorations in Port Orchard, Washington.

3J will assist you with the construction documents and permit assistance related to the Stormwater Pollution Prevention Plan (SWPPP) for the project. 3J understands that the project will only need to meet Minimum Requirements #2 and #4 and be limited to the Basic Abbreviated Plan requirements, per the City adopted Stormwater Management Manual for Western Washington (SWMMWW), 2019.

3J has provided a Lump Sum Fee and Time and Materials to complete the specific professional services listed in the attached Scope of Services. The attached Agreement for Consulting Services has been prepared based on our email conversations on February 29, 2024 and conceptual layout attached in Appendix A.

Thank you for the opportunity to assist you with this project. Once we receive a signed copy of the Scope of Services, we will proceed with work on the project. Please do not hesitate to contact me if you have any questions.

Sincerely,



Ashley Doty, PE
Project Manager
3J Consulting, Inc.

copy: File

AGREEMENT

FOR CONSULTING SERVICES

This Agreement for Consulting Services (together with each of the applicable attachments hereto, this "**Agreement**") sets forth the terms and conditions for retention of **3J Consulting, Inc. ("3J")** to provide professional consulting services to **Baumwelt PLLC ("CLIENT")** in connection with the **Givens Park Court Restorations** project (the "**Project**"). This Agreement consists of this acknowledgement and signature page, and each of the following identified subparts developed for the Project which are attached hereto and by this reference incorporated herein (as applicable): **SCOPE OF SERVICES, GENERAL PROVISIONS**, and any **CONTRACT ADDENDUM** which may be used to supplement the **SCOPE OF SERVICES** hereafter.

The basis of 3J's retention is described in the attached **GENERAL PROVISIONS**. Any requested services which are in addition to the attached Scope of Services will be invoiced according to 3J's standard Schedule of Fees in effect at the time of the services or included in an addendum to this Agreement (a "**Contract Addendum**"). By signing below, CLIENT acknowledges that it has read and understood and hereby agrees to be bound by the terms and conditions set forth in this Agreement.

THIS IS A LEGALLY BINDING AGREEMENT APPROVED AND AGREED TO:

Persons who execute this Agreement shall be authorized to financially bind the CLIENT or be personally liable for all payments due to 3J. Please provide a copy of the letter of signatory authority from the CLIENT with the executed copy of this Agreement.

Approved for **3J Consulting, Inc.**

Approved for **Baumwelt PLLC**

Signed: _____

Signed: _____

Name: John Howorth

Name: _____

Title: President

Title: _____

Date: _____

Date: _____

SCOPE OF SERVICES

BAUMWELT PLLC GIVENS PARK COURT RESTORATIONS PORT ORCHARD, WASHINGTON

MARCH 6, 2024

PROJECT OVERVIEW

The project site is located at Givens Park, 1025 Tacoma Ave, within the City of Port Orchard. 3J understands the City of Port Orchard would like to improve the existing tennis court into a combined tennis and pickleball court and replace the existing asphalt court with a new combined basketball and futsal court. The conceptual layout attached to Appendix A is the basis for this Agreement.

STATEMENT OF WORK

3J will provide Civil Engineering to design the erosion control and prepare the SWPPP permit package for the project. 3J will provide construction documents and SWPPP permit assistance for the Project. All work will be performed by or under the direct supervision of a licensed Professional Engineer.

CONSTRUCTION DOCUMENTS (CD)

3J will prepare the construction documents required for the SWPPP for the proposed Project based on the final governing agency Conditions of Approval and the final Client approved site plan. The Project will be completed as one (1) phase.

Authorizing the preparation of construction documents prior to receiving land use approvals is at CLIENT's risk. Modifications to the site plan to reflect Conditions of Approval or site plan modifications after 3J has begun the construction documents may require a Contract Addendum.

3J understands that the project will only need to meet Minimum Requirements #2 and #4 and be limited to the Basic Abbreviated Plan requirements, per the City adopted Stormwater Management Manual for Western Washington (SWMMWW), 2019.

3J assumes for our budgeting purposes the construction document phase of the Project will last approximately two (2) months. Additional time may require coordination budgets to be increased.

CIVIL ENGINEERING

- **Team Coordination:** 3J will coordinate with CLIENT and other team members during this phase of the Project and has budgeted to attend up to one (1) - 1hr virtual meetings/conference calls and provide up to one (1) hour of coordination each week for eight (8) weeks. The budget for meetings may or may not be used for formal meetings depending upon the amount of coordination in other ways (i.e., Emails, phone calls, etc.).
- **Basic Abbreviated Erosion Control Plan:** 3J will prepare a basic abbreviated erosion and sediment control plan that meets the current City or DOE SWPPP Permit requirements. The temporary erosion and sediment control (TESC) plans will show the proposed erosion and

sediment control measures and other best management practices to be used at the site including general notes and details for the construction of the erosion control facilities.

PERMITTING

3J will assist with the permit process necessary for CLIENT to obtain the required construction permits for the Project. 3J assumes for our budgeting purposes this process will take a total of eight (8) weeks. 3J has included a maximum of one (1) round of City comments for a total of two (2) submittals in all. Any additional comments generated by the City beyond this, may require a Contract Addendum.

CIVIL ENGINEERING

- **Permit Submittal:** 3J will prepare and submit the SWPPP permit application. 3J will work with the City to obtain the SWPPP permit for the Project.
- **Plan Revisions, Response & Coordination:** 3J will work with the City to obtain the required permits for the Project. 3J will make corrections to reasonable comments on the plans and resubmit back to the City. Any comments substantially modifying/changing/altering the submitted design may require a Contract Addendum.

CONTRACT ADDENDUMS

Contract Addendums will be issued and approved as required.

SUB-CONSULTANT SERVICES

CLIENT will contract directly with sub-consultants.

EXCLUSIONS

The following items and task are excluded from this Scope of Services.

- *Site design is understood to be by other third parties ("Others") and not included.*
- *Stormwater design, drainage analysis and storm drainage report is understood to be by other third parties ("Others") and not included.*
- *Pedestrian level wayfinding or other amenity signing is not included in this proposal and is to be by Others.*
- *Land use planning will be by others or under a separate contract.*
- *Attendance at neighborhood meetings, public outreach, and land use hearings are not included in this Agreement. If 3J is requested to attend any public meeting a Contract Addendum will be required.*
- *Wetland coordination is not anticipated to be necessary for this project.*
- *Cost estimating is not included in this proposal.*
- *Modifications to development codes, building codes, or engineering codes after the date of this proposal may require additional fees.*
- *Client will provide the current 30% design for the project and all available as-built information for the Project. Where as-builts are not available and utilities are not easily found by standard land surveying services, Client will contract with others to assist in locating the utility and/or current condition assessment.*
- *Any changes to the site plan after 3J have begun the next phase of work may require a Contract Addendum.*
- *Any comments substantially modifying/changing/altering the submitted design to permitting review agencies may require a Contract Addendum.*

- *The site will be designed, bid, and constructed at the same time with one package.*
- *Erosion control inspections are to be by Others.*

CONDITIONS

The following conditions are essential to the Scope of Work and are incorporated into the Agreement:

1. Jurisdictional Requirements: 3J will complete all Work based on the current governing agencies' requirements existing and published as of the date of this Agreement, consistent with the Standard of Care. Modifications or revisions required due to new jurisdictional code(s) or design requirements may be completed as a Contract Addendum.
2. Opinions Regarding Cost: When included in the Scope of Services, opinions or estimates of probable construction costs are prepared on the basis of 3J's experience and qualifications and represent 3J's judgment as a professional generally familiar with the industry. However, because 3J has no control over the cost of labor, materials, equipment, or services furnished by others, over contractor's methods of determining prices, or over competitive bidding or market conditions, 3J cannot and does not guarantee that its opinions or estimates of probable construction cost will reflect the actual costs of proposals, bids, or actual construction costs.
3. Schedules: Schedules prepared by 3J, or durations described within the Scope of Services are not intended to set any contractual deliverable dates or milestones. Schedules are for information, planning, and 3J budgeting of fees purposes only.
4. Value Engineering: Unless expressly included in the Scope of Services, 3J will require additional fees to review "Value Engineering" proposals and will require the supporting data, calculations, and cost estimates for all Value Engineering proposals in order to provide a thorough evaluation of the proposal(s). 3J shall have no liability whatsoever for any claims arising from any changes implemented into the design or construction of the Project without 3J's prior review and approval of the applicable Value Engineering, whether undertaken by any third party or CLIENT.
5. Differing Site Conditions: If any of the physical conditions at the site which is the subject of this Agreement are different than those represented by CLIENT or different than those encountered in work of a similar character ("Differing Site Conditions"), and such differences adversely affect 3J's ability to perform the Work, 3J may terminate this Agreement after notifying CLIENT in writing of such Differing Site Conditions or shall agree, in writing, to a new or modified Scope of Services and Fees.
6. Permitting Assistance: CLIENT is responsible to obtain, pay for and comply with any permits necessary for the Project(s). 3J will provide CLIENT with consultation support and assistance with the permitting process.
7. Construction Phase Services: Notwithstanding any professional consulting services provided by 3J for any construction phase of the Project, CLIENT understands and agrees that CLIENT's construction contractor(s) (the "Contractor") is solely responsible for the construction of the Project, that 3J has no liability whatsoever with respect to construction of the Project, and that 3J is not responsible for the acts or omissions of any contractor, subcontractor, or material supplier (including without limitation for safety precautions, programs, or enforcement; or for construction means, methods, techniques, sequences and procedures employed by the Contractor).
8. Hazardous Environmental Conditions: It is acknowledged by both parties that the Scope of Services does not include any services related to the presence at the site of asbestos, PCBs, petroleum, hazardous waste or radioactive materials. CLIENT acknowledges that 3J is performing professional services for CLIENT and 3J is not and shall not be required to become an "arranger", "operator", "generator", or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA).
9. Minimum Time Billed & Travel Time: 3J's minimum time billed is 15 minutes. Travel is billed door to door at the rates established per the Agreement or Schedule of Fees in effect at the time of the service, as applicable. Travel time is billed for all meetings and site visits and include the time from the office location of the staff to the job site or meeting location and back.
10. Site Access: CLIENT shall provide 3J unrestricted access to the site to the same degree as CLIENT maintains. CLIENT shall be responsible to obtain any third party consents or rights of way necessary to ensure such access by 3J.
11. CLIENT'S Insurance: CLIENT shall procure at its own expense such permits, licenses, insurance and governmental approval, as may be necessary for CLIENT to procure to comply with Federal, State and local laws, ordinances and regulations for performance of the Work.
12. Contractors' Insurance: CLIENT shall require its contractor(s) to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect the CLIENT and 3J's interests in the Project.
13. Insurance Policy Provisions. CLIENT's and its contractors' insurance policies related to the Project will (i) include 3J as an additional insured and loss payee, (ii) contain provisions to the effect that 3J's interests are covered and that the insurers will have no rights of recovery against 3J or any insureds, additional insureds, or loss payees in the event of payment for a claim thereunder, (iii) require that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to 3J.

