



**City of Port Orchard Council Meeting Agenda**  
**September 10, 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  
Kitsap Transit-alt

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

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

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

**Department Directors:**

Nicholas Bond, AICP  
Development Director  
Mark Dorsey, P.E.  
Director of Public Works/City Engineer

Debbie Hunt  
Court Administrator

Noah Crocker, M.B.A.  
Finance Director

Matt Brown  
Police Chief

Brandy Rinearson, MMC, CPPO  
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. Adoption of a Resolution Adopting the Final Plat of Plat of Sherman Ridge (Dorsey) *Page 3***

**D. Adoption of a Resolution Confirming Mayoral Appointment to the Lodging Tax Advisory Committee (Rinearson) *Page 15***

**E. Approval of a Contract with the Washington State Department of Natural Resources for the Renewal of the Dekalb Street Waterway Permit No. 20-B12074 (Dorsey) *Page 21***

**F. Excusal of Councilmember Clauson Due to Business Obligations**

**5. PRESENTATION**

**A. Oath of Office: Police Officer Austin Culbert (Brown)**

**6. PUBLIC HEARING**

**7. BUSINESS ITEMS**

**A. Adoption of an Ordinance Amending Port Orchard Municipal Code Chapter 2.08 Appointive Officers and Creating a New Chapter 2.82 Abatement Hearing Officer (Price) *Page 55***

**B. Adoption of an Ordinance Amending Port Orchard Municipal Code Chapter 20.212 Dangerous and Unfit Dwellings, Buildings and Structures (Price) *Page 65***

**C. Adoption of a Resolution Approving a Contract with Robinson Noble, Inc. for the 2019-2020 ESSB 6091 Foster Pilot Project Services and Documenting Procurement Procedures (Dorsey) *Page 93***

**D. Adoption of a Resolution Approving a Contract with Ventilation Power Cleaning, Inc., for the 2019 Stormwater Catch Basin and Pipe Maintenance (Dorsey) *Page 131***

- E. [Adoption of a Resolution Approving a Contract with the Law Office of Thomas M. Pors for the 2019-2020 Water Rights-Legal Services \(Dorsey\) \*\*Page 151\*\*](#)
- F. [Adoption of a Resolution Approving the Purchase of Vehicles for the Equipment Rental Revolving Fund 500 \(Crocker\) \*\*Page 171\*\*](#)
- G. [Approval of Amendment No. 1 to Contract No. 052-18 with Northwest Urban Law, PLLC for Special Projects and Land Use Attorney Services \(Rinearson\) \*\*Page 199\*\*](#)
- H. [Approval of Amendment No. 2 to Contract No. 29-11 with Key Bank National Assoc. to Lease Right-of-Way Adjacent to 1301 Bay Street \(Rinearson\) \*\*Page 209\*\*](#)
- I. [Approval of Special Event Application: Kitsap County Sherriff's Office Open House \(Rinearson\) \*\*Page 243\*\*](#)
- J. [Approval of the August 13, 2019, Council Meeting Minutes \*\*Page 259\*\*](#)
- K. [Approval of the August 20, 2019, Council Meeting Minutes \*\*Page 267\*\*](#)

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

- A. [Update on Water Systems Improvements and Agreements for the 580 Zone \(Mayor\) \*\*Page 273\*\*](#)
- B. City of Port Orchard Promotional Videos (Rinearson)
- C. Draft Interlocal Agreement with the Public Facilities District for a Joint Community Center Funding (Mayor)

**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 may hold an executive session. The topic(s) and the session duration will be announced prior to the executive session.

**14. ADJOURNMENT**

	Date & Time	Location
<b>COMMITTEE MEETINGS</b>		
Finance	September 10, 2019; 5:15pm	City Hall
Economic Development and Tourism	September 9, 2019; 9:30am	City Hall
Utilities	September 16, 2019; 9:30am	City Hall
Sewer Advisory	November 6, 2019; 6:30pm	City Hall
Land Use	September 23, 2019; 9:30am	DCD*
Lodging Tax Advisory	TBD	City Hall
Festival of Chimes & Lights	September 16, 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**

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Please turn off cell phones during meeting and hold your questions for staff until the meeting has been adjourned.  
 The Council may consider other ordinances and matters not listed on the Agenda, unless specific notification period is required.  
 Meeting materials are available on the City's website at: [www.cityofportorchard.us](http://www.cityofportorchard.us) or by contacting the City Clerk's office at (360) 876-4407.  
 The City of Port Orchard does not discriminate on the basis of disability. Contact the City Clerk's office should you need special accommodations.



**City of Port Orchard**

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

**Agenda Staff Report**

Agenda Item No.: Consent Agenda 4C  
Subject: Adoption of a Resolution Adopting the  
Final Plat of Plat of Sherman Ridge

Meeting Date: September 10, 2019  
Prepared by: Nick Bond, AICP  
DCD Director  
Atty Routing No.: N/A  
Atty Review Date: N/A

**Summary:** The site is identified as Sherman Ridge and was granted approval with conditions by the City of Port Orchard Hearing Examiner on October 10, 2017. A Mitigated Determination of Non-Significance for Sherman Ridge was issued on August 11, 2017. The Plat of Sherman Ridge subdivision creates 27 single-family residential lots and three tracts consisting of a private alley, recreational space and stormwater facilities. The applicant has installed or bonded for roadway illumination, roads, sidewalks, landscaping, water and sewer, and storm drainage improvements. Streets within this final plat are for public use and will be accepted into the City’s road system.

**Relationship to Comprehensive Plan:** Not applicable.

**Recommendation:** Adoption of a resolution, granting approval of the final plat of Plat of Sherman Ridge.

**Motion for consideration:** I move to adopt a resolution, as presented, granting final plat approval for Plat of Sherman Ridge.

**Fiscal Impact:** Income from building permit fees, ongoing maintenance of public infrastructure.

**Alternatives:** Approval with added conditions.

**Attachments:** Resolution, Plat map, DCD Approval Letter, PW Approval Letter, SKFR Approval Letter and Bill of Sale Exhibit B.

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

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, GRANTING FINAL PLAT APPROVAL FOR A 27-LOT AND THREE-TRACT PLAT KNOWN AS SHERMAN RIDGE.**

**WHEREAS**, on October 10, 2017, the City of Port Orchard Hearing Examiner approved the Preliminary Plat known as Sherman Ridge; and

**WHEREAS**, on August 11, 2017, the City of Port Orchard issued a Mitigated Determination of Non-Significance for Sherman Ridge; and

**WHEREAS**, on July 2, 2019 an application was submitted for the final plat of Sherman Ridge preliminary plat for the subdivision of 27 single-family residential lots, three tracts, public right-of-way; and

**WHEREAS**, the Director of Public Works has determined that the proposed means of sewage disposal and water supply are adequate and recommends approval of the final plat; and

**WHEREAS**, the City Engineer recommends approval of the final plat; and

**WHEREAS**, the City Community Development Director recommends approval of the final plat; and

**WHEREAS**, the South Kitsap Fire and Rescue District recommends approval of the final plat; and

**WHEREAS**, the City Council finds that the Sherman Ridge plat conforms to all terms and conditions of the preliminary plat approval and that said subdivision meets the requirements of Chapter 58.17 RCW and other applicable state laws and local ordinances; and

**WHEREAS**, the City Council finds that Sherman Ridge conforms to the applicable zoning requirements and Port Orchard's Comprehensive Plan; now, therefore;

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

**THAT:** The Port Orchard City Council approves the final plat for Sherman Ridge, as illustrated and as legally described in Exhibit A, attached hereto; and

**FURTHER THAT:** The Sherman Ridge subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval for a period of five years after final plat approval unless the City Council finds that a change in conditions has created a serious threat to the public health or safety in the subdivision.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the Clerk in authentication of such passage this 10<sup>th</sup> day of September 2019.

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

ATTEST:

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

# SHERMAN RIDGE

Situate in

SW.1/4 NW1/4 SEC. 35, TWP. 24N., RG. 1E., W.M. City of Port Orchard, Kitsap County, Washington.

### DEDICATION

Know all persons by these presents, that the undersigned owners in fee simple of the land being platted hereby declare this land platted and dedicate to the use of the public forever all streets and roads shown on the plat and the use thereof for any and all public purposes not inconsistent with the use thereof for public high-way purposes; also the right to make all necessary slopes for cuts and fills upon the lots shown on this plat in the reasonable original grading of all the streets and roads shown hereon; also the right to drain all streets, roads and easements over and across any lot or lots where water might take a natural drainage course after the street or streets are graded.

The owners hereof, and their successors and assigns, hereby waive all claims for damages against any governmental authority from construction and maintenance of public facilities and public property within this plat.

All sanitary sewer, water mains, storm sewers, and appurtenances, and empty telecommunications conduit (installed for future use) which are located within public right-of-way or within easements specifically dedicated to the City of Port Orchard are hereby granted and conveyed to the ownership of the City of Port Orchard.

Tracts A, B & C are hereby conveyed to the Sherman Ridge Homeowners Association.

This subdivision has been made with the free consent and in accordance with the wishes of the undersigned owner(s). In witness whereof we have hereunto set our hands and seals.

[Signature] by STUART GREGAN, EXEC DIR  
Housing Kitsap (Print name and title)  
[Signature] by HEATHER WEGAN, DIRECTOR  
Homeowners Association (Print name and title)

### ACKNOWLEDGMENT

County of Kitsap }  
State of Washington } SS

On this day personally appeared before me Stuart Gregan to me known to be the of Housing Kitsap that executed the within and forgoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said Entity for the uses and purposes therein mentioned and on oath stated that he is authorized to execute said instrument.

Given under my hand and official seal this 19<sup>th</sup> day of August, 2019.

[Signature]  
Notary Public in and for the State of Washington  
Residing at Bremerton



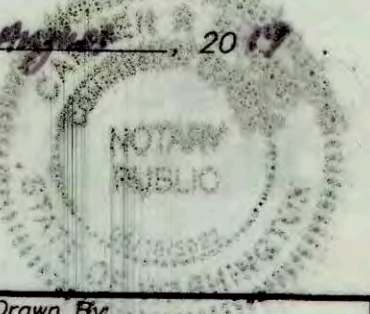
### ACKNOWLEDGMENT

County of Kitsap }  
State of Washington } SS

On this day personally appeared before me Heather Wegan to me known to be the of Community Frameworks that executed the within and forgoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said Entity for the uses and purposes therein mentioned and on oath stated that he is authorized to execute said instrument.

Given under my hand and official seal this 19<sup>th</sup> day of August, 2019.

[Signature]  
Notary Public in and for the State of Washington  
Residing at Bremerton



### EASEMENT PROVISIONS

#### UTILITY EASEMENTS

Declarant hereby reserves, grants and conveys to utility providers to the Plat, included but not limited to Puget Sound Energy, CenturyLink, Comcast, Cascade Natural Gas, the City of Port Orchard, Wave Broadband Cable, Waste Management, and South Kitsap Fire and Rescue, their successors and assigns, and any other purveyors of electricity, telephone, internet, water sewer garbage and cable services and their respective successors and assigns, perpetual easements under and upon the Lots of the Property as shown and/or described on the face of the Plat Map, and the ten feet (10') of all lots and tracts within the Plat lying parallel with and adjoining all roadways in which to install, construct, operate, maintain, repair, replace, and enlarge underground pipes, conduits, cables, and wires, with all necessary or convenient underground or ground-mounted appurtenances thereto for the purpose of serving the Plat and other property with electric, gas, television, internet, water, and other utility services, together with the right to enter upon the roadways and Lots at all times for the purposes herein stated.

An additional easement for utilities for the benefit of the current and future owners of tax parcel number 352401-2-040-2004 (The Gadberry Parcel) is hereby reserved, granted and conveyed under and upon that portion of Lots 12, 13 and 14 as depicted on the Plat Map.

No permanent structures shall be installed within utility easements.

#### ROADWAY AND STORM DRAINAGE EASEMENTS

Declarant hereby grants and conveys to the Association, the City of Port Orchard, and utility purveyors, for the common use and enjoyment of the Association and Owners, all easements for roadway and stormwater drainage facilities reserved over, under and across those areas as depicted on the Plat Map.

Please see Declaration of Covenants, Conditions, Easements and Restrictions for "Sherman Ridge"; a Plat Community for further details.

### LEGAL DESCRIPTION

That portion of the Northeast quarter of the Southwest quarter of the Northwest quarter, Section 35, Township 24 North, Range 1 East, W.M., in Kitsap County, Washington, described as follows:

Beginning at a point which is 350 feet North of the Southeast corner of said subdivision; Thence West 660 feet; Thence North 310 feet; Thence East 660 feet; Thence South 310 feet to the point of beginning; Except Melcher Street.

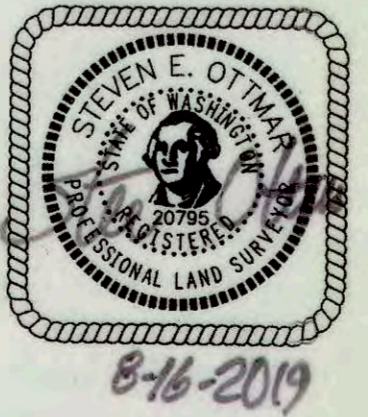
### PROTECTIVE COVENANTS

See Protective Covenants, Conditions, Restrictions and Easements as recorded under Auditor's File No. \_\_\_\_\_

### SURVEYOR'S CERTIFICATE

I, hereby certify that the plat of Sherman Ridge is based upon a complete and actual survey and subdivision of Section 35, Township 24 N., Range 1E., W.M.; that the courses and distances are shown correctly thereon, that the monuments have been set and the lot block corners staked correctly on the ground; that this is a true and correct representation of the lands actually surveyed and that I have fully complied with the provisions of the statutes and platting regulations.

[Signature]  
Steven E. Ottmar, P.L.S.  
Certificate: 20795  
Expiration: 11-10-2020  
Date: 8-16-2019



### COUNTY TREASURER APPROVAL

This is to certify that all taxes heretofore levied and which has become a lien upon the lands herein described, have been fully paid and discharged, according to the records of my office, up to and including the year \_\_\_\_\_.

Executed this day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
COUNTY TREASURER

### CITY COUNCIL APPROVAL

Approved by the City Council of the City of Port Orchard, this \_\_\_\_ day of \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
City Clerk Date

\_\_\_\_\_  
Mayor Date

### CITY ENGINEER APPROVAL

I hereby certify that this final plat is consistent with all applicable City improvement standards and requirements in force on the date of preliminary plat approval. I have approved this final plat as to the streets, alleys and other rights-of-way, design of bridges, sewage and water systems and other structures. Examined and approved by me this 14<sup>th</sup> day of Aug, 2019.

[Signature] 8/14/19  
CITY ENGINEER DATE

### CITY FINANCE DIRECTOR APPROVAL

I hereby certify that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied or discharged.

Executed this day of 8.25, 2019.

[Signature] 8.28.2019  
FINANCE DIRECTOR DATE

### COUNTY AUDITOR

Filed at the request of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and recorded in  
Volume \_\_\_\_\_ of plats, pages \_\_\_\_\_, records of Kitsap County, Washington.

\_\_\_\_\_  
County Auditor

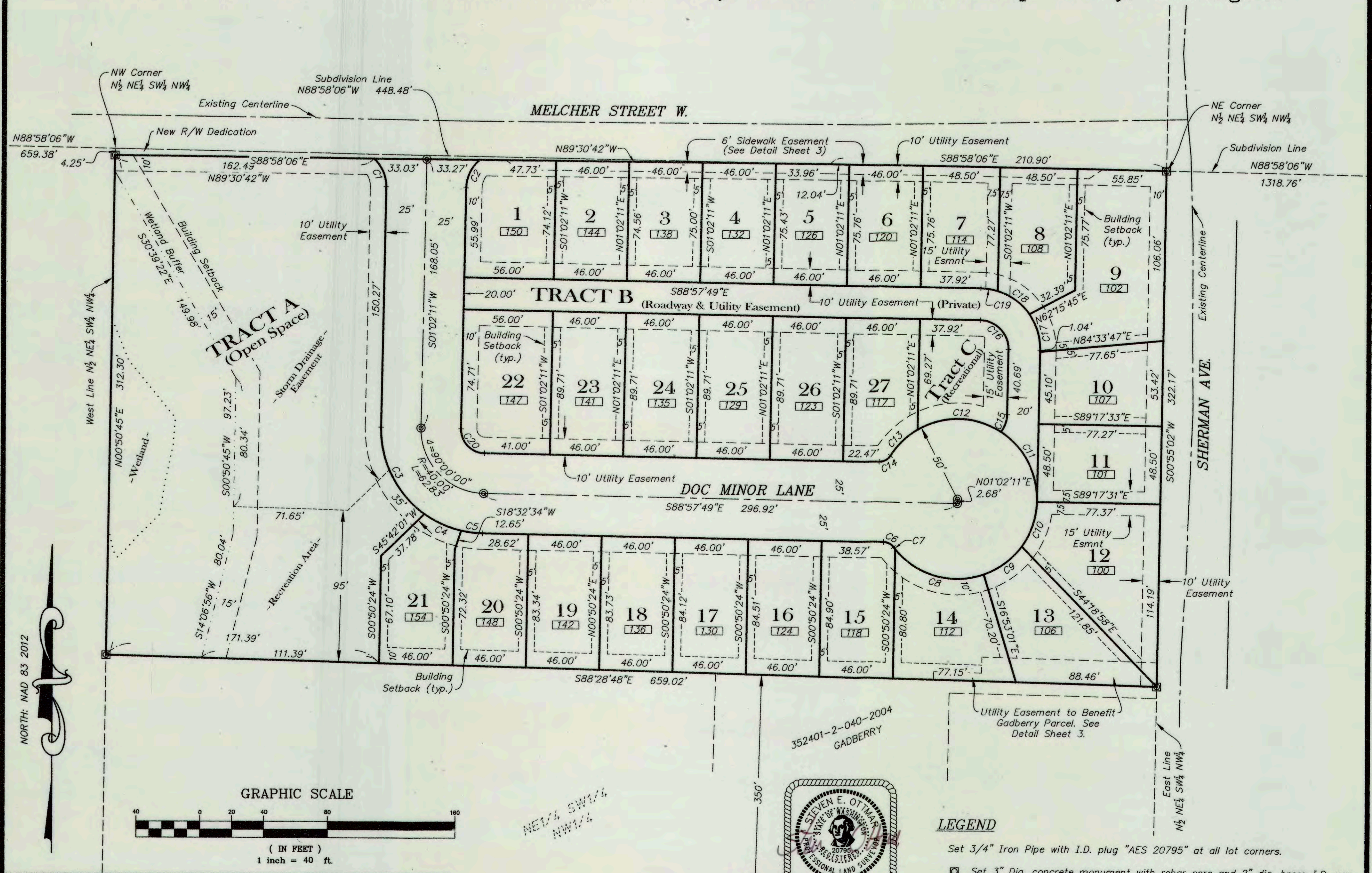
**AES**  
CONSULTANTS, INC.  
P.O. BOX 930 • SILVERDALE, WA. 98383 • (360)692-6400

Drawn By:	B.J.M.
Date:	8/15/19
Checked By:	S.E.O.
Job No.	6326

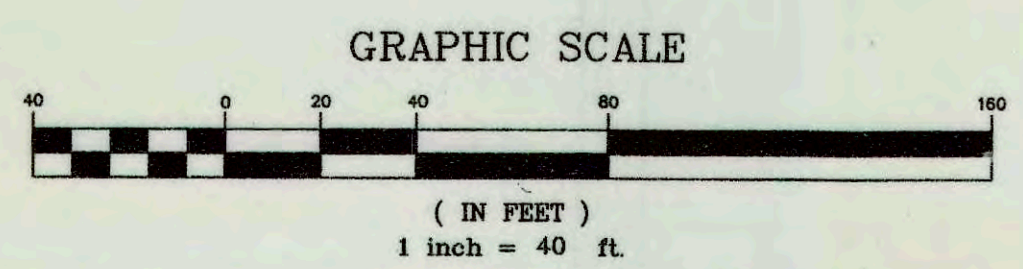
# SHERMAN RIDGE

Situate in

SW.1/4 NW1/4 SEC. 35, TWP. 24N., RG. 1E., W.M. City of Port Orchard, Kitsap County, Washington.



NORTH: NAD 83 2012



**AES**  
CONSULTANTS, INC.  
P.O. BOX 930 · SILVERDALE, WA. 98383 · (360)692-6400

Drawn By:	B.J.M.
Date:	8/15/19
Checked By:	S.E.O.
Job No.	6326

NE1/4 SW1/4  
NW1/4



**LEGEND**

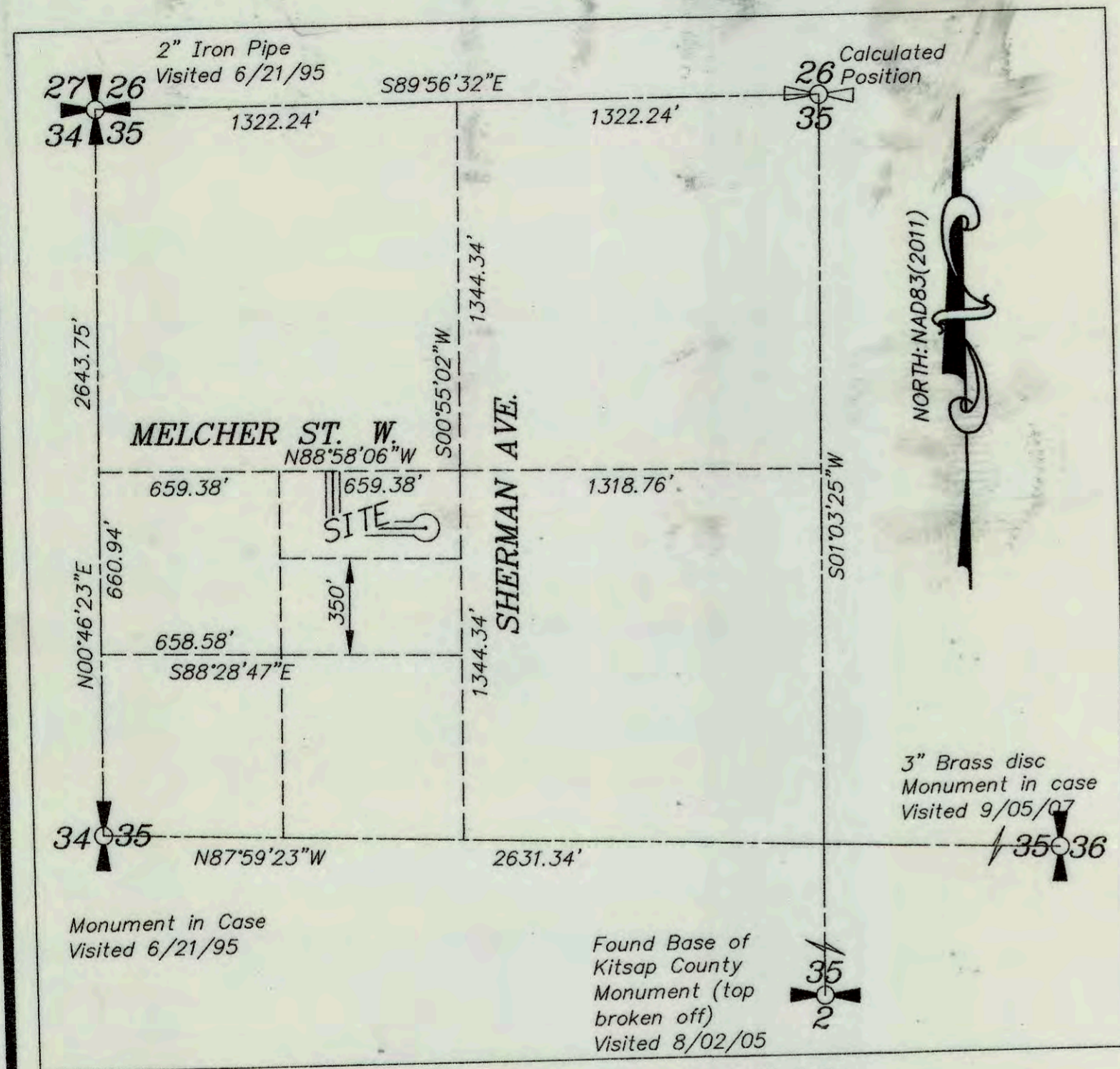
- Set 3/4" Iron Pipe with I.D. plug "AES 20795" at all lot corners.
- ☐ Set 3" Dia. concrete monument with rebar core and 2" dia. brass I.D. cap.
- ⊙ Set 2" Iron Pipe flush in pavement 1" Dia. Bronze I.D. Cap.
- 4282 Address
- Setback Lines



# SHERMAN RIDGE

Situate in

SW.1/4 NW1/4 SEC. 35, TWP. 24N., RG. 1E., W.M. City of Port Orchard, Kitsap County, Washington.

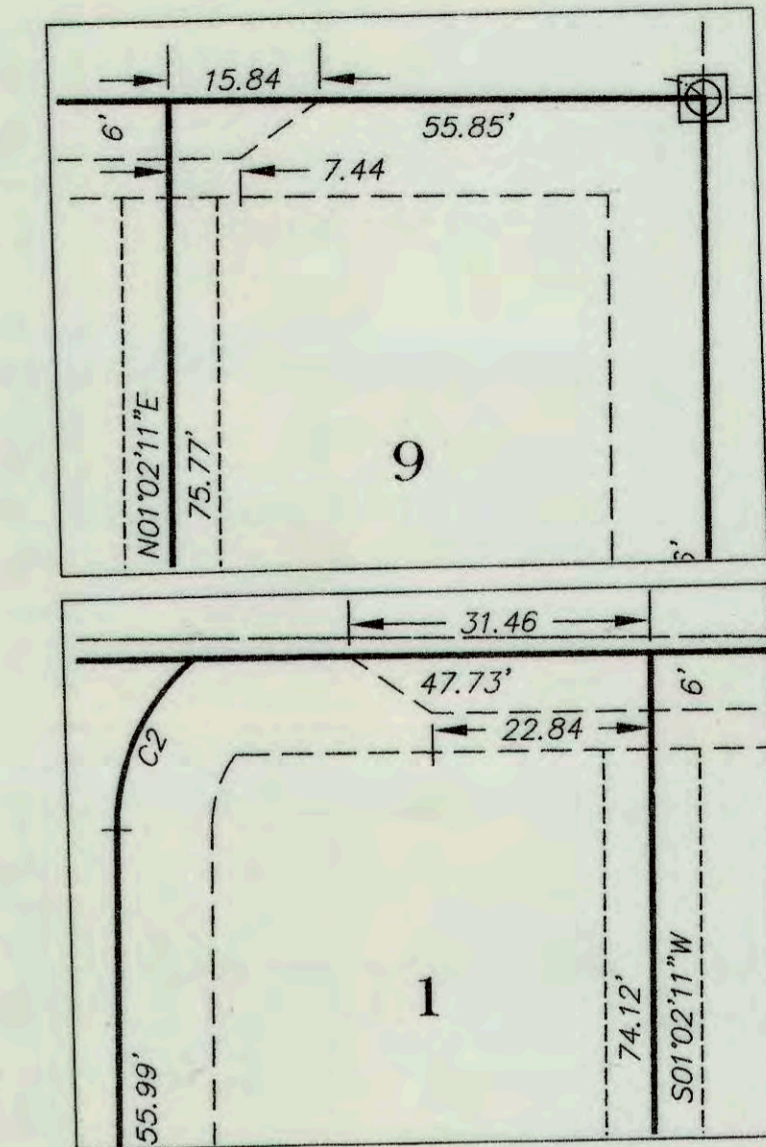


Vicinity Map & Section Subdivision  
Scale= 1"=500'

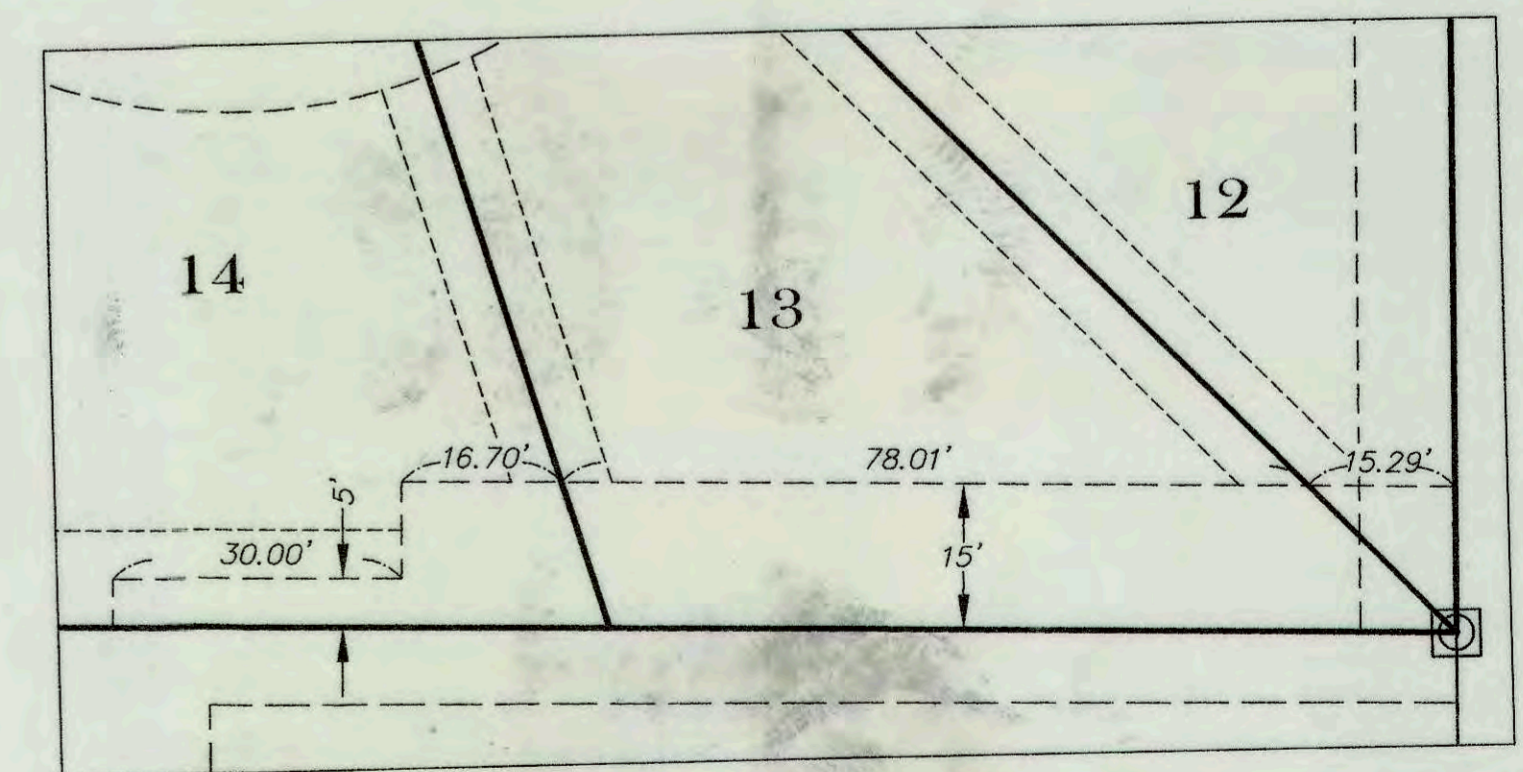
**NOTES**

- 1) All Building permits on these lots will be subject to impact fees pursuant to Port Orchard Municipal Code.
- 2) All lots shall access from interior roads only.
- 3) The Sherman Ridge Home Owners Association shall be responsible for maintenance of all landscaping within the existing and proposed right-of-way including any structures other than roadway, storm drainage facilities, and traffic signage. Maintenance shall include, but not be limited to, mowing of lawn areas.
- 4) Maintenance of Tracts A,B and C shall be the responsibility of the Sherman Ridge Home Owners Association.
- 5) Maintenance of the Filtera Storm System shall be the responsibility of the Sherman Ridge Homeowners Association.
- 6) Dimensions and use of all lots embraced in this plat are subject to and shall be in conformity with the City of Port Orchard Zoning regulations.
- 7) The City of Port Orchard will not be responsible for any damage to any private roads, tracts, and/or easement areas that may occur during routine maintenance activities and that in City of Port Orchard's judgement occur, in whole or in part, because of any construction materials or techniques, or any maintenance materials or techniques. This includes, but is not limited to, damage to pavement or vegetated areas caused by maintenance trucks.
- 8) The Sherman Ridge Home Owners Association shall be responsible for maintenance of all roadway improvements and landscaping within the existing and proposed private right-of-way including all storm drainage facilities and traffic signage.

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	19.83	23.00	49.39
C2	20.14	23.00	50.18
C3	63.02	65.00	55.55
C4	25.45	65.00	22.43
C5	13.63	65.00	12.02
C6	7.26	8.00	52.03
C7	1.81	50.00	2.07
C8	61.52	50.00	70.50
C9	30.00	50.00	34.38
C10	30.00	50.00	34.38
C11	51.39	50.00	58.89
C12	55.01	50.00	63.04
C13	23.79	50.00	27.26
C14	8.17	8.00	58.49
C15	11.65	18.00	37.08
C16	28.27	18.00	90.00
C17	23.96	38.00	36.13
C18	25.00	38.00	37.69
C19	10.72	38.00	16.17
C20	23.56	15.00	90.00



SIDEWALK EASEMENT DETAILS



UTILITY EASEMENT  
(To benefit adjoining parcel  
352401-2-040-2004 Gadberry)



8-16-2019

## AES

CONSULTANTS, INC.

P.O. BOX 930 · SILVERDALE, WA. 98383 · (360)692-6400

Drawn By:	B.J.M.
Date:	8/15/19
Checked By:	S.E.O.
Job No.	6326



**CITY OF PORT ORCHARD**  
**Development Director**  
216 Prospect Street, Port Orchard, WA 98366  
Phone: (360) 874-5533 • Fax: (360) 876-4980  
planning@cityofportorchard.us  
www.cityofportorchard.us

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September 3, 2019

City Council  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366

Re: Recommendation of Approval of Final Plat for Sherman Ridge LU19-PLAT FINAL-02

Dear City Council:

In accordance with RCW 58.17.150(2), I hereby state that I have reviewed the subdivision documents for conformance to applicable land use regulations and to the conditions in the City of Port Orchard Hearing Examiner decision dated October 10, 2017, and the conditions of the Mitigated Determination of Non-Significance dated August 11, 2017. The subdivision complies with all terms and conditions of the approved preliminary plat that are within the authority of the Department of Community Development. I therefore recommend approval of the final plat.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nicholas Bond', with a stylized flourish at the end.

