



# City of Port Orchard Council Meeting Agenda

## February 12, 2019

### 6:30 p.m.

#### Mayor:

Rob Putaansuu  
Administrative Official

#### Councilmembers:

Bek Ashby (Mayor Pro-Tempore)  
**Chair:** ED/Tourism/LT Committee  
**Staff:** Development Director  
Finance Committee  
KRCC / PSRC TransPol / KRCC TransPol  
KRCC PlanPol-alt / PRTPO

Shawn Cucciardi  
Finance Committee  
Land Use Committee  
PSRC EDD-alt

Fred Chang  
Utilities Committee  
Sewer Advisory Committee (SAC)  
**Staff:** Public Works Director

Jay Rosapepe  
ED/Tourism/LT Committee  
Utilities Committee  
**Chair:** Lodging Tax Committee  
Sewer Advisory Committee (SAC)  
KRCC-alt / KRCC TransPol-alt  
Kitsap Transit-alt

John Clauson  
**Chair:** Finance Committee  
**Staff:** Finance Director  
Kitsap Public Health District-alt  
KEDA/KADA-alt

Cindy Lucarelli  
**Chair:** Utilities and SAC Committee  
**Staff:** Public Works Director  
**Chair:** Chimes and Lights Committee  
**Staff:** City Clerk  
KEDA/KADA

Scott Diener  
**Chair:** Land Use Committee  
**Staff:** Development Director  
ED/Tourism/LT Committee

**Department Directors:**  
Nicholas Bond, AICP  
Development Director

Mark Dorsey, P.E.  
Director of Public Works/City Engineer

Tim Drury  
Municipal Court Judge

Noah Crocker, M.B.A.  
Finance Director

Geoffrey Marti  
Police Chief

Brandy Rinearson, MMC, CPRO  
City Clerk

#### Contact us:

216 Prospect Street  
Port Orchard, WA 98366  
(360) 876-4407

## 1. CALL TO ORDER

### A. Pledge of Allegiance

## 2. APPROVAL OF AGENDA

## 3. CITIZENS COMMENTS

*(Please limit your comments to **3 minutes** for items listed on the Agenda and that are not for a Public Hearing. When recognized by the Mayor, please state your name for the official record)*

## 4. CONSENT AGENDA

*(Approval of Consent Agenda passes all routine items listed below, which have been distributed to each Councilmember for reading and study. Consent Agenda items are not considered separately unless a Councilmember so requests. In the event of such a request, the item is returned to Business Items.)*

### A. Approval of Checks, Payroll, and Electronic Payments

### B. Approval of the January 15, 2019, Council Work Study Meeting Minutes **Page 3**

## 5. PRESENTATION

## 6. PUBLIC HEARING

## 7. BUSINESS ITEMS

### A. Adoption of an Ordinance Approving a Contract with the Washington State Department of Ecology for the Marina Pump Station Rebuild Project-CWSRF Loan Agreement (Dorsey) Page 9

### B. Adoption of an Ordinance Approving a Contract with the State Department of Ecology for the Port Orchard Downtown Basin Stormwater Plan (Dorsey) Page 53

### C. Adoption of a Resolution Approving a Contract with Robinson Noble, Inc. for the 2019 Hydrogeological Services and Procurement Procedure Documentation (Dorsey) Page 99

### D. Adoption of a Resolution Approving a Contract with Transportation Solutions, Inc. for the Transportation Impact Fee Study and Traffic Model Calibration (Bond) Page 121

### E. Approval to Allow the Placement of Public Art on Utility Equipment in the Right-of-Way (Bond) Page 149

### F. Approval of the January 22, 2019, Council Meeting Minutes Page 155

## 8. REPORTS OF COUNCIL COMMITTEES

## 9. REPORT OF MAYOR

## 10. REPORT OF DEPARTMENT HEADS

### 11. CITIZEN COMMENTS

*(Please limit your comments to 3 minutes for any items not up for Public Hearing. When recognized by the Mayor, please state your name for the official record)*

**12. EXECUTIVE SESSION:** Pursuant to RCW 42.30.110(1)(i), the City Council will hold a 10-minute executive session to discuss a potential litigation matter.

### 13. ADJOURNMENT

#### COMMITTEE MEETINGS

	Date & Time	Location
Finance	February 19, 2019; 5:15pm	City Hall
Economic Development and Tourism	March 11, 2019; 9:30am	City Hall
Utilities	February 27, 2019; 9:30am	City Hall
Sewer Advisory	April 17, 2019; 6:30pm	SKWRF*
Land Use	February 25, 2019; 9:30am	DCD**
Lodging Tax Advisory	TBD	City Hall
Festival of Chimes & Lights	February 27, 2019; 3:30pm	City Hall
Outside Agency Committees	Varies	Varies

\*South Kitsap Water Reclamation Facility – 1165 Beach Drive (Beach Drive and Olney)

\*\*720 Prospect Street, Port Orchard

#### CITY COUNCIL GOOD OF THE ORDER

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Please turn off cell phones during meeting and hold your questions for staff until the meeting has been adjourned.

The Council may consider other ordinances and matters not listed on the Agenda, unless specific notification period is required.

Meeting materials are available on the City's website at: [www.cityofportorchard.us](http://www.cityofportorchard.us) or by contacting the City Clerk's office at (360) 876-4407.

The City of Port Orchard does not discriminate on the basis of disability. Contact the City Clerk's office should you need special accommodations.



**City of Port Orchard  
Council Meeting Minutes  
Work Study Session Meeting of January 15, 2019**

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**CALL TO ORDER AND ROLL CALL**

Mayor Robert Putaansuu called the meeting to order at 6:30 p.m.

Roll call was taken by the City Clerk as follows:

Mayor Pro-Tem Ashby	Present
Councilmember Chang	Present
Councilmember Clauson	Present
Councilmember Cucciardi	Present
Councilmember Diener	Present
Councilmember Lucarelli	Present
Councilmember Rosapepe	Present
Mayor Putaansuu	Present

Staff present: Finance Director Crocker, Community Development Director Bond, City Attorney Cates, City Clerk Rinearson and Office Assistant Whisenant were also present.

**Pledge of Allegiance**

**Mayor Putaansuu** led the audience and Council in the Pledge of Allegiance.

**1. Adoption of an Ordinance Adopting Revisions to Port Orchard Municipal Code Chapter 3.48 Multifamily Property Tax Exemption [Continued from December 18, 2018, Council meeting]- With Possible Action**

Mayor Putaansuu stated that the fire department will not be attending the meeting. However, the fire department does understand what the city is trying to accomplish and the potential impacts.

Community Development Director Bond represented the motion still on the floor considering the draft ordinance from the December 18<sup>th</sup> Council Meeting. Concerns have been expressed by the fire department and Councilmembers. During the recent Land Use Committee meeting, it was decided that the exemption needs to be looked at deeper and consider potential concerns. Asked how the council wishes to proceed; by either acting on the draft ordinance tonight or to take a more comprehensive look.

Staff and Councilmembers discussed the basis of affordable housing as configured in tax abatement, and the difference between the data collected by Department of Housing and Urban Development

(HUD) and the Census. The Census data shows that the immediate Port Orchard area has a lower median income than the county. A possible suggestion would be for the Council to look at shifting the percentage of median income to be more in Port Orchard's demographic.

Councilmember Ashby discussed the data between HUD and the Census. Also, identified the other topics discussed at Land Use Committee was the original intent for the tax abatement and developing criteria.

Mayor Putaansuu stated that the decision is to develop criteria it will have to take a back-seat, as code revisions are going for review to the Planning Commission later this month.

Councilmembers expressed the prioritization of the code revisions, but also the importance on quickly moving forward with the tax abatement revisions. The original intent was identified to encourage development in certain areas.

Mayor, Council and staff discussed the change in the length of time for the tax abatement, interest from potential future developer in another location within the Sedgwick area, development versus redevelopment, economic and other agency impacts.

Community Development Director Bond expressed a possible land evaluation increase per acre to be a requirement within the future revisions.

**MOTION:** By Councilmember Cucciardi, seconded by Councilmember Rosapepe, to approve an ordinance adopting revisions to Chapter 3.48 of the Port Orchard Municipal Code as presented at the December 18, 2018 City Council Meeting.

It was stated that no public testimony was set for this meeting, as it was previously given at the December 18, 2018, City Council Meeting.

Mayor Putaansuu stated that staff is to readdress this Spring and remove the 12-year timeline and adjust income percentages.

Councilmember Chang expressed his concern with setting a precedent.

Community Development Director Bond suggested that Council consider not to accept any additional requests until the topic has finished being reviewed.

Councilmembers discussed moving forward with not accepting additional requests and reviewing again in the distant future to identify the impacts of this new Sedgwick project.

**The motion passed. Councilmembers Chang and Ashby voted no.**

**(Ordinance No. 003-19)**

Mayor Putaansuu clarified that other locations are not being considered until a new process and procedure is adopted.

**Council Direction:** Direction was given to staff that no other locations will be considered until a new process and procedure is adopted.

**2. Plastic Bag Reduction**

Mayor Putaansuu stated that he heard from Lobbyist Josh that the Plastic Bag Bill is going before legislation tomorrow.

Councilmember Ashby expressed the efforts put forth through the Economic Development and Tourism Committee, Townhall, and outreach to other local jurisdictions. Didn't want to provide a recommendation this evening since the bill is being presented through the Legislature tomorrow, and if the State moves forward then would be compatible. Will bring to next work study to have the language for adoption, based off the State.

**Council Direction:** Will be reviewed at next Economic Development and Tourism Committee and then bring forward at the February Work Study.

**OTHER DISCUSSION:**

Mayor Putaansuu inquired about the current status of small cells, since the Federal Government has taken under advisement.

City Attorney Cates has discussed with the attorney hired to work on this topic. Stating some additional concerns, so they are making sure to address the concerns before finalizing the ordinance.

**3. Utility Late Fees and Penalties**

Mayor Putaansuu informed of the request for waiving utility late fees and penalties. Research completed by Finance Director Crocker determined that the city's insurance company suggesting revising the code to address the request.

Finance Director Crocker, Mayor, Councilmembers, and staff discussed the proposed conditional requirements identified on requesting a waiver, application of penalties, payment arrangements, and the authority for approval to be given to the Finance Director.

Mayor Putaansuu explained process of shut off and timeframes.

**Council Direction:** Staff is to bring the ordinance to the next Council Meeting for adoption.

#### **4. Countywide Planning Policies**

Community Development Director Bond is seeking direction from the Council on the City's position and direction regarding the regional strategy in the Countywide Planning Policies that is currently under review with Kitsap Regional Coordinating Council (KRCC), through the Land Use Technical Advisory Committee (LUTAC).

Explanation of how prioritization for funding is determined through the specific criteria identified.

Councilmembers, Mayor and staff discussed the different levels of criteria for the different areas in question with the proposed changes to define the requirements and terminology, so that it is uniformed for all involved.

Mayor Putaansuu confirmed that all the Council was in agreeance with moving forward on the changes.

Different funding outlets were discussed outside of Puget Sound Regional Council (PSRC), such as rural funding that is determined through Peninsula Regional Transportation Planning Organization (Peninsula RPTO) and other sources as well.

Other involved areas' positions were briefly discussed.

**Council Direction:** Staff is to continue to advocate to prioritize investments in support of our centers and based on the hierarchy that exists, as well as identifying as many county-wide centers as possible.

#### **5. Kitsap County McCormick Woods Traffic Impact Fees**

Mayor Putaansuu informed the Council that Kitsap County has collected traffic impact fees for McCormick Woods which remains unspent, and that based on the agreement the money should be transferred to the City, which it has not. The City is wanting to move forward by proposing to send Kitsap County a bill, and if that is not met then a follow up letter will be sent by the City's Land Use Attorney.

**Council Direction:** Staff is to move forward.

#### **6. Police Chief Recruitment Process**

Mayor Putaansuu informed of the Police Chief's retirement in the next few months, stated that recruitment process costs were identified in budget and a contract had been signed that is within

the budget allowance. The process for recruitment was explained and discussed. The salary range was suggested to be reviewed and stated that council action would need to be taken to make the adjustment.

Discussion between Councilmembers and Mayor on salary ranges, with including benefits, were determined in the proposed adjustment.

**Council Direction:** Staff was directed to move forward.

**OTHER ITEMS DISCUSSED:**

Councilmembers and Mayor discussed the derelict boat ordinance. Mayor Putaansuu identified that it is a complicated process and the police department is trying to work on a simpler process, emphasizing to not discourage recreational use.

Mayor Putaansuu stated that he will be out of town for the AWC Mayor's Exchange, so Councilmember Ashby will be Mayor Pro-Tem for the next council meeting. Identified need for a quorum, as Councilmember Cucciardi will also be out.

Mayor Putaansuu gave updates on; the Rockwell Pocket Park Bid and McCormick Woods Village Park Closure.

It was determined to move Land Use Committee to the forth Monday of the month going forward.

Councilmember Clauson extended invitation to tour tiny homes in West Seattle.

Mayor Putaansuu updated on the overall tornado costs, and Small Business Association on site with resources available. Also, updated on presentation given at the Chamber of Commerce and Bay Street Pedestrian Pathway.

**ADJOURNMENT**

The meeting adjourned at 8:08 p.m. No other action was taken. Audio/Visual was successful.

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Brandy Rinearson, MMC, City Clerk

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Robert Putaansuu, Mayor

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**City of Port Orchard**

216 Prospect Street, Port Orchard, WA 98366

(360) 876-4407 • FAX (360) 895-9029

**Agenda Staff Report**

Agenda Item No.:	<u>Business Item 7A</u>	Meeting Date:	<u>February 12, 2019</u>
Subject:	<u>Adoption of an Ordinance Approving a</u>	Prepared by:	<u>Mark Dorsey, P.E.</u>
	<u>Contract with the Washington State</u>		<u>Public Works Director</u>
	<u>Department of Ecology for the Marina</u>	Atty Routing No.:	<u>115-18</u>
	<u>Pump Station Rebuild Project-CWSRF</u>	Atty Review Date:	<u>February 5, 2019</u>
	<u>Loan Agreement</u>		

**Summary:** The City of Port Orchard has successfully applied for and received a Clean Water State Revolving Fund (CWSRF) loan from the Department of Ecology for the Marina Pump Station Rebuild Project. The general terms of the Loan are as follows:

- Loan Amount: \$4,100,000
- City Share: N/A
- Loan Term: 20-years
- Interest Rate: 2.0% (incl. admin charge)
- Effective Date: 7/1/2018
- Expiration Date: May 31, 2023

The Loan (Ecology Agreement No. WQC-2019-PoOrPW-00025) is a Revenue Secure Lien Obligation of the City, payable solely from the net revenue of the City’s Sanitary Sewer System. The Marina Pump Station Engineering Report was completed by BHC in September 2017 and will be utilized by RH2 for the 30% Design and Permit Coordination Phase of the Project and the pending Final Ad Ready Design (Consultant to be Determined), as currently funded within the 2019-2020 Budget.

**Relationship to Comprehensive Plan:** Chapter 7 – Utilities.

**Recommendation:** Staff recommends that the City Council adopt an ordinance approving a contract with the State Department of Ecology, thereby accepting a Clean Water State Revolving Fund (CWSRF) loan from the Department of Ecology for the Marina Pump Station Rebuild Project in the amount of \$4,100,000.00.

**Motion for Consideration:** I move to adopt an ordinance approving a contract with the State Department of Ecology, thereby accepting a Clean Water State Revolving Fund (CWSRF) loan from the Department of Ecology for the Marina Pump Station Rebuild Project in the amount of \$4,100,000.00.

**Fiscal Impact:** Loan repayment schedule to be developed.

**Alternative:** Refuse loan.

**Attachment:** Ordinance and Ecology Agreement No. WQC-2019-PoOrPW-00025.

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, ACCEPTING TERMS AND CONDITIONS ASSOCIATED WITH DEPARTMENT OF ECOLOGY (ECOLOGY) CWSRF LOAN AGREEMENT NO. WQC-2019-PoOrPW-00025, THEREBY APPROVING CONTRACT NO C011-19 WITH ECOLOGY FOR THE MARINA PUMP STATION REBUILD PROJECT; PROVIDING FOR SEVERABILITY AND PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, in 2017, the City's Public Works Department applied for State Fiscal Year 2019 (SFY19) funding through the Department of Ecology's Clean Water State Revolving Fund (CWSRF) for the Marina Pump Station Rebuild Project (MPSRP); and

**WHEREAS**, on December 12, 2017, West Sound Utility District (WSUD) provided the City with a letter of support for the MPSRP; and

**WHEREAS**, on January 19, 2018, Ecology notified the City that the City's MPSRP Application was determined to be eligible to compete for funding and that the Project was ranked adequately to receive funding; and

**WHEREAS**, on December 13, 2018 the City received the Draft Loan Agreement for the Project (WQC-2019-PoOrPW-00025) and provided comments back to Ecology; and

**WHEREAS**, the City Council has determined it to be in the best interests of the City to enter into Contract No. C011-10 with Ecology for the MPSRP; now, therefore,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**SECTION 1.** Contract No. C011-10 with the Department of Ecology for the Marina Pump Station Rebuild Project is hereby approved and the City agrees to be bound by the terms and conditions thereof in their entirety.

**SECTION 2. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**SECTION 3. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**SECTION 4. Effective Date.** This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 12<sup>th</sup> day of February 2019.

\_\_\_\_\_  
Robert Putaansuu, Mayor

ATTEST:

SPONSOR:

\_\_\_\_\_  
Brandy Rinearson, MMC, City Clerk

\_\_\_\_\_  
Cindy Lucarelli, Councilmember

APPROVED AS TO FORM:

\_\_\_\_\_  
Sharon Cates, City Attorney

PUBLISHED:

EFFECTIVE DATE:



## Agreement No. WQC-2019-PoOrPW-00025

### WATER QUALITY COMBINED FINANCIAL ASSISTANCE 2019 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:	Marina Pump Station
Total Cost:	\$4,100,000.00
Total Eligible Cost:	\$4,100,000.00
Ecology Share:	\$4,100,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2018
The Expiration Date of this Agreement is no later than:	05/31/2023
Project Type:	Wastewater Facility

#### Project Short Description:

This project includes the design and construction of improvements to the Marina Pump Station. These improvements will prevent a catastrophic sea wall failure and increase capacity and reliability by replacing mechanical and electrical equipment. This project will protect water quality and the health and safety of the citizens around the Sinclair Inlet.

#### Project Long Description:

This project includes the design and construction of improvements to the Marina Pump Station. These improvements will prevent a catastrophic sea wall failure and increase capacity and reliability by replacing mechanical and electrical equipment. This project will protect water quality and the health and safety of the citizens around the Sinclair Inlet.

The Marina Pump Station (MPS) is the most critical pump station in the City of Port Orchard. All of the raw sewage from the City’s collection system is pumped through this station to the South Kitsap Water Reclamation

Facility (SKWRF). The seawall protecting the Controls Building is failing as evidenced by soil erosion behind the wall. This places the Controls Building at risk to earthquakes, tsunamis, and other causes of seawall failure. According to the Kitsap Multi Hazard Mitigation Plan, the site is located within 1 mile of a fault which runs through Bremerton.

If the seawall and/or building were to fail, the controls and generator set would no longer be operational, which will require emergency pumping systems to be put in place to prevent raw sewage from overflowing into Sinclair Inlet and the surrounding parking lot in downtown Port Orchard. Based on the size of the pumps and lack of bypass facilities, obtaining, delivering, and installing temporary emergency pumping systems would take some time before becoming operational, and raw sewage will overflow until that time. In the case of an earthquake or tsunami, availability of temporary pumping facilities, pumps, and pump controls will likely be very limited. The raw sewage overflowing into Sinclair Inlet and downtown Port Orchard will have a negative impact on health, safety, and water quality.

The MPS is also nearing its capacity during peak hour conditions. The MPS has two smaller duty pumps and two high flow pumps to accommodate future peak hour flows. The generator set is no longer manufactured and spare parts are difficult to obtain. The fuel tank for the generator does not have secondary containment.

This project will replace the failing seawall, seismically retrofit and modify the Controls Building to accommodate a new generator set with secondary fuel containment, replace an aging generator set, install a bypass for temporary pumping facilities, reroute some influent piping for better bypass capabilities, remove an existing overflow into Sinclair Inlet, replace high flow pumps with higher capacity pumps, replace other mechanical equipment as necessary, and replace electrical, instrumentation, and controls equipment.

Overall Goal:

The goal of this project is to protect the health and safety of the residents of the City of Port Orchard and the water quality of Sinclair Inlet from a catastrophic failure of the sea wall protecting the Marina Pump Station and to increase the reliability and capacity of the pump station.

**RECIPIENT INFORMATION**

Organization Name: City of Port Orchard

Federal Tax ID: 91-6001487

DUNS Number: 081932790

Mailing Address: 216 Prospect Street  
Port Orchard, WA 98366

Physical Address: 216 Prospect Street  
Port Orchard, Washington 98366

**Contacts**

<b>Project Manager</b>	Thomas Hunter Utility Manager  216 Prospect Street Port Orchard, Washington 98366 Email: thunter@cityofportorchard.us Phone: (360) 876-4991
<b>Billing Contact</b>	Heidi Draper Accounting Assistant III  216 Prospect Street Port Orchard, Washington 98366 Email: hdraper@cityofportorchard.us Phone: (360) 874-5523
<b>Authorized Signatory</b>	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**

<b>Project Manager</b>	Kevin Leung  3190 - 160th Ave SE Bellevue, Washington 98008-5452 Email: kleu461@ecy.wa.gov Phone: (425) 649-7207
<b>Financial Manager</b>	Sean Mellon  PO Box 47600 Olympia, Washington 98504-7600 Email: smel461@ecy.wa.gov Phone: (360) 407-6570



**AUTHORIZING SIGNATURES**

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

IN WITNESS WHEREOF: the parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Washington State  
Department of Ecology

City of Port Orchard

By: \_\_\_\_\_

By: \_\_\_\_\_

Heather R. Bartlett  
Water Quality  
Program Manager  
Date

Robert B Putaansuu  
May  
Date

Template Approved to Form by  
Attorney General's Office

**SCOPE OF WORK**

Task Number: 1 **Task Cost: \$60,000.00**

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 a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating compliance with applicable procurement, contracting, and interlocal agreement requirements; 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.