14. Cooperation RE Insurance. CLIENT shall provide 3J certificates of insurance upon request and shall cooperate, and require its contractor(s), to cooperate with 3J and its insurers to the extent necessary for 3J to obtain insurance coverage related to any claims or potential claims that arise out of this Agreement.

REIMBURSABLE EXPENSES

Customary reimbursable expenses are the actual expense incurred in direct connection with the Project. The following schedule applies for Reimbursable Expenses:

Vehicle mileage is reimbursed at the current IRS rate per mile for project related travel.

The following project related expenses are reimbursed at cost plus ten (10) percent:

- Copy and Reproduction Services
- Travel Expenses, other than private vehicle mileage
- Postage, Messenger Services, Etc.

In-house printing/scanning/binders/thumb drives is reimbursed at the following rates:

Plots – B&W	\$0.60/SF	Plots – Color	\$1.80/SF
Small Scan	\$0.50/each	Full Scan	\$2.50 each
8.5x11 B&W	\$0.30 each	8.5x11 Color	\$0.60 each
11x17 B&W	\$0.60 each	11x17 Color	\$1.80 each
Binders	\$12.00 each	Thumb Drives	\$6.00 each

F E E S

The Fees for the above Scope of Services will be on a Lump Sum and a time and materials basis, plus Reimbursable Expenses as outlined above and as broken down as follows: Additional services requested and approved by CLIENT not identified within this Scope of Services will be billed as a Contract Addendum as agreed upon herein. (*Time and Materials Budgets are italicized.*)

Phase	Description	LS Fee	T&M
Construction Documents			
	Civil Engineering	\$ 6,500	
Permitting			
	Civil Engineering	\$ 3,500	
Reimbursable Expenses			
	<i>Estimated Reimbursable Expense Budget</i>		<i>As Incurred</i>

Summary of Fees

Total Lump Sum Fee	\$ 10,000
Reimbursable Expense Budget	<i>As Incurred</i>
Total Contract Fee	\$ 10,000

Time & Materials Budget: Any unused budget from any Phase, Task, or Service may be used for other phases of the Project as needed. If the overall budget is exceeded or anticipated to be exceeded, a Contract Addendum increasing the budgets will be issued.

GENERAL PROVISIONS

These General Provisions are incorporated into this Agreement between 3J and CLIENT. Any capitalized terms used herein but otherwise not defined shall have the meanings set forth in the other component parts of this Agreement:

- A. **Authorization to Proceed:** Any request by CLIENT for 3J to proceed with work under this Agreement (the "Work") with respect to the Project shall constitute an acceptance of all terms of this Agreement, including these General Provisions. Signing this Agreement or any Contract Addendum hereto and providing any required retainer shall be construed as authorization by CLIENT for 3J to proceed with the Work.
- B. **Payment:** Invoices will be issued monthly by 3J and are due and payable upon receipt. Interest is charged at a periodic rate of 1.5% per month (18% APR) on all invoices not paid within thirty (30) days. If any invoice is not paid in full within 30 days after the invoice date, then in addition to any other remedies available to 3J, it may cease performing the Work and not release any information or plans hereunder upon delivery of written notice, electronic or otherwise, of its intention thereof to CLIENT. Further, in the event of such default, 3J shall have the right, but not the obligation, to cease performing any work under any other contract then outstanding between CLIENT and 3J. CLIENT expressly agrees that payment to 3J is not subject to any payments due to CLIENT from any third party and payments due 3J will not be delayed pending any third-party disbursement. If CLIENT disputes any portion of an invoice, CLIENT shall notify 3J of the dispute (including amount and details of the disputed facts) in writing within 30 days of the invoice date. CLIENT hereby waives the right to dispute an invoice more than 30 days after an invoice's date, and/or if CLIENT fails to provide the required notice.
- C. **Reimbursable Expenses:** Any outside services, reproductions or other services that are required to complete the Work that are not itemized in the Scope of Services to be performed by 3J are invoiced as "Reimbursable Expenses" at cost plus 10%.
- D. **Limitation of Liability:** 3J's liability to CLIENT for any cause or combination of causes is, in the aggregate, limited to the lesser of the fee paid to 3J by CLIENT for the applicable Scope of Services, or the remaining applicable professional liability insurance coverage proceeds available to 3J (after deduction of any costs, claim payments or other amounts that may have reduced policy limits). No director, officer, shareholder, employee, or other individual representative of 3J shall have any personal or other liability to CLIENT or any other party, for any and all claims, except fraud claims, arising out of or relating to this Agreement, the Project, the Work, or work product created in connection with the foregoing. All third party claims shall be made against CLIENT only.
- E. **CLIENT Acts or Omissions:** 3J shall have no liability whatsoever for any delay or failure to perform any of its obligations under this Agreement and shall not be deemed to be in breach hereof to the extent such delay or failure arises directly or indirectly from any act or omission of CLIENT or any of its agents, subcontractors, consultants or employees.
- F. **Fees:** The fees reflected in the Scope of Services are good for thirty (30) days after the date they are prepared and may be refreshed by 3J at any time thereafter prior to full execution of this Agreement. If, at any time during the performance of the Work, the Project is delayed for more than sixty (60) days then 3J has the right to re-evaluate the Fees accordingly.
- G. **Standard of Care:** The "Standard of Care" for all professional services performed or furnished by 3J under this Agreement will be the skill and care used by members of 3J's profession practicing under similar circumstances at the same time and in the same locality and nothing in this Agreement obligates 3J to provide services that exceed the Standard of Care.
- H. **Disclaimer of Warranties:** Other than exercising the Standard of Care, 3J makes no warranties under this Agreement or otherwise, in connection with 3J's services and disclaims any warranty of merchantability, warranty of fitness for a particular purpose, warranty of title, or warranty against infringement of intellectual property rights of a third party, whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise. If at any time 3J fails to meet the Standard of Care, 3J's liability shall be limited to re-performance of the Work that did not meet the Standard of Care, or reimbursement of an appropriate portion of the fee charged for such Work, in 3J's sole discretion.
- I. **Assignment:** Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by CLIENT without the prior written consent of 3J, which consent will not be unreasonably withheld. 3J may freely assign this Agreement to any successor in interest.
- J. **Termination:** Either CLIENT or 3J may terminate this Agreement by giving thirty (30) days written notice to the other party. In such event, CLIENT shall immediately pay 3J in full for all the Work previously authorized and performed prior to the effective date of termination. 3J need not give thirty (30) days notice if the reason for termination is non-payment by CLIENT.
- K. **Suspended Work:** If CLIENT suspends the Work for more than thirty (30) days, 3J shall have the right to revisit the Scope of Services and/or Fees and make reasonable adjustments to account for staff remobilization, Project scope or design criteria changes, building code revisions, updated studies or reports, electronic project model updates due to revisions or updates in computer software, drafting project updates, staff compensation, firm overhead changes, insurance requirement changes, or other expenses as deemed by 3J to be related to the Project. The original Scope of Services and Fees may be revised in their entirety pursuant to an addendum to this Agreement (each, a "Contract Addendum").