Nicholas Bond, AICP  
City Development Director



# CITY OF PORT ORCHARD

## Public Works Director

216 Prospect Street, Port Orchard, WA 98366  
Phone: (360) 876-4991 • Fax: (360) 876-4980  
[mdorsey@cityofportorchard.us](mailto:mdorsey@cityofportorchard.us)  
[www.cityofportorchard.us](http://www.cityofportorchard.us)

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September 3, 2019

Port Orchard City Council  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366

Re: Recommendation of Approval of Final Plat for Sherman Ridge

Dear City Council:

In accordance with RCW 58.17.150(2), I hereby state that I have reviewed the subdivision documents for conformance to applicable land use regulations and to the conditions in the Kitsap County Hearing Examiner decision dated October 10, 2017. The subdivision complies with all terms and conditions of the approved preliminary plat that are within the authority of the Department of Community Development.

I also state that the City of Port Orchard has confirmed that they have sufficient sewage disposal and water supply capacity to serve the subdivision known as Sherman Ridge and that the final plat documents have been reviewed, that all working drawings and specifications for the improvements have been prepared in conformance with City standards and that all required improvements are either complete and accepted, or that a Performance Bond has been established for all unfinished work.

I therefore recommend approval of the final plat. If you should have any questions, or need additional information, please feel free to contact me at this office.

Sincerely,

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

MRD;mrd

Cc: Sharon Cates – City Attorney  
Nick Bond – Development Director  
File

City Council  
City of Port Orchard  
216 Prospect Street  
Port Orchard WA 98366

September 4, 2019

RE: Recommendation of Approval of Final Plat for Sherman Ridge

Dear City Council:

In accordance with RCW 58.17.150(2), I hereby state that I have reviewed the subdivision documents for conformance to applicable land use regulations and to the conditions in the Kitsap County Hearing Examiner decision and conditions. The subdivision complies with all terms and conditions of the approved preliminary plat that are within the authority of South Kitsap Fire and Rescue. I therefore recommend approval of the final plat.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brad Wiggins - 328".

Brad Wiggins  
Deputy Fire Marshal  
South Kitsap Fire and Rescue

**EXHIBIT B**

**CONSTRUCTION COST ESTIMATE**

<b>PROJ:</b> <i>Sherman Plat</i>		<b>CLIENT:</b> <i>Housing Kitsap</i>	
<b>DATE:</b> <i>August 15, 2019</i>		<b>Agency:</b> <i>CITY OF PORT ORCHARD</i>	

	<i>ITEM</i>	<i>QTY</i>	<i>UNITS</i>	<i>UNIT COST</i>	<i>TOTAL COST</i>
<b>PLAT WATER MAIN</b>					
	8" D.I. WATER MAIN	920	LF	\$140.17	\$128,959
	FIRE HYDRANT	1	EA	\$8,669.01	\$8,669
<b>OFF-SITE WATER MAIN (MELCHER AVE.)</b>					
	8" D.I. WATER MAIN	866	LF	\$140.17	\$121,390
<b>PLAT SANITARY SEWER</b>					
	PVC SANITARY SEWER PIPE 8 IN. DIAM.	895	LF	\$256.76	\$229,803
	MANHOLE	7	EA	\$6,755.08	\$47,286
<b>PLAT STREETS</b>					
	DRAIN PIPE 12 IN. DIAM.	1,317	LF	\$59.43	\$78,266
	CATCH BASIN TYPE 1	14	EA	\$3,046.74	\$42,654
	CATCH BASIN TYPE 30	9	EA	\$1,351.02	\$12,159
	CATCH BASIN TYPE 2 48"	7	EA	\$5,910.69	\$41,375
	HMA CL. 1/2 IN. PG 64-22	602	TN	\$407.82	\$245,508
	CURB, GUTTER, SIDEWALK	1209	LF	\$202.46	\$244,780
	STREET LIGHTING	17	EA	\$2,369.24	\$40,277
<b>OFF-SITE STREET IMPROVEMENTS (MELCHER AVE.)</b>					
	HMA CL. 1/2 IN. PG 64-22 (Melcher overlay)	172	TN	\$158.74	\$27,304
	CURB, GUTTER, SIDEWALK	810	LF	\$202.46	\$163,996
				<b>TOTAL =</b>	<b>\$1,432,427</b>

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**City of Port Orchard**

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

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**Agenda Staff Report**

Agenda Item No.:	<u>Consent Agenda 4D</u>	Meeting Date:	<u>September 10, 2019</u>
Subject:	<u>Adoption of a Resolution Confirming</u>	Prepared by:	<u>Brandy Rinearson, MMC</u>
	<u>Mayoral Appointment to the Lodging</u>		<u>City Clerk</u>
	<u>Tax Advisory Committee</u>	Atty Routing No.:	<u>N/A</u>
		Atty Review Date:	<u>N/A</u>

**Summary:** On August 20, 2019, Council adopted Resolution No. 025-19 which confirmed the Mayor’s appointments of representatives from the Days Inn and Comfort Inn as businesses required to collect the tax; and the Port Orchard Chamber of Commerce and Port Orchard Bay Street Association as organizations involved in activities to serve on the Lodging Tax Advisory Committee.

On September 5, 2019, staff was notified that the representatives from the Port Orchard Bay Street Association would not be able to serve on the committee due to other commitments.

The Mayor asked staff to contact the Saint’s Car Club to ask if they would be willing to serve on the Lodging Tax Advisory Committee; and they have agreed to serve.

**Recommendation:** The Mayor recommends adopting a resolution, un-appointing the Port Orchard Bay Street Association from the Lodging Tax Advisory Committee and confirming the appointment of the Saint’s Car Club to the Lodging Tax Advisory Committee as an organization involved in activities.

**Motion for consideration:** I move to adopt a resolution, un-appointing the Port Orchard Bay Street Association from the Lodging Tax Advisory Committee and confirming the appointment of the Saint’s Car Club to the Lodging Tax Advisory Committee as an organization involved in activities.

**Fiscal Impact:** None.

**Alternatives:** Deny the Mayor’s recommendation.

**Attachments:** Resolution and history matrix.

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RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON CONFIRMING MAYORAL APPOINTMENT AND CHAIR TO THE LODGING TAX ADVISORY COMMITTEE.**

**WHEREAS**, the Mayor is authorized by RCW 67.28.1817 to review the membership of the Lodging Tax Advisory Committee annually and to make changes as appropriate; and

**WHEREAS**, on August 20, 2019, Council adopted Resolution No. 025-19, which confirmed the Mayor's appointments of representatives from the Days Inn and Comfort Inn as businesses required to collect the tax; and the Port Orchard Chamber of Commerce and Port Orchard Bay Street Association as organizations involved in activities, and

**WHEREAS**, staff was notified the Port Orchard Bay Street Association was unable to serve on the committee due to other commitments; and

**WHEREAS**, the Mayor recommends the Saint's Car Club to serve on the committee as an organization involved in activities; now, therefore,

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

**THAT:** The City Council confirms the Mayor's confirmation to un-appoint the Port Orchard Bay Street Association as an organization involved in activities from the Lodging Tax Advisory Committee.

**FURTHER THAT:** The City Council confirms the Mayor's confirmation for the Saint's Car Club to serve as an organization involved in activities on the Lodging Tax Advisory Committee.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this 10<sup>th</sup> day of September 2019.

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Rob Putaansuu, Mayor

ATTEST:

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Brandy Rinearson, MMC, City Clerk

City of Port Orchard  
Lodging Tax Advisory Committee Board Members

<b>Group</b>	<b>2018-2019</b>	<b>2017-2018</b>	<b>2016-2017</b>	<b>2015-2016</b>	<b>2014-2015</b>	<b>2013-2014</b>	<b>2012-2013</b>	<b>2011-2012</b>	<b>2010-2011</b>	<b>2009-2010</b>
Chair	Rosapepe	Chang	Chang	Chang	Chang	Chang	Chang	Chang	Chang	Chang
KPVCB/Visit Kitsap							Kim Punt	Diane Robinson		
Port Orchard Chamber		Matt Murphy		Matt Murphy	Desiree Steffens	Christine Daniels	Desiree Steffens			
Fathoms O'Fun			Jessie Turner	Jessie Turner	Jessie Turner				Jesse Turner	Jesse Turner
Amy's on the Bay/POBSA								Amy Igloi		
Concerts by the Bay										
Sidney Art Museum			Chris Stansbury			Christine Stansbery	Mary Peterson			
Bay St Assn/POBSA			Bobbie Stewart	Bobbi Stewart	Bobbi Stewart		Don Ryan	Kathleen Wilson	John Ready	John Ready
Chimes & Lights										
Saints Car Club	Keith Woyshtnis				Frank Graziani	Frank Graziani				
Givens Center										
Port of Bremerton	Kathy Garcia								Brian Sauer	Brian Sauer
Jingle Bell Run		Sheila Cline								
Kitsap Harbor Festival										
Explore Port Orchard										
Cedar Cove Association										
Holiday Inn/Comfort Inn			Chan Park	Chan Park	Chan Park	Chan Park	Chan Park	Chan Park	Chan Park	Chan Park
Days Inn	Jack Edwards				Stephen Saffell				Stephen Saffell	Stephen Saffell
Vista Motel								Dick Berg		
Cedar Cove B&B		Kathy Michael	Kathy Michael	Kathy Michael	Kathy Michael	Kathy Michael	Kathy Michael			
Hidden Treasures B&B							Heather Cole	Heather Cole	Heather Cole	Heather Cole
Mrs. Howe's B&B	Lorraine Olsen	Lorraine Olsen	Lorraine Olsen	Lorraine Olsen	Lorraine Olsen	Lorraine Olsen	Lorraine Olsen			
Guest House Inn										

2008-2009	2007-2008	2006-2007	2005-2006	2004-2005	2003-2004	2002-2003	2001-2002	2000-2001
Chang	Wyatt	Wyatt	DiIenno	DiIenno	DiIenno	Wyatt	Wyatt	Wyatt
	Grant Griffin		Grant Griffin	Grant Griffin	Grant Griffin	Grant Griffin	Grant Griffin	Grant Griffin
Sharon Pierce or Coreen Haydock	Sharon Pierce or Coreen Haydock	DeDe Teeters	DeDe Teeters	Ruth Doveland	Melode' Sapp	Melode' Sapp	Melode' Sapp	Melode' Sapp
			Al Mahaney		Bob Morehouse	X		
		Pam Heinrich		Mary Peterson				
Amanda Rudd	Amanda Rudd or Mallory Jackson	Amanda Rudd					Phil McCormick	
Terry Bontrager								
								Debbie Baker
Chan Park	Chan Park	Maria Burns	Sharon Pierce	Sharon Pierce	Sharon Pierce	Sharon Pierce	Sharon Pierce	Sharon Pierce
Stephen Saffell	Stephen Saffell	Andrea Huges	Bryan Powell	John Miller	Brian Powell	Ken Parks		
Connie McGregory	Connie McGregory	Unknown	Seung Suh	Seung Suh	Seung Suh	Jasdip Sohal	Jasdip Sohal	Jasdip Sohal
							Michelle Middleton	Pat Wallace

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**City of Port Orchard**

216 Prospect Street, Port Orchard, WA 98366  
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**Agenda Staff Report**

Agenda Item No.:	<u>Consent Agenda 4E</u>	Meeting Date:	<u>September 10, 2019</u>
Subject:	<u>Approval of a Contract with the</u>	Prepared by:	<u>Mark R. Dorsey, P.E.</u>
	<u>Washington State Department of</u>		<u>Public Works Director</u>
	<u>Natural Resources for the Renewal of</u>	Atty Routing No:	<u>N/A</u>
	<u>the Dekalb Street Waterway Permit No.</u>	Atty Review Date:	<u>N/A</u>
	<u>20-B12074</u>		

**Summary:** On November 5, 1984, the City of Port Orchard entered into Washington State Department of Natural Resources (“DNR”) Permit No. 20-A12074 (“Waterway Permit”), being a 30-year Interagency Agreement for the use of State-Owned Aquatic Lands at the Dekalb Street Pier Waterway. The initial 30-year term expired on September 30, 2014. The subsequent 5-year term, approved on June 10, 2014 (Contract No. C059-14) had an associated termination date of September 30, 2019. Therefore, on November 13, 2018, the City Council authorized the Mayor to execute the required JARPA form to initiate the Permit renewal process. In general, and pursuant to WAC 332-30-31, the ‘Permitted Use’ of the property remains the same.

**Relationship to Comprehensive Plan:** Chapter 4 – Parks.

**Recommendation:** Staff recommends that the City Council authorize the Mayor to execute Contract No. C064-19 for the renewal of Dekalb Street Pier Waterway Permit No. 20-B12074 with the DNR for a 5-year term renewal, commencing on October 1, 2019 and terminating on September 30, 2024.

**Motion for Consideration:** I move to approve a contract for the renewal of Dekalb Street Pier Waterway Permit No. 20-B12074 with the DNR for a 5-year term renewal, commencing on October 1, 2019 and terminating on September 30, 2024.

**Fiscal Impact:** None currently. Until fees are adjusted pursuant to Section 4 of the Permit, the Licensee shall pay the State an annual fee of Zero Dollars (\$0.00)

**Alternatives:** None.

**Attachments:** WA DNR Waterway Permit No. 20-B12074.

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HILARY S. FRANZ  
COMMISSIONER OF PUBLIC LANDS

## WATERWAY PERMIT

### Permit No. 20-B12074

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting in its proprietary capacity through the Department of Natural Resources (“State”), and CITY OF PORT ORCHARD, a government entity (“Licensee”).

### BACKGROUND

Licensee desires to use the aquatic lands commonly known as Dekalb Waterway, which is a waterway located in Kitsap County, Washington, from State, and State desires to authorize the Licensee’s use of the property pursuant to the terms and conditions of this Permit. State has authority to enter this Agreement under Chapter 43.12, Chapter 43.30 and Title 79 RCW.

THEREFORE, the Parties agree as follows:

### SECTION 1 GRANT OF PERMISSION

#### 1.1 Permission.

- (a) Subject to the terms and conditions set forth below, State hereby grants Licensee a revocable, nonexclusive, and nonpossessory license to use the real property described in Exhibit A (the “Property”). In this agreement, the term “Permit” means this agreement and the privileges granted herein. State may revoke this permission in accordance with Paragraph 3.4.
- (b) This License is subject to all valid interests of third parties noted in the records of Kitsap County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington. Licensee is responsible for obtaining approvals from other persons, if any, who have an interest in the Property. This License is subject to the rights of the public under the Public Trust Doctrine or federal navigation servitude and treaty rights of Indian Tribes.
- (c) This Permit does not include a right to harvest, collect, or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials.

- (d) This License shall not be exclusive. State may grant easements and other land uses on the Property to others when such easements or other land uses will not unreasonably interfere with the Permitted Use. Nothing in this provision shall limit State's right to revoke this Permit under Paragraph 3.4 of this Permit.

**1.2 Survey and Property Descriptions.**

- (a) Licensee warrants that the Property description provided in Exhibit A is a true and accurate description of the Permit boundaries and the improvements to be constructed or already existing on the Property. Licensee's obligation to provide a true and accurate description of the Property boundaries is a material term of this Permit.
- (b) Licensee's use of any state-owned aquatic lands outside the Property boundaries is a material breach of this Permit and State may seek remedies under Section 14 of this Permit in addition to any other remedies afforded by law or equity or otherwise.

**1.3 Inspection.** State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Licensee's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property.

**SECTION 2 USE OF PROPERTY**

**2.1 Licensee's Interest in the Property.** State grants Licensee only a license to use the Property for the purposes set forth in Paragraph 2.2 below. State does not grant Licensee a possessory interest or estate in the Property.

**2.2 Permitted Use.** Licensee shall use the Property for a public use and access pier, catwalk, ramp and moorage floats. Public use and access shall be managed and operated in conformance to WAC 332-30-131, (the "Permitted Use"), and for no other purpose. This is a water-dependent use. Exhibit B describes the Permitted Use in detail. The Permitted Use is subject to additional obligations in Exhibit B. The Permitted Use of this Permit shall not be changed or modified without the written consent of State, which shall be at State's sole discretion.

**2.3 Restrictions on Permitted Use and Operations.** The following limitations and requirements apply to the Property and adjacent state-owned aquatic land. Licensee's compliance with the following does not limit Licensee's liability under any other provision of this Permit.

- (a) Licensee shall not cause or permit:
  - (1) Damage to natural resources,
  - (2) Waste, or
  - (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (b) The Permitted Use and Licensee's operations are subject to Washington Administrative Code (WAC) 332-30-117, as amended.



- (c) State may take any steps reasonably necessary to remedy any failure of Licensee to comply with the limitations and requirements under this Paragraph 2.3. Upon demand by State, Licensee shall pay all remedial costs and natural resources damages.
- (d) Residential uses, as defined by WAC 332-30-106(62), are not permitted on the Property.
- (e) Licensee shall not cause or permit grounding, scour, or damage to aquatic land and vegetation. This prohibition includes the following limitations:
  - (1) If pressure washing or cleaning any equipment, machinery, or floating or fixed structures within the boundaries of the Property or on any adjacent state-owned aquatic land, Licensee shall avoid scouring the substrate and damaging any aquatic land and vegetation. Licensee shall also comply with the following limitations:
    - (i) If equipment contains or is covered with petroleum based products:
      - (1) Licensee shall not pressure wash such equipment in or over the water and
      - (2) All wash water must be contained and taken to an approved treatment facility.
    - (ii) Licensee shall collect or sweep up non-organic debris accumulations on structures resulting from pressure washing and properly dispose of such debris in an upland location.
    - (iii) Licensee shall pressure wash using only clean water. Licensee shall not use or add to the pressure washing unit any detergents or other cleaning agents.
  - (2) Licensee shall avoid damage caused by propeller wash from vessels.
  - (3) Licensee shall not allow moorage or anchorage of vessels in water more shallow than six (6) feet at the extreme low tide and shall not allow vessels to come into contact with underlying bedlands (“ground out”) at any time.
- (f) Licensee shall not install fixed breakwaters.
- (g) Licensee shall not construct or install new covered moorage or boat houses.
- (h) Nothing in this License shall be interpreted as an authorization to dredge the Property. Licensee may submit an application in writing to State for authorization to dredge the Property. Except as permitted under the terms of a separate written authorization issued by State pursuant to Licensee’s application, Licensee shall not cause or permit dredging on the Property. State will not approve an application for dredging unless:
  - (1) Required for flood control, maintenance of existing vessel traffic lanes, or maintenance of water intakes;
  - (2) Consistent with State’s management plans, if any; and
  - (3) State determines the dredging proposal is otherwise in the best interest of the State. Licensee shall maintain authorized dredge basins in a manner that prevents internal deeper pockets.
- (i) Licensee shall incorporate best management practices to prevent release of chemical contaminants, wastewater, garbage, and other pollutants, as set forth in Pollution Prevention for Washington State Marinas, available at <https://wsg.washington.edu/wordpress/wp-content/uploads/marina-handbook.pdf>.

Licensee shall comply with any revisions to these best management practices that occur after the effective date of this permit. If Department of Natural Resources, Department of Ecology, or any other regulatory agency establishes different standards, Licensee shall meet the most protective standard.

**2.4 Conformance with Laws.** Licensee shall, at all times, keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Licensee's use of the Property.

**2.5 Liens and Encumbrances.** Licensee shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Licensee's use of the Property.

**2.6 Interference with Other Uses.** Licensee shall use the Property in a manner that minimizes or avoids interference with the rights of State, the public or others with valid right to use or occupy the Property or surrounding lands and water.

**2.7 Permittees.** Licensee may permit its employees, agents, contractors, invitees, or licensees (collectively referred to as "Permittees,") to exercise the rights granted herein. Acts or omissions of Permittees entering or using the Property under this License shall be deemed an act of the Licensee. Restrictions and requirements placed on the Licensee herein shall apply equally to Permittees.

### SECTION 3 TERM

**3.1 Term Defined.** The term of this Permit is five (5) years (the "Term"), beginning on the 1st day of October, 2019 (the "Commencement Date"), and ending on the 30th day of September, 2024 (the "Termination Date"), unless revoked, cancelled, or terminated sooner under the terms of this Permit.

**3.2 No Right of Renewal.** This Permit does not provide a right of renewal. Licensee may apply for a new Permit, which State has discretion to grant. Licensee must apply for a new Permit at least one (1) year prior to the Termination Date.

**3.3 End of Term.**

- (a) Upon the revocation, expiration, cancellation, or termination of this Permit (hereafter collectively referred to in this Permit as "termination of this Permit"), Licensee shall remove Improvements in accordance with Section 7, vacate the Property, and restore the Property to the same or better condition like its natural state before Licensee's use of the Property, reasonable wear and tear excepted.
- (b) Definition of Reasonable Wear and Tear.
  - (1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse of the Property by Licensee or any other person on the premises with the permission of Licensee.

- (2) Reasonable wear and tear does not include unauthorized deposit of material prohibited under Paragraph 2.3 regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.
  - (3) Reasonable wear and tear does not include any damage to the Property or natural resources that results from Licensee's failure to comply with the restrictions, limitations, and requirements set forth in this Permit.
- (c) If Property is in worse condition on the date of termination of this Permit than before Licensee's use of the Property, excepting for reasonable wear and tear, the following provisions apply.
- (1) State shall provide Licensee a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Licensee to enter into a right-of-entry or other use authorization prior to the Licensee entering the Property if the Permit has terminated.
  - (2) If Licensee fails to remedy the condition of the Property in a timely manner, State may take steps reasonably necessary to remedy Licensee's failure. Upon demand by State, Licensee shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with State's remedy.

**3.4 Revocation of Permit by State.** State may revoke or cancel this Permit upon 90 days' notice if the Property is needed for a higher priority use as defined in WAC 332-30-117. To the extent such revocation is not prohibited by WAC 332-30-117, as amended, State may also revoke or cancel this permit without cause upon 90 days' notice if State determines revocation or cancellation is in the best interest of State. If State revokes or cancels this Permit under this Paragraph, the revocation or cancellation shall be a termination and Licensee shall take all actions required of Licensee upon termination of this Permit. If State revokes or cancels this Permit under this Paragraph, Licensee is entitled to a refund of the pre-paid fees attributable to the period beyond the date of revocation. Termination for breach is governed by Section 14.

## SECTION 4 FEES

### 4.1 Fees

- (a) For the Term, Licensee shall pay to State a fee of Zero Dollars (\$0.00).
- (b) The fee is due and payable in full on or before the Commencement Date. Any payment not paid by State's close of business on the date due is past due.
- (c) Under WAC 332-30-117, waterway fees are to be determined on the same basis as required for similar types of uses on state-owned aquatic lands. State's determination of the fees in this Permit are based on the statutes and rules governing rent valuation for leases on state-owned aquatic land and Licensee's Permitted Use of the Property. State's basis for determining fees under this Permit should not be interpreted or construed as State giving the Licensee a lease for the Property.

- (d) **Public Use and Access.** This Permit allows for free or reduced fees for areas that meet the public use and access requirements of WAC 332-30-131. If Licensee's use of these areas cease to meet the requirements for free or reduced fees in WAC 332-30-131, State will charge Licensee a fee for using this area based on water-dependent use.

**4.2 Payment Place.** Licensee shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

**4.3 Adjustment Based on Use.** The fee is based on the designation of Licensee's Permitted Use of the Property and the square footage of each designation, as described in Section 2 above. If Licensee's Permitted Use designation or the square footage of a designation changes, the fee shall be adjusted as appropriate for the changed use. The Permitted Use designation or the square footage of a use designation shall not be changed or modified without the written consent of State, which shall be at State's sole discretion.

## SECTION 5 OTHER EXPENSES

**5.1 Utilities.** Licensee shall pay all fees charged for utilities required or needed by the Permitted Use.

**5.2 Taxes and Assessments.** Licensee shall pay all taxes (including leasehold excise taxes, as defined by RCW 82.29A.020(1) or other applicable statute), assessments, and other governmental charges, applicable or attributable to the Property, the improvements, or Licensee's use and enjoyment of the Property.

**5.3 Right to Contest.** If in good faith, Licensee may contest any tax or assessment at its sole cost and expense. At the request of State, Licensee shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

**5.4 Proof of Payment.** If required by State, Licensee shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Permit requires Licensee to pay.

**5.5 Failure to Pay.** If Licensee fails to pay amounts due under this Permit, State may pay the amount due, and recover its cost in accordance with Section 6.

## SECTION 6 LATE PAYMENTS AND OTHER CHARGES

**6.1 Failure to Pay Fee.** Failure to pay fees is a breach by the Licensee. State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

**6.2 Late Charge.** If State does not receive full fee payment within ten (10) days of the date due, Licensee shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

**6.3 Interest Penalty for Past Due Fees and Other Sums Owed.**

- (a) Licensee shall pay interest on the past due fees at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Fees not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Licensee, Licensee shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Licensee of the payment or advance. This includes, but is not limited to, State's payment of taxes of any kind, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Permit, or other amounts not paid when due.

**6.4 Referral to Collection Agency and Collection Agency Fees.** If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Licensee shall pay collection agency fees in addition to the unpaid amount.

**6.5 No Accord and Satisfaction.** If Licensee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance of the fees or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

**6.6 No Counterclaim, Setoff, or Abatement of Fees.** Except as expressly set forth elsewhere in this Permit, Licensee shall pay fees and all other sums payable by Licensee without the requirement that State provide prior notice or demand. Licensee's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

## **SECTION 7 IMPROVEMENTS, PERSONAL PROPERTY, AND WORK**

**7.1 Improvements and Personal Property Defined.**

- (a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, structures and fixtures.
- (b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property, or Improvements or (2) diminishing the value or utility of the Property, or Improvements.

- (c) “State-Owned Improvements” are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Licensee.
- (d) “Licensee-Owned Improvements” are Improvements authorized by State and (1) made by Licensee or (2) acquired by Licensee from a previous occupant of the Property.
- (e) “Unauthorized Improvements” are Improvements made on the Property without State’s prior consent or Improvements made by Licensee that do not conform to plans submitted to and approved by the State.
- (f) “Improvements Owned by Others” are Improvements made by Others with a right to occupy or use the Property or adjacent state-owned lands.

**7.2 Existing Improvements.** On the Commencement Date, the following Improvements are located on the Property: One pier, one (1) 90 foot long by 5 foot wide catwalk with six (6) 12-inch diameter steel piles; one (1) 80 foot long by 5 foot wide grated gangway; 260 feet of 9 foot wide moorage floats; one (1) 16 foot long by 12 foot wide landing float; and fourteen (14) 18-inch diameter steel pilings. The Improvements are Licensee-Owned Improvements. Licensee warrants that all Licensee-Owned Improvements are capable of ready removal.

**7.3 Construction, Major Repair, Modification, and Other Work.**

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements, (“Work”). Restoration of the Property to a condition like its natural state before Licensee’s use of the Property is also considered to be Work.
- (b) All Work must conform to requirements under Paragraph 7.4. Paragraph 11.3, which applies to routine maintenance and minor repair, also applies to all Work under this Paragraph 7.3.
- (c) Except in an emergency, Licensee shall not conduct Work without State’s prior written consent, as follows:
  - (1) State may deny consent if State determines that denial is in the best interests of the State or if proposed Work does not comply with Paragraph 7.4 and 11.3. State may impose additional conditions reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.
  - (2) Except in an emergency, Licensee shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Licensee and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Licensee shall submit plans and specifications at least ninety (90) days before commencement of Work.
  - (3) State will not approve plans to construct new Improvements on the Property that are not capable of ready removal.
  - (4) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat. Licensee shall confirm location of important habitat on Property,

if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.

- (d) Licensee shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Licensee shall provide State with plans and specifications or as-builts of emergency Work.
- (e) Licensee shall not commence or authorize Work until Licensee or Licensee's contractor has:
  - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Licensee or Licensee's contractor shall maintain the performance and payment bond until the costs of the Work are paid in full, including all laborers and material persons.
  - (2) Obtained all required permits.
- (f) Before completing Work, Licensee shall remove all debris and restore the Property to an orderly and safe condition. If Work is intended for removal of Improvements at End of Term, Licensee shall restore the Property in accordance with Paragraph 3.3, End of Term.
- (g) Upon completing work, Licensee shall promptly provide State with as-built plans and specifications.
- (h) State shall not charge fees for authorized Improvements installed by Licensee during this Term of this Permit, but State may charge fees for such Improvements when and if the Licensee obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5.

**7.4 Standards for Work.** The following Standards of Work apply to all Work conducted on the Property:

- (a) Licensee shall not install skirting on any overwater structure.
- (b) Licensee shall only conduct in-water Work during time periods authorized for such work under WAC 220-660-330, Authorized Work Times in Saltwater Areas, as amended, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW), United States Fish and Wildlife Service (USFWS), or National Marine Fisheries Service (NMFS).
- (c) Licensee shall not provide anchorage or moorage in water more shallow than six (6) feet (1.8 meters) at the extreme low tide.
- (d) Licensee shall install grating on new floats, fingers, docks, decks, and/or gangways as follows: For floats, fingers, and docks, Licensee shall install unobstructed grating on at least fifty (50) percent of the surface area; grating material must have at least sixty (60) percent functional open space or forty (40) percent or greater multi-directional open space. For gangways and decks, Licensee shall install grating on one hundred (100) percent of the surface area; grating material must have at least sixty (60) percent functional open space or forty (40) percent or greater multi-directional open space.

## **7.5 Licensee-Owned Improvements at Termination of Permit.**

- (a) Disposition.
  - (1) Licensee shall remove Licensee-Owned Improvements in accordance with Paragraph 7.3 upon the termination of this Permit unless State waives the requirement for removal.
  - (2) Licensee-Owned Improvements remaining on the Property after the termination of this Permit become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
  - (3) If Licensee-Owned Improvements remain on the Property after the termination of this Permit without State's consent, State may remove all Improvements and Licensee shall pay State's costs.
- (b) Conditions Under Which State May Waive Removal of Licensee-Owned Improvements.
  - (1) State may waive removal of some or all Licensee-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Licensee enters into a new Permit.
  - (2) If Licensee enters into a new Permit, State may waive requirement to remove Licensee-Owned Improvements. State also may consent to Licensee's continued ownership of Licensee-Owned Improvements.
  - (3) If Licensee does not enter into a new Permit, State may waive requirement to remove Licensee-Owned Improvements upon consideration of a timely request from Licensee, as follows:
    - (i) Licensee must notify State at least one (1) year before the Termination Date of its request to leave Licensee-Owned Improvements.
    - (ii) State, within ninety (90) days of receiving Licensee's notification, will notify Licensee whether State consents to some or all Licensee-Owned Improvements remaining. State has no obligation to grant consent.
    - (iii) State's failure to respond to Licensee's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Licensee's Obligations if State Waives Removal.
  - (1) Licensee shall not remove Improvements if State waives the requirement for removal of some or all Licensee-Owned Improvements.
  - (2) Licensee shall maintain such Improvements in accordance with this Permit until the termination of this Permit. Licensee is liable to State for cost of repair if Licensee causes or allows damage to Improvements State has designated to remain.

## **7.6 Disposition of Unauthorized Improvements.**

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) The placement of Unauthorized Improvements is a breach of this License.
- (c) State may require immediate removal of Unauthorized Improvements. If Licensee fails to remove the Unauthorized Improvements, State may remove the Unauthorized Improvements and Licensee shall pay for the cost of removal and



disposal. If State requires removal, State may charge Licensee a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until removal.

- (d) If State consents to Unauthorized Improvements remaining on the Property, upon State's consent, the Unauthorized Improvements will be treated as Licensee-Owned Improvements and the disposition of such improvements shall be governed by Paragraph 7.5. If State consents to the Unauthorized Improvements remaining on the Property, State may charge a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

#### **7.7 Disposition of Personal Property.**

- (a) Licensee retains ownership of Personal Property unless Licensee and State agree otherwise in writing.
- (b) Licensee shall remove Personal Property from the Property by the termination of this Permit. Licensee is liable for damage to the Property and to any Improvements resulting from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Property after the termination of this Permit.
  - (1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's costs in removing the Personal Property and conducting the sale, second to payment of any amount that then may be due from the Licensee to the State, and State shall pay the remainder, if any, to the Licensee. Licensee shall be liable for any costs of removing the Personal Property and conducting the sale that exceed the proceeds received by State.
  - (2) If State disposes of Personal Property, Licensee shall pay for the cost of removal and disposal.

### **SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

#### **8.1 Definitions.**

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW, as amended.
- (d) "Licensee and affiliates" when used in this Section 8 means Licensee or Licensee's contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Licensee's permission.

- (e) “Liabilities” as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys’ fees and disbursements), penalties, or judgments.

**8.2 General Conditions.**

- (a) Licensee’s obligations under this Section 8 extend to the area in, on, under, or above:
  - (1) The Property and
  - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
  - (1) Licensee shall exercise the utmost care with respect to Hazardous Substances.
  - (2) Licensee shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

**8.3 Current Conditions and Duty to Investigate.**

- (a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property.
- (b) This Permit does not impose a duty on State to conduct investigations or supply information to Licensee about Hazardous Substances.
- (c) Licensee is responsible for conducting all appropriate inquiry and gathering sufficient information about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Licensee to meet Licensee’s obligations under this Permit and utilize the Property for the Permitted Use.

**8.4 Use of Hazardous Substances.**

- (a) Licensee and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Licensee shall not undertake, or allow others to undertake by Licensee’s permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to the Permitted Use and/or Licensee’s use of the Property results in violation of law:
  - (1) Licensee shall submit to State any plans for remedying the violations, and
  - (2) Licensee shall implement any remedial measures to restore the Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.
- (d) At a minimum, Licensee and affiliates shall observe the following Hazardous Substances operational standards. If the Washington Department of Ecology, U.S. Environmental Protection Agency or other regulatory agency establishes different standards applicable to Licensee’s activities under the Permitted Use, Licensee shall meet the standard that provides greater protection to the environment.

- (1) Licensee shall not allow work on overwater structures or vessels without protective measures to prevent discharge of toxins to the water, including:
  - (i) Licensee shall not cause or allow underwater hull scraping and other underwater removal of paints.
  - (ii) Licensee shall not cause or allow underwater refinishing work from boats or temporary floats unless permitted by an industrial National Pollutant Discharge Elimination System (NPDES) permit.
  - (iii) Licensee shall not cause or allow above the waterline boat repairs or refinishing in-water except if limited to decks and superstructures and less than 25 percent of a boat is repaired or refinished in-water per year.
  - (iv) Licensee shall use and require others to use tarps and other dust, drip and spill containment measures when repairing or refinishing boats in water.
- (2) Licensee shall not store or allow others to store fuel tanks, petroleum products, hydraulic fluid, machinery coolants, lubricants and chemicals not in use in locations above the water surface.
- (3) Licensee shall maintain a supply of oil spill containment materials adequate to contain a spill from the largest vessel in use on the Property.
- (4) Licensee shall not use or allow use of a pressure washer at any location above the water surface to clean any item that uses petroleum products.
- (5) Licensee shall inspect all equipment using petroleum products, hydraulic fluids, machinery coolants, chemicals, or other toxic or deleterious materials on a monthly basis and immediately make all repairs necessary to stop leakage.

