



**REVISED**

## City of Port Orchard Council Meeting Agenda

June 11, 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:** Development Director

Jay Rosapepe  
ED/Tourism/LT Committee  
Utilities Committee  
Sewer Advisory Committee (SAC)  
KRCC-alt / KRCC TransPol-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 Vouchers and Electronic Payments

B. Approval of Payroll and Direct Deposits

C. Approval of the May 21, 2019, Council Word Study Meeting Minutes  
**Page 3**

D. Approval of the May 28, 2019, Council Meeting Minutes **Page 7**

E. Approval of a Contract with the Port Orchard Independent as the City's Official Newspaper (Rinearson) **Page 13**

F. Excusal of Councilmember Ashby Due to Personal Obligations

### 5. PRESENTATION

### 6. PUBLIC HEARING

### 7. BUSINESS ITEMS

A. Adoption of an Ordinance Extending Term of the Mixed Use Pilot Program (Bond) **Page 17**

B. Approval of Addendum No. 2 to Contract No. 053-18 with Waterman Investment Partners, LLC, for the Real Estate Purchase and Sale Agreement for 640 Bay Street (Cates) **Page 47**

### 8. DISCUSSION ITEMS (No Action to be Taken)

### 9. REPORTS OF COUNCIL COMMITTEES

### 10. REPORT OF MAYOR

### 11. REPORT OF DEPARTMENT HEADS

### 12. 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)

**13. EXECUTIVE SESSION:** Pursuant to RCW 42.30.110, the City Council **will hold** an executive session regarding potential litigation. The session duration will be announced prior to the executive session.

**14. ADJOURNMENT**

<b>COMMITTEE MEETINGS</b>	<b>Date &amp; Time</b>	<b>Location</b>
Finance	TBD	City Hall
Economic Development and Tourism	July 8, 2019; 9:30am	City Hall
Utilities	June 17, 2019; 9:30am	City Hall
Sewer Advisory	August 14, 2019; 6:30pm	City Hall
Land Use	July 1, 2019; 9:30am	DCD*
Lodging Tax Advisory	TBD	City Hall
Festival of Chimes & Lights	August 19, 2019; 3:30pm	City Hall
Outside Agency Committees	Varies	Varies

\*DCD, Department of Community Development, 720 Prospect Street, Port Orchard

**CITY COUNCIL GOOD OF THE ORDER**



**City of Port Orchard  
Council Meeting Minutes  
Work Study Session Meeting of May 21, 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: Community Development Director Bond, City Attorney Cates, and Office Assistant II Whisenant.

**Pledge of Allegiance**

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

**1. Status of DCD Work Plan and Comprehensive Plan Implementation**

Community Development Director Bond presented an update on the 2019 departmental work plan among the Community Development and Public Works departments. Stating this is a way to make sure we are implementing our goals and policies and that they are in line with our Comprehensive Plan. He shared that in reviewing the list, most of the items have been addressed in some way or another. With that, staff has initiated the subarea planning for the Sidney-Sedgwick local center and is working with the County on the County-wide Buildable Lands Monitoring program. It was mentioned that some goals need funding, and some need more clarification or removed as it is not clear as to what was intended when they were created.

Councilmembers, Mayor and staff discussed goals identified in the historic waterfront overlay district, park and ride facilities, and cleanup of homeless camps.

Community Development Director Bond spoke to the 2020-2021 Work Plan, mentioning the annual Comprehensive Plan Amendment, Master Shoreline Program, and Parks Plan update are on the docket.

Mayor Putaansuu stated he provided a letter to the Public Utilities District regarding the City's role and necessary steps for the potential community events center project. If the community center happens, we will want it part of our parks plan.

In continuing with the 2020-2021 Work Plan discussion, Community Development Director Bond said their continuing to work on Centers Plan, Bethel-Sedgwick Design, McCormick Woods projects and development, Downtown Redevelopment Plans, Traffic Impact Fee Study, permitting software challenges, zoning ordinance updates, and working with the County on various projects including trying to get a joint planning agreement. The Public Works department is working on updating all their system plans.

At PSRC, the Vision 2050 is taking shape and in the process of updating the Multi-family County-wide planning policies. At KRCC, we are doing the County-wide planning policies centers work and will be talking about growth allocations for all the cities. Sounds like Bainbridge, Poulsbo, and Port Orchard will be splitting about 30,000 people over the 20-year planning period. It was mentioned that Kitsap County wants more growth than allocated.

**Council Direction:** Bring to a Land Use Committee to review and cleanup Comprehensive Plan goals.

## **2. Plastic Bag Reduction**

Mayor Putaansuu went over the highlights of the State's bill regarding the plastic bag ban.

Councilmembers and Mayor discussed the State's proposal, allowing merchants to make decisions on the charge for the plastic bag use, partnering with Kitsap County for outreach, and the next steps to move this item forward within the city and timeframes to implement.

**Council Direction:** Bring forward to the June Work Study and have staff invite County to participate and provide an update on their efforts.

## **3. Downtown Parking**

Mayor Putaansuu asked Council for their thoughts on downtown parking.

Councilmembers and Mayor discussed individual experiences with parking downtown, expressed concerns with the amount of available paid parking stalls, discussed the different parking needs between business patrons, merchants, and commuters, the request from POBSA on the impact to

their patrons, merchants parking habits, education to merchants and the public on other parking and commuter options, parking costs, surveying to see where commuter parking is needed, parking hours and locations, and carpooling incentives.

**Council Direction:** Revisit topic after Kitsap Transit outreach and gauge impacts with new business locations.

**4. Community Service Day**

Mayor Putaansuu presented on the Community Service Day and expressed his gratitude to over 250 volunteers that came out and helped. The cleanup sites were at VanZee Park, McCormick Village Dog Park, Cedar Heights Middle School, South Kitsap High School, Beach cleanup, Etta Turner Park, Bay Street Pedestrian Pathway, Marina Park grandstands, Boat Launch, and Bay Street flowers. The volunteers were from the Church of Latter-Day Saints, Rotary, Kitsap Bank, and other members of the community. Other participants were Port Orchard Bay Street Merchants, Port of Bremerton, City of Port Orchard staff and Council, and South Kitsap School District.

**Council Direction:** No direction was given.

**OTHER ITEMS DISCUSSED:**

Mayor Putaansuu gave an update on the near completion status of the Rockwell Park, and needing to schedule a ribbon cutting with the City's delegation. Informed of presentations that will be at next week's council meeting. Finance Committee supportive of separating the Utilities/Facilities Operations Manager role into two positions and will bring forward at next week's council meeting.

Councilmembers discussed a couple concerns of property appearances and the Public Works Spring Cleanup Week.

**ADJOURNMENT**

The meeting adjourned at 8:03 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  
Council Meeting Minutes  
Regular Meeting of May 28, 2019**

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**1. CALL TO ORDER AND ROLL CALL**

Mayor 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: Public Works Director Dorsey, Human Resource Coordinator Lund, City Attorney Cates, City Clerk Rinearson and Office Assistant II Whisenant.

**A. PLEDGE OF ALLEGIANCE**

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

**2. APPROVAL OF AGENDA**

**MOTION:** By Councilmember Ashby, seconded by Councilmember Lucarelli, to accept the agenda as presented.

The motion carried.

**3. CITIZENS COMMENTS**

There were no citizen comments.

**4. CONSENT AGENDA**

- A. Approval of Voucher Nos. 76766 through 76850 including bank drafts in the amount of \$862,897.09 and Electronic Payments in the amount of \$252.00 totaling \$862,645.09.
- B. Approval of Payroll Check Nos. 76757 through 75759, including bank drafts and EFT's in the amount of \$129,206.71; and Direct Deposits in the amount of \$183,717.20 totaling \$312,923.91.

**MOTION:** By Councilmember Cucciardi, seconded by Councilmember Diener, to approve the consent agenda as presented.

**The motion carried.**

## **5. PRESENTATION**

### **A. Kitsap County Block Grant Program**

Mayor Putaansuu introduced Kitsap County's Human Services Block Grant Manager, Bonnie Tufts.

Ms. Tufts explained the Block Grant Program, jurisdictions involved and the funding process.

Mayor Putaansuu explained the difference in a misunderstanding on filing fee dollars versus the Block Grant Program.

Councilmembers discussed with Ms. Tufts; council involvement, Port Orchard apartments, and income levels.

### **B. Lobbyist Legislative Post Session Briefing**

Mayor Putaansuu introduced Lobbyist Josh Weiss, with Gordon Thomas Honeywell.

Mr. Weiss gave an update on the Legislative Session turned out, and that Port Orchard did have a successful session. Detailed the three components; Operating, Capital, and Transportation budgets.

The City's legislative priorities were:

- McCormick Sewage Lift Station #2
- Sedgwick Roundabouts
- Economic Development Tools
- Condominium Liability Reform
- Foster Pilot Program

Mr. Weiss explained that Port Orchard was very engaged in the session. Informed of the status of the different budgets, city's legislative priorities, bills not passed to be reviewed next biennium, and the continued lobbying efforts.

Mayor Putaansuu discussed future needs for the City such as the community center, pedestrian path, and infrastructure projects.



Mr. Weiss and councilmembers also discussed the status of the plastic bag ban and accessory dwelling units Bill that were presented at session.

## **6. PUBLIC HEARING**

There were no public hearings.

## **7. BUSINESS ITEMS**

### **A. Adoption of an Ordinance Confirming the Appointment of Matthew Brown to Chief of Police**

**MOTION:** By Councilmember Diener, seconded by Councilmember Clauson, to adopt an Ordinance to confirm Mayor Putaansuu's appointment of Matthew Brown to the position of Chief of Police, effective July 8, 2019.

**The motion carried.  
(Ordinance No. 016-19)**

### **B. Adoption of an Ordinance Approving an Employment Agreement with Matthew Brown as the City's Chief of Police**

**MOTION:** By Councilmember Clauson, seconded by Councilmember Rosapepe, adopt an ordinance approving the Chief of Police Employment Agreement with Matthew Brown, effective May 28, 2019; with the first day of employment being July 8, 2019 and authorizing the Mayor to execute the agreement.

**The motion carried  
(Ordinance No. 017-19)**

### **C. Adoption of an Ordinance Authorizing a Utility Manager and a Public Works Operations Manager**

**MOTION:** By Councilmember Lucarelli, seconded by Councilmember Diener, to adopt an Ordinance which adds two positions and eliminates one in the Public Works Department. This restructuring will enable the Public Works Department to better manage its resources and help to fulfill the department's mission of providing quality public works and facilities.

**The motion carried.  
(Ordinance No. 018-19)**

**D. Adoption of a Resolution Sponsoring Peninsula Regional Transportation Planning Organization (PRTPO) Membership into the Associations of Washington Cities (AWC) Risk Management Service Agency (RMSA)**

**MOTION:** By Councilmember Ashby, seconded by Councilmember Cucciardi, to adopt a resolution sponsoring from the Peninsula Regional Transportation Planning Organization's membership into the Association of Washington Cities (AWC) Risk Management Service Agency (RMSA).

**The motion carried.  
(Resolution No. 014-19)**

**E. Approval of the May 14, 2019, City Council Meeting Minutes**

**MOTION:** By Councilmember Clauson, seconded by Councilmember Lucarelli, to accept the May 14, 2019, City Council minutes as presented.

**The motion passed. Councilmember Diener abstained.**

**8. DISCUSSION ITEMS (No Action to be Taken)**

**A. Marina Pump Station Update**

Public Works Director Dorsey gave an update on the Marina Pump Station and the alternative options with multiple variations. Taking some time to work through a few more details and hone in on a preferred alternative.

**9. REPORTS OF COUNCIL COMMITTEES**

Councilmember Clauson reported on the May 21<sup>st</sup> Finance Committee meeting.

Councilmember Ashby reported the Economic Development and Tourism Committee is scheduled to meet June 10<sup>th</sup>.

Councilmember Lucarelli reported the Utilities Committee is scheduled to meet June 17<sup>th</sup>. She reported the Sewer Advisory Committee is scheduled to meet August 14<sup>th</sup> at City Hall. She reported next meeting for Chimes and Lights Committee is August 14<sup>th</sup>.

Councilmember Diener reported the next Land Use Committee meeting is scheduled for July 1<sup>st</sup>.

Councilmember Rosapepe reported the next Lodging Tax Advisory Committee meeting is to be determined.

Mayor Putaansuu reported on Housing Kitsap.

## **10. REPORT OF MAYOR**

The Mayor reported on the following:

- Federal Transportation Grants for lighting and sidewalks for downtown and Salmonberry roundabout, but need to have designs completed to apply for grants;
- June 14<sup>th</sup> Ribbon Cutting for Rockwell Park at [2:30] p.m.;
- Attending AWC Annual Conference;
- Will not be attending last council meeting in June;
- Affordable Housing Committee requesting to adopt an emergency declaration;
- Planning Commissioner Marcus Lane notified out of compliance and the City's next steps; and
- Request for memorialized benches and parks and potentially working with nonprofits.

## **11. REPORT OF DEPARTMENT HEADS**

Public Works Director Dorsey reported on the past weekend's use of the new McCormick Woods Water Park and the Bay Street Pedestrian Pathway Segment #3. Final paving for Tremont Street Project now to be completed in June, instead of July, and road closure traffic impacts.

## **12. CITIZEN COMMENTS**

**Patty Lemley**, President of Givens Senior Center, came to request involvement by the City Council. Informed of the growth the center is experiencing. Expressed that the center would like to be open every day but would need a part-time position to answer phones and manage website.

Mayor Putaansuu informed that the City is working towards a community center project, which could potentially include a dedicated area for Seniors. Encouraged the organization be engaged in the process for the community center project.

**Gerry Harmon** stated that there is a disconnect on what is low income and the available HUD housing facilities.

## **13. EXECUTIVE SESSION**

At 7:40 p.m., Mayor Putaansuu recessed the meeting for a 10-minute executive session to discuss a potential litigation matter pursuant to RCW 42.30.110(1)(i) and a 10-minute executive session to discuss a real estate matter RCW 42.30.110(1)(b) City Attorney Cates was invited to attend.

At 8:00 p.m. Mayor Putaansuu reconvened council back into regular session.