- L. Dispute Resolution: CLIENT and 3J agree that they shall first submit any and all unsettled claims, counter claims, disputes, and other matters in question between them arising out of or relating to this Agreement, or the Project, to mediation in accordance with the Construction Industry Mediation Rules of the Arbitration Service of Portland, effective as of the date of this Agreement. If mediation does not resolve any and all disputes, the parties agree that upon formal termination of the mediation, either 3J or CLIENT may assert a claim against the other in any competent court located in Washington County, OR. Notwithstanding the foregoing, lien perfection, collection claims and suits for injunctive relief may be filed by 3J at any time in any court having jurisdiction over the Project.
- M. Collection Expenses: CLIENT shall be liable for any expenses incurred by 3J to collect any past due sum owed to 3J by CLIENT and shall promptly reimburse 3J for all such expenses in addition to all other charges due under this Agreement, including attorneys' fees and collection fees.
- N. Controlling Law, Jurisdiction and Venue: This Agreement shall be governed by the laws of the State of Oregon under the exclusive jurisdiction of the courts located in Washington County, Oregon, and each party irrevocably submits to the exclusive jurisdiction of such courts in any suit, action or proceeding arising under this Agreement.
- O. Ownership of Documents: All documents, written work product, renderings, images, electronic files, etc. prepared or furnished to CLIENT by 3J pursuant to this Agreement are instruments of 3J's professional service ("Work Product"), and 3J retains all ownership, intellectual property, copyright and other interests therein. 3J grants CLIENT a limited license for CLIENT and its authorized agents to use Work Product for the sole purpose of construction, occupying, and maintaining the Project. CLIENT's license to use Work Product for the Project shall be automatically revoked upon any default by CLIENT of any of the terms or obligations of this Agreement or any other contract between 3J and CLIENT, including, without limitation, the CLIENT's obligation to pay 3J. Reuse or modification of any Work Product by CLIENT, without 3J's written permission, shall be at CLIENT's sole risk, and CLIENT agrees to indemnify and hold 3J harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse or modification by CLIENT or by others acting on behalf of or through CLIENT.
- P. Confidentiality: Subject to the license granted pursuant to Section O, CLIENT agrees to keep Work Product and all confidential or proprietary information of 3J disclosed to CLIENT in the course of performing the Work (including without limitation, trade secrets, know-how, technology, business operations and strategies, information pertaining to customers, pricing and marketing, and any information which if disclosed, would undermine 3J's competitive advantage) strictly confidential and shall secure such confidential information in at least as secure a manner as its own highly confidential information.
- Q. Use of Electronic Media: Copies of documents that may be relied upon by CLIENT are limited to the physically printed copies (also known as hard copies) that are signed or sealed by 3J, or digitally signed files that are not invalidated or modified. Files in electronic format or text, data, graphic or other types that are furnished by 3J to CLIENT are for convenience of CLIENT only, unless they are digitally signed, validated, and not modified. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format (including those that are digitally signed), 3J makes no representations as to long-term compatibility, usability, security (i.e. viruses or other electronic threats), or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those in use by 3J at the beginning of the assignment.
- R. Lien Rights: 3J may perform or discharge any and all procedures, acts, notices, and filings to perfect its lien rights under the applicable state law, notwithstanding any limits or requirements established by Sections Q or S.
- S. Force Majeure: Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations (other than for payment obligations) results from any cause beyond its reasonable control and without any negligence on the part of the performing party or its agents or representatives; provided that the impacted party shall use diligent efforts to mitigate the effect of any such cause and reduce or end the delay or failure and shall resume its performance as soon as reasonably possible after the removal of the cause.
- T. Indemnification: CLIENT and 3J each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives, from and against liability for all claims, losses, damages, and expenses specifically excluding attorneys' fees and costs, but only to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions (or those of any of its respective agents or representatives) in relation to the Project, or claims of copyright or patent infringement arising from the use of any documents provided by any previous design firm. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of CLIENT and 3J, liability therefor shall be borne by each party in proportion to its respective negligence.
- U. Statute of Limitations: Any and all claims and/or causes of action between the parties arising out of or relating to this Agreement shall be brought by either party within two (2) years of the sooner of (i) substantial completion of the Project or (ii) termination of this Agreement or the Project.
- V. Notice of Claim: CLIENT shall provide 3J written notice of any potential claim, or facts that CLIENT is aware of that could result in a claim, against 3J within ten (10) days after the date of the occurrence of the event causing the potential

claim or discovery of the facts as a condition precedent to any recovery from 3J. CLIENT's failure to provide such notice shall constitute waiver of any potential claim.

- W. Integration; Amendments: This Agreement represents the entire and integrated agreement between CLIENT and 3J regarding the Project, and supersedes all prior and contemporaneous negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a Contract Addendum or other written instrument signed by both parties.
- X. No Waiver: No waiver by 3J of any of the provisions of this Agreement is effective unless expressly set forth in writing and signed by 3J. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising under this Agreement may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- Y. Severability: If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- Z. Survival: Notwithstanding any termination or expiration of this Agreement, the provisions of these General Terms, which by their nature should survive expiration or termination of this Agreement in order to give full and proper effect to its intent, will remain in full force and effect after any such expiration or termination of this Agreement.
- AA. Subconsultants: CLIENT agrees to and may have input on the subconsultants used by 3J in connection with the Project or Projects. 3J shall not enter into any subcontracts for any of the work required by this Agreement without prior written notice.
- BB. No Third Party Beneficiaries: CLIENT and 3J are the only parties to the Agreement and are the only parties entitled to enforced its terms. Nothing in the Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name in the Agreement and expressly described as intended beneficiaries of the terms of the Agreement.

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Agenda Staff Report

Agenda Item No.: Business Item 7C

Meeting Date: March 12, 2024

Subject: Approval of Change Orders No. 1 and 2
to Contract 059-23 with Stellar J
Corporation for the Marina Pump Station

Prepared By: Denis Ryan
Public Works Director

Summary: The City identified a need for improvements at the Marina Pump Station. Public Works Staff then identified a scope of work to address these issues referred to as the Marina Pump Station Improvement Project (the “Project”). On July 28, 2020, the City Council authorized design work for the Project by a design Consultant. On August 8, 2023, following a procurement process consistent with state law and the City’s Procurement Policies adopted by Resolution 073-23, as amended, the City executed Contract No. 059-23 with Stellar J Corporation for the Project. During the course of the project additional associated work was identified as necessary.

- Change Order No. 1 addresses water main installation changes due to unforeseen conditions with adjacent sewer. The total for this change order is \$37,460.72 (applicable tax included).
- Change Order No. 2 was issued to address an unforeseen underground condition. Additional work was required to relocate an electrical service. The total for this Change Order is \$70,228.56 (applicable tax included).

Change Orders 1 & 2 will increase the contract by \$107,638.77 for a contract total of \$14,995,583.04 (applicable tax included).

Recommendation: Staff recommends the City Council authorize the Mayor to execute Change Order No. 1 and Change Order No. 2 to Contract No. C059-23 with Stellar J Corporation for the Marina Pump Station Improvement Project to increase the contract by \$107,638.77 for a contract total of \$14,995,583.04 (applicable taxes included).

Relationship to Comprehensive Plan: Chapter 7: Utilities

Motion for consideration: I move to authorize the Mayor to execute Change Order No. 1 and Change Order No. 2 to Contract No. C059-23 with Stellar J Corporation for the Marina Pump Station Improvement project and to add an amount of \$107,638.77 for a contract total of \$14,995,583.04 (applicable taxes included)

Fiscal Impact: Project funding is budgeted in the 2023-2024 Biennial Budget. The City received a Washington State Department of Ecology Loan in the amount of \$13M additional funding has been budgeted from Sewer Capital Projects and Sewer Operating. A Budget Amendment may be required.

Alternatives: Do not approve and provide further guidance.

Attachments: Change Orders No. 1 & 2, Courtesy Copy-Contract. Exhibit B to C059-23 is too large to attach to the packet, but it can be viewed [here](#).

CITY OF PORT ORCHARD

Authorization for Change Order No. 1

Date: 2/16/2024 **Contractor:** Stellar J Corporation
Project: Marina Sewer Lift Station 1363 Downriver Drive
Contract / Job # C059-23 Woodland, WA 98674

THIS CHANGE ORDER AUTHORIZES (add description).

Water main installation changes. Additional Work/ Change Directives:
WCD#1: CDF for water main due to unforeseen conditions with adjacent sewer. Install additional 6-inch water main in place of 8 inch main as shown in plans. Install blow off.
WCD#2: Reconfigure water main at Frederick Street. Different configuration of existing water main. Reduced extent of new work.
WCD#3: Reconfigure water main at Orchard Street. Different configuration of existing water main. Increased extent of new work. Refer to plan revision 2.
Change Order #1 Totals- \$37,346.72 w/ tax and 4 working days. See COR's for breakdown.

Contract History					
	Amount	Sales Tax	Total	Date	Appvd by
Original Contract	\$13,621,175.00	\$1,266,769.28	\$14,887,944.28	08-Aug-23	Council
Change Order 1	\$34,227.09	\$3,183.12	\$37,410.21		PW Director
Total Contract	\$13,655,402.09	\$1,269,952.39	\$14,925,354.49		

I have reviewed the Change Order information above and certify that to the best of my knowledge descriptions and costs are true and accurate.


 Contractor Approval Signature
 Casey Cox/ Project Manager
 Printed Name & Title


 Public Works Director
 Denis Ryan
 Printed Name

Change Orders that do not exceed 10%, with a maximum of \$50,000, of either legally authorized budget limit or contract amount established by City Council can be approved by the Public Works Director.

Approved: _____
 Mayor

Change Orders that do not exceed 10%, with a maximum of \$100,000, of either legally authorized budget limit or contract amount established by City Council are to be approved by the Mayor.

Attest: _____
 City Clerk

Change Orders over \$100,000 or exceed a total of 10% require Council Action.

 Council Approval Date

CITY OF PORT ORCHARD

Authorization for Change Order No. 2

Date: 2/16/2024 Contractor: Stellar J Corporation
Project: Marina Sewer Lift Station 1363 Downriver Drive
Contract / Job # C059-23 Woodland, WA 98674

THIS CHANGE ORDER AUTHORIZES (add description).

Unforeseen underground condition. Relocation of private electrical service. Additional Work/ Change Directives:
WCD#5: Relocated electrical service discovered in abandoned sewer pipe located in areas to be excavated for new structures.
Change Order #2 Total- \$70,228.56 w/ tax and 7 working days. See COR's for breakdown.