**8.5 Management of Contamination, if any.**

- (a) Licensee and affiliates shall not undertake activities that:
  - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
  - (2) Result in human or environmental exposure to contaminated sediments, if any;
  - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Licensee shall allow reasonable access to:
  - (1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and
  - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Licensee may negotiate an access agreement with such parties, but Licensee may not unreasonably withhold such agreement.

**8.6 Notification and Reporting.**

- (a) Licensee shall immediately notify State if Licensee becomes aware of any of the following:

- (1) A release or threatened release of Hazardous Substances;
  - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
  - (3) Any lien or action arising from Hazardous Substances;
  - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
  - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Licensee's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a), and to any other property used by Licensee in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.
- (c) Licensee shall provide State with copies of all documents Licensee submits to any federal, state or local authorities concerning environmental impacts or proposals relative to the Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits; Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

#### **8.7 Indemnification.**

- (a) Licensee shall fully indemnify, defend, and hold State harmless from and against Liabilities that arise out of, or relate to:
- (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Licensee and affiliates occurring whenever Licensee occupies or has occupied the Property;
  - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Licensee and affiliates occurring whenever Licensee occupies or has occupied the Property.
- (b) Licensee shall fully indemnify, defend, and hold State harmless for any Liabilities that arise out of or relate to Licensee's breach of obligations under Paragraph 8.5.
- (c) If Licensee fails to exercise care as described in Paragraph 8.2(b)(2), Licensee shall fully indemnify, defend, and hold State harmless from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

#### **8.8 Reservation of Rights.**

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.
- (b) The Parties expressly reserve all rights, claims, immunities, and defenses either Party may have against third parties. Nothing in this Section 8 benefits, or creates rights for third parties.

- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from, or affect the liability of either Party for, Hazardous Substances claims or actions by regulatory agencies.

#### **8.9 Cleanup.**

- (a) If Licensee's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Licensee shall, at Licensee's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) Licensee may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Licensee cooperates with the Department of Natural Resources in development of cleanup plans. Licensee shall not proceed with Voluntary Cleanup without the Department of Natural Resources approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Permit. Licensee's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Permit.

#### **8.10 Sampling by State, Reimbursement, and Split Samples.**

- (a) If State conducts any sampling, tests, audits, surveys, or investigations ("Tests") on the Property, and such Tests, along with any other information, demonstrate a breach of Licensee's obligations regarding Hazardous Substances under this Permit, Licensee shall promptly reimburse State for all costs associated with the Tests, provided State gave Licensee thirty (30) calendar days advance notice in non-emergencies and reasonably practical notice in emergencies.
- (b) If either Party conducts Tests on the Property, the conducting Party shall provide the other with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) calendar days of a written request by the other Party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Licensee shall submit data and information to State without State's written request. Neither Party is obligated to provide any analytical summaries or the work product of experts.

### **SECTION 9 NO ASSIGNMENTS**

This Permit is granted only to Licensee and is not transferable or assignable in whole or in part.

### **SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE**

#### **10.1 Indemnity.**

- (a) Licensee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any and all Claims arising out of the Permitted Use and/or the

use of the Property by Licensee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees to the fullest extent permitted by law and subject to the limitations provided below.

- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property, diminution in value, and/or damages resulting from loss of use of the Property.
- (c) State shall not require Licensee to indemnify, defend, and hold State harmless for claims caused solely by or resulting solely from the negligence or willful act of the State or State's elected officials, employees, or agents.
- (d) Licensee specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and/or hold State and its agencies, officials, agents, or employees harmless. Further, the indemnification obligation under this License shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the worker's compensation acts.
- (e) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a claim, suit, or action for injuries or damage is caused by or results from the concurrent negligence of (a) the State or State's agents or employees and (b) the Licensee or Licensee's agents or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Licensee and those acting on its behalf.
- (f) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Licensee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

## 10.2 Insurance Terms.

- (a) Insurance Required.
  - (1) At its own expense, Licensee, or Licensee's contractor(s) where permitted in Paragraph 10.3, shall procure and maintain during the Term of this Permit, the insurance coverages and limits described in this Paragraph 10.2 and in Paragraph 10.3, Insurance Types and Limits. State may terminate this Permit if Licensee fails to maintain required insurance.
  - (2) Unless State agrees to an exception, Licensee shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Licensee may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.

- (3) All general liability, excess, umbrella, builder's risk, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as an additional insured by way of endorsement.
  - (4) All property insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as loss payees.
  - (5) All insurance provided in compliance with this Permit must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
- (1) Licensee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Permit covers these damages.
  - (2) Except as prohibited by law, Licensee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Permit.
- (c) Proof of Insurance.
- (1) Licensee shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Permit and, if requested, copies of policies to State.
  - (2) The certificate(s) of insurance must reference additional insureds and the Permit number.
  - (3) Receipt of such certificates, endorsement or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Permit, as follows:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
  - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
  - (2) Licensee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Licensee fails to procure and maintain the insurance described above within fifteen (15) days after Licensee receives a notice to comply from State, State may either:
- (1) Terminate this Permit, or

- (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Licensee shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Licensee's repayment.
- (g) General Terms.
  - (1) State does not represent that coverage and limits required under this Permit are adequate to protect Licensee.
  - (2) Coverage and limits do not limit Licensee's liability for indemnification and reimbursements granted to State under this Permit.
  - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Permit, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Licensee.

**10.3 Insurance Types and Limits.**

- (a) General Liability Insurance.
  - (1) Licensee shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of the Permitted Use and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
  - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
  - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
  - (1) State of Washington Workers' Compensation.
    - (i) Licensee shall comply with all State of Washington workers' compensation statutes and regulations. Licensee shall provide workers' compensation coverage for all employees of Licensee. Coverage must include bodily injury (including death) by accident or disease, which arises out of the Permitted Use or related activities.
    - (ii) If Licensee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Licensee shall indemnify State. Indemnity shall



include all fines; payment of benefits to Licensee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

- (2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Licensee to provide insurance coverage in some circumstances. Licensee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Licensee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employers' Liability Insurance. Licensee shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) Property Insurance.
  - (1) Licensee shall buy and maintain property insurance covering all real property and fixtures, equipment, improvements and betterments (regardless of whether owned by Licensee or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as a loss payee.
  - (2) Licensee shall buy and maintain equipment breakdown insurance required by contract documents or by law, covering all real property and fixtures, equipment, improvements and betterments (regardless of whether owned by Licensee or State) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arching or pipes.
  - (3) In the event of any loss, damage, or casualty which is covered by one or more of the types of insurance described above, the Parties to this Permit shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Permit. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).
  - (4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
    - (i) Repair and restore damaged building(s) and/or Improvements to their former condition, or
    - (ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.

- (e) **Builder's Risk Insurance.**
- (1) Licensee shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Licensee, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3).
  - (2) Insurance described above must cover or include the following:
    - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
    - (ii) The entire work on the Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
    - (iii) Portions of the work located away from the Property but intended for use at the Property, and portions of the work in transit;
    - (iv) Scaffolding, falsework, and temporary buildings located on the Property; and
    - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
  - (3) Licensee or Licensee'(s) contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
  - (4) Licensee or Licensee'(s) contractor shall buy and maintain equipment breakdown insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Licensee, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3).
- (f) **Protection and Indemnity Insurance (P&I).** For each vessel owned, used, and/or operated on the Property by Licensee or Licensee's contractor(s), Licensee or Licensee's contractor(s) shall procure and maintain P&I insurance with limits of liability not less than One Million Dollars (\$1,000,000). The P&I insurance must cover, at a minimum, all claims relating to injuries or damages to persons or property, sustained in, on, or about the Property; fuel spills; wreck removal; salvage; injuries to passengers and crew of the vessel; and damages to nets and fishing lines. . If necessary, Licensee shall procure and maintain commercial umbrella liability insurance covering claims for these risks.

**10.4 Financial Security.**

- (a) On the Commencement Date of this Permit, Licensee is not required to procure and maintain a corporate security bond or other financial security (“Security”). During the Term of this Permit, State may require Licensee to procure and maintain Security upon any of the events listed in Paragraph 10.4(c)(1). Licensee’s failure to maintain the Security in the required amount during the Term constitutes a breach of this Permit.
- (b) All Security must be in a form acceptable to the State.
  - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best’s Reports, unless State approves an exception. Licensee may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.
  - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, et. seq.
  - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
  - (1) State may require an adjustment in the Security amount
    - (i) At the same time as revaluation of the Annual Fees, or
    - (ii) Upon a material change in the condition or disposition of any Improvements, or
    - (iii) Upon a change in the Permitted Use.
  - (2) Licensee shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any breach by Licensee in its obligations under this Permit, State may collect on the Security to offset the liability of Licensee to State. Collection on the Security does not (1) relieve Licensee of liability, (2) limit any of State’s other remedies, (3) reinstate or cure the breach or (4) prevent termination of the Permit because of the breach.

**SECTION 11 MAINTENANCE AND REPAIR**

**11.1 State's Repairs.** State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

**11.2 Licensee's Repairs, Alteration, Maintenance and Replacement.**

- (a) Licensee shall, at its sole cost and expense, keep and maintain the Property and all Improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition.

- (b) Licensee shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property which may be required by any public authority having jurisdiction over the Property and requiring it for public health, safety and welfare purposes.
- (c) Except as provided in Section 11.2(d), all additions, repairs, alterations, replacements or changes to the Property and to any Improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.
- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.

**11.3 Limitations.** The following limitations apply whenever Licensee conducts maintenance, repair or replacement.

- (a) Licensee shall not use or install treated wood on decks, pilings, or any other structure at any location above or below water, except that Licensee may use Ammoniacal Copper Zinc Arsenate (ACZA) treated wood for above water structural framing. Licensee shall never use Chromated Copper Arsenate (CCA), Alkaline Copper Quaternary (ACQ) or creosote-treated wood at any location.
- (b) Licensee shall not use or install tires (for example, floatation or fenders) at any location above or below water.
- (c) Licensee shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of flotation material into the water.
- (d) Licensee shall orient night lighting to minimize the amount of light shining directly on the water.
- (e) Licensee shall not allow new floating structures to come in contact with underlying bedlands (“ground out”). Licensee must either (1) locate all new floating structures in water too deep to permit grounding out or (2) install stoppers sufficient to prevent grounding, keeping the bottom of the structure above the level of the substrate.

## SECTION 12 DAMAGE OR DESTRUCTION

**12.1 Notice and Repair.**

- (a) In the event of damage to or destruction of the Property or Improvements, Licensee shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction without Licensee’s written notice.
- (b) Licensee shall be solely responsible for the reconstruction, repair, or replacement of any Improvements. If Licensee elects not to reconstruct, repair, or replace all or a portion of any damaged Improvements, Licensee shall promptly remove any damaged or destroyed Improvements and restore the Property to its condition immediately preceding the damage or destruction. Where damage to state-owned

aquatic land or natural resources is attributable to the Permitted Use or related activities, Licensee shall promptly restore the lands or resources to the condition immediately preceding the damage or destruction. All restoration, reconstruction, repair, or replacement shall be performed in accordance with Paragraph 7.3.

**12.2 State's Waiver of Claim.** State does not waive any claims for damage or destruction of the Property unless State provides written notice to Licensee of each specific claim waived.

**12.3 Insurance Proceeds.** Licensee's obligations in Paragraph 12(b) of this Permit are not conditioned upon the availability of any insurance proceeds from which the cost of repairs, reconstruction, replacement, removal, or restoration may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

**12.4 Fees in the Event of Damage or Destruction.** Unless the Parties agree to terminate this Permit, there is no abatement or reduction in fees during such reconstruction, repair, and replacement.

**12.5 Breach at the Time of Damage or Destruction.** If Licensee is in breach of the terms of this Permit at the time damage or destruction occurs, State may elect to terminate the Permit without giving Licensee an opportunity to cure the breach and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

## SECTION 13 CONDEMNATION

In the event of condemnation, Licensee is not entitled to condemnation award. The Permit does not give Licensee any property right or interest and Licensee shall assert no claim of any interest in this Permit or the underlying estate.

## SECTION 14 TERMINATION

**14.1 Termination for Breach.** State may terminate this Permit upon Licensee's failure to cure a breach of any of the terms and conditions of this Permit. State shall provide Licensee written notice of breach. Unless expressly provided elsewhere in this Permit, Licensee shall have ten (10) days after receiving notice to cure a breach relating to the payment of fees or other monetary breaches and thirty (30) days after receiving notice to cure all other breaches. For nonmonetary breaches, State may extend the cure period if a breach is not reasonably capable of cure within thirty (30) days. The thirty (30) day cure period does not apply where State revokes the Permit under Paragraph 3.4 or where State terminates this Permit under Paragraph 10.2(f) or 12.4. The remedies specified under this Paragraph 14.1 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Licensee's breach or threatened breach of any provision of this Permit.

**14.2 Termination by Licensee.** Licensee may terminate this Permit upon providing State with ninety (90) days written notice of intent to terminate. If Licensee terminates under this Paragraph, Licensee shall take all actions required by Licensee upon termination of this Permit.

### **SECTION 15 ENTRY BY STATE**

State retains full possessory rights in the Property, including the right to access and enter the Property at any time and for all purposes. Licensee grants State permission to cross Licensee's upland and aquatic land property to access the Property.

### **SECTION 16 DISCLAIMERS AND RELEASES**

**16.1 No Quiet Enjoyment.** This Permit grants no possessory rights to Licensee. State expressly disclaims and Licensee expressly releases State from any claim for breach of any covenant of quiet enjoyment with respect to use and occupation of the Property.

**16.2 Structures Beyond Federal Pierhead Line or In Waterway Where No Pierhead Line.** Some or all of the Licensee-Owned Improvements are constructed in the waterway beyond the federal pierhead line or in a waterway where there is no pierhead line. If a court with competent jurisdiction over this matter determines that this Permit, the placement of the Improvements, and/or the use of the Property by Licensee violates the prohibition against sale or lease of waterways contained in RCW 79.120.010, this License shall terminate and Licensee shall take all actions required of Licensee upon termination of this Permit. Licensee releases State from any claims Licensee may have arising from any such decision or early termination, except for a refund of fees as provided in this Paragraph. If Licensee has prepaid any fees, Licensee will be entitled to a refund of the pre-paid fees attributable to the period following such early termination.

### **SECTION 17 NOTICE AND SUBMITTALS**

Following are the locations for delivery of notice and submittals required or permitted under this Permit. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES  
Shoreline District  
950 Farman Ave. North  
Enumclaw, WA 98022

Licensee: CITY OF PORT ORCHARD  
Public Works Department  
216 Prospect Street  
Port Orchard, WA 98366

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Permit number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

## SECTION 18 MISCELLANEOUS

**18.1 Authority.** Licensee and the person or persons executing this Permit on behalf of Licensee represent that Licensee is qualified to do business in the State of Washington, that Licensee has full right and authority to enter into this Permit, and that each and every person signing on behalf of Licensee is authorized to do so. Upon State's request, Licensee shall provide evidence satisfactory to State confirming these representations.

**18.2 Headings.** The headings used in this Permit are for convenience only and in no way define, limit, or extend the scope of this Permit or the intent of any provision.

**18.3 Entire Agreement.** This Permit, including the exhibits, attachments, and addenda, if any, contains the entire agreement of the Parties. This Permit merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

**18.4 Waiver.**

- (a) The waiver of any breach of any term, covenant, or condition of this Permit is not a waiver of such term, covenant, or condition; of any subsequent breach of the same; or of any other term, covenant, or condition of this Permit. State's acceptance of a payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The issuance of a new Permit to Licensee does not waive State's ability to pursue any rights or remedies under the Permit.

**18.5 Cumulative Remedies.** The rights and remedies of State under this Permit are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

**18.6 Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Permit.

**18.7 Language.** The word "Licensee" as used in this Permit applies to one or more persons and regardless of gender, as the case may be. If there is more than one Licensee, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Licensee in the collective. The word "Party" means either or both State and Licensee, depending on the context.

**18.8 Invalidity.** The invalidity, voidness, or illegality of any provision of this Permit does not affect, impair, or invalidate any other provision of this Permit.

**18.9 Applicable Law and Venue.** This Permit is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Permit is in the Superior Court for Thurston County, Washington.

**18.10 Statutory Reference.** Any reference to a statute or rule means that statute or rule as presently enacted or hereafter amended or superseded.

**18.11 Modification.** No modification of this Permit is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

**18.12 Survival.** Any obligations of Licensee not fully performed upon termination of this Permit do not cease, but continue as obligations of the Licensee until fully performed.

**18.13 Exhibits and Attachments.** All referenced exhibits and attachments are incorporated in the Permit unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

CITY OF PORT ORCHARD

Dated: \_\_\_\_\_, 20\_\_

By: ROBERT BRYAN PUTAANSUU  
Title: Mayor  
Address: 216 Prospect Street  
Port Orchard, WA 98366  
Phone: 360-876-4407

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: \_\_\_\_\_, 20\_\_

By: KRISTIN SWENDDAL  
Title: Aquatics Division Supervisor  
Address: 950 Farman Ave. North  
Enumclaw, WA 98022

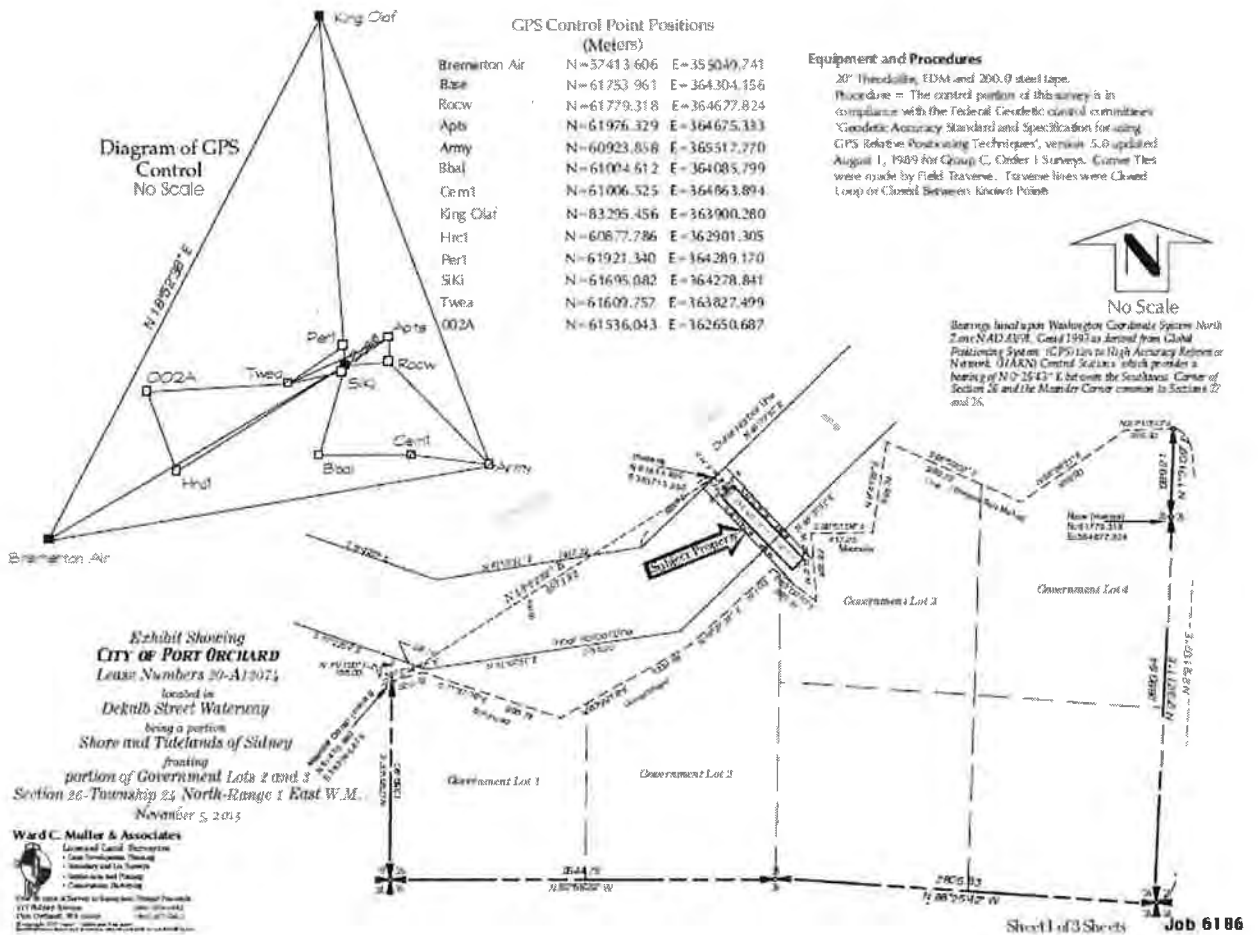
Master Approved as to form  
14<sup>th</sup> day of June 2019  
Jennifer Clement, Assistant Attorney General



# EXHIBIT A

## Global Positioning System Data Site Diagram

Agreement Number 20-B12074



*Exhibit Situating*  
**CITY OF PORT ORCHARD**  
*Lease Numbers 20-A12074*

*located at*  
**DeKalb Street Waterway**  
*being a portion*  
*of the*  
**Shore and Tidelands of Sidney**  
*fronting*

**portion of Government Lots 2 and 3**  
**Section 26-Township 24 North-Range 1 East W.M.**

November 5, 2013

**Description of Lease**

That portion of the DeKalb Street Waterway being a portion of the Shore and Tide Lands of Sidney (now Port Orchard), Kitsap County, Washington fronting portions of Government Lots 2 and 3, Section 26, Township 24 North Range 1 East W.M., Kitsap County, Washington, more particularly described as follows:

Commencing at the meander corner common to Sections 27 and 26, Township 24 North, Range 1 East W.M., which bears N 0°25'43" E 1359.90 feet from the Southwest corner of said Section 26; thence N 58°22'32" E 2571.92 feet more or less to the intersection of the Outer Harbor Line of said Shore and Tide Lands of Sidney and the Northerly extension of the Phase 2 centerline of the catwalk and floats; thence leaving said Outer Harbor Line run S 44°11'20" E, along said catwalk and floats centerline extended, 114.34 feet to the TRUE POINT OF BEGINNING of a Lease Area 100.00 feet in width and being 50.00 feet on each side of the following described centerline: thence S 44°11'20" E, along said Lease Area centerline 635.71 feet more or less to its intersection with the Northerly line of "Public Place" being the 1984 Supplemental Map of Port Orchard showing a portion of the DeKalb Street Waterway as recorded in Volume 25, page 74 of plats and the end of said Lease Area centerline.

The sidelines of said Lease Area shall be extended or foreshortened as to intersect with the Northerly line of Public Place on the South and at right angle to the centerline at the True Point of Beginning of said Lease Area on the North.

TOGETHER WITH "Public Place" being the 1984 Supplemental Map of Port Orchard showing a portion of the DeKalb Street Waterway as recorded in Volume 25, page 74 of plats, records of Kitsap County, Washington

The bases of bearing for this description coincide with the the Washington State Plane Coordinate System (North Zone) as derived from a bearing of N 18° 52' 28" E between HAREN Control Stations Breckenon Air and King Olat as shown on Sheet 1 of Exhibit "A" recorded under Auditor's File Number 3090257 and filed in Volume 49 of surveys, pages 139 and 140, records of Kitsap County, Washington.



**Meander Corner East Line Section 26-Township 24 North-Range 1 East W.M.**  
This office found a 6" square (approximate) granite stone with wood plug for center point 3.0 more or less feet below surface of beach. This office established a 3.0 foot  $\pm$  long brass 3/4" pipe over centerpoint in granite in a 3" concrete pipe sand filled. The above was accomplished April 1956. Currently there is approximately 3.0 to 4.0' of fill above the top of the above set brass pipe. In March 1990 a 2" brass cap set in concrete, was established for the Meander Corner as shown in Volume 31, page 101 of surveys.

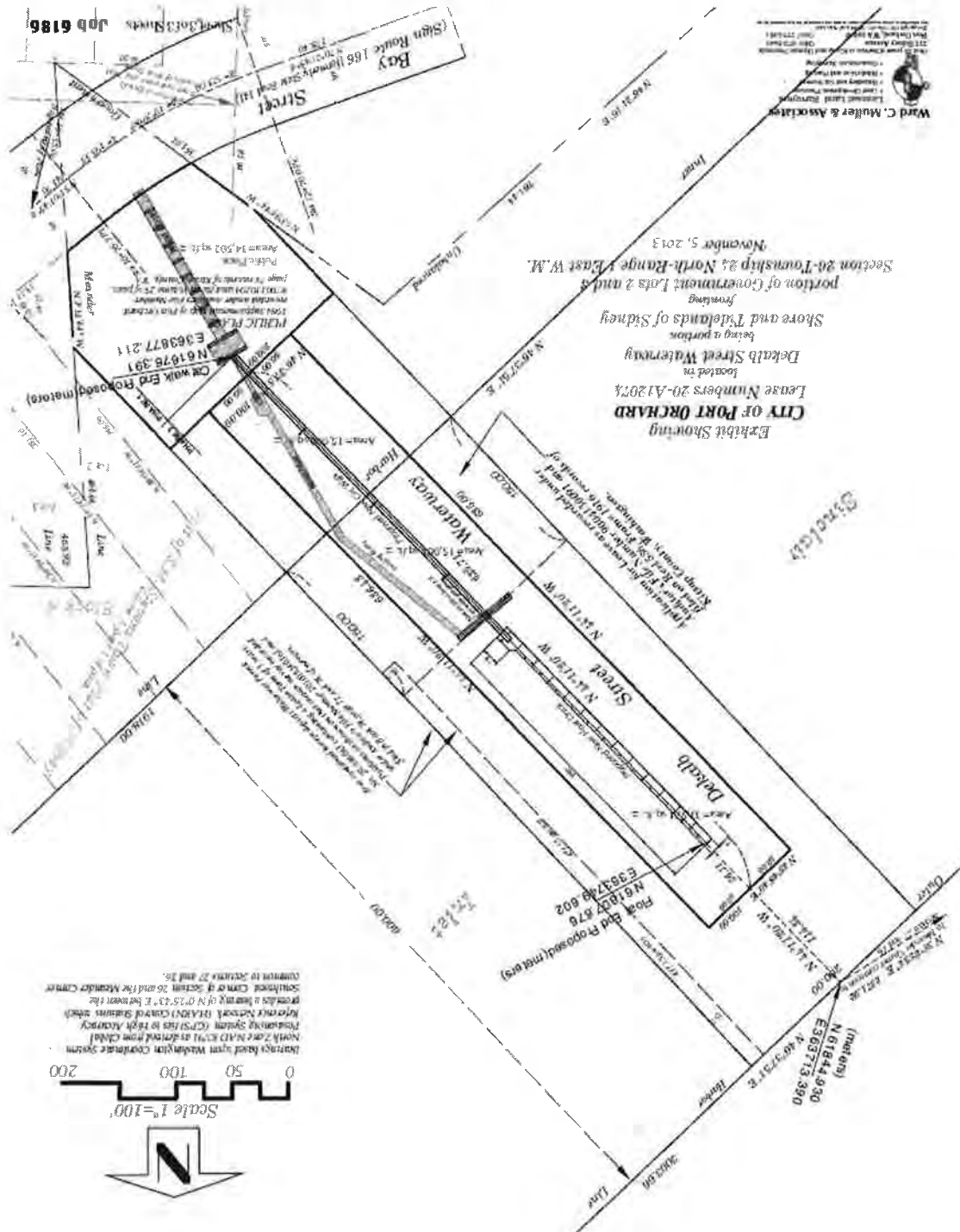
**East One-Quarter Corner Section 26-Township 24 North-Range 1 East W.M.**  
Kitsap County Engineers found a stone monument 4" East of manhole May 1940 Fieldbook 998 page 1. This office found 1" iron pipe lead filled with tack center point in concrete on east edge of a sanitary manhole in the center of the intersection of Morton Street and Reckwell Street April 1956. Visited in March 1990 and found monument as described above last visited August 1997.

**South One-Quarter Corner Section 26-Township 24 North-Range 1 East W.M.**  
January 29, 1942 Kitsap County Engineers found a concrete monument for the South one quarter corner of Section 26-Township 24 North-Range 1 East W.M., as noted in County Fieldbook 998, page 33. April 1956, Ward C. Muller, Licensed Land Surveyor, found a 6" square concrete monument with an "etched cross" and copper tack center point, for said one quarter corner. On December 1972 and June 1984, this office found the same above mentioned monument. Refer to Survey recorded under Auditor's File Number 8407200121 and filed in Volume 21, of Surveys, Page 98.

**Southeast Corner Section 26-Township 24 North-Range 1 East W.M.**  
Kitsap County Engineers found an iron pipe, for the Southwest corner of Section 26-Township 24 North-Range 1 East W.M., near fence corner. Also, 3 Bearing Trees, also, with visible scribes, circa February 1931. The County Engineers again visited corner and found a 1 1/2" iron pipe, January 1942, noted in Fieldbook Number 998, page 34. This office found a 1 1/2" iron pipe with wood plug and tack center point, 0.40'  $\pm$  East and 0.50'  $\pm$  North of fence corner and found Bearing Tree stumps in the Southeast and Southwest quadrants, April 1956. This office again visited above described corner in March 1976, August 1990 and June 1996. Refer to Surveys recorded under Auditor's File Number 8710060135 and filed in Volume 26, Page 223 of surveys and Surveys recorded under Auditor's File Number 9102130050 in Volume 33 Page 117 of surveys. Found iron pipe in case in concrete by N.L. Olson Office during the preparation of the Plat of Highlands at Ross Creek.

**Meander Corner West Line Section 26-Township 24 North-Range 1 East W.M.**  
Olin M. Sprague, Professional Engineer and Land Surveyor, set a 2" iron pipe on the beach, June 1946, for the meander corner between Sections 26 and 27-Township 24 North-Range 1 East W.M. This office found said 2" iron pipe on the beach, April 1956. Survey recorded under Auditor's File Number 1152018, and filed in Volume 6, of Surveys, Page 169, shows that the 2" iron pipe to be non existing. R. M. McGinnis re-monumented corner with a 2" diameter iron pipe concrete filled with a 2 1/4" brass disk as described on sheet 3 of 4 sheets of survey recorded in Volume 34, page 130 and recorded under Auditor's File Number 9107100046, records of Kitsap County, Washington.

As shown on that unrecorded Exhibit for the City of Port Orchard Lease Number 20-A12074, dated November 5, 2013, by Ward C. Muller PLS, of Ward C. Muller and Associates. On file at the Washington State Department of Natural Resources Title and Records Office under DNR File 20-B12074.



1. SQUARE FOOTAGE OF EACH USE CLASSIFICATION:

Water-dependent	<u>0</u>
Water-dependent use that is Public Use and Access	<u>83,073 SF</u>
Nonwater-dependent	<u>0</u>
<b>Total Square Feet</b>	<b><u>83,073 SF</u></b>

**PLAN OF OPERATIONS  
EXHIBIT B**

**1. DESCRIPTION OF PERMITTED USE**

**A. Existing Facilities.** Licensee owns and operates the Dekalb Pier as a public access facility within the Dekalb Waterway, Sinclair Inlet. The facility includes:

- One (1) Pier which is 168 feet long by 10 feet wide. The pier widens to a 30 foot x 18 foot viewing area at the terminus. The pier was renovated in 2013 as Phase 1 of a facility renovation. The pier renovations included replacing the treated wood decking with a 100% grated surface, metal guardrails and replacement of treated wood cross members with steel. The city evaluated the creosote support piling prior to replacing the decking and found the pilings to be structurally sound. The original creosote pilings were retained during the 2013 renovation.
- One (1) 90 foot long by 5 foot wide catwalk supported by six (6) 12-inch diameter steel piles;
- One (1) 80 foot long by 5 foot wide grated gangway;
- One (1) 16 ft. long by 12 ft. wide landing float;
- Two Hundred Sixty (260) feet of 9 foot wide moorage floats; and
- Fourteen (14) 18-inch diameter steel pilings.

The pier is operated as first-come first-served public use and access moorage. No residential uses, overnight moorage or commercial uses are allowed at the moorage floats. The pier was renovated in 2013 under agreement 20-012074. The rest of the improvements were installed in 2016 under agreement 20-A12074.

**B. Proposed Work.**

Licensee proposes no new facilities or Work.

**2. ADDITIONAL OBLIGATIONS**

State has not authorized Licensee to conduct any Work on the Property. Where Work will need to be conducted to meet the Additional Obligations below, Licensee shall obtain State's prior written consent in accordance with Section 7.3 of this License and obtain all necessary regulatory permits prior to commencing such Work.

- a. Licensee shall post clearly all national and state oil and chemical spill hotlines.

- b. Licensee shall post clearly the location of the nearest upland restroom facility and sewage pumpout facility.
- c. Licensee shall post the Property with no-wake advisories.
- d. Licensee shall orient and shield lighting fixtures attached to overwater structures in a manner which minimizes the amount of light shining directly on the water, minimizes the amount of glare on the water, and minimizes the amount of light broadcasting into the night sky. Licensee shall implement the following measures to achieve this requirement:
  - (i) Licensee shall direct light to walkways,
  - (ii) Licensee shall use light shields which prevent light from being emitted upward and prevent glare on the water,
  - (iii) Licensee shall use fixtures that do not emit light upward, and
  - (iv) Licensee shall use lights that are “warm-white” or filtered.

Master approved as to form this  
14<sup>th</sup> day of June 2019  
Jennifer Clements, Assistant Attorney General



**City of Port Orchard**

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

**Agenda Staff Report**

Agenda Item No.: Business Item 7A  
Subject: Adoption of an Ordinance Amending Port Orchard Municipal Code Chapter 2.08 Appointive Officers and Creating a New Chapter 2.82 Abatement Hearing Officer

Meeting Date: September 10, 2019  
Prepared by: Nick Bond (Doug Price) DCD Director  
Atty Routing No: 045-19  
Atty Review Date: September 6, 2019

**Summary:** Under current regulations, appeals of abatement orders issued under POMC Chapter 20.212, Dangerous and Unfit Dwellings, Buildings, and Structures, are to be heard by the Board of Building Appeals and appeals under Chapter 9.30, Nuisances, are heard by the City Council. As discussed in the staff report for amendment of Chapter 20.212, such appeals are not appropriate to the intended purpose of the Building Board of Appeals and appeals to the Hearing Examiner would be very costly to the City. Also, for general consistency and because properties containing unfit or dangerous buildings often also contain public nuisances, staff propose to establish consistent procedures among different types of abatements.