C. The RECIPIENT shall manage the project. Efforts include, but are not limited to: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. 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 or 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: Thomas Hunter

**Project Administration/Management**

**Deliverables**

Number	Description	Due Date
1.1	Quarterly Progress Reports	
1.2	Recipient Closeout Report	
1.3	Project Outcome Summary Report	

## SCOPE OF WORK

Task Number: 2 **Task Cost: \$580,000.00**

Task Title: Permitting and Final Design

### Task Description:

A. The RECIPIENT will obtain necessary permits required for the project.

B. The RECIPIENT will procure engineering services in accordance with state law. The RECIPIENT must include ECOLOGY's specification insert in the contract documents for design. The RECIPIENT must submit all contracts for engineering services before ECOLOGY shall provide reimbursement for work performed under this task .

C. The RECIPIENT will design the Marina Pump Station . Plans and specifications developed by the RECIPIENT shall be consistent with the requirements of Chapter 173-240 WAC. Elements of the design will include:

1. New lift station pumps
2. Associated piping and electrical work
3. Replacement of the failing sea wall
4. New generator.

D. The plans and specifications, construction contract documents, and addenda will be approved by the RECIPIENT prior to submittal for ECOLOGY review. All construction plans submitted to ECOLOGY for review and approval will be reduced to no larger than 11" x 17" in size. All reduced drawings shall be completely legible. The project manager may request plans be submitted in either PDF or AutoCAD electronic format, and specifications in a searchable PDF or Microsoft Word electronic file. A current construction cost estimate will be submitted along with each plan/specification submittal. The project manager may request a spreadsheet of the costs in electronic file format.

E. The RECIPIENT will complete the facility design within one year after the execution of this AGREEMENT.

F. Investment Grade Efficiency Audit. The RECIPIENT will procure a third party analysis of potential energy and water efficiency measures for incorporation into the design of any wastewater facilities. The analysis will identify potential efficiency measures, provide cost estimates, and evaluate their cost effectiveness. If the RECIPIENT has obtained either a preliminary or investment grade energy audit of the utility in the last 5 years, documentation of that audit can be submitted instead.

G. The RECIPIENT's construction management staff will provide a constructability review and quality assurance check of the project drawing and specification package, and general requirements of the construction bid documents at the 60 percent and 90 percent stages.

### Task Goal Statement:

Project permitted and designed to ECOLOGY approved specification.

### Task Expected Outcome:

All necessary permits obtained and project designed to ECOLOGY approved specification.

Recipient Task Coordinator: Thomas Hunter

**Permitting and Final Design**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
2.1	Executed contracts for engineering services and affidavit of publication	
2.2	Documentation of the RECIPIENT's process for procuring engineering services	
2.3	Two copies of the final design with detailed cost estimate and specifications	
2.4	Investment Grade Efficiency Audit documentation	

## SCOPE OF WORK

Task Number: 3 **Task Cost: \$570,000.00**

Task Title: Construction Management

### Task Description:

A. The RECIPIENT will provide adequate and competent construction management and inspection for the Project. This may involve procuring the professional services. If professional services are procured, the RECIPIENT will procure them in accordance with state law. The RECIPIENT will include ECOLOGY's specification insert in the contract documents. The RECIPIENT must submit all contracts for construction management services before ECOLOGY will provide reimbursement for work performed under this task.

B. The RECIPIENT will develop a detailed Construction Quality Assurance Plan (WAC 173-240-075) and submit it to ECOLOGY for approval. This plan must describe the activities which the RECIPIENT will undertake to achieve adequate and competent oversight of all construction work.

C. The RECIPIENT will provide a plan of interim operation for the facility while under construction.

D. The RECIPIENT will ensure construction progresses according to a timely schedule developed to meet completion dates indicated in the construction contract. The RECIPIENT will revise or update the schedule whenever major changes occur and resubmit to ECOLOGY. In the absence of any major changes, the RECIPIENT will describe progress of the construction in the quarterly progress reports.

E. Upon completion of this construction, the RECIPIENT will submit the Declaration of Construction Completion form to ECOLOGY in accordance with WAC 173-240-090 and a set of "as-built" plans of the construction contract i.e., record construction drawings which reflect changes, modifications, or other revisions made to the project during construction. The form, when signed by a professional engineer, indicates that the project was completed in accordance with the plans and specifications and major change orders approved by ECOLOGY, and is accurately shown on the as-built plans.

F. The RECIPIENT will prepare an Operations and Maintenance (O&M) manual for the marina pump station.

### Task Goal Statement:

To manage construction of the project to ensure a project that is built in accordance with Ecology approved specifications.

### Task Expected Outcome:

Project constructed in accordance with Ecology approved specifications.

Recipient Task Coordinator: Thomas Hunter

**Construction Management**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
3.1	Executed contract for construction management services	
3.2	Documentation of the RECIPIENT's process for procuring engineering services	
3.3	Construction Quality Assurance Plan	
3.4	Plan of interim operation of the facility while under construction	
3.5	Declaration of Construction Completion	
3.6	"As-built" plans	
3.7	Operation and Maintenance Manual	

## SCOPE OF WORK

Task Number: 4 **Task Cost: \$2,890,000.00**

Task Title: Project Construction

### Task Description:

A. The RECIPIENT will include ECOLOGY's specification insert in the bid documents. The RECIPIENT will execute a contract with the low responsive responsible bidder to construct the PROJECT. The RECIPIENT shall submit Bid Tabs, the Notice of Award, and a copy of the executed contract before ECOLOGY shall provide reimbursement for work performed under this task.

B. The RECIPIENT will complete construction of the Marina Pump Station in accordance with the plans and specifications. Elements of the construction project will include:

1. New lift station pumps
2. Associated piping and electrical work
3. Replacement of the failing sea wall
4. New generator.

C. The RECIPIENT will conduct a pre-construction conference and invite ECOLOGY staff.

D. As a condition of receiving this funding, the RECIPIENT will prepare an asset management program (fiscal sustainability plan). The RECIPIENT will certify that a plan that contains at least the minimum required elements listed above has been developed and is being implemented. The plan must include the following elements

1. An inventory of critical assets that belong to the utility.
2. An evaluation of the condition and performance of the critical assets.
3. A plan to maintain, repair, and replace the critical assets and to fund those activities.
4. A process to evaluate and implement water and energy conservation efforts as part of the plan.

### Task Goal Statement:

To have the project constructed in accordance with ECOLOGY approved plans and specifications.

### Task Expected Outcome:

Project constructed in accordance with ECOLOGY approved plans and specifications.

Recipient Task Coordinator: Thomas Hunter

**Project Construction**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
4.1	Copy of the advertisement for bids with affidavit of publication	
4.2	Minutes of the pre-construction meeting	
4.3	Declaration of Construction completion (paper copy) and one electronic copy of the Record Drawings	
4.4	Investment Grade Efficiency Audit documentation	
4.5	Certification that the Financial Sustainability Plan has been developed and is being implemented	



**SCOPE OF WORK**

Task Number: 5 **Task Cost: \$0.00**

Task Title: Change Orders

Task Description:

A. The RECIPIENT will negotiate all change orders to the construction contract necessary for successful completion of the project.

B. The RECIPIENT will submit the change orders to ECOLOGY for approval. Change orders that are a significant deviation from the approved plans/specifications must be submitted for approval, prior to execution. All other change orders must be submitted within 30 days after execution.

Task Goal Statement:

To have all change orders reviewed and approved by ECOLOGY prior to requesting reimbursement.

Task Expected Outcome:

All change orders reviewed and approved by ECOLOGY prior to reimbursement.

Recipient Task Coordinator: Thomas Hunter

**Change Orders**

**Deliverables**

Number	Description	Due Date
5.1	Change order justifications if needed	
5.2	Executed change orders with backup documentation and professional engineer seal and signature	



<b>SRF Standard Loan</b>	<b>Task Total</b>
Project Administration/Management	\$ 60,000.00
Permitting and Final Design	\$ 580,000.00
Project Construction	\$ 2,890,000.00
Construction Management	\$ 570,000.00
Change Orders	\$ 0.00

**Total: \$ 4,100,000.00**

**Funding Distribution Summary**

**Recipient / Ecology Share**

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
SRF Standard Loan	0.00 %	\$ 0.00	\$ 4,100,000.00	\$ 4,100,000.00
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 4,100,000.00</b>	<b>\$ 4,100,000.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

**SECTION 1: DEFINITIONS**

Unless otherwise provided, the following terms will have the respective meanings for all purposes of this agreement: "Administration Charge" means a charge established in accordance with Chapter 90.50A RCW and Chapter 173-98 WAC, to be used to pay Ecology's cost to administer the State Revolving Fund by placing a percentage of the interest earned in an Administrative Charge Account.

"Administrative Requirements" means the effective edition of ECOLOGY's Administrative Requirements for Recipients of Ecology Grants and Loans at the signing of this agreement.

"Annual Debt Service" for any calendar year means for any applicable bonds or loans including the loan, all interest plus all principal due on such bonds or loans in such year.

"Average Annual Debt Service" means, at the time of calculation, the sum of the Annual Debt Service for the remaining years of the loan to the last scheduled maturity of the loan divided by the number of those years.

"Acquisition" means the purchase or receipt of a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

"Centennial Clean Water Program" means the state program funded from various state sources.

"Contract Documents" means the contract between the RECIPIENT and the construction contractor for construction of the project.

"Cost Effective Analysis" means a comparison of the relative cost-efficiencies of two or more potential ways of solving a water quality problem as described in Chapter 173-98-730 WAC.

"Defeasement" or "Defeasance" means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

"Effective Date" means the earliest date on which eligible costs may be incurred.

"Effective Interest Rate" means the total interest rate established by Ecology that includes the Administrative Charge.

"Estimated Loan Amount" means the initial amount of funds loaned to the RECIPIENT.

"Estimated Loan Repayment Schedule" means the schedule of loan repayments over the term of the loan based on the Estimated Loan Amount.

"Equivalency" means projects designated by ECOLOGY to meet additional federal requirements.

"Expiration Date" means the latest date on which eligible costs may be incurred.

"Final Accrued Interest" means the interest accrued beginning with the first disbursement of funds to the RECIPIENT through such time as the loan is officially closed out and a final loan repayment schedule is issued.

"Final Loan Amount" means all principal of and interest on the loan from the Project Start Date through the Project

**Completion Date.**

“Final Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Final Loan Amount.

“Forgivable Principal” means the portion of a loan that is not required to be paid back by the borrower.

“General Obligation Debt” means an obligation of the RECIPIENT secured by annual ad valorem taxes levied by the RECIPIENT and by the full faith, credit, and resources of the RECIPIENT.

“General Obligation Payable from Special Assessments Debt” means an obligation of the RECIPIENT secured by a valid general obligation of the Recipient payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

“Gross Revenue” means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) Utility Local Improvement Districts (ULID) Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any investments in a trust, Defeasance, or escrow fund created to Defeasance or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

“Guidelines” means the ECOLOGY’s Funding Guidelines that correlate to the State Fiscal Year in which the project is funded.

“Initiation of Operation Date” means the actual date the Water Pollution Control Facility financed with proceeds of the loan begins to operate for its intended purpose.

“Loan” means the Washington State Water Pollution Control Revolving Fund Loan or Centennial Clean Water Fund (Centennial) Loan made pursuant to this loan agreement.

“Loan Amount” means either an Estimated Loan Amount or a Final Loan Amount, as applicable.

“Loan Fund” means the special fund created by the RECIPIENT for the repayment of the principal of and interest on the loan.

“Loan Security” means the mechanism by which the RECIPIENT pledges to repay the loan.

“Loan Term” means the repayment period of the loan.

“Maintenance and Operation Expense” means all reasonable expenses incurred by the RECIPIENT in causing the Utility to be operated and maintained in good repair, working order, and condition including payments to other parties, but will not include any depreciation or RECIPIENT levied taxes or payments to the RECIPIENT in lieu of taxes.

“Net Revenue” means the Gross Revenue less the Maintenance and Operation Expense.

“Original Engineer’s Estimate” means the engineer’s estimate of construction costs included with bid documents.

“Principal and Interest Account” means, for a loan that constitutes Revenue-Secured Debt, the account created in the loan fund to be first used to repay the principal of and interest on the loan.

“Project” means the project described in this agreement.

“Project Completion Date” means the date specified in the agreement on which the Scope of Work will be fully completed. This term is only used in loan agreements.

“Project Schedule” means that schedule for the project specified in the agreement.

“Revenue-Secured Debt” means an obligation of the RECIPIENT secured by a pledge of the revenue of a utility and one not a general obligation of the RECIPIENT.

“Reserve Account” means, for a loan that constitutes a Revenue Secured Debt and if specifically identified as a term and condition of the funding agreement, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.

“Risk-Based Determination” means an approach to sub-recipient monitoring and oversight based on risk factors associated to a RECIPIENT or project.

“Scope of Work” means the tasks and activities constituting the project.

“Section 319” means the section of the Clean Water Act that provides funding to address nonpoint sources of water pollution.

“Senior Lien Obligations” means all revenue bonds and other obligations of the RECIPIENT outstanding on the date of execution of this loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this loan agreement having a claim or lien on the Gross Revenue of the Utility prior and superior to the claim or lien of the loan, subject only to Maintenance and Operation Expense.

“State Water Pollution Control Revolving Fund (Revolving Fund)” means the water pollution control revolving fund established by Chapter 90.50A.020 RCW.

“Termination Date” means the effective date of ECOLOGY’s termination of the agreement.

“Termination Payment Date” means the date on which the RECIPIENT is required to repay to ECOLOGY any outstanding balance of the loan and all accrued interest.

“Total Eligible Project Cost” means the sum of all costs associated with a water quality project that have been determined to be eligible for ECOLOGY grant or loan funding, including any required recipient match.

“Total Project Cost” means the sum of all costs associated with a water quality project, including costs that are not eligible for ECOLOGY grant or loan funding.

“ULID” means any utility local improvement district of the RECIPIENT created for the acquisition or construction of additions to and extensions and betterments of the Utility.

“ULID Assessments” means all assessments levied and collected in any ULID. Such assessments are pledged to be paid into the Loan Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments will include principal installments and any interest or penalties which may be due.

“Utility” means the sewer system, stormwater system, or the combined water and sewer system of the RECIPIENT, the Net Revenue of which is pledged to pay and secure the loan.

## SECTION 2: THE FOLLOWING CONDITIONS APPLY TO ALL RECIPIENTS OF WATER QUALITY COMBINED FINANCIAL ASSISTANCE FUNDING.

The Water Quality Financial Assistance Funding Guidelines are included in this agreement by reference and are available on ECOLOGY’s Water Quality Program website.

A. Architectural and Engineering Services: The RECIPIENT certifies by signing this agreement that the requirements of Chapter 39.80 RCW, “Contracts for Architectural and Engineering Services,” have been, or shall be, met in procuring qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final architectural/engineering services contract and submit a copy of the contract to ECOLOGY.

B. Acquisition: The following provisions shall be in force only if the project described in this agreement is an acquisition project:

- a. Evidence of Land Value and Title. The RECIPIENT shall submit documentation of the cost of the property rights and the type of ownership interest that has been acquired.
- b. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased with funding assistance provided through this agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the agreement before final payment.
- c. Conveyance of Rights to the State of Washington. Upon purchase of real property rights (both fee simple and lesser interests), the RECIPIENT shall execute the document necessary to convey certain rights and responsibilities to ECOLOGY, on behalf of the State of Washington. The documents required will depend on the project type, the real property rights being acquired, and whether or not those rights are being acquired in perpetuity (see options below). The RECIPIENT shall use language provided by ECOLOGY, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to ECOLOGY.

Documentation Options:

1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. RECIPIENTS shall use this document

Agreement No: WQC-2019-PoOrPW-00025  
 Project Title: Marina Pump Station  
 Recipient Name: City of Port Orchard

when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the RECIPIENT has acquired a perpetual easement for public purposes. The RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the deed of right.

2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to ECOLOGY. The RECIPIENT shall use this document when an easement or lease is being acquired for water quality and habitat conservation. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.

3. Easements and Leases. The RECIPIENT may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; therefore, the RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the easement or lease.

d. Real Property Acquisition and Relocation Assistance.

1. Federal Acquisition Policies. See Section 4 of this agreement for requirements specific to Section 319 and SRF funded projects.

2. State Acquisition Policies. When state funds are part of this agreement, the RECIPIENT agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.

3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the RECIPIENT agrees to provide any housing and relocation assistance required.

e. Hazardous Substances.

1. Certification. The RECIPIENT shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(10), and certify:

- i. No hazardous substances were found on the site, or
- ii. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site is deemed "clean."

2. Responsibility. Nothing in this provision alters the RECIPIENT's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.

3. Hold Harmless. The RECIPIENT will defend, protect and hold harmless ECOLOGY and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the RECIPIENT is acquiring.

f. Restriction On Conversion Of Real Property And/Or Facilities To Other Uses

The RECIPIENT shall not at any time convert any real property (including any interest therein) or facility acquired, developed, maintained, renovated, and/or restored pursuant to this agreement to uses other than those purposes for which funds were approved without prior approval of ECOLOGY. For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

C. Best Management Practices (BMP) Implementation: If the RECIPIENT installs BMPs that are not approved by ECOLOGY prior to installation, the RECIPIENT assumes the risk that part or all of the reimbursement for that activity may be delayed or ineligible. For more details regarding BMP Implementation, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY's Water Quality Program funding website.

D. Electronic Fund Transfers: The RECIPIENT must register as a statewide vendor in order to receive payment reimbursement. Washington State's Department of Enterprise Services (DES) issues all payments. DES maintains a central vendor file for Washington State agency use to process vendor payments. The RECIPIENT can complete the

registration process online at:

<http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. This registration process allows the RECIPIENT to sign up for direct deposit payments, also known as electronic fund transfers (EFT). If the RECIPIENT has questions about the vendor registration process or setting up direct deposit payments contact DES Payee Help Desk at (360) 407-8180 or [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.wa.gov).

E. Equipment Purchase: Equipment purchases over \$5,000 and not included in the scope of work or the Ecology approved construction plans and specifications, must be pre-approved by ECOLOGY's project manager before purchase. All equipment purchases over \$5,000 and not included in a contract for work being completed on the funded project, must also be reported on the Equipment Purchase Report in EAGL.

F. Funding Recognition: The RECIPIENT must inform the public about ECOLOGY or any EPA (see Section 3.B for Section 319 funded or Section 5.E for SRF funded projects) funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from ECOLOGY's Financial Manager upon request.

G. Growth Management Planning: The RECIPIENT certifies by signing this agreement that it is in compliance with the requirements of Chapter 36.70A RCW, "Growth Management Planning by Selected Counties and Cities." If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT shall notify ECOLOGY in writing of this change within 30 days.

H. Interlocal: The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements necessary for the project are, or shall be, consistent with the terms of this agreement and Chapter 39.34 RCW, "Interlocal Cooperation Act." The RECIPIENT shall submit a copy of each interlocal agreement necessary for the project to ECOLOGY upon request.

I. Lobbying and Litigation: Costs incurred for the purposes of lobbying or litigation are not eligible for funding under this agreement.

J. Post Project Assessment Survey: The RECIPIENT agrees to participate in a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project approximately three years after project completion. A representative from ECOLOGY's Water Quality Program may contact the RECIPIENT to request this data. ECOLOGY may also conduct site interviews and inspections, and may otherwise evaluate the project, as part of this assessment.

K. Project Status Evaluation: ECOLOGY may evaluate the status of this project 18 months from the effective date of this agreement. ECOLOGY's Project Manager and Financial Manager will meet with the RECIPIENT to review spending trends, completion of outcome measures, and overall project administration and performance. If the RECIPIENT fails to make satisfactory progress toward achieving project outcomes, ECOLOGY may change the scope of work, reduce grant funds, or increase oversight measures.

L. Technical Assistance: Technical assistance for agriculture activities provided under the terms of this agreement shall be consistent with the current U.S. Natural Resource Conservation Service ("NRCS") Field Office Technical Guide for Washington State and specific requirements outlined in the Water Quality Funding Guidelines. Technical assistance, proposed practices, or project designs that do not meet these standards may be eligible if approved in writing by ECOLOGY.

### SECTION 3: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND CENTENNIAL CLEAN WATER FUNDED PROJECTS BEING USED TO MATCH SECTION 319 FUNDS.

The RECIPIENT must submit the following documents to ECOLOGY before this agreement is signed by ECOLOGY:

1. Federal Funding Accountability and Transparency Act (FFATA) Form, available on the Water Quality Program website.
2. "Section 319 Initial Data Reporting" form in EAGL.

A. Data Reporting: The RECIPIENT must complete the "Section 319 Initial Data Reporting" form in EAGL before



this agreement can be signed by Ecology. This form is used to gather general information about the project for EPA.

B. Funding Recognition and Outreach: In addition to Section 2.F of these Terms and Conditions, the RECIPIENT shall provide signage that informs the public that the project is funded by EPA. The signage shall contain the EPA logo and follow usage requirements available at <http://www2.epa.gov/stylebook/using-epa-seal-and-logo>. To obtain the appropriate EPA logo or seal graphic file, the RECIPIENT may send a request to their Ecology Financial Manager. To increase public awareness of projects serving communities where English is not the predominant language, RECIPIENTS are encouraged to provide their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable. The RECIPIENT shall use the following paragraph in all reports, documents, and signage developed under this agreement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency under an assistance agreement to the Washington State Department of Ecology. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the mention of trade names or commercial products constitute endorsement or recommendation for use.”

C. Load Reduction Reporting: The RECIPIENT shall complete the “Section 319 Annual Load Reduction Reporting” form in EAGL by January 15 of each year and at project close-out. ECOLOGY may hold reimbursements until the RECIPIENT has completed the form. This form is used to gather information on best management practices (BMPs) installed and associated pollutant load reductions that were funded as a part of this project.

D. Time Extension: The RECIPIENT may request a one-time extension for up to 12 months. However, the time extension cannot exceed the time limitation established in EPA’s assistance agreement. In the event a time extension is requested and approved by ECOLOGY, the RECIPIENT must complete all eligible work performed under this agreement by the expiration date.

#### SECTION 4: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

A. Accounting Standards: The RECIPIENT shall maintain accurate records and accounts for the project (PROJECT Records) in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets or in accordance with the standards in Chapter 43.09.200 RCW “Local Government Accounting – Uniform System of Accounting”.

B. Acquisitions: Section 319 and SRF Equivalency project RECIPIENTS shall comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)-Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.

C. Audit Requirements: In accordance with 2 CFR 200.501(a), the RECIPIENT agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year. The RECIPIENT must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse’s Internet Data Entry System available at: <https://harvester.census.gov/fac/collect/ddeindex.html>. For complete information on how to accomplish the single audit submission, go to the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>.