Contract History					
	Amount	Sales Tax	Total	Date	Appvd by
Original Contract	\$13,621,175.00	\$1,266,769.28	\$14,887,944.28	08-Aug-23	Council
Change Order 1	\$34,227.09	\$3,183.12	\$37,410.21		PW Director
Change Order 2	\$64,253.03	\$5,975.53	\$70,228.56		Council
Total Contract	\$13,719,655.12	\$1,275,927.92	\$14,995,583.05		

I have reviewed the Change Order information above and certify that to the best of my knowledge descriptions and costs are true and accurate.

Casey Cox
Contractor Approval Signature

Casey Cox/ Project Manager
Printed Name & Title

Denis Ryan
Public Works Director

Denis Ryan
Printed Name

Change Orders that do not exceed 10%, with a maximum of \$50,000, of either legally authorized budget limit or contract amount established by City Council can be approved by the Public Works Director.

Approved: _____
Mayor

Change Orders that do not exceed 10%, with a maximum of \$100,000, of either legally authorized budget limit or contract amount established by City Council are to be approved by the Mayor.

Attest: _____
City Clerk

Change Orders over \$100,000 or exceed a total of 10% require Council Action.

Council Approval Date

CONTRACT C059-23

**CITY OF PORT ORCHARD
MARINA PUMP STATION IMPROVEMENTS
PUBLIC WORKS PROJECT NUMBER 2023-013**

THIS CONTRACT ("Contract") is made and entered into this 8th day of August, 2023, by and between the City of Port Orchard, a municipality incorporated and existing under the laws of the State of Washington, hereinafter called the "City," and Stellar J Corporation, hereinafter called the "Contractor."

WITNESSETH:

I. General Provisions.

A. Description of Work.

The Contractor, in consideration of the covenants, agreements and payments to be performed and made by the City, hereby covenants and agrees to furnish all labor, tools, materials, equipment and supplies required for, and to execute, construct and finish in full compliance with the Contract Documents, **Marina Pump Station Improvements**. The Contractor further agrees to perform all such work for the Contract Price stated in the Contractor's Bid Proposal dated July 18, 2023, attached hereto and incorporated herein by this reference as if set forth in full. Contractor further represents that the services furnished under this Agreement will be performed in accordance with and as described in the attached plans and specifications and with the Port Orchard Municipal Code, the City's Public Works Standards, which includes (but is not limited to) the 2021 edition of the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction (which shall apply except where noted otherwise). All of these standards are by this reference incorporated herein and made a part hereof. Contractor further represents that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time such services are performed.

The Contract Documents include:

Exhibit A - a confirmed copy of the Proposal made by the Contractor on July 18, 2023, together with the Instructions to Bidders.

Exhibit B – The Project Manual for the **Marina Pump Station Improvements Project**.

Exhibit C – Retainage Options

All Exhibits to this Contract are by this reference incorporated herein and made a part hereof as if set forth in full.

B. Time of Completion.

Time is of the essence of this Contract. It is agreed that the work covered by this Contract shall start within 14 calendar days after Notice to Proceed is issued and that all construction shall be complete within **450 working days** after the Notice to Proceed Date.

C. Liquidated Damages.

It is further agreed that the City will suffer damage and be put to additional expense in the event that the Contractor shall not have the specified portions of the work completed in all its parts in the time specified, and as it may be difficult to accurately compute the amount of such damage, the Contractor expressly covenants and agrees to pay to the City liquidated damages, the sum as calculated by the equation shown in Section 1-08.9 of the WSDOT Standard Specifications, for each and every working day said work is not complete beyond the time shown in the Proposal.

II. Non-Discrimination.

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to compliance with the following Pertinent Non-Discrimination Authorities:

- 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 C.F.R. Part 21.
- 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);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- 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 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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);

- 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;
- 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);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures 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;
- 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, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Title VI of the Civil Rights Act of 1964

The City of Port Orchard, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, must affirmatively ensure that its contracts comply with these regulations.

Also, in accordance with Title VI, the City is required to include the following clauses in every contract subject to Title VI and its related regulations.

Therefore, during the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** The Contractor will comply with the Acts and the regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during this Contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including

procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth herein, including employment practices when this Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor 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 Contractor of the Contractor's obligations under this Contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.
4. **Information and Reports:** The Contractor 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 FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the City or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the Non-discrimination provisions of this Contract, the City will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding payments to the Contractor under the Contract until the Contractor complies; and/or
 2. cancelling, terminating, or suspending the Contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the City to enter into any litigation to protect the interests of the City. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

III. Public Records Act Chapter 42.56 RCW

Contractor understands that her/his bid response documents, and any contract documents may be subject to release under the Public Records Act Chapter 42.56 RCW and the City may be required to disclose such documents upon a request. Contractor acknowledges that they have been advised to mark any records believed to be trade secrets or confidential in nature as "confidential." If records marked as "confidential" are found to be responsive to the request for records, the City as a courtesy to the Contractor, may elect to give notice to Contractor of the request so as to allow Contractor to seek a protective order from a Court. Contractor acknowledges and agrees that any records deemed responsive to a public records request may be released at the sole discretion of, and without notice by, the City.

IV. Termination

The City may terminate this contract for cause or for convenience.

1. **Termination for Cause.** The City may, upon 7 days written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of the City) the contract, or any part of it, for cause upon the occurrence of any one or more of the following events: Contractor fails to complete the work or any portion thereof with sufficient diligence to ensure substantial completion of the work within the contract time; Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; Contractor fails in a material way to replace or correct work not in conformance with the Contract Documents, Contractor repeatedly fails to supply skilled workers or proper materials or equipment; Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or Contractor is otherwise in material breach of any provision of the contract. Upon termination, the City may, at its option, take possession of or use all documents, materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the work, and finish the work by whatever other reasonable method it deems expedient.
2. **Termination for Convenience.** The City may, upon written notice, terminate (without prejudice to any right or remedy of the City) the contract, or any part of it, for the convenience of the City.
3. **Settlement of Costs.** If the City terminates for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus a reasonable allowance for overhead and profit on work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments.

V. Corporate Surety Bond

With this Contract, Contractor is furnishing a Corporate Surety Bond in the amount of

Fourteen Million eight hundred eighty-seven thousand nine hundred forty-four and 28/100 Dollars (\$ 14,887,944.28) with Liberty Mutual Insurance Company as Surety, to ensure full compliance, execution and performance of this Contract by the Contractor in accordance with all its terms and provisions.

VI. Independent Contractor.

The parties intend that an Independent Contractor-Employer Relationship will be created by this Agreement and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement.

VII. Employment of State Retirees.

The City is a "DRS-covered employer" which is an organization that employs one or more members of any retirement system administered by the Washington State Department of Retirement Systems (DRS). Pursuant to RCW 41.50.139(1) and WAC 415-02-325(1), the City is required to elicit on a written form if any of the Contractor's employees providing services to the City retired using the 2008 Early Retirement Factors (ERFs), or if the Contractor is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. Failure to make this determination exposes the City to significant liability for pension overpayments. As a result, before commencing work under this Agreement, Contractor shall determine whether any of its employees providing services to the City or any of the Contractor's owners retired using the 2008 ERFs, and shall immediately notify the City and shall promptly complete the form provided by the City after this notification is made. This notification to DRS could impact the payment of retirement benefits to employees and owners of Contractor. Contractor shall indemnify, defend, and hold harmless the City from any and all claims, damages, or other liability, including attorneys' fees and costs, relating to a claim by DRS of a pension overpayment caused by or resulting from Contractor's failure to comply with the terms of this provision. This provision shall survive termination of this Agreement.

VIII. Changes.

The City may issue a written change order for any change in the Contract work during the performance of this Agreement. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the Notice provision section of this Agreement, within fourteen (14) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section IX entitled, "Claims," below.

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

IX. Claims. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor may file a claim as provided in this section. The Contractor shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Contractor knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Agreement or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Agreement.

At a minimum, a Contractor's written claim shall include the information set forth in subsections A, items 1 through 5 below.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

A. **Notice of Claim.** Provide a signed written notice of claim that provides the following information:

1. The date of the Contractor's claim;
2. The nature and circumstances that caused the claim;
3. The provisions in this Agreement that support the claim;
4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
5. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

B. **Records.** The Contractor shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Contractor's records needed for evaluating the protest.

The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

C. **Contractor's Duty to Complete Protested Work.** In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Agreement.

D. **Failure to Protest Constitutes Waiver.** By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

E. **Failure to Follow Procedures Constitutes Waiver.** By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

X. Limitation Of Actions.

CONTRACTOR MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS AGREEMENT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONTRACTOR'S ABILITY TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

XI. Warranty.

Upon acceptance of the contract work, Contractor must provide the City a two-year warranty bond in the amount of twenty percent (20%) of the contract price a form and amount acceptable to the City. The Contractor shall correct all defects in workmanship and materials within two (2) years from the date of the City's acceptance of the Contract work, including replacing vegetation that fails to thrive. In the event any parts are repaired or replaced, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) additional year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

XII. Indemnification.

Contractor shall defend, indemnify, and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Contractor's performance of this Agreement, except for that portion of the injuries and damages caused by the sole negligence of the City.

The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

XIII. Insurance.

The Contractor 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 Contractor, its agents, representative, employees or subcontractors.

No Limitation. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility

of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

B. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$10,000,000 each occurrence, \$10,000,000 general aggregate and a \$10,000,000 products-completed operations aggregate limit.
3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability and Builders Risk insurance:

1. The Contractor's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee-owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation. The Contractor and the City waive all rights against each other any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extend covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. **Verification of Coverage.** Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this Project.