Therefore, it is proposed that the City create the position of Abatement Hearing Officer to hear appeals of abatement orders issued by the City. The new sections in Chapter 2.08, Appointive Officers, would create the new appointive position and the new Chapter 2.82, Abatement Hearing Officer, would establish the authority, qualifications, and general procedures of the position.

**Relationship to Comprehensive Plan:** Not applicable.

**Recommendation:** Staff recommends that the City Council adopt the proposed ordinance amending POMC Chapter 2.08, Appointive Officers, and creating a new Chapter 2.82, Abatement Hearing Officer.

**Motion for consideration:** "I move to adopt an ordinance amending POMC Chapter 2.08 and creating a new Chapter 2.82 as presented."

**Fiscal Impact:** Estimated cost of \$0 – 1,500 per year, from funds already budgeted for abatements.

**Alternatives:** Do not adopt the proposed ordinance; revise the proposed ordinance.

**Attachments:** Ordinance.

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

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, AMENDING CHAPTER 2.08 AND ADOPTING A NEW CHAPTER 2.82 OF THE PORT ORCHARD MUNICIPAL CODE; CREATING THE POSITION OF ABATEMENT HEARING OFFICER; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, under various provisions of the Revised Code of Washington, cities have the authority to adopt regulations and abate public nuisances, dangerous buildings, and other conditions on private property, and to pursue recovery of associated costs against the properties and owners; and

**WHEREAS**, the City of Port Orchard has adopted such regulations; and

**WHEREAS**, to ensure substantial due process for property owners and other affected parties, to comply with the requirements of RCW 35.80, and to provide consistent procedures among the different types of abatement actions, the City desires to provide for an administrative level of appeal of abatement orders before such actions proceed to Superior Court for final appeals and actions; and

**WHEREAS**, the City's existing administrative hearing bodies and officers are not the most appropriate for the types of conditions and violations involved in the various abatement actions, nor the most cost-effective for the City and property owners; and

**WHEREAS**, the City Council desires to create the appointive position of Abatement Hearing Officer to serve in this capacity and to establish the duties, qualifications, and other provisions for the position; and

**WHEREAS**, a minor amendment is needed in the section of POMC 2.08 creating the appointive position of Hearing Examiner, to correctly reflect the source of the duties of that position; now, therefore

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

**SECTION 1.** POMC Chapter 2.08.010 Amended. Port Orchard Municipal Code, Section 2.08.010, is hereby amended to read as follows:

**2.08.010 Appointment and removal of appointive officers.**

The mayor of the city may appoint or remove the city clerk, finance director, public works director, city engineer, development director, city attorney, police chief, municipal judge, code enforcement officer, abatement hearing officer, and hearing examiner subject to any

applicable law, ordinance, rule, or regulation, including those relating to civil service. All appointments of city officers shall be made on the basis of ability and training or experience of the appointees in the duties they are to perform, from among persons having such qualifications as may be prescribed by ordinance, and in compliance with provisions of any merit system applicable to the city. Confirmation by the city council of appointments of officers shall be required only when the city council, by ordinance, provides for confirmation of such appointments. Confirmation of mayoral appointments by the council may be required by the council in any instance where qualifications for the office or position have not been established by ordinance. Appointive offices shall be without definite term unless a term is established for such office by law or ordinance.

**SECTION 2.** Chapter 2.08.110 Amended. Section 2.08.110 of the Port Orchard Municipal Code is hereby amended to read as follows:

**2.08.110 Hearing examiner.**

(1) There is created the position of hearing examiner. The mayor may appoint or remove the hearing examiner with confirmation by a majority vote of the city council. In lieu of the hearing examiner being a city employee, the city may enter into a professional services contract upon agreement by the mayor and confirmation by a majority vote of the city council.

(2) Powers and Duties. The duties of the hearing examiner are as detailed in, but not confined to those contained in, the Port Orchard Municipal Code and the job description or professional services contract on file in the office of the finance department and may be updated from time to time. The hearing examiner shall have all the powers granted and duties imposed by authority of the laws of the state, resolutions, and ordinances of the city now existing or hereinafter adopted.

**SECTION 3.** New Section 2.08.120 Adopted. A new Section 2.08.120 to Chapter 2.08 ("Appointive Officers") of the Port Orchard Municipal Code is hereby adopted as follows:

**2.08.120 Abatement hearing officer.**

(1) There is created the position of abatement hearing officer. The mayor may appoint or remove the abatement hearing officer with confirmation by a majority vote of the city council. In lieu of the abatement hearing officer being a city employee, the city may enter into a professional services contract upon agreement by the mayor, with confirmation by a majority vote of the city council if the contract amount is above the mayor's contracting authority.

(2) Powers and Duties. The duties of the abatement hearing officer are as detailed in, but not confined to those contained in, the Port Orchard Municipal Code and the job description or professional services contract on file in the office of the finance department and may be updated from time to time. The abatement hearing officer shall have all the powers granted and duties imposed by authority of the laws of the state and resolutions and

ordinances of the city now existing or hereinafter adopted.

**SECTION 4. New POMC Section 2.08.125 Adopted.** A new Section 2.08.125 of the Port Orchard Municipal Code is hereby adopted as follows:

**2.08.125 Compensation of abatement hearing officer.**

The compensation of the abatement hearing officer shall be the amount established by the city council in the annual budget or as established by contract.

**SECTION 5. New Chapter 2.82 Adopted.** A new Chapter 2.82 (“Abatement Hearing Officer”) to Title 2 (“Administration and Personnel”) of the Port Orchard Municipal Code is hereby adopted as follows:

**Chapter 2.82  
ABATEMENT HEARING OFFICER**

Sections:

- 2.82.010 Definition
- 2.82.020 Authority.
- 2.82.030 Conflict of interest.
- 2.82.040 Improper influence.
- 2.82.050 Organization and rules.
- 2.82.060 Powers.
- 2.82.070 Notice of appeal.
- 2.82.080 Determination of completeness.
- 2.82.090 Hearings – Closed record.
- 2.82.100 Rules of evidence.
- 2.82.110 Burden of proof.
- 2.82.120 Notice of hearing.
- 2.82.130 Decision.
- 2.82.140 Appeal from Hearing Officer’s decision.

**2.82.010 Definition.**

“Abatement Hearing Officer” and “Hearing Officer” shall mean the person appointed by the City of Port Orchard to hear appeals of dangerous or unfit building, nuisance, or other abatement orders of the City. Unless the context requires otherwise, the terms “Abatement Hearing Officer” and “Hearing Officer” shall include “Hearing Officer pro tem.”

**2.82.020 Authority.**

The Abatement Hearing Officer shall be appointed and compensated as set forth in Chapter 2.08 POMC, and shall have the powers and duties as set forth herein. The Hearing Officer shall be appointed based on his or her qualifications for the duties of the office and shall have the

necessary training and experience to conduct administrative or quasi-judicial hearings, and to render decisions according to law. The Hearing Officer shall suggest a Hearing Officer pro tem to serve in the event of his/her absence or disability, or in the event of a conflict of interest. The appointment of a Hearing Officer pro tem is expected to be infrequent in nature. The Hearing Officer pro tem will be entitled to the same compensation as the Hearing Officer during his/her term of service.

**2.82.030 Conflict of interest.**

- (1) The Hearing Officer shall not conduct or participate in any hearing or decision in which:
  - (a) The Hearing Officer has a direct or indirect personal interest; or
  - (b) The Hearing Officer has a beneficial interest, directly or indirectly, in any aspect of the matter on which he or she is called upon to issue a decision; or
  - (c) The Hearing Officer has a direct or indirect familial interest which might influence or interfere with his or her decision-making process or give rise to a violation of the appearance of fairness doctrine as codified in Chapter 42.36 RCW, as written or hereafter amended, and the common law.
- (2) The Hearing Officer shall disclose matters involving ex parte contacts, conflicts of interest or appearance of fairness issues prior to or at the beginning of any matter or immediately upon becoming aware of the need for such disclosure. The Hearing Officer shall recuse himself or herself if the Hearing Officer believes his or her review of the matter would represent a conflict of interest or violate the appearance of fairness doctrine as set forth herein.
- (3) In the event the Hearing Officer recuses himself or herself, a Hearing Officer pro tem will be appointed, according to POMC 2.82.020.

**2.82.040 Improper influence.**

No city official either elected or appointed shall attempt to influence the Hearing Officer in any matter officially before him or her so as to constitute misconduct by a public officer under Chapter 42.20 RCW, as written or hereafter amended, or that would constitute a violation of the appearance of fairness doctrine as codified in Chapter 42.36 RCW, as written or hereafter amended.

**2.82.050 Organization and rules.**

- (1) Organization. The Hearing Officer operates independently of any department of the city, but will receive such administrative assistance from city staff as is necessary to carry out the functions of his or her office.
- (2) Rules. The Hearing Officer shall have the power to prescribe rules not in conflict with this chapter for procedural matters including adopting procedures for prehearing conferences, the scheduling and conduct of hearings, the submission of legal motions, briefs and other written documents, the scheduling of discovery, issuance of subpoenas for the attendance of witnesses or the production of information, receipt of evidence, and issues relating to settlement.

**2.82.060 Powers.**

(1) General. The Hearing Officer shall receive and examine all information in the official file, conduct hearings and administer preparation of the official record, and issue a written decision on the matter. The Hearing Officer is authorized to hear appeals of abatement orders issued by the City and to affirm, rescind, or modify, in whole or in part, any such abatement order, consistent with federal, state and local law.

(2) Specific. In addition to the general authority as granted herein, the Hearing Officer shall have the authority granted to him elsewhere in the Port Orchard Municipal Code.

(3) The city council may, from time to time, grant to the Hearing Officer additional powers and authority as the council deems appropriate, consistent with state law and the city code, ordinances and resolutions.

**2.82.070 Notice of appeal.**

(1) The notice of appeal shall be in writing, be accompanied by the required appeal fee, and contain the following information:

- (a) Appellant's name, address and phone number;
- (b) A statement describing appellant's standing to appeal;
- (c) Identification of the order which is the subject of the appeal;
- (d) Appellant's statement of grounds for appeal and the facts upon which the appeal is based;
- (e) The specific relief sought;
- (f) A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

(2) Any notice of appeal that does not contain all of the required information, or otherwise does not meet the requirements of this Chapter shall be deemed incomplete and shall be rejected.

**2.82.080 Determination of completeness.**

Within 5 business days of the filing of an appeal, the Hearing Officer shall make an initial review of the notice of appeal and, if it is incomplete, shall notify the appellant of the deficiencies in the appeal.

**2.82.090 Hearings – Closed record.**

(1) Hearings shall be based on the record of the administrative hearing before the Director of Community Development or Public Works. The record includes the written decision of the Director, a transcript or recording of the proceedings, and copies of any exhibits that were admitted into the record at the hearing.

(2) No new testimony or other evidence will be accepted by the Hearing Officer except: relevant information that, in the opinion of the Hearing Officer, was improperly excluded by the

Director. Appellants who believe that information was improperly excluded must specifically request, in writing prior to the hearing, that the information be made part of the record. The request shall describe the information excluded, its relevance to the issues appealed, the reason(s) that the information was excluded by the Director, and why the Director erred in excluding the information. No reference to excluded information shall be made in any presentation to the Hearing Officer on the merits, written or oral, until the Hearing Officer has determined that the information should be admitted.

(3) Parties to the appeal may present written and/or oral arguments. Argument shall describe the particular errors committed by the Director, with specific references to the administrative record.

**2.82.100 Rules of evidence.**

The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Hearing Officer.

**2.82.110 Burden of proof.**

The appellant has the burden of proof to establish, by a preponderance of the evidence, that the abatement order was issued in error, or that equity requires the deletion or modification of one or more of the requirements set forth in the abatement order to accomplish the removal or correction of the violating condition(s).

**2.82.120 Notice of hearing.**

The planning department shall, in coordination with the Hearing Officer, be responsible for assigning a date and assuring due notice of the hearing on the matter to come before the Hearing Officer. Notice of the time, place, location, and subject matter of the hearing shall be consistent with applicable law. Such notice shall be given a minimum of 10 days prior to the scheduled hearing.

**2.82.130 Decision.**

(1) Time for Issuance of Recommendation/Decision. Unless a longer period is agreed to by the appellant, the examiner shall issue a recommendation or decision within 10 working days after the close of the hearing and the record.

(2) Decision. A decision shall set forth findings of fact, conclusions, and decision based on the record. Findings shall be supported by substantial evidence in the record, and conclusions shall follow from the findings. The decision will specify that the abatement order has been affirmed, rescinded, or modified and, if modified, detail the requirements for removing or correcting the violating conditions. The decision will further specify the parties' appeal rights.

(3) Notice of decision. Not later than five calendar days following the issuance of the Hearing Officer's decision, copies thereof shall be mailed to the applicant, to parties of record and to any person who requested a copy of the decision. The original decision shall be maintained in the official record.

(4) Transcript. A transcript of the Hearing Officer's findings of fact shall be made available to

the owner or other party in interest upon demand.

**2.82.140 Appeal from Hearing Officer’s decision.**

All appeals of decisions of the Hearing Officer will be to the Superior Court and must be filed with the Superior Court no later than 30 days after the service of the Hearing Officer’s decision.

**SECTION 6. 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 7. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**SECTION 8. Effective Date.** This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 10<sup>th</sup> day of September, 2019.

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

ATTEST:

SPONSOR:

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

\_\_\_\_\_  
Scott Diener, Councilmember

APPROVED AS TO FORM:

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

PUBLISHED:

EFFECTIVE DATE:

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**City of Port Orchard**

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

**Agenda Staff Report**

Agenda Item No.:	<u>Business Item 7B</u>	Meeting Date:	<u>September 10, 2019</u>
Subject:	<u>Adoption of an Ordinance Amending Port Orchard Municipal Code Chapter 20.212</u>	Prepared by:	<u>Nick Bond (Doug Price) DCD Director</u>
	<u>Dangerous and Unfit Dwellings, Buildings and Structures</u>	Atty Routing No:	<u>045-19</u>
		Atty Review Date:	<u>August 28, 2019</u>

**Summary:** POMC Chapter 20.212, Dangerous and Unfit Dwellings, Buildings, and Structures, designates the Board of Building Appeals (BBA) as the administrative hearing body to hear appeals of orders issued by the “Officer” (Community Development Director).

The BBA is a body of subject-matter experts established by the Building Code to “hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of” the Building Code. The board is made up of local professionals in building and related trades, serving without compensation.

Unlike construction-related issues, orders under Chapter 20.212 typically involve dilapidation, neglect, or abandonment of structures; nuisance conditions and activity; illegal occupancy; health, fire, and safety hazards; substandard, unpermitted construction; and, related issues such as garbage accumulations and nuisance vehicles and vegetation. Such orders, and resulting appeals, typically have little to do with interpretation or application of the Building Code. It is not within the original intent of the BBA to hear such appeals.

Consideration was given to having abatement appeals heard by the City’s Hearing Examiner, however, such hearings would be very costly to the City. Therefore, it is proposed to create the position of Abatement Hearing Officer. This requires changes in Chapter 20.212 to replace Board with Hearing Officer. Other minor changes are proposed to eliminate confusion between Officer and Hearing Officer, and to clarify appeal procedures, what actions are and aren’t stayed during appeal, what costs are recoverable, authority to modify provisions of issued orders, and an unclear sentence regarding emergency actions.

The Planning Commission has reviewed the proposed amendments to Chapter 20.212, held a public hearing, and recommends the Council approve the proposed amendments.

**Relationship to Comprehensive Plan:** Not applicable.

**Recommendation:** Staff recommends that the City Council adopt the proposed ordinance amending POMC Chapter 20.212 – Dangerous and Unfit Dwellings, Buildings, and Structures.

**Motion for consideration:** “I move to adopt an ordinance amending POMC Chapter 20.212 as presented.”

**Fiscal Impact:** Estimated cost of \$0 – 1,500 per year, from funds already budgeted for abatements.

**Alternatives:** Do not adopt the proposed amendment; revise the proposed amendment.

**Attachments:** Ordinance and redline POMC 20.212.

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

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON,  
AMENDING CHAPTER 20.212 OF THE PORT ORCHARD  
MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND  
PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, POMC Chapter 20.212 provides for the Board of Building Appeals to hear appeals of abatement orders; and

**WHEREAS**, the Board of Building Appeals is a group of local professionals in building and related trades, established by the Building Code to hear appeals related to the interpretation and application of the Building Code; and

**WHEREAS**, abatement orders issued under Chapter 20.212, and resulting appeals, are typically related to factors other than the application and interpretation of the Building Code; and

**WHEREAS**, an administrative Hearing Officer would be more appropriate to the nature of Chapter 20.212 appeals; and

**WHEREAS**, various amendments are needed to clarify various other provisions; and

**WHEREAS**, the City may adopt amendments to the City's development regulations pursuant to RCW 36.70A.106; and

**WHEREAS**, on August 19, 2019, the City submitted to the Department of Commerce a 60-day request for review of the proposed minor revisions and corrections to Title 20, pursuant to RCW 36.70A.106(1); and

**WHEREAS**, on August 23, 2019, the City's SEPA official issued a determination of non-significance for the proposed revisions and corrections to Chapter 20.212, and there have been no appeals; and

**WHEREAS**, on August 26, 2019, the Land Use Committee of the City Council considered the proposed amendments and recommended bringing them forward for consideration by the Planning Commission and the City Council; and,

**WHEREAS**, on September 2, 2019, the City's Planning Commission held a duly-noticed public hearing and voted unanimously to recommend approval by the City Council; **NOW, THEREFORE**

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

**SECTION 1.** POMC Chapter 20.212 Amended. Port Orchard Municipal Code, Chapter 20.212, is hereby amended to read as follows:

**Chapter 20.212  
DANGEROUS AND UNFIT DWELLINGS, BUILDINGS, AND STRUCTURES**

**Sections:**

- 20.212.010 Purpose – Findings.
- 20.212.020 Definitions.
- 20.212.030 Authority and liability.
- 20.212.040 Criteria for unfit or dangerous buildings or structures.
- 20.212.050 Inspection and complaint.
- 20.212.060 Findings and order.
- 20.212.070 Standards for demolition or repair.
- 20.212.080 Appeals.
- 20.212.090 Enforcement of order.
- 20.212.100 Emergency measures.
- 20.212.110 Sale or disposal of materials and contents.
- 20.212.120 Recovery of expenses.
- 20.212.130 Permits, regulations and workmanship.
- 20.212.140 Remedies not exclusive.
- 20.212.150 Public nuisance.
- 20.212.160 Violations.
- 20.212.170 Penalties and other relief.

**20.212.010 Purpose – Findings.**

The city council finds that there are within the city of Port Orchard dwellings, buildings, structures, and premises or portions thereof, which are dangerous or injurious to the health or safety of the occupants of such dwelling, building, structure or premises, the occupants of neighboring dwellings, or other residents of the city, or which are otherwise unfit for human habitation, occupancy, or other uses, due to: dilapidation; disrepair; structural defects; unpermitted and substandard construction or modification; lack of maintenance; abandonment or neglect; filth and other conditions attracting insects or vermin or likely to spread disease; defects increasing the risks and hazards of fire, accidents, or other calamities; inadequate ventilation and uncleanliness; inadequate light or sanitary facilities; inadequate drainage; overcrowding; violations of various building, health, and safety regulations; and, other conditions which are inimical to the health and welfare of the residents of the city.

Such dwellings, buildings, structures, and premises are dangerous to occupants, threaten the

public health, safety, and welfare, attract and harbor vagrants and criminals, offend public values, lower the value of neighboring properties, contribute to neighborhood or community deterioration, and hamper community and economic development.

When the owners or other persons in possession or control of such properties are unwilling or unable to correct such conditions in a proper and timely manner, it is in the interest of the community and of the occupants of such places for the city to intervene and vacate, secure, correct, repair, or remove such buildings, structures, and conditions, and to pursue all legal means to recover from such persons and/or properties the costs of doing so, including the costs of staff salaries and benefits, materials, contractors, and all other legally recoverable costs and expenses.

### **20.212.020 Definitions.**

For the purposes of this chapter, certain words shall have the meanings as defined in this section. Words, terms, or phrases not defined in this section shall be as defined in the building code, other codes of this jurisdiction, or their commonly accepted meanings. Words used in the singular include the plural. Words in masculine gender include the feminine and in the feminine gender include the masculine.

(1) “Abandoned” or “apparently abandoned” shall mean any dwelling, building, structure or premises that is so neglected, or other characteristics exist, as to support a reasonable conclusion that it is vacant – except as may be temporarily occupied by vagrants – and not cared for by any owner, tenant, or other party.

(2) “Abate” shall mean to remove, repair, correct, put an end to, secure from entry, or otherwise eliminate or diminish the intensity of, any dangerous or unfit dwelling, building, structure, or premises or portion thereof, or any condition causing a dwelling, building, structure, or premises to be dangerous or unfit.

(3) “Building” shall mean any structure used or intended for supporting or sheltering any use or occupancy.

(4) “Building code” shall mean the International Building and Residential Codes, and their referenced codes and standards, and other codes related to the construction, occupancy, and use of buildings and structures, as adopted and amended by Chapter 20.200 POMC or as subsequently amended.

(5) “Director” shall mean the Director of the Department of Community Development or Public Works and his/her designee(s).

(6) “Hearing Officer” shall mean the person designated by the City of Port Orchard to hear appeals of the findings and order issued by the Director, in accordance with POMC 20.212.080

and Chapter 2.82.

(7) "Owner" shall mean the owner or taxpayer shown in the records of the Kitsap County assessor, recorded with the Kitsap County auditor, or as otherwise known to the city of Port Orchard, and shall include any manager, agent, or other representative of the owner, or other person with responsibility for or control over the dwelling, building, structure or premises.

(8) "Person" shall mean and include any individual, business, corporation, organization, or entity.

(9) "Structure" shall mean or include that which is built or constructed or a portion thereof, including but not limited to buildings and such nonhabitable structures as walls, fences, towers, shafts, signs, and other constructed objects, whether temporary or permanent. For the purposes of this chapter, the terms "building" and "structure" may be used interchangeably, and both terms include dwellings and other premises and portions thereof.

#### **20.212.030 Authority and liability.**

(1) The Director is hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter. These powers shall include the following, in addition to others granted in this chapter: (a) to determine which dwellings, buildings, structures, or premises or portions thereof are dangerous or unfit for human habitation or other use; (b) to administer oaths and affirmations, examine witnesses, and receive evidence; (c) to investigate and inspect dwellings, buildings, structures and premises and other property conditions in the city, and to enter into and upon such for the purpose of making examinations when the Director has reasonable ground for believing they are dangerous or unfit for human habitation or other use; provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, to obtain an order for this purpose after submitting evidence in support of an application which is adequate to justify such an order from a court of competent jurisdiction in the event entry is denied or resisted, or to otherwise inspect or observe the building or structure in any lawful manner that does not constitute an unlawful trespass or violate a reasonable expectation of privacy; (d) to direct any utility provider to temporarily or permanently suspend or terminate service to any building or structure deemed dangerous or unfit under this chapter, and to authorize the reconnection or resumption of service once the conditions necessitating such action have been corrected to the satisfaction of the Director; (e) to hire or otherwise receive assistance from such other experts, inspectors, individuals, contractors, agencies, or others as may be appropriate to conduct or assist with such inspections and actions or to provide reports or other information or resources the Director may consider in evaluating such buildings/structures or use in enforcing the provisions of this code; (f) to expend public funds to abate such conditions; and (g) to cause such funds to be recovered by legal means including but not limited to filing liens against the properties upon which such buildings or structures have

been abated.

(2) The Director or designee, Hearing Officer, or employee charged with the enforcement of this chapter, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be civilly or criminally rendered liable personally and are hereby relieved from personal liability for any damage or loss accruing to persons or property as a result of, or by reason of, any act or omission in the discharge of official duties.

(3) Any action, suit, or criminal proceeding instituted against the Director or designee, Hearing Officer, or city employee, because of an act performed or an omission made by that Director or designee, Hearing Officer, or employee in the lawful discharge of duties under the provisions of this chapter shall be defended by legal representatives of the jurisdiction until the final termination of the action, suit, or proceeding. The Director or designee, Hearing Officer, or employee shall not be liable for the costs of any action, suit, or proceeding that is instituted relating to the provisions of this chapter.

**20.212.040 Criteria for unfit or dangerous buildings or structures.**

The Director may determine that a building or structure is dangerous or unfit for occupancy or other use if he/she finds that conditions exist in such building or structure that are dangerous or injurious to the health, safety, or welfare of the occupants of such structure, the occupants of neighboring structures, or other residents of the city, or is otherwise not safe or fit for the use for which it was designed or intended, or for other appropriate and legal use. Such conditions may include the following, without limitations:

(1) Any door, aisle, passageway, stairway, or other means of exit is too narrow or small, or other factors or conditions exist, so as to be unsafe or to hinder safe exit in case of panic, fire, or other emergency.

(2) The walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn, or other factors or conditions exist, so as to be unsafe or to not provide safe and adequate means of exit in case of panic, fire, or other emergency.

(3) The stress in any materials, member, or portion thereof, due to dead and live loads, is more than one and one-half times the working stress or stresses allowed in the building code for new buildings of similar structure, purpose, or location.

(4) Any portion has been damaged by fire, earthquake, wind, flood, deterioration, neglect, or any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such damage or deterioration and is less than the minimum requirements of the building code for new buildings of similar structure, purpose, or location.

- (5) Any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons, damage property, or render other portions of the structure or premises unsafe or unfit to occupy.
- (6) Any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place as to be capable of resisting a wind pressure of one-half of that specified in the building code for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in the building code for such buildings.
- (7) Any portion thereof is wracked, warped, buckled, settled, deteriorated, or other conditions exist, such that walls or other structural portions have materially less resistance to wind, earthquakes, snow, or other loads, than is required in the case of similar new construction.
- (8) The building or structure, or any portion thereof, because of (a) dilapidation, deterioration, or decay; (b) faulty construction; (c) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (d) the deterioration, decay, or inadequacy of its foundation; or (e) any other cause, is likely to partially or completely collapse.
- (9) For any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used or is designed and intended to be used.
- (10) The exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall within the middle one-third of the base.
- (11) The building, structure, or premises is damaged by fire, wind, earthquake, flood, or any other cause, has become dilapidated, deteriorated, or neglected, or is abandoned or apparently abandoned, so as to: (a) be an attractive nuisance dangerous to children; (b) attract and/or provide harborage for vagrants, criminals, or immoral persons; or (c) enable persons to resort thereto and engage in unlawful, immoral, or dangerous activities, or activities constituting a public nuisance.
- (12) The building or structure has been constructed, exists, or is maintained, occupied, or used in violation of any specific requirement or prohibition applicable to such building or structure provided by the building code or any other law of the state or ordinance of the city relating to the condition, location, structure, occupancy, or use of buildings.
- (13) The building or structure, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member, or portion less than 50 percent – or in any supporting part, member, or portion less than 66 percent – of the (a) strength, (b) fire-resisting qualities or characteristics, or (c) weather-resisting qualities or characteristics required



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by law for newly constructed buildings of like area, height, and occupancy in the same location.

(14) Because of neglect, dilapidation, decay, damage, or faulty construction; inadequate light, ventilation, or sanitation facilities; infestation of rodents, roaches, wood-destroying organisms, or other vectors of disease; filth or accumulation of garbage; or, for any other reason, the building, structure, or premises is unsanitary, unfit for human habitation, occupancy, or use, or in a condition that is likely to cause sickness or disease.

(15) Because of obsolescence, deterioration, damage, lack of sufficient or proper fire-resistive construction or fire-protection systems, faulty electric wiring or components, gas connections, or mechanical systems, or for any other cause, the building, structure, or premises is determined by the fire authority to be a fire hazard.

(16) Electrical, plumbing, mechanical, ventilation, or other equipment or systems, or portions thereof, due to damage, deterioration, improper installation or use, or any other cause, are unsafe, unable to perform their required or designed function, or contributing or likely to contribute to deterioration or unsafe conditions of other portions of the structure.

(17) Roofing, siding, vents, or other protective components, systems, or materials are damaged, deteriorated, improperly installed, or for any other reason not functioning properly to prevent the intrusion or retention of moisture into interior components or materials not designed or intended for exposure to moisture.

(18) Vents, cracks, or other exterior openings are not properly covered or otherwise treated to prevent the entrance of insects, birds, rodents, or other animals.

(19) Foundations, footings, and related supporting components are damaged, settled, or otherwise deteriorated, or not properly constructed, anchored, installed, or supported, as to provide the required support, stability, or protection against the elements.

(20) Any portion of a structure remaining on a site after the demolition or destruction of the structure or any structure abandoned or apparently abandoned so as to constitute such structure or portion thereof an attractive nuisance or hazard to the public.

(21) The building or structure is in such a condition as to constitute a public nuisance.

(22) Any vehicle, shipping container, tent, mechanical equipment, or other object, used as a dwelling/sleeping unit, storage structure/building, or other structure or occupancy, or component thereof, except as specifically designed and intended for such use, converted to such use in compliance with all applicable regulations, or otherwise approved for such use, and used in accordance with such design or approval.

(23) Any other condition the building official or other official or expert determines that renders the building or structure unsafe or unfit for habitation, occupancy, or other appropriate and legal use.

**20.212.050 Inspection and complaint.**

If, after a preliminary investigation of any dwelling, building, structure, or premises, the Director finds that it is dangerous or unfit for human habitation, occupancy, or other appropriate and legal use, he or she shall issue a complaint stating in what respects such dwelling, building, structure, or premises is dangerous or unfit. Such complaint shall contain a notice that a hearing will be held before the Director, at a place therein fixed, not less than 10 days nor more than 30 days after the serving of the complaint; and that all parties in interest shall be given the right to file an answer to the complaint, to appear in person, or otherwise, and to give testimony at the time and place in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Director.

The complaint shall be served either personally or by certified mail with return receipt requested, upon all persons having any interest therein, as shown upon the records of the Kitsap County auditor, and shall be posted in a conspicuous place on such property. If the whereabouts of any of such persons is unknown and the same cannot be ascertained by the Director in the exercise of reasonable diligence, and the Director makes an affidavit to that effect, then the complaint may be served upon such persons by mailing a copy by certified mail, postage prepaid, return receipt requested, to each such person at the address of the building or structure involved in the proceedings, and mailing a copy by first class mail to any address of each such person in the records of the Kitsap County assessor or auditor. A copy of the complaint shall also be filed with the Kitsap County auditor and such filing of the complaint shall have the same force and effect as other *lis pendens* notices provided by law.

**20.212.060 Findings and order.**

If the Director determines that the dwelling, building, structure, or premises is dangerous or unfit for human habitation, occupancy, or use, in accordance with this chapter, he/she shall state in writing his/her findings of fact in support of such determination, and shall issue an order that: (1) requires the owner or party in interest, within the time specified in the order, to repair, alter, or improve such dwelling, building, structure, or premises, or otherwise remove or correct the violating condition(s), so as to eliminate the threat and/or nuisance to the occupants and/or community and render it fit for human habitation, occupancy, or other appropriate or legal use, and/or to vacate and close the dwelling, building, structure, or premises, if such course of action is deemed proper on the basis of the standards set forth in POMC 20.212.040; or (2) requires the owner or party in interest, within the time specified in the order, to remove or demolish such dwelling, building, structure, or premises, if this course of action is deemed proper on the basis of those standards.

The findings and order shall be served and posted in the same manner as prescribed in POMC

20.212.050. If no appeal is filed, the order shall be final and a copy of the order shall be filed with the Kitsap County auditor.

**20.212.070 Standards for demolition or repair.**

(1) In ordering the required course of action to be taken by the owner to abate the unfit or dangerous building or structure, the Director may order the building or structure or a portion thereof demolished and not repaired under any of the following circumstances:

(a) The estimated cost to repair the building or structure or portion thereof is more than 50 percent of the appraised or estimated replacement value of the structure;

(b) The building or structure, exclusive of the foundation, has damage or deterioration to 33 percent or more of its supporting members, or 50 percent of its nonsupporting members, enclosing or outside walls or coverings.

(2) In estimating the replacement value of a building or structure, the Director shall use the square foot cost estimating method set forth in the "Residential Cost Handbook," Marshall and Swift, latest available edition, or a cost estimating method or publication that the Director deems comparable.

(3) Appraised value of a structure shall be as determined by a professional real estate appraiser within one year of the date of the order.

(4) In estimating the cost of repairs, the Director shall apply the following standards:

(a) All repair costs shall be based on estimates calculated from the Marshall and Swift's "Residential Cost Handbook," latest available edition, or a cost estimating publication that the Director deems comparable;

(b) Repair estimates shall assume that all work will comply with the requirements of all applicable current codes;

(c) If the extent of damage to a portion of a building or structure cannot be ascertained from visual inspection, the Director shall assume that the relative extent of damage or deterioration identified in the observable portion of the building exists in the unobserved portions; and

(d) Cost estimates for replacing or repairing the building, structure or portion thereof shall include the same type and quality of materials as originally used in the structure, unless different materials are required by current building, mechanical, electrical, plumbing, energy, fire, or other codes. If the building or structure is so damaged that the

original materials cannot be determined, repair costs shall be estimated using the materials identified under the applicable building quality classification in the square foot cost estimating method in the "Residential Cost Handbook" by Marshall and Swift.

#### **20.212.080 Appeals.**

(1) In accordance with RCW 35.80.030(1(g)), as now written or hereafter amended, within 30 days from the date of service upon the owner or any party in interest, and posting of the findings and order issued under POMC 20.212.060, the owner or any party in interest may file a notice of appeal with the city clerk for a hearing before the Hearing Officer.

(2) Upon application for an appeal, enforcement of the order is suspended until the resolution of the appeal, except that emergency measures and orders shall not be suspended.

(3) The City shall establish rules of procedure adequate to assure a prompt and thorough review of matters submitted to the Hearing Officer, including but not limited to the following:

(a) The Hearing Officer must resolve all matters submitted to him/her within 60 days from the date of filing;

(b) The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Hearing Officer; and

(c) A transcript of the Hearing Officer's findings of fact shall be made available to the owner or other party in interest upon demand.