D. Archaeological Resources and Historic Properties (Section 106): The RECIPIENT shall comply with the additional requirements under section 106 of the National Historic Preservation Act (NHPA, 36 CFR 800).

E. Data Universal Numbering System (DUNS) and Central Contractor Registration (CCR) Requirements: RECIPIENTS shall have a DUNS number. Unless exempted from this requirement under 2 CFR 25.110, the RECIPIENT must ensure that their organization’s information in the System for Award Management (SAM),

<https://www.sam.gov>, is kept current through project closeout. This requires that the RECIPIENT reviews and updates the information at least annually after the initial registration, and more frequently if information changes.

F. Disadvantaged Business Enterprise (DBE): General Compliance, 40 CFR, Part 33. The RECIPIENT agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises (MBE/WBE) 40CFR, Part 33 in procurement under this agreement.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C. The RECIPIENT agrees to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under this agreement. Records documenting compliance with the following six good faith efforts shall be retained:

- 1) Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government RECIPIENTS, this shall include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- 2) Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- 3) Consider, in the contracting process, whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State, and Local Government RECIPIENTS, this shall include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- 4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6) If the prime contractor awards subcontracts, require the prime contractor to take the five good faith efforts steps in paragraphs 1 through 5 above.

The RECIPIENT agrees to submit ECOLOGY's Contractor Participation Report Form D with each payment request. Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

Non-discrimination Provision. The RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this agreement. The RECIPIENT shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the RECIPIENT to carry out these requirements is a material breach of this agreement which may result in the termination of this contract or other legally available remedies.

This does not preclude the RECIPIENT from enacting broader nondiscrimination protections.

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including but not limited to, Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the RECIPIENT's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this agreement may be rescinded, canceled, or terminated in whole or in part and the RECIPIENT may be declared ineligible for further funding from ECOLOGY. The RECIPIENT shall, however, be given a reasonable time in which to cure this noncompliance.

The RECIPIENT shall include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services pertaining to this agreement.

"The Contractor will not discriminate on the basis of race, color, national origin or sex in the performance of this

Contract. The Contractor will carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract or other legally available remedies.”

Bidder List, 40 CFR, Section 33.501(b) and (c). The RECIPIENT agrees to create and maintain a bidders list. The bidders list shall include the following information for all firms that bid or quote on prime contracts, or bid or quote subcontracts, including both MBE/WBEs and non-MBE/WBEs.

1. Entity's name with point of contact
2. Entity's mailing address, telephone number, and e-mail address
3. The procurement on which the entity bid or quoted, and when
4. Entity's status as an MBE/WBE or non-MBE/WBE

G. Electronic and information Technology (EIT) Accessibility: RECIPIENTs shall ensure that loan funds provided under this agreement for costs in the development or purchase of EIT systems or products provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology as per Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7. Systems or products funded under this agreement must be designed to meet the diverse needs of users without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology.

H. Hotel-Motel Fire Safety Act: The RECIPIENT shall ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (15 USC 2225a, PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act. Pursuant to 15 USC 2225a.

I. Trafficking In Persons: The RECIPIENT and RECIPIENT employees that are private entities shall not engage in forms of trafficking in persons during the period of time this agreement is effective. This includes, but is not limited to, the procurement of a commercial sex act or forced labor. The RECIPIENT shall notify ECOLOGY immediately of any information received from any source alleging a violation under this provision.

#### SECTION 5: THE FOLLOWING CONDITIONS APPLY TO STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

The RECIPIENT must submit the following documents/forms to ECOLOGY before this agreement is signed by ECOLOGY:

1. Financial Capability Assessment Documentation
2. Opinion of RECIPIENT's Legal Council
3. Authorizing Ordinance or Resolution
4. Federal Funding Accountability and Transparency Act (FFATA) Form
5. CWSRF Federal Reporting Information form available in EAGL
6. Fiscal Sustainability Plan Certification Form (only required if the project includes construction of a wastewater or stormwater facility construction)
7. Cost and Effectiveness Analysis Certification Form

A. Alteration and Eligibility of Project: During the term of this agreement, the RECIPIENT (1) shall not materially alter the design or structural character of the project without the prior written approval of ECOLOGY and (2) shall take no action which would adversely affect the eligibility of the project as defined by applicable funding program rules and state statutes, or which would cause a violation of any covenant, condition, or provision herein.

B. American Iron and Steel (Buy American): This loan provision applies to projects for the construction, alteration, maintenance, or repair of a “treatment works” as defined in the Federal Water Pollution Control Act (33 USC 1381 et

seq.) The RECIPIENT shall ensure that all iron and steel products used in the project are produced in the United States. Iron and Steel products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The RECIPIENT may request waiver from this requirement from the Administrator of the Environmental Protection Agency. The RECIPIENT must coordinate all waiver requests through ECOLOGY. This provision does not apply if the engineering plans and specifications for the project were approved by ECOLOGY prior to January 17, 2014. ECOLOGY reserves the right to request documentation of RECIPIENT'S compliance with this provision.

C. Authority of RECIPIENT: This agreement is authorized by the Constitution and laws of the state of Washington, including the RECIPIENT'S authority, and by the RECIPIENT pursuant to the authorizing ordinance or resolution. The RECIPIENT shall submit a copy of the authorizing ordinance or resolution to the ECOLOGY Financial Manager before this agreement shall be signed by ECOLOGY.

D. Equivalency Projects: (For designated equivalency projects only)

1. The RECIPIENT must procure architectural and engineering services in accordance with the federal requirements in Chapter 11 of Title 40, U.S.C. (see

[www.gpo.gov/fdsys/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleI-chap11.pdf](http://www.gpo.gov/fdsys/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleI-chap11.pdf)).

E. Fiscal Sustainability Plan Certification: The RECIPIENT shall submit a completed Fiscal Sustainability Plan Certification before this agreement is signed by ECOLOGY. The Fiscal Sustainability Plan Certification is available from the ECOLOGY Financial Manager or on the Water Quality Program website.

F. Funding Recognition and Outreach: In addition to Section 2.F of these Terms and Conditions, the RECIPIENT agrees to comply with the EPA SRF Signage Guidance in order to enhance public awareness of EPA assistance agreements nationwide. The signage guidance can be found at:

<http://www.ecy.wa.gov/programs/wq/funding/FundPrgms/CWSRF/SignageGuidanceJune2015.pdf>.

G. Insurance: The RECIPIENT shall at all times carry fire and extended insurance coverage, public liability, and property damage, and such other forms of insurance with responsible insurers and policies payable to the RECIPIENT on such of the buildings, equipment, works, plants, facilities, and properties of the Utility as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, and against such claims for damages as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, or it shall self-insure or participate in an insurance pool or pools with reserves adequate, in the reasonable judgment of the RECIPIENT, to protect it against loss.

H. Litigation Authority: No litigation is now pending, or to the RECIPIENT'S knowledge, threatened, seeking to restrain, or enjoin:

- (i) the execution of this agreement; or
- (ii) the fixing or collection of the revenues, rates, and charges or the formation of the ULID and the levy and collection of ULID Assessments therein pledged to pay the principal of and interest on the loan (for revenue secured lien obligations); or
- (iii) the levy and collection of the taxes pledged to pay the principal of and interest on the loan (for general obligation-secured loans and general obligation payable from special-assessment-secured loans); or
- (iv) in any manner questioning the proceedings and authority under which the agreement, the loan, or the project are authorized. Neither the corporate existence, or boundaries of the RECIPIENT nor the title of its present officers to their respective offices is being contested. No authority or proceeding for the execution of this agreement has been repealed, revoked, or rescinded.

I. Loan Interest Rate and Terms: This loan agreement shall remain in effect until the date of final repayment of the loan, unless terminated earlier according to the provisions herein.

When the Project Completion Date has occurred, ECOLOGY and the RECIPIENT shall execute an amendment to this loan agreement which details the final loan amount (Final Loan Amount), and ECOLOGY shall prepare a final loan repayment schedule. The Final Loan Amount shall be the combined total of actual disbursements made on the loan

and all accrued interest to the computation date.

The Estimated Loan Amount and the Final Loan Amount (in either case, as applicable, a "Loan Amount") shall bear interest based on the interest rate identified in this agreement as the "Effective Interest Rate," per annum, calculated on the basis of a 365 day year. Interest on the Estimated Loan Amount shall accrue from and be compounded monthly based on the date that each payment is mailed to the RECIPIENT. The Final Loan Amount shall be repaid in equal installments, semiannually, over the term of this loan "Loan Term" as outlined in this agreement.

#### J. Loan Repayment:

##### Sources of Loan Repayment

1. Nature of RECIPIENT's Obligation. The obligation of the RECIPIENT to repay the loan from the sources identified below and to perform and observe all other agreements and obligations on its part, contained herein, shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind. To secure the repayment of the loan from ECOLOGY, the RECIPIENT agrees to comply with all of the covenants, agreements, and attachments contained herein.

2. For General Obligation. This loan is a General Obligation Debt of the RECIPIENT.

3. For General Obligation Payable from Special Assessments. This loan is a General Obligation Debt of the RECIPIENT payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

4. For Revenue-Secured: Lien Position. This loan is a Revenue-Secured Debt of the RECIPIENT's Utility. This loan shall constitute a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon such Net Revenue of any Senior Lien Obligations.

In addition, if this loan is also secured by Utility Local Improvement Districts (ULID) Assessments, this loan shall constitute a lien upon ULID Assessments in the ULID prior and superior to any other charges whatsoever.

5. Other Sources of Repayment. The RECIPIENT may repay any portion of the loan from any funds legally available to it.

6. Defeasance of the Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT shall not be entitled to, and shall not affect, an economic Defeasance of the loan. The RECIPIENT shall not advance refund the loan.

If the RECIPIENT defeases or advance refunds the loan, it shall be required to use the proceeds thereof immediately upon their receipt, together with other available RECIPIENT funds, to repay both of the following:

(i) The Loan Amount with interest

(ii) Any other obligations of the RECIPIENT to ECOLOGY under this agreement, unless in its sole discretion ECOLOGY finds that repayment from those additional sources would not be in the public interest.

Failure to repay the Loan Amount plus interest within the time specified in ECOLOGY's notice to make such repayment shall incur Late Charges and shall be treated as a Loan Default.

7. Refinancing or Early Repayment of the Project. So long as ECOLOGY shall hold this loan, the RECIPIENT shall give ECOLOGY thirty days written notice if the RECIPIENT intends to refinance or make early repayment of the loan.

##### Method and Conditions on Repayments

1. Semiannual Payments. Notwithstanding any other provision of this agreement, the first semiannual payment of principal and interest on this loan shall be due and payable no later than one year after the project completion date or initiation of operation date, whichever comes first.

Thereafter, equal payments shall be due every six months.

If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington State agencies, the payment shall be due on the next business day for Washington State agencies.

Payments shall be mailed to:

Department of Ecology  
Cashiering Unit

P.O. Box 47611  
Olympia WA 98504-7611

In lieu of mailing payments, electronic fund transfers can be arranged by working with ECOLOGY's Financial Manager.

No change to the amount of the semiannual principal and interest payments shall be made without a mutually signed amendment to this agreement. The RECIPIENT shall continue to make semiannual payments based on this agreement until the amendment is effective, at which time the RECIPIENT's payments shall be made pursuant to the amended agreement.

2. Late Charges. If any amount of the Final Loan Amount or any other amount owed to ECOLOGY pursuant to this agreement remains unpaid after it becomes due and payable, ECOLOGY may assess a late charge. The late charge shall be one percent per month on the past due amount starting on the date the debt becomes past due and until it is paid in full.

3. Repayment Limitations. Repayment of the loan is subject to the following additional limitations, among others: those on defeasance, refinancing and advance refunding, termination, and default and recovery of payments.

4. Prepayment of Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT may prepay the entire unpaid principal balance of and accrued interest on the loan or any portion of the remaining unpaid principal balance of the Loan Amount. Any prepayments on the loan shall be applied first to any accrued interest due and then to the outstanding principal balance of the Loan Amount. If the RECIPIENT elects to prepay the entire remaining unpaid balance and accrued interest, the RECIPIENT shall first contact ECOLOGY's Revenue/Receivable Manager of the Fiscal Office.

#### K. Loan Security

Due Regard: For loans secured with a Revenue Obligation: The RECIPIENT shall exercise due regard for Maintenance and Operation Expense and the debt service requirements of the Senior Lien Obligations and any other outstanding obligations pledging the Gross Revenue of the Utility, and it has not obligated itself to set aside and pay into the loan Fund a greater amount of the Gross Revenue of the Utility than, in its judgment, shall be available over and above such Maintenance and Operation Expense and those debt service requirements.

Where collecting adequate gross utility revenue requires connecting additional users, the RECIPIENT shall require the sewer system connections necessary to meet debt obligations and expected operation and maintenance expenses.

Levy and Collection of Taxes (if used to secure the repayment of the loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors on all of the taxable property within the boundaries of the RECIPIENT in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the principal of and interest on the loan, and the full faith, credit and resources of the RECIPIENT are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

Not an Excess Indebtedness: For loans secured with a general obligation pledge or a general obligation pledge on special assessments: The RECIPIENT agrees that this agreement and the loan to be made do not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations.

Pledge of Net Revenue and ULID Assessments in the ULID (if used to secure the repayment of this loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges the Net Revenue of the Utility, including applicable ULID Assessments in the ULID, to pay when due the principal of and interest on the loan.

Utility Local Improvement District (ULID) Assessment Collection (if used to secure the repayment of the loan): All ULID Assessments in the ULID shall be paid into the Loan Fund and used to pay the principal of and interest on the loan.

L. Maintenance and Operation of a Funded Utility: The RECIPIENT shall, at all times, maintain and keep the funded Utility in good repair, working order, and condition.

M. Opinion of RECIPIENT's Legal Counsel: The RECIPIENT must submit an "Opinion of Legal Counsel to the

RECIPIENT” to ECOLOGY before this agreement will be signed. ECOLOGY will provide the form.

**N. Prevailing Wage (Davis-Bacon Act):** The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out, in whole or in part, with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

The RECIPIENT shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation). These wage determinations shall be incorporated into solicitations and any subsequent contracts. The RECIPIENT shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and sub contracts in excess of \$2,000. The RECIPIENT shall maintain records sufficient to document compliance with the Davis-Bacon Act, and make such records available for review upon request.

The RECIPIENT also agrees, by signing this agreement, to comply with State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable. Compliance may include the determination whether the project involves “public work” and inclusion of the applicable prevailing wage rates in the bid specifications and contracts. The RECIPIENT agrees to maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and make such records available for review upon request.

**O. Progress Reports:** RECIPIENTS funded with State Revolving Fund Loan or Forgivable Principal shall include the following verification statement in the “General Comments” text box of each progress report.

“We verify that we are in compliance with all the requirements as outlined in our funding agreement(s) with the Department of Ecology. This includes but is not limited to:

- The Davis-Bacon Act, 29 CFR (If applicable)
- Washington State Prevailing Wage Rate, Chapter 39.12 RCW (Pertaining to all recipients)
- The Disadvantaged Business Enterprise (DBE), 40 CFR, Part 33”

**P. Representations and Warranties:** The RECIPIENT represents and warrants to ECOLOGY as follows:

**Application: Material Information.** All information and materials submitted by the RECIPIENT to ECOLOGY in connection with its loan application were, when made, and are, as of the date the RECIPIENT signs this agreement, true and correct. There is no material adverse information relating to the RECIPIENT, the project, the loan, or this agreement known to the RECIPIENT, which has not been disclosed in writing to ECOLOGY.

**Existence; Authority.** It is a duly formed and legally existing municipal corporation or political subdivision of the state of Washington or a federally recognized Indian Tribe. It has full corporate power and authority to execute, deliver, and perform all of its obligations under this agreement and to undertake the project identified herein.

**Certification.** Each payment request shall constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this loan agreement remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the project or to repay the principal of or interest on the loan, have occurred since the date of this loan agreement. Any changes in the RECIPIENT’s financial condition shall be disclosed in writing to ECOLOGY by the RECIPIENT in its request for payment.

**Q. Sale or Disposition of Funded Utility:** The RECIPIENT shall not sell, transfer, or otherwise dispose of any of the works, plant, properties, facilities, or other part of the funded Utility or any real or personal property comprising a part of the funded Utility unless:

1. The facilities or property transferred are not material to the operation of the funded Utility, or have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the funded Utility or are no longer necessary, material, or useful to the operation of the funded Utility; or
2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three percent of the total assets of the funded Utility; or

3. The RECIPIENT receives from the transferee an amount equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the funded Utility from the portion of the funded Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.

4. Expressed written agreement by the DEPARTMENT.

The proceeds of any transfer under this paragraph must be used (1) to redeem promptly, or irrevocably set aside for the redemption of, Senior Lien Obligations and to redeem promptly the loan, and (2) to provide for part of the cost of additions to and betterments and extensions of the Utility.

R. Sewer-Use Ordinance or Resolution for Funded Wastewater Facility Projects: If not already in existence, the RECIPIENT shall adopt and shall enforce a sewer-use ordinance or resolution. Such ordinance or resolution shall be submitted to ECOLOGY upon request.

The sewer use ordinance must include provisions to:

- 1) Prohibit the introduction of toxic or hazardous wastes into the RECIPIENT's sewer system.
- 2) Prohibit inflow of stormwater into separated sewer systems.
- 3) Require that new sewers and connections be properly designed and constructed.

S. Termination and Default:

Termination and Default Events

1. For Insufficient ECOLOGY or RECIPIENT Funds. ECOLOGY may terminate this loan agreement for insufficient ECOLOGY or RECIPIENT funds.
2. For Failure to Commence Work. ECOLOGY may terminate this loan agreement for failure of the RECIPIENT to commence project work.
3. Past Due Payments. The RECIPIENT shall be in default of its obligations under this loan agreement when any loan repayment becomes 60 days past due.
4. Other Cause. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all of its obligations under this loan agreement. The RECIPIENT shall be in default of its obligations under this loan agreement if, in the opinion of ECOLOGY, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this loan agreement.

Procedures for Termination. If this loan agreement is terminated prior to project completion, ECOLOGY shall provide to the RECIPIENT a written notice of termination at least five working days prior to the effective date of termination (the "Termination Date"). The written notice of termination by the ECOLOGY shall specify the Termination Date and, when applicable, the date by which the RECIPIENT must repay any outstanding balance of the loan and all accrued interest (the "Termination Payment Date").

Termination and Default Remedies

No Further Payments. On and after the Termination Date, or in the event of a default event, ECOLOGY may, at its sole discretion, withdraw the loan and make no further payments under this agreement.

Repayment Demand. In response to an ECOLOGY initiated termination event, or in response to a loan default event, ECOLOGY may at its sole discretion demand that the RECIPIENT repay the outstanding balance of the Loan Amount and all accrued interest.

Interest after Repayment Demand. From the time that ECOLOGY demands repayment of funds, amounts owed by the RECIPIENT to ECOLOGY shall accrue additional interest at the rate of one percent per month, or fraction thereof.

Accelerate Repayments. In the event of a default, ECOLOGY may, in its sole discretion, declare the principal of and interest on the loan immediately due and payable, subject to the prior lien and charge of any outstanding Senior Lien Obligation upon the Net Revenue. That is, the loan is not subject to acceleration so long as any Senior Lien Obligations are outstanding. Repayments not made immediately upon such acceleration will incur Late Charges.

Late Charges. All amounts due to ECOLOGY and not paid by the RECIPIENT by the Termination Payment Date or after acceleration following a default event, as applicable, shall incur late charges.



Agreement No: WQC-2019-PoOrPW-00025  
 Project Title: Marina Pump Station  
 Recipient Name: City of Port Orchard

**Intercept State Funds.** In the event of a default event and in accordance with Chapter 90.50A.060 RCW, "Defaults," any state funds otherwise due to the RECIPIENT may, at ECOLOGY's sole discretion, be withheld and applied to the repayment of the loan.

**Property to ECOLOGY.** In the event of a default event and at the option of ECOLOGY, any personal property (equipment) acquired under this agreement may, in ECOLOGY's sole discretion, become ECOLOGY's property. In that circumstance, ECOLOGY shall reduce the RECIPIENT's liability to repay money by an amount reflecting the fair value of such property.

**Documents and Materials.** If this agreement is terminated, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT shall, at the option of ECOLOGY, become ECOLOGY property. The RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

**Collection and Enforcement Actions.** In the event of a default event, the state of Washington reserves the right to take any actions it deems necessary to collect the amounts due, or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this agreement.

**Fees and Expenses.** In any action to enforce the provisions of this agreement, reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of legal staff) shall be awarded to the prevailing party as that term is defined in Chapter 4.84.330 RCW.

**Damages.** Notwithstanding ECOLOGY's exercise of any or all of the termination or default remedies provided in this agreement, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or 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.

**T. User-Charge System for Funded Utilities:** The RECIPIENT certifies that it has the legal authority to establish and implement a user-charge system and shall adopt a system of user-charges to assure that each user of the funded utility shall pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the project. The user-charge system will include provisions for a connection charge.

In addition, the RECIPIENT shall regularly evaluate the user-charge system, at least annually, to ensure the system provides adequate revenues necessary to operate and maintain the funded utility, to establish reserves to pay for replacement, and to repay the loan.

## **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.

Agreement No: WQC-2019-PoOrPW-00025  
Project Title: Marina Pump Station  
Recipient Name: City of Port Orchard

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.
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 \$25,000 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 DUNS number, at [www.frs.gov](http://www.frs.gov) <http://www.frs.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.frs.gov](http://www.frs.gov) <http://www.frs.gov>.

## GENERAL TERMS AND CONDITIONS

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

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 1/22/2018 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/1701004.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. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts 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:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing 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 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 archeological or historic resources are found while conducting work under this Agreement:
  - Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:

- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

#### 4. ASSIGNMENT

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

#### 5. 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.

#### 6. 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 Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.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 other reports required by this agreement. Failure to comply may result in delayed reimbursement.

#### 7. 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.

#### 8. 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.

#### 9. 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.

#### 10. 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 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.

#### 11. 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.

## 12. 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.

## 13. 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.

## 14. 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.

## 15. 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.

## 16. 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.

#### 17. 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"; and (f) the General Terms and Conditions.

#### 18. 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.

#### 19. PROGRESS REPORTING

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

#### 20. 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

Agreement No: WQC-2019-PoOrPW-00025  
 Project Title: Marina Pump Station  
 Recipient Name: City of Port Orchard

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.