H. **Subcontractors.** Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor (with the exception of Builders Risk insurance). Upon request the City, the Contractor shall provide evidence of such insurance.

XIV. WORK PERFORMED AT CONTRACTOR'S RISK. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XV. Miscellaneous Provisions.

A. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. **Resolution of Disputes and Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the Kitsap County Superior Court, Kitsap County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section XII of this Agreement.

C. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the

addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.

F. Entire Agreement. The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the above documents are hereby made a part of this Agreement. However, should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

G. Compliance with Laws. The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

H. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement. IN WITNESS WHEREOF the parties hereto have caused these presents to be duly executed.

CITY OF PORT ORCHARD

By: Rob Putaansuu
3B9C492E9F5047D...
 Robert Putaansuu, Mayor

CONTRACTOR

By: Jeff Carlsen

Title: President

Address: 1363 Down River Drive
Woodland, WA. 98674

ATTEST Signed by:

Brandy Wallace

46A5A54BBD00418...

Brandy Wallace, MMC, City Clerk

APPROVED AS TO FORM:

[Signature]

203701E25520457

Charlotte Archer, City Attorney

NOTICES TO BE SENT TO:

CONTRACTOR:

NAME Stellar J Corporation
ADDRESS 1363 Down River Drive
Woodland, WA, 98674
TELEPHONE 360-225-4663
Email jeffcarlsen@stellarj.com

CITY

Name: Robert Putaansuu, Mayor
216 Prospect Street,
Port Orchard, WA 98366
TELEPHONE: 360 876-4407
EMAIL: Cityclerk@portorchardwa.gov

With a copy to the City Clerk at the same address

EXHIBIT C**5% RETAINAGE INVESTMENT OPTION¹**Contractor: Stellar J CorporationProject Name: **MARINA PUMP STATION IMPROVEMENTS**Date: August 8th, 2023 Project Number: **PW2023-013**

Pursuant to RCW 60.28.010, as amended, you may exercise an option as to how the 5% retainage under this contract will be invested. Please complete and sign this form indicating your preference. If you fail to do so you will miss the benefit of any interest earned. Select one of the following options:

☐

1. **Savings Account:** Money will be placed in an interest-bearing account. The interest will be paid to you directly, rather than kept on deposit. If this is your choice, then please complete attached **SAVINGS ACCOUNT AGREEMENT**. Please state the name of your bank.

Bank: _____

☐

2. **Escrow/Investments:** The City will deliver retainage checks to a selected bank, pursuant to an escrow agreement. The bank will then invest the funds in securities or bonds selected by you, and interest will be paid to you as it accrues. If this is your choice then please complete attached **ESCROW AGREEMENT**.

Preferred Bank: _____

Securities/Bonds: _____


☐

3. **Guarantee Deposit:** Retainage will be held by the City. No interest is payable to the Contractor

Retainage is normally released 45 days after final acceptance of the work or following receipt of Labor and Industries/Department of Revenue clearance, whichever date is the later. Retainage on landscaping work may be longer, due to its seasonal nature. However, if this project is subject to grant funding, then the retainage may also be held until such time as the Contractor meets its obligations to the City to provide required information and documentation for compliance with the grant funding requirements.

State law allows for limited early release of retainage in certain circumstances

Stellar J is submitting a retainage bond


 Contractor's Signature Jeff Carlsen
 President
 Title

¹ If the Contractor opts to post a retainage bond under RCW 60.28.011, such bond shall be in a form acceptable to the City, shall be with a surety with a minimum of A.M. Best financial strength rating of a minimum of A-.

SAVING ACCOUNT AGREEMENT

N/A

TO BANK: _____ SAVINGS ACCOUNT NO: _____

BANK'S ADDRESS: _____

AGENCY: CITY OF PORT ORCHARD
216 Prospect Street
Port Orchard WA 98366

CONTRACT NO: _____

PROJECT TITLE: _____

The estimated completion date of contract is: _____

The undersigned, _____, herein referred to as the CONTRACTOR, has directed the CITY OF PORT ORCHARD, Washington, hereinafter referred to as the AGENCY, to deliver to you its warrants which shall be payable to you and the CONTRACTOR jointly. Such warrants are to be held and disposed of by you in accordance with the following instructions and upon the terms and conditions hereinafter set forth.

INSTRUCTIONS

1. Warrants or checks made payable to you and the CONTRACTOR jointly upon delivery to you shall be endorsed by you and forwarded for collection. The moneys will then be placed by you in an interest-bearing savings account.
2. When and as interest on the savings account accrues and is paid, you shall collect such interest and forward it to the CONTRACTOR at its address designated below unless otherwise directed by the CONTRACTOR.
3. You are not authorized to deliver to the CONTRACTOR all or any part of the principal held by you pursuant to this agreement, except in accordance with written instruction from the AGENCY. Compliance with such instructions shall relieve you of any further liability related thereto.
4. The CONTRACTOR agrees to pay you as compensation for your services hereunder as follows:

Payment of all fees shall be the sole responsibility of the CONTRACTOR and shall not be deducted from any moneys placed with you pursuant to this agreement until and unless the AGENCY directs the release to the CONTRACTOR, whereupon you shall be granted a first lien upon such moneys released and shall be entitled to reimburse yourself from such moneys for the entire amount of your fees as provided for herein above. In the event that you are made a party to any litigation with respect to the moneys held by you hereunder, or in the event that the conditions of this agreement are not promptly fulfilled, or that you are required to render any service not provided for in these

instructions, or that there is any assignment of the interests of this agreement, or any modification hereof, you shall be entitled to reasonable compensation for such extraordinary services from the CONTRACTOR and reimbursement from the CONTRACTOR for all costs and expenses, including attorney fees occasioned by such default, delay, controversy or litigation.

5. This agreement shall not be binding until executed by the CONTRACTOR and the AGENCY and accepted by you.
6. This instrument contains the entire agreement between you, the CONTRACTOR and the AGENCY. You are not a party to nor bound by any instrument or agreement other than this. You shall not be required to take notice of any default or any other matter nor be bound by nor required to give notice or demand, nor required to take any action whatever except as herein expressly provided. You shall not be liable for any loss or damage not caused by your own negligence or willful misconduct.
7. The foregoing provisions shall be binding upon the assigns, successors, personal representative and heir of the Parties hereto.

Contractor

CITY OF PORT ORCHARD
Agency

BY: _____

BY: _____

Title: _____

Date: _____

Date: _____

Address: _____

 The above savings account agreement and instruction received and accepted this _____ day of _____, 20____

Bank Name

Authorized Bank Officer

ESCROW AGREEMENT

TO BANK: _____ ESCROW NO.: _____

BANK'S ADDRESS: _____

AGENCY: CITY OF PORT ORCHARD
 216 Prospect Street
 Port Orchard WA 98366

CONTRACT NO.: _____

PROJECT TITLE: _____

The estimated completion date of contract is: _____

The undersigned, _____, herein referred to as the CONTRACTOR, has directed the CITY OF PORT ORCHARD, Washington, hereinafter referred to as the AGENCY, to deliver to you its warrants which shall be payable to you and the CONTRACTOR jointly. Such warrants are to be held and disposed of by you in accordance with the following instructions and upon the terms and conditions hereinafter set forth.

INSTRUCTIONS

1. Warrants or checks made payable to you and the CONTRACTOR jointly upon delivery to you shall be endorsed by you and forwarded for collection. The moneys will then be used by you to purchase, as directed by the CONTRACTOR, bonds or other securities chosen by the CONTRACTOR and approved by the AGENCY. Attached is a list of such bonds, or other securities approved by the AGENCY. Other bonds or securities, except stocks may be selected by the CONTRACTOR, subject to express written approval of the AGENCY. Purchase of such bonds or other securities shall be in a form which shall allow you alone to reconvert such bonds or other securities into money if you are required to do so by the AGENCY as provided in Paragraph 4 of this Escrow Agreement.
2. When and as interest on the securities held by you pursuant to this agreement accrues and is paid, you shall collect such interest and forward it to the CONTRACTOR at its address designated below unless otherwise directed by the CONTRACTOR.
3. You are not authorized to deliver to the CONTRACTOR all or any part of the securities held by you pursuant to this agreement (or any moneys derived from the sale of such securities,

or the negotiation of the AGENCY'S warrants) except in accordance with written instructions from the AGENCY. Compliance with such instruction shall relieve you of any further liability related thereto.

4. In the event the AGENCY orders you to do so in writing, you shall within thirty-five (35) days of receipt of such order, reconvert into money the securities held by you pursuant to this agreement and return such money together with any other moneys held by you hereunder, to the AGENCY.

5. The CONTRACTOR agrees to pay you as compensation for your services hereunder as follows:

Payment of all fees shall be the sole responsibility of the CONTRACTOR and shall not be deducted from any property placed with you pursuant to this agreement until and unless the AGENCY directs the release to the CONTRACTOR of the securities and moneys held hereunder whereupon you shall be granted a first lien upon such property released and shall be entitled to reimburse yourself from such property for the entire amount of your fees as provided for herein above. In the event that are made a party to any litigation with respect to the property held by you hereunder, or in the event that the conditions of this escrow are not promptly fulfilled or that you are required to render any service not provided for in these instructions, or that there is any assignment of the interest of this escrow or any modification hereof, you shall be entitled to reasonable compensation for such extraordinary services from the CONTRACTOR and reimbursement from the CONTRACTOR for all costs and expenses, including attorney fees occasioned by such default, delay, controversy or litigation.