(4) The decision of the Hearing Officer shall be served and posted, within 5 calendar days of issuance, in the same manner as prescribed in POMC 20.212.050 and shall be enforceable as provided herein.

(5) In accordance with RCW 35.80.030(2), as now written or hereafter amended, any person affected by a decision issued by the Hearing Officer pursuant to subsection (1) of this section may, within 30 days after the posting and service of the decision, petition to the superior court for an injunction restraining the Director from carrying out the provisions of the decision. In all such proceedings the court is authorized to affirm, reverse, or modify the decision and such trial shall be heard de novo. Absent such a timely petition for injunction, the decision of the Hearing Officer shall be final.

#### **20.212.090 Enforcement of order.**

(1) If the owner(s) or parties in interest, following exhaustion of their rights to appeal, fail to comply with the final order or decision to secure, repair, alter, improve, vacate, close, remove,

or demolish the dwelling, building, structure, or premises or portion thereof, or otherwise remove or correct the violating condition, the Director may direct or cause such dwelling, building, structure, or premises or portion thereof to be repaired, altered, improved, vacated and closed, removed, or demolished, or such other action as is necessary to remove or correct the violating condition.

(2) In working with an owner or other responsible party who has not appealed the Director's order and is working toward compliance, the Director may grant additional time and/or alternative methods for achieving compliance from those initially ordered by the Director. Such accommodations shall be in writing and signed by both parties, and shall be based on reasonable plans, progress, and/or assurances by the owner or responsible party, or circumstances outside of their control, and upon reasonable interim measures implemented to protect the health, safety, and welfare of the public and/or occupants of the building. Issuance of any permit for work related to the conditions addressed herein may be conditioned on such written agreement. Such accommodations and permit(s) shall be conditioned upon the continued satisfactory performance of the owner or responsible party and may be revoked by the Director upon lack of such satisfactory performance. The granting or revocation of such accommodations/agreements shall not be subject to appeal.

(3) Any owner or responsible party who has appealed to the Hearing Officer must petition the Hearing Officer for any subsequent modification of the time, method, materials, or other provisions of the order issued by the Hearing Officer, unless the Hearing Officer has delegated such authority to the Director. If such authority has been delegated, the Director, at his or her discretion, may consult with or defer any such decision back to the Hearing Officer.

(4) Any owner or responsible party must petition to the superior court for any subsequent modification of the time, method, materials, or other provisions of any order issued by the court, unless the court has delegated such authority to the Director or Hearing Officer. If such authority has been delegated, the Director or Hearing Officer, at their discretion, may consult with or defer any such decision back to the superior court.

#### **20.212.100 Emergency measures.**

Whenever the Director finds that any building, structure, premises, or portion thereof, is an imminent hazard to the public, the building occupants, or surrounding buildings or properties, he/she may, without notice and order, take immediate action to vacate, stabilize, secure from entry, or otherwise protect the occupants, public, and surrounding properties or buildings from the hazard. Such action may include closing and vacating sidewalks, streets, and surrounding properties and buildings. The Director shall, within five working days following completion of such work or action, issue a complaint pursuant to this chapter. Any city funds spent in responding to the emergency shall be included in costs recoverable under this chapter.

Any notice posted by the Director, declaring a building, structure, or premises unsafe or unfit to

enter or occupy may only be removed by the Director or designee, or with the express approval of the Director or designee. Any person who removes, alters, defaces, covers, or otherwise renders such notice ineffective, without such express approval, shall be guilty of a misdemeanor.

**20.212.110 Sale or disposal of materials and contents.**

If the dwelling, building, structure, or premises is removed or demolished by the city, the Director shall, if possible, sell the materials of the dwelling, building, structure, or premises, and shall credit the proceeds of such sale against the cost of the removal or demolition and, if there be any balance remaining, it shall be paid to the parties entitled thereto, as determined by the Director, after deducting the costs incident thereto.

The determination of whether or not it is possible to sell the materials shall be based on factors such as, but not limited to: the type, nature, and condition of the materials; whether or not they can reasonably be removed and separated for sale; and the costs involved in attempting to sell the materials. The salability of the materials may be determined by the Director based on experience, or in consultation with such contractors or experts as deemed appropriate.

The procedures for selling the materials shall be based on the type and quantity of materials involved. Such procedures may include, but not be limited to: listing in local, Internet, or other forums or publications; request for bids for purchase and removal; public auction; and, recycling by abatement contractor.

**20.212.120 Recovery of expenses.**

(1) The amount of the cost of such repairs, alterations or improvements, vacating and closing, removal or demolition, or other action to remove or correct the violation(s) and/or protect the occupants, public, and/or neighboring buildings and properties, taken or caused to be done by the Director, shall be assessed against the real property upon which such cost was incurred, unless such amount is previously paid. Such costs shall include all reasonable expenses, including, but not limited to, the costs of consultants and contractors, legal counsel, staff time, court fees, materials and equipment, incidentals, mailing, publishing, and recording notices. Pursuant to RCW 35.80.030(1)(h), the amount of such costs shall constitute a lien against the property of equal rank with state, county, and municipal taxes.

(2) For purposes of this section, the cost of vacating and closing shall include (a) the amount of relocation assistance payments that a property owner has not repaid to the city of Port Orchard or other local government entity that has advanced relocation assistance payments to tenants under RCW 59.18.085; and (b) all penalties and interest that accrue as a result of the failure of the property owner to timely repay the amount of these relocation assistance payments under RCW 59.18.085.

(3) Upon certification to him/her by the Director, of the assessment amount being due and owing, the county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84.56.020 for delinquent taxes, and when collected to be deposited to the credit of the general fund of the city.

**20.212.130 Permits, regulations and workmanship.**

All repairs, improvements, maintenance, or other work performed in relation to any enforcement under this code shall be performed and completed by the owner, contractor, or other person in interest in a workmanlike manner and in compliance with all permitting and other requirements of all applicable codes and regulations. The owner or other person in interest shall be responsible for identifying and complying with all applicable codes and regulations.

**20.212.140 Remedies not exclusive.**

(1) This section does not abrogate or impair the powers of the courts or of any department of the city to enforce any other of its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

(2) This section does not impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

**20.212.150 Public nuisance.**

Any structure or premises subject to complaint or order under this chapter is also a public nuisance.

**20.212.160 Violations.**

(1) In addition or alternative to any other provisions of this chapter, any person who violates or fails to comply with any of the provisions of this chapter, or who violates or fails to comply with any lawful notice or order made hereunder, shall for each and every such violation and noncompliance respectively be subject to the penalties and provisions specified in POMC 20.212.170.

(2) Each day in which a violation occurs or is allowed to continue shall constitute a separate offense and may be punished as such.

**20.212.170 Penalties and other relief.**

(1) Civil Penalty. In addition or alternative to any other penalty provided herein or by law, any violation of, or failure to comply with, any provision of this chapter or any lawful order issued hereunder, shall constitute a civil infraction subject to a penalty in the amount of \$250.00, not including statutory penalties, per violation.

(2) Criminal Penalty. In addition or alternative to any other penalty provided herein or by law, any violation of, or failure to comply with, any provision of this chapter or any lawful order issued hereunder, shall constitute a misdemeanor, punishable by a fine of not more than \$1,000, or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

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

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

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

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 10<sup>th</sup> day of September, 2019.

\_\_\_\_\_  
Robert Putansuu, Mayor

ATTEST:

SPONSOR:

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

\_\_\_\_\_  
Scott Diener, Councilmember

APPROVED AS TO FORM:

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



PUBLISHED:  
EFFECTIVE DATE:

**Chapter 20.212**  
**DANGEROUS AND UNFIT DWELLINGS, BUILDINGS, AND STRUCTURES**

**Sections:**

- 20.212.010 Purpose – Findings.
- 20.212.020 Definitions.
- 20.212.030 Authority and liability.
- 20.212.040 Criteria for unfit or dangerous buildings or structures.
- 20.212.050 Inspection and complaint.
- 20.212.060 Findings and order.
- 20.212.070 Standards for demolition or repair.
- 20.212.080 Appeals.
- 20.212.090 Enforcement of order.
- 20.212.100 Requests for reconsideration, modification, or extension.
- ~~20.212.100110~~ Emergency measures.
- ~~20.212.110120~~ Sale or disposal of materials and contents.
- ~~20.212.120130~~ Recovery of expenses.
- ~~20.212.130140~~ Permits, regulations and workmanship.
- ~~20.212.140150~~ Remedies not exclusive.
- ~~20.212.150160~~ Public nuisance.
- ~~20.212.160170~~ Violations.
- ~~20.212.170180~~ Penalties and other relief.

**20.212.010 Purpose – Findings.**

The city council finds that there are within the city of Port Orchard dwellings, buildings, structures, and premises or portions thereof, which are dangerous or injurious to the health or safety of the occupants of such dwelling, building, structure or premises, the occupants of neighboring dwellings, or other residents of the city, or which are otherwise unfit for human habitation, occupancy, or other uses, due to: dilapidation; disrepair; structural defects; unpermitted and substandard construction or modification; lack of maintenance; abandonment or neglect; filth and other conditions attracting insects or vermin or likely to spread disease; defects increasing the risks and hazards of fire, accidents, or other calamities; inadequate ventilation and uncleanliness; inadequate light or sanitary facilities; inadequate drainage; overcrowding; violations of various building, health, and safety regulations; and, other conditions which are inimical to the health and welfare of the residents of the city.

Such dwellings, buildings, structures, and premises are dangerous to occupants, threaten the public health, safety, and welfare, attract and harbor vagrants and criminals, offend public values, lower the value of neighboring properties, contribute to neighborhood or community deterioration, and hamper community and economic development.

When the owners or other persons in possession or control of such properties are unwilling or unable to correct such conditions in a proper and timely manner, it is in the interest of the community and of the occupants of such places for the city to intervene and vacate, secure, correct, repair, or remove such buildings, structures, and conditions, and to pursue all legal means to recover from such persons and/or properties the costs of doing so, including the costs of staff salaries and benefits, materials, contractors, and all other legally recoverable costs and expenses.

**20.212.020 Definitions.**

For the purposes of this chapter, certain words shall have the meanings as defined in this section.

Words, terms, or phrases not defined in this section shall be as defined in the building code, other codes of this jurisdiction, or their commonly accepted meanings. Words used in the singular include the plural. Words in masculine gender include the feminine and in the feminine gender include the masculine.

(1) “Abandoned” or “apparently abandoned” shall mean any dwelling, building, structure or premises that is so neglected, or other characteristics exist, as to support a reasonable conclusion that it is vacant – except as may be temporarily occupied by vagrants – and not cared for by any owner, tenant, or other party.

(2) “Abate” shall mean to remove, repair, correct, put an end to, secure from entry, or otherwise eliminate or diminish the intensity of, any dangerous or unfit dwelling, building, structure, or premises or portion thereof, or any condition causing a dwelling, building, structure, or premises to be dangerous or unfit.

~~(3) “Board of appeals” or “board” shall mean the board of building appeals as established under the building code.~~

(43) “Building” shall mean any structure used or intended for supporting or sheltering any use or occupancy.

~~(54)~~ “Building code” shall mean the International Building and Residential Codes, and their referenced codes and standards, and other codes related to the construction, occupancy, and use of buildings and structures, as adopted and amended by Chapter 20.200 POMC or as subsequently amended.

~~(5) “Director” shall mean the Director of the Department of Community Development or Public Works and his/her designee(s).~~

~~(6) “Hearing Officer” shall mean the person designated by the City of Port Orchard to hear appeals of the findings and order issued by the Director, in accordance with POMC 20.212.080 and Chapter 2.82.~~

~~(6) “Officer” shall mean and include the mayor and his/her designee(s).~~

(7) “Owner” shall mean the owner or taxpayer shown in the records of the Kitsap County assessor, recorded with the Kitsap County auditor, or as otherwise known to the city of Port Orchard, and shall include any manager, agent, or other representative of the owner, or other person with responsibility for or control over the dwelling, building, structure or premises.

(8) “Person” shall mean and include any individual, business, corporation, organization, or entity.

(9) “Structure” shall mean or include that which is built or constructed or a portion thereof, including but not limited to buildings and such nonhabitable structures as walls, fences, towers, shafts, signs, and other constructed objects, whether temporary or permanent. For the purposes of this chapter, the terms “building” and “structure” may be used interchangeably, and both terms include dwellings and other premises and portions thereof.

#### **20.212.030 Authority and liability.**

(1) The ~~officer~~Director is hereby authorized to exercise such powers as may be necessary or convenient

to carry out and effectuate the purposes and provisions of this chapter. These powers shall include the following, in addition to others granted in this chapter: (a) to determine which dwellings, buildings, structures, or premises or portions thereof are dangerous or unfit for human habitation or other use; (b) to administer oaths and affirmations, examine witnesses, and receive evidence; (c) to investigate and inspect dwellings, buildings, structures and premises and other property conditions in the city, and to enter into and upon such for the purpose of making examinations when the ~~officer~~Director has reasonable ground for believing they are dangerous or unfit for human habitation or other use; provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, to obtain an order for this purpose after submitting evidence in support of an application which is adequate to justify such an order from a court of competent jurisdiction in the event entry is denied or resisted, or to otherwise inspect or observe the building or structure in any lawful manner that does not constitute an unlawful trespass or violate a reasonable expectation of privacy; (d) to direct any utility provider to temporarily or permanently suspend or terminate service to any building or structure deemed dangerous or unfit under this chapter, and to authorize the reconnection or resumption of service once the conditions necessitating such action have been corrected to the satisfaction of the ~~officer~~Director; (e) to hire or otherwise receive assistance from such other experts, inspectors, individuals, contractors, agencies, or others as may be appropriate to conduct or assist with such inspections and actions or to provide reports or other information or resources the ~~officer~~Director may consider in evaluating such buildings/structures or use in enforcing the provisions of this code; (f) to expend public funds to abate such conditions; and (g) to cause such funds to be recovered by legal means including but not limited to filing liens against the properties upon which such buildings or structures have been abated.

(2) The ~~officer~~Director or designee, ~~member of the board of building appeals~~Hearing Officer, or employee charged with the enforcement of this chapter, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be civilly or criminally rendered liable personally and ~~is~~are hereby relieved from personal liability for any damage or loss accruing to persons or property as a result of, or by reason of, any act or omission in the discharge of official duties.

(3) Any action, suit, or criminal proceeding instituted against the ~~officer~~Director or designee, ~~member of the board of building appeals~~Hearing Officer, or city employee, because of an act performed or an omission made by that ~~officer~~Director or designee, ~~board member~~Hearing Officer, or employee in the lawful discharge of duties under the provisions of this chapter shall be defended by legal representatives of the jurisdiction until the final termination of the action, suit, or proceeding. The ~~officer~~Director or designee, ~~board member~~Hearing Officer, or employee shall not be liable for the costs of any action, suit, or proceeding that is instituted relating to the provisions of this chapter.

#### **20.212.040 Criteria for unfit or dangerous buildings or structures.**

The ~~officer~~Director may determine that a building or structure is dangerous or unfit for occupancy or other use if he/she finds that conditions exist in such building or structure that are dangerous or injurious to the health, safety, or welfare of the occupants of such structure, the occupants of neighboring structures, or other residents of the city, or is otherwise not safe or fit for the use for which it was designed or intended, or for other appropriate and legal use. Such conditions may include the following, without limitations:

(1) Any door, aisle, passageway, stairway, or other means of exit is too narrow or small, or other factors or conditions exist, so as to be unsafe or to hinder safe exit in case of panic, fire, or other emergency.

- (2) The walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn, or other factors or conditions exist, so as to be unsafe or to not provide safe and adequate means of exit in case of panic, fire, or other emergency.
- (3) The stress in any materials, member, or portion thereof, due to dead and live loads, is more than one and one-half times the working stress or stresses allowed in the building code for new buildings of similar structure, purpose, or location.
- (4) Any portion has been damaged by fire, earthquake, wind, flood, deterioration, neglect, or any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such damage or deterioration and is less than the minimum requirements of the building code for new buildings of similar structure, purpose, or location.
- (5) Any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons, damage property, or render other portions of the structure or premises unsafe or unfit to occupy.
- (6) Any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place as to be capable of resisting a wind pressure of one-half of that specified in the building code for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in the building code for such buildings.
- (7) Any portion thereof is wracked, warped, buckled, settled, deteriorated, or other conditions exist, such that walls or other structural portions have materially less resistance to wind, earthquakes, snow, or other loads, than is required in the case of similar new construction.
- (8) The building or structure, or any portion thereof, because of (a) dilapidation, deterioration, or decay; (b) faulty construction; (c) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (d) the deterioration, decay, or inadequacy of its foundation; or (e) any other cause, is likely to partially or completely collapse.
- (9) For any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used or is designed and intended to be used.
- (10) The exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall within the middle one-third of the base.
- (11) The building, structure, or premises is damaged by fire, wind, earthquake, flood, or any other cause, has become dilapidated, deteriorated, or neglected, or is abandoned or apparently abandoned, so as to:
  - (a) be an attractive nuisance dangerous to children;
  - (b) attract and/or provide harborage for vagrants, criminals, or immoral persons;
  - (c) enable persons to resort thereto and engage in unlawful, immoral, or dangerous activities, or activities constituting a public nuisance.
- (12) The building or structure has been constructed, exists, or is maintained, occupied, or used in violation of any specific requirement or prohibition applicable to such building or structure provided by the building code or any other law of the state or ordinance of the city relating to the condition, location, structure, occupancy, or use of buildings.

(13) The building or structure, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member, or portion less than 50 percent – or in any supporting part, member, or portion less than 66 percent – of the (a) strength, (b) fire-resisting qualities or characteristics, or (c) weather-resisting qualities or characteristics required by law for newly constructed buildings of like area, height, and occupancy in the same location.

(14) Because of neglect, dilapidation, decay, damage, or faulty construction; inadequate light, ventilation, or sanitation facilities; infestation of rodents, roaches, wood-destroying organisms, or other vectors of disease; filth or accumulation of garbage; or, for any other reason, the building, structure, or premises is unsanitary, unfit for human habitation, occupancy, or use, or in a condition that is likely to cause sickness or disease.

(15) Because of obsolescence, deterioration, damage, lack of sufficient or proper fire-resistive construction or fire-protection systems, faulty electric wiring or components, gas connections, or mechanical systems, or for any other cause, the building, structure, or premises is determined by the fire authority to be a fire hazard.

(16) Electrical, plumbing, mechanical, ventilation, or other equipment or systems, or portions thereof, due to damage, deterioration, improper installation or use, or any other cause, are unsafe, unable to perform their required or designed function, or contributing or likely to contribute to deterioration or unsafe conditions of other portions of the structure.

(17) Roofing, siding, vents, or other protective components, systems, or materials are damaged, deteriorated, improperly installed, or for any other reason not functioning properly to prevent the intrusion or retention of moisture into interior components or materials not designed or intended for exposure to moisture.

(18) Vents, cracks, or other exterior openings are not properly covered or otherwise treated to prevent the entrance of insects, birds, rodents, or other animals.

(19) Foundations, footings, and related supporting components are damaged, settled, or otherwise deteriorated, or not properly constructed, anchored, installed, or supported, as to provide the required support, stability, or protection against the elements.

(20) Any portion of a structure remaining on a site after the demolition or destruction of the structure or any structure abandoned or apparently abandoned so as to constitute such structure or portion thereof an attractive nuisance or hazard to the public.

(21) The building or structure is in such a condition as to constitute a public nuisance.

(22) Any vehicle, shipping container, tent, mechanical equipment, or other object, used as a dwelling/sleeping unit, storage structure/building, or other structure or occupancy, or component thereof, except as specifically designed and intended for such use, converted to such use in compliance with all applicable regulations, or otherwise approved for such use, and used in accordance with such design or approval.

(23) Any other condition the building official or other official or expert determines that renders the building or structure unsafe or unfit for habitation, occupancy, or other appropriate and legal use.

**20.212.050 Inspection and complaint.**

~~If, after a preliminary investigation of any dwelling, building, structure, or premises, the officer finds that it is dangerous or unfit for human habitation, occupancy, or other appropriate and legal use, he or she shall cause to be served either personally or by certified mail, with return receipt requested, upon all persons having any interest therein, as shown upon the records of the Kitsap County auditor, and shall post in a conspicuous place on such property, a complaint stating in what respects such dwelling, building, structure, or premises is dangerous or unfit. If the whereabouts of any of such persons is unknown and the same cannot be ascertained by the officer in the exercise of reasonable diligence, and the officer makes an affidavit to that effect, then the serving of such complaint upon such persons may be made by mailing a copy of the complaint and order by certified mail, postage prepaid, return receipt requested, to each such person at the address of the building or structure involved in the proceedings and mailing a copy of the complaint by first class mail to any address of each such person in the records of the Kitsap County assessor or auditor. Such complaint shall contain a notice that a hearing will be held before the officer, at a place therein fixed, not less than 10 days nor more than 30 days after the serving of the complaint; and that all parties in interest shall be given the right to file an answer to the complaint, to appear in person, or otherwise, and to give testimony at the time and place in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the officer. A copy of such complaint shall also be filed with the Kitsap County auditor and such filing of the complaint shall have the same force and effect as other lis pendens notices provided by law.~~  
If, after a preliminary investigation of any dwelling, building, structure, or premises, the Director finds that it is dangerous or unfit for human habitation, occupancy, or other appropriate and legal use, he or she shall issue a complaint stating in what respects such dwelling, building, structure, or premises is dangerous or unfit. Such complaint shall contain a notice that a hearing will be held before the Director, at a place therein fixed, not less than 10 days nor more than 30 days after the serving of the complaint; and that all parties in interest shall be given the right to file an answer to the complaint, to appear in person, or otherwise, and to give testimony at the time and place in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Director.

The complaint shall be served either personally or by certified mail with return receipt requested, upon all persons having any interest therein, as shown upon the records of the Kitsap County auditor, and shall be posted in a conspicuous place on such property. If the whereabouts of any of such persons is unknown and the same cannot be ascertained by the Director in the exercise of reasonable diligence, and the Director makes an affidavit to that effect, then the complaint may be served upon such persons by mailing a copy by certified mail, postage prepaid, return receipt requested, to each such person at the address of the building or structure involved in the proceedings, and mailing a copy by first class mail to any address of each such person in the records of the Kitsap County assessor or auditor. A copy of the complaint shall also be filed with the Kitsap County auditor and such filing of the complaint shall have the same force and effect as other lis pendens notices provided by law.

**20.212.060 Findings and order.**

If the ~~officer~~Director determines that the dwelling, building, structure, or premises is dangerous or unfit for human habitation, occupancy, or use, in accordance with this chapter, he/she shall state in writing his/her findings of fact in support of such determination, and shall issue ~~and cause to be served upon the owner or party in interest thereof, as provided in POMC 20.212.050, and shall post in a conspicuous place on the property,~~ an order that: (1) requires the owner or party in interest, within the time specified in the order, to repair, alter, or improve such dwelling, building, structure, or premises, or otherwise remove or correct the violating condition(s), so as to eliminate the threat and/or nuisance to the occupants and/or community and render it fit for human habitation, occupancy, or other appropriate or

legal use, and/or to vacate and close the dwelling, building, structure, or premises, if such course of action is deemed proper on the basis of the standards set forth in POMC 20.212.040; or (2) requires the owner or party in interest, within the time specified in the order, to remove or demolish such dwelling, building, structure, or premises, if this course of action is deemed proper on the basis of those standards.

The findings and order shall be served and posted in the same manner as prescribed in POMC 20.212.050. If no appeal is filed, the order shall be final and a copy of the order shall be filed with the Kitsap County auditor.

#### **20.212.070 Standards for demolition or repair.**

(1) In ordering the required course of action to be taken by the owner to abate the unfit or dangerous building or structure, the ~~officer~~Director may order the building or structure or a portion thereof demolished and not repaired under any of the following circumstances:

- (a) The estimated cost to repair the building or structure or portion thereof is more than 50 percent of the ~~replacement value or~~ appraised or estimated replacement value of the structure;
- (b) The building or structure, exclusive of the foundation, has damage or deterioration to 33 percent or more of its supporting ~~member or~~ members, or 50 percent of its nonsupporting members, enclosing or outside walls or coverings.

(2) In estimating the replacement value of a building or structure, the ~~officer~~Director shall use the square foot cost estimating method set forth in the “Residential Cost Handbook,” Marshall and Swift, latest available edition, or a cost estimating method or publication that the ~~officer~~Director deems comparable.

(3) Appraised value of a structure shall be as determined by a professional real estate appraiser within one year of the date of the order.

(4) In estimating the cost of repairs, the ~~officer~~Director shall apply the following standards:

- (a) All repair costs shall be based on estimates calculated from the Marshall and Swift’s “Residential Cost Handbook,” latest available edition, or a cost estimating publication that the ~~officer~~Director deems comparable;
- (b) Repair estimates shall assume that all work will comply with the requirements of all applicable current codes;
- (c) If the extent of damage to a portion of a building or structure cannot be ascertained from visual inspection, the ~~officer~~Director shall assume that the relative extent of damage or deterioration identified in the observable portion of the building exists in the unobserved portions; and
- (d) Cost estimates for replacing or repairing the building, structure or portion thereof shall include the same type and quality of materials as originally used in the structure, unless different materials are required by current building, mechanical, electrical, plumbing, energy, fire, or other codes. If the building or structure is so damaged that the original materials cannot be determined, repair costs shall be estimated using the materials identified under the applicable building quality classification in the square foot cost estimating method in the “Residential Cost Handbook” by Marshall and



Swift.

## 20.212.080 Appeals.

(1) In accordance with RCW 35.80.030(1(g)), as now written or hereafter amended, within 30 days from the date of service upon the owner or any party in interest, and posting of the findings and order decision issued under POMC 20.212.060, the owner or any party in interest may file a notice of appeal with the city clerk for a hearing before the Hearing Officer board of building appeals. ~~The rules for hearings before the board shall be those specified in the building code and as established by the board. In addition to the rules and procedures of the board, all matters under this chapter shall be resolved by the board within 60 days from the date of filing therewith and a transcript of the findings of fact of the board shall be made available to the owner or other party in interest upon demand. The findings and orders of the board shall be reported in the same manner and shall bear the same legal consequences as if issued by the officer.~~

~~(2) The notice of appeal shall:~~

~~(a) Be in writing and state clearly and concisely the specific objections to the building official's order;~~

~~(b) State the ownership or other interest that each appellant has in the building, premises, or portion thereof involved in the order of the building official;~~

~~(c) State briefly the remedy sought; and~~

~~(d) Include the signatures of all appellants and their mailing addresses.~~

~~(2) Upon application for an appeal, enforcement of the order is suspended until the resolution of the appeal, except that emergency measures and orders shall not be suspended.~~

~~(3) The City shall establish rules of procedure adequate to assure a prompt and thorough review of matters submitted to the Hearing Officer, including but not limited to the following:~~

~~(a) The Hearing Officer must resolve all matters submitted to him/her within 60 days from the date of filing;~~

~~(b) The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Hearing Officer; and~~

~~(c) A transcript of the Hearing Officer's findings of fact shall be made available to the owner or other party in interest upon demand.~~

~~(4) The decision of the Hearing Officer shall be served and posted, within 5 calendar days of issuance, in the same manner as prescribed in POMC 20.212.050 and shall be enforceable as provided herein.~~

~~(35) In accordance with RCW 35.80.030(2), as now written or hereafter amended, any person affected by a decision an order issued by the ~~board~~ Hearing Officer pursuant to subsection (1) of this section may, within 30 days after the posting and service of the decision order, petition to the superior court for an injunction restraining the ~~officer~~ Director from carrying out the provisions of the decision order. In all~~

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such proceedings the court is authorized to affirm, reverse, or modify the ~~decision~~ order and such trial shall be heard de novo. Absent such a timely petition for injunction, the decision of the ~~board~~ Hearing Officer shall be final.

#### **20.212.090 Enforcement of order.**

~~(1)~~ If the owner(s) or parties in interest, following exhaustion of their rights to appeal, fail to comply with the final order ~~or decision~~ to ~~secure~~, repair, alter, improve, vacate, close, remove, or demolish the dwelling, building, structure, or premises or portion thereof, ~~or otherwise remove or correct the violating condition~~, the ~~officer~~ Director may direct or cause such dwelling, building, structure, or premises or portion thereof to be repaired, altered, improved, vacated and closed, removed, or demolished, ~~or such other action as is necessary to remove or correct the violating condition~~.

#### **20.212.100 Requests for reconsideration, modification, or extension.**

(1) Requests for reconsideration may be made to the Director or Hearing Officer who's order or decision is the subject of the request. Such request must be made within 30 days of service of the order or decision. Appeal or compliance deadlines are not automatically suspended or extended upon filing of a request, but the Director or Hearing Officer may, at their discretion, suspend or extend such deadlines during their review of the request and/or in their final decision.

(2) In working with an owner or other responsible party who has not appealed the ~~officer~~ Director's order and is working toward compliance, the ~~officer~~ Director may grant additional time and/or alternative methods for achieving compliance from those initially ordered by the ~~officer~~ Director. Such accommodations shall be in writing and signed by both parties, and shall be based on reasonable plans, progress, and/or assurances by the owner or responsible party, or ~~on~~ circumstances outside of their control, and upon reasonable interim measures implemented to protect the health, safety, and welfare of the public and/or occupants of the building. Issuance of any permit for work related to the conditions addressed herein may be conditioned on such written agreement ~~and assurances~~. Such accommodations and permit(s) shall be conditioned upon the continued satisfactory performance of the owner or responsible party and may be revoked by the ~~officer~~ Director upon lack of ~~such~~ satisfactory performance. The granting or revocation of such accommodations/agreements shall not be subject to appeal.

(3) Any owner or responsible party who has appealed to the ~~board of building appeals~~ Hearing Officer must petition the ~~board~~ Hearing Officer for any subsequent modification of the time, method, materials, or other provisions of the order issued by the ~~board~~ Hearing Officer, unless the ~~board~~ Hearing Officer has delegated such authority to the ~~officer~~ Director. ~~If such authority has been delegated, the Director, at his or her discretion, may consult with or defer any such decision back to the Hearing Officer.~~

(4) Any owner or responsible party must petition to the superior court for any subsequent modification of the time, method, materials, or other provisions of any order issued by the court, unless the court has delegated such authority to the ~~officer~~ Director or ~~board~~ Hearing Officer. ~~If such authority has been delegated, the Director or Hearing Officer, at their discretion, may consult with or defer any such decision back to the superior court.~~

#### **~~20.212.100-110~~ Emergency measures.**

Whenever the ~~officer~~ Director finds that any building, structure, premises, or portion thereof, is an imminent hazard to the public, the building occupants, or surrounding ~~buildings or~~ properties, he/she may, without notice and order, take immediate action to vacate, ~~stabilize, secure from entry, or~~

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~~otherwise protect the occupants, public, and surrounding properties or buildings from the hazard. Such action may include closing and vacating sidewalks, streets, and surrounding properties and buildings, or demolish or restore the hazard to a condition of stability and safety and/or take whatever action necessary to barricade or prevent occupants or the public from any dangerous conditions.~~ The ~~officer~~Director shall, within five working days following completion of ~~such work to remove the imminent hazard or action~~, issue a complaint pursuant to this chapter. Any city funds spent in responding to the emergency shall be included in costs recoverable under this chapter.

Any notice posted by the ~~officer~~Director, declaring a building, structure, or premises unsafe or unfit to enter or occupy may only be removed by the ~~officer~~Director or designee, or with the express approval of the ~~officer~~Director or designee. Any person who removes, alters, defaces, covers, or otherwise renders such notice ineffective, without such express approval, shall be guilty of a misdemeanor.

**20.212.110-120 Sale or disposal of materials and contents.**

If the dwelling, building, structure, or premises ~~or portion thereof~~ is removed or demolished by the city, the ~~officer~~Director shall, if possible, sell the materials of the dwelling, building, structure, or premises, and shall credit the proceeds of such sale against the cost of the removal or demolition and, if there be any balance remaining, it shall be paid to the parties entitled thereto, as determined by the ~~officer~~Director, after deducting the costs incident thereto.

The determination of whether or not it is possible to sell the materials shall be based on factors such as, but not limited to: the type, nature, and condition of the materials; whether or not they can reasonably be removed and separated for sale; and the costs involved in attempting to sell the materials. The salability of the materials may be determined by the ~~officer~~Director based on experience, or in consultation with such contractors or experts as deemed appropriate.

The procedures for selling the materials shall be based on the type and quantity of materials involved. Such procedures may include, but not be limited to: listing in local, Internet, or other forums or publications; request for bids for purchase and removal; public auction; and, recycling by abatement contractor.

**20.212.120-130 Recovery of expenses.**

(1) The amount of the cost of such repairs, alterations or improvements; ~~or, vacating and closing; or, removal or demolition,~~ or other action to remove or correct the violation(s) and/or protect the occupants, public, and/or neighboring buildings and properties, taken or caused to be done by the ~~officer~~Director, shall be assessed against the real property upon which such cost was incurred, unless such amount is previously paid. Such costs shall include all reasonable expenses, including, but not limited to, the costs of consultants and contractors, legal counsel, staff time, court fees, materials and equipment, incidentals, mailing, publishing, and recording notices. Pursuant to RCW 35.80.030(1)(h), the amount of such costs shall constitute a lien against the property of equal rank with state, county, and municipal taxes.

(2) For purposes of this section, the cost of vacating and closing shall include (a) the amount of relocation assistance payments that a property owner has not repaid to the city of Port Orchard or other local government entity that has advanced relocation assistance payments to tenants under RCW 59.18.085; and (b) all penalties and interest that accrue as a result of the failure of the property owner to timely repay the amount of these relocation assistance payments under RCW 59.18.085; ~~and (c) all other reasonable expenses, including, but not limited to, the costs of staff time, materials, incidentals, mailing, publishing, and recording notices.~~

(3) Upon certification to him/her by the ~~officer~~Director, of the assessment amount being due and owing, the county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84.56.020 for delinquent taxes, and when collected to be deposited to the credit of the general fund of the city.

**20.212.130-140 Permits, regulations and workmanship.**

All repairs, improvements, maintenance, or other work performed in relation to any enforcement under this code shall be performed and completed by the owner, contractor, or other person in interest in a workmanlike manner and in compliance with all permitting and other requirements of all applicable codes and regulations. The owner or other person in interest shall be responsible for identifying and complying with all applicable codes and regulations.

**20.212.140-150 Remedies not exclusive.**

(1) This section does not abrogate or impair the powers of the courts or of any department of the city to enforce any other of its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

(2) This section does not impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

**20.212.150-160 Public nuisance.**

Any structure or premises subject to complaint or order under this chapter is also a public nuisance.