**14. ADJOURNMENT**

The meeting adjourned at 8:00 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



## 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>Consent Agenda 4E</u>	Meeting Date:	<u>June 11, 2019</u>
Subject:	<u>Approval of a Contract with the Port Orchard Independent as the City's Official Newspaper</u>	Prepared by:	<u>Brandy Rinearson, MMC City Clerk</u>
		Atty Routing No:	<u>N/A</u>
		Atty Review Date:	<u>N/A</u>

**Summary:** RCW 35A.40.210 and 35.23.352(7) requires each city or town designate an Official City Newspaper of general population less than 20,000. The newspaper shall be of general circulation within the city or town and shall have been published regularly, at least once a week. Request for Newspaper Publication Services was published on May 24<sup>th</sup> and May 31<sup>st</sup>, with bids being received by 4:00pm, Thursday, June 6, 2019.

The City received the following bid:

<b>Port Orchard Independent:</b>	
Cost per single column inch	\$2.40
Cost per additional line	\$0.24
Width of column in inches	1.078"
Circulation Numbers:	
City of Port Orchard (within city limits)	4,106
South Kitsap Urban Growth Area	12,902

**Relationship to Comprehensive Plan:** N/A

**Recommendation:** Staff recommends authorizing the Mayor to execute a contract with Port Orchard Independent as the City's Official Newspaper, as they are the lowest and only responsive bidder.

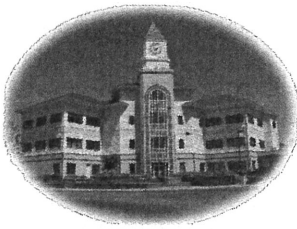
**Motion for consideration:** I move to authorize the Mayor to execute an agreement with Port Orchard Independent as the City's Official Newspaper as presented.

**Fiscal Impact:** Funds have been designated for publications as part of the 2019/2020 Biennial Budget.

**Alternatives:** None.

**Attachments:** Contract and bid documents.

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

**BID AND CONTRACT DOCUMENT**

The City of Port Orchard, upon award, will sign the document and return one copy to the successful bidder; that will become the contract between the City and the Newspaper. All documents referenced therein become part of the contract by their reference.

**The bidder understands that the bid includes:**

1. For the purposes of publication verification, a subscription to the newspaper printed by the successful bidder at no cost to the City.
2. Affidavit of publication for each item published at no cost to the City.
3. The City will not pay for any ad which is improperly run. The successful bidder will re-run an improperly run ad at its expense.
4. The successful bidder shall furnish an itemized statement of the City's account monthly, listing the invoice number, item(s) published, and the total amount of each invoice.
5. Bidder must fill in all spaces. Bids must be submitted on this form:
  - a. Cost per single column inch      \$ 2.40
  - b. Cost for addition line              \$ .24
  - c. Width of column in inches          1.028"
6. Provide the circulation numbers within City limits, as well as inside the South Kitsap Urban Growth Area :
 

Circulation Number within City Limits: 4,106

Circulation Number within the South Kitsap Urban Growth Area: 12,902
7. Term: Bid shall be for the period of July 1, 2019 through June 30, 2020.

8. The City of Port Orchard reserves the right to reject any or all proposals in its sole discretion.

The undersigned states that he or she is authorized to submit a bid on behalf of the corporation, partnership, or sole proprietorship listed below and further states that the corporation, partnership, or sole proprietorship is bound by the above offer.

Legal Newspaper: Port Orchard Independent  
Print/Type Name of Newspaper

Steve Perry General Manager 5/24/19  
Signature Title Date

Steve Perry  
Print/Type Signature Name

2497 Bethel Rd. SE #102 Port Orchard WA 98366  
Business Street Address City State Zip

(360) 876-4414 (360) 779-4414 legal@soundpublishing.com  
Phone No. Fax No. Email

The following is to be completed if the bid has been awarded by the Port Orchard City Council:

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

ATTEST:

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

DATED: \_\_\_\_\_

APPROVED AS TO FORM

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





**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 7A</u>	Meeting Date:	<u>June 11, 2019</u>
Subject:	<u>Adoption of an Ordinance Extending Term of Mixed Use Pilot Program</u>	Prepared by:	<u>Nick Bond Development Director</u>
		Atty Routing No.:	<u>N/A</u>
		Atty Review Date:	<u>N/A</u>

**Summary:** In November 2017, the City Council adopted Ordinance 046-17 to establish its mixed use pilot program to promote transit oriented mixed-use development in the City’s downtown and local centers in accordance with its Comprehensive Plan goals and policies. The MUPP term was established as April 2, 2018 through June 30, 2019 to allow time for development agreements to be submitted under the terms of the program. However, City staff has determined that the length of this term has not been sufficient to allow for such development agreements to be submitted, and is now proposing that the term of the MUPP be extended for an additional calendar year. Attached is a proposed Ordinance to effectuate this extension.

**Recommendation:** Staff recommends adoption of an ordinance to extend the mixed use pilot program to June 30, 2020, as presented.

**Relationship to Comprehensive Plan:** N/A

**Motion for consideration:** “I move to adopt an ordinance to extend the mixed use pilot program to June 30, 2020 as presented.”

**Fiscal Impact:** None anticipated.

**Alternatives:** Do not adopt ordinance.

**Attachments:** Ordinance 046-17 (establishing MUPP) and Ordinance to extend MUPP term.

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**ORDINANCE NO. 046-17**

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON,  
ESTABLISHING A MIXED-USE PILOT PROGRAM AND  
DEVELOPMENT REGULATIONS, PROVIDING FOR SEVERABILITY  
AND PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, the City desires to promote transit oriented mixed-use development in its downtown and local centers in accordance with the Comprehensive Plan goals and policies; and

**WHEREAS**, a pilot program can provide the city with examples of mixed use projects and proof of concept for the viability of mixed use development in Port Orchard; and

**WHEREAS**, Port Orchard has not seen a mixed use (residential over commercial) project developed locally since the passage of the growth management act in 1991; and

**WHEREAS**, mixed-use development is currently allowed in the City's existing mixed-use (permitted outright) and commercial zones (permitted by conditional use permit); and

**WHEREAS**, Port Orchard has had zoning in place allowing for mixed-use development for more than 15 years; however, these regulations have not yielded any mixed-use projects despite significant residential growth within the city; and

**WHEREAS**, anecdotal evidence suggests that the existing development regulations and zones in which mixed-use development would be allowed do not produce economically viable mixed-use projects and are barriers to mixed use development. (For instance, in some areas of the city, the code allows a 55-foot building and 100% lot coverage but doesn't allow a sufficient residential density to fill the upper stories of the building with residential dwellings of a typical square footage.); and

**WHEREAS**, the 2016 Port Orchard Comprehensive Plan and Kitsap County Countywide Planning Policies call for the City of Port Orchard to accommodate an additional 8,235 people and 3,132 additional jobs (over the period from 2010-2036); and

**WHEREAS**, Port Orchard is growing at a rate slightly below its population allocation as expressed in a linear projection; and

**WHEREAS**, Port Orchard's Comprehensive Plan calls for 2.1% annual population growth to meet its 2036 population allocation target; however, from 2016-2017, the Office of Financial Management projects that the city only grew at 1.3%; and

**WHEREAS**, Port Orchard's Commercial and Mixed-Use zones are underperforming as it pertains to residential development in support of the city's growth allocation (targets); and

**WHEREAS**, the City's 2016 update to its comprehensive plan included a local centers approach to planning and called for mixed-use development and increased densities within local centers; and

**WHEREAS**, the proposed Mixed-Use Pilot Program implements numerous comprehensive plan policies and goals including:

**Land Use Element Policies and Goals**

- Policy LU-23 Enable land use patterns that allow all residents to safely and efficiently access commercial services, especially grocery stores and healthcare facilities, without an automobile.

**Land Use Element General Center Policies and Goals:**

- Policy CN-5 Support pedestrian and transit uses by promoting compact, mixed-use areas with appropriate infrastructure that provide a variety of activities.
- Policy CN-2 The City should support employment growth, the increased use of non-automobile transportation options, and the preservation of the character of existing built-up areas by encouraging residential and mixed-use development at increased densities in designated Centers. (Centers Goals 1,2,3,4,5,6; Housing, Parks, Economic Development, Transportation, and Capital Facilities Elements)
- Goal 10. Update the existing Downtown Development Regulations (currently known as the Downtown Overlay District) to better define design guidelines, the design review process, and to encourage a balance between historic preservation and redevelopment in accordance with the following purposes:
  - Provide for the development of an integrated mixed use downtown district that contains office, service, retail, residential and recreational uses within close proximity to one another.
- Goal 13. Encourage mixed use development within the Downtown and Gateways.
- Policy CN-19 Encourage residential use above commercial and retail ground floor developments, including incentives and public amenities.
- Goal 14. Encourage facilities that will draw local residents and tourists to Downtown and the Gateways.

**Housing Policies and Goals:**

- Goal 1. Ensure that the City's housing stock responds to changes in desired housing types based on demographic trends and population growth.

- Policy HS-2 Support the development of a variety of housing types, including apartments, townhomes, mixed-use (residential and other uses) and live-work development, small-lot and zero lot line single-family homes, and manufactured homes, as well as traditional single-family homes, through innovative planning, efficient and effective administration of land and building codes, and, where available, applicable financial assistance.
- Goal 2. Ensure that housing is affordable and available to all socioeconomic levels of Port Orchard residents.
- Policy HS-4 Adopt zoning and development regulations that will have the effect of minimizing housing costs and maximizing housing options.
- Goal 3. Encourage the clustering of new housing developments in designated mixed-use Centers where residential uses are co-located with commercial uses
- Policy HS-9 Implement minimum residential density requirements in centers of local importance in order to increase land and infrastructure efficiency.
- Policy HS-10 Encourage the development of vertical multi-family housing above ground floor commercial uses within centers of local importance.
- Policy HS-11 Encourage the development of a mix of housing types within walking and bicycling distance of public schools, parks, transit service, and commercial centers.
- Goal 4. Promote the efficient provision of municipal infrastructure and services to new housing developments.
- Policy HS-12 Require that new housing developments occur concurrently with necessary infrastructure investments.
- Goal 5. Promote the efficient use of residential land in order to maximize development potential.
- Policy HS-14 Implement zoning and development regulations which encourage infill housing on empty and redevelopable parcels.
- Goal 9. Ensure that future residential development protects and maintains natural ecosystems and critical areas, including wetlands, streams, and wildlife habitats.
- Policy HS-26 Prioritize residential growth in centers of local importance.

**Economic Development Policies and Goals:**

- Goal 2. Encourage new commercial development to occur within designated centers of activity near housing, multi-modal transportation connections, and urban services.
- Policy ED-6 The City shall encourage residential and commercial growth in mixed-use local centers where job opportunities and a diverse mix of retail and office activities are concentrated.

- Policy ED-7 The City shall prioritize economic development and redevelopment in local centers.
- Goal 5. Increase residents' ability to enjoy a high quality of life and access to healthy living opportunities, such as locally produced food, nearby grocery stores, parks and open space, and safe streets for walking and bicycling.
- Goal 6. Provide a diverse mix and appropriate range of commercial, industrial, and business park uses within Port Orchard and South Kitsap area that will provide living wage jobs.
- Policy ED 25 The City shall ensure that local mixed-use centers allow for neighborhood scale grocery stores and restaurants to ensure that the City's residents have access to healthy food options.
- Policy ED-27 The City shall, through changes to the land use code, encourage mixed use developments within centers of local importance that will enhance the visual, economic, and environmental quality of these areas and improve the transition between commercial and residential districts;

**WHEREAS**, downtown Port Orchard is a designated local center in the 2016 Comprehensive Plan and as designated in appendix F of the Kitsap County Countywide Planning Policies; and

**WHEREAS**, barriers to mixed-use development have been identified including maximum zoning density that doesn't fit allowable building heights, conflicting height limit measurement methods, height restrictions that don't justify the cost of underground parking, excessive minimum parking standards, a nebulous design review process lacking clear written standards, a conditional use permit process required for both mixed use development in commercial zones and for height bonuses, and numerous and sometimes contradictory overlay districts; and

**WHEREAS**, retail sales patterns resulting from online sales growth and changing generational preferences are disrupting the commercial real estate market; and

**WHEREAS**, the Kitsap County Buildable Lands Report showed a surplus of commercial land within the city limits of Port Orchard; and

**WHEREAS**, the areas targeted under this mixed-use pilot program are currently designated commercial in the comprehensive plan with either a Commercial, Business Professional, or Mixed-use zoning designation; and

**WHEREAS**, in designating areas under this program, the city has identified sites within walking distance of downtown, the Bay Street Pedestrian Pathway (segments 1-6), and the Kitsap Transit Downtown Foot Ferry terminal; and

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**WHEREAS**, the city is not seeking to redevelop the core of downtown Port Orchard (from Frederick to Harrison) under this ordinance, but rather undeveloped and underdeveloped properties near the downtown core which when developed could contribute to downtown economic development and vitality; and

**WHEREAS**, Kitsap County and Port Orchard suffer from a lack of affordable housing; and

**WHEREAS**, increasing the number of available housing units and providing for alternative housing types is one way to increase the supply of affordable housing; and

**WHEREAS**, apartment vacancy rates in Kitsap County remain low at 4.6% countywide and 3.5% in Port Orchard as of January 2017; and

**WHEREAS**, the construction cost of parking represents a significant cost of housing development and rent; and

**WHEREAS**, ground floor retail uses abutting Bay Street are not currently required to provide parking due to the presence of on-street parking within the Bay Street right of way; and uses occupying spaces above the ground floor on sites abutting Bay Street are currently required to provide dedicated off-street parking; and

**WHEREAS**, few opportunities exist in Port Orchard for car-free living to limited transit services and a lack of non-motorized pedestrian facilities; and

**WHEREAS**, the areas identified for mixed-use transit oriented development in this pilot program potentially allow for car free living due to the availability of the new high-speed passenger ferry from Bremerton to Seattle, the Kitsap Transit foot ferry connecting Port Orchard and Bremerton, Kitsap Transit bus services, as well as car sharing services such as Uber and Lyft, zip car, car-to-go which are becoming increasingly available throughout the region; and

**WHEREAS**, transit oriented development and car free living further the city's greenhouse gas emission policies; and

**WHEREAS**, the Port Orchard Chamber of Commerce conducted a downtown parking study and found that there is ample parking available in and around downtown Port Orchard with 926 available parking spaces in the immediate downtown area; and

**WHEREAS**, the City continues to improve pedestrian infrastructure along the waterfront including the construction of the Bay Street Pedestrian Pathway which by 2019 will extend from more than 1 mile along the downtown waterfront and provide accessible connectivity to the Kitsap Transit bus and ferry services; and

**WHEREAS**, the basic building block of a community is the neighborhood; and

**WHEREAS**, a neighborhood is limited in physical size, with a well-defined edge and center; and

**WHEREAS**, a neighborhood should comprise a fine-grained mix of land uses, providing opportunities for all segments of the population to find places to live, shop and be entertained; and

**WHEREAS**, the neighborhood should be based on the distance a person can walk within five minutes from the center to the edge of the neighborhood; and

**WHEREAS**, buildings should be in proportion to human scale; and

**WHEREAS**, infill development has significant advantage to greenfield development and can leverage existing infrastructure; and

**WHEREAS**, dense mixed-use development reduces the financial burden of maintaining public infrastructure and services; and

**WHEREAS**, successful mixed-use projects are needed in Port Orchard to demonstrate project viability and market demand for mixed use retail space and apartments (or condos); and

**WHEREAS**, a SEPA Determination of Non-Significance was issued on this proposed ordinance on October 20, 2017; and

**WHEREAS**, the City submitted a request for expedited review of the proposed ordinance to the Department of Commerce on October 17, 2017; and

**WHEREAS**, the Planning Commission held a public hearing on this proposed ordinance on November 7, 2017 and voted to recommend that the City Council of Port Orchard approve the proposed mixed-use pilot program and adopted the above whereas statement as findings in support of their recommendation; now, therefore,

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

**SECTION 1.** The City Council hereby adopts the above recitals as findings in support of this ordinance.

**SECTION 2.** An alternative set of development regulations known as the Transit Oriented



Mixed-Use Pilot Program is hereby adopted to read as follows:

**Transit Oriented Mixed-Use Development Pilot Program**

1. Purpose. To promote transit oriented form based mixed-use development near downtown Port Orchard and the City's passenger ferry terminal, while ensuring that such development demonstrates high quality building and site design that enhances the downtown business environment while complementing existing downtown development. In addition, the Pilot Program is intended to develop a body of successful, well-regarded examples of mixed-use buildings to inform a later Council decision whether to finalize and/or refine development regulations and design standards for future mixed-use projects in Port Orchard.