6. This agreement shall not be binding until executed by the CONTRACTOR and the AGENCY and accepted by you.
7. This instrument contains the entire agreement between you, the CONTRACTOR and the AGENCY with respect to this escrow and you are not a party to nor bound by any instrument or agreement other than this; you shall not be required to take notice of any default or any other matter nor be bound by nor be bound by nor required to give notice or demand , nor required to take action whatever except as herein expressly provided; you shall not be liable for any loss or damage not caused by your own negligence or willful misconduct.

The foregoing provision shall be binding upon the assigns, successors, personal representative, and heir of the Parties hereto.

Stellar J Corporation
Contractor

CITY OF PORT ORCHARD
Agency

By: _____

By: _____

Title: Jeff Carlsen/President

Date: _____

Date: _____

Address: 1363 Down River Drive, Woodland, WA. 98674

The above escrow agreement and instruction received and accepted this _____ day of _____, 20__.

Bank Name

Authorized Bank Officer

SECURITIES AUTHORIZED BY AGENCY

1. Bills, certificates, notes or bonds of the United States;
2. Other obligations of the United States or its agencies;
3. Obligation of any corporation wholly-owned by the government of the United States;
4. Indebtedness of the Federal Nation Mortgage Association; and
5. Time deposits in commercial banks.

PERFORMANCE AND PAYMENT BOND

CITY OF PORT ORCHARD
MARINA PUMP STATION IMPROVEMENTS PROJECT
 PUBLIC WORKS PROJECT NO. PW2023-013
 Bond to City of Port Orchard, Washington
 Bond No. 023227858

We, Stellar J Corporation, and Liberty Mutual Insurance Company
 (Principal) (Surety)

a Massachusetts Corporation, and as a surety corporation authorized to become a surety upon Bonds of Contractors with municipal corporations in Washington State, are jointly and severally bound to the City of Port Orchard, Washington ("Owner"), in the penal sum of Fourteen Million Eight Hundred Eighty-Seven Thousand Nine Hundred Forty-Four and 28/100-- Dollars (\$ 14,887,944.28---), the payment of which sum, on demand, we bind ourselves and our successors, heirs, administrators, executors, or personal representatives, as the case may be. This Performance Bond is provided to secure the performance of Principal in connection with a contract dated August 8, 2023, between Principal and Owner for a project entitled "Project" - Public Works Project No. 2023-013 ("Contract"). The initial penal sum shall equal 100 percent of the Total Bid Price, including all applicable state sales tax, as specified in the Proposal submitted by Principal.

NOW, THEREFORE, this Performance and Payment Bond shall be satisfied and released only upon the condition that Principal:

Faithfully performs all provisions of the Contract and changes authorized by Owner in the manner and within the time specified as may be extended under the Contract;

Pays all laborers, mechanics, subcontractors, lower tier subcontractors, material-persons, and all other persons or agents who supply labor, equipment, or materials to the Project;

Pays the taxes, increases and penalties incurred on the Project under Titles 50, 51 and 82 RCW on: (A) Projects referred to in RCW 60.28.011(1)(b); and/or (B) Projects for which the bond is conditioned on the payment of such taxes, increases and penalties; and

Posts a two-year warranty/maintenance bond to secure the project. Such bond shall be in the amount of twenty percent (20%) of the project costs.

Provided, further that this bond shall remain in full force and effect until released in writing by the City at the request of the Surety or Principal.

The surety shall indemnify, defend, and protect the Owner against any claim of direct or indirect

loss resulting from the failure:

Of the Principal (or any of the employees, subcontractors, or lower tier subcontractors of the Principal) to faithfully perform the Contract, or

Of the Principal (or any subcontractor or lower tier subcontractor of the Principal) to pay all laborers, mechanics, subcontractors, lower tier subcontractors, material person, or any other person who provides supplies or provisions for carrying out the work.

The liability of Surety shall be limited to the penal sum of this Performance and Payment Bond.

No change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed under the Contract shall in any way affect Surety's obligation on the Performance Bond. Surety hereby waives notice of any change, extension of time, alteration, or addition to the terms of the Contract or the Work, with the exception that Surety shall be notified if the Contract time is extended by more than twenty percent (20%).

If any modification or change increases the total amount to be paid under the Contract, Surety's obligation under this Performance and Payment Bond shall automatically increase in a like amount. Any such increase shall not exceed twenty-five percent (25%) of the original amount of the Performance and Payment Bond without the prior written consent of Surety.

This Performance and Payment Bond shall be governed and construed by the laws of the State of Washington, and venue shall be in Kitsap County, Washington.

IN WITNESS WHEREOF, the parties have executed this instrument in two (2) identical counterparts this 27th day of July, 20 23.

Stellar J Corporation
Principal

Signature of Authorized Official

Jeff Carlsen, President
Printed Name and Title

Liberty Mutual Insurance Company
Surety

Signature of Authorized Official

By Roger Kaltenbach
Attorney in Fact (Attach Power of Attorney)



Name and address of local office of
Agent and/or Surety Company:

Parker Smith & Feek
2233 112th Avenue N.E.
Bellevue, WA 98004

Surety companies executing bonds must appear on the current Authorized Insurance List in the State of Washington per Section 1-02.7 of the Standard Specifications.

ACKNOWLEDGEMENT
Corporation, Partnership, or Individual

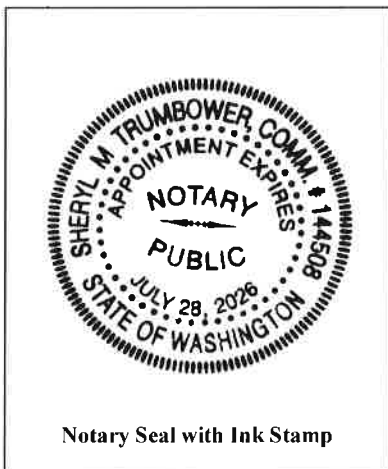
STATE OF Washington)
)ss.
COUNTY OF Cowlitz)

On this 27th day of July, 2023, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jeff Carlsen, to me known to be the (check one of the following boxes):

- ☒ President of Stellar J Corporation, the corporation,
☐ _____ of _____, the partnership,
☐ individual,

that executed the foregoing instrument to be the free and voluntary act and deed of said ☐ corporation, ☐ partnership, ☐ individual for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Sheryl M Trumbower
Print or type name Sheryl M Trumbower

NOTARY PUBLIC,
in and for the State of Washington

Residing at Woodland

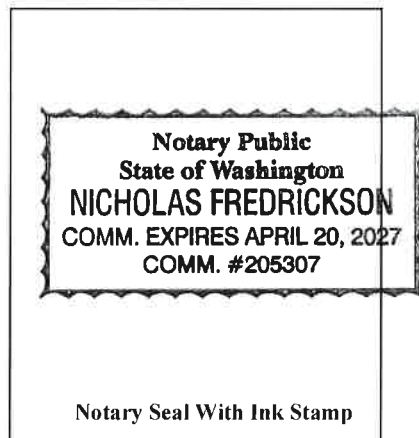
My Commission expires: July 28, 2026

SURETY ACKNOWLEDGEMENT

STATE OF Washington)
)ss.
 COUNTY OF King)

On this 27th day of July, 2023, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Roger Kaltenbach, to me known to be the Attorney-in-Fact of Liberty Mutual Insurance Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.




 Print or type name Nicholas Fredrickson

NOTARY PUBLIC,
 in and for the State of Washington
 Residing Bellevue, WA
 My Commission expires: 04/20/2027



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8210462-023001**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Alec Gumpfer, Andrew Kerslake, Andrew P. Larsen, Deanna M French, Derek Sabo, Elizabeth R. Hahn, Guy Armfield, Jana M. Roy, John Clacys, Katelyn Cooper, Mindee L. Rankin, Nicholas Fredrickson, Roger Kaltenbach, Scott Fisher, Scott Garcia, Scott McGilvray, Susan B. Larson of Bellevue, WA; Ronald J. Lange, Charla M. Boadle, Jennifer Barret of Spokane, WA; Charles W. Floberg, Drew D. Neessen, James Hamlin, John M. Miller, Mason M. Marks, Michael S. Cranston, Nicholas Warren, William M. Smith, Gregory C. Ryerson of Portland, OR; Abbie A. Bonney, Sandy L. Boswell, Janie Ma, Marie I. Matetich, Sharon Pope, Brenda S. Nolin all of the city of Anchorage state of AK each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 20th day of July, 2023.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By:

David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 20th day of July, 2023 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By:

Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 27th day of July, 2023.



By:

Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

CITY OF PORT ORCHARD
MAINTENANCE/WARRANTY BOND

NOTE: This form must be completed at Contract Completion. Before the Performance Bond or the retainage can be released, the City must receive the two year Maintenance /Warranty Bond

Project #:PW2023-013

Surety Bond #: _____

Date Posted: _____

Expiration Date: _____

RE: Project Name: _____
Owner/Developer/Contractor: _____
Project Address: _____

KNOW ALL PERSONS BY THESE PRESENTS: That we, _____ (hereinafter called the "Principal"), and _____, a corporation organized under the laws of the State of _____, and authorized to transact surety business in the State of Washington (hereinafter called the "Surety"), are held and firmly bound unto the City of Port Orchard, Washington, in the sum of _____ dollars (\$_____) 20% of the total contract amount, lawful money of the United States of America, for the payment of which sum we and each of us bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents. THE CONDITIONS of the above obligation are such that:

WHEREAS, the above named Principal has constructed and installed certain improvements on public property in connection with a project as described above within the City of Port Orchard; and

WHEREAS, the Principal is required to post a bond for the twenty-four (24) months following written and final acceptance of the project in order to provide security for the obligation of the Principal to repair and/or replace said improvements against defects in workmanship, materials or installation during the twenty-four (24) months after written and final approval/acceptance of the same by the City;

NOW, THEREFORE, this Maintenance Bond has been secured and is hereby submitted to the City. It is understood and agreed that this obligation shall continue in effect until released in writing by the City, but only after the Principal has performed and satisfied the following conditions:

A. The work or improvements installed by the Principal and subject to the terms and conditions of this Bond are as follows: (insert complete description of work here)

B. The Principal and Surety agree that the work and improvements installed in the above-referenced project shall remain free from defects in material, workmanship and installation (or, in the case of landscaping, shall survive,) for a period of twenty-four (24) months after written and final acceptance of the same and approval by the City. Maintenance is defined as acts carried out to prevent a decline, lapse or cessation of the state of the project or improvements as accepted by the City during the twenty-four (24) month period after final and written acceptance, and includes, but is not limited to, repair or replacement of defective workmanship, materials or installations.