**20.212.160-170 Violations.**

(1) In addition or alternative to any other provisions of this chapter, any person who violates or fails to comply with any of the provisions of this chapter, or who violates or fails to comply with any lawful notice or order made hereunder, shall for each and every such violation and noncompliance respectively be subject to the penalties and provisions specified in POMC 20.212.170.

(2) Each day in which a violation occurs or is allowed to continue shall constitute a separate offense and may be punished as such.

**20.212.170-180 Penalties and other relief.**

(1) Civil Penalty. In addition or alternative to any other penalty provided herein or by law, any violation of, or failure to comply with, any provision of this chapter or any lawful order issued hereunder, shall constitute a civil infraction subject to a penalty in the amount of \$250.00, not including statutory penalties, per violation.

(2) Criminal Penalty. In addition or alternative to any other penalty provided herein or by law, any violation of, or failure to comply with, any provision of this chapter or any lawful order issued hereunder, shall constitute a misdemeanor, punishable by a fine of not more than \$1,000, or by imprisonment for not more than 90 days, or by both such fine and imprisonment.



**City of Port Orchard**

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

**Agenda Staff Report**

Agenda Item No. <u>Business Item 7C</u> Subject <u>Adoption of a Resolution Approving a</u> <u>Contract with Robinson Noble, Inc. for</u> <u>the 2019-2020 ESSB 6091 Foster Pilot</u> <u>Project Services and Documenting</u> <u>Procurement Procedures</u>	Meeting Date: <u>September 10, 2019</u> Prepared by: <u>Mark Dorsey, P.E.</u> <u>Public Works Director</u> Atty Routing No: <u>N/A</u> Atty Review Date: <u>N/A</u>
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**Summary:** The City of Port Orchard continues to grow and much of its aging water system infrastructure needs to be upgraded or replaced to provide safe and adequate water supply to both new and existing customers. Draft water system demand projections by BHC Consultants demonstrate the need for additional instantaneous water rights by 2029 and additional annual water rights potentially as early as 2047. Due to the complexity of ground water applications and legal standards requiring “perfect” mitigation of impacts to rivers and streams, the City retained Robinson Noble, Inc. and the Law Office of Thomas Pors in 2016 to prepare appropriate water right applications to achieve new water source approvals in time to meet these future demands. After filing these applications and beginning the process of planning a comprehensive mitigation strategy for them, the State Legislature adopted ESSB 6091, the Foster Pilot Project process that fortunately included a pilot project designed for Port Orchard. On the recommendations of Mr. Pors and the city’s lobbyists, the City of Port Orchard accepted this Pilot Project opportunity and so notified the Department of Ecology in February 2018. Since then, Ecology has issued guidance concerning the investigation and findings required to meet the Foster Pilot project legal standards, including how to demonstrate that replacement water is not “reasonably available” and that “net environmental benefits” are achieved by “out-of-kind” mitigation.

The new consultant scopes of work and budgets presented this evening (C052-19 and C053-19) are designed to comply with this new guidance and achieve a positive outcome for the City’s Pilot Project applications. This in turn is the best available opportunity for the City of Port Orchard to obtain additional water rights, to authorize new Wells No. 12 and No. 13, and to meet its future growth demands. The budgets include modelling impacts to regulated streams in Kitsap County from projected groundwater production, efforts to identify existing water rights for mitigation purposes and to minimize streamflow impacts through replacement water or streamflow augmentation, and the design and evaluation of habitat enhancement projects, particularly within the Blackjack Creek basin. The workload is extensive because that is what is necessary to obtain final approval from the Department of Ecology, which is on record as being conservative about approving these applications and avoiding litigation from potential opponents. The budgets include extensive consultations and meetings with local Tribes, State Fish & Wildlife, and Ecology officials in order to prevent opposition and to achieve a positive outcome for the City.

Therefore, on July 26, 2019, the City’s Public Works Department published a Request for Qualifications (RFQ) for the ESSB 6091 Foster Pilot Project Streamflow Augmentation/Restoration, Net Ecological

Benefits and Hydrogeological Services. By the August 9, 2019 deadline, one (1) Statement of Qualification (SOQ) was received. On August 13, 2019, upon reviewing the SOQ received, the City selected Robinson Noble, Inc. for the Project. On August 14, 2019, Public Works Staff then completed the Mandatory Bidder Responsibility and received a viable Scope, Timeline and Budget Proposal from Robinson Noble, Inc. in an amount not to exceed \$324,900.00.

**Recommendation:** Staff recommends adoption of a Resolution thereby approving a Contract with Robinson Noble, Inc. for the 2019-2020 ESSB 6091 Foster Pilot Project Streamflow Augmentation/Restoration, Net Ecological Benefits and Hydrogeological Services in an amount not to exceed \$324,900.00 and documenting the Professional Services procurement procedures.

**Relationship to Comprehensive Plan:** Chapter 7 – Utilities (Sewer)

**Motion for Consideration:** I move to adopt a resolution, thereby approving a contract with Robinson Noble, Inc. for the 2019-2020 ESSB 6091 Foster Pilot Project Streamflow Augmentation/Restoration, Net Ecological Benefits and Hydrogeological Services in an amount not to exceed \$324,900.00

**Fiscal Impact:** This currently unfunded activity is a result of the Foster Pilot Project and the recent departure of the City's previous Utility Manager. A Budget Amendment for both 2019 and 2020 will be required.

**Attachments:** Resolution, Contract and Robinson Noble, Inc. Proposal (received 8/14/2019).

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

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. C053-19 WITH ROBINSON NOBLE, INC. FOR THE 2019 – 2020 ESSB 6091 FOSTER PILOT PROJECT SERVICES AND DOCUMENTING PROFESSIONAL SERVICES PROCUREMENT PROCEDURES**

**WHEREAS**, on July 26, 2019, the City of Port Orchard Public Works Department published a Request for Qualifications (RFQ) for the ESSB 6091 ‘Foster Pilot Project’ Streamflow Augmentation/Restoration, Net Ecological Benefits and Hydrogeological Services; and

**WHEREAS**, by the August 9, 2019 deadline, the City’s Public Works Department received one (1) Statement of Qualification (SOQ) from a qualified firm; and

**WHEREAS**, on August 13, 2019, Staff notified Robinson Noble, Inc. that they were selected as the responsive firm and to develop a Scope and Budget Proposal; and

**WHEREAS**, on August 14, 2019 City Staff completed the Mandatory Bidder Responsibility Checklist for the qualified firm; and

**WHEREAS**, on August 14, 2019, the City’s Public Works Department received a viable Proposal from Robinson Noble, Inc.; and

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

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

**THAT:** The Port Orchard City Council approves Contract 053 -19 with Robinson Noble, Inc. for the ESSB 6091 ‘Foster Pilot Project’ Streamflow Augmentation/Restoration, Net Ecological Benefits and Hydrogeological Services and adopts the “Whereas” statements contained herein, as findings in support of the City’s consultant selection procurement procedures.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the Clerk in authentication of such passage this 10<sup>th</sup> day of September 2019.

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

ATTEST:

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

## CITY OF PORT ORCHARD PERSONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 10<sup>th</sup> day of September 2019, by and between the City of Port Orchard, a municipal corporation, organized under the laws of the State of Washington, whose address is:

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

Contact: Mayor Robert Putaansuu Phone: 360.876.4407 Fax: 360.895.9029

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

ROBINSON NOBLE, INC. (hereinafter the "CONSULTANT")  
2105 South C Street  
Tacoma, WA 98402

Contact: Joseph E. Becker, LHG Phone: 253.475.7711 Email: JBecker@robinson-noble.com  
Principal Hydrogeologist

for personal services in connection with the following Project:

*2019-2020 ESSB 6091 Foster Pilot Project Services*

### TERMS AND CONDITIONS

#### 1. Services by Consultant.

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

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

#### 2. Schedule of Work.

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

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

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*City of Port Orchard and Robinson Noble, Inc.*

*Contract No. C053-19*

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3. **Terms.** This Agreement shall commence on August 20, 2019 ("Commencement Date") and shall terminate December 31, 2020 unless extended or terminated in writing as provided herein. **The City reserves the right to offer two (2) one-year extensions prior to contract expiration to retain the selected company's services.**

4. **Compensation.**

- LUMP SUM. Compensation for these services shall be a Lump Sum of \$\_\_\_\_\_.
- TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed **\$324,900** without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "A thru E."
- TIME AND MATERIALS. Compensation for these services shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "\_\_\_\_\_."
- OTHER. \_\_\_\_\_

5. **Payment.**

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

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

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

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

E. If the services rendered do not meet the requirements of the Agreement, the Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

6. **Discrimination and Compliance with Laws**

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

*City of Port Orchard and Robinson Noble, Inc.*

*Contract No. C053-19*

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

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

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

7. **Relationship of Parties.** The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including but not limited to compensation, insurance, and unemployment insurance, are available from the City to the employees, agents, representatives or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

## 8. Suspension and Termination of Agreement

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

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

C. Rights Upon Termination.

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

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*City of Port Orchard and Robinson Noble, Inc.*

*Contract No. C053-19*

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termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

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

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

E. Notice of Termination or Suspension. If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to the Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

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

**10. Ownership of Work Product.**

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

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

**11. Work Performed at the Consultant's Risk.** The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents and sub-consultants in the performance of the work hereunder, and shall utilize all protection necessary for that purpose. All work shall be done at

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*City of Port Orchard and Robinson Noble, Inc.*

*Contract No. C053-19*

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the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

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

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

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

**13. Insurance.** The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

## B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Workers' Compensation Employer's Liability each accident \$1,000,000, Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease – Policy Limit \$1,000,000.
4. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

## C. Other Insurance Provisions

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

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

## D. Acceptability of Insurers

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

## E. Verification of Coverage

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

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

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

Robert Putaansuu  
Mayor  
216 Prospect Street  
Port Orchard, WA 98366

CONSULTANT  
Robinson Noble, Inc.  
2105 South C Street  
Tacoma, WA 98402

Phone: 360.876.4407  
Fax: 360.895.9029

Phone: 253.475.7711  
Fax: 253.472.5846

**16. Resolution of Disputes and Governing Law.**

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

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

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

**17. General Provisions.**

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

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

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. **Entire Agreement.** The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

## 18. Title VI

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

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

1. **Compliance with Regulations:** The Consultant will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The Consultant, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix A, attached hereto and incorporated herein by this reference, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.
4. **Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the City or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

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*City of Port Orchard and Robinson Noble, Inc.*

*Contract No. C053-19*

U:\ENGINEERING\WATER\Well #13\2018 - 2020 Well #13 Project\Admin\Consultant Selection Well #13\Water Rights\_Foster\RobNob 2019-2020\PSA\_RN 2019-2020 Foster (with SEC edits).docx

Rev 7/18/2019

5. **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the Non-discrimination provisions of this Agreement, the City will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  1. withholding payments to the Consultant under the Agreement until the Consultant complies; and/or
  2. cancelling, terminating, or suspending the Agreement, in whole or in part.
  
6. **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the City to enter into any litigation to protect the interests of the City. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

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

CITY OF PORT ORCHARD,  
WASHINGTON

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

ATTEST/AUTHENTICATE:

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

APPROVED AS TO FORM:

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

CONSULTANT

By: Joseph E  
Becker Digitally signed by Joseph E  
Becker  
Date: 2019.08.14 16:27:59  
-07'00'

Name: Joseph E. Becker

Title: President



## APPENDIX A

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

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to -ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## Exhibit A



August 13, 2019

Mr. Mark Dorsey  
Public Works Director  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366

Subject: Robinson Noble scope of work and cost estimate for ESSB 6091 'Foster' Pilot Project Streamflow Augmentation/Restoration, Net Ecological Benefits & Hydrogeological Services

Dear Mark,

In February, the City of Port Orchard contracted with Robinson Noble to provide hydrogeologic and water rights consulting in relation to the City's Foster pilot project. In July, with changes in the project, the City decided to send out a competitive request for qualifications to complete the work. Earlier today, you emailed me to say that the Robinson Noble team was selected to continue the Foster pilot work and asked for a new scope of work. We appreciate the City's confidence in our work.

With this letter, I am providing a new scope of work and cost estimate. It is based on the previous scope, as well as new information that has come to light since the previous scope was written. This new information includes the final guidance from Ecology for the net ecological benefit analysis (dated July 31) and the latest modeling. As you directed, this scope includes, as noted below, the work previously completed.

I've broken down the scope into two general tasks: 1) completing the modeling and providing a hydrogeologic impact report; and 2) providing CRA services, including writing the draft Report of Examinations. Subtasks that are complete or partially complete as of the time of writing this scope are noted with comments on status. If a subtask description does not have a status comment, work has yet to begin.

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

#### **Subtask 1A: Initial Model Modifications and Error Estimates**

As a requirement of the preliminary permits for Wells 12 and 13, Ecology requires the USGS Kitsap groundwater model be used to analyze potential impacts of withdrawals from the wells. Prior using the model, slight modifications were needed, such as inserting Wells 12 and 13 and changing the number of stress periods. In addition, an estimate of model error was necessary so that modeled changes in streamflow can be addressed with respect to model error. The estimate of model error was also used to estimate the area of potential influence of the new wells, i.e. the area in which stream impacts may rise above the level of model error.

**Status:** this work is complete

#### **Subtask 1B: Steady-state Modeling**

As a requirement of the preliminary permits, the USGS Kitsap groundwater flow model needs to be used to conduct steady-state modeling simulations of the proposed new water withdrawals under water right applications G1-28476A (Well 12) and G1-28162A (Well 12) as well as the change applications related to G1-\*04166C, G1-2458gC, G1-26119P, G1-24437P, G1-2644P, and G1-26454P which make Well 13 as an additional point of withdrawal for Wells 6, 7, and 10; make Well 11 an additional point of withdrawal for McCormick Wells 1, 2, 3, and 4B; and make Well 12 an additional point of withdrawal for Well 11 and McCormick Wells 1, 2, 3, and 4B.

Baseline model simulations will first be run using currently allowed water rights withdrawals. Then predictive simulations will be run with the newly propose withdrawals under the above listed applications. The results of the two sets of runs will be compared to determine projected stream flow impairments. Separate model runs will be conducted for each of the applications as well as combinations of all the applications.

**Status:** the majority of this work is complete, and it likely will be all complete by the effective date of the new contract (unless Ecology requests additional model modifications, see optional subtask 1E below). The simulations had to be re-run when the projected future water demand was revised in July.

#### **Subtask 1C: Stream Record Analysis.**

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

**Status:** the majority of this work is complete, and it likely will be all complete by the effective date of the new contract.

#### **Subtask 1D: Transient Modeling.**

Transient modeling will allow timing of impacts to be defined. However, based on the provisions of the preliminary permits for Wells 12 and 13, transient modeling is to occur following consultation with Ecology and the Tribes. In a previous meeting with Ecology, the City requested Ecology concurrence on conducting transient modeling. Ecology's concurrence was given.

Transient modeling will look at several combinations of the above listed water rights applications and compare results to baseline simulations under currently authorized rights. Various simulations will be run including looking at the effects of instantaneously changing to the new water rights amounts and phasing in the new rights over a 50-year period based upon projected water demands provided by the City's engineer, BHC. Because of the extremely long run times for the USGS Kitsap model, most the transient simulations will use year-long stress periods. However, to investigate the effect of seasonal changes in production, several

simulations will be made with month-long stress periods. (A single model run of 50 years with month-long stress periods takes about four full days.)

Results will be analyzed to look to total projected impairments of streams as well the timing of the impairments, both annually and seasonally. Results will be presented to the Tribe and Ecology for comment.

**Status:** the majority of this work is complete. It is likely the analysis of results will be completed by the effective date of the new contract. The simulations had to be re-run with the revision to the water demand in July. The presentation of results to the Tribe and Ecology is not yet scheduled.

#### **Subtask 1E: (Optional) Refinement/Modification of the Model**

According to the preliminary permits, Ecology may require refinement or modification of the model (based on the model results) followed by re-running some or all of the previous model simulations. We will not know whether this will be required until after results are presented to the Tribe and Ecology. There are two main concerns that may prompt modification of the model. The first is that the deep aquifer at Well 12 location is poorly represented in the model. In the model, the aquifer at Well 12 is essentially absent (the modeled Well 12 produces from a low permeability zone<sup>1</sup>). The second is the depth of Well 13. The deep aquifer at the Well 13 site in the model is at about 800 feet below sea level. Drilling of Well 13 found the aquifer considerably deeper, at about -1100 to -1500 below sea level (this zone is partially in a confining unit and partially in bedrock within the model).

If required, the model will be modified to address these conditions and the simulations re-run as necessary. In this case, an additional meeting with the Tribe and Ecology presenting the revised model results will likely be required.

#### **Subtask 1F: Hydrogeology and Impact Report.**

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

#### **Subtask 1G: Project Management, Meetings, and other Assistance.**

Task 1 includes a number of meetings, including meetings between the team members, two meetings with the Tribe and Ecology (either together or separately), and attendance Foster legislative committee meetings as directed. It also includes additional general project management time. Other non-scoped technical assistance will be provided as requested by the City.

**Status:** several team member meeting have occurred, as well as one meeting with Ecology and one informal meeting with the Tribe.

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<sup>1</sup> This situation results in the simulated Well 12 producing a very large amount of drawdown in the model. Of course, since Well 12 has yet to be drilled, the lack of a deep aquifer at the site may be real.

### **Task 1 Schedule**

The complexity of the model simulations coupled with changing guidance from Ecology has significantly changed the scheduling of Task 1. Currently, Task 1 can likely be completed by the end of September provided model modification is not required. If the model needs to be modified and various simulations re-run, task 1 could potentially run to the end of November.

### **Task 2: Water Right Processing**

This scope of work assumes the applications will be processed through a streamlined Cost Reimbursement Agreement (CRA) with Robinson Noble acting as the consultant conducting all work, including drafting the Reports of Examination (ROEs). Matt Rakow with Ecology previously indicated a streamlined CRA will be allowed. The work is divided into six subtasks.

#### **Subtask 2A: Tier 1 Avoidance Analysis.**

The ROEs will need to address the three tiers of analysis described in pilot project legislation. The first tier is avoidance. For this subtask, Robinson Noble will work with Tom Pors to address avoidance of impairments in the ROEs. Tom Pors has indicated, based on Ecology guidance, that the tier 1 analysis will be rather simple.

#### **Subtask 2B: Tier 2 Minimization Analysis.**

This work will involve two set types of mitigation: stream augmentation and replacement water rights. Work on the stream augmentation portion of this subtask will be completed by Robinson Noble in conjunction with our subconsultant, Carollo Engineers (Carollo). Carollo's scope of work is summarized here but the full body of their scope is included as part of this scope and is attached as Exhibit A. For the replacement water rights portion of this subtask, work will be completed by Robinson Noble in conjunction with our subconsultant, WestWater Research (WestWater). WestWater's scope of work is summarized here but the full body of their scope is included as part of this scope and is attached as Exhibit B. Subtask 2B will start with a team meeting to discuss the results of the impairment analysis and to coordinate subtask communications and workloads between team members and the City.

Stream augmentation will be proposed for those impacted creeks where it is reasonably attainable. Currently this includes creeks within the Port Orchard service area (Blackjack, Ross, Anderson, and Parrish), as well as creeks in within neighboring purveyors service areas where agreements might be reached to provide augmentation. Specifically, these are Salmonberry Creek via West Sound Utilities and Gorst Creek (and possibly the Union River) via the City of Bremerton.

Stream augmentation at Blackjack, Ross, Anderson, and Parrish will use the previous stream mitigation plan developed for the City in 2006 which provided design concept stream augmentation on these four creeks provided the sites can handle the (presumed) new larger flows. Carollo will use the City's hydraulic model to confirm transmission capacities to the sites. Similar conceptual designs will be provided for Salmonberry and Gorst Creeks if agreements can be worked out with West Sound and the City of Bremerton.

For other impacted creeks, Robinson Noble will provide support for determining that stream augmentation as being not reasonably attainable. Carollo will assist with definition of conceptual-level stream augmentation and provide definition of where it is not reasonably attainable by looking at costs and impediment to extending City service to the more distant impacted streams.

For creeks where stream augmentation is not reasonably attainable (currently scoped as upper Blackjack, Olalla, Crescent, Purdy, Burly, Huge/Minter, Rocky, and Coulter Creeks), a search will be conducted for replacement water rights that potentially could be purchased to mitigate modeled impacts. The water right search will be accomplished WestWater Research. Based on our experience in the area, we believe that few if any such water rights will be found. However, the search needs to be accomplished to satisfy Ecology's tier 2 guidance. Should suitable water rights be identified by the search, we will attempt to ascertain the owners of said rights and contact them as to their interest in selling the rights. Negotiating the actual sale of rights to the City is outside the current scope. More details on the water right search are provided in the attached scope of work from WestWater.

#### **Subtask 2C: Tier 3 Compensation Analysis.**

The third tier is compensation analysis. Work on subtask 2C will be completed by Robinson Noble in conjunction with our subconsultant, Environmental Science Associates (ESA). ESA's scope of work is summarized here but the full body of their scope is included as part of this scope and is attached as Exhibit C.

The compensation analysis will consist of several major facets: developing the compensation plan, completing the NEB analysis to demonstrate the plan adequately offsets impairments, and working with stakeholders to get general agreement on the plan and the NEB analysis. We plan for three meetings with stakeholders.

We assume the development of projects for the tier 3 mitigation will occur from potential mitigation projects in existing reports and that no new projects will need to be identified. We also assume no field work will be required for either the selection/development of mitigation projects or calculations of ecological benefit. ESA will develop an analysis framework with mitigation projects and preliminary credit/debit calculations which will be shared with the City and stakeholders and subject to revisions to address comments.

When the framework is agreed upon, ESA will prepare a NEB report following Ecology's final guidance dated July 31<sup>st</sup>. The report will include an evaluation and description of impacts and ecological offsets, as well as a matrix that describes all impacts and offsets, summing up the net benefits in a quantitative or semi-quantitative manner. It will also include a discussion of financial and other assurances that mitigation will be implemented and remain in place, monitoring or evaluations plans to ensure lasting benefits, and descriptions of contingency plans or corrective actions to be taken if goals are not met. We anticipate the City will need to participate in developing with the assurances and contingency sections. Assistance from the City may also be required to obtain support from tribal, state and local resource managers.

#### **Subtask 2D: Monitoring, Reporting, Compliance, and Assurance.**

This subtask will involve designing monitoring, reporting, compliance, and assurance conditions for the ROEs. We will work together with Tom Pors, and in consultation with Ecology, to identify compatible conditions for inclusion as provisions in the ROEs. ESA will provide monitoring and assurance plans within their subtask 2C report that will be used as input for this subtask.

**Subtask 2E: Draft Reports of Examination.**

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

**Subtask 2F: Project Management, Meetings, and other Assistance.**

This scope includes five in-person meetings between Robinson Noble and various team members as the project progresses, attendance at Foster legislative committee meetings as requested, and attendance at three meetings with Tribal or other stakeholders. This task also includes project management following the end of Task 1 and any assistance of Robinson Noble with other parts of the process not specified in Tasks 1 and 2.

**Task 2 Schedule**

Task 2 was scheduled to start in June but has been delayed due to the time Task 1 has taken. Task 2 work will begin following the effective date of the new contract, assumed to be September 1<sup>st</sup>. Because of the evolving nature of the Foster program and the uncertainty of whether subtask 1E will be required, as well as meetings with and review by the Tribes and Ecology, the schedule below is an estimate.

Subtask 2A: Tier 1 Avoidance Analysis	September
Subtask 2B: Tier 2 Minimization Analysis	September - November
Subtask 2C: Tier 3 Compensation Analysis	September - November
Subtask 2D: Monitoring, Reporting, etc.	December – January 2020
Subtask 2E: Draft Reports of Examination	February – August 2020
Subtask 2F: PM, Meetings, Other Assistance	September 2019 – August 2020

**Estimated Cost**

While this current version of the scope of work is better defined than the version from earlier this year, it is still expected that the exact nature of the required work may evolve as the project progresses and with input from the Tribe, WDFW, and Ecology. Therefore, the following cost estimate is truly an estimate and could be higher or lower depending upon how the project progresses.

Based on our current understanding of the project and the conditions outlined in this scope, we estimate the cost of our services for Task 1, as described above, to be \$80,500. This includes

August 13, 2019  
Mr. Mark Dorsey  
Robinson Noble Foster Pilot Project Services Scope of Work  
Page 7

\$17,500 for optional subtask 1E and \$3,500 for other assistance as request under subtask 1G. Our estimate for Task 2, including the services of ESA, Carollo, and WestWater, is estimated at \$294,400. Together, the total estimated cost is \$374,900. This estimate is based upon Robinson Noble's current fee schedule, attached as Exhibit D.

The estimated cost includes work to date. As of today, we have invoiced \$41,659 under the existing contract and have another \$3,472 booked against the project but not yet invoiced. It is likely that we will accrue another \$4,000 or \$5,000 worth of work prior to the end of the current contract and the start of the new contract. This projects to approximately \$50,000 worth of work being completed prior to the execution date of the new contract. Consequently, the work yet-to-be completed under the new contract is estimated at \$324,900. Of course, this total depends on how much work we actually complete prior to the new contract as well as the start date of the new contract.

I hope this scope of work and cost estimate is adequate for your needs. Please contact us if we can provide additional information or modify the scope of work to better assist the City. If you have questions or need additional information, please contact me. Thank you for the opportunity to continue being of service to the City.

Sincerely,  
Robinson Noble, Inc.

A handwritten signature in blue ink, appearing to read "Joseph E. Becker".

Joseph E, Becker, LHG  
Principal Hydrogeologist



## Exhibit B

### SCOPE OF WORK

### ROBINSON NOBLE

### PORT ORCHARD STREAMFLOW AUGMENTATION STUDY

#### SCOPE OF SERVICES

The following Scope of Services has been developed to assist the City of Port Orchard (City) with the identification of conceptual infrastructure needed for stream augmentation. The task will consider using City water or wholesale water from Group A water systems and identify the water system infrastructure needed to deliver the water, including pipes, pump station, etc.

#### PROJECT ASSUMPTIONS

- Carollo Engineers, Inc. will be referred to as "Consultant" in this document.
- The City of Port Orchard and its staff will be referred to as "City" in this document.
- Robinson Noble Inc. will be referred to as "Prime".
- Environmental Sciences Associates will be referred to as "ESA"
- All meetings will be held at the City offices unless specified as a teleconference.
- Draft deliverables will be provided in electronic copy (PDF and/or Microsoft Word) transmitted via email or secure file transfer.
- Consultant to provide an agenda, meeting materials, and a meeting summary documenting discussions, action items, and decisions for all facilitated meetings. Meeting summary and related materials will be transmitted electronically in MS Word and PDF formats via email.
- The Prime and City will print and produce additional copies of all documents as necessary for their use beyond what will be provided by the Consultant, as stated within this scope of services.
- Consultant shall not be responsible for warranties, guarantees, fitness for a particular purpose, breach of fiduciary duty, loss of anticipated profits, or for economic, incidental or consequential damages to the Prime, City or any third party arising out of breach of contract, termination, or for professional negligence. Additionally, Consultant shall not be responsible for acts and decisions of third parties, including governmental agencies, other than Consultant's subconsultants, that impact project completion and/or success.

- The Prime shall furnish Consultant with available studies, reports, and other data pertinent to Consultant's services; obtain or authorize Consultant to obtain or provide additional reports and data as required; furnish to Consultant services of others required for the performance of Consultant's services hereunder, and Consultant shall be entitled to use and rely upon all such information and services provided by the Prime, City or others in performing Consultant's services under this Agreement.
- The services to be performed by Consultant are intended solely for the benefit of the Prime or City. No person or entity not a signatory to this Agreement shall be entitled to rely on Consultant's performance of its services hereunder, and no right to assert a claim against Consultant by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Agreement or the performance of Consultant's services hereunder.
- The City shall arrange for access to and make all provisions for Consultant to enter upon public and private property, as required for Consultant to perform services hereunder.
- In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, Consultant has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates.
- Project is anticipated to last four (4) months. It is assumed each Monthly Progress Report and Invoice requires 3 hours of Project Manager (PM) effort, 1 hour of Quality Manger/PIC, and 1 hour for Document Processing.
- It is assumed meetings or workshops will be attended by two Consultant Staff: Project Manager (4 hours) and Professional (6 hours). Document Processing of 1 hour is assumed for meeting minutes.
- It is assumed teleconferences will be attended by two Consultant Staff: Project Manager (1.5 hours) and Professional (3 hours). Document Processing of 1 hour is assumed for meeting minutes.
- It is assumed that each stream augmentation option in Task 200 will require 4 hours of Professional effort, 2 hours of GIS effort, 1 hour of PM effort, and 15 minutes of Quality Manager Effort.
- It is assumed that costing each stream augmentation option in Task 300 will require 2 hours of Professional effort, 1.75 hour of GIS effort, 0.25 hours of PM effort, and 5 minutes of Quality Manager Effort.

## Tasks

### Task 100 – Project Management

The objective of this task is to track and execute the project in accordance with the schedule, budget, and quality expectations that are established. This task includes the following project management work activities:

1. Monthly Progress Reports and Invoices. This subtask includes preparing and submitting the work-in-progress reports and monthly invoices showing current project scope, budget, and schedule status and identifying key issues or elements of the project that will need to be addressed in the proceeding weeks. An electronic version of the monthly progress reports and invoices will be sent to the Prime for review and approval. Provide regular communication on project progress to the Prime. Conduct internal coordination as required to manage the project.
2. Kick-off Teleconference. Attend a kick-off meeting with City to establish goals and criteria for analyses. Discuss available data and tools.
3. Ecology Coordination Meeting. Facilitate a meeting with Ecology Staff to review and obtain comments on the Stream Augmentation infrastructure methodology. Incorporate comments into Tasks 200 through 400.

### Task 200 – Stream Augmentation Analysis

The objective of this task is to identify infrastructure needed to provide direct stream augmentation with potable water. The task will consider using City water or wholesale water from Group A water systems. Infrastructure needed to deliver the water will be identified, including pipes, pump station, etc.

Subtasks include:

1. Stream Augmentation Meeting. Attend a meeting with Prime and City to review the location and quantity of stream augmentation needed based on data and input provided from the City, the City's water rights attorney, Prime, and ESA. It is assumed that 15 sites will be considered: four sites in or directly adjacent to the City Service area and eleven sites outside the City's service area. It is assumed the City will identify Group A water systems that have sufficient available supply for stream augmentation outside of the City's service area, including West Sound Utility District, City of Bremerton, and Washington Water.
2. City Stream Augmentation Verification. Evaluate stream augmentation by the City to up to four existing sites in or directly adjacent to City's Service Area that have current conceptual designs. These designs were based on a previously proposed lower augmentation rates. The evaluation will use the City's hydraulic model to verify the transmission capacity for to the new augmentation rates. Document any new pressure or velocity deficiencies due to stream augmentation during the hydraulic modeling from the Maximum Day Demand (MDD) and MDD plus fire flow scenario for near-term and long-term demand projections. Propose improvements to mitigate new deficiencies. It is assumed the City will provide a calibrated model and demand scenarios representing the study conditions and includes the augmentation sites. Review of the on-site stream augmentation conceptual design is not included in this task.
3. Outside City Service Area Stream Augmentation. Evaluate up to eleven sites outside the current service area. Two options for stream augmentation: 1. Extend City service to the site and 2.

Purchase wholesale supply from nearby Group A. Evaluations will be made using engineering calculations; the City's hydraulic model will not be used.

- a. Extend City Service. Identify a potential option to extend the City water system to up to eleven stream augmentation sites outside of current service area. Assess the infrastructure needed to convey supply to the augmentation site, based on engineering calculation, including booster pump stations and transmission piping.
  - b. Group A Stream Augmentation. It is assumed that Group A systems identified by the City with sufficient available supply will only be identified for two stream augmentation sites. For those two sites, Consultant will identify infrastructure needed to convey wholesale supplies. It is assumed that the City will provide a meter location, available supply, minimum pressure, and typical disinfection residual concentrations. Assess the infrastructure needed to convey supply to the augmentation sites, based on engineering calculations, including booster pump stations and transmission piping. Identify sites that cannot be served by Group A system.
4. Transmission Routing Teleconference. Facilitate a teleconference with the Prime and City to coordinate preferred routes for transmission piping.
  5. Stream Augmentation Infrastructure Workshop. Facilitate a workshop with City to review and comment on the potential infrastructure needed to supply for the 15 potential stream augmentation sites.

### Task 300 –Stream Augmentation Infrastructure Costs

The objective of this task is to estimate the infrastructure costs for stream augmentation sites. Costs will be calculated based on capital infrastructure and potential connection charges for wholesale water purchases for up to 17 stream augmentation options identified in Task 200. Subtasks include:

1. Infrastructure Costs. Calculate infrastructure costs for up to 25 stream augmentation options. Capital costs will be based on planning-level conceptual estimates. Transmission costs will be based on typical cost per linear foot of water main installation. Connection charges for the purchase of Group A supply is assumed to be provided by the City.
2. Cost Teleconference. Facilitate a teleconference with the Prime and City to review infrastructure costs.
3. Selection Workshop. Attend a workshop facilitated by the Prime to review stream augmentation options.

### Task 400 – Documentation

The objective of this task is to document the stream augmentation evaluations in previous tasks.

Subtasks include:

1. Draft Report. Document Tasks in a short report, including stream augmentation locations, required infrastructure, and costs. Provide a draft Report for Prime review and comment.
2. City Review Draft Report. Incorporate Prime comments into a City Review Draft Report. Submit Report to City for review and comment.
3. Final Report. Incorporate City comments into a final signed and sealed Report for submittal to Prime.

*Meeting List:*

- Kick-off Teleconference.
- Ecology coordination Meeting.
- Stream Augmentation Meeting.
- Transmission Routing Teleconference.
- Stream Augmentation Infrastructure Workshop.
- Cost Teleconference.
- Selection Workshop.

*Deliverable List:*

- Meeting Agenda, materials, and summary.
- Draft Report.
- City Review Draft Report.
- Final Report.



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## Exhibit C

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**To:** Robinson Noble  
**From:** WestWater Research  
**Date:** June 10, 2019  
**Re:** City of Port Orchard

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### Background and Purpose

The City of Port Orchard is attempting to move municipal water supply wells to alternative locations. Hydrologic studies have shown evidence that doing so may have negative impact on surface water stream flow and senior water right holders. To reduce these impacts, the city may be required to acquire available water rights to provide in-kind mitigation for reduced stream flows. New draft legislation affecting water rights may allow other out-of-kind mitigation efforts if there is evidence no water rights are "reasonably attainable" for in-kind mitigation. This proposal provides a scope of work and budget to evaluate water rights within certain regions to determine if there are potentially available water rights for acquisition that would be considered "reasonably attainable".