## 21. RECORDS, AUDITS, AND INSPECTIONS

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.

## 22. 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.

## 23. 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.

## 24. 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.

## 25. 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.

## 26. 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, and 100% post-consumer recycled paper.

For more suggestions visit ECOLOGY's web page: Green Purchasing, ,  
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 27. 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 in 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/contractor through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the recipient/contractor. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

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.

**28. 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.

**29. 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.

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**City of Port Orchard**

216 Prospect Street, Port Orchard, WA 98366  
(360) 876-4407 • FAX (360) 895-9029

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**Agenda Staff Report**

Agenda Item No.:	<u>Business Item 7B</u>	Meeting Date:	<u>February 12, 2019</u>
Subject:	<u>Adoption of an Ordinance Approving a Contract with the State Department of Ecology for the Port Orchard Downtown Basin Stormwater Plan</u>	Prepared by:	<u>Mark Dorsey, P.E. Public Works Director</u>
		Atty Routing No.:	<u>005-19</u>
		Atty Review Date:	<u>February 5, 2019</u>

**Summary:** Pursuant to the Terms and Conditions contained within Washington State Department of Ecology ('Ecology') Grant Agreement WQC-2018-PoOrPW-00206 for the City of Port Orchard Downtown Basin Stormwater Plan, the City of Port Orchard has been awarded a no-match \$216,840.00 grant. This grant funding award will be used to: 1) provide project administration; 2) provide a data review/gap analysis; 3) develop a stormwater basin model; and 4) develop a Downtown stormwater basin Plan. The Effective Term of the Agreement is July 1, 2018 through June 30, 2021. This activity will be coordinated with the Marina Pump Station Improvement Plan and the proposed redevelopment plans within the Downtown area.

**Relationship to Comprehensive Plan:** Chapter 7 – Utilities.

**Recommendation:** Staff recommends that the City Council adopt an Ordinance, thereby authorizing the Mayor to execute a Contract, being Agreement WQC-2018-PoOrPW-00206 with the Washington State Department of Ecology, in the amount of \$216,840.00 in funding for the City of Port Orchard Downtown Basin Stormwater Plan.

**Motion for Consideration:** I move to adopt an ordinance, thereby authorizing the Mayor to execute a Contract, being Agreement WQC-2018-PoOrPW-00206 with the Washington State Department of Ecology, in the amount of \$216,840.00 in funding for the City of Port Orchard Downtown Basin Stormwater Plan.

**Fiscal Impact:** Project funding will be allocated within the approved 2019-2020 Biennial Budget via budget amendment.

**Alternative:** Do not accept award.

**Attachment:** Ordinance and Ecology Agreement WQC-2018-PoOrPW-00206.

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ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, ACCEPTING TERMS AND CONDITIONS ASSOCIATED WITH DEPARTMENT OF ECOLOGY (ECOLOGY) GRANT AGREEMENT NO. WQC-2018-PoOrPW-00206, THEREBY APPROVING CONTRACT NO. C016-19 WITH ECOLOGY FOR THE PORT ORCHARD DOWNTOWN BASIN STORMWATER PLAN; PROVIDING FOR SEVERABILITY AND PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, on October 21, 2016, the City's Public Works Department applied for Stormwater Financial Assistance Program (SFAP) funding through the Department of Ecology's Environmental Legacy Stewardship Account (ELSA) for the Port Orchard Downtown Basin Stormwater Plan (DBSP); and

**WHEREAS**, on February 23, 2018 Ecology notified the City that the SFAP Application was successful and that the City would be receiving grant funding for FY 2018-2021; and

**WHEREAS**, on September 25, 2018 the City received the Draft Agreement for the Project (WQC-2018-PoOrPW-00206) and provided comments back to Ecology; and

**WHEREAS**, on February 6, 2019, the City received the Final Agreement for the Project; and

**WHEREAS**, the City Council has determined it to be in the best interests of the City to enter into Contract No. C016-19 with Ecology for the DBSP; now, therefore,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**SECTION 1.** Contract No. C016-19 with the Department of Ecology for the Downtown Basin Stormwater Plan is hereby approved and the City agrees to be bound by the terms and conditions thereof in their entirety.

**SECTION 2. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**SECTION 3. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**SECTION 4. Effective Date.** This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 12th day of February 2019.

\_\_\_\_\_  
Robert Putaansuu, Mayor

ATTEST:

SPONSOR:

\_\_\_\_\_  
Brandy Rinearson, MMC, City Clerk

\_\_\_\_\_  
Cindy Lucarelli, Councilmember

APPROVED AS TO FORM:

\_\_\_\_\_  
Sharon Cates, City Attorney

PUBLISHED:

EFFECTIVE DATE:





**Agreement No. WQC-2018-PoOrPW-00206**

**WATER QUALITY COMBINED FINANCIAL ASSISTANCE AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

**AND**

**CITY OF PORT ORCHARD PUBLIC WORKS DEPT.**

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 Public Works Dept., hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

**GENERAL INFORMATION**

Project Title:	Port Orchard Downtown Basin Stormwater Plan
Total Cost:	\$216,840.00
Total Eligible Cost:	\$216,840.00
Ecology Share:	\$216,840.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2018
The Expiration Date of this Agreement is no later than:	06/30/2021
Project Type:	Stormwater Facility

Project Short Description:

This project will develop a Downtown Basin Stormwater Plan for the City of Port Orchard. This project will provide a roadmap for implementing water quality treatment for total suspended solids (TSS) and will also reduce flows to Sinclair Inlet by increasing stormwater treatment, infiltration and/or providing stormwater detention. Additional benefits of this project include modernizing infrastructure and flow control in nearshore areas.

Project Long Description:

This project will develop a Downtown Basin Stormwater Plan to improve stormwater quality for Port Orchard's downtown and shoreline areas. Port Orchard's downtown basins drain approximately 74 acres of existing mixed development to Sinclair Inlet. The Plan will guide the investment in structural and non-structural best management practices (BMPs) to improve stormwater water quality draining from Port Orchard's older developed commercial and residential areas. These areas currently lack any permanent runoff collection, conveyance, or treatment measures. The Plan will identify prioritized stormwater capital improvement projects

and stormwater-related activities that most efficiently provide flow control within the downtown basin and improve the long-term water quality of Sinclair Inlet.

The RECIPIENT will inventory stormwater management constraints and opportunities in the basin, analyze water quality data, use modeling tools to assess current water quality and flows at the downtown outfalls, and determine the most cost-effective alternative(s) to address the water quality deficiencies. Any essential data gaps in terms of stormwater infrastructure or water quality will be addressed. Plan sections will include an existing conditions assessment, plan objectives, basin opportunities and constraints, facility and activity alternatives, funding alternatives, alternatives evaluation, and plan recommendations and implementation.

Overall Goal:

This project will help protect and restore water quality in Washington state by reducing stormwater impacts from existing infrastructure and development.

**RECIPIENT INFORMATION**

Organization Name: City of Port Orchard Public Works Dept.

Federal Tax ID: 91-6001487

DUNS Number: 081932790

Mailing Address: 216 Prospect Street  
 Port Orchard, WA 98366

Physical Address: 216 Prospect Street  
 Port Orchard, Washington 98366

**Contacts**

<b>Project Manager</b>	Zack Holt Stormwater Program Manager  216 Prospect St. Port Orchard, Washington 98366 Email: zholt@cityofportorchard.us Phone: (360) 876-4991
<b>Billing Contact</b>	Heidi Draper Accounting Assistant III  216 Prospect Street Port Orchard, Washington 98366 Email: hdraper@cityofportorchard.us Phone: (360) 874-5523
<b>Authorized Signatory</b>	Zack B Holt Stormwater Program Manager  216 Prospect St. Port Orchard, Washington 98366 Email: zholt@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**

<p><b>Project Manager</b></p>	<p>Denise Di Santo</p> <p>3190 - 160th Ave SE          Bellevue, Washington 98008-5452          Email: ddis461@ecy.wa.gov          Phone: (425) 649-7025</p>
<p><b>Financial Manager</b></p>	<p>Sarah Zehner          Water Quality Financial Manager</p> <p>PO Box 47600          Olympia, Washington 98504-7600          Email: szeh461@ecy.wa.gov          Phone: (360) 407-7196</p>
<p><b>Technical Advisor</b></p>	<p>Amanda Heye</p> <p>PO Box 47600          Olympia, Washington 98504-7600          Email: ahey461@ecy.wa.gov          Phone: (360) 407-6457</p>



Robert Putaansuu

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Mayor of Port Orchard

Date

Brandy Rinearson

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City Clerk

Date

**SCOPE OF WORK**

Task Number: 1 **Task Cost: \$9,840.00**

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 a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating compliance with applicable procurement, contracting, and interlocal agreement requirements; 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.

C. The RECIPIENT shall manage the project. Efforts include, but are not limited to: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. 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 or 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: Andrea Archer-Parsons, P.E.

**Project Administration/Management**

**Deliverables**

Number	Description	Due Date
1.1	Quarterly Progress Reports	
1.2	Recipient Closeout Report	
1.3	Project Outcome Summary Report	

**SCOPE OF WORK**

Task Number: 2 **Task Cost: \$36,500.00**

Task Title: Data Review, Gap Analysis, Field Investigation

Task Description:

The RECIPIENT shall ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

- A. The RECIPIENT will complete a data and information review and gap analysis.
- B. The RECIPIENT will complete supportive field investigation as determined necessary from the gap analysis to complete the data gap field inventory.

Task Goal Statement:

The RECIPIENT will complete all data review and data gap analysis and supporting field investigation tasks and respond to ECOLOGY comments in a timely manner. The RECIPIENT will compile existing data and fill data gaps needed to develop the analytical tools and models (GIS, water quality, and hydrologic/hydraulic) that will be used during alternative development and assessment work completed under subsequent tasks.

Task Expected Outcome:

The project will complete a preliminary characterization of the existing stormwater infrastructure and identify opportunities/constraints for stormwater activities and projects, fill key data gaps regarding the City’s existing stormwater system infrastructure, and ensure high quality is data used in the water quality and hydraulic models being developed.

Recipient Task Coordinator: Zack Holt

**Data Review, Gap Analysis, Field Investigation**

**Deliverables**

Number	Description	Due Date
2.1	Draft of Existing Conditions Technical Memorandum. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.2	Responses to Existing Conditions Technical Memorandum ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.3	Data Gap Field Inventory Map or Informational Tool in GIS format. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.4	Responses to Data Gap Field Inventory ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	



## SCOPE OF WORK

Task Number: 3 **Task Cost: \$42,000.00**

Task Title: Model Development and Application

### Task Description:

- A. The RECIPIENT will provide hydraulic model development and application for this project.
- B. The RECIPIENT will provide water quality model development and application for this project.
- C. The RECIPIENT will submit a QAPP to ECOLOGY for review and acceptance prior to modeling. The QAPP must include how the RECIPIENT will develop and apply the models to quantify the magnitude of flow and pollutant loading.
- D. Upon completion of hydraulic and water quality modeling runs, the RECIPIENT will provide to ECOLOGY:
  1. GIS compatible project area in Shapefile, Geodatabase file, or ECOLOGY-Approved Equivalent. The project area will include features to show treatment facilities and contributing areas.
  2. A technical memorandum to accompany the GIS file with explanation of the completed analysis.

### Task Goal Statement:

The RECIPIENT will develop water quality and hydraulic models and complete model runs to quantify the magnitude of pollutant loading and flows/water surface elevations at points of interest in the downtown basin. The RECIPIENT will communicate with ECOLOGY in a timely fashion and provide ECOLOGY with all requested project documentation.

### Task Expected Outcome:

The project will develop and use water quality and hydraulic models to determine the most effective infrastructure investments to improve water quality and alleviate localized flooding through flow control in the downtown stormwater basin. The model will be developed and used in accordance with the completed QAPP and outlined methodology.

Agreement No: WQC-2018-PoOrPW-00206  
 Project Title: Port Orchard Downtown Basin Stormwater Plan  
 Recipient Name: City of Port Orchard Public Works Dept.

Recipient Task Coordinator: Zack Holt

**Model Development and Application**

**Deliverables**

Number	Description	Due Date
3.1	Modeling Quality Assurance Plan. Submit to ECOLOGY for review and acceptance. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.2	Responses to Modeling Quality Assurance Plan ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.3	Hydraulic Model (SWMM) and technical memorandum. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.4	Responses to Hydraulic Model (SWMM) and technical memorandum. ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.5	Water quality model (spreadsheet) and technical memorandum. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.6	Responses to water quality model and technical memorandum ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.7	Project Area Shapefile, Geodatabase file, or ECOLOGY-approved Equivalent. The project area will include features for treatment facilities and contributing areas. Upload to EAGL and notify ECOLOGY when upload is complete.	

**SCOPE OF WORK**

Task Number: 4 **Task Cost: \$128,500.00**

Task Title: Downtown Basin Stormwater Plan

Task Description:

A. The RECIPIENT will complete the draft and final Downtown Basin Stormwater Plan. At a minimum the plan will include the following elements or their equivalent:

1. Executive Summary
2. Introduction/Background
3. Existing Conditions Assessment
4. Technical Memorandum for model development
5. Stormwater Management Options (SMO) List and Metrics Matrix
6. Description of Stakeholder Engagement
7. Final Priority SMO List
8. Schedule for Implementation
9. Estimation of Yearly Budget Needs and Identification of Funding Sources
10. Description of Adaptive Management and Plan Update Process

B. Present Plan to appropriate decision makers and stakeholders.

Task Goal Statement:

The RECIPIENT will completion of the Downtown Basin Stormwater Plan in accordance with ECOLOGY-accepted plans and specifications.

Task Expected Outcome:

The project will provide a completed Downtown Basin Stormwater Plan that will provide a roadmap for implementing water quality BMPs and activities to improve stormwater quality entering Sinclair Inlet and water quality benefits including flow control and reductions in total suspended solids (TSS).

Recipient Task Coordinator: Zack Holt

**Downtown Basin Stormwater Plan**

**Deliverables**

Number	Description	Due Date
4.1	Draft Downtown Basin Stormwater Plan. Upload to EAGL and notify ECOLOGY when upload is complete.	
4.2	Responses to Draft Downtown Basin Stormwater Plan ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
4.3	Final Downtown Basin Stormwater Plan uploaded to EAGL. Upload to EAGL and notify ECOLOGY when upload is complete.	
4.4	Responses to Final Downtown Basin Stormwater Plan ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	



**Funding Distribution Summary**

**Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
SFAP Green Retrofit Incentive	0.00 %	\$ 0.00	\$ 216,840.00	\$ 216,840.00
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 216,840.00</b>	<b>\$ 216,840.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

**SECTION 1: DEFINITIONS**

Unless otherwise provided, the following terms will have the respective meanings for all purposes of this agreement:

“Administration Charge” means a charge established in accordance with Chapter 90.50A RCW and Chapter 173-98 WAC, to be used to pay Ecology’s cost to administer the State Revolving Fund by placing a percentage of the interest earned in an Administrative Charge Account.

“Administrative Requirements” means the effective edition of ECOLOGY's Administrative Requirements for Recipients of Ecology Grants and Loans at the signing of this agreement.

“Annual Debt Service” for any calendar year means for any applicable bonds or loans including the loan, all interest plus all principal due on such bonds or loans in such year.

“Average Annual Debt Service” means, at the time of calculation, the sum of the Annual Debt Service for the remaining years of the loan to the last scheduled maturity of the loan divided by the number of those years.

“Acquisition” means the purchase or receipt of a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

“Centennial Clean Water Program” means the state program funded from various state sources.

“Contract Documents” means the contract between the RECIPIENT and the construction contractor for construction of the project.

“Cost Effective Analysis” means a comparison of the relative cost-efficiencies of two or more potential ways of solving a water quality problem as described in Chapter 173-98-730 WAC.

“Defease” or “Defeasance” means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

“Effective Date” means the earliest date on which eligible costs may be incurred.

“Effective Interest Rate” means the total interest rate established by Ecology that includes the Administrative Charge.

“Estimated Loan Amount” means the initial amount of funds loaned to the RECIPIENT.

“Estimated Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Estimated Loan Amount.

“Equivalency” means projects designated by ECOLOGY to meet additional federal requirements.

“Expiration Date” means the latest date on which eligible costs may be incurred.

“Final Accrued Interest” means the interest accrued beginning with the first disbursement of funds to the RECIPIENT through such time as the loan is officially closed out and a final loan repayment schedule is issued.

“Final Loan Amount” means all principal of and interest on the loan from the Project Start Date through the Project Completion Date.

“Final Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Final Loan Amount.

“Forgivable Principal” means the portion of a loan that is not required to be paid back by the borrower.

“General Obligation Debt” means an obligation of the RECIPIENT secured by annual ad valorem taxes levied by the RECIPIENT and by the full faith, credit, and resources of the RECIPIENT.

“General Obligation Payable from Special Assessments Debt” means an obligation of the RECIPIENT secured by a valid general obligation of the Recipient payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

“Gross Revenue” means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) Utility Local Improvement Districts (ULID) Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any investments in a trust, Defeasance, or escrow fund created to Defeasance or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

“Guidelines” means the ECOLOGY's Funding Guidelines that that correlate to the State Fiscal Year in which the project is funded.

“Initiation of Operation Date” means the actual date the Water Pollution Control Facility financed with proceeds of the loan begins to operate for its intended purpose.

“Loan” means the Washington State Water Pollution Control Revolving Fund Loan or Centennial Clean Water Fund (Centennial) Loan made pursuant to this loan agreement.

“Loan Amount” means either an Estimated Loan Amount or a Final Loan Amount, as applicable.

“Loan Fund” means the special fund created by the RECIPIENT for the repayment of the principal of and interest on the loan.

“Loan Security” means the mechanism by which the RECIPIENT pledges to repay the loan.

“Loan Term” means the repayment period of the loan.

“Maintenance and Operation Expense” means all reasonable expenses incurred by the RECIPIENT in causing the Utility to be operated and maintained in good repair, working order, and condition including payments to other parties, but will not include any depreciation or RECIPIENT levied taxes or payments to the RECIPIENT in lieu of taxes.

“Net Revenue” means the Gross Revenue less the Maintenance and Operation Expense.

“Original Engineer’s Estimate” means the engineer’s estimate of construction costs included with bid documents.

“Principal and Interest Account” means, for a loan that constitutes Revenue-Secured Debt, the account created in the loan fund to be first used to repay the principal of and interest on the loan.

“Project” means the project described in this agreement.

“Project Completion Date” means the date specified in the agreement on which the Scope of Work will be fully completed. This term is only used in loan agreements.

“Project Schedule” means that schedule for the project specified in the agreement.

“Revenue-Secured Debt” means an obligation of the RECIPIENT secured by a pledge of the revenue of a utility and one not a general obligation of the RECIPIENT.

“Reserve Account” means, for a loan that constitutes a Revenue Secured Debt and if specifically identified as a term and condition of the funding agreement, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.

“Risk-Based Determination” means an approach to sub-recipient monitoring and oversight based on risk factors associated to a RECIPIENT or project.

“Scope of Work” means the tasks and activities constituting the project.

“Section 319” means the section of the Clean Water Act that provides funding to address nonpoint sources of water pollution.

“Senior Lien Obligations” means all revenue bonds and other obligations of the RECIPIENT outstanding on the date of execution of this loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or



issued after the date of execution of this loan agreement having a claim or lien on the Gross Revenue of the Utility prior and superior to the claim or lien of the loan, subject only to Maintenance and Operation Expense.

“State Water Pollution Control Revolving Fund (Revolving Fund)” means the water pollution control revolving fund established by Chapter 90.50A.020 RCW.

“Termination Date” means the effective date of ECOLOGY’s termination of the agreement.

“Termination Payment Date” means the date on which the RECIPIENT is required to repay to ECOLOGY any outstanding balance of the loan and all accrued interest.

“Total Eligible Project Cost” means the sum of all costs associated with a water quality project that have been determined to be eligible for ECOLOGY grant or loan funding, including any required recipient match.

“Total Project Cost” means the sum of all costs associated with a water quality project, including costs that are not eligible for ECOLOGY grant or loan funding.

“ULID” means any utility local improvement district of the RECIPIENT created for the acquisition or construction of additions to and extensions and betterments of the Utility.

“ULID Assessments” means all assessments levied and collected in any ULID. Such assessments are pledged to be paid into the Loan Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments will include principal installments and any interest or penalties which may be due.

“Utility” means the sewer system, stormwater system, or the combined water and sewer system of the RECIPIENT, the Net Revenue of which is pledged to pay and secure the loan.

## SECTION 2: THE FOLLOWING CONDITIONS APPLY TO ALL RECIPIENTS OF WATER QUALITY COMBINED FINANCIAL ASSISTANCE FUNDING.

The Water Quality Financial Assistance Funding Guidelines are included in this agreement by reference and are available on ECOLOGY’s Water Quality Program website.

A. Architectural and Engineering Services: The RECIPIENT certifies by signing this agreement that the requirements of Chapter 39.80 RCW, “Contracts for Architectural and Engineering Services,” have been, or shall be, met in procuring qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final architectural/engineering services contract and submit a copy of the contract to ECOLOGY.

B. Acquisition: The following provisions shall be in force only if the project described in this agreement is an acquisition project:

a. Evidence of Land Value and Title. The RECIPIENT shall submit documentation of the cost of the property rights and the type of ownership interest that has been acquired.

b. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased

with funding assistance provided through this agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the agreement before final payment.

c. Conveyance of Rights to the State of Washington. Upon purchase of real property rights (both fee simple and lesser interests), the RECIPIENT shall execute the document necessary to convey certain rights and responsibilities to ECOLOGY, on behalf of the State of Washington. The documents required will depend on the project type, the real property rights being acquired, and whether or not those rights are being acquired in perpetuity (see options below). The RECIPIENT shall use language provided by ECOLOGY, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to ECOLOGY.

Documentation Options:

1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. RECIPIENTS shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the RECIPIENT has acquired a perpetual easement for public purposes. The RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the deed of right.
2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to ECOLOGY. The RECIPIENT shall use this document when an easement or lease is being acquired for water quality and habitat conservation. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
3. Easements and Leases. The RECIPIENT may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; therefore, the RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the easement or lease.

d. Real Property Acquisition and Relocation Assistance.

1. Federal Acquisition Policies. See Section 4 of this agreement for requirements specific to Section 319 and SRF funded projects.
2. State Acquisition Policies. When state funds are part of this agreement, the RECIPIENT agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.
3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the RECIPIENT agrees to provide any housing and relocation assistance required.

e. Hazardous Substances.