2. Term. The Pilot Program shall commence on the effective date, April 2, 2018. Applications for development agreements to be submitted under the terms of this program shall not be accepted until both of the following dates have occurred: 1) the effective date of this ordinance; and 2) the effective date of the new architectural and site design standards applicable to mixed use development, which standards are still under development as of the date of adoption of this ordinance. The Pilot Program shall expire and its effectiveness shall cease on June 30, 2019, or, once the city has received development agreement applications for the construction of 200 residential dwelling units under the terms of this program, whichever occurs first. Once an application for a development agreement submitted under the terms of this program has been submitted, that application and development agreement and any needed project approval(s) may continue to be processed accordingly even if the effectiveness of the pilot program has ceased. Once the City has received a counter complete application for a project that would yield the 200<sup>th</sup> dwelling unit under the terms of this program, no additional applications submitted pursuant to this chapter may be accepted and any applications submitted under this pilot program after that threshold is reached shall be added to a waitlist. The project application that proposes the 200<sup>th</sup> dwelling unit as described herein, may propose a number of dwelling units that causes the total number of units proposed under this program to exceed 200 units, but may not cause the total number of units proposed under the pilot program to exceed 250 dwelling units under any circumstances. (For instance, if development agreement applications for 3 projects totaling 175 units have been accepted, a 4th project could be accepted bringing to total number of units allowed under the program to 230 units. While the city seeks 200 units to be constructed under this program, the city wishes to be flexible (allowing up to 250 total units) to ensure project viability.) If a development agreement application is rejected, substantially modified, withdrawn, or deemed withdrawn due to lack of responsiveness on the part of the applicant, that application may be replaced with the next application on the waitlist.

**3. Submittal of Development Agreement Application and Development Agreement Approval Required.**

**A. A development agreement substantially similar to the form attached to this ordinance as Exhibit A shall be required as a prerequisite to participation in this program. The development agreement shall reserve any requested and available residential capacity as allowed under this program as described in Section 2 and include a provision requiring that a counter complete building permit application submitted pursuant to this program be submitted within one year of the date of development agreement approval.**

**B. Development agreement application window and selection process. The City shall accept development agreement applications pursuant to this program during an initial application window that begins on the effective date and ends on April 30, 2018. During the initial application window, if development agreement applications for fewer multifamily dwelling units than allowed under this program are received, then the applications will be processed on a first-come first-serve basis and any subsequent applications submitted will be processed on a first-come first-serve basis. If development agreement applications totaling more than 250 units are submitted during the initial application window, then the city will utilize the competitive selection process described in Section 15 of this chapter to determine which applications will be selected for processing. In such a case, the city will not accept any additional development agreement applications under this program.**

**C. Additional development agreement application requirements. Regardless of whether the pilot program is administered on a first-come first-serve basis or through a competitive process as derived in Section B above, the following materials shall be submitted with an application for a development agreement:**

**i. A site plan.**

**ii. Building elevations of all sides.**

**iii. A massing study which shows a three-dimensional axonometric view of the structure from at least 4 vantage points (the four corners of a 4-sided building) and also shows all other buildings, above-ground structures, and roadways within at least 300 feet of the project boundaries. See an example of a massing study in Figure 1 below.**

**iv. A minimum 24x36 inch color project rendering showing the proposed structure, associated public improvements, design elements and landscaping. See an example of a project rendering in figure 2 below.**

**v. A narrative describing how the project will be consistent with the pilot program's purpose, and how the project's incorporated design features are consistent with the adopted architectural standards.**

**vi. Project details including the total number of residential units proposed, the proposed building height, the location of proposed parking, and the total number of parking spaces proposed.**

- vii. Details concerning any proposed projections of balconies and weather protection into the right of way.
- viii. Details and/or preliminary drawings of proposed improvements within the public right of way.

Figure 1: An Example of a massing study.

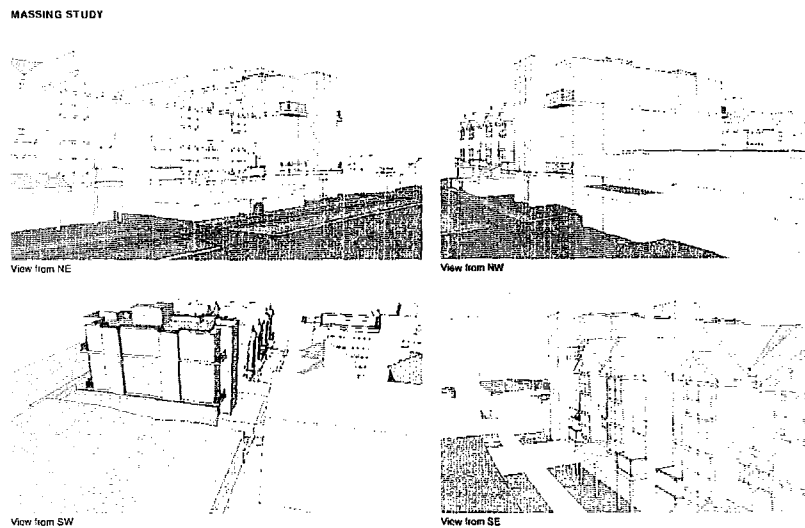


Figure 2: An Example of a color project rendering.



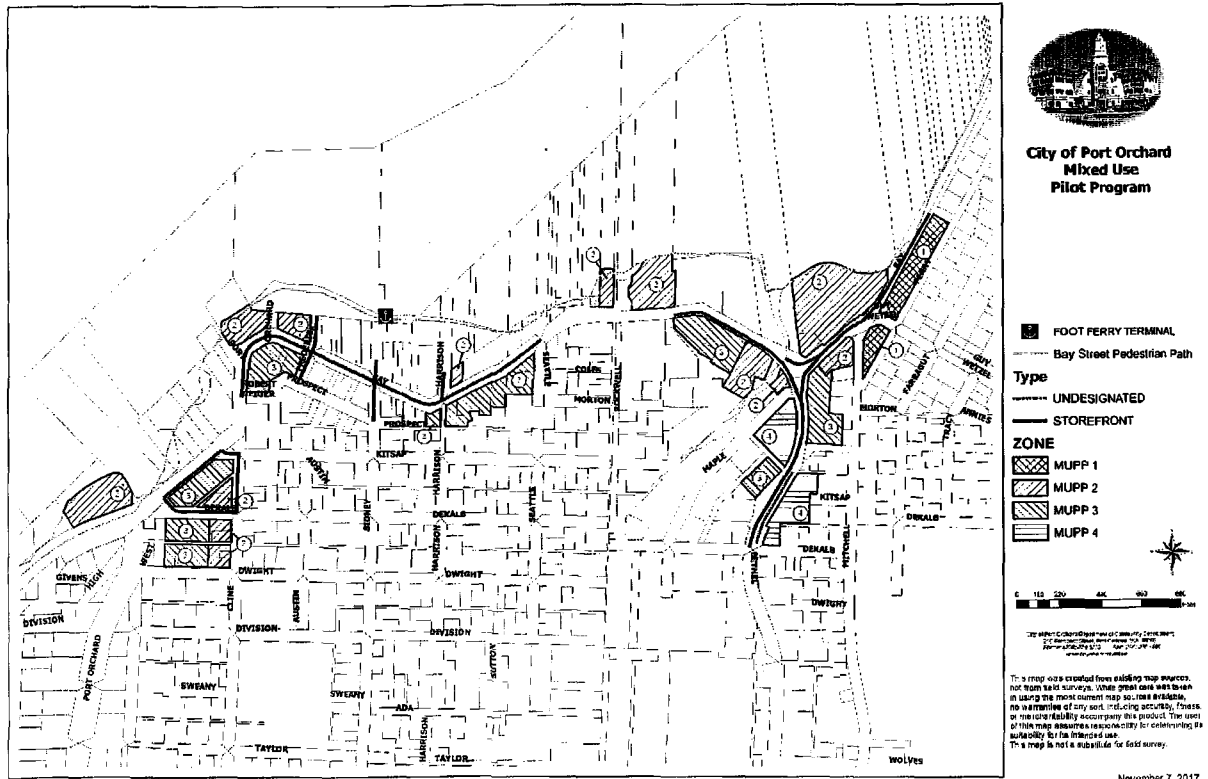
#### 4. Applicability.

A. This program provides alternative development standards for the specially designated areas shown on the maps in section 4(B) below. Any such property shown in section 4(B) Figure 3 below may still be developed under the normally applicable development regulations as if this pilot program didn't exist, in

accordance with all other provisions of the POMC and state law.

B. The provisions of this pilot program only apply to areas shown designated as MUPP-1, MUPP-2, MUPP-3 or MUPP-4 on Figure 3 below, and only until the pilot program expires as described above.

Figure 3: MUPP Map and Height Limits.



C. The following POMC code sections as existing now or hereafter amended shall not apply to development in the areas described in subsection B above when accepted into this pilot program:

- POMC 20.30 Zoning Map
- POMC 20.34 Zoning Districts (excluding 20.34.220)
- POMC 20.38 Overlay Districts
- POMC 20.46 Designated Land Uses
- POMC 20.54 Nonconforming Uses
- POMC 20.120 Development Standards
- POMC 20.122 Common Development Standards
- POMC 20.124 Parking and Circulation

POMC 20.128 Landscaping Standards

D. Minimum Project Size. Projects proposed under this pilot program shall have a minimum building footprint of 5,000 square feet and a minimum of 10 residential units.

5. **Mixed-Use Pilot Program Zones.** The mixed-use pilot program consists of one zone that allows four (4) different building height limits depending on where that property is in relation to upland development and topographic features as designated on the map above. This zone, designated Mixed Use Pilot Program (MUPP) is accompanied by a number (1, 2, 3, or 4) that directs one to the corresponding maximum height limit. Building height is the only difference between these four (4) designations under the pilot program.

- A. MUPP-1
- B. MUPP-2
- C. MUPP-3
- D. MUPP-4

6. **Permitted Uses.** The following uses are the only uses permitted in the MUPP (1-4) zone. See definitions in section 16. The uses permitted under the MUPP are categorized as either (A) storefront uses or (B) general uses. Storefront uses are permitted in outright all locations within the MUPP zone (as designated 1-4). General uses shall be permitted in all areas designated under the MUPP zone (as designated 1-4) except in ground floor spaces within 40 feet of the right-of-way line of a storefront street. Exceptions to the ground floor use requirements may be granted for building access such as a residential apartment lobby or office lobby or a parking garage access, provided that the ground floor area appears to consist primarily of storefronts when viewed from the street. Storefront street/block frontages are shown on figure 3 above.

**A: Storefront Uses:**

- i. Commercial Childcare
- ii. Commercial Entertainment
- iii. Library.
- iv. Lodging, level 3
- v. Museum
- vi. Parking Access Point (not to exceed 25 feet in width).
- vii. Product Services Level 1
- viii. Restaurants Levels 1, 2, and 3
- ix. Sales, Ancillary
- x. Sales, Level 1
- xi. Tavern

**B. General (non-storefront) Uses**

- i. Dwelling, Multiple Family
- ii. Accessory Uses and Structures
- iii. Home Occupations
- iv. Home Profession
- v. Government administrative office
- vi. Public/Private Services
- vii. Community Recreation Hall

- viii. Parks
- ix. Electric (rapid) vehicle charging station
- x. Conference Centers
- xi. Personal Services
- xii. Business Services
- xiii. Professional Services.
- xiv. Healthcare Services
- xv. Ancillary Services
- xvi. Commercial Recreation
- xvii. Parking Lot, Commercial (Parking structures, underground parking, and parking under a building permitted, uncovered surface parking prohibited).

#### 7. Building Height.

A. Building Heights shall be measured in accordance with the definition of "building height" found in POMC 20.12 Definitions, except for the MUPP-1 area (which shall be measured from the average uphill property line elevation, or when a proposed site is located within areas regulated for minimum flood elevations under POMC 20.170, in which case building height may be measured from the minimum flood elevation, whichever method results in the more permissive building height. Building Heights in the MUPP zone (as designated MUPP 1, 2, 3, or 4) shall be limited to a maximum height as follows:

MUPP-1: 15 feet as measured from the uphill property line average elevation. The MUPP-1 height limits are intended to apply only to through lots on sloping sites between Bay Street and Perry Ave.