### Scope of Work

#### Water Rights Desktop Review

##### Task 1: Review Ecology Water Rights Data

- WestWater will acquire updated versions of Ecology's GWIS geodatabase as well as other tabular datasets in the WRTS database system. Study area will be determined and delineated in coordination with client to cover the Blackjack, Olalla, Crescent, Purdy, Burley, Huge/Minter, Rocky, and Coulter Creek systems.
- WestWater will perform initial selection of diversion data for all water rights. GIS data will be crosschecked to tabular water rights datasets to ensure that all water rights have been mapped and no water rights are being missed. Any discrepancies between GIS datasets and tabular data, if any, will be researched and resolved resulting in a master list of water rights within the defined geographic area.
- A web based map will be set up to host and maintain data on the ArcGIS online platform to provide access to original and filtered water rights data, and any other geospatial data utilized or developed during the process.
- Water rights will initially be filtered down based on water rights status, ownership, size, use type and other screening criteria as determined by WestWater. All records will be properly noted to identify reason for exclusion. Any remaining water rights will be reviewed with additional scrutiny in Task 2.

**Task 2: Perform a preliminary validity analysis**

- Any water rights identified from the initial selection and review will undergo further analysis. This will involve an additional screening based on initial mapping of water rights and may include aerial imagery analysis, document review, and other research as needed.
- Based on the results of the analysis, a list of candidate water rights will be compiled to be further analyzed in Task 3.

**Task 3: Water Right Ownership Research**

- To determine if identified water rights are potentially available for acquisition, current ownership will need to be determined in order to contact water right holders. Current water right ownership is not actively maintained by Ecology and requires additional review of water rights place of use information and county land ownership records.
- All existing places of use within Ecology's GIS layers will be utilized and verified against water right documents to assure accuracy. A preliminary review of GIS layers indicates that there are a significant number of unmapped water rights within the region. Unmapped places of use may need to be mapped using water rights application maps and/or legal descriptions on water rights documents. Due to the large amount of unmapped water rights in the subject area, mapping place of use could require considerable efforts and may affect budget depending on how many records require review.
- Parcel data maintained by relevant counties will be acquired and overlaid on the place of use data. Water right ownership is generally appurtenant to landownership. Landowner information for parcels adjoining the place of use of a water right will be recorded. WestWater anticipates that multiple landowners may be identified for some water rights due to general legal descriptions of the water right place of use or quality limitations of legal descriptions provided on water right certificates. This information will assist in further narrowing the list of candidate water rights. For example, water rights that have been divided through multiple property sales often do not represent viable acquisition opportunities.

**Task 4: Water Right Field Inspection Analysis**

- If potential water right acquisition opportunities arise, field inspections for each candidate water right may be conducted if determined necessary and beneficial to determining if the rights are reasonably available. Data developed in the ArcGIS online webmap under Task 1 will be utilized to collect pictures, additional notes, and any other relevant data supporting water rights. The field inspections provide an opportunity to verify the location of the water rights, ownership information, as well as determine the current use of the water right.

**Task 5: Water Right Owner Outreach**

- Letters of inquiry may be sent to landowners that fulfil criteria of potential acquisition opportunities to determine willingness to sell. WestWater will consult with R&N, Port Orchard and other legal counsel to determine if this task is necessary and the best approach to execute.



**Task 6: Summary report of findings**

- A summary report outlining the research process and findings will be developed. Accompanying maps will be developed to display diversions researched and any identified candidate water rights. Detailed profile maps of candidate water rights will be identified along with field observations and photos if applicable.

**Project Schedule**

Work will be completed within 12 weeks of engagement. At approximately the 4<sup>th</sup> week of the project a conference call will be held to discuss the results of Task 1 and 2 to determine next required steps of project. If candidate water rights are identified, Task 3 will be completed to further filter the results at approximately week 5. A second conference call may be required to discuss findings. If determined that field visits are required, Task 4 will be completed at approximately week 6 followed by Task 5 if water rights are determined to be potentially available for acquisition. A report will be furnished at the completion of the project.

Task/Week	1	2	3	4	5	6	7	8
Task 1: Review Ecology Water Rights Data	■	■	■	■				
Task 2: Perform a preliminary validity analysis			■	■				
Task 3: Water Right Ownership Research				■	■			
Task 4: Water Right Field Inspection Analysis						■		
Task 5: Water Right Owner Outreach							■	
Task 6: Summary report of findings								■

**Project Deliverables**

Project deliverables to the following:

- Web map built displaying Points of Diversion information and filtered datasets displaying analysis results
- Up to 3 conference calls to discuss results and findings
- Summary report discussing methodology and research results





## Project Budget

To complete all tasks within the scope it is estimated to cost between \$31,300 and \$44,240. Depending on the results of the analysis, field verification and water right owner outreach (Tasks 4 and 5) may not be necessary.

Tasks	Required Tasks	Optional Tasks
<b>Task 1: Review Ecology Water Rights Data</b>	\$12,560	
<b>Task 2: Perform a preliminary validity analysis</b>	\$7,180	
<b>Task 3: Water Right Ownership Research</b>	\$6,000	
<b>Task 4: Water Right Field Inspection Analysis</b>		\$9,360
<b>Task 5: Water Right Owner Outreach</b>		\$3,580
<b>Task 6: Summary report of findings</b>	\$5,560	
Subtotal	\$31,300	\$12,940
Optional Tasks Subtotal		
<b>Grand Totals</b>		<b>\$31,300 - \$44,240</b>



## Exhibit D

### Scope of Work Preparation of Net Ecological Benefit Analysis For the City of Port Orchard ESSB 6091 Pilot Project

June 4, 2019

#### Project Understanding

The City of Port Orchard's (City) application for an additional municipal water right has been accepted as a pilot project for the joint legislative task force on water mitigation formed by the Washington State Legislature in ESSB 6091. RCW 90.94.090(8) outlines a mitigation sequence that the City, as a pilot project participant, must follow when creating a mitigation plan to offset impacts from the proposed projects. The mitigation sequence includes avoidance, minimization, and compensation. As part of the compensation step, "net ecological benefit" to fish and related aquatic resources are to be provided using in-kind and/or out-of-kind mitigation.

The City has applied for water right changes and new water rights for new Wells 12 and 13. To mitigate for the water withdrawal effects, the City is planning for both in-kind and out-of-kind mitigation actions. Achieving "net ecological benefit" necessitates that the anticipated benefits of the mitigation portfolio offset the anticipated impacts of the project. A scientifically-sound, defensible analysis framework is needed characterize the anticipated impacts and benefits. In May 2019, Ecology published *Draft Final Guidance for Determining Net Ecological Benefit* which provides an overview of the information Ecology will be looking for in such analysis. This document is out for public comment which will be addressed in a final version. This scope of work is based on the Draft Final Guidance and may need to be adjusted pending changes included in the final version expected to be issued in July 2019.

Robinson Noble has been hired by the City to provide hydrogeological and water rights services for the pilot project. However, they need assistance in performing the required net ecological benefit analysis. This proposed scope of work is for Environmental Science Associates (ESA) to develop and implement an analysis comparing the anticipated water withdrawal impacts to the anticipated mitigation benefits. This analysis will document the extent to which the proposed mitigation portfolio meets the net ecological benefit threshold. Following is ESA's understanding of the anticipated impacts and mitigation portfolio:

- The City's water rights applications are for the deep sub-sea level aquifer, which will reduce impacts on Kitsap County streams from existing shallower municipal wells, but which could result in smaller impacts to a larger geographic area.
- The geographic area of potential effect includes approximately 20 named creek systems in the project vicinity. Preliminary analysis indicates the largest magnitude of flow depletion is on the order of 0.15 cubic feet per second (110 acre-feet per year).

## Scope of Work

### Task 1. Stakeholder Meetings

ESA will participate in up to three meetings with project stakeholders to introduce the net ecological benefit analysis requirements and gain meeting participants' approval of the analysis method being implemented. Up to two ESA staff will participate in each meeting. ESA will prepare PowerPoint presentations and handouts, as needed, to support the planned topic for each meeting. Additional discussions with stakeholders to follow up on specific topics or questions are anticipated.

#### *Assumptions:*

- The City or Robinson Noble, with input from ESA, will develop the list of stakeholders and will be responsible for stakeholder outreach.
- ESA is not responsible for stakeholder meeting logistics. ESA will communicate with meeting organizers to help set the agenda for net ecological benefit topics.
- Each meeting will be in the vicinity of Port Orchard or Poulsbo and last up to 3 hours in length.
- If stakeholder meetings identify tasks or effort that is beyond the established scope and budget, ESA will notify the City and Robinson Noble and provide a written amendment to the scope and/or budget. ESA will undertake such additional work only upon the City's written authorization.
- ESA will prepare summary notes of the net ecological benefit topic of each meeting.
- Up to 24 hours of discussions with stakeholders outside of the meetings are expected to follow up on specific topics or questions about the mitigation or net ecological benefit analysis.

#### *Deliverables:*

- Summary of meeting discussions focusing on net ecological benefit in electronic format.
- PowerPoint presentations and handouts, as needed, to support each meeting.

### Task 2. Analysis Framework Development

ESA will review available background materials and develop a structured and transparent analysis framework to use as the basis for making a net ecological benefit determination. The framework will be developed to meet the requirements of Ecology's 2019 Draft Final Guidance document. The framework will calculate the anticipated ecological impacts associated with surface water flow depletions as well as the anticipated ecological benefit associated with the proposed out-of-kind mitigation. The impacts and benefits are expected to be calculated by assigning points.

Ecology's 2008 Implementation Plan for the Adoption of Water Resources Management Programs in WRIA 27 (Lewis) and WRIA 28 (Salmon-Washougal) will be introduced to stakeholders as a potential framework to use. It is anticipated that the overall concept of scoring impacts and benefits will be accepted by the stakeholders, but that revisions will be necessary. Up to three iterations of the analysis framework will be conducted to test and refine the scoring system and address comments from stakeholders. The development of iterations will include review and documentation of scientific literature to support the framework scoring assignments.

Flow depletion inputs to the analysis framework will be provided to ESA. ESA will work with Robinson Noble to obtain information on the anticipated impacts of the water withdrawals. These inputs are expected to be in terms of the magnitude of surface water reductions (to nearest 0.1 cubic feet per second) and the length of river (to nearest 0.1 river mile). The location of the impacts relative to proposed in-kind mitigation (i.e., upstream or downstream) will also be needed.

Habitat type and quantity inputs will be calculated by ESA using GIS. ESA will work with Robinson Noble to identify up to six potential habitat mitigation projects from existing reports. ESA will use GIS tools to prepare conceptual polygons by habitat type in the project area and quantify the area and/or length. The habitat types may include: side channels, wetlands, and connected floodplains among others. The area calculations may need to be made under up to two flow scenarios (e.g., late summer low flow and extreme storm event).

*Assumptions:*

- The development of the mitigation projects and calculation of ecological uplift will be a desktop exercise and does not include fieldwork or survey.
- No new potential mitigation projects will need to be identified by ESA other than those in existing reports.
- Framework development discussions with the stakeholders will use the surface water depletion estimates provided by Robinson Noble.
- Robinson Noble will provide surface water depletion inputs for the framework that indicate the spatial extent, time duration, and magnitude of water depletion. For example, X miles of 0.1 cubic feet per second (cfs) depletion over three weeks and Y miles of 0.2 cfs depletion over two weeks.
- Habitat type and quantity inputs will be developed by ESA using information from existing reports. It is anticipated that assumptions about the project footprint, area of influence, and design features will be necessary and ESA will document those in the framework
- Up to three iterations of the analysis framework will be conducted to address comments from the City and stakeholders.

*Deliverables:*

- Analysis framework table with preliminary credit and debit calculations.

### Task 3. Net Ecological Benefit Analysis Report

ESA will prepare a Net Ecological Benefit Analysis Report per the requirements of Ecology's 2019 Draft Final Guidance document. The report will describe the methods and results of the analysis framework developed in Task 2. The analysis will be a structured and transparent ledger or matrix describing all the impacts and offsets.

The documentation of net ecological benefit analysis required in Ecology (2019) includes elements that ESA and Robinson Noble will need to work together to prepare. Table 1 lists the elements required in Ecology (2019) and the responsible company.

**Table 1. Net Ecological Benefit Elements and Company Responsibilities**

<b>Element</b>	<b>Responsibility</b>
Demonstrate that complete avoidance and minimization of impacts is not reasonably attainable with water offset projects.	Robinson Noble
Structure the analysis in the form of a ledger or matrix that describes all the impacts and offsets in detail and sums up the net benefits in a quantitative or semi-quantitative manner.	ESA
Describe any ecological impacts that are not offset through in-place and in-kind replacement of consumptive water use.	ESA
Include an evaluation of impacts and offsets based on a detailed hydrological analysis, conceptual model, or numerical model.	ESA
Document financial and other assurances that the mitigation will be fully implemented and remain in place for the full duration of the new water use (likely in perpetuity).	ESA/ Robinson Noble
Include monitoring and evaluation plans that describe or detail maintenance needed to ensure lasting benefits.	ESA
Include contingency plans or corrective actions to be taken if goals and measures are not achieved.	ESA/ Robinson Noble
Include information that describes the level of support for the proposed mitigation pilot from tribal, state and local resource managers (which may be in the form of letters of support or agreement).	Robinson Noble/City of Port Orchard
Identify and document scientific sources and methods of analysis	ESA

ESA will prepare a draft report in electronic format. Three rounds of review of the draft report are anticipated. The first draft will be provided for City review. ESA will address comments and submit a second draft for stakeholders (tribe(s)) review. ESA will address comments and submit a third draft for Ecology review. ESA will address comments and electronically submit a final report.

*Assumptions:*

- City will provide compiled written comments on first draft.
- Robinson Noble or City will provide compiled written comments from stakeholders (tribe(s)) on second draft.
- Robinson Noble or City will provide compiled written comments from Ecology on third draft.
- Robinson Noble will respond to comments on text prepared by them.
- If the comments require more effort than is included in the established scope and budget, ESA will notify the City and Robinson Noble and provide a written amendment to the scope and/or budget. ESA will undertake such additional work only upon the City’s written authorization.

*Deliverables:*

- Three drafts and a final Net Ecological Benefit report will be delivered in electronic format.

**Task 4. Project Management**

ESA will conduct project management activities including communication with the City, Thomas Pors, Robinson Noble (prime consultant), and the ESA project team. In addition, monthly invoices and progress reports will be prepared.

*Assumptions:*

- The project is anticipated to last up to 20 months from NTP to project closeout.

*Deliverables:*

- Invoices and progress reports.
- Monthly, or more frequent, project updates via email and/or teleconference with the Robinson Noble project manager.

**Budget**

The ESA budget for each task is presented in Table 1. The project will be billed on a time and materials, not-to-exceed basis. The total authorized amount for all tasks is \$88,950.00. Surplus budget from completed tasks can be moved to other tasks.

**Table 1. Budget by Task.**

<b>Task</b>	<b>Budget</b>
Task 1. Stakeholder Meetings	\$15,410.00
Task 2. Analysis Framework Development	\$32,000.00
Task 3. Net Ecological Benefit Report	\$34,250.00
Task 4. Project Management	\$7,290.00
<b>Total</b>	<b>\$88,950.00</b>



**General Fee Schedule**

**Exhibit E**

**January 1, 2019**

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

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

**Hydrogeologic Equipment Rental Schedule  
January 1, 2019**

<u>Equipment</u>	<u>Unit</u>	<u>Rate</u>
Water Level Transducer and Data Logger	Per day	\$25
Field Laptop Computer	Per day	\$40
Electric Water Level Sounder(s)	0 to 300 ft over 300 ft	Flat fee per project Flat fee per project
		\$30 \$60
DC Submersible Purge Pump (Single Stage)	Per pump	List price + 10%
DC Submersible Purge Pump (Dual Stage)	Per pump	List price + 10%
Double-Ring Infiltrometer	Per day	\$50
Schonstedt Gradient Magnetometer	Per day	\$75
Geonics EM-61 Metal Detector	Per day	\$500
Downhole Gamma/Resistivity/Temperature Logging Equipment	Per day	\$500
Downhole Caliper Logging Equipment	Per day	\$350
Draw Works	Per day	\$600
Mechanical Sieve Sample Equipment	Flat fee per well	\$50
2-inch Gasoline-powered Centrifugal Pump (includes hoses)	Per day	\$100
2-inch Submersible Pump + Controller	Per day	\$180
Generator & Fuel	Per day	\$70
Hand Auger	Per day	\$50
Survey Gear (laser level & rod)	Per day	\$85
FlowTracker Acoustic Doppler Velocimeter Stream Gaging Equipment	Per day	\$200
pH Field Meter	Per day	\$25
GPS	Per day	\$20
Other Equipment	Negotiated	Negotiated
Digital Camera	Per day	\$10

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



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

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

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

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

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

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



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

**Agenda Staff Report**

Agenda Item No. <u>Business Item 7D</u> Subject <u>Adoption of a Resolution Approving a</u> <u>Contract with Ventilation Power Cleaning</u> <u>Inc., for the 2019 Stormwater Catch Basin</u> <u>and Pipe Maintenance</u>	Meeting Date: <u>September 10, 2019</u> Prepared by: <u>Mark Dorsey, P.E.</u> <u>Public Works Director</u> Atty Routing No: <u>N/A</u> Atty Review Date: <u>N/A</u>
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**Summary:** On July 31, 2019, the City established a list of qualified contractors from the 2019 MRSC Small Works Roster (see Resolution - Exhibit A attached) for the Main Category; Storm Drainage Facility Construction, Repair, and Maintenance and Sub-Category; Catch Basin Cleaning/Vactoring/Jet Rodding to perform this year’s annual Stormwater Catch Basin & Pipe Maintenance requirement. On July 31, 2019 and pursuant to Resolution No. 009-15 (Section 4 - Limited Public Works Process), the City’s Public Works Department emailed a Request for Proposal for the 2019 Stormwater Catch Basin & Pipe Maintenance from all MRSC Small Works Roster Contractors. Four (4) bids (including applicable taxes, labor, equipment, material and fees) were received prior to the August 14, 2019 proposal deadline as follows:

<b><i>Name of Contractor</i></b>	<b><i>Bid Total</i></b>
Ventilation Power Cleaning, Inc	\$81,325.00
LineScape of WA	\$124,688.50
Bravo Environmental	\$176,535.85
LaVelle Vac and Drainage	\$113,900.00

On August 19, 2019, the City’s Public Works Department Staff completed the MRSC Mandatory Bidder Responsibility Checklist and determined that the Ventilation Power Cleaning, Inc. bid of \$81,325.00 was the lowest qualified bid. The Public Works Department has confirmed that the bidding requirements for Public Work have been followed. Please note, the number of City owned catch basins and stormwater pipes that require maintenance has increased significantly in recent years, with the increase due to annexations, private development and significant improvements to the City’s mapping and features inventory program, which has identified several catch basins that were previously not listed in City inventory, so this budget item will continue to increase.

**Recommendation:** Staff recommends that the City Council adopt Resolution No. 026-19, thereby approving Contract No. C062-19 with Ventilation Power Cleaning, Inc. for the 2019 Stormwater Catch Basin & Pipe Maintenance Contract in the amount not to exceed \$81,325.00, with the contract term beginning September 11, 2019 and ending December 31, 2019.

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

**Motion for Consideration:** I move to adopt a resolution, thereby approving a contract with Ventilation Power Cleaning, Inc. for the 2019 Stormwater Catch Basin & Pipe Maintenance Contract in the amount not to exceed \$81,325.00.

**Fiscal Impact:** The 2019 budget allocated \$50,000 for this activity (421.5.531.20.40). A budget amendment may be required.

**Alternatives:** None.

**Attachments:** Resolution and Contract.

RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING SMALL WORKS CONTRACT NO. C062-19 WITH VENTILATION POWER CLEANING, INC. FOR THE 2019 STORMWATER CATCH BASIN & PIPE MAINTENANCE PROJECT AND DOCUMENTING THE SMALL PUBLIC WORKS ROSTER PROCUREMENT PROCEDURES**

**WHEREAS**, and as performed annually since 2013 the Municipal Research and Services Center of Washington (MRSC) advertised on behalf of participating local government agencies within Washington State (including the City of Port Orchard), for the 2019 MRSC Small Public Works Roster; and

**WHEREAS**, on July 31, 2019, pursuant to RCW 39.04.155, the City's Public Works Department established a list of qualified contractors from the 2019 Small Works Roster (see Resolution Exhibit A attached) for the Main Category – Storm Drainage Facility Construction, Repair, and Maintenance and Sub-Category – Catch Basin Cleaning/Vactoring/Jet Rodding; and

**WHEREAS**, on July 31, 2019 and pursuant to Resolution No. 009-15, Section 4. Limited Public Works Process, the City's Public Works Department performed email Requests for Quote for the Stormwater Catch Basin & Pipe Maintenance Project from all MRSC Small Works Roster Contractors; and

**WHEREAS**, on August 14, 2019, the City's Public Works Department received four (4) bids, whereby Ventilation Power Cleaning, Inc. provided the lowest qualified Proposal for the 2019 Stormwater Catch Basin & Pipe Maintenance; and

**WHEREAS**, on August 19, 2019, the City's Public Works Department completed the MRSC Mandatory Bidder Responsibility Checklist on Ventilation Power Cleaning, Inc. and

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

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

**THAT:** The City Council approves Contract No. C062-19 with Ventilation Power Cleaning, Inc. for the 2019 Stormwater Catch Basin & Pipe Maintenance Project and adopts the "Whereas" statements contained herein, as findings in support of the City's selection/procurement procedures.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage on this 10th day of September 2019.

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

ATTEST:

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

**CITY OF PORT ORCHARD SMALL WORKS OVER 35K**  
**CONSTRUCTION CONTRACT NO. C062-19**  
**PUBLIC WORKS PROJECT NO. PW2019-010**

THIS Agreement is made effective as of the **11th** day of **September**, 20**19**, by and between

CITY OF PORT ORCHARD, WASHINGTON (“CITY”)

216 Prospect Street

Port Orchard, Washington 98366

Contact: Mayor Robert Putaansuu Phone: 360.876.4407 Fax: 360.895.9029

and

Ventilation Power Cleaning, Inc. (“CONTRACTOR”)

3914 Leary Way

NW, Seattle WA 98107

Contact: Janice Benner, President Phone: 206.634.2750 Fax: 206.634.2753

for the following Project:

*2019 STORMWATER CATCH BASIN & PIPE MAINTENANCE (“PROJECT”)*

The City and Contractor agree as follows:

1. **Contract Documents.** The Contractor shall complete the Work described in the Contract Documents for the Project. The following documents are collectively referred to as the “Contract Documents”:
  - a. This Agreement signed by the City and the Contractor;
  - b. Division 1 of WSDOT Standard Specifications for Road, Bridge and Municipal Construction, 2018 edition, together with APWA Supplement (1-99), subject to specific provisions contained within the Public Works Terms and Conditions;
  - c. The attached Special Provisions, Plans and Specifications;
  - d. Written change orders or orders for minor changes in the Work issued after execution of this Agreement;
  - e. Public Works Terms and Conditions;
  - f. Insurance and Bonding Requirements; and

*City of Port Orchard and Ventilation Power Cleaning, Inc.*

*Public Works Project No. PW2019-010*

*Small Works Contract No.C062-19*

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- g. The bid proposal submitted by the Contractor, except when inconsistent with Contract Documents a-f.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. These Contract Documents complement each other in describing a complete work. Any requirement in one document binds as if stated in all. The Contractor shall provide any work or materials clearly implied in the Contract even if the Contract does not mention it specifically.

2. **Date of Commencement and Substantial Completion Date.** The date of commencement shall be **September 11th 2019**. The Contractor shall substantially complete the Work not later than **December 31st 2019**, subject to adjustment by change order.
3. The Contractor shall do all work and furnish all tools, materials, and equipment in accordance with the above described Construction Contract Documents. The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing of the work provided for in these Construction Contract Documents, except those items mentioned therein to be furnished by the City.
4. Subject to additions and deductions by change order, the construction Contract Sum is the base bid amount of \$81,325.00 plus applicable sales tax. The construction Contract Sum shall include all items and services necessary for the proper execution and completion of the work. The City hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the work described in the Construction Contract Documents and to complete and finish the same according to the plans and specifications and the terms and conditions herein contained; and hereby contracts to pay for the same at the time and in the manner and upon the conditions provided for in this Contract.
5. The Contractor agrees to comply with all state and federal laws relating to the employment of labor and wage rates to be paid. The Contractor agrees to furnish insurance of the types and in the amounts set forth in the Construction Contract Documents.
6. The Contractor agrees to repair and replace all property of the City and all property of others damaged by himself, his employees, and sub-contractors.
7. The Contractor for himself and for his heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein upon the part of the Contractor.
8. It is further provided that no liability shall attach to the City of Port Orchard by reason of entering into this Construction Contract, except as expressly provided herein.



## 9. Title VI

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

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

1. **Compliance with Regulations:** The Contractor will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix A, attached hereto and incorporated herein by this reference, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the City or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the Non-discrimination provisions of this Agreement, the City will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  1. withholding payments to the Contractor under the Agreement until the contractor complies; and/or
  2. cancelling, terminating, or suspending the Agreement, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment,

*City of Port Orchard and Ventilation Power Cleaning, Inc.*

*Public Works Project No. PW2019-010*

*Small Works Contract No. C062-19*

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unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the City to enter into any litigation to protect the interests of the City. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be duly executed on the date first written above.

CITY OF PORT ORCHARD

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

CONTRACTOR  
Ventilation Power Cleaning, Inc.

  
\_\_\_\_\_

By: Wade Anderson

Its: Manager

ATTEST/AUTHENTICATE:

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

APPROVED AS TO FORM:

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

**CERTIFICATE AS TO CORPORATE PRINCIPAL**

I, Janice Benner (*Corporate Officer (Not Contract Signer)*) certify that I am the President (*Corporate Title*) of the corporation named as the Contractor in the Agreement attached hereto; that Wade Anderson (*Contract Signer*) who signed said Agreement on behalf of the Contractor, was then Manager (*Corporate Title*) of said corporation; that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate Seal

Janice Benner

Corp. officer signature (not contract signer)

Janice Benner

Printed

President

Title

State of Washington  
County of King

Janice Benner (*corporate officer (not contract signer)*) being duly sworn, deposes and says that he/she is President (*Corporate Title*) of Ventilation Power Cleaning, Inc. (*Name of Corporation*)

Subscribed and sworn to before me this 28th day of August 2019



Valerie Lescantz

Notary Public (Signature)

Valerie Lescantz

Notary Public (Print)

My commission expires 06/01/2022

**CITY OF PORT ORCHARD  
PUBLIC WORK PROJECT TERMS AND CONDITIONS**

The following terms and conditions shall be used in conjunction with the Standard Specifications for Road, Bridge and Municipal Construction, 2018 edition, together with the APWA Supplement (Section 1-99), as issued by the Washington State Department of Transportation and American Public Works Association, Washington State Chapter, hereinafter referred to as the "standard specifications". The standard specifications, except as they may be modified or superseded by these provisions, shall govern all phases of work under this Contract, and they are by reference made an integral part of these specifications and Contract as if herein fully set forth.

When the provisions of the standard specification conflict with the terms and conditions as contained herein, the terms and conditions shall prevail.

1. **BID PRICE:** The bid price(s) shall include all necessary permits, fees and items of labor, material, equipment, tools, overhead and compensation, supplies, taxes, utilities and other incidentals necessary to complete the work in a fully functional and operational state. All prices including bid prices are in US funds.

2. **DEFINITIONS:** The term "City" means Port Orchard, Washington, "successful bidder" means the apparent lowest and best responsible bidder to whom an award is made, and "Contractor" means the successful bidder who has satisfied the requirements for the award and who receives a contract executed by the City. "Bidder" means the person, firm or corporation that has made an offer in response to the invitation to bid. "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

3. **LICENSING AND REGISTRATION:** The Contractor must have a Washington State certificate of registration per chapter 18.27 RCW; a current state unified business identifier number; and if applicable, industrial insurance coverage for the bidder's employees working in Washington, an Employment Security Department number, and a state excise tax registration number. In addition, the bidder must not be disqualified from bidding on any public works contracts under RCW 39.06.010 or 39.12.065(3).

4. **PUBLIC WORK REQUIREMENTS:** This project constitutes a public work under state law. Bidders are warned to take into consideration statutory legal requirements, particularly, the payment of prevailing wages and fringe benefits, payment and performance bonds and sales tax implications in making their bids. It is the sole responsibility of the bidder to insure that the appropriate labor classification(s) are identified and that the applicable wage and benefit rates are taken into consideration when preparing their bid according to these specifications. The Contractor shall complete and file State of Washington, Department of Labor & Industries, Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid forms and shall familiarize itself with their requirements. The Contractor shall also be responsible for and pay all costs pertaining to the processing of these forms.

5. **INSURANCE REQUIREMENT:** The successful bidder will furnish insurance as stipulated in the Attachment entitled "Insurance Requirements."

6. **RECEIPT OF ADDENDA:** All official clarifications or interpretations of the bid documents will be by written addenda only.

*City of Port Orchard and Ventilation Power Cleaning, Inc.*

*Public Works Project No. PW2019-010*

*Small Works Contract No. C062-19*

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7. PROJECT COMPLIANCE: In compliance with the request for quotation, Bidder hereby proposes to perform all work for this project in strict accordance with the Contract Documents, at the Contract Sum, and within the time set forth herein with the understanding that time is of the essence in the performance of this Contract.

8. TAXES: Proposals shall include all applicable taxes except sales tax, which is a separate bid item. It shall be the Bidder's responsibility to furnish Federal Excise Tax Exemption Certificate, when applicable.

9. ERROR IN EXTENSION: Unit price, when used, shall govern in case of extension error.

10. PERMITS AND FEES: The Contractor shall furnish all permits, inspection fees, and fees required in the performance of this Contract, including those charged under RCW 39.12.070 by the Department of Labor and Industries for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid, etc. The Department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The Contractor is responsible for all fees resulting from these statutes.

11. CONTRACT: The Contract, when properly signed, will be the only form that will be recognized by the City as an award. The executed Contract supersedes all previous communications and negotiations, except as referenced herein, and constitutes the entire agreement between the City and Contractor (parties), except as provided herein. The Contractor shall not make any changes, alterations, or variations in the terms of the Contract without the written consent of the City. No terms stated by the Bidder in its proposal shall be binding on the City unless accepted in writing by the City. The successful bidder may not assign the Contract resulting from this invitation to bid without the City's prior written consent. No waiver by the City of a breach of any provision of the terms and conditions outlined in the invitation to bid shall constitute a waiver of any other breach of such provision or of any other provisions.

12. CHANGE ORDERS: If the City or the Contractor requests a change in the Work, or either party believes that a change is necessary, then the parties shall comply with the following procedure to document and reflect a change in the Work: (a) The party requesting the change shall write a description of the change and give the description to the other party (the "Change Notice"); (b) Before proceeding with the change in Work, unless otherwise excused by emergency, the Contractor shall provide the City with a fixed-price written estimate of the cost and time impact of the change in Work; and (c) The City and the Contractor shall execute a Change Order confirming their agreement as to the change in Work, the fixed-price cost, and the extension of the Substantial Completion Date, if any. If the change in Work cannot be performed on a fixed-price basis, the Change Order shall identify the agreed method of compensation.

13. CHANGE DIRECTIVES: A "Change Directive" is a written order signed by the City, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Substantial Completion Date, or both. The City may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Substantial Completion Date being adjusted accordingly. A Change Directive shall only be used in the absence of total agreement on the terms of a Change Order. Upon receipt of a Change Directive, the Contractor shall promptly proceed with the change in the Work and advise the City of its agreement or disagreement with the proposed method for determining the proposed adjustment in the Contract Sum and/or Substantial Completion Date, if any, provided in the Change Directive. A Change Directive signed by the Contractor indicates agreement with all terms set forth in the Change Directive.

*City of Port Orchard and Ventilation Power Cleaning, Inc.*

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Such agreement shall be effective immediately and shall be recorded as soon as practical with a Change Order. If the parties are unable to agree on an adjustment to the Contract Sum and/or Substantial Completion Date, if any, then either party may submit the matter for determination in accordance with Section 21.

14. **MINOR CHANGES IN THE WORK:** The City shall have the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Substantial Completion Date and not inconsistent with the Contract documents. The Contractor shall promptly carry out such written orders for minor changes in the Work.

15. **COMPLIANCE WITH LAWS AND REGULATIONS:** The Contractor warrants full compliance with all applicable local, state or federal laws and regulations and agrees to indemnify and defend the City against any loss, cost, liability or damage, including reasonable attorney's fees, by reason of successful bidder's violation of this paragraph.

16. **INDEMNIFICATION:** All services to be rendered or performed under this Contract will be rendered or performed entirely at the Contractor's own risk. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract.

17. **TERMINATION:** This Contract may be terminated in whole or in part, without penalty, under the following conditions: 1) by mutual written agreement; 2) by the City for breach by the Contractor of any of the obligations or requirements set forth in the Contract Documents which would, at the option of the City, require the Contractor to assume liability for any and all damages, including the excess of re-procuring similar products or services; 3) for convenience of the City; or 4) by the City for non-appropriation of funds.

18. **TERMINATION BY THE CITY WITHOUT CAUSE:** Notwithstanding any other provisions contained herein, the City, without cause, may terminate the Contract between the parties by providing notice to the Contractor. Upon termination under this section: 1) All remaining obligations of the parties are discharged, but any right based upon breach or performance occurring prior to termination survives; 2) If the reasonable costs of performance incurred by the Contractor prior to termination exceed the amount paid by the City to the Contractor on the Contract Sum, the City shall reimburse the Contractor in the amount of such excess; 3) If the amount paid by the City to the Contractor on the Contract Sum exceeds the reasonable costs of performance incurred by the Contractor prior to termination, the Contractor shall reimburse the City in the amount of such excess; and 4) Any funds obtained or retained by the Contractor as provided in subsections 2) or 3), above, shall constitute full payment and consideration for the services performed by the Contractor prior to termination.

19. COMPLIANCE WITH TERMS: The City may at any time insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice, or course of dealing to the contrary.

20. PAYMENT: Contractor shall maintain time and expense records and provide them to the City along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice. All invoices shall be paid by the City within 45 days of receipt of a proper invoice. If the services rendered do not meet the requirements of the Contract, Contractor will correct or modify the work to comply with the Contract. City may withhold payment for such work until the work meets the requirements of the Contract.