1. Certification. The RECIPIENT shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(10), and certify:
  - i. No hazardous substances were found on the site, or

ii. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site is deemed "clean."

2. Responsibility. Nothing in this provision alters the RECIPIENT's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.

3. Hold Harmless. The RECIPIENT will defend, protect and hold harmless ECOLOGY and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the RECIPIENT is acquiring.

f. Restriction On Conversion Of Real Property And/Or Facilities To Other Uses

The RECIPIENT shall not at any time convert any real property (including any interest therein) or facility acquired, developed, maintained, renovated, and/or restored pursuant to this agreement to uses other than those purposes for which funds were approved without prior approval of ECOLOGY. For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

C. Best Management Practices (BMP) Implementation: If the RECIPIENT installs BMPs that are not approved by ECOLOGY prior to installation, the RECIPIENT assumes the risk that part or all of the reimbursement for that activity may be delayed or ineligible. For more details regarding BMP Implementation, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY's Water Quality Program funding website.

D. Electronic Fund Transfers: The RECIPIENT must register as a statewide vendor in order to receive payment reimbursement. Washington State's Department of Enterprise Services (DES) issues all payments. DES maintains a central vendor file for Washington State agency use to process vendor payments. The RECIPIENT can complete the registration process online at:

<http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. This registration process allows the RECIPIENT to sign up for direct deposit payments, also known as electronic fund transfers (EFT). If the RECIPIENT has questions about the vendor registration process or setting up direct deposit payments contact DES Payee Help Desk at (360) 407-8180 or [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.wa.gov).

E. Equipment Purchase: Equipment purchases over \$5,000 and not included in the scope of work or the Ecology approved construction plans and specifications, must be pre-approved by ECOLOGY's project manager before purchase. All equipment purchases over \$5,000 and not included in a contract for work being completed on the funded project, must also be reported on the Equipment Purchase Report in EAGL.

F. Funding Recognition: The RECIPIENT must inform the public about ECOLOGY or any EPA (see Section 3.B for Section 319 funded or Section 5.E for SRF funded projects) funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from ECOLOGY's Financial Manager upon request.

Agreement No: WQC-2018-PoOrPW-00206  
Project Title: Port Orchard Downtown Basin Stormwater Plan  
Recipient Name: City of Port Orchard Public Works Dept.

G. Growth Management Planning: The RECIPIENT certifies by signing this agreement that it is in compliance with the requirements of Chapter 36.70A RCW, "Growth Management Planning by Selected Counties and Cities." If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT shall notify ECOLOGY in writing of this change within 30 days.

H. Interlocal: The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements necessary for the project are, or shall be, consistent with the terms of this agreement and Chapter 39.34 RCW, "Interlocal Cooperation Act." The RECIPIENT shall submit a copy of each interlocal agreement necessary for the project to ECOLOGY upon request.

I. Lobbying and Litigation: Costs incurred for the purposes of lobbying or litigation are not eligible for funding under this agreement.

J. Post Project Assessment Survey: The RECIPIENT agrees to participate in a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project approximately three years after project completion. A representative from ECOLOGY's Water Quality Program may contact the RECIPIENT to request this data. ECOLOGY may also conduct site interviews and inspections, and may otherwise evaluate the project, as part of this assessment.

K. Project Status Evaluation: ECOLOGY may evaluate the status of this project 18 months from the effective date of this agreement. ECOLOGY's Project Manager and Financial Manager will meet with the RECIPIENT to review spending trends, completion of outcome measures, and overall project administration and performance. If the RECIPIENT fails to make satisfactory progress toward achieving project outcomes, ECOLOGY may change the scope of work, reduce grant funds, or increase oversight measures.

L. Technical Assistance: Technical assistance for agriculture activities provided under the terms of this agreement shall be consistent with the current U.S. Natural Resource Conservation Service ("NRCS") Field Office Technical Guide for Washington State and specific requirements outlined in the Water Quality Funding Guidelines. Technical assistance, proposed practices, or project designs that do not meet these standards may be eligible if approved in writing by ECOLOGY.

### SECTION 3: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND CENTENNIAL CLEAN WATER FUNDED PROJECTS BEING USED TO MATCH SECTION 319 FUNDS.

The RECIPIENT must submit the following documents to ECOLOGY before this agreement is signed by ECOLOGY:

1. Federal Funding Accountability and Transparency Act (FFATA) Form, available on the Water Quality Program website.
2. "Section 319 Initial Data Reporting" form in EAGL.

A. Data Reporting: The RECIPIENT must complete the "Section 319 Initial Data Reporting" form in EAGL before this agreement can be signed by Ecology. This form is used to gather general information about the project for EPA.

B. Funding Recognition and Outreach: In addition to Section 2.F of these Terms and Conditions, the RECIPIENT shall provide signage that informs the public that the project is funded by EPA. The signage shall contain the EPA

logo and follow usage requirements available at <http://www2.epa.gov/stylebook/using-epa-seal-and-logo>. To obtain the appropriate EPA logo or seal graphic file, the RECIPIENT may send a request to their Ecology Financial Manager.

To increase public awareness of projects serving communities where English is not the predominant language, RECIPIENTS are encouraged to provide their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

The RECIPIENT shall use the following paragraph in all reports, documents, and signage developed under this agreement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency under an assistance agreement to the Washington State Department of Ecology. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the mention of trade names or commercial products constitute endorsement or recommendation for use.”

C. Load Reduction Reporting: The RECIPIENT shall complete the “Section 319 Annual Load Reduction Reporting” form in EAGL by January 15 of each year and at project close-out. ECOLOGY may hold reimbursements until the RECIPIENT has completed the form. This form is used to gather information on best management practices (BMPs) installed and associated pollutant load reductions that were funded as a part of this project.

D. Time Extension: The RECIPIENT may request a one-time extension for up to 12 months. However, the time extension cannot exceed the time limitation established in EPA’s assistance agreement. In the event a time extension is requested and approved by ECOLOGY, the RECIPIENT must complete all eligible work performed under this agreement by the expiration date.

#### SECTION 4: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

A. Accounting Standards: The RECIPIENT shall maintain accurate records and accounts for the project (PROJECT Records) in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets or in accordance with the standards in Chapter 43.09.200 RCW “Local Government Accounting – Uniform System of Accounting”.

B. Acquisitions: Section 319 and SRF Equivalency project RECIPIENTS shall comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)-Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.

C. Audit Requirements: In accordance with 2 CFR 200.501(a), the RECIPIENT agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year. The RECIPIENT must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse’s Internet Data Entry System available at: <https://harvester.census.gov/fac/collect/ddeindex.html>. For complete information on how to accomplish the single

audit submission, go to the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>.

D. Archaeological Resources and Historic Properties (Section 106): The RECIPIENT shall comply with the additional requirements under section 106 of the National Historic Preservation Act (NHPA, 36 CFR 800).

E. Data Universal Numbering System (DUNS) and Central Contractor Registration (CCR) Requirements: RECIPIENTs shall have a DUNS number. Unless exempted from this requirement under 2 CFR 25.110, the RECIPIENT must ensure that their organization's information in the System for Award Management (SAM), <https://www.sam.gov>, is kept current through project closeout. This requires that the RECIPIENT reviews and updates the information at least annually after the initial registration, and more frequently if information changes.

F. Disadvantaged Business Enterprise (DBE): General Compliance, 40 CFR, Part 33. The RECIPIENT agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises (MBE/WBE) 40CFR, Part 33 in procurement under this agreement.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C. The RECIPIENT agrees to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under this agreement. Records documenting compliance with the following six good faith efforts shall be retained:

- 1) Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government RECIPIENTs, this shall include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- 2) Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- 3) Consider, in the contracting process, whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State, and Local Government RECIPIENTs, this shall include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- 4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6) If the prime contractor awards subcontracts, require the prime contractor to take the five good faith efforts steps in paragraphs 1 through 5 above.

The RECIPIENT agrees to submit ECOLOGY's Contractor Participation Report Form D with each payment request.

Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract

administration provisions of 40 CFR, Section 33.302.

**Non-discrimination Provision.** The RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this agreement. The RECIPIENT shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the RECIPIENT to carry out these requirements is a material breach of this agreement which may result in the termination of this contract or other legally available remedies.

This does not preclude the RECIPIENT from enacting broader nondiscrimination protections.

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including but not limited to, Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the RECIPIENT's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this agreement may be rescinded, canceled, or terminated in whole or in part and the RECIPIENT may be declared ineligible for further funding from ECOLOGY. The RECIPIENT shall, however, be given a reasonable time in which to cure this noncompliance.

The RECIPIENT shall include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services pertaining to this agreement.

"The Contractor will not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract or other legally available remedies."

Bidder List, 40 CFR, Section 33.501(b) and (c). The RECIPIENT agrees to create and maintain a bidders list. The bidders list shall include the following information for all firms that bid or quote on prime contracts, or bid or quote subcontracts, including both MBE/WBEs and non-MBE/WBEs.

1. Entity's name with point of contact
2. Entity's mailing address, telephone number, and e-mail address
3. The procurement on which the entity bid or quoted, and when
4. Entity's status as an MBE/WBE or non-MBE/WBE

**G. Electronic and information Technology (EIT) Accessibility:** RECIPIENTs shall ensure that loan funds provided under this agreement for costs in the development or purchase of EIT systems or products provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology as per Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7. Systems or products funded under this agreement must be designed to meet the diverse needs of users without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology.

Agreement No: WQC-2018-PoOrPW-00206  
 Project Title: Port Orchard Downtown Basin Stormwater Plan  
 Recipient Name: City of Port Orchard Public Works Dept.

H. Hotel-Motel Fire Safety Act: The RECIPIENT shall ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (15 USC 2225a, PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act. Pursuant to 15 USC 2225a.

I. Trafficking In Persons: The RECIPIENT and RECIPIENT employees that are private entities shall not engage in forms of trafficking in persons during the period of time this agreement is effective. This includes, but is not limited to, the procurement of a commercial sex act or forced labor. The RECIPIENT shall notify ECOLOGY immediately of any information received from any source alleging a violation under this provision.

#### SECTION 5: THE FOLLOWING CONDITIONS APPLY TO STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

The RECIPIENT must submit the following documents/forms to ECOLOGY before this agreement is signed by ECOLOGY:

1. Financial Capability Assessment Documentation
2. Opinion of RECIPIENT's Legal Council
3. Authorizing Ordinance or Resolution
4. Federal Funding Accountability and Transparency Act (FFATA) Form
5. CWSRF Federal Reporting Information form available in EAGL
6. Fiscal Sustainability Plan Certification Form (only required if the project includes construction of a wastewater or stormwater facility construction)
7. Cost and Effectiveness Analysis Certification Form

A. Alteration and Eligibility of Project: During the term of this agreement, the RECIPIENT (1) shall not materially alter the design or structural character of the project without the prior written approval of ECOLOGY and (2) shall take no action which would adversely affect the eligibility of the project as defined by applicable funding program rules and state statutes, or which would cause a violation of any covenant, condition, or provision herein.

B. American Iron and Steel (Buy American): This loan provision applies to projects for the construction, alteration, maintenance, or repair of a "treatment works" as defined in the Federal Water Pollution Control Act (33 USC 1381 et seq.) The RECIPIENT shall ensure that all iron and steel products used in the project are produced in the United States. Iron and Steel products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The RECIPIENT may request waiver from this requirement from the Administrator of the Environmental Protection Agency. The RECIPIENT must coordinate all waiver requests through ECOLOGY. This provision does not apply if the engineering plans and specifications for the project were approved by ECOLOGY prior to January 17, 2014. ECOLOGY reserves the right to request documentation of RECIPIENT'S compliance with this provision.

C. Authority of RECIPIENT: This agreement is authorized by the Constitution and laws of the state of Washington, including the RECIPIENT's authority, and by the RECIPIENT pursuant to the authorizing ordinance or resolution. The RECIPIENT shall submit a copy of the authorizing ordinance or resolution to the ECOLOGY Financial Manager



before this agreement shall be signed by ECOLOGY.

D. Equivalency Projects: (For designated equivalency projects only)

1. The RECIPIENT must procure architectural and engineering services in accordance with the federal requirements in Chapter 11 of Title 40, U.S.C. (see [www.gpo.gov/fdsys/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleI-chap11.pdf](http://www.gpo.gov/fdsys/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleI-chap11.pdf)).

E. Fiscal Sustainability Plan Certification: The RECIPIENT shall submit a completed Fiscal Sustainability Plan Certification before this agreement is signed by ECOLOGY. The Fiscal Sustainability Plan Certification is available from the ECOLOGY Financial Manager or on the Water Quality Program website.

F. Funding Recognition and Outreach: In addition to Section 2.F of these Terms and Conditions, the

RECIPIENT agrees to comply with the EPA SRF Signage Guidance in order to enhance public awareness of EPA assistance agreements nationwide. The signage guidance can be found at:  
<http://www.ecy.wa.gov/programs/wq/funding/FundPrgms/CWSRF/SignageGuidanceJune2015.pdf>.

G. Insurance: The RECIPIENT shall at all times carry fire and extended insurance coverage, public liability, and property damage, and such other forms of insurance with responsible insurers and policies payable to the RECIPIENT on such of the buildings, equipment, works, plants, facilities, and properties of the Utility as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, and against such claims for damages as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, or it shall self-insure or participate in an insurance pool or pools with reserves adequate, in the reasonable judgment of the RECIPIENT, to protect it against loss.

H. Litigation Authority: No litigation is now pending, or to the RECIPIENT's knowledge, threatened, seeking to restrain, or enjoin:

- (i) the execution of this agreement; or
- (ii) the fixing or collection of the revenues, rates, and charges or the formation of the ULID and the levy and collection of ULID Assessments therein pledged to pay the principal of and interest on the loan (for revenue secured lien obligations); or
- (iii) the levy and collection of the taxes pledged to pay the principal of and interest on the loan (for general obligation-secured loans and general obligation payable from special-assessment-secured loans); or
- (iv) in any manner questioning the proceedings and authority under which the agreement, the loan, or the project are authorized. Neither the corporate existence, or boundaries of the RECIPIENT nor the title of its present officers to their respective offices is being contested. No authority or proceeding for the execution of this agreement has been repealed, revoked, or rescinded.

I. Loan Interest Rate and Terms: This loan agreement shall remain in effect until the date of final repayment of the loan, unless terminated earlier according to the provisions herein.

When the Project Completion Date has occurred, ECOLOGY and the RECIPIENT shall execute an amendment to this

loan agreement which details the final loan amount (Final Loan Amount), and ECOLOGY shall prepare a final loan repayment schedule. The Final Loan Amount shall be the combined total of actual disbursements made on the loan and all accrued interest to the computation date.

The Estimated Loan Amount and the Final Loan Amount (in either case, as applicable, a "Loan Amount") shall bear interest based on the interest rate identified in this agreement as the "Effective Interest Rate," per annum, calculated on the basis of a 365 day year. Interest on the Estimated Loan Amount shall accrue from and be compounded monthly based on the date that each payment is mailed to the RECIPIENT. The Final Loan Amount shall be repaid in equal installments, semiannually, over the term of this loan "Loan Term" as outlined in this agreement.

#### J. Loan Repayment:

##### Sources of Loan Repayment

1. Nature of RECIPIENT's Obligation. The obligation of the RECIPIENT to repay the loan from the sources identified below and to perform and observe all other agreements and obligations on its part, contained herein, shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind. To secure the repayment of the loan from ECOLOGY, the RECIPIENT agrees to comply with all of the covenants, agreements, and attachments contained herein.

2. For General Obligation. This loan is a General Obligation Debt of the RECIPIENT.

3. For General Obligation Payable from Special Assessments. This loan is a General Obligation Debt of the RECIPIENT payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

4. For Revenue-Secured: Lien Position. This loan is a Revenue-Secured Debt of the RECIPIENT's Utility. This loan shall constitute a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon such Net Revenue of any Senior Lien Obligations.

In addition, if this loan is also secured by Utility Local Improvement Districts (ULID) Assessments, this loan shall constitute a lien upon ULID Assessments in the ULID prior and superior to any other charges whatsoever.

5. Other Sources of Repayment. The RECIPIENT may repay any portion of the loan from any funds legally available to it.

6. Defeasance of the Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT shall not be entitled to, and shall not affect, an economic Defeasance of the loan. The RECIPIENT shall not advance refund the loan.

If the RECIPIENT defeases or advance refunds the loan, it shall be required to use the proceeds thereof immediately upon their receipt, together with other available RECIPIENT funds, to repay both of the following:

(i) The Loan Amount with interest

(ii) Any other obligations of the RECIPIENT to ECOLOGY under this agreement, unless in its sole discretion ECOLOGY finds that repayment from those additional sources would not be in the public interest.

Failure to repay the Loan Amount plus interest within the time specified in ECOLOGY's notice to make such repayment shall incur Late Charges and shall be treated as a Loan Default.

7. Refinancing or Early Repayment of the Project. So long as ECOLOGY shall hold this loan, the RECIPIENT shall give ECOLOGY thirty days written notice if the RECIPIENT intends to refinance or make early repayment of the loan.

#### Method and Conditions on Repayments

1. Semiannual Payments. Notwithstanding any other provision of this agreement, the first semiannual payment of principal and interest on this loan shall be due and payable no later than one year after the project completion date or initiation of operation date, whichever comes first.

Thereafter, equal payments shall be due every six months.

If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington State agencies, the payment shall be due on the next business day for Washington State agencies.

Payments shall be mailed to:

Department of Ecology  
Cashiering Unit  
P.O. Box 47611  
Olympia WA 98504-7611

In lieu of mailing payments, electronic fund transfers can be arranged by working with ECOLOGY's Financial Manager.

No change to the amount of the semiannual principal and interest payments shall be made without a mutually signed amendment to this agreement. The RECIPIENT shall continue to make semiannual payments based on this agreement until the amendment is effective, at which time the RECIPIENT's payments shall be made pursuant to the amended agreement.

2. Late Charges. If any amount of the Final Loan Amount or any other amount owed to ECOLOGY pursuant to this agreement remains unpaid after it becomes due and payable, ECOLOGY may assess a late charge. The late charge shall be one percent per month on the past due amount starting on the date the debt becomes past due and until it is paid in full.

3. Repayment Limitations. Repayment of the loan is subject to the following additional limitations, among others: those on defeasance, refinancing and advance refunding, termination, and default and recovery of payments.

4. Prepayment of Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT may prepay the entire unpaid principal balance of and accrued interest on the loan or any portion of the remaining unpaid principal balance of the Loan Amount. Any prepayments on the loan shall be applied first to any accrued interest due and then to the outstanding principal balance of the Loan Amount. If the RECIPIENT elects to prepay the entire remaining unpaid balance and accrued interest, the RECIPIENT shall first contact ECOLOGY's Revenue/Receivable Manager of the

Fiscal Office.

#### K. Loan Security

**Due Regard:** For loans secured with a Revenue Obligation: The RECIPIENT shall exercise due regard for Maintenance and Operation Expense and the debt service requirements of the Senior Lien Obligations and any other outstanding obligations pledging the Gross Revenue of the Utility, and it has not obligated itself to set aside and pay into the loan Fund a greater amount of the Gross Revenue of the Utility than, in its judgment, shall be available over and above such Maintenance and Operation Expense and those debt service requirements.

Where collecting adequate gross utility revenue requires connecting additional users, the RECIPIENT shall require the sewer system connections necessary to meet debt obligations and expected operation and maintenance expenses.

**Levy and Collection of Taxes (if used to secure the repayment of the loan):** For so long as the loan is outstanding, the RECIPIENT irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors on all of the taxable property within the boundaries of the RECIPIENT in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the principal of and interest on the loan, and the full faith, credit and resources of the RECIPIENT are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

**Not an Excess Indebtedness:** For loans secured with a general obligation pledge or a general obligation pledge on special assessments: The RECIPIENT agrees that this agreement and the loan to be made do not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations.

**Pledge of Net Revenue and ULID Assessments in the ULID (if used to secure the repayment of this loan):** For so long as the loan is outstanding, the RECIPIENT irrevocably pledges the Net Revenue of the Utility, including applicable ULID Assessments in the ULID, to pay when due the principal of and interest on the loan.

**Utility Local Improvement District (ULID) Assessment Collection (if used to secure the repayment of the loan):** All ULID Assessments in the ULID shall be paid into the Loan Fund and used to pay the principal of and interest on the loan.

**L. Maintenance and Operation of a Funded Utility:** The RECIPIENT shall, at all times, maintain and keep the funded Utility in good repair, working order, and condition.

**M. Opinion of RECIPIENT's Legal Counsel:** The RECIPIENT must submit an "Opinion of Legal Counsel to the RECIPIENT" to ECOLOGY before this agreement will be signed. ECOLOGY will provide the form.

**N. Prevailing Wage (Davis-Bacon Act):** The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out, in whole or in part, with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

The RECIPIENT shall obtain the wage determination for the area in which the project is located prior to issuing

requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation). These wage determinations shall be incorporated into solicitations and any subsequent contracts. The RECIPIENT shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and sub contracts in excess of \$2,000. The RECIPIENT shall maintain records sufficient to document compliance with the Davis-Bacon Act, and make such records available for review upon request.

The RECIPIENT also agrees, by signing this agreement, to comply with State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable. Compliance may include the determination whether the project involves “public work” and inclusion of the applicable prevailing wage rates in the bid specifications and contracts. The RECIPIENT agrees to maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and make such records available for review upon request.

O. Progress Reports: RECIPIENTS funded with State Revolving Fund Loan or Forgivable Principal shall include the following verification statement in the “General Comments” text box of each progress report.

“We verify that we are in compliance with all the requirements as outlined in our funding agreement(s) with the Department of Ecology. This includes but is not limited to:

- The Davis-Bacon Act, 29 CFR (If applicable)
- Washington State Prevailing Wage Rate, Chapter 39.12 RCW (Pertaining to all recipients)
- The Disadvantaged Business Enterprise (DBE), 40 CFR, Part 33”

P. Representations and Warranties: The RECIPIENT represents and warrants to ECOLOGY as follows:

Application: Material Information. All information and materials submitted by the RECIPIENT to ECOLOGY in connection with its loan application were, when made, and are, as of the date the RECIPIENT signs this agreement, true and correct. There is no material adverse information relating to the RECIPIENT, the project, the loan, or this agreement known to the RECIPIENT, which has not been disclosed in writing to ECOLOGY.