C. The Principal shall, at its sole cost and expense, carefully replace and/or repair any damage or defects in workmanship, materials or installation to the City-owned real property on which improvements have been installed and leave the same in as good condition or better as it was before commencement of the work.

D. The Principal and the Surety agree that in the event any of the improvements or restoration work installed or completed by the Principal as described herein, fail to remain free from defects in materials, workmanship or installation (or in the case of landscaping, fail to survive), for a period of twenty-four (24) months from the date of approval/acceptance of the work by the City, the Principal shall repair and/replace the same within ten (10) days of demand by the City, and if the Principal should fail to do so, then the Surety shall:

1. Within twenty (20) days of demand of the City, make written commitment to the City that it will either:
 - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
 - b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection D(1)(b), the City shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs which exceeded the City estimate, limited to the bond amount.

2. In the event the Principal fails to make repairs or provide maintenance within the time period requested by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of repairing or maintaining the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to repair or maintain such improvements.

E. **Corrections.** Any corrections required by the City shall be commenced within ten (10) days of notification by the City and completed within thirty (30) days of the date of notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section D above.

F. **Extensions and Changes.** No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The Surety waives notice of any such change, extension, alteration or addition thereunder.

G. **Enforcement.** It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this bond shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this bond shall be in Kitsap County Superior Court.

H. **Bond Expiration.** This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and until released in writing by the City at the request of the Surety or Principal.

DATED this ____ day of _____, 20__.

SURETY COMPANY
(Signature must be notarized)

By: _____
Its: _____

Business Name: _____
Business Address: _____
City/State/Zip Code: _____
Telephone Number: _____

DEVELOPER/OWNER
(Signature must be notarized)

By: _____
Its: _____

Business Name: _____
Business Address: _____
City/State/Zip Code: _____
Telephone Number: _____

CHECK FOR ATTACHED NOTARY SIGNATURE

_____ Developer/Owner	(Form P-1)
_____ Surety Company	(Form P-2)

FORM P-1 / NOTARY BLOCK

(Developer/Owner)

STATE OF WASHINGTON

)

) ss.

COUNTY OF

)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that they signed this instrument, on oath stated that they are authorized to execute the instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the

State of Washington, residing

at: _____

My Commission expires: _____

FORM P-2/NOTARY BLOCK

(Surety Company)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that they signed this instrument, on oath stated that they are authorized to execute the instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____

PROPOSAL

**CITY OF PORT ORCHARD
MARINA PUMP STATION IMPROVEMENTS
PROJECT NO. PW 2023-013**

**To: Mayor and City Council
City of Port Orchard, Washington**

Contractor: Stellar J Corporaion
State License No.: STELLJC045J9
Date: 07/18/2023
Month/Day/Year

Bidder's Declaration and Understanding

The Bidder declares that they have carefully examined the Contract Documents for the construction of the project, that they have personally inspected the site, that they have satisfied themselves as to the quantities involved, including materials and equipment, and conditions of work involved, including the fact that the description of the quantities of work and materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the said quantities with the detailed requirements of the Contract Documents, and that this Proposal is made according the provisions and under the terms of the Contract Documents, which Documents are hereby made a part of this Proposal. The Bidder further declares that they have exercised their own judgment regarding the interpretation, of subsurface information and have utilized all data, which they believe pertinent from City and other sources and have made such independent investigations as the Bidder deems necessary in arriving at their conclusions.

Bidder understands that any bid response documents may be subject to release under the Public Records Act Chapter 42.56 RCW and the City may be required to disclose bid responses upon a request. Bidder acknowledges that they have been advised to mark any records believed to be trade secrets or confidential in nature as "confidential." If records marked as "confidential" are found to be responsive to the request for records, the City as a courtesy to the Bidder may elect to give notice to Bidder of the request so as to allow Bidder to seek a protective order from a Court. Bidder acknowledges and agrees that any records deemed responsive to a public records request may be released at the sole discretion of, and without notice by, the City.

Contract Execution

The Bidder agrees that if this Proposal is accepted, the bidder will, within fourteen (14) calendar days after Notice of Award, complete and sign the Contract in the form annexed hereto, and will at that time deliver to the City executed copies of the Performance Bond, Labor and Material Payment bond, the Certificate of Insurance, and other documentation required by the Contract Documents, and will, to the extent of the Proposal, furnish all machinery, tools, apparatus and other means of construction

*Rev 1/29/18 by SEC
City of Port Orchard*

*Marina Pump Station Improvements, Permit #PW23-011, PW23-012, Project #PW2023-013
SRF Project No. WQC-2019-PoOrPW-00025
Contract Documents
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LD-148

Proposal

and do the work and furnish all the materials or services necessary to complete all work as specified or indicated in the Contract Documents.

Start of Construction and Contract Completion

The Bidder further agrees that within 14 calendar days of CONTRACT START DATE, they will meet with engineering personnel and complete the construction within **450** working days of the START DATE.

Lump Sum and Unit Price Work

The Bidder further proposes to accept as full payment for the work proposed herein the amounts computed under the provisions of the Contract Documents and based on lump sum and unit price amounts, it being expressly understood that the unit prices are independent of the exact quantities involved. The Bidder agrees that the lump sum prices and the unit prices represent a true measure of the labor, services, and materials required to perform the work, including all allowances for overhead and profit for each type and unit of work called for in these Contract Documents.

If any material, item, or service required by the Contract Documents has not been mentioned specifically, the same shall be furnished and placed with the understanding that the full cost to the City has been merged with prices named in the proposal.

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City of Port Orchard

Marina Pump Station Improvements, Permit #PW23-011, PW23-012, Project #PW2023-013

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SRF Project No. WQC-2019-PoOrPW-00025

Contract Documents

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Addendum 1

**SCHEDULE OF CONTRACT PRICES
MARINA PUMP STATION IMPROVEMENTS PROJECT
PROJECT NO. PW2023-013**

NOTE: Unit prices for all items and the total amount bid must be shown. The Project must be bid in its entirety, including all bid items as specifically listed in the Proposal, in order to be considered a responsive bid. Where conflict occurs between the unit price and the total amount named for any items, the unit price typed or printed and entered in ink shall prevail. The Contracting Agency reserves the right to award all work bid according to the lowest qualified responsive bid tendered, available funds, and as it best serves the interest of the Contracting Agency. All work awarded will be made to the same Contractor/bidder.

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount in Words	Unit Price	Total Amount
Base Bid					
1	Lump Sum	DIV. 18	Mobilization, Demobilization, Site Preparation, and Cleanup (10% Max of Total)	LS \$	\$
				\$ 800,000. ⁰⁰	800,000. ⁰⁰
			<u>\$ Eight hundred thousand dollars and no cents</u> (Total Amount in Words)		
2	Lump Sum	DIV. 18	Type B Progress Schedule	LS \$ 25,000. ⁰⁰	25,000. ⁰⁰
			<u>Twenty five thousand dollars and no cents</u> (Total Amount in Words)		
3	Lump Sum	DIV. 18	Trench Safety and Shoring	LS \$ 1,050,000. ⁰⁰	\$ 1,050,000. ⁰⁰
			<u>one million, fifty thousand dollars and no cents</u> (Total Amount in Words)		
4	Lump Sum	DIV. 18	Dewatering	LS \$ 400,000. ⁰⁰	\$ 400,000. ⁰⁰
			<u>\$ Four hundred thousand dollars</u> (Total Amount in Words)		
5	Lump Sum	DIV. 18	Temporary Bypass Pumping System	LS \$ 600,000. ⁰⁰	\$ 600,000. ⁰⁰
			<u>\$ Six hundred thousand dollars</u> (Total Amount in Words)		
6	Lump Sum	DIV. 18	Temporary Erosion and Sedimentation Control	LS \$ 25,000. ⁰⁰	\$ 25,000. ⁰⁰
			<u>\$ Twenty five thousand dollars and no cents</u> (Total Amount in Words)		

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City of Port Orchard

Marina Pump Station Improvements, Permit #PW23-011, PW23-012, Project #PW2023-013
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Schedule of Contract Prices