MUPP-2: 48 feet, not to exceed 4 stories

MUPP-3: 58 feet, not to exceed 5 stories

MUPP-4: 68 feet, not to exceed 6 stories

B. A ten-foot (one story) height bonus not to exceed 20,000 feet in area may be granted to exceed the applicable maximum height provided in 7 (A) if the applicant agrees to construct and operate (or lease to an operator) a grocery store in the same building for which the bonus is sought, with the grocery store space measuring at least 10,000 square feet in area. In addition to the 20,000-square foot bonus limit, the area of this additional ten feet of building height shall not exceed 95% of the area of the floor immediately below this bonus height (floor). A letter of interest from a grocer shall be required at the time of application for participation in the MUPP expressing an interest in operating a store in the proposed location. The grocery store space constructed shall be restricted by a covenant with the city such that the space's primary use be the sale of unprepared foods for a period of fifteen (15) years. In addition, projects receiving the bonus shall be designed and constructed to include structural, electrical, and mechanical systems consistent with the planned operation of a grocery store.

C. Projections above the height limits in sections A and B are permitted for mechanical systems and their associated screening, turrets, unoccupied towers, spires, antennas, elevator shafts, rooftop patios and decks, landscaping, and other similar features typically found on a flat roof.

8. Mix of Uses required in buildings constructed pursuant to this ordinance.

A. A mix of uses in at least one building on a site proposed for development under this program shall be a requirement of this program. The ground floor portions of any building within 40 feet of the right-of-way line of a storefront street as designated on figure 3 shall only be occupied by a storefront use as listed in section 6 (A) (restaurants, retail, etc.). General uses under section 6 (B) (multifamily dwellings, live/work dwelling units, personal service uses, etc.) may be located on the ground floor in portions of a building which are more than 40 feet from the right-of-way line of a designated storefront street. Exceptions to the ground floor use requirements may be granted for building access such as a residential apartment lobby or office lobby or a parking garage access, provided that the ground floor area appears to consist primarily storefronts when viewed from the street.

9. Parking. Parking shall be provided in accordance with the minimum standards listed below. Parking may be located on-site. Parking may be located on private property off-site provided that the property boundary containing the required parking is within 1,000 feet of the property on which the project is proposed under this program and provided that adequate controls are established to guarantee the availability of that parking in perpetuity unless parking requirements are reduced at a future date, or, if alternative parking facilities are provided subject to City Council acceptance. The conditions under which offsite required parking may be reduced or relocated shall be established in the development agreement between the City and the applicant prior to building permit issuance.

A. Commercial uses for ground floor storefronts abutting Bay Street between Robert Geiger Street and Harrison: Parking is not required.

B. Dwelling Units: 0.5 vehicle spaces per dwelling unit.

C. Other Commercial Uses not located on the ground floor: Parking not required.

D. Total on-site parking for any project shall not exceed 1.5 automotive spaces per proposed dwelling (including any parking intended to support commercial uses), however projects qualifying for a grocery store height bonus shall be allowed additional parking at 1 stall per 300 square feet of grocery store area.

E. Bicycle parking shall be provided at a ratio of 1 bicycle parking space per 3,000 square feet of gross commercial floor area in a constructed building with a minimum of 3 bicycle parking spaces provided.

10. Required Landscaping. All areas of sites developed pursuant to this program which are not to be covered by proposed hard surfaces or building structure shall be fully landscaped in accordance with this section. In addition, street frontages (including areas in the adjacent right of way) and public plazas shall be designed with landscaping in

accordance with this subsections C and D below.

A. All areas which are not covered by building or hardscape shall be landscaped using one or a combination of the following techniques:

i. Landscaping consisting of dense shrubs, trees, flowers is provided in accordance with an approved landscape planting plan;

ii. Environmental restoration plan provided and implemented using native indigenous species.

iii. Installation of lawn areas for use of residents and/or the public.

iv. Low Impact Development stormwater facilities

B. Landscape plans as prepared by a licensed landscape architect shall be provided for review and approval in accordance with this section. Low Impact Development stormwater facilities shall be designed by a licensed civil engineer.

C. Street trees, planters, hanging baskets, or some other landscaping appropriate for placement within the abutting right of way shall be provided at a regular interval ranging between 20 and 50 feet, as determined by the Director. (Provide Illustration)

D. Any public spaces and plazas developed as part of a project proposal shall include landscape areas measuring at least 10% of the total public space and plaza area. (Provide Illustration).

E. Permanent irrigation shall be provided for all landscape areas.

11. Frontage and Sidewalk Improvements. The City may require as a provision of the development agreement that concrete (other decorative surfaces allowed with Director approval) sidewalks, curbs, landscaping, pedestrian ways, and (asphalt or concrete) parking lanes immediately abutting a project developed under this program be improved or enhanced. At a minimum, sidewalks and ADA ramps shall be improved to current City standards. Alternative materials or patterns (such as pavers, brick, or stamped concrete) may be required as a provision of the development agreement to coordinate with the design and materials proposed for a proposed project. In addition, continuous ADA compliant pedestrian ways measuring at least 6-feet in width shall be required for all projects constructed under this program to connect the proposed project with either the Bay Street Pedestrian Pathway (segments 1-6) or the Port Orchard Passenger Ferry Terminal. (see map). All pedestrian ways shall be designed using guidance found in the National Association of City Transportation Officials Urban Street Design Guide.

12. Lot Coverage. One-Hundred Percent (100%) lot coverage shall be allowed in MUPP (1-4) areas above, except for portions of properties located within areas controlled by the Shoreline Master Program which shall comply with lot coverage requirements as adopted under the shoreline master program. The critical areas code may also limit lot coverage or require setbacks in some instances.

13. Balconies and weather protection (awnings or canopies) may be proposed to project over the sidewalk or other pedestrian right of way. Such projections shall be limited to 75% of the width of the sidewalk/landscape portion of the right-of-way, provided that no



projection shall extend to within two feet of the vertical curb face along a street or parking lane. Projections shall be approved under a street use permit (for removable projections) or by partial street vacation approved by the City Council (for permanent projections). A removable projection is one that could be removed from the right-of-way at a later date without substantial cost and without adversely affecting the integrity of the building. Weather protection shall be required along all building façades adjacent to a public right of way. In no case shall a balcony or weather protection project more than 8 feet into the abutting right-of-way.

14. All development proposed under this pilot program shall comply with the applicable sections of POMC Title 20 and any Architectural and Site Design standards in effect at the time of building permit application or as approved through a development agreement. Note that these standards are currently under development and will only apply if adopted prior to project vesting. The chapters that will apply are tentatively numbered and titled as follows:

- 20.128 Introduction
- 20.129 Block Frontage Standards
- 20.130 Site Planning
- 20.131 Building Design
- 20.135 Outdoor Lighting

15. Competitive Selection Process (if required). If prior to April 30, 2018, development agreement applications collectively expressing an intent to construct more than 250 dwelling units are submitted, then a competitive project selection process under this section shall commence.

A. Review process. The Mayor will convene a special advisory review body which shall function in an advisory capacity to provide a recommendation prior to the City Council taking action to determine which projects should be included within the program. The City Council shall determine which projects may proceed under this program. The Open Public Meetings Act and the Appearance of Fairness Doctrine shall apply to all meetings of the advisory review body and the city council for the purposes of evaluating and ranking the projects in the competition.

B. The special advisory review body shall consist of:

- i. The Community Development Director or designee;
- ii. The Public Works Director;
- iii. An architect or urban design professional appointed by the mayor;
- iv. Two (2) other design professionals with urban design experience as appointed by the mayor;

C. The special advisory review body will assess the consistency of the proposal with the following criteria and scoring. Each member of the body shall score the project individually, but not anonymously, and the averaged result shall be used to determine a final score. All proposals submitted under the provisions of this section shall be evaluated

based on the applicant's demonstration of the following according to the materials submitted as of April 30, 2018:

i. Responsiveness to the following basic downtown patterns established by existing development in the area (up to 25 points).

- a. Street frontage characteristics.
- b. Rhythm of development along the street.
- c. Building orientation on the site and in relation to the street.
- d. Street setback patterns.
- e. Landscaping and trees.
- f. Architectural features.
- g. Historic character, if located within a designated Historic District.

ii. Pedestrian-friendly design (up to 20 Points). The degree to which the proposed development provides exceptional pedestrian access between proposed buildings and adjacent public rights of way and emphasizes pedestrian connectivity. The quality of the pedestrian experience within the site and in the abutting public right-of-way shall be high.

iii. De-emphasize parking (up to 10 points). The degree to which the project meets minimum parking requirements while concealing or effectively screening required parking from view along public streets and rights of way.

iv. Create useable outdoor public and private spaces (10 points). The degree to which the project provides usable and functional public and private outdoor spaces.

v. Other special project amenities (up to 10 points). The degree to which the project provides other special amenities to its residents. Examples include but are not limited to exercise facilities, pools, common areas, public art, etc.

vi. Affordable Housing (up to 10 points). The degree to which the project will provide affordable housing.

vii. Sustainable features (up to 5 points). The degree to which the project incorporates sustainability features through one of the following certification programs:

- a. Built Green
- b. LEED
- c. Greenroads

vii. Economic Development (up to 10 points). The type of commercial tenant spaces created and the degree to which those spaces can support businesses that will further enhance downtown Port Orchard as a desirable place to live and work, create synergies with the existing business mix in and around downtown, and support tourism.

D. The special advisory committee shall score the proposed projects based on the points system and scoring criteria in section C above and forward its recommendation to the City Council for approval of the project rankings. The City Council shall review the advisory committee rankings using the same criteria without being obligated to give deference to the committee and shall make the final ranking determination. Upon the City Council's final determination of the project rankings, the City Council may consider the development agreement applications for the projects that were selected to proceed forward pursuant to this program.

16. Definitions. The definitions in POMC 20.12 shall apply to the pilot program except as follows:

“Accessory uses and structures” shall mean a use or a structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure. means caretaker dwelling units associated with nonresidential uses, residential garages, sheds, similar outbuildings associated with the principal residential uses on the site and temporary buildings for and during construction.

“Ancillary services” means services primarily for the employees of a primary permitted use. Examples of such uses include day care centers, cafeterias and exercise facilities for the benefit of the employees.

“Business services” means an establishment engaged in providing services to individuals, business and professional office uses. Examples of such uses include: postal services, financial institutions, photocopying and reproduction services, janitorial services, graphic design services, advertising services, data processing services, employment agencies.

“Commercial child care” means a state-licensed business that provides child care on a daily basis outside of the provider’s dwelling.

“Community recreation hall” means a facility provided by a nonprofit organization or government agency, for the purposes of community gatherings, classes, meetings, etc. Such a facility may include a commercial grade kitchen.

“Conference center” shall mean an establishment developed primarily as a meeting facility, including facilities for recreation, overnight lodging, and related activities provided for conference participants.

“Dwelling Unit – Multifamily” means a building that includes separate but attached residential dwelling units, which are each designed for occupancy by one family with no other uses except permitted accessory activities. Multifamily dwelling units may be located in a stand-alone residential building or as a component of a mixed-use building.

“Entertainment, Commercial” means any passive recreational activities including but not limited to movie theaters, performing arts theaters, concert halls, and arcades. Does not include adult entertainment facilities.

“Food truck” means a vehicle or trailer located on private property from which a vendor prepares and/or serves food for sale to the general public.

“Government administrative office” means a facility for the executive, legislative, judicial, administrative, and regulatory activities of local, state, federal, and international

governments that may perform public services and work directly with citizens. Typical facilities include courthouses, human and social service offices, health offices, and government offices.

**Health Services:** Includes offices, patient clinics, and medical dental laboratories.

**“Home occupation”** means any activity conducted for financial gain or profit in a dwelling unit by persons residing therein, and which activity is not generally or customarily characteristic of activities for which dwelling units are intended or designed and such activity is clearly incidental or secondary to the residential use of a dwelling unit.

**“Home Profession”** means a limited-scale activity undertaken for financial gain with no on-site fabrication, service or sales, which occurs in a dwelling unit or accessory building and is subordinate to the primary use of the premises as a residence in accordance with the provisions of Chapter 20.60 POMC.

**“Lodging, level 1”** means a single-family residence which provides overnight lodging for guests, and may provide meals for overnight guests, not to exceed seven guest rooms.

**“Lodging, level 2”** means an establishment providing sleeping accommodations with a majority of all guest rooms having direct access to the outside without the necessity of passing through the main lobby of the building, with or without food services, and may include conference facilities.

**“Lodging, level 3”** means an establishment providing sleeping accommodations with a majority of all guest rooms having direct access through the main lobby of the building, with or without food services, and may include conference facilities.

**“Museum”** means a building or place for the acquisition, conservation, study, assembly and public display and/or exhibition, and educational interpretation of objects having historical, cultural, scientific, or artistic value.

**“Parking Lot Commercial”** means an off-street parking area, a majority of which is available to the public, and such parking is the primary use of the site.

**“Parks”** means land used for active and passive recreation including, but not limited to, local and regional parks, playgrounds, ballfields, water access facilities and nonmechanical boat launches.

**“Personal services”** means an establishment engaged in providing services involving nonmedical care of a person and/or his or her personal goods or apparel. Examples of such uses include: laundromats, drycleaners, barbers, hairstyling salons, spa services, indoor pet grooming salons, photography studios, dance schools, karate schools, and

indoor fitness centers no more than 20,000 square feet in size.

“Product services, level 1” means businesses engaged in servicing, repair or maintenance of small personal items such as shoes, small appliances, computers, watches and clocks, jewelry, and clothing, etc.

“Product services, level 2” means all product services, level 1 uses plus large appliance repair, auto repair, boat repair and garden equipment repair.

“Professional services” means specialized services or skills provided in an office setting, such as lawyers, licensed health care providers, architects, engineers, consultants, accountants and financial advisors.

“Public/private services” means uses such as libraries, fire stations, police stations, government and school maintenance and storage facilities, and public parking lots.

“Recreation - Indoor commercial” means any indoor active recreational use, including but not limited to tennis centers, fitness centers greater than 20,000 square feet in size, bowling, skating, and swimming.

“Recreation - Outdoor commercial” means any outdoor active recreational use, including but not limited to tennis, golf, outdoor fitness centers, skating and swimming.

“Restaurant Level 1” establishment provided the Restaurant 1 use does not exceed 1,200 square feet in size.

“Restaurant Level 2” means an establishment that prepares and serves food and nonalcoholic beverages.

“Restaurant Level 3” means an establishment that prepares and serves food and alcoholic beverages.