Existence; Authority. It is a duly formed and legally existing municipal corporation or political subdivision of the state of Washington or a federally recognized Indian Tribe. It has full corporate power and authority to execute, deliver, and perform all of its obligations under this agreement and to undertake the project identified herein.

Certification. Each payment request shall constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this loan agreement remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the project or to repay the principal of or interest on the loan, have occurred since the date of this loan agreement. Any changes in the RECIPIENT’s financial condition shall be disclosed in writing to ECOLOGY by the RECIPIENT in its request for payment.

Q. Sale or Disposition of Funded Utility: The RECIPIENT shall not sell, transfer, or otherwise dispose of any of the works, plant, properties, facilities, or other part of the funded Utility or any real or personal property comprising a part of the funded Utility unless:

1. The facilities or property transferred are not material to the operation of the funded Utility, or have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the funded Utility or are no longer necessary, material, or useful to the operation of the funded Utility; or

Agreement No: WQC-2018-PoOrPW-00206  
Project Title: Port Orchard Downtown Basin Stormwater Plan  
Recipient Name: City of Port Orchard Public Works Dept.

2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three percent of the total assets of the funded Utility; or

3. The RECIPIENT receives from the transferee an amount equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the funded Utility from the portion of the funded Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.

4. Expressed written agreement by the DEPARTMENT.

The proceeds of any transfer under this paragraph must be used (1) to redeem promptly, or irrevocably set aside for the redemption of, Senior Lien Obligations and to redeem promptly the loan, and (2) to provide for part of the cost of additions to and betterments and extensions of the Utility.

R. Sewer-Use Ordinance or Resolution for Funded Wastewater Facility Projects: If not already in existence, the RECIPIENT shall adopt and shall enforce a sewer-use ordinance or resolution. Such ordinance or resolution shall be submitted to ECOLOGY upon request.

The sewer use ordinance must include provisions to:

- 1) Prohibit the introduction of toxic or hazardous wastes into the RECIPIENT's sewer system.
- 2) Prohibit inflow of stormwater into separated sewer systems.
- 3) Require that new sewers and connections be properly designed and constructed.

S. Termination and Default:

Termination and Default Events

1. For Insufficient ECOLOGY or RECIPIENT Funds. ECOLOGY may terminate this loan agreement for insufficient ECOLOGY or RECIPIENT funds.

2. For Failure to Commence Work. ECOLOGY may terminate this loan agreement for failure of the RECIPIENT to commence project work.

3. Past Due Payments. The RECIPIENT shall be in default of its obligations under this loan agreement when any loan repayment becomes 60 days past due.

4. Other Cause. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all of its obligations under this loan agreement. The RECIPIENT shall be in default of its obligations under this loan agreement if, in the opinion of ECOLOGY, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this loan agreement.

Procedures for Termination. If this loan agreement is terminated prior to project completion, ECOLOGY shall provide

to the RECIPIENT a written notice of termination at least five working days prior to the effective date of termination (the "Termination Date"). The written notice of termination by the ECOLOGY shall specify the Termination Date and, when applicable, the date by which the RECIPIENT must repay any outstanding balance of the loan and all accrued interest (the "Termination Payment Date").

#### Termination and Default Remedies

**No Further Payments.** On and after the Termination Date, or in the event of a default event, ECOLOGY may, at its sole discretion, withdraw the loan and make no further payments under this agreement.

**Repayment Demand.** In response to an ECOLOGY initiated termination event, or in response to a loan default event, ECOLOGY may at its sole discretion demand that the RECIPIENT repay the outstanding balance of the Loan Amount and all accrued interest.

**Interest after Repayment Demand.** From the time that ECOLOGY demands repayment of funds, amounts owed by the RECIPIENT to ECOLOGY shall accrue additional interest at the rate of one percent per month, or fraction thereof.

**Accelerate Repayments.** In the event of a default, ECOLOGY may, in its sole discretion, declare the principal of and interest on the loan immediately due and payable, subject to the prior lien and charge of any outstanding Senior Lien Obligation upon the Net Revenue. That is, the loan is not subject to acceleration so long as any Senior Lien Obligations are outstanding. Repayments not made immediately upon such acceleration will incur Late Charges.

**Late Charges.** All amounts due to ECOLOGY and not paid by the RECIPIENT by the Termination Payment Date or after acceleration following a default event, as applicable, shall incur late charges.

**Intercept State Funds.** In the event of a default event and in accordance with Chapter 90.50A.060 RCW, "Defaults," any state funds otherwise due to the RECIPIENT may, at ECOLOGY's sole discretion, be withheld and applied to the repayment of the loan.

**Property to ECOLOGY.** In the event of a default event and at the option of ECOLOGY, any personal property (equipment) acquired under this agreement may, in ECOLOGY's sole discretion, become ECOLOGY's property. In that circumstance, ECOLOGY shall reduce the RECIPIENT's liability to repay money by an amount reflecting the fair value of such property.

**Documents and Materials.** If this agreement is terminated, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT shall, at the option of ECOLOGY, become ECOLOGY property. The RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

**Collection and Enforcement Actions.** In the event of a default event, the state of Washington reserves the right to take any actions it deems necessary to collect the amounts due, or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this agreement.

**Fees and Expenses.** In any action to enforce the provisions of this agreement, reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of legal staff) shall be awarded to the prevailing party as that term is defined in Chapter 4.84.330 RCW.

Damages. Notwithstanding ECOLOGY's exercise of any or all of the termination or default remedies provided in this agreement, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or 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.

T. User-Charge System for Funded Utilities: The RECIPIENT certifies that it has the legal authority to establish and implement a user-charge system and shall adopt a system of user-charges to assure that each user of the funded utility shall pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the project. The user-charge system will include provisions for a connection charge.

In addition, the RECIPIENT shall regularly evaluate the user-charge system, at least annually, to ensure the system provides adequate revenues necessary to operate and maintain the funded utility, to establish reserves to pay for replacement, and to repay the loan.

### **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.
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 \$25,000 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 DUNS number, at [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov>.

## GENERAL TERMS AND CONDITIONS

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

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 1/22/2018 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/1701004.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. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts 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:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing 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 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 archeological or historic resources are found while conducting work under this Agreement:
    - Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
  - d) If any human remains are found while conducting work under this Agreement:

- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

#### 4. ASSIGNMENT

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

#### 5. 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.

#### 6. 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 Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.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 other reports required by this agreement. Failure to comply may result in delayed reimbursement.

#### 7. 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.

#### 8. 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.

#### 9. 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.

#### 10. 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 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.

#### 11. 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.

## 12. 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.

## 13. 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.

## 14. 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.

## 15. 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.

## 16. 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.

#### 17. 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"; and (f) the General Terms and Conditions.

#### 18. 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.

#### 19. PROGRESS REPORTING

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

#### 20. 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

Agreement No: WQC-2018-PoOrPW-00206  
 Project Title: Port Orchard Downtown Basin Stormwater Plan  
 Recipient Name: City of Port Orchard Public Works Dept.

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.

## 21. RECORDS, AUDITS, AND INSPECTIONS

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.

## 22. 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.

## 23. 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.

## 24. 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.

## 25. 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.

## 26. 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, and 100% post-consumer recycled paper.

For more suggestions visit ECOLOGY's web page: Green Purchasing, ,  
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 27. TERMINATION

### a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the



Agreement No: WQC-2018-PoOrPW-00206  
Project Title: Port Orchard Downtown Basin Stormwater Plan  
Recipient Name: City of Port Orchard Public Works Dept.

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 in 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/contractor through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the recipient/contractor. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

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.

**28. 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.

**29. 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.



**City of Port Orchard**

216 Prospect Street, Port Orchard, WA 98366  
(360) 876-4407 • FAX (360) 895-9029

**Agenda Staff Report**

Agenda Item No.:	<u>Business Item 7C</u>	Meeting Date:	<u>February 12, 2019</u>
Subject:	<u>Adoption of a Resolution Approving a</u>	Prepared by:	<u>Mark Dorsey, P.E.</u>
	<u>Contact with Robinson Noble, Inc. for the</u>		<u>Public Works Director</u>
	<u>2019 Hydrogeological Services and</u>	Atty Routing No.:	<u>N/A</u>
	<u>Procurement Procedure Documentation</u>	Atty Review Date:	<u>N/A</u>

**Summary:** On January 29, 2019, the City’s Public Works Department selected three (3) qualified firms from the City’s current Professional Services Roster (see Exhibit A of Resolution No. 008-19 attached) for the Main Category; Environmental Consulting and Sub-Category; Hydrology. Staff then scored each Statement of Qualification (SOQ) and selected Robinson Noble, Inc. as being the most qualified professional services engineering firm for the Project. On February 5, 2019, the City received a Fee Proposal from Robinson Noble, Inc. in the amount of \$136,000.00 for the 2019 Hydrogeological Services as needed for the continuation of the City’s Water Rights Amendments.

**Recommendation:** Staff recommends that the City Council adopt a resolution, thereby approving a contract with Robinson Noble, Inc. in the amount not to exceed \$136,000.00 for the 2019 Hydrogeological Services and documenting the Professional Services procurement procedures pursuant to RCW 39.80.

**Relationship to Comprehensive Plan:** Chapter 7 – Utilities.

**Motion for Consideration:** I move to adopt a resolution, thereby approving a contract with Robinson Noble, Inc. in the amount not to exceed \$136,000.00 for the 2019 Hydrogeological Services and documenting the Professional Services procurement procedures pursuant to RCW 39.80.

**Fiscal Impact:** As this necessary task, associated with the continuation of the City’s Water Rights Amendment process was unbudgeted, it is proposed that the necessary funding come from Water Capital Fund No. 413.

**Alternatives:** Do not approve.

**Attachments:** Resolution, Contract and Proposal.

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**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING CONTRACT NO. C022-19 WITH ROBINSON NOBLE, INC. FOR THE 2019 HYDROGEOLOGICAL SERVICES NEEDED FOR THE CONTINUATION OF THE CITY'S WATER RIGHTS AMENDMENT PROCESS AND DOCUMENTING ARCHITECTURAL & ENGINEERING SERVICES PROCUREMENT PROCEDURES**

**WHEREAS**, pursuant to RCW 39.80, the City of Port Orchard's Public Works Department annually publishes the general Request for Qualifications (RFQ) for professional engineering, surveying, architecture, structural design and related services for the Professional Services Roster; and

**WHEREAS**, on June 3, 2013 the City of Port Orchard transitioned to the MRSC Consultant Roster database, but still publishes annually the general Request for Qualifications (RFQ) for the Professional Services Roster; and

**WHEREAS**, on January 29, 2019 the City of Port Orchard's Public Works Department selected three (3) qualified firms from the City's current Professional Services Roster (Exhibit A attached) for the Main Category; Environmental Consulting and Sub-Category; Hydrology; and

**WHEREAS**, the City's Public Works Department then scored and selected Robinson Noble, Inc., being determined as the most qualified professional services engineering firm; and

**WHEREAS**, the City's Public Works Department then worked with Robinson Noble Inc. on a viable project scope and budget; 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:** The City Council approves Contract No. C022-19 with Robinson Noble, Inc. for the 2019 Hydrogeological Services and adopts the "Whereas" statements contained herein, as findings in support of the City's consultant selection procurement procedures.

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 on this 12th day of February 2019.

\_\_\_\_\_  
Robert Putaansuu, Mayor

ATTEST:

\_\_\_\_\_  
Brandy Rinearson, MMC, City Clerk

## CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 12<sup>th</sup> day of February 2019, by and between the City of Port Orchard, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF PORT ORCHARD, WASHINGTON (hereinafter the "CITY")  
216 Prospect Street  
Port Orchard, Washington 98366

Contact: Mayor Robert Putaansuu Phone: 360.876.4407 Fax: 360.895.9029

And Robinson Noble, Inc. a corporation, organized under the laws of the State of Washington, doing business at:

Robinson Noble, Inc. (hereinafter the "CONSULTANT")  
2105 South C Street  
Tacoma, WA 98402

Contact: Joseph E. Becker, LHG, PG, RPG Phone: 253.475.7711  
President

for professional services in connection with the following Project:

*2019 Hydrogeological Services*

### TERMS AND CONDITIONS

#### 1. Services by Consultant.

A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

#### 2. Schedule of Work.

A. Consultant shall perform the services described in the Scope of Work in accordance with the Tasks identified within Exhibit "A" and the Terms of this Agreement. If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

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

3. **Terms.** This Agreement shall commence on **February 12, 2019** (“Commencement Date”) and shall terminate **December 31, 2019** unless extended or terminated in writing as provided herein. **Additionally, the City reserves the right to offer two one-year extensions prior to contract expiration to retain the selected company’s services.**

4. **Compensation.**

LUMP SUM. Compensation for these services shall be a Lump Sum of \$\_\_\_\_\_.

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed **\$136,000.00** without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit “B.”

TIME AND MATERIALS. Compensation for these services shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit “\_\_\_\_\_.”

OTHER. \_\_\_\_\_

5. **Payment.**

A. 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 sixty (60) 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. 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, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

6. **Discrimination and Compliance with Laws**

A. 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,

*City of Port Orchard and Robinson Noble, Inc.  
Public Works Project No. PW2019-002  
Professional Service Agreement Contract No. C022-19*

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. 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 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.

C. Consultant shall obtain a City of Port Orchard business license prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

7. **Relationship of Parties.** 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 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.

## 8. Suspension and Termination of Agreement

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. The 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.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and 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. Consultant shall not be entitled to any reallocation of



cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. 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.

2. *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 Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

**9. Standard of Care.** 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 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.

**10. Ownership of Work Product.**

A. All data, materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to City. Any reuse or modification of such documents, reports or other material or work of the Consultant for purposes other than those intended by the Consultant in its scope of services shall be at the City's risk and without liability to the Consultant.

B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise. The Consultant is permitted to disclose any such information to the extent required by law, subpoena or other court order.

**11. 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 or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

**12. Indemnification.** The 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 reasonable attorneys' fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries or 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, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

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. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

**13. 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:

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 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant 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 \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Employer's Liability each accident \$1,000,000, Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease – Policy Limit \$1,000,000.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant'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 Consultant's insurance and shall not contribute with it.
2. The Consultant'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.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorse to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

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

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.

**14. Assigning or Subcontracting.** Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

**15. Notice.** Any notices required to be given by the City to Consultant or by Consultant to the City shall be in writing and delivered to the parties at the following addresses:

Robert Putaansuu  
Mayor  
216 Prospect Street  
Port Orchard, WA 98366

Phone: 360.876.4407  
Fax: 360.895.9029

CONSULTANT  
Joseph E. Becker, LHG, PG, RPG  
Robinson Noble, Inc.  
2105 South C Street  
Tacoma, WA 98402

Phone: 253.475.7711

**16. Resolution of Disputes and 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 attorney's fees from the other party.

**17. General Provisions.**

A. 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.

B. 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.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or

unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions 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 whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF PORT ORCHARD,  
WASHINGTON

CONSULTANT

By: \_\_\_\_\_  
Robert Putaansuu  
Mayor

By: \_\_\_\_\_

Name: Joseph E. Becker, LHG, PG, RPG

Title: President

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

Date: February 6, 2019

Attest:

By: \_\_\_\_\_  
Brandy Rinearson, CMC  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Sharon Cates  
City Attorney

~~EXHIBIT~~ A



ROBINSON  
NOBLE

February 5, 2019

Mr. Thomas Hunter  
Utility Manager  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366

Subject: Robinson Noble 2019 pilot project scope of work and cost estimate

Dear Thomas,

On our recent call, it was suggested that I provide you with a scope of work and cost estimate to conduct hydrogeologic services directed toward the pilot project and water right processing. Ideally, this scope will be used for a contract between the City and Robinson Noble.

As you know, considerable work needs to be accomplished on the City's project this year, with schedules driven by the Foster task force's legislated deadlines. As you also know, the exact work to be accomplished will require future input from Ecology and other stakeholders as the project progresses. The following scope is based on our current understanding of scheduling and the nature of the work. I've broken down the scope into two general tasks: 1) completing the modeling and providing a hydrogeologic impact report; and 2) providing CRA services, including writing the draft Report of Examinations for the two pending new applications and six change applications.

#### **Task 1: Modeling and Hydrogeologic Impact Report**

Based on Tom Pors' work plan and timeline, as well as our recent conversation, I developed the following modeling and reporting scope, which includes several subtasks as described below.

**Subtask 1A: Steady-state Modeling.** Initially, the previous steady-state modeling simulation needs to be updated with return flows. In addition, a second simulation will be made looking at the effect of adding shallow aquifer recharge (SAR) of treated effluent in the McCormick West area. It is my understanding that BHC can provide the required information for incorporating return flows in the next several days. With the information from BHC, the revised steady-state modeling can be accomplished within the next several weeks. To incorporate the secondary simulation with SAR in McCormick West, the potential locations of SAR will need to be established. As the potential for SAR is still in the feasibility phase, general locations should be sufficient if the exact locations are not known.

**Subtask 1B: Stream Record Analysis.** In order to prioritize timing of potential mitigation, as well as examine the relationship between critical periods of natural streamflow and any projected impacts to stream flow, an analysis of the hydrographs of the potentially impacted streams needs to be made. We will examine and analyze existing stream gage records available from Kitsap PUD and the USGS for each of the potentially impacted streams. Results will be provided in the Task 1 report.

**Subtask 1C: Transient Modeling.** Transient modeling will allow timing of impacts to be defined. However, based on the provisions of the preliminary permits for Wells 12 and 13, transient modeling is to occur following consultation with Ecology and the Tribes. Therefore, the initial work under this subtask will be to define a specific transient modeling work plan, discuss it with the team, and then present it to the Tribe and Ecology for comment and input. At this point, I expect the transient modeling to consist of two sets of model simulations, one to cover the new and change applications for Well 12 and the other to cover the new and change applications for Well 13. Initially, the model will be run with long time steps (one year or more) to get a general idea about the timing of impacts at the streams. Following simulations can include shorter time steps (probably month-long steps) to help describe seasonal effects. The well production will be ramped up in the transient simulations based on population and demand projections provided by BHC. Initially, the simulations will be run without SAR in the McCormick West area; later simulations will include the SAR if it is still being contemplated at the time of the model runs.

**Subtask 1D: Hydrogeology and Impact Report.** The deliverable for Task 1 will be a report or technical memorandum describing the hydrogeology of the area, the stream hydrographic analysis, the modeling procedures and results, and a summary of projected impacts to area streams. The report will be written so that it is easily incorporated into a later draft Reports of Examination for the various water right applications.

**Subtask 1E: Project Management and Meetings.** Task 1 includes a number of meetings including meetings between the team members, planning meetings with the Tribe and Ecology, and a transient modeling meeting with the Tribe and Ecology. Included in this subtask is project management work completed this month to date.

### Task 1 Schedule

Based on our recent call and Tom Pors' draft timeline, I've made a tentative schedule for Task 1.

Subtask 1A: Steady-state Modeling	February 5 – February 22
Subtask 1B: Stream Record Analysis	February 5 – February 28
Subtask 1C: Transient Modeling	February 25 – March 29
Subtask 1D: Hydrogeology and Impact Report	February 25 – April 5
Subtask 1E: Project Management and Meetings	February 5 – April 5

### Task 2: Water Right Processing

We presume the pending new and change applications can be processed through a streamlined Cost Reimbursement Agreement (CRA) with Robinson Noble acting as the consultant conducting all work, including drafting the Reports of Examination (ROEs). If this is not the case, and Ecology requires a different consultant, we assume that Robinson Noble will conduct the work up to the drafting of the ROEs, providing a technical memorandum that can be used in drafting the ROEs. The work is divided into six subtasks.

**Subtask 2A: Tier 1 Avoidance Analysis.** The ROEs will need to address the three tiers of analysis described in pilot project legislation. The first tier is avoidance. For this subtask, Robinson Noble will adapt an avoidance analysis provided by BHC and Tom Pors for use in the ROEs.

**Subtask 2B: Tier 2 Minimization Analysis.** The second tier is minimization analysis. Guidance is still needed for Ecology as to what they want to see for this analysis, so the scope of the subtask might change. Currently, we envision this analysis to be an examination of the lack of in-kind water available for mitigation as well as descriptions of project design and phasing of proposed in-stream mitigation elements. We expect this work to be completed in close concert with Tom Pors.

**Subtask 2C: Tier 3 Compensation Analysis.** The third tier is compensation analysis. This includes conducting a net ecological benefit (NEB) analysis. Again, guidance is needed from Ecology as to the form and level of detail in the NEB analysis, so the scope of this subtask may be modified. The subtask also involves two rounds of consultation with the Tribe and the Washington Department of Fish and Wildlife (WDFW) – an initial round to get the Tribe and WDFW’s comments on benefits of proposed creek and habitat improvements and a second round for comment on the draft NEB analysis. Much of the work on the NEB analysis will be completed by a Subconsultant to Robinson Noble.

ESA Associates (ESA) would be a well-qualified choice to perform the NEB analysis. ESA is an environmental consulting company specializing in permitting and compliance, environmental planning, and ecosystem restoration and mitigation. Robinson Noble has worked with ESA many times in the past. ESA is very familiar with the area, as they produced the Blackjack Creek Watershed Assessment and Protection and Restoration Plan (December 2017) for the Suquamish Tribe.

**Subtask 2D: Monitoring, Reporting, Compliance, and Assurance.** This subtask will involve designing monitoring, reporting, compliance, and assurance conditions for the ROEs. We will work together with Tom Pors, and in consultation with Ecology, to identify compatible conditions for inclusion as provisions in the ROEs.

**Subtask 2E: Draft Reports of Examination.** Robinson Noble will write draft ROEs for the two new and six change applications that are pending. The results of Task 1 and Subtasks 2A – 2D will be incorporated into the draft ROEs. We presume that preliminary drafts may be submitted to the Tribe for comment. Following possible incorporation of Tribal comments, the drafts will be delivered to Ecology. Ecology’s comments will be worked into final drafts for posting on Ecology’s website.

**Subtask 2F: Project Management, Meetings, and other Assistance.** Based on today’s conference call, we assume there will be at least three in-person meetings between the team as the project progresses. This task also includes project management following the end of Task 1 and any assistance of Robinson Noble with other parts of the process not specified in Tasks 1 and 2.



### Task 2 Schedule

Based on today's conference call and Tom Pors' draft timeline, I've made a tentative schedule for Task 2.

Subtask 2A: Tier 1 Avoidance Analysis	February – March
Subtask 2B: Tier 2 Minimization Analysis	March – April
Subtask 2C: Tier 3 Compensation Analysis	April – June
Subtask 2D: Monitoring, Reporting, etc.	June – July
Subtask 2E: Draft Reports of Examination	August – October
Subtask 2F: PM, Meetings, Other Assistance	March – October

### Estimated Cost

It is expected that the exact nature of the required work will evolve as the project progresses and with input from the Tribe, WDFW, and Ecology. Therefore, the following cost estimate is truly an estimate and could be higher or lower depending upon how the project progresses.

Based on our understanding of the project and the conditions outlined in this scope, we estimate the cost of our services, as described above, to be \$43,600 for Task 1 and \$92,500 for Task 2, for a total of \$136,000. If transient modeling is removed from the Task 1 scope following consultation with Ecology and the Tribe, the estimated Task 1 cost will be reduced by \$13,400. The Task 2 cost includes an estimated \$34,000 for an environmental habitat subconsultant (as the definition of the NEB analysis is unknown at this time, this portion of the estimate is highly variable). Robinson Noble works on a time-and-expense basis according to the attached General Fee Schedule. This estimate will remain valid for 90 days from the date of this scope.

I hope this scope of work and cost estimate is adequate for your needs. Please contact us if we can provide additional information or modify the scope of work to better assist the City. Should this scope and cost estimate be acceptable, please send me a contract for review.

If you have questions or need additional information, please contact me. Thank you for the opportunity to continue being of service to the City.

Sincerely,  
Robinson Noble, Inc.



Joseph E. Becker, LHG  
Principal Hydrogeologist



**General Fee Schedule**

**January 1, 2019**

Professional Positions		Fee per Hour
Principal Engineer, Hydrogeologist or Environmental Scientist		\$187
Associate Engineer, Hydrogeologist or Environmental Scientist		\$171
Senior Engineer, Hydrogeologist or Environmental Scientist		\$146
Senior Project Engineer, Hydrogeologist or Environmental Scientist		\$126
Project Engineer, Hydrogeologist or Environmental Scientist		\$113
Staff Engineer, Hydrogeologist or Environmental Scientist		\$102
Senior Field Staff		\$93
Field Staff		\$80
Legal Support/Expert Witness Services/Testimony		150% of above rates
Support Positions		
Senior GIS/CAD Specialist		\$95
Senior Technician		\$95
Senior Administrator		\$83
GIS/CAD Specialist		\$83
Technician		\$83
Administrator		\$72
Clerical Support		\$72
Other Fees and Costs		
<b>Subcontracts/ Management Fee</b>	Professional services	15%
	Outside laboratory services	15%
	Construction subcontracts	15%
<b>Other Costs</b>	Travel (auto)	\$0.64/mile
	Travel (other)	Cost +10%
	Per diem	Prevailing State rate +10%
	Other direct expenses	Cost +10%
	Field and laboratory testing/equipment rental	See following pages

This fee schedule is subject to change according to contract or Professional Services Agreement conditions.



**Environmental Equipment Rental and Consumable Schedule  
January 1, 2019**

<u>Equipment</u>	<u>Unit</u>	<u>Rate</u>
Water Level Transducer and Data Logger	Per day	\$50
Field Laptop Computer	Per day	\$40
Electronic Water Level Sounder	Per day	\$30
Electronic Interface Probe	Per day	\$75
DC Operated Peristaltic Pump	Per day	\$45
2-inch Gasoline-powered Centrifugal Pump (includes hoses)	Per day	\$100
2-inch Submersible Pump + Controller	Per day	\$350
Generator & Fuel	Per day	\$70
Low-Flow Bladder Pump	Per day	\$175
Photoionization Detector	Per day	\$75
Combustible Gas Indicator	Per day	\$65
GPS	Per day	\$20
Water Quality Meter	Per day	\$200
Teflon Water Bailer	Per day	\$30
Soil Sampling Equipment (manual)	Per day	\$25
Mechanical Sieve Sample Equipment	Flat fee per project	\$50
Survey Gear (laser level & rod)	Per day	\$85
pH Field Meter (soils)	Per day	\$50
Soil Vapor Extraction System	Per month	\$750
Digital Camera	Per day	\$10
Hand Auger	Per day	\$50
Other Equipment	Negotiated	Negotiated
<b><u>Consumable Items:</u></b>		
Polyethylene Purge/Sampling Tubing	Each 10 feet	\$2.50
DC Submersible Purge Pump (Single stage)	Per pump	List price + 10%
DC Submersible Purge Pump (Dual Stage)	Per pump	List price + 10%
Silicone Peristaltic Pump Head Tubing	Each foot	\$4.00
Bladders for Low-Flow Bladder Pump	Each	\$5.00
Water Sample Bailer	Each	\$10
Bailer Rope/String	Each 10 feet	\$1.00
Personal Protection Equipment	Per day per person	\$50

This fee schedule is subject to change according to contract or Professional Services Agreement conditions.

**Geotechnical Field and Laboratory Testing Schedule  
January 1, 2019**

<u>Test</u>		<u>Fee</u>
Portable Nuclear Density Gauge	Per Hour	\$5.00
Slope Inclinometer	Per day	\$250
Direct Shear	Point	\$200
Moisture-Density Relationship Curves:	Each	1 pt \$120
	Each	Multiple pts \$225
Sieve Analyses (Gradations-Wet Sieve) Bulk Sieve (if gravelly or >10lb)	Each	\$150
	Add	\$70
200 Wash	Each	\$80
Hydrometer Analysis	Each	\$175
Falling Head Permeability	Each	\$165
Atterberg Limits (Liquid Limit and Plastic Limit)	Each	\$220
Moisture Content	Each	\$12
Dynamic Cone Penetrometer Points	Day	\$225
	Each	\$20
Resistivity 4-point Gauge	Day	\$300
Hand Auger	Per day	\$50
Consolidation Test Incremental Loading (9 loads, 0.125 TSF to 32 TSF, 4 unloads)		\$550
		\$50/each additional load
Shelby Tube Extrusion/Sample Description		\$40
Single-Ring Infiltrometer	Per day	\$50

This fee schedule is subject to change according to contract or Professional Services Agreement conditions.

Public Agency Name:	City of Port Orchard
Roster Type:	Consultant Roster
Date:	01/29/2019
Time:	08:50 am
Main Category:	Environmental Consulting
Sub-Category:	Hydrogeology

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Adopt A Stream Foundation

Akana

Apex Companies, LLC

Apex Engineering

Aptum Inc.

Aspect Consulting, LLC

Associated Earth Sciences, Inc.

Associated Environmental Group LLC

ATC Group Services, LLC

Bergeson-Boese & Associates, Inc. dba BB&A Environmental

Blue Marine, LLC

Brown and Caldwell

Cardno

Cascadia Consulting Group

Coho Water Resources

CRETE Consulting Inc

Dalton, Olmsted & Fuglevand, Inc.

Delphis Technical Support and Solutions, LLC

DH Environmental, Inc.

EA Engineering, Science, and Technology, Inc., PBC

EHS-International, Inc.

Jacobs Engineering Group Inc.

JECB

Jerome W. Morrisette & Associates Inc., P.S.

Kane Environmental, Inc.

Kennedy/Jenks Consultants

Key Environmental Solutions, LLC.

Kindred Hydro, Inc.

Kleinfelder

KPG

Landau Associates

Land Development Consultants, Inc.

Marine Surveys & Assessments

Maul Foster & Alongi, Inc.

Migizi Group, Inc.

Mott MacDonald

Northwest Groundwater Services, LLC

Pacific Groundwater Group

Pacific Surveying and Engineering Services

Parametrix

PBS Engineering and Environmental Inc.

Perteet Inc.

PND Engineers, Inc.

RH2 Engineering, Inc

Robinson Noble, Inc.

Schemmer Consulting Group PLLC

SCJ Alliance

SCS Engineers

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**City of Port Orchard**

216 Prospect Street, Port Orchard, WA 98366  
(360) 876-4407 • FAX (360) 895-9029

**Agenda Staff Report**

Agenda Item No.: Business Item 7D  
Subject: Adoption of a Resolution Approving a  
Contract with Transportation Solutions,  
Inc. for the Transportation Impact Fee  
Study and Traffic Model Calibration

Meeting Date: February 12, 2019  
Prepared by: Nick Bond  
Development Director  
Atty Routing No: N/A  
Atty Review Date: N/A

**Summary:** In 2015, the City adopted traffic impact fees and a traffic impact fee study to determine how traffic impact fees were to be calculated. The adopted study recommended that the City Council review and update the study every three years to ensure that the study would remain defensible.

In November 2018, City staff reviewed its consultant roster and prepared a request for proposals for personal services. Three firms were selected from the roster, including Fehr and Peers, Transpo Group USA, and Transportation Solutions Inc, An RFP was provided to these firms on November 30, 2018, requesting that proposals be submitted on December 17, 2018. Only one firm, Transportation Solutions, Inc. responded. Staff reviewed their proposal and determined that they were qualified to perform the work.

When negotiating the contract, City staff identified a need to also recalibrate the City’s transportation model which was previously developed by TSI. This model will provide more accurate information on growth’s share of traffic impact fee project costs, will inform the City and County’s work on developing a South Kitsap Transportation Implementation Strategy, and will inform ongoing renegotiations of the development agreements with McCormick Woods.

A professional services contract for updating the transportation impact fee study and to calibrate the transportation model has been prepared for this project and is not to exceed \$25,000. This scope includes both the traffic impact fee calculation and study and work to calibrate the city’s transportation model. The City’s DCD planning department budget included \$15,000 for the TIF Study update and \$15,000 for miscellaneous professional services. This would deplete most of the funds allocated for miscellaneous professional services in the DCD budget.

**Recommendation:** Staff recommends adoption of a resolution approving the proposed personal services with TSI for the transportation impact fee study update and traffic model calibration.

**Relationship to Comprehensive Plan:** Transportation impact fees are a critical part of funding the implementation of the City’s transportation element of the comprehensive plan. Amendments to the comprehensive plan necessitate periodic updates to the city’s adopted traffic impact fee rate study. A well calibrated transportation model is critical to administering the city’s concurrency management system and for ensuring that level of service standards as found in the comprehensive plan are maintained.

**Motion for Consideration:** “I move to adopt a resolution approving a contract with Transportation Solutions, Inc. for the City’s Transportation Impact Fee Rate Study Update and transportation model calibration.”

**Fiscal Impact:** The contract amount is not to exceed \$25,000.

**Alternatives:** Consider hiring a transportation engineer as an employee of the city to perform the tasks described in the City’s concurrency and impact fee ordinances. Perform a new selection process to see if additional firms respond to the RFP. Amend the scope of services.

**Attachments:** Resolution; Exhibit A Personal Services Agreement; Exhibit B Scope of Work; Exhibit C Fee Estimate; Exhibit D consultant list, Exhibit E a copy of the request for proposals

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING A PERSONAL SERVICES CONTRACT WITH TRANSPORTATION SOLUTIONS, INC TO UPDATE THE CITY'S TRAFFIC IMPACT FEE STUDY AND TRANSPORTATION MODEL CALIBRATION.**

**WHEREAS**, the City of Port Orchard is required to maintain and update its traffic impact fee calculation rate pursuant to Chapters 20.180 and 20.182 of the Port Orchard Municipal Code; and

**WHEREAS**, the traffic impact fee calculations require transportation engineering expertise beyond that which is possessed by the City; and

**WHEREAS**, the city maintains a transportation model that provides critical information related to calculating traffic impact fee rates; and

**WHEREAS**, the City solicited personal services proposals for this work by sending requests for proposals to three firms selected from its MRSC consultant roster (see exhibit D attached hereto); and

**WHEREAS**, on November 30, 2018, the attached RFP (Exhibit E) was sent to Fehr and Peers, Transpo Group USA, Inc., and Transportation Solutions, Inc. with a response deadline of December 17, 2018; and

**WHEREAS**, Transportation Solutions Inc. ("TSI") was the only consultant to respond to this request for proposals; and

**WHEREAS**, the proposal submitted by TSI demonstrates that TSI is qualified to complete the requested work; and

**WHEREAS**, the City wishes to use the services of TSI to update the traffic impact fee calculations and to calibrate its transportation model, since TSI exclusively developed the City's transportation model, transportation plan and traffic impact fee, and has extensive familiarity with the City's traffic modeling requirements and procedures; now, therefore,

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

**THAT:** The Mayor is authorized to execute the personal services contract (attached hereto as Exhibits A, B and C) between the City and Transportation Services, Inc., attached hereto, in an amount not to exceed \$25,000.

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 February 2019.

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Robert Putaansuu, Mayor

ATTEST:

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Brandy Rinearson, MMC, City Clerk

**CITY OF PORT ORCHARD PERSONAL SERVICES AGREEMENT**

THIS Agreement is made effective as of the 12<sup>th</sup> day of February 2019, by and between the City of Port Orchard, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF PORT ORCHARD, WASHINGTON (hereinafter the "CITY")  
216 Prospect Street  
Port Orchard, Washington 98366

Contact: Mayor Robert Putaansuu Phone: 360.876.4407 Fax: 360.895.9029

and Transportation Solutions, Inc., a corporation, organized under the laws of the State of Washington, doing business at:

8250 165<sup>th</sup> Ave NE #100 (hereinafter the "CONSULTANT")  
Redmond, WA 98052

Contact: Victor Salemann Phone: 425-883-4134 Email: victors@tsinw.com

for personal services in connection with the following Project:

***Transportation Impact Fee Update and Transportation Model Calibration***

**TERMS AND CONDITIONS**

**1. Services by Consultant.**

A. The Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "B." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

**2. Schedule of Work.**

A. The Consultant shall perform the services described in the Scope of Work in accordance with the tasks identified within Exhibit "B" and the terms of this Agreement. If delays beyond the Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

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

**3. Terms.** This Agreement shall commence on February 13, 2019 ("Commencement Date") and shall terminate on December 31, 2019, unless extended or terminated in writing as provided

City of Port Orchard and \_\_\_\_\_

Public Works Project No. \_\_\_\_\_

Personal Services Agreement Contract No. \_\_\_\_\_

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Rev 1/29/2018

1 of 8

herein. **The City reserves the right to offer two (2) one-year extensions prior to contract expiration to retain the selected company's services.**

**4. Compensation.**

- LUMP SUM. Compensation for these services shall be a Lump Sum of \$ \_\_\_\_\_.
- TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$25,000.00 without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "C."
- 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 "\_\_\_\_\_."
- OTHER. \_\_\_\_\_

**5. 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.

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City of Port Orchard and \_\_\_\_\_  
Public Works Project No. \_\_\_\_\_  
Personal Services Agreement Contract No. \_\_\_\_\_

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Rev 1/29/2018

2 of 8

**6. Discrimination and Compliance with Laws**

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. 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 term(s) 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.

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

D. Violation of this Paragraph 6 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.

**7. Relationship of Parties.** 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 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.

**8. Suspension and Termination of Agreement**

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.

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City of Port Orchard and \_\_\_\_\_

Public Works Project No. \_\_\_\_\_

Personal Services Agreement Contract No. \_\_\_\_\_

U:\City Council DRAFT\2019\03\_Feb 12\TSI Contract Traffic Impact Fee Update\3 Exhibit A TSI Personal Services Contract.doc (with SEC edits) 1.24.19.docx

Rev 1/29/2018

3 of 8

C. Rights Upon Termination.

1. *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.

2. *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 Section 15 herein.

9. **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.

10. **Ownership of Work Product.**

A. All data, materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of the City, shall be forwarded to the City at its request and may be used by the City as it sees fit. Upon termination of this Agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to City. Any reuse or modification of such documents, reports or other material or work of the Consultant for purposes other than those intended by the Consultant in its scope of services under this Agreement shall be at the City's risk.

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City of Port Orchard and \_\_\_\_\_

Public Works Project No. \_\_\_\_\_

Personal Services Agreement Contract No. \_\_\_\_\_

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Rev 1/29/2018

4 of 8



B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in the Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise. The Consultant is permitted to disclose any such information only to the extent required by law, subpoena or other court order.

**11. 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.

**12. Indemnification.** The 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 all legal costs and attorneys' fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries or 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, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

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. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

**13. Insurance.** The Consultant shall procure and maintain for the duration of this 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:

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.

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City of Port Orchard and \_\_\_\_\_

Public Works Project No. \_\_\_\_\_

Personal Services Agreement Contract No. \_\_\_\_\_

U:\City Council DRAFT\2019\03\_Feb 12\TSI Contract Traffic Impact Fee Update\3 Exhibit A TSI Personal Services Contract.doc (with SEC edits) 1.24.19.docx

Rev 1/29/2018

5 of 8

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant 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 \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Workers' Compensation Employer's Liability each accident \$1,000,000, Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease – Policy Limit \$1,000,000.
4. 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 Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant'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 Consultant's insurance and shall not contribute with it.
2. The Consultant'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.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.

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City of Port Orchard and \_\_\_\_\_

Public Works Project No. \_\_\_\_\_

Personal Services Agreement Contract No. \_\_\_\_\_

U:\City Council DRAFT\2019\03\_Feb 12\TSI Contract Traffic Impact Fee Update\3 Exhibit A TSI Personal Services Contract.doc (with SEC edits) 1.24.19.docx

Rev 1/29/2018

6 of 8

- 4. If any coverage is written on a “claims made” basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

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.

**14. Assigning or Subcontracting.** The Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

**15. Notice.** Any notices required to be given by the City to the Consultant or by the Consultant to the City shall be in writing and delivered to the parties at the following addresses:

<p>CITY          Robert Putaansuu          Mayor          216 Prospect Street          Port Orchard, WA 98366</p> <p>Phone: 360.876.4407          Fax: 360.895.9029</p>	<p>CONSULTANT          Victor Salemann          Transportation Solutions, Inc.          8250 165<sup>th</sup> Ave NE, Suite 100          Redmond, WA 98052</p> <p>Phone: 425-883-4134          Fax: 425-867-0898</p>
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**16. Resolution of Disputes and 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.

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*City of Port Orchard and \_\_\_\_\_*  
*Public Works Project No. \_\_\_\_\_*  
*Personal Services Agreement Contract No. \_\_\_\_\_*

**17. General Provisions.**

A. 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.

B. 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.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions 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 whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF PORT ORCHARD,  
WASHINGTON

By: \_\_\_\_\_  
Robert Putaansuu, Mayor

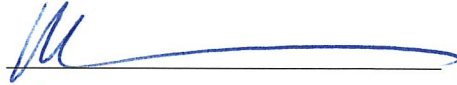
ATTEST/AUTHENTICATE:

By: \_\_\_\_\_  
Brandy Rinearson, MMC  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Sharon Cates, City Attorney

CONSULTANT

By:  \_\_\_\_\_

Name: Victor Salemann

Title: President

City of Port Orchard and \_\_\_\_\_  
Public Works Project No. \_\_\_\_\_  
Personal Services Agreement Contract No. \_\_\_\_\_

**Exhibit B**  
**Scope of Work and Fee Estimate**  
**City of Port Orchard**  
**Traffic Model Recalibration and Traffic Impact Fee Update**

**Task 1. 2019 Traffic Model Recalibration and Update**

**Task 1.01 Project administration and quality control. (Budget \$700)**

Prepare regular status reports and project cost invoices; perform ongoing quality control.

**Task 1.02 Collect traffic data. (Budget \$350)**

Manage traffic data collection and review resulting data. TC2 will be used as a data collection vendor. Data collection will focus on PM peak period (4-6 PM) operations at up to 25 intersections citywide. Supplemental traffic count data along the SW Old Clifton Road corridor will be obtained from Transpo Group as part of the SW Old Clifton Road corridor analysis.

**Task 1.03 Update existing conditions (2019) intersection operations model. (Budget \$650)**

Using the 2015 intersection operations (Synchro) model as a baseline, a 2019 PM peak hour Synchro model will be developed for all intersections for which counts are obtained in Task 2. Identify 2019 intersection Level of Service (LOS) deficiencies based on Port Orchard LOS policy.

**Task 1.04 Updated existing conditions (2019) travel demand model. (Budget \$650)**

Using the 2015 travel demand (Visum) model as a baseline, a 2019 PM peak hour Visum model will be developed and calibrated according to best practices described in NCHRP Report 765 and according to FHWA guidance.

**Task 1.05 Confirm pipeline developments. (Budget \$250)**

Confirm the locations, land use types, quantities, and PM peak hour trip generation forecasts (as available) for pipeline developments identified by City staff. Develop PM peak hour trip generation forecasts for developments for which trip generation forecasts are not available.

**Task 1.06 Update pipeline (2025) travel demand model. (Budget \$1,000)**

Update citywide pipeline travel demand model with pipeline developments identified in Task 5. Update external trip growth based on recent historical growth trends along SR 16.

**Task 1.07 Update pipeline (2025) intersection operations model. (Budget \$500)**

Update citywide pipeline Synchro model with updated travel demand forecasts generated in Task 6. Identify 2025 intersection LOS deficiencies based on Port Orchard LOS policy.

**Task 1.08 Confirm 2039 land use growth forecast. (Budget \$250)**

Confirm 2039 land use growth allocations and locations based on PSRC Vision 2040 documentation and proposed citywide zoning changes. TSI will work with City staff to determine locations of anticipated residential and employment growth.

**Task 1.09 Update long-range (2039) travel demand model. (Budget \$650)**

Update long-range travel demand model to reflect land use forecasts identified in Task 8.

**Task 1.10 Update long-range (2039) intersection operations model. (Budget \$400)**

Update citywide pipeline Synchro model with updated travel demand forecasts generated in Task 9. Identify 2039 intersection LOS deficiencies based on Port Orchard LOS policy.

**Task 1.11 Summarize findings in memorandum. (Budget \$1,100)**

Document traffic modeling methods, assumptions, and findings in a memorandum to City staff. Identify existing and future intersection LOS deficiencies based on Port Orchard LOS policy. All traffic count files and traffic model files will be provided to the City.

## **Task 2. Transportation Impact Fee Update**

### **Task 2.01 Budget \$2,500**

Meet with City Staff and elected officials to determine if any additional projects should be included in the Traffic Impact Fee Rate Study calculation or if the fee calculation approach should be amended.

- One Preparatory Meeting with Staff
- One Workshop Meeting with Elected Officials
- One Follow Up Meeting with Staff

### **Task 2.02 Budget \$8,000**

Update the 2015 Traffic Impact Fee Rate Study and Appendix A Fee Schedule, Appendix B Comparison of TIF Base Rates.

- Update Project List
- Update Project Estimates
- Update Growth Share of Project Costs
- Update Rate Study
- Update Rate Tables
- Update Fee Comparison Table

### **Task 2.03 Budget \$4,500**

Provide technical support through the update and adoption process.