21. DISPUTE RESOLUTION: In the event there is a dispute between the parties, the parties agree to resolve that dispute in the following manner: (a) The parties shall attempt in good faith to resolve any dispute promptly through negotiation. Either party may give the other party written notice that a dispute exists (a "Notice of Dispute"). The Notice of Dispute shall include a statement of such party's position. Within ten (10) days of the delivery of the Notice of Dispute, the parties shall meet at a mutually acceptable time and place and attempt to resolve the dispute; (b) If the parties are unable to resolve the dispute, they may elect to submit the dispute to mediation. The cost of the mediation shall be borne equally by the parties. The mediator shall be selected by the mutual agreement of the parties; (c) If the mediation does not result in a settlement of the dispute, the dispute shall be settled by binding arbitration by the Judicial Arbitration and Mediation Services ("JAMS") in accordance with the then operative construction rules of JAMS. The parties may select an arbitrator by mutual agreement, or if unable to agree, the arbitrator will be selected pursuant to the rules of JAMS. The parties shall be bound by the decision of such arbitrator. The arbitration shall be conducted in Kitsap County, Washington; provided, if JAMS is unable to conduct the arbitration in Kitsap County, then the arbitration shall be held in such location as the parties may agree after consulting with JAMS.

## CITY OF PORT ORCHARD INSURANCE REQUIREMENTS

The Contractor shall procure and maintain for the duration of the Contract with the City, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees and subcontractors.

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

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

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



increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

- *Employer's Liability* insurance limit of \$1,000,000 each accident, *Employer's Liability Disease* each employee \$1,000,000 and *Employer's Liability Disease – Policy* limit \$1,000,000.

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

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

Other Insurance Provisions. The Contractor's Automobile Liability, Commercial General Liability and Builders Risk insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respects the City. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it. If any coverage is written on a "claims made" basis, then a minimum of three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided by the City.

Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, including but not limited to the Contractor's employee-owned tools, machinery, equipment or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as any temporary structures, scaffolding and protective fences.

Waiver of Subrogation. The Contractor waives all rights against the City, any of its Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to this Insurance Requirements Section of the Contract or other property insurance applicable to the work. The Contractor's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City. The City will not waive its right to subrogation against the Contractor. The Contractor's insurance shall be endorsed acknowledging that the City will not waive its right to subrogation.

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

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

Subcontractors. The Contractor shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

Notice of Cancellation. The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

Failure to Maintain Insurance. The insurance required by this Section will not be canceled, materially changed or altered without forty-five (45) days prior written notice submitted to the City. Failure on the part of the Contractor to maintain insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Contract, or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

**CITY OF PORT ORCHARD  
DECLARATION OF OPTION FOR PERFORMANCE  
BOND OR ADDITIONAL RETAINAGE**

**(APPLICABLE TO CONTRACTS OF \$150,000 OR LESS –RCW 39.08.010)**

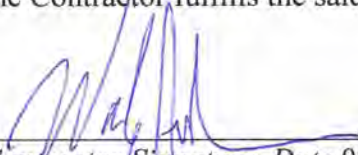
*Note: This form must be submitted at the time the Contractor executes the Contract. The Contractor shall designate the option desired by checking the appropriate space.*

The Contractor elects to:

         (1) Furnish a performance bond in the amount of the total contract sum. An executed performance bond on the required form is included with the executed contract documents.

  X   (2) Have the City retain, in lieu of the performance and payment bonds, ten percent (10%) of the total contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.  
RCW 39.08.010.

In choosing option 2, the Contractor agrees that if the Contractor, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract, and shall faithfully perform all the provisions of such Contract and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of the Contract that may hereafter be made, at the time and in the manner therein specified, and shall pay all laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, on his or her part, and shall defend, indemnify, and save harmless the City of Port Orchard, Washington, its officers and agents from any claim for such payment, then the funds retained in lieu of a performance bond shall be released at the time provided in said option 2; otherwise, the funds shall be retained until the Contractor fulfills the said obligations.

  
\_\_\_\_\_  
Contractor Signature, Date 08/27/2019  
Bond No. \_\_\_\_\_

**ACKNOWLEDGEMENT**

**Corporation, Partnership, or Individual**

STATE OF Washington

)ss.

COUNTY OF King

On this 28th day of August 2019, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Wade Anderson to me known to be the (check one of the following boxes):

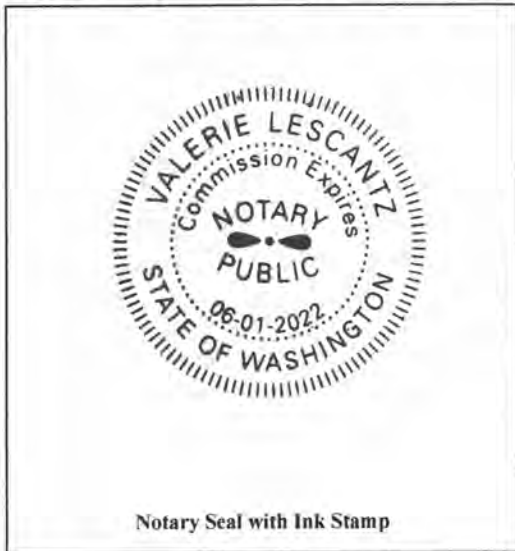
Manager of Ventilation Power Cleaning, Inc., the **corporation,**

\_\_\_\_\_ of \_\_\_\_\_, the **partnership,**

**individual,**

that executed the foregoing instrument to be the free and voluntary act and deed of said  corporation,  partnership,  individual for the uses and purposes therein mentioned, and on oath stated that  he  she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Dated: August 28, 2019

Valerie Lescantz

Valerie \_\_\_\_\_ Lescantz  
Print or type name

**NOTARY PUBLIC,**  
in and for the State of Washington

Residing at: King County, WA

My Commission expires: 06/01/2022

## APPENDIX A

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

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to -ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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**City of Port Orchard**

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

**Agenda Staff Report**

Agenda Item No.	<u>Business Item 7E</u>	Meeting Date:	<u>September 10, 2019</u>
Subject:	<u>Adoption of a Resolution Approving a</u>	Prepared by:	<u>Mark Dorsey, P.E.</u>
	<u>Contract with the Law Office of Thomas</u>		<u>Public Works Director</u>
	<u>M. Pors for the 2019-2020 Water Rights-</u>	Atty Routing No:	<u>N/A</u>
	<u>Legal Services</u>	Atty Review Date:	<u>N/A</u>

**Summary:** As a continuation of the Water Rights – Legal Services first initiated in 2016 for the Well No. 10 Project, and subsequent to the Legislative actions associated with the Foster Pilot Project in which the City’s Well No. 13 Project was included as a participant, and all of the City’s other existing water sources are included, the need for water rights legal services within the City of Port Orchard’s Retail Water Service Area has never been more urgently needed. Therefore, on July 18, 2019, the Public Works Department selected three (3) Qualified legal firms from the current MRSC Professional Services Roster for Main Category – Legal Services and Sub-Category – Land Use. Upon the review and scoring of each of the firms SOQ’s, the City’s Public Works Department selected the Law Offices of Thomas M. Pors as being the most qualified professional services firm. On July 23, 2019 the City received a satisfactory Scope and Budget Proposal and on August 7, 2019 the City verified that the Law Office of Thomas Pors was favorably listed on the System for Award Management (SAM.) The Proposal received from the Law Office of Thomas M. Pors for the required 2019 – 2020 water rights related activities is in the amount not to exceed \$137,500.00 (includes a \$27,500.00 Management Reserve Contingent.)

**Relationship to Comprehensive Plan:** Chapter 7 - Utilities

**Recommendation:** Staff recommends that the City Council adopt Resolution No. 021-19, thereby approving Contract No. C052-19 with the Law Office of Thomas M. Pors in the amount not to exceed \$137,500.00 for the 2019-2020 water rights related activities and documenting the Professional Services procurement procedures pursuant to RCW 39.80.

**Motion for Consideration:** I move to adopt a resolution, thereby approving a contract with the Law Office of Thomas M. Pors in the amount not to exceed \$137,500.00 for the 2019-2020 water rights related activities.

**Fiscal Impact:** Funding allocated for this task within the approved 2019-2020 Budget has been expended. A budget amendment will be required.

**Alternatives:** None

**Attachments:** Resolution, Contract and Proposal (dated 7/19/2019).

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

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING CONTRACT NO. C052-19 WITH THE LAW OFFICE OF THOMAS M. PORS, FOR THE 2019-2020 WATER RIGHTS - LEGAL SERVICES FOR THE CITY OF PORT ORCHARD AND DOCUMENTING THE PROFESSIONAL SERVICES PROCUREMENT PROCEDURES.**

**WHEREAS**, pursuant to RCW 39.80, MRSC, on behalf of the City of Port Orchard, annually publishes the general Request for Qualifications (RFQ) for professional engineering, surveying, architecture, structural design and related services for the Professional and Personal Services Roster; and

**WHEREAS**, on July 18, 2019 the City of Port Orchard's Public Works Department selected three (3) qualified water rights legal firms from the current MRSC Roster Professional Services Roster (see Resolution Exhibit A attached) for the Main Category - Legal Services and Sub-Category - Land Use; and

**WHEREAS**, the Public Works Director and the Utility Manager subsequently reviewed and rated the SOQ's and selected the Law Office of Thomas M. Pors, being determined to be the most qualified professional services consultant; and

**WHEREAS**, on July 23, 2019 a satisfactory Professional Services proposal from the Law Office of Thomas Pors for 2019-2020 was submitted to the City; and

**WHEREAS**, on August 7, 2019 the City verified good standing for Thomas M. Pors on the System for Award Management (SAM); and

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

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

**THAT:** The City Council approves Contract No. C052-19 with the Law Office of Thomas M. Pors for the 2019-2020 Water Rights - Legal Services for the City of Port Orchard and adopts the "Whereas" statements contained herein, as findings in support of the City's consultant selection procurement procedures.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage on this 10<sup>th</sup> day of September 2019.

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

ATTEST:

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

# EXHIBIT A

Public Agency Name:	City of Port Orchard
Roster Type:	Consultant Roster
Date:	07/18/2019
Time:	02:20 pm
Main Category:	Legal Services
Sub-Category:	Land Use, Legal Services, Municipal Legal Advice, Water Rights

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A.B.C. Consulting Arborists LLC

Apex Engineering

AustinCina Architects, p.s.

Cascadia Law Group PLLC

Contract Land Staff, LLC

DBA Prolumina, ProMotion Arts, SRS Premier Realtime; Byers & Anderson

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

Erickson Structural Consulting Engineers, PC

Facility Contractors Inc.

Fehr & Peers

GeoEngineers Inc.

Goodstein Law Group PLLC

Historical Research Associates, Inc. (HRA)

ICF Jones & Stokes, Inc.

Inslee, Best, Doezie & Ryder, P.S.

Kenyon Disend, PLLC

Landau Associates

Law Office of Richard L Hughes PLLC

Law Office of Thomas M. Pors

McKee Appraisal

Murraysmith

Northwest Groundwater Services, LLC

Northwest Water Systems

Ogden Murphy Wallace, P.L.L.C.

Reid Middleton, Inc.

Ryan, Swanson & Cleveland, PLLC

Skellenger Bender, P. S.

Smith Alling PS

SoundEarth Strategies, Inc.

Sound Municipal Consultants

SPF Water Engineering, LLC

SubTerra, Inc

Thaxton Parkinson PLLC

Transportation Engineering Northwest, LLC

Van Ness Feldman LLP

Victoria S. Byerly, P.S.

Wood

## CITY OF PORT ORCHARD PERSONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 10<sup>th</sup> day of September 2019, by and between the City of Port Orchard, a municipal corporation, organized under the laws of the State of Washington, whose address is:

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

Contact: Mayor Robert Putaansuu Phone: 360.876.4407 Fax: 360.895.9029

And the Law Office of Thomas M. Pors, a corporation, organized under the laws of the State of Washington, doing business at:

LAW OFFICE OF THOMAS M. PORS (hereinafter the "CONSULTANT")  
1700 Seventh Ave., Suite 2100  
Seattle, WA 98101

Contact: Thomas Pors Phone: 206.357.8570 Email: tompors@comcast.net

for personal services in connection with the following Project:

*2019-2020 Water Rights – Legal Services*

### TERMS AND CONDITIONS

#### 1. Services by Consultant.

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

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

#### 2. Schedule of Work.

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

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

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*City of Port Orchard and Law Office of Thomas M. Pors*

*Personal Services Agreement Contract No. C052-19*

U:\ENGINEERING\WATER\Well #13\2018 - 2020 Well #13 Project\Admin\Consultant Selection Well #13\Water Rights\_Foster\Pors 2019-2020\PSA\_Pors 2019-2020 WR (with SEC edits).docx

Rev 7/18/2019

2/16/2019  
TME

3. **Terms.** This Agreement shall commence on August 20, 2019 ("Commencement Date") and shall terminate December 31, 2020 unless extended or terminated in writing as provided herein. **The City reserves the right to offer two (2) one-year extensions prior to contract expiration to retain the selected company's services.**

4. **Compensation.**

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

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed **\$137,500** without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "A & B."

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

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

5. **Payment.**

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

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

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

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

E. If the services rendered do not meet the requirements of the Agreement, the Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

6. **Discrimination and Compliance with Laws**

City of Port Orchard and Law Office of Thomas M. Pors  
Personal Services Agreement Contract No. C052-19  
U:\ENGINEERING\WATER\Well #13\2018 - 2020 Well #13 Project\Admin\Consultant Selection Well #13\Water Rights\_Foster\Pors 2019-2020\PSA\_Pors 2019-2020 WR (with SEC  
edit) docx

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

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

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

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

**7. Relationship of Parties.** The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including but not limited to compensation, insurance, and unemployment insurance, are available from the City to the employees, agents, representatives or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

## **8. Suspension and Termination of Agreement**

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

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

C. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to the City, and the Consultant shall be entitled to just and equitable compensation for

any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. The Consultant shall not be entitled to any reallocation of cost, profit or overhead. The Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. The Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

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

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

E. Notice of Termination or Suspension. If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to the Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

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

## 10. **Ownership of Work Product.**

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

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



inadvertent or otherwise. The Consultant is permitted to disclose any such information only to the extent required by law, subpoena or other court order.

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

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

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

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

**13. Insurance.** The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Workers' Compensation Employer's Liability each accident \$1,000,000, Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease – Policy Limit \$1,000,000.
4. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

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

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers

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

E. Verification of Coverage

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

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

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

Robert Putaansuu  
Mayor  
216 Prospect Street  
Port Orchard, WA 98366

CONSULTANT  
Law Office of Thomas M. Pors  
1700 Seventh Ave., Suite 2100  
Seattle, WA 98101

Phone: 360.876.4407  
Fax: 360.895.9029

Phone: 206.357.8570  
Fax: 866.342.9646

**16. Resolution of Disputes and Governing Law.**

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

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

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

**17. General Provisions.**

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

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

C. **Severability.** The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. **Entire Agreement.** The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

## 18. Title VI

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

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

1. **Compliance with Regulations:** The Consultant will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The Consultant, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix A, attached hereto and incorporated herein by this reference, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.
4. **Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its

books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the City or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the Non-discrimination provisions of this Agreement, the City will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  1. withholding payments to the Consultant under the Agreement until the Consultant complies; and/or
  2. cancelling, terminating, or suspending the Agreement, in whole or in part.
  
6. **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the City to enter into any litigation to protect the interests of the City. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

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

CITY OF PORT ORCHARD,  
WASHINGTON

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

ATTEST/AUTHENTICATE:

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

APPROVED AS TO FORM:

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

CONSULTANT

By: 

Name: Thomas M. Pors

Title: Owner

## APPENDIX A

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

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to -ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT A

Law Office of Thomas M. Pors

July 19, 2019

Port Orchard Water Rights



Mark Dorsey  
Public Works Director  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366

*Re: Updated Scope of Work and Budget for Legal Services Relating to Water Rights*

Dear Mr. Dorsey:

I am delighted that the City of Port Orchard has again selected me to provide water rights legal services, including the ESSB 6019 Pilot Project process and assistance with the water system plan update. At your request, this letter presents a new scope of work and budget for these legal services. This represents my best estimate of the scope and budget for the described services through calendar year 2020 and may need to be adjusted in the future as we move through the process.

The attached 2019-20 Work Plan and Timeline is an overall project description, including work by other consultants on the Pilot Project, including BHC Consultants (water system planning and engineering), Robinson & Noble (hydrogeology and water rights permitting) and ESA Consultants (subconsultant to Robinson & Noble). Part of my scope of work is overseeing the entire process from application through final decision (report of examination) by the Department of Ecology.

Here is a breakdown of legal services on this matter, including a budget estimate.

Task	Schedule	Cost Estimate
Oversight of Pilot Project: communications and coordination of work by other consultants and Public Works Department to progress applications to final decision	July 2019 to project completion	\$30,000.00
Review and advise City and BHC re water system plan update	July 2019 to plan completion	\$6,000.00
Coordinate development of decision matrix for "net environmental benefits"	October 2019 to project completion	\$9,000.00

1700 Seventh Avenue  
Suite 2100  
Seattle, WA 98101

Phone: (206) 357-8570  
Fax: (866) 342-9646  
Email: tompors@comcast.net

finding		
Meetings and negotiations with Department of Ecology and stakeholders	July 2019 to project completion	\$15,000.00
Legal advice re application process, mitigation requirements, miscellaneous agreements, and permit decisions	July 2019 to project completion	\$25,000.00
Draft and review decision documents for Pilot Project applications	October 2019 through project completion	\$25,000.00
Subtotal		\$110,000.00
Contingency	25%	\$27,500.00
Total		\$137,500.00

A contingency of 25% is included to account for longer than anticipated negotiations regarding the mitigation plan, NEB matrix and findings, or currently unknown issues that may arise over the course of this project. This proposal does not include any water right decision appeals, which cannot be predicted at this time.

Please call me if you have any questions about this updated scope of work and budget, or if you need it in a different format for budget and council approval. I look forward to continuing to work with you on this project and helping the City of Port Orchard accomplish its water supply objectives in a cost-effective manner.

Yours very truly,



Thomas Pors

Enc: Work Plan Objectives and Timeline  
Cc: Jacki Brown



**Appendix B**  
(updated July 19, 2019)

Item	Timeline	Notes
<b>Define Work Plan Objectives and Timeline</b>	Jan-Feb 2019	updated
Draft to Ecology and Suquamish Tribe	January 22, 2019	Send update with new COPO contact info to ECY and Stakeholders
Meeting with Ecology	January 29, 2019	Complete
<b>Cost Reimbursement Agreement (CRA)</b>	Before Ecology review of draft ROE Late 2019/early 2020	Ecology verbally OK'd streamlined approach; confirm in writing
<b>Population/Demand Projections and Water Use Efficiency Report</b>	Updated 3-29-2019	To share with stakeholders, w/ new COPO contacts
<b>Grants for Port Orchard Mitigation Projects</b>	Check for due date for 2020 grant cycle	See WAC 173-566
<b>Complete Impact Analysis for Pilot Project</b>	August - September 2019	Joe Becker to consult with John O'Leary, Suquamish Tribe re model margin of error
<b>Tier 1 Avoidance Analysis</b>		NA per Ecology
<b>Tier 2 Minimization Analysis – in kind water replacement and “not reasonably attainable”</b>	August - October 2019	RN and engineering firm; Westwater for replacement water investigation
<b>Tier 3 Compensation Analysis</b> Review NEB guidance from ECY; Develop matrix for NEB findings; Mitigation consultation and project selection	October 2019 to March 2020	<ul style="list-style-type: none"> <li>Need COPO approval of contract scope for RN &amp; ESA</li> </ul>
Tribal/WDFW analysis of positive effects of Blackjack Creek HP on fish habitat	August to December 2019	Tribal and WDFW staff comment letters?
ESA to draft NEB analysis and finding	January – February 2010	
Meetings re draft mitigation sequence findings	December 2019 to March 2020	3 monthly meetings suggested
<b>Drafting of monitoring and reporting conditions</b>	January-February 2020	Request templates from Ecology and 3d parties
Replacement water monitoring		
Habitat monitoring		Streamflow Restoration Grants?
<b>Drafting of compliance and assurance conditions</b>	January-February 2020	Request templates from Ecology and 3d parties
<b>Port Orchard JARPA application for BCHP</b>	Draft JARPA before ROE	Develop project schedule and funding plan
<b>Draft ROE</b>		Include in scope of CRA
Preliminary draft to Tribe	March 2020	
Draft ROE to Ecology	May 2020	
Ecology public notice (?) and ROE issuance	June to August 2020	

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**City of Port Orchard**

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

**Agenda Staff Report**

Agenda Item No.: Business Item 7F  
Subject: Adoption of a Resolution Approving the  
Purchase of Vehicles for the Equipment  
Rental Revolving Fund 500

Meeting Date: September 10, 2019  
Prepared by: Noah Crocker  
Finance Director  
Atty Routing No.: N/A  
Atty Review Date: N/A

**Summary:** The City Council adopted a Biennial Budget which included \$1,226,000 for the purchase of vehicles for the Equipment Rental and Revolving Fund 500.

The City’s Procurement Policies require City Council approval for purchases costing \$35,000 or more.

The vehicles listed in the proposed Resolution are within the limits of the Biennial Budget and meet the City’s fleet standardization policies.

The proposed Resolution is to provide the City Council’s approval of the vehicle purchases in accordance with the procurement procedures established by the City Council.

**Recommendation:** Staff recommends approving the Resolution as proposed.

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

**Motion for consideration:** “I move to adopt a Resolution providing City Council approval of the purchase of vehicles in accordance with the City’s fleet standardization policies and the 2019-2020 Biennial Budget.”

**Fiscal Impact:** \$669,963.54

**Alternatives:** Do not approve resolution and provide alternative guidance.

**Attachment:** Resolution.

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

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING  
THE PURCHASE OF VEHICLES FOR THE EQUIPMENT RENTAL REVOLVING FUND**

**WHEREAS**, the City Council has approved Ordinance No.036-18, approving the 2019-2020 Biennial Budget; and

**WHEREAS**, the 2019-2020 Biennial Budget includes \$1,226,000 for capital purchases of vehicles for the Equipment Rental and Revolving fund; and

**WHEREAS**, the City Council has approved procurement policies which require City Council authorization for purchasing items costing \$35,000 or more; and

**WHEREAS**, the attached purchase orders are for vehicles that exceed the \$35,000 authorization limit; and

**WHEREAS**, the purchase orders are for vehicles that meet the fleet standards as adopted by the City Council and are consistent with the 2019-2020 Biennial Budget; now, therefore;

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

**THAT:** The City Council approves the purchase of all vehicles listed in the purchase orders attached hereto in Exhibit A.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 10<sup>th</sup> day of September 2019.

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

ATTEST:

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



## Equipment Rental & Revolving Fund Additional 2019 Purchases

The following were reviewed by the department directors and approved by the ER&R Program manager for replacement or addition during the 2019-2020 biennium.

Replacements & Additions		2019 Budget	2019 Actual*
<u>Department</u>	<u>Vehicle/ Equipment</u>	<u>Estimated Purchase Cost</u>	<u>Purchase Order Cost</u>
Public Works - Sewer/Storm	Vac-Truck	\$450,000	\$450,570.52
Public Works – Sewer/Storm	CCTV Truck	\$225,000	\$219,393.02
<b>Total</b>		<b>\$675,000</b>	<b>\$669,963.54</b>

\*Purchase Order Cost do not reflect all-inclusive final vehicle cost as there will be minor miscellaneous outfitting cost (City logo, lights, licensing, radios, etc.)

**City of Port Orchard**

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

**PURCHASE ORDER**

**SWS Equipment, Inc.**  
**PO Box 13040**  
**Spokane Valley, WA 99213-3040**

**P.O. No. 040-19**  
**Date: September 5, 2019**

**Bill To:**

Attn: Accounts Payable  
 City Of Port Orchard  
 216 Prospect Street  
 Port Orchard, WA 98366

**Ship To:**

City of Port Orchard  
 1535 Vivian Ct  
 Port Orchard, WA 98366

**Ordered By:****Authorized Signature:**

Tony Lang  
 Public Works

  
 City Clerk or Authorized Representative Signature

Qty	Description	Unit Price	Total
<b>Vac Truck</b>			
1	12yrd 900 Eco Mounted Combination Sewer Cleaner	\$294,526.02	\$294,526.02
1	Freightliner Chassis 114 SD Tandem 370 HP for 12 yard 900 ECO	\$109,345.00	\$109,345.00
	<b>Sourcewell member# 26305</b>		
	<b>Sourcewell contract# 122017-SCA</b>		
	<b>IF TOTAL COST IS OVER \$7,500.00 ATTACH PROCUREMENT DOCUMENTS</b>		
	<i>* See attached proposal for more details*</i>		

Subtotal	\$403,868.02
Tax	\$41,699.50
Est. Freight	\$5,000.00
Add'l Fees	
Bal Due	\$450,570.52

<b>THIS ORDER IS A CONFIRMATION</b>	<b>Yes</b>
<b>THIS ORDER IS NOT A CONFIRMATION</b>	
<b>ACCOUNT CODE:</b>	

Purchases through Interlocal Agreements

CITY OF PORT ORCHARD

**PURCHASES THROUGH INTERLOCAL AGREEMENTS**

City Contract No.: 075-14

Interlocal Agreement with (government agency or Purchasing Co-Op name):

*Southernwell - Firmally  
National Joint Powers  
Alliance (NJPA)*

Item Description: VAC TRUCK

Do you have an Interlocal agreement signed with the Contract (host) Agency?

If yes, where is it filed: Clerks

If no, get a mutually signed Agreement in place before you continue.

*NJPA Contract*

State OSP Contract No. #: 122017-SCA

*If you have an Office of State Procurement (OSP) contract number you may skip the remainder of this test because the OSP contracts comply with remaining requirements and retain the documentation on hand for SAO to review in the OSP offices.*

Is this a technology contract? NO

- If yes, do your own rules allow for technology contracts to be negotiated?
- If your own rules allow for negotiated IT contracts, you can skip this test.

Is this a services contract? NO

- If yes, do your own rules allow services to be negotiated?
- If your own rules allow for negotiated services, you can skip the remainder of the test.

Are you using this as only one of multiple quotes, for a small purchase? NO

- If yes, you can skip the remainder of the test. Your purchase will not mandate the sealed bid rules.

**Checklist for Required Compliance**

Does the host agency have a requirement to run a newspaper ad in their local paper and did they comply	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Federal and State contract rules usually don't require a newspaper ad. For others, attach the ad or place into the file
Did they list on a website? If so, state when and the address. Attach proof if possible.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Always required. Indicate date, address and/or attach or place into the file.
Did the bid & award comply with the Host agency's codes and statutes?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If No, you cannot use the bid.
Did bid contain any preference that is illegal in your statutes such as WMBE points? <u>RCW 39.24.030</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, you cannot use the bid. <u>ESB 5958</u>





# SWS Equipment, Inc.

P.O. Box 13040  
 Spokane Valley, WA 99213-3040  
 800 1-800-892-7831

## QUOTE

Quote #: JCILQ5081  
 Date: 08/29/19  
 Sales Rep: James Long  
 Customer No:  
 FOB: Destination  
 Ship Via: Best Way  
 Est. Ship Date: 6 months After Receipt of  
 Terms: NET On Delivery

**Quote To:**

City Of Port Orchard  
 Tony Lang  
 216 Prospect St  
 Port Orchard WA 98366  
 (360) 535-2490 Fax: (360) 876-4607

**Ship To:**

City Of Port Orchard  
 Tony Lang  
 216 Prospect St  
 Port Orchard WA 98366  
 (360) 535-2490

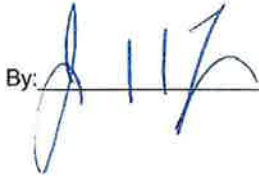
**We are pleased to propose the following for your consideration**

Qty	Description	Unit Price	Ext. Price
1	Sourcewell formally known as NJPA (National Joint Powers Alliance) Sewer Equipment Contract number 122017-SCA City of Port Orchard, WA. membership number is 26305  With Trash Pump		
1	12yd 900 Eco Mounted Combination Sewer Cleaner Length: 40' Width: 8'5" Height: 11'10" Max Water Capacity: 1300 gal Max Boom Extension: 10' Standard Options: Cold Weather Recirculation System 2.5" Hydrant Fill system Air Purge Valve Variable Volume Delivery Low Water Warning Light Analog Pressure Display Performance Black Duraprolene Water Tank Construction 1300 gal capacity water tank 1 paper Owner's Manual Debris Level Indicator Hydraulic Dump, 50 degree dump angle Dual Ported Rear Door w/ Knife Valve Dump Height 60" Hydraulic Open/Close/Lock Door Hydraulic powered Boom 180 degree working radius 10' extendable design 70 degree steel elbow 4400 CFM blower 8" vacuum hose system 18" Hg Vacuum rating Dual Cyclone Separator Dual Element 10 Micron Final Filter Remote Vacuum relief Variable Volume Delivery (1) Alum Toolbox 24"x36"x96" - behind cab (2) Alum Toolbox 18"x18"x30" - passenger (2) Alum Toolbox 18"x18"x24" - rear (1) Alum Long Handle Storage - rear Debris Tank - Boom: painted standard white Honse Reel - Upright: painted Sewer blue Front Mounted Telescoping and Rotating 10' leader hose Single side controls NEMA 4 Control Panel Hour Meter (blower & water pump) Military Spec Sealed Switches (3) 8"x6' Extension Tubes (1) 8"x4' Extension Tubes (1) 6"x10' Lay Flat Hose (1) 8"x6' Crowned Suction Nozzle (5) Quick Clamps BB hose guide Toolbox Configurations Tri-Star (chisel point) nozzle DD (high flow) nozzle Finned Nozzle Extension Nozzle Rack 25' Fill hose Upstream Pulley Guide Washdown gun w/ 25' ext. hose (1) Fan Nozzle (for Washdown Gun) (1) Hydrant Wrench LED DOT approved lighting (6) 18" DOT safety cones and holder	\$294,526.02	\$294,526.02
1	Automatic Level Wind with Hydraulic up/down action		
1	Footage Meter (mounted on Jet hose reel)		
700	Sewer Hose (3/4" I.D., 3000 P.S.I. Operating Pressure) Per Ft		

Qty	Description	Unit Price	Ext. Price
1	Six (6) 28" DOT Safety Cones and holder		
1	Central Lubrication System		
1	Triplex Piston Style Water Pump Rated At 55 Gpm @ 3000 Psi (Includes Drain Valves)		
1	Fill hose storage rack		
1	Standard Hydroexcavation Cleaning Kit 20 gpm @ 2000psi (8"x6' digging tube, 8gpm rotary digging wand, 10 gpm linear nozzle (shipped loose), (2) 5' extension wands and automatic reel w/ 75' of 3/8" hose)		
1	Central Washdown System (includes 50' of 1/2" hose on a spring retracting hose reel mounted mid-ship)		
1	Long Handled Tool Storage (two (2) 4" tubes) & Cabinet		
1	Debris Body Pump Off System (4" Hydraulic Driven Pump Rated @ 800 Gpm Located On Rear Door Of Debris Box, Includes Swing Out Decant Screen)		
1	Telescoping Boom System (identical reach as standard)		
1	Debris Body Wash Out System (includes dual nozzles in debris box)		
1	Decant Screen on Rear Door Port (Swing out perforated shield)		
1	Wireless Remote control pendant (controls include hose reel payout/retrieve, water pump on/off, vacuum relief on/off, boom up/down, boom left/right, boom extend/retract and module kill switch)		
1	Enhanced Visibility camera system (includes front and rear mounted camera heads with split screen monitor in cab)		
2	(2) LED FLUSH MOUNTED STROBES: LOCATED ON FRONT BOOM SUPPORT (factory standard)		
1	Led Arrow Board (Factory Standard)		
1	LED Manhole Area Work Light		
1	LED Curbside Body mounted work light		
1	LED Boom Mounted Work lights (2) (complete with limb guard)		
1	LED Rear Mounted work lights (2) Located above rear door		
1	Led Handheld Wireless 12V/110V Rechargeable Led Spotlight W/ Storage		
1	Air Purge Winterization System (supplied by chassis air system)		
1	Training - Customer Location (1 Day)		
1	Freightliner Chassis 114 SD Tandem 370 HP for 12 yard 900 ECO	\$109,345.00	\$109,345.00
1	1 day customer location training		
1	PDI		
1	Freight to get finished truck to Port Orchard, WA.	\$5,000.00	\$5,000.00
1	PDI pre delivery inspection		

Qty	Description	Unit Price	Ext. Price
1	Terms: Net is due upon delivery.		
1			
1	This quote is good for 90 days		
1	Sales Tax Please note this Sales Tax could be adjusted quarterly and is based on what is charged this quarter it could change when the truck is delivered and when the tax is due.	\$40,478.23	\$40,478.23
1	WA State Vehicle Tax .3% Please note this Wa state Vehicle Tax is based on what is charged this quarter it could change when the truck is delivered and when the tax is due.	\$1,221.27	\$1,221.27
		<b>Order Total</b>	<b>\$450,570.52</b>

PRICES SUBJECT TO CHANGE DUE TO CHANGING STEEL PRICES - THANK YOU!

By: 

Accepted \_\_\_\_\_

Date \_\_\_\_\_

QUOTE VALID FOR 30 DAYS

**PAYMENT DUE UPON COMPLETION OF WORK OR AS SPECIFIED ABOVE**





September 4, 2019

PO #

Product Class:

WO#

Distributor: SWS Equipment

End User: City of Port Orchard with Trash Pump

Address: 216 Prospect St

City, State, Zip: Port Orchard, WA. 98366

Phone: 360-535-2490

Contact: Toby Lang

Email:



### 900-ECO 12 Yard Truck Mounted Combination Sewer Cleaner

**Vacuum System:**

- 4400 CFM Blower
- 8" Vacuum Hose system
- 18" Hg vacuum rating
- Dual Cyclone Separator
- Dual Element 10 Micron Final Filter
- Remote Vacuum Relief
- Variable Volume Delivery
- Analog Vacuum Display
- (6) Tube / Tube Rack

**Boom:**

- Hydraulic Powered Boom
- 180° Working Radius
- 10' Boom Cylinder
- Boom Joystick Control

**Debris Tank:**

- 12 Cubic Yard Capacity
- Exten Steel Construction
- Debris Level Indicator
- Hydraulic Dump, 50° Dump Angle (LIFT)
- Dual Ported Rear Door w/ Knife Valve
- Dump Height 60"
- Hydraulic Open/Close/Lock Door

**Water System:**

- 1300 Gallon Capacity Water Tank
- Giant plunger style triplex
- 65 gpm @ 2000 psi w/ 30 min run dry
- Black Duraprolene™ Water Tank Constructio
- w/ 10 Year Warranty
- Cold