Addendum 1

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount in Words	Unit Price	Total Amount
7	Lump Sum	DIV. 18	Earthwork	LS \$ 650,000.00	\$ 650,000.00
			<u>\$ Six hundred fifty thousand dollars and no cents</u> (Total Amount in Words)		
8	400 CY	DIV. 18	Unscheduled Excavation	CY \$ 125.00	\$ 50,000.00
			<u>\$ Fifty thousand dollars and no cents</u> (Total Amount in Words)		
9	225 LF	DIV. 18	12-inch Water Main	LF \$ 345.00	\$ 77,625.00
			<u>\$ Seventy seven thousand, six hundred twenty five</u> (Total Amount in Words) <u>dollars and no cents</u>		
10	235 LF	DIV. 18	8-inch Water Main	LF \$ 275.00	\$ 64,625.00
			<u>\$ Sixty four thousand, six hundred twenty five</u> (Total Amount in Words) <u>dollars and no cents</u>		
11	30 LF	DIV. 18	6-inch Water Main	LF \$ 385.00	\$ 11,550.00
			<u>\$ Eleven thousand five hundred fifty dollars</u> (Total Amount in Words) <u>and no cents</u>		
12	7 EA	DIV. 18	12-inch Gate Valves	EA \$ 3,500.00	\$ 24,500.00
			<u>\$ Twenty four thousand, five hundred dollars</u> (Total Amount in Words) <u>and no cents</u>		
13	1 EA	DIV. 18	8-inch Gate Valves	EA \$ 1,875.00	\$ 1,875.00
			<u>\$ One thousand eight hundred seventy five</u> (Total Amount in Words) <u>dollars and no cents</u>		
14	Lump Sum	DIV. 18	Site Work, Site Utilities, and Sewer Force Mains	LS \$ 450,000.00	\$ 450,000.00
			<u>\$ Four hundred fifty thousand dollars</u> (Total Amount in Words) <u>and no cents</u>		
15	1,220 SF	DIV. 18	Concrete Sidewalk including Curb	SF \$ 50.00	\$ 61,000.00
			<u>\$ Sixty one thousand dollars and</u> (Total Amount in Words) <u>no cents</u>		

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City of Port Orchard

Marina Pump Station Improvements, Permit #PW23-011, PW23-012, Project #PW2023-013

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Contract Documents

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Schedule of Contract Prices

Addendum 1

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount in Words	Unit Price	Total Amount
16	100 CY	DIV. 18	Concrete Plaza and Walkway	CY \$ 1,500.00	\$ 150,000.00
			<u>One hundred fifty thousand dollars and</u> (Total Amount in Words) <u>no cents</u>		
17	Lump Sum	DIV. 18	Landscaping and Restoration	LS \$ 225,000.00	\$ 225,000.00
			<u>Two hundred twenty five thousand dollars</u> (Total Amount in Words) <u>and no cents</u>		
18	Lump Sum	DIV. 18	Structural – Below-Grade Emergency Storage Structure	LS \$ 1,300,000.00	\$ 1,300,000.00
			<u>One million three hundred thousand dollars</u> (Total Amount in Words) <u>and no cents</u>		
19	Lump Sum	DIV. 18	Structural – Pump Station and Wetwell Improvements	LS \$ 750,000.00	\$ 750,000.00
			<u>Seven hundred fifty thousand dollars</u> (Total Amount in Words) <u>and no cents</u>		
20	Lump Sum	DIV. 18	Structural – Wetwell Rehabilitation	LS \$ 75,000.00	\$ 75,000.00
			<u>Seventy five thousand dollars and</u> (Total Amount in Words) <u>no cents</u>		
21	Lump Sum	DIV. 18	Structural – Above-Grade Multi-Use Facility	LS \$ 1,175,000.00	\$ 1,175,000.00
			<u>One million one hundred seventy five thousand</u> (Total Amount in Words) <u>dollars</u>		
22	Lump Sum	DIV. 18	Structural – Valve Vault	LS \$ 275,000.00	\$ 275,000.00
			<u>Two hundred seventy five thousand dollars</u> (Total Amount in Words) <u>and no cents</u>		
23	Lump Sum	DIV. 18	Structural - Generator	LS \$ 175,000.00	\$ 175,000.00
			<u>One hundred seventy five thousand dollars</u> (Total Amount in Words) <u>and no cents</u>		
24	Lump Sum	DIV. 18	Mechanical – Emergency Storage	LS \$ 50,000.00	\$ 50,000.00
			<u>Fifty thousand dollars and no</u> (Total Amount in Words) <u>cents</u>		

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City of Port Orchard

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Schedule of Contract Prices

Addendum 1

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount in Words	Unit Price	Total Amount
25	Lump Sum	DIV. 18	Mechanical – Pump Station	LS \$ 1,500,000.00	\$ 1,500,000.00
			<u>\$ One million five hundred thousand</u> (Total Amount in Words) <u>dollars</u>		
26	Lump Sum	DIV. 18	Mechanical – Above-Grade Multi-Use Facility	LS \$ 650,000.00	\$ 650,000.00
			<u>\$ Six hundred fifty thousand dollars</u> (Total Amount in Words) <u>and no cents</u>		
27	Lump Sum	DIV. 18	Mechanical – Valve Vault	LS \$ 325,000.00	\$ 325,000.00
			<u>\$ Three hundred twenty five thousand dollars</u> (Total Amount in Words) <u>and no cents</u>		
28	Lump Sum	DIV. 18	Heating, Ventilation, and Air Conditioning	LS \$ 300,000.00	\$ 300,000.00
			<u>\$ Three hundred thousand dollars and</u> (Total Amount in Words) <u>no cents</u>		
29	Lump Sum	DIV. 18	Existing Facility Demolition	LS \$ 300,000.00	\$ 300,000.00
			<u>\$ Three hundred thousand dollars and</u> (Total Amount in Words) <u>no cents</u>		
30	Lump Sum	DIV. 18	Control Structure Retrofit	LS \$ 75,000.00	\$ 75,000.00
			<u>\$ Seventy five thousand dollars and</u> (Total Amount in Words) <u>no cents</u>		
31	Lump Sum	DIV. 18	Electrical	LS \$ 1,250,000.00	\$ 1,250,000.00
			<u>\$ One million two hundred fifty thousand</u> (Total Amount in Words) <u>dollars</u>		
32	Lump Sum	DIV. 18	Automatic Control	LS \$ 650,000.00	\$ 650,000.00
			<u>\$ Six hundred fifty thousand dollars</u> (Total Amount in Words)		
33	Lump Sum	DIV. 18	Record Drawings and O&M Manuals	LS \$	\$ 5,000
			<u>\$ Five Thousand Dollars</u> (Total Amount in Words)		

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City of Port Orchard

Marina Pump Station Improvements, Permit #PW23-011, PW23-012, Project #PW2023-013

SRF Project No. WQC-2019-PoOrPW-00025

Contract Documents

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Schedule of Contract Prices

Addendum 1

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount in Words	Unit Price	Total Amount
34	Force Account	DIV. 18	Minor Change	DOL \$	\$ 100,000

\$ One Hundred Thousand Dollars

(Total Amount in Words)

Total Base Bid

\$13,621,175.00

Tax 9.3%

\$1,206,769.28 ✓

TOTAL BID

\$14,827,944.28 ✓

SALES TAX

Retailing/Retail Sales Tax Rule WAC 458-20-170: Washington State Retail sales tax added as percent (%) in addition to contract bid price; sales tax shown as separate line item.

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City of Port Orchard

Marina Pump Station Improvements, Permit #PW23-011, PW23-012, Project #PW2023-013

SRF Project No. WQC-2019-PoOrPW-00025

Contract Documents

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10684935.1 - 366922 - 0009

LD-20S

Schedule of Contract Prices

STATE OF Woodland)
)ss.
 COUNTY OF Cowlitz)

I certify that I know or have satisfactory evidence that Jeff Carlsen signed this proposal, on oath stated that they are authorized to execute the proposal and acknowledged it as the President (title) of Stellar J Corporation (name of party on behalf of whom proposal was executed) and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in this proposal.

Dated this 18 day of July, 2023.



Sheryl M Trumbower
 Notary Public

Sheryl M Trumbower

Printed Name

My Commission Expires:
July 28, 2026

Rev 1/29/18 by SEC

City of Port Orchard

Marina Pump Station Improvements, Permit #PW23-011, PW23-012, Project #PW2023-013

LD-22S

SRF Project No. WQC-2019-PoOrPW-00025

Contract Documents

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The undersigned Bidder hereby agrees to start construction on this project, if awarded, no later than fourteen (14) calendar days after Notice to Proceed and to complete the project within the time stipulated in the Contract. By signing below, Bidder acknowledges receipt of the following Addenda to the Bid Documents:

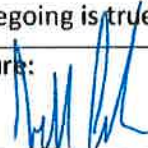
**CITY OF PORT ORCHARD
MARINA PUMP STATION
IMPROVEMENTS
PUBLIC WORKS PROJECT NO. PW 2023-013**

1	07/06/2023	2	07/13/2023
Addendum No.	Date of Receipt	Addendum No.	Date of Receipt
Addendum No.	Date of Receipt	Addendum No.	Date of Receipt

NOTE: Failure to acknowledge receipt of Addenda may be considered as an irregularity in the Bid Proposal and Owner reserves the right to determine whether the bid will be disqualified.

By signing below, Bidder certifies that they have reviewed the insurance provisions of the Bid Documents and will provide the required coverage.

The undersigned Bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date for this Project, the Bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

<u>OFFICIAL AUTHORIZED TO SIGN FOR BIDDER:</u>	
"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."	
Signature: 	Date: 07/18/2023
Printed Name and Title: Jeff Carlsen	Location or Place Executed (City, State): Woodland, Washington
Business Address: 1363 Down River Drive Woodland, WA 98674	Business Telephone: 360-225-7996

NOTES: If the Bidder is a co-partnership, give firm name under which business is transacted; proposal must be executed by a partner. If the Bidder is a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign).

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