- Respond to Comments/Questions from Staff/Elected Officials
- Prepare PowerPoint Presentation for Public Hearing
- One Council Meeting/Public Hearing with Elected Officials

**Total Contract Value not to exceed \$25,000 without written approval.**

### **Schedule**

Complete the project within 120 days of contract award (estimated contract award date 1/22/19)



8250 - 165th Avenue NE  
 Suite 100  
 Redmond, WA 98052-6628  
 T 425-883-4134  
 F 425-867-0898  
 www.tsinw.com

Exhibit C to Resolution \_\_\_\_\_ and  
 Contract \_\_\_\_\_

**Transportation Solutions, Inc.**

**2019  
 HOURLY BILLING RATES**

<b>Name</b>	<b>Title</b>	<b>Hourly Labor Billing Rate</b>
Victor L. Salemann	Principal	\$235.00
Jeff S. Elekes	Director	\$215.00
David D. Markley	Principal	\$235.00
Andrew L. Bratlien	Sr. Tr. Engineer	\$168.50
Michelle L. Mach	Sr. Tr. Engineer	\$168.50
Jeffrey P.K. Hee	Sr. Tr. Engineer	\$168.50
Phil McDonald	Sr. Engineering Tech	\$120.00
Jennifer Salemann	Planner I	\$98.00
Jill Berberich	Project Administrator	\$115.00
Staff	Engineering Technician	\$ 60-95

**EXPENSES**

Reimbursable Expenses	Direct Cost no Markup
Sub-consultant invoices	Direct Cost no Markup

Billing rates are subject to change.



Public Agency Name:	City of Port Orchard
Roster Type:	Consultant Roster
Date:	11/29/2018
Time:	09:56 am
Main Category:	Design and Planning, Engineering Services, Financial Services
Sub-Category:	Traffic Counts/Data Collection, Traffic Operations Simulation Modeling, Travel Demand Modeling, Transit Planning and Design (including High Capita Transit), Transportation/Traffic, Rate Studies, Transportation Finance

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3 Square Blocks

AEI Williams Group Co. DBA: AEIWG Co.

AHBL, Inc.

Akana

Alta Planning + Design

Apex Engineering

Applied Pavement Technology, Inc.

Art Anderson Associates

Barney & Worth, Inc.

BergerABAM

BERK Consulting, Inc.

Blue Marine, LLC

Braaksma Engineering Inc.

Bright Engineering, INc.

Brown and Caldwell

BST Associates

Business Street

Century West Engineering

Collins Engineers, Inc.

Columbia Telecommunications Corporation

Community Attributes Inc.

Confluence Environmental Company

Conservation Technix, Inc.  
Contract Land Staff, LLC  
COWI North America Inc.  
CPD Solutions  
CPH Consultants  
CTS Engineers  
David Evans and Associates, Inc.  
Davido Consulting Group, Inc.  
DCI Engineers  
DGK Inc. dba Widener & Associates  
DKS Associates  
DN Traffic Consultants  
DOWL LLC, D.B.A. DOWL  
Duncanson Company, Inc.  
EA Engineering, Science, and Technology, Inc., PBC  
Earth Economics  
ECONorthwest  
ECO Resource Group  
Eco Resource Management Systems Inc.  
EES Consulting, Inc.  
Elliott Bay Design Group  
ELM  
EN Engineering LLC  
Entitlement and Engineering Solutions, Inc.  
Epic Land Solutions, Inc.  
Exeltech Consulting, Inc.  
Facility Contractors Inc.  
FCS GROUP  
Fehr & Peers

GeoDesign, Inc.  
GeoEngineers Inc.  
GHD Inc.  
Gibson Traffic Consultants, Inc.  
GMG Consultants  
Golder Associates Inc.  
Gravis Technologies, Inc.  
Gray and Osborne, Inc.  
Gridics  
Harmsen & Associates, Inc.  
Harper Houf Peterson Righellis Inc.  
Harris & Associates  
HDR Engineering, Inc.  
Heartland LLC  
Heath & Associates, Inc.  
Herrera Environmental Consultants, Inc.  
Hill International, Inc.  
HMA Engineering  
Huitt-Zollars, Inc.  
HWA GeoSciences Inc.  
ICF Jones & Stokes, Inc.  
IDAX  
J.A. Brennan Associates, PLLC  
Jacobs Engineering Group Inc.  
Jimale Technical Services  
Johnston Architects LLC  
JP Morgan  
JR MILLER & ASSOCIATES INC  
Katy Isaksen & Associates

KBA, Inc.

Keller Associates, Inc.

Kidder Mathews

Kindred Hydro, Inc.

King Technologics, PLLC

KPFF Consulting Engineers

KPG

Leland Consulting Group, Inc.

LMN Architects

Lochner (H.W. Lochner)

Loving Engineering & Consulting, P.S. Inc.

MacKay Sposito

Mackenzie

MacLearnsberry, Inc.

Manceps, Inc.

Merritt Arch PLLC

MICHAEL F. WNEK, PE., PS

Moffatt & Nichol

Morrison-Maierle, Inc.

Murraysmith

Nelson Nygaard

Northwest Water Systems

Osborn Consulting Inc

Otak, Inc.

PACE Engineers, Inc.

Pacific Surveying & Engineering Services, Inc. PSE

Parametrix

Parsons Transportation Group Inc.

Pavement Services, Inc.

PBS Engineering and Environmental Inc.

Peninsula Financial Consulting

Performance Plane LLC

Perteet Inc.

PH Consulting LLC

ProjectCorps

PRR

Reichhardt & Ebe Engineering, Inc.

Reid Middleton, Inc.

RH2 Engineering, Inc

RHC Engineering Inc.

SAFEbuilt

SCE, Inc.

SCJ Alliance

SCS Engineers

Seahurst Electric, Inc.

Shiels Oblatz Johnsen, Inc.

Sitts & Hill Engineers, Inc.

Skillings Connolly, Inc.

Sound Municipal Consultants

Soundwest Engineering Associates, Inc.

Stantec

Studio Cascade, Inc.

T-O Engineers

TCA Architecture Planning, Inc

Terracon Consultants, Inc.

Terra Verde Environmental Consulting

TerraVista NW, LLC

Tetra Tech, Inc.

The Beckett Group

The Greenbusch Group, Inc.

The Planning Studio LLC

TMK Consulting Inc.

Toole Design Group LLC

Traffic Count Consultants, Inc (TC2inc)

Traffic Data Gathering

Transpo Group

Transportation Engineering Northwest, LLC

Transportation Solutions, Inc.

TranTech Engineering, LLC

Tres West Engineers

V+M Structural Design, Inc.

VIA Architecture

Victoria S. Byerly, P.S.

Walker Consultants

WHPacific, Inc.

Wilson Engineering, LLC

WSP (formerly WSP | Parsons Brinckerhoff)

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**CITY OF PORT ORCHARD PUBLIC WORKS DEPARTMENT  
REQUEST FOR Proposals (RFP) – Personal Services**

**Transportation Impact Fee Rate Study Update**

**November 30, 2018**

**INTRODUCTION**

The City of Port Orchard Public Works Department, hereinafter referred to as the City, is inviting proposals from three (3) selected consulting firms on the City's 2018 MRSC Consultant Roster to prepare an update to the City's Traffic Impact Fee Rate Study.

The following subjects are discussed in this Request for Proposals.

- I. Background
- II. Scope of Services
- III. Required Insurance
- IV. Proposal Format and Content
- V. Evaluation Criteria and Selection Process
- VI. Submittal

**I. Background:**

The City needs expertise in preparing an update to its traffic impact fee rate calculation. The City first adopted a traffic impact fee in 2015 based on a traffic impact fee rate study prepared at that time. Included in that report was a recommendation that the rate study and fee calculation be updated every 3 years after adoption. The City seeks to update its impact fee rate study and fee calculation to consider recent changes to the City's transportation plan and changes in construction costs and project estimates. The project will require coordination with City staff and elected officials as well as support through the review and adoption process. The project budget is \$15,000.

**II. Scope of Services:**

- Meet with City Staff and elected officials to determine if any addition projects should be included in the Traffic Impact Fee Rate Study calculation or if the fee calculation approach should be amended.
- Update the 2015 Traffic Impact Fee Rate Study and Appendix A Fee Schedule, Appendix B Comparison of TIF Base Rates.
- Provide technical support through the update and adoption process.
- Complete the project within 120 days of contract award (estimated contract award date 1/22/19)

**III. Required 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:

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 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant 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 \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Employer's Liability each accident \$1,000,000, Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease – Policy Limit \$1,000,000.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant'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 Consultant's insurance and shall not contribute with it.
2. The Consultant'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.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorse to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

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  
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.

**IV. Proposal Format and Content:**

Proposals which do not address the items in this section will be considered incomplete and will be deemed non-responsive by the City.

- A. Letter of Transmittal

- B. Narrative

- 1. Provide brief resumes of the "Principal in Charge" and the key technical personnel to be assigned to this project. Discuss the experience of these persons and relate their experience to this project. Include what portion of this contract would be assigned to each person. (maximum 3 pages)

- 2. Discuss your resources, qualifications, experience, and ability to meet the time constraints of the proposed work. (maximum 3 pages)

- C. References

Provide names and telephone numbers of at least three references willing to attest to your firm's ability to complete this project on time and within budget. (maximum 1 page)

- D. Provide a proposed project cost and budget. (maximum 1 page)

- E. Confirmation of Business Organization

On the last page of the proposal, the proposer shall identify the business organization under which it operates (form provided in RFP). Partnerships and joint ventures will list each member's name, address, and business license, tax ID, telephone and fax numbers on a separate sheet of paper attached to the proposal.

**V. Evaluation Criteria and Selection Process**

The basis of award will be to the respondent receiving the most points based on the following criteria:

- A. Proposed project cost. (MAXIMUM 40 POINTS AVAILABLE)
- B. Qualifications of the consultant and firm. (MAXIMUM 15 POINTS AVAILABLE)
- C. Previous project experience on similar projects. (MAXIMUM 15 POINTS AVAILABLE)

- D. Knowledge of City’s transportation plan, transportation issues, and impact fee rate study. (MAXIMUM 15 POINTS AVAILABLE)
- E. Previous municipal work experience. (MAXIMUM 5 POINTS AVAILABLE)
- F. Capability of performing work and meeting required timelines. (MAXIMUM 5 POINTS AVAILABLE)
- G. Response of references. (MAXIMUM 5 POINTS AVAILABLE)

**VI. Submittal**

**Two copies of the proposal (one .pdf copy for email submittals) are due to the City of Port Orchard Department of Public Works Office prior to 2:00 p.m. on Monday, December 17, 2018.** Proposals may be hand-delivered, mailed, delivered by courier or e-mailed.

Submittal Address: City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366  
Attention: Public Works Department  
(360) 876-4991  
(360) 876-4980 fax  
Email: [publicworks@cityofportorchard.us](mailto:publicworks@cityofportorchard.us)  
Subject: **Transportation Impact Fee Rate Study Update**

All proposals should be clearly marked on the outside of the envelope with the subject line **“Transportation Impact Fee Rate Study Update.”**

Any copies should be duplex printed, and not use plastic or non-recyclable covers or bindings.

Inquiries regarding the RFP can be directed to Mark Dorsey, P.E., Public Works Director/City Engineer, at the address and phone number noted above.

Before receiving an award, the successful proposer will be required to provide the City of Port Orchard with copies of their current State of Washington and City of Port Orchard business licenses and Certificates of Insurance.

A committee of individuals to be selected by the City of Port Orchard Public Works Department will perform evaluation of the proposals. The proposals will be scored and ranked based on the selection committee’s evaluation. In the event of close scoring, a shortlist interview may be performed. The firm with the highest cumulative score will be invited to enter into contract negotiations. If an agreement cannot be reached, the second highest proposer may be contacted for negotiations. The City reserves the right to award the contract to the highest ranked firm without further discussions.

It is anticipated that contract approval will occur on January 22, 2018.

**QUALIFICATIONS**

**CITY OF PORT ORCHARD, WASHINGTON**

**Transportation Impact Fee Study Update 2018**

Identification of Business Organization:

The firm, by checking the applicable box, represents that it operates as:

a corporation incorporated under the laws of the State of Washington

an individual doing business as \_\_\_\_\_

a partnership (identify all partners on a separate page, attached)

a joint venture (identify all joint ventures on a separate page, attached)

other (please specify) \_\_\_\_\_

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
City of Port Orchard Business License #

\_\_\_\_\_  
Address of Proposer

\_\_\_\_\_  
Tax ID #

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Facsimile Number

\_\_\_\_\_  
Signature Name and Title (Print)

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**City of Port Orchard**

216 Prospect Street, Port Orchard, WA 98366  
(360) 876-4407 • FAX (360) 895-9029

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**Agenda Staff Report**

Agenda Item No.: Business Item 7E  
Subject: Approval to Allow the Placement of Public  
Art on Utility Equipment in the Right-of-  
Way

Meeting Date: February 12, 2019  
Prepared by: Nick Bond  
Development Director  
Atty Routing No: N/A  
Atty Review Date: N/A

**Summary:** The City received a request from Julie Benson to install a graphic wrap on two electrical boxes located within the right of way near Bay Street and Sidney. The graphics that are proposed are shown in the attached email. The City reached out to WSDOT to see if this would be allowed and WSDOT granted approval pending the submittal of a general permit application to allow the installation. Council is asked to consider whether this public art display should be allowed.

**Recommendation:** Staff recommends that the City Council make a motion to authorize the placement of public art as proposed in the attached documents, contingent on the city obtaining a WSDOT General Permit and on adherence to any conditions of that permit.

**Relationship to Comprehensive Plan:** N/A

**Motion for Consideration:** "I move to authorize the placement of public art as proposed, contingent on the City obtaining a WSDOT General Permit and on adherence to any permit conditions."

**Fiscal Impact:** A WSDOT General Permits as a \$2.50 application fee.

**Alternatives:** Do not approve the placement of public art as proposed.

**Attachments:** Email showing the public art proposal.

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**From:** [Severson, Dale](#)  
**To:** [Mark Dorsey](#)  
**Cc:** [Nick Bond](#); [Kim, Steve](#); [Newman, Jim](#); [Herland, Perry](#); [Heusman, Jonathan](#); [Nick Bond](#); [Rob Putaansuu](#)  
**Subject:** RE: SR 166 Public Art proposal for WSDOT Signal Controller Cabinet  
**Date:** Wednesday, February 6, 2019 7:15:11 AM  
**Attachments:** [image004.png](#)  
[image005.png](#)

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Hi Mark,

Just to clarify are the pictures you're considering the two shown below? Or is that just an example?

Dale



Sidney Street, Port Orchard, WA



Sidney & Bay Street, Port Orchard, WA



Port Orchard, 1920



Washington State Flower

**From:** Mark Dorsey <[mdorsey@cityofportorchard.us](mailto:mdorsey@cityofportorchard.us)>  
**Sent:** Tuesday, February 5, 2019 6:24 PM  
**To:** Severson, Dale <[SeversD@wsdot.wa.gov](mailto:SeversD@wsdot.wa.gov)>



Sidney Street, Port Orchard, WA



Sidney & Bay Street, Port Orchard, WA



Port Orchard, 1920



Washington State Flower  
Coastal Rhododendron



**Cc:** Keri Sallee <[kSallee@cityofportorchard.us](mailto:kSallee@cityofportorchard.us)>

**Subject:** FW: Public Art proposal for WDOT

I know we discussed this previously, but did we ever determined how to process these requests? I think the proposal is solid and complete. If Dale at WSDOT is good with this, I think it could go straight to Council. Thoughts?

Nick

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**From:** Julie Benson <[jmbenson2001@yahoo.com](mailto:jmbenson2001@yahoo.com)>

**Sent:** Monday, January 28, 2019 4:50 PM

**To:** Nick Bond <[nbond@cityofportorchard.us](mailto:nbond@cityofportorchard.us)>

**Subject:** Public Art proposal for WDOT

Hi Nick,

Please review this public art proposal for WDOT regarding traffic box on Sidney Street Port Orchard.

Let me know if you have any questions or suggestions for changes

Thanks much

Julie Benson

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**City of Port Orchard  
Council Meeting Minutes  
Regular Meeting of January 22, 2019**

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**1. CALL TO ORDER AND ROLL CALL**

Mayor Pro-Tem Ashby called the meeting to order at 6:30 p.m.

Roll call was taken by the City Clerk as follows:

Mayor Pro-Tem Ashby	Present
Councilmember Chang	Present
Councilmember Clauson	Present
Councilmember Cucciardi	Absent
Councilmember Diener	Present
Councilmember Lucarelli	Present
Councilmember Rosapepe	Present
Mayor Putaansuu	Absent

Staff present: Public Works Director Dorsey, Finance Director Crocker, City Attorney Cates, HR Coordinator Howard, City Clerk Rinearson, and Deputy City Clerk Floyd.

**A. PLEDGE OF ALLEGIANCE**

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

**2. APPROVAL OF AGENDA**

**MOTION:** By Councilmember Rosapepe, seconded by Councilmember Clauson, recommends approval of the agenda with an added item that after number 6, public hearing, and between the business items, to add a collective bargaining.

**The motion carried.**

**MOTION:** By Councilmember Clauson, seconded by Councilmember Diener, to approve the agenda as amended.

**The motion carried.**

**3. CITIZENS COMMENTS**

There were no citizen comments.

**4. CONSENT AGENDA**

- A. Approval of Check Nos. 76020 through 76057 totaling \$832,945.06; and Bi-Weekly Payroll including Check Nos. 148114 through 148116 totaling \$295,730.19.
- B. Excusal of Councilmember Cucciardi Due to Business Obligations

**MOTION:** By Councilmember Clauson, seconded by Councilmember Lucarelli, to approve the consent agenda as presented.

**The motion carried.**

**5. PRESENTATION**

There were no presentations.

**6. PUBLIC HEARING**

There were no public hearings.

**NEW ITEM:** Collective Bargaining Session pursuant to RCW 42.30.140.

**7. BUSINESS ITEMS**

- A. Adoption of an Ordinance Ratifying the Collective Bargaining Agreement with Teamsters Local No. 589 Representing the Police Support Staff Employees**

**MOTION:** By Councilmember Clauson, seconded by Councilmember Diener, to adopt an Ordinance ratifying the terms of the Collective Bargaining Agreement with the Teamsters Local 589 representing the Police Support Staff Employees' bargaining unit and authorize the Mayor to execute the same.

**The motion carried.**  
**(Ordinance No. 004-19)**

- B. Adoption of an Ordinance to Waive Utility Late Fees and Penalties and to Make Alternative Utility Payment Arrangements**

**MOTION:** By Councilmember Lucarelli, seconded by Councilmember Clauson, to adopt an ordinance delegating authority to the Finance director to waive utility late fees, penalties, and/or disconnection charges, and to make alternative utility payment arrangements in accordance with the listed criteria, as presented.

**The motion carried.**

**(Ordinance No. 005-19)**

**C. Adoption of a Resolution Approving the Revised Salary for the Recruitment of a New Police Chief**

HR Coordinator Howard and Mayor Pro-Tem Ashby explained proposed changes to language in the resolution and motion.

**MOTION:** By Councilmember Chang, seconded by Councilmember Clauson, to adopt a resolution, approving the revised top salary increase to \$155,000 for the recruitment of a new Police Chief, thereon, as presented.

**The motion carried.  
(Resolution No. 004-19)**

**D. Adoption of a Resolution Approving an Interlocal Agreement with the Port of Bremerton for Human Resources Services**

**MOTION:** By Councilmember Diener, seconded by Councilmember Lucarelli, to adopt a resolution authorizing the Mayor to execute an interlocal agreement between the Port of Bremerton and the City of Port Orchard for temporary human resource services.

**The motion carried.  
(Resolution No. 005-19)**

**E. Adoption of a Resolution Approving a Contract with Neptune Marine LLC for the Rockwell Pocket Park Improvement Project and Document Procurement Procedures**

**MOTION:** By Councilmember Lucarelli, seconded by Councilmember Clauson, to adopt a resolution, thereby approving Contract No. C008-19 with Neptune Marine LLC in an amount not to exceed \$412,848.67 (applicable taxes included) for the Rockwell Pocket Park Improvement Project.

**The motion carried.  
(Resolution No. 006-19)**

**F. Approval of the January 8, 2019, Council Meeting Minutes**

**MOTION:** By Councilmember Diener, seconded by Councilmember Chang, to approve the minutes as presented.

**The motion carried. Councilmember Clauson abstained.**

## **8. REPORTS OF COUNCIL COMMITTEES**

After a brief discussion, Finance Director Crocker noted he will verify if the Finance Committee will be meeting on February 19<sup>th</sup>.

Mayor Pro-Tem Ashy reported the Economic Development and Tourism Committee is scheduled to meet February 11<sup>th</sup>. She also spoke to the status of the single use plastic bag ordinance.

Councilmember Lucarelli reported on the January 14<sup>th</sup> Chimes & Lights committee meeting. The next meeting is scheduled for February 27<sup>th</sup>. She reported the Utilities Committee is also scheduled for February 27<sup>th</sup>. She reported on the January 16<sup>th</sup> Sewer Advisory Committee meeting with the next meeting scheduled for April 17<sup>th</sup> at the South Kitsap Water Reclamation Facility SKWRF.

Councilmember Diener reported the Land Use Committee is scheduled to meet January 28<sup>th</sup>.

Councilmember Rosapepe reported on the Kitsap Transit meeting held today.

## **9. REPORT OF MAYOR**

There was no report of the Mayor.

## **10. REPORT OF DEPARTMENT HEADS**

Public Works Director Dorsey reported on the Rockwell Pocket Park; McCormick Village Park; Well No. 9; and the Tremont Widening Project.

HR Coordinator reported on the Office Assistant II position which closes on Friday and gave a report on the current recruitment process for police and public works positions.

City Clerk Rinearson said she received texts from CHI Franciscan regarding the Tremont Widening Project which helps notify people about the traffic delays and detours.

## **11. CITIZENS COMMENTS**

**Gerry Harmon** finds it upsetting that things get started in government and there is no reevaluation as to why it got started. She voiced her concerns with the \$0.10 cents per bag proposal.

## **12. EXECUTIVE SESSION**

There was no executive session.

**13. ADJOURNMENT**

The meeting adjourned at 7:29 p.m. No other action was taken. Audio/Visual was successful.

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Brandy Rinearson, MMC, City Clerk

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Mayor Pro-Tem Bek Ashby

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