Sales, Ancillary “Ancillary sales” means sales directed towards the employees or patrons of a primary permitted use with no exterior signage.

“Sales, level 1” means general sales including grocery stores, hardware stores, variety stores, nurseries, pharmacies, bakeries, flower shops, and similar general retail uses.

“Sales, level 2” means automobiles, trucks, motorcycles, recreational vehicles, boats and trailer sales.

“Sales, level 3” means heavy equipment sales and rentals, and including outdoor bulk sales of building and landscaping supplies.

“Tavern” means an establishment that serves alcoholic beverages as its primary use.

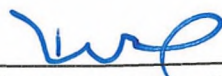
**SECTION 3.** The development agreement template as attached hereto as Exhibit A is adopted by reference.

**SECTION 4. 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 5. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**SECTION 6. Effective Date.** This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, PROVIDED THAT this ordinance shall not take effect any earlier than April 2, 2018 regardless of the publication date.

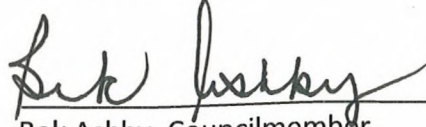
PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 14<sup>th</sup> day of November 2017.

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

ATTEST:

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

SPONSOR:

  
\_\_\_\_\_  
Bek Ashby, Councilmember

APPROVED AS TO FORM:

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



PUBLISHED: November 24, 2017  
EFFECTIVE DATE: November 29, 2017

**DRAFT October 30, 2017**

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF PORT ORCHARD  
AND \_\_\_\_\_ FOR THE  
[insert project name] DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT executed on \_\_\_\_\_ (hereinafter the “Development Agreement” recorded under Kitsap County Auditor’s No. \_\_\_\_\_ **add number**), is made on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Port Orchard, a Washington municipal corporation, hereinafter the “City,” and \_\_\_\_\_, a **limited liability corporation (may need to change)**, organized under the laws of the State of Washington, hereinafter the “Developer.”

**RECITALS**

WHEREAS, this development agreement has been prepared, in part, for the purpose of reserving limited residential dwelling unit capacity for mixed use development under the City of Port Orchard Mixed Use Pilot Program (MUPP); and,

WHEREAS, the MUPP has an upper limit on the number of residential units to be permitted under the program and stipulates that these units be reserved under a development agreement prior to the applicant submitting a building permit application;

WHEREAS, the MUPP was adopted in furtherance of the goals and policies of the City of Port Orchard Comprehensive Plan to provide “high quality building and site design that enhances the downtown business environment while complementing existing downtown development” and “to develop a body of successful, well-regarded examples of mixed use buildings to inform a later Council decision whether to finalize and/or refine development regulations and design standards for future mixed-use projects in Port Orchard,” both of which constitute public benefits; and

WHEREAS, the \_\_\_\_\_ Development proposal includes the following elements: [**insert appropriate description such as, xxx dwelling units, and yyy square feet of office space, zzz square feet of retail space, and *be sure to include all elements for which development received points as part of competitive application process***]; and

WHEREAS, the Developer has proposed to construct and, after City inspection and approval, dedicate to the City without cost, for ownership and maintenance, frontage and sidewalk improvements, and other public amenities, if applicable, (all as set forth in its

[Insert Project Title]

Page 1 of 5

application and in sections **XXX and YYY** of the Development Agreement) to serve the Development; and

WHEREAS, the City would like to provide the Developer with a window of time under which the developer may prepare and submit a building permit application (and any other required applications) pursuant to the Transit Oriented Mixed-Use Pilot Program; and

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, the Port Orchard City Council provided public notice and held a public hearing on this Development Agreement on \_\_\_\_\_ **add date** \_\_\_\_, 2018;

Now, therefore, the parties hereto agree as follows:

### GENERAL PROVISIONS

Section 1. Building Permit Submittal. The Developer agrees to submit a counter complete building permit application within two (2) years of the date of this Agreement for a mixed-use structure generally consistent with the structure proposed in their application attached hereto as Exhibit 1 and which shall include all elements for which Developer received points during the competitive selection process. Building permit application (s) submitted pursuant to this agreement shall additionally comply with the requirements of the City's MUPP and the following parameters:

Dwelling Unit Count (may be decreased by no more than \_\_% but not increased):

Minimum Number of Parking Stalls to be provided (may be increased by no more than \_\_% but not decreased):

Commercial Square footage (may be adjusted +/- 10%):

Office square footage (may be adjusted +/- 10%):

Other use square footage (may be adjusted +/- 10%):

[Insert other parameters]

[Insert Project Title]

Page 2 of 5



Section 2. Vesting. The City agrees that building permits submitted pursuant to this agreement shall be vested to the development regulations and other land use controls in place as of the date of development agreement approval by the city council, including but not limited to the standards of the MUPP.

Section 3. Valuable Consideration. As a condition of building permit issuance, the Developer agrees to construct at his or her expense, the following public and private amenities and facilities in support of the project:

**Public Improvements:**

- a. Frontage, Sidewalk, and/or Right of Way improvements, with construction drawings subject to Public Works director approval, consistent with those shown on Exhibit 2.
- b. Offsite Improvements:
- c. Public Parking (number of stalls):
- d. Public plazas or other common areas open to the public:
- e. [insert other improvement proposed and be sure to include any elements for which Developer received points during the competitive selection process]

**Private improvements/amenities:**

- a. Private Parking (number of stalls) (onsite or offsite):
- b. Landscape improvements (describe if any).
- c. Common Areas (describe if any).
- d. Affordable housing (describe if any):
- e. Tenant amenities (describe if any):
- f. [insert other improvement proposed and be sure to include any elements for which Developer received points during the competitive selection process]

Section 4. Term. This agreement shall be valid for 2 years unless a counter complete building permit application is submitted by the developer pursuant to the terms of this agreement in which case the agreement shall be extended for two more years.

Section 6. XXX

[Insert Project Title]

Page 3 of 5

Section 7. XXX

Section 8. XXX

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

**CITY OF PORT ORCHARD:**

**[Insert Name]**

By: \_\_\_\_\_  
Robert Putaansuu  
Its: Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name:  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

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

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KITSAP )

On this day personally appeared before me Robert Putaansuu to me known to be the Mayor of the City of Port Orchard, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged that he signed said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said municipal corporation.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_ 2018.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KITSAP )

On this day personally appeared before me \_\_\_\_\_ to me known to be the \_\_\_\_\_, the corporation described in and that executed the within and foregoing instrument, and acknowledged that he/she signed said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said corporation.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_ 2018.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**NOTICE OF CITY OF PORT ORCHARD  
ORDINANCE**

The following is a summary of an Ordinance approved by the Port Orchard City Council at their regular Council meeting held November 14, 2017.

**ORDINANCE NO. 046-17**

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON,  
ESTABLISHING A MIXED-USE PILOT PROGRAM AND DEVELOPMENT  
REGULATIONS, PROVIDING FOR SEVERABILITY AND PUBLICATION;  
AND SETTING AN EFFECTIVE DATE.**

Copies of Ordinance No. 046-17 are available for review at the office of the City Clerk of the City of Port Orchard. Upon written request, a statement of the full text of the Ordinance will be mailed to any interested person without charge. Thirty days after publication, copies of Ordinance No. 046-17 will be provided at a nominal charge.

City of Port Orchard

Brandy Rinearson  
City Clerk

Published: Friday, November 24, 2017

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

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, EXTENDING THE TERM OF ITS MIXED-USE PILOT PROGRAM; PROVIDING FOR SEVERABILITY AND PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, in November 2017, the City Council adopted Ordinance No. 046-17, establishing a mixed use pilot program (MUPP) to promote transit oriented mixed-use development in the City's downtown and local centers in accordance with its Comprehensive Plan goals and policies; and

**WHEREAS**, the MUPP term was established as April 2, 2018 through June 30, 2019 to allow time for development agreements to be submitted under the terms of the program; and

**WHEREAS**, the City Council has determined that the length of this term has not been sufficient to allow for such development agreements to be submitted, and has therefore determined that it is in the City's best interests to extend the term of the MUPP for an additional calendar year; now, therefore,

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

**SECTION 1.** The City Council hereby amends the MUPP expiration date, set forth in Section 2 of Ordinance 046-17, from June 30, 2019 to June 30, 2020.

**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 be in full force and effect five (5) days after posting and publication, as required by law. A summary of the Ordinance may be published in lieu of the entire Ordinance, as authorized by State 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 11<sup>th</sup> day of June, 2019.

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

ATTEST:

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

APPROVED AS TO FORM:

SPONSOR:

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

\_\_\_\_\_  
Bek Ashby, Councilmember

PUBLISHED:

EFFECTIVE DATE:



**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>June 11, 2019</u>
Subject:	<u>Approval of Addendum No. 2 to Contract</u>	Prepared by:	<u>Sharon Cates</u>
	<u>No. 053-18 with Waterman Investment</u>		<u>City Attorney</u>
	<u>Partners, LLC, for the Real Estate Purchase</u>	Atty Routing No.:	<u>N/A</u>
	<u>And Sale Agreement for 640 Bay Street</u>	Atty Review Date:	<u>N/A</u>

**Summary:** The City entered into a Purchase and Sale Agreement (“Agreement”) with Waterman Investment Partners for the 640 Bay Street property on July 10, 2018. The Agreement provides for the extension of the closing date of the sale upon the agreement of the parties. On December 11, 2018, the parties executed Addendum No. 1 to amend certain provisions of the Agreement, including extending the closing date to June 30, 2019. The City has determined that it is in the best interests of the City to allow the further extension of the closing date to December 31, 2019 in exchange for a payment from Waterman Investment Partners of \$10,000, which amount will go toward closing or be forfeited if closing does not occur. In addition, waiting for the Public facilities District to award funds as part of the master planned project. Attached is a proposed Addendum No. 2 to effectuate this extension.

**Recommendation:** Staff recommends approval of Addendum No. 2 to the 640 Bay Street Purchase and Sale Agreement as presented.

**Relationship to Comprehensive Plan:** N/A.

**Motion for consideration:** “I move to approve Amendment No. 2 to the 640 Bay Street Purchase and Sale Agreement as presented.”

**Fiscal Impact:** The \$10,000 to be paid to the City upon execution of Addendum No. 2 will go towards the \$150,000 in cash that is due at closing. If closing does not occur, this payment will be forfeited by Waterman Investment Partners and paid to the City at escrow close-out.

**Alternatives:** Do not approve addendum.

**Attachments:** Contract No. 053-18 640 Bay Street Purchase and Sale Agreement; Addendum No. 1 and Addendum No. 2 thereto.

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## REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into by and between **Waterman Investment Partners, LLC**, a Washington limited liability company, its successors or assigns (“Buyer”) and the **City of Port Orchard**, a Washington municipal corporation, its successors or assigns (“Seller”), as of the date appearing in the last paragraph of this Agreement (“Effective Date”). Buyer and Seller may hereafter be known individually as “Party” and collectively as “Parties.”

### RECITALS

- A. Seller owns certain real property in Port Orchard, Kitsap County, Washington, more particularly described in Exhibit A and depicted in Exhibit B attached hereto (the “Property”).
- B. Seller advertised a Request for Proposals (“RFP”) for the purchase and redevelopment of the Property.
- C. Buyer submitted the winning proposal (“Proposal”) for the purchase and redevelopment of the Property, which is located in downtown Port Orchard.
- D. The parties agree that the acquisition of the Property is the first step in the redevelopment of the Property and that Buyer shall be required to undertake a Mixed-Use Pilot Program (“MUPP”) redevelopment project, substantially as set forth in the Buyer’s Proposal.
- E. Seller desires to sell the Property (as defined herein) to Buyer, and Buyer desires to purchase the Property from Seller on the terms and conditions set forth in this Agreement.
- F. The parties agree that the purchase price for the Property shall be a combination of U.S. funds and other valuable consideration conferred on the City as a direct result of the development of the Property.

**NOW, THEREFORE**, intending to be legally bound, for good and valuable consideration, including the mutual covenants and promises of the Parties, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

**1. Property.** Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, the following:

1.1 **Land.** That certain parcel of real property located in the City of Port Orchard, Kitsap County, Washington, more particularly described in Exhibit A attached to this Agreement, together with all mineral, oil, gas, hydrocarbon substances, development rights, air rights, water rights, and water stock owned by Seller relating to the real property; all easements and rights of way owned by Seller that are appurtenant to the real property or any improvements on the

real property, and any appurtenance, or the operation, use or enjoyment of any of the foregoing, all rights of Seller in and to streets, sidewalks, alleys, driveways, parking areas, and areas adjacent thereto or used in connection therewith and any land lying in the bed of any existing or proposed street adjacent to such land (collectively the "Land");

1.2 **Improvements.** Any and all fixtures, structures, landscaping, and other improvements located upon the Land (the "Improvements");

1.3 **Plans, Permits and Contracts.** All surveys of, and environmental reports with respect to, the Real Property; all plans, specifications, engineering drawings, and prints relating either to the construction of the Improvements or to future development and expansion of existing Improvements (the "Plans"); all licenses and permits pertaining to the Property, to the extent assignable, (the "Permits"); and all warranties upon the Improvements and Personal Property; all service, maintenance, management and operating agreements affecting the Property (to the extent Buyer elects to assume such) (the "Contracts").

The Land and Improvements that constitute real property are collectively referred to in this Agreement as the "Real Property." All of the property described in this Section 1, both real and personal, is collectively referred to in this Agreement as the "Property."

## 2. **Deposit; Purchase Price.**

2.1 **Deposit.** Within five (5) business days after the date on which the last party executes this Agreement (the "Effective Date"), Buyer shall execute and deliver to Land Title Company of Kitsap in Port Orchard, Washington ("Title Company"), as escrow agent for the closing of this transaction, a promissory note (the "Earnest Money Note") in the amount of Fifteen Thousand Dollars (\$15,000.00). The Earnest Money Note will be converted to cash upon the expiration of the Due Diligence Period (as defined in Section 5.1) (the "Deposit") and will be paid or delivered as earnest money (the "Earnest Money") in part payment for the purchase price of the Property. The Deposit will be held by Title Company for the benefit of the parties pursuant to the terms of this Agreement. Interest will accrue on the Deposit for the benefit of Buyer; provided, however, if Buyer forfeits the Deposit to Seller pursuant to the terms of this Agreement, then all interest accrued on the Deposit will be paid to Seller.

2.2 **Purchase price.** The purchase price for the Property (the "Purchase Price") includes a **One Hundred Fifty Thousand Dollar (\$150,000.00)** cash payment, of which the Earnest Money is a part, plus other valuable consideration in the form of economic, public and other benefits as agreed to between the parties in a separate development agreement, for valuable consideration totaling **Three Hundred Forty Two Thousand Eight Hundred Eighty Five Dollars (\$342,885.00)**. The One Hundred Fifty Thousand Dollar (\$150,000.00) cash payment, including the Earnest Money, will be paid by the Buyer to the Seller in cash through escrow at closing.

## 3. **Title to Real Property.**

3.1 **Conveyance.** At closing, Seller shall convey to Buyer fee simple title to the Real Property by duly executed and acknowledged statutory warranty deed (the "Deed"), free

and clear of all defects and encumbrances and subject only to those exceptions that Buyer approves pursuant to Section 3.2 below (the "Permitted Exceptions").

**3.2 Preliminary commitment.** Buyer shall order a preliminary commitment for an owner's standard coverage policy of title insurance (or, at Buyer's election, an owner's extended coverage policy of title insurance) in the amount of the Purchase Price to be issued by Title Company and accompanied by copies of all documents referred to in the commitment (the "Preliminary Commitment"). Buyer shall advise Seller by written notice what exceptions to title, if any, are disapproved by Buyer ("Disapproved Exceptions") within fifteen (15) days of receipt of the Preliminary Commitment and legible copies of all exceptions to title shown in the Preliminary Commitment. All monetary encumbrances other than non-delinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) days after receipt of Buyer's notice to give Buyer notice that (i) Seller will remove Disapproved Exceptions or (ii) Seller elects not to remove Disapproved Exceptions. If Seller fails to give Buyer notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Exceptions. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer.

If Seller elects not to remove any nonmonetary Disapproved Exemptions, Buyer will have until the expiration of the Due Diligence Period to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those exceptions, or to terminate this Agreement. If Seller gives notice that it will cause one or more nonmonetary exceptions to be removed but fails to remove any of them from title on or before the Closing Date, Buyer will have the right to either (i) elect to terminate this Agreement by written notice to Seller or (ii) proceed with the purchase, with an abatement of the Purchase Price equal to the actual cost of removing from title those exceptions not approved by Buyer, and to take the Property subject to those exceptions.

If the Title Company issues a supplement to the Preliminary Commitment, the procedure set forth in this Section 3.2 will apply to such supplement, except that Buyer will have seven (7) days to notify Seller of its disapproval of any new exceptions, and Seller will have five (5) days to give Buyer notice that Seller will either remove or not remove any new Disapproved Exceptions. If Buyer elects to terminate this Agreement under this Section 3.2, the escrow will be terminated, the Deposit must be returned immediately to Buyer, all documents and other funds will be returned to the Party who deposited them, and neither party will have any further rights or obligations under this Agreement except as otherwise provided in this Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Buyer shall share equally any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

**3.3 Title policy.** Seller shall cause Title Company to issue to Buyer at closing an extended coverage owner's policy of title insurance (or, at Buyer's election, an owner's standard coverage policy of insurance) insuring Buyer's title to the Real Property in the full amount of the Purchase Price subject only to the Permitted Exceptions (the "Title Policy"). The Title Policy must be dated as of the Closing Date.

#### 4. Conditions to Closing.

4.1 **Development Agreement.** The parties agree that closing may take place only upon the execution of a development agreement (“Development Agreement”) between the parties for the development of the Property. The Development Agreement must demonstrate the **One Hundred Ninety Two Thousand Eight Hundred Eighty Five Dollars (\$192,885.00)** (excluding the \$150,000.00 cash payment pursuant to section 2.2 of this Agreement) in valuable consideration as set forth in Section 5.5, below, contemplated in the Purchase Price for the Property. If the Development Agreement fails to demonstrate this entire amount, Buyer shall pay to Seller the difference in cash at closing.

4.2 **Due diligence materials.** Seller shall provide to Buyer, or make available to Buyer for inspection, as soon as possible (but in any event no later than thirty (30) days after the Effective Date) all materials specified in this Section 4.2 that exist and that are in Seller’s actual possession or that Seller knows exist and to which Seller has access (collectively, the “Due Diligence Materials”). If Seller thereafter discovers any additional items that should have been included among the Due Diligence Materials, Seller shall promptly deliver them to Buyer.

Due Diligence Materials will include:

- (a) copies of any existing and proposed easements, covenants, restrictions, agreements or other documents that, to Seller’s knowledge, affect title to the Real Property and that are not disclosed by the Preliminary Commitment;
- (b) all surveys, plats or plans relating to the Real Property;
- (c) all warranties and guarantees affecting any portion of the Property;
- (d) notice of any existing or threatened litigation affecting or relating to the Property and copies of any pleadings with respect to that litigation;
- (e) all issued Permits that the seller possesses; and
- (f) (i) all environmental assessment reports with respect to the Real Property that were performed or are being performed by or for Seller, (ii) any raw data that relates to the environmental condition of the Real Property, (iii) any governmental correspondence, orders, requests for information or action and other legal documents that relate to the presence of Hazardous Material (as defined in Section 10.1.2) on, in or under the Real Property, and (iv) any other information material to the environmental condition or potential contamination of the Real Property.

#### 5. Due Diligence.

5.1 **Due diligence period.** On or before November 30, 2018 (the “Due Diligence Period”), Buyer shall conduct a review with respect to the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Buyer’s intended use (the “Due Diligence”).

The Due Diligence may include all inspections and studies Buyer deems necessary or desirable, in its sole discretion. Buyer and Buyer's agents, representatives, consultants, architects and engineers will have the right, from time to time, from and after the date of this Agreement to enter onto the Real Property and make borings, drive test piles and conduct any other tests and studies that may be necessary or desirable to ascertain the condition and suitability of the Real Property for Buyer's intended use. Buyer shall protect, defend and indemnify Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released. Buyer shall provide 48 hours notice of any proposed onsite exploration, including geotechnical exploration. All exploration shall be at buyers expense and shall include restoration of any onsite disturbance.

**5.2 Termination of Agreement.** Buyer will have the right to terminate this Agreement if, in Buyer's good faith judgment, the Real Property is not suitable for Buyer's intended use or does not meet Buyer's intended investment objectives. Buyer's right to terminate must be exercised by delivering written notice of its election to Seller on or before the expiration of the Due Diligence Period. In the event Buyer does not complete the purchase, Buyer shall return the Real Property as near as is practicable to its original condition. If Buyer terminates this Agreement pursuant to this Section 5.2, the Deposit will be returned to Buyer, this Agreement will terminate, and Seller and Buyer will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement.

**5.3 Buyer's contingencies.** Buyer's obligation to purchase the Property is expressly contingent upon the following:

**5.3.1. Due Diligence.** Buyer's approval, prior to expiration of the Due Diligence Period, of the suitability of the Property as a result of the Due Diligence;

**5.3.2. Appraisal.** Buyer's review and approval, prior to expiration of the Due Diligence Period, of the appraisal of the Property to support the purchase price;

**5.3.3. Environmental condition.** Buyer's approval, prior to expiration of the Due Diligence Period, of the environmental condition of the Real Property pursuant to Section 10.4;

**5.3.4. Title Policy.** Buyer's receipt of Title Company's firm commitment to issue, upon closing, the Title Policy as described in Section 3;

**5.3.5. Representations and warranties.** All of Seller's representations and warranties contained in or made pursuant to this Agreement being true and correct when made, and as of the Closing Date;

**5.3.6. Seller's compliance.** Seller's timely performance of all of its obligations under this Agreement; provided, however, that Seller will be given notice of any failure on its part to perform obligations pursuant to Seller's warranties made in Section 9.1 and those obligations required of it during the Due Diligence Period, and will have a period of time that is reasonable under the circumstance to cure its nonperformance; and

The foregoing conditions are collectively referred to in this Agreement as "Buyer's Contingencies."

**5.4. Satisfaction/waiver of buyer's contingencies.** Buyer's Contingencies are solely for the benefit of Buyer. If any of Buyer's Contingencies are not timely satisfied, Buyer will have the right at its sole election either to waive any of them in writing and proceed with the purchase or to terminate this Agreement. If Buyer elects to terminate this Agreement, the escrow will be terminated, the Deposit must immediately be returned to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each party shall pay one-half (1/2) of the cost of terminating the escrow.

**5.5. Seller's contingency.** The Seller's obligation to sell the Property to the Buyer is expressly contingent upon the Buyer's entry into the Development Agreement with the Seller for the redevelopment of the Property as part of the City of Port Orchard's MUPP, to include substantially the terms set forth in the Buyer's Proposal submitted in response to the Seller's RFP. The Development Agreement will document the additional consideration to be conveyed by the Buyer to the Seller in the form of economic, public and other benefits, which is an essential element of the purchase price of the Property.

**5.5.1 The Development Agreement must include an agreement by Buyer to, at a minimum:**

**5.5.1.1** Submit a building permit application to develop a mixed use building pursuant to the MUPP, which the Seller will authorize the Buyer to do on behalf of the "owner" of the Property before closing; and

**5.5.1.2** Begin construction on the MUPP redevelopment project within thirty (30) months of the execution of this Purchase and Sale Agreement; and

**5.5.1.3** Develop a mixed-use building containing a minimum of 8,000 square feet of commercial/library space and 30 dwelling units, which is in compliance with MUPP requirements and the City of Port Orchard Design Standards; and

**5.5.1.4** Reconstruct all sidewalks along the 640 Bay Street property frontages; and

**5.5.1.5** Reconstruct any sidewalks or sidewalk ramps required to provide continuous 6 foot wide sidewalks and crosswalks meeting ADA access standards between the 640 Bay Street property and either the Port Orchard foot ferry dock or the Bay Street Pedestrian Path; and

**5.5.1.6** Construct the following improvements at a minimum cost to the Buyer as follows:

<b>Item</b>	<b>Description</b>	<b>Cost</b>
1	Frederick Hill Climb (Construct a plaza/staircase in the Frederick ROW between Bay Street and Prospect Street)	\$101,900.00
2	Water Main Replacement within the Frederick and Prospect ROW (Continuous weld HDPE minimum 200 feet in length connecting mains/utility crossings in Bay Street and Prospect Street)	35,905.00
3	Sidewalk (ADA accessibility) improvements between 640 Bay Street and the Bay Street Pedestrian Pathway	38,230.00
4	Public Plaza @ Prospect (minimum 400 square feet)	\$16,850.00
	<b>Totals</b>	<b>\$192,885.00</b>

5.5.2 The Development Agreement shall additionally stipulate the following:

5.5.2.1 The City shall grant no impact fee credits (School, fire, transportation, or parks) related to the previous use or building at 640 Bay Street.

5.5.2.2 The City shall recognize the value of the previous water and sewer utility connections providing water and sewer service to the previous building located at this site.

5.5.3 The Development Agreement may allow for the expansion of the project onto contiguous properties.

5.6. **Satisfaction/waiver of Seller's contingency.** This Seller's contingency is solely for the benefit of the Seller. If this contingency is not timely satisfied, or if the Port Orchard City Council fails to approve the Development Agreement, Seller will have the right at its sole election either to waive the contingency in writing and proceed with the purchase or to terminate this Agreement. If Seller elects to terminate this Agreement, the escrow will be terminated, the Deposit must immediately be returned to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each party shall pay one-half (1/2) of the cost of terminating the escrow.

## 6. Closing.

6.1 **Closing date.** This transaction will be closed in escrow by Title Company acting as escrow agent ("Escrow Agent"). The closing will be held at the offices of Title Company on or before that date which is thirty (30) days after the execution of the Development Agreement and the expiration of any applicable appeal period related thereto, but in any event no later than December 31, 2018 (the "Closing Date"). If closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Escrow Agent will immediately terminate the escrow, forward the Deposit to the party entitled to receive it as provided in this Agreement and return all documents to the party that deposited them.

## 6.2 Closing.

6.2.1 **Seller's escrow deposits.** On or before the Closing Date, Seller shall deposit into escrow the following:

- (a) the duly executed and acknowledged Deed;
- (b) a duly executed and completed Real Estate Excise Tax Affidavit;
- (c) a non-foreign affidavit pursuant to Section 1445 of the Internal Revenue Code;
- (d) any other documents, instruments, records, correspondence and agreements called for hereunder that have not previously been delivered; and
- (e) a certificate reaffirming as of the Closing Date that all of Seller's representations and warranties under this Agreement are true and correct.

6.2.2 **Buyer's escrow deposits.** On or before the Closing Date, Buyer shall deposit into escrow the following:

- (a) cash or immediately available funds in an amount sufficient to pay the One Hundred Fifty Thousand Dollars (\$150,000.00) cash payment portion of the Purchase Price, plus Buyer's share of closing costs;
- (b) a duly executed Development Agreement, per Section 5.5 above;
- (c) a duly executed and completed Real Estate Excise Tax Affidavit;
- (d) any other documents or instruments Buyer is obligated to provide pursuant to this Agreement (if any) in order to close this transaction; and
- (e) a certificate reaffirming as of the Closing Date that all of Buyer's representations and warranties under this Agreement are true and accurate.

6.2.3 **Additional instruments and documentation.** Seller and Buyer shall each deposit any other instruments and documents that are reasonably required by Escrow Agent or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with this Agreement.

## 6.3 Closing costs.

6.3.1 **Seller's costs.** Seller shall pay the premium for a standard coverage owner's policy of title insurance in the full amount of the Purchase Price, State of Washington real estate excise taxes applicable to the sale, and one-half of Title Company's escrow fee.



6.3.2 **Buyer's costs.** Buyer shall pay the additional premium, if any, attributable to the extended coverage owner's policy of title insurance (if elected by Buyer) and any endorsements required by Buyer, the cost of recording the Deed and one-half of Title Company's escrow fee.

6.4 **Foreign Investment in Real Property Tax Act.** The parties agree to comply in all respects with Section 1445 of the Internal Revenue Code and the regulations issued thereunder (the "Regulations"). If Seller is not a "foreign person" (as defined in the Regulations), Seller shall deliver to Buyer through escrow a nonforeign certificate as prescribed by the Regulations, properly executed and in form and content satisfactory to Buyer. If Seller is a "foreign person" or fails or refuses to deliver the nonforeign certificate, or if Buyer receives notice, or has actual knowledge, that the non-foreign certificate is false, a tax equal to 10% of the Purchase Price will be withheld through escrow and paid by Escrow Agent to the Internal Revenue Service in the manner prescribed by the Regulations, unless withholding is reduced or excused in the manner prescribed by the Regulations.

In the event of any withholding, Seller's obligations to deliver title and close this transaction will not be excused or otherwise affected.

7. **Adjustments and Prorations.** The following adjustments and prorations will be made as of 12:01 a.m. on the Closing Date (with Buyer either responsible for or entitled to a credit for, as the case may be, the actual Closing Date).

7.1. **Property taxes.** All property taxes payable in the year of closing and assessments approved by Buyer, if any, will be prorated as of the Closing Date.

7.2. **Utilities.** All gas, electric and other utility charges will be prorated as of the Closing Date.

7.3. **Accounts payable.** Except as may be otherwise agreed by Seller and Buyer in writing, all sums due for accounts payable that were owing or incurred in the maintenance or operation of the Property prior to the Closing Date will be paid by Seller on or prior to the Closing Date or adequate provisions reasonably satisfactory to Buyer will be made in respect to such payment. Seller agrees to indemnify and hold Buyer harmless with respect to all such obligations. Buyer shall furnish to Seller for payment promptly following receipt any bills to be paid by Seller. Except as may otherwise be agreed to by Seller and Buyer in writing, all accounts payable incurred on or after the Closing Date with respect to the Property will be paid by Buyer and Buyer agrees to indemnify Seller with respect thereto.

8. **Seller's Covenants.**

8.1 **Covenant to operate and maintain.** Prior to the Closing Date, Seller shall maintain, repair, manage and operate the Property in a businesslike manner in accordance with Seller's prior practices and Seller shall not dissipate any portion of the Property. Seller shall keep the Property insured in accordance with Seller's prior practices up to the Closing Date.

## 9. Representations and Warranties.

9.1 **Seller's representations and warranties.** Seller represents and warrants to Buyer as follows:

(a) Seller has full power and authority to convey the Property to Buyer.

(b) To the best of Seller's knowledge, the Property is now, or will be as of the Closing Date, in compliance in all material respects with all applicable zoning, land-use, building, construction, subdivision and other local, state and federal laws, ordinances and regulations and with all existing covenants, conditions, restrictions and easements.

(c) To the best of Seller's knowledge, all Due Diligence Materials and other instruments and documents delivered to Buyer pursuant to this Agreement (the "Warranted Materials") are complete and accurate originals or copies, and Seller shall advise Buyer in writing of any inaccuracies in the Warranted Materials as Seller becomes aware of them. With respect to all other instruments and documents delivered or required to be delivered to Buyer by Seller pursuant to this Agreement, Seller has not purposefully altered or withheld any of them.

(d) Seller has not received notice of any special assessment or condemnation proceedings affecting the Property.

(e) To the best of Seller's knowledge, there is no litigation pending or threatened against Seller (or any basis for any claim) that arises out of the ownership of the Property and that might materially and detrimentally affect (i) the use or operation of the Property for Buyer's intended use, or (ii) the ability of Seller to perform its obligations under this Agreement, or (iii) the value of the Property.

(f) Seller is a Washington municipal corporation. This Agreement and all documents executed by Seller that are to be delivered to Buyer at closing are, or at the time of closing will be, (i) duly authorized, executed and delivered by Seller, (ii) legal, valid and binding obligations of Seller, (iii) sufficient to convey title (if they purport to do so), and (iv) in compliance with all provisions of all agreements and judicial orders to which Seller is a party or to which Seller or all or any portion of the Property is subject.

(g) Other than the Property, there are no items, tangible or intangible, real or personal, owned by Seller or any affiliate of Seller, now or at any time used in conjunction with the Property or any portion thereof.

(h) Seller has received no notice of any failure of Seller to comply with any applicable governmental requirements in respect of the use, occupation and construction of the Property, including, but not limited to, environmental, fire, health, safety, zoning, subdivision and other land use requirements that have not been corrected to the satisfaction of the appropriate governmental authority, and Seller has received no notice of, and has no knowledge of, any violations or investigation relating to any such governmental requirement.

(i) Seller has received no notice of any default or breach by Seller under any covenants, conditions, restrictions, rights of way or easements that may affect Seller in respect to the Property or may affect the Property or any portion thereof and no such default or breach now exists.

(j) No building or other improvement encroaches on the real property, nor does any building or improvement that is a part of the real property encroach on lands of others or any public or private road or right of way.

(k) There are no leases affecting any part of the Property and there are no written or oral promises, understandings or agreements between Seller and any tenant or occupant of the Property that have not been disclosed by Seller as part of the materials provided by Buyer.

(l) To Seller's knowledge there are no permits, licenses or consents required by any governmental authority in connection with the use and occupancy of the Property except those previously obtained by Seller and delivered to Buyer, and Seller knows of no local improvement districts proposed which will affect the Property.

(m) Except as disclosed in writing by Seller to Buyer, the Property is not affected by any statute or governmental regulation of any kind that limits the right to increase rents, requires the renewal of leases or grants a right to purchase to any tenant.

(n) All public utilities required for the operation of the Property either enter the Property through adjoining public streets or, if they pass through adjoining private lands, do so in accordance with valid public easements or private easements that will inure to the benefit of Buyer on the Closing Date.

(o) Capacity within the water and sewer systems beyond that which was associated with the previous building and use may be reserved by applying for water and sewer concurrency pursuant to POMC 20.180.

(p) Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

(q) All of the representations, warranties and covenants of Seller contained in this Agreement are true and correct as of the Effective Date and as of the Closing Date and will survive the closing of the transaction contemplated by this Agreement.

**9.2 Buyer's representations and warranties.** Buyer represents and warrants to Seller as follows:

(a) Buyer is a Washington limited liability company, duly organized and validly existing under the laws of the state of Washington; this Agreement and all documents executed by Buyer that are to be delivered to Seller at closing are, or at the time of closing will be (i) duly authorized, executed and delivered by Buyer, (ii) legal, valid and binding obligations of Buyer, and (iii) in compliance with all provisions of all agreements and judicial orders to which Buyer is a party or to which Buyer is subject.

(b) In connection with its Due Diligence, Buyer will inspect those aspects of the Property, including, without limitation, its physical condition, that Buyer deems necessary in order to make a determination whether to purchase the Property.

(c) As of the date of this Agreement, Buyer is not aware of any default by Seller of any representation or warranty set forth in this Agreement.

## **10. Hazardous Materials.**

### **10.1 Definitions.**

**10.1.1 Definition of "Environmental Laws".** "Environmental Laws" means any federal, state or local laws, ordinances, permits or regulations, or any common law, regarding health, safety, radioactive materials or the environment, each as amended, and any regulations promulgated thereunder, guidance and directives issued with respect thereto, or policies adopted by the applicable authorities thereunder.

**10.1.2 Definition of "Hazardous Materials".** "Hazardous Materials" means: (i) any radioactive materials; (ii) any substance or material the transportation, storage, treatment, handling, use, removal or release of which is subject to any Environmental Law; or (iii) any substance or material for which standards of conduct are imposed under any Environmental Law. Without limiting the generality of the foregoing, "Hazardous Materials" includes: asbestos and asbestos-containing materials (whether or not friable); urea-formaldehyde in any of its forms; polychlorinated biphenyls; oil, used oil; petroleum products and their by-products; lead-based paint; radon; and any substances defined as "hazardous waste," "hazardous substances," "pollutants or contaminants," "toxic substances," "hazardous chemicals," "hazardous pollutants," or "toxic chemicals" "under any law, statute, ordinance or regulation governing environmental matters or hazardous materials.

**10.2 Compliance with Environmental Laws.** Seller represents and warrants that:

(a) Seller has no actual knowledge of the release or presence of any Hazardous Material on, in, from or onto the Real Property;

(b) Seller has not generated, manufactured, refined, transported, stored, handled, disposed of or released any Hazardous Materials on the Property, nor has Seller permitted the foregoing;

(c) To the best of Seller's actual knowledge, Seller has obtained all approvals and caused all notifications to be made as required by Environmental Laws;

(d) To the best of Seller's actual knowledge, Seller has not received any notice of any violation of any Environmental Laws;

(e) To the best of Seller's actual knowledge, no action has been commenced or threatened regarding Seller's compliance with any Environmental Laws;

(f) To the best of Seller's actual knowledge, no tanks used for the storage of any Hazardous Materials above or below ground are present or were at any time present on or about the Real Property; and

(g) To the best of Seller's actual knowledge, no action has been commenced or threatened regarding the presence of any Hazardous Materials on or about the Real Property.

**10.3 No waiver of liability.** Seller has not released or waived and will not release or waive the liability of any previous owner, lessee or operator of the Real Property or any party who may be potentially responsible for the presence or removal of Hazardous Materials on or about the Real Property. Seller has made no promises of indemnification regarding Hazardous Materials to any party.

**10.4 Environmental inspection.** A Phase I Environmental Assessment was prepared by the Seller and is available to the Buyer upon request. During the Due Diligence Period, Buyer will have the right to take soil and water samples (including groundwater samples) from the Real Property, and to test and analyze those samples to determine the extent of any contamination of the soils and water (including groundwater) on or about the Real Property. If, based on the results of those inspections and/or tests, Buyer determines that the condition of the Real Property is unsatisfactory or if Buyer believes that its ownership of the Real Property would expose Buyer to undue risks of government intervention or third-party liability, Buyer may, without liability, cancel the purchase of the Property and terminate this Agreement.

**11. Casualty Loss.** Following the occurrence of any event prior to the Closing Date, causing damage to or destruction of the Property or any portion of the Property, Seller shall promptly notify Buyer of such occurrence. Under any such circumstances the provisions of this Section 11 will apply.

**11.1 Minor casualty loss.** If the amount of any casualty loss referred to above in this Section 11 is not more than Five Hundred Dollars (\$500.00), the obligation of each party under this Agreement will continue, notwithstanding any such casualty, the rights to all insurance proceeds collectively by reason of such loss and not collected prior to closing will at closing be assigned to Buyer, and the Purchase Price will be paid without reduction by reason of such loss. Buyer and Seller will under such circumstances cooperate in settlement of such claims and any proceeds collected prior to closing will, consistent with the circumstances, be applied to any reconstruction or be offset against the portion of the Purchase Price paid at closing.

**11.2 Substantial casualty loss.** If the amount of any casualty loss is more than Five Hundred Dollars (\$500.00), Buyer and Seller will each have the right to terminate this Agreement in the manner specified by this Section 11.2. Such election may be exercised only by the party so electing to terminate giving written notice of termination to the other party within thirty (30) days after receipt of actual notice of such casualty loss. Such notice of casualty will be effective to commence the running of this termination period only if such notice specifically provides that it is being given pursuant to this Section 11.2. Upon effective exercise of such termination election by either party, this Agreement will terminate, and the Earnest Money will be returned to Buyer. If, in the event of any such casualty, neither party affirmatively exercises

the right to terminate provided for by this Section 11.2, such right will lapse, and the provisions of Section 11.1 above will apply.

**11.3 Eminent domain.** If at any time after the Effective Date, Seller receives any notice of any condemnation proceedings, or other proceedings in the nature of eminent domain, it will promptly send a copy of such notice to Buyer. If all or any part of the Property is taken by condemnation or eminent domain and the value of the portion of the Property so taken exceeds Five Hundred Dollars (\$500.00), Buyer may, upon written notice to Seller, elect to terminate this Agreement, and in such event all monies theretofore paid on account must be returned to Buyer, and neither party will have any further liability or obligation under this Agreement. If all or any portion of the Property has been or is hereafter condemned or taken by eminent domain and this Agreement is not canceled, Seller's right, title and interest in and to any awards in condemnation or eminent domain, or damages of any kind, to which Seller may have become entitled or may thereafter be entitled by reason of any exercise of the power of condemnation or eminent domain with respect to the Property or any portion thereof.

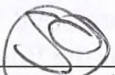
**12. Possession.** Seller shall deliver possession of the Property to Buyer on the Closing Date.

**13. Events of Default.**

**13.1 By Seller.** If there is an event of default under this Agreement by Seller (including a breach of any representation, warranty or covenant), Buyer will be entitled (a) in addition to all other remedies available at law or in equity, to seek specific performance of Seller's obligations under this Agreement or (b) to terminate this Agreement by written notice to Seller and Escrow Agent. If Buyer terminates this Agreement, the escrow will be terminated, the entire Deposit must immediately be returned to Buyer, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement except that Seller shall pay any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

**13.2 By Buyer.** IN THE EVENT BUYER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE PROPERTY, THE EARNEST MONEY DEPOSIT MADE BY BUYER WILL BE FORFEITED TO SELLER AS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER FOR SUCH FAILURE.

  
\_\_\_\_\_  
Seller's Initials

  
\_\_\_\_\_  
Buyer's Initials

**14. Notices.** Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service or given by mail or via facsimile. Any notice given by mail must be sent, postage prepaid, by certified or registered mail, return receipt requested. All notices must be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Seller: City of Port Orchard  
ATTN: Mayor Robert Putaansuu  
216 Prospect Street

Port Orchard, WA 98366

with a copy to: Office of the City Attorney  
Sharon Cates  
Lighthouse Law Group PLLC  
600 Stewart Street, Suite 400  
Seattle, WA 98101

Buyer: Waterman Investment Partners, LLC  
P.O. Box 376  
Burley, WA 98322

with a copy to: Ron Templeton  
Templeton Horton Weibel  
3212 NW Byron Street, #104  
Silverdale, WA 98383

Any notice will be deemed to have been given, if personally delivered, when delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit at any post office in the United States of America, and if delivered via facsimile or electronic mail, the same day as verified, provided that any verification that occurs after 5:00 p.m. on a business day, or at any time on a Saturday, Sunday or holiday, will be deemed to have occurred as of 9:00 a.m. on the following business day.

**15. Brokers and Finders.** Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplated by this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based upon any other contract, dealings or communication, the party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend and hold harmless the other party from and against any liability, cost or damages (including attorneys' fees and costs) arising out of that claim.

**16. Amendments.** This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

**17. Continuation and Survival of Representations and Warranties.** All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of Closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title for a period of twelve (12) months. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

**18. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of Washington.

**19. Entire Agreement.** This Agreement and the exhibits to it constitute the entire agreement between the parties with respect to the purchase and sale of the Property, and supersede all prior agreements and understandings between the parties relating to the subject matter of this Agreement.

**20. Attorney's Fees.** If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy court proceeding.

**21. Time of the Essence.** Time is of the essence of this Agreement.

**22. Exclusivity.** Seller shall not market the Property actively until after the expiration of the Due Diligence Period and then only if Buyer elects not to proceed with the purchase of the Property.

**23. Waiver.** Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

**24. Nonmerger.** The terms and provisions of this Agreement, including, without limitation, all indemnification obligations, will not merge in, but will survive, the closing of the transaction contemplated under this Agreement.

**25. Assignment.** Buyer shall not assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld or delayed. Seller shall consent to an assignment of this Agreement to (i) the parent of Buyer, or to a wholly-owned subsidiary of Buyer or of such parent, or (ii) to any corporation or other entity with which Buyer may be merged or consolidated, provided that the net worth of the resulting corporation is at least equal to the net worth of Buyer as of the Effective Date.

**26. Negotiation and Construction.** This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

**27. Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period will be deemed to end at 5 p.m., Pacific Time.



28. **Section 1031 Exchange.** Each party agrees to cooperate with the other and/or the other's principals in effectuating a like-kind exchange under Section 1031 of the Internal Revenue Code. Each party shall execute such documents as may be necessary or appropriate to assist with a contemporaneous or deferred exchange arrangement requested by the other on the conditions that the non-requesting party will have no liability whatsoever in connection with such exchange, the non-requesting party will not be required to incur any expense in connection therewith and that the requesting party indemnifies and holds the non-requesting party harmless from any such liability or expense, including all of the non-requesting party's costs and attorney fees related thereto.

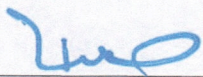
29. **Recitals and exhibits.** The Recitals and Exhibits are incorporated into this Agreement by this reference.

30. **Counterparts.** This agreement may be signed in counterparts, any of which shall be deemed an original.

31. **Date.** This Agreement is made this 10<sup>th</sup> day of July 2018.

**SELLER:**

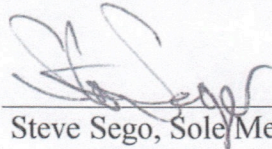
City of Port Orchard, a municipal corporation of the State of Washington



Robert Putaansuu, Mayor

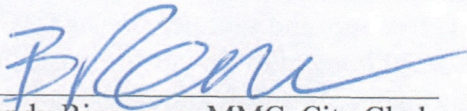
**BUYER:**

Waterman Investment Partners, LLC



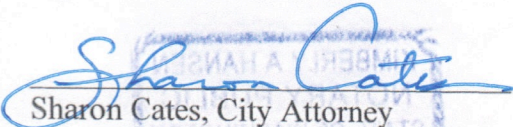
Steve Segó, Sole Member

ATTEST/AUTHENTICATE:

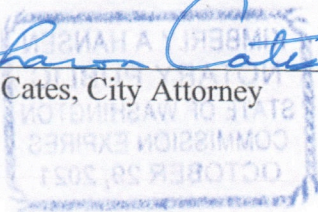


Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:



Sharon Cates, City Attorney



STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KITSAP )

On this 26 day of July, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Robert Putaansuu, to me known to be the Mayor of the City of Port Orchard, the Washington municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Jenine Floyd  
Notary Public in and for said state, residing  
at Port Orchard WA  
My commission expires: 11-15-18  
Print Name: Jenine Floyd

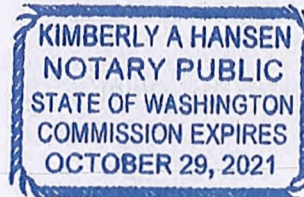


STATE OF WASHINGTON )  
 ) ss  
COUNTY OF Kitsap )

On this 19th day of July, 2018, I certify that I know or have satisfactory evidence that Steve Sego is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument on behalf of Waterman Investment Partners, LLC, referenced herein, and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Kimberly Hansen  
Notary Public in and for said state, residing  
at Kitsap County  
My commission expires: 10-29-21  
Print Name: Kimberly A. Hansen



**EXHIBIT LIST**

EXHIBIT A — Legal Description

EXHIBIT B — Property Depiction

**Exhibit A**

RESULTANT PARCEL 1 OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201510130176, AND AS DEPICTED ON SURVEY RECORDED UNDER AUDITOR'S FILE NO. 201510130175, IN VOLUME 81 OF SURVEYS, PAGE 145, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE SOUTHEASTERLY HALF OF LOT 6, BLOCK 9, S.M. STEVENS' TOWN PLAT OF SIDNEY, ACCORDING TO PLAT RECORDED IN VOLUME 1 OF PLATS, PAGES 1 AND 2, IN KITSAP COUNTY, WASHINGTON; EXCEPT THE SOUTHWESTERLY 3 FEET THEREOF; ALSO EXCEPT THE NORTHWESTERLY 5 FEET THEREOF; TOGETHER WITH ALL OF LOT 7, BLOCK 9, S.M. STEVENS' TOWN PLAT OF SIDNEY, ACCORDING TO PLAT RECORDED IN VOLUME 1 OF PLATS, PAGES 1 AND 2, IN KITSAP COUNTY, WASHINGTON.

PLAT 111  
Exhibit B



**Addendum No. 1 to  
REAL ESTATE PURCHASE AND SALE AGREEMENT**

**THIS ADDENDUM NO. 1** to the Real Estate Purchase and Sale Agreement for the property located at **640 Bay Street, Port Orchard, Kitsap County, Washington**, is executed by and between **Waterman Investment Partners, LLC**, a Washington Limited Liability Company hereafter (“Buyer”) and the **City of Port Orchard**, a municipal corporation organized under the laws of the State of Washington (hereafter “Seller”).

**WHEREAS**, Buyer and Seller entered into the above referenced Real Estate Purchase and Sale Agreement, dated July 10, 2018, which is attached hereto and incorporated herein by this reference (“Agreement”); and

**WHEREAS**, Section 16 of the Agreement provides that it may be amended or modified by a written instrument executed by Buyer and Seller; and

**WHEREAS**, Section 6.1 of the Agreement sets forth the Closing Date requirements of the parties, and provides that the parties may agree in writing to a later closing date than the originally anticipated closing date of December 31, 2018; and

**WHEREAS**, the parties agree that it is in the best interests of both to amend the purchase price, development agreement, and improvement construction provisions of the Agreement, and to extend the closing date beyond December 31, 2018; and

**WHEREAS**, the parties wish to memorialize their agreement to amend these provisions of the Agreement;

**NOW, THEREFORE**, Buyer and Seller agree as follows:

1. Section 2.2 of the Agreement is hereby amended to read as follows:

**Purchase price.** The purchase price for the Property (the “Purchase Price”) includes a **One Hundred Fifty Thousand Dollar (\$150,000.00)** cash payment, of which the Earnest Money is a part, plus other valuable consideration in the form of economic, public and other benefits as agreed to between the parties in a separate development agreement, for valuable consideration totaling of **Four Hundred Sixteen Thousand Five Hundred and Five Dollars (\$416,505.00)**. The One Hundred Fifty Thousand Dollar (\$150,000.00) cash payment, including the Earnest Money, will be paid by the Buyer to the Seller in cash through escrow at closing.

2. Section 4.1 of the Agreement is hereby amended to read as follows:

**Development Agreement.** The parties agree that closing may take place only upon the execution of a development agreement (“Development Agreement”) between the parties for the development of the Property. The Development Agreement must demonstrate the Two Hundred Sixty-Six Thousand Five Hundred and Five Dollars (\$266,505.00) (excluding the \$150,000 cash payment pursuant to section 2.2 of this agreement) in other valuable consideration contemplated in the purchase price for the Property. If the Development Agreement fails to demonstrate this entire amount, Buyer shall pay to Seller the difference in cash at closing.

3. Section 5.5.1.6 of the Agreement is hereby amended to read as follows:

Construct the following improvements at a minimum cost to the Buyer as follows:

Item	Description	Cost
1	Prospect Street to Bay Street Pedestrian Hill Climb (Construct a staircase and pedestrian way between Bay Street and Prospect Street)	\$101,900.00
2	Sidewalk (ADA accessibility) improvements between 640 Bay Street and the Bay Street Pedestrian Pathway	38,230.00
3	Public Plaza @ Prospect (minimum 3,000 square feet)	\$126,375
	<b>Totals</b>	<b>\$266,505.00</b>

4. Section 6.1 of the Agreement is hereby amended to read as follows:

**Closing date.** This transaction will be closed in escrow by Title Company acting as escrow agent (“Escrow Agent”). The closing will be held at the offices of Title Company on or before that date which is thirty (30) days after the execution of the Development Agreement and the expiration of any applicable appeal period related thereto, but in any event no later than June 30, 2019 (the “Closing Date”). If closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Escrow Agent will immediately terminate the escrow, forward the Deposit to the party entitled to receive it as provided in this Agreement and return all documents to the party that deposited them.

5. In all other respects, the Agreement between the parties shall remain in full force and effect, amended as set forth herein, but only as set forth herein.

IN WITNESS WHEREOF, the parties have executed this Addendum No. 1 this 11<sup>th</sup> day of December 2018.

**WATERMAN INVESTMENT  
PARTNERS, LLC (BUYER):**

  
\_\_\_\_\_  
Steve Sego, Sole Member

**CITY OF PORT ORCHARD  
(SELLER):**

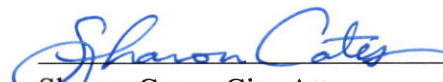
  
\_\_\_\_\_  
Robert Putaansuu, Mayor



ATTEST/AUTHENTICATED:

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

APPROVED AS TO FORM:

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



**Addendum No. 2 to  
REAL ESTATE PURCHASE AND SALE AGREEMENT**

**THIS ADDENDUM NO. 2** to the Real Estate Purchase and Sale Agreement for the property located at **640 Bay Street, Port Orchard, Kitsap County, Washington**, is executed by and between **Waterman Investment Partners, LLC**, a Washington Limited Liability Company hereafter (“Buyer”) and the **City of Port Orchard**, a municipal corporation organized under the laws of the State of Washington (hereafter “Seller”).

**WHEREAS**, Buyer and Seller entered into the above referenced Real Estate Purchase and Sale Agreement, dated July 10, 2018, which is attached hereto and incorporated herein by this reference (“Agreement”); and

**WHEREAS**, Buyer and Seller entered into Addendum No. 1 to the Agreement, dated December 11, 2018, to amend certain provisions of the Agreement, including the Closing Date, which is attached hereto and incorporated herein by this reference (“Addendum No. 1”); and

**WHEREAS**, Section 16 of the Agreement provides that it may be amended or modified by a written instrument executed by Buyer and Seller; and

**WHEREAS**, Section 6.1 of the Agreement sets forth the Closing Date requirements of the parties, and provides that the parties may agree in writing to a later closing date than the originally anticipated closing date of December 31, 2018; and

**WHEREAS**, via Addendum No. 1, the parties extended the closing date to June 30, 2019; and

**WHEREAS**, the parties agree that it is in the best interests of both to further extend the closing date to December 31, 2019 in exchange for a payment from Buyer that will go toward closing or be forfeited if closing does not occur; and

**WHEREAS**, the parties wish to memorialize their agreement to amend the closing and payment provisions of the Agreement;

**NOW, THEREFORE**, Buyer and Seller agree as follows:

1. Section 2.1 of the Agreement is hereby amended to read as follows:

**Deposit.** Within five (5) business days after the date on which the last party executes this Agreement (the “Effective Date”), Buyer shall execute and deliver to Land Title Company of Kitsap in Port Orchard, Washington (“Title Company”), as escrow agent for the closing of this transaction, a promissory note (the “Earnest Money Note”) in the amount of Fifteen Thousand Dollars (\$15,000.00). The Earnest Money Note will be

converted to cash upon the expiration of the Due Diligence Period (as defined in Section 5.2.1) (the “Deposit”) and will be paid or delivered as earnest money (the “Earnest Money”) in part payment for the purchase price of the Property no later than January 4, 2019.

Within five (5) business days after the date on which the last party executes Addendum No. 2 to this Agreement, Buyer shall deposit with Title Company, as escrow agent for the closing of this transaction, a payment (“Closing Date Extension Payment”) in the amount of Ten Thousand Dollars (\$10,000.00). The Closing Date Extension Payment will be paid or delivered to Seller in part payment for the purchase price of the Property upon closing. If the parties do not close this transaction, the Closing Date Extension Payment will be forfeited by Buyer and paid or delivered to Seller.

2. Section 2.2 of the Agreement is hereby amended to read as follows:

**Purchase price.** The purchase price for the Property (the “Purchase Price”) includes a **One Hundred Fifty Thousand Dollar (\$150,000.00)** cash payment, of which the Earnest Money and the Closing Date Extension Payment are a part, plus other valuable consideration in the form of economic, public and other benefits as agreed to between the parties in a separate development agreement, for valuable consideration totaling of **Four Hundred Sixteen Thousand Five Hundred and Five Dollars (\$416,505.00)**. The One Hundred Fifty Thousand Dollar (\$150,000.00) cash payment, including the Earnest Money and the Closing Date Extension Payment, will be paid by the Buyer to the Seller in cash through escrow at closing.

3. Section 6.1 of the Agreement is hereby amended to read as follows:

**Closing date.** This transaction will be closed in escrow by Title Company acting as escrow agent (“Escrow Agent”). The closing will be held at the offices of Title Company on or before that date which is thirty (30) days after the execution of the Development Agreement and the expiration of any applicable appeal period related thereto, but in any event no later than December 31, 2019 (the “Closing Date”). If closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Escrow Agent will immediately terminate the escrow, forward the Deposit to the party entitled to receive it as provided in this Agreement and return all documents to the party that deposited them.

4. The parties agree that, as the Buyer’s project for the Property is evolving, the list of improvements (with minimum cost to Buyer) as set forth in Section 5.5.1.6, as revised by Addendum No. 1, will require further revisions before closing.

5. In all other respects, the Agreement between the parties shall remain in full force and effect, amended as set forth herein, but only as set forth herein.

IN WITNESS WHEREOF, the parties have executed this Addendum No. 2 this 11<sup>th</sup> day of June 2019.

**WATERMAN INVESTMENT  
PARTNERS, LLC (BUYER):**

**CITY OF PORT ORCHARD  
(SELLER):**

\_\_\_\_\_  
Steve Sego, Sole Member

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

ATTEST/AUTHENTICATED:

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

APPROVED AS TO FORM:

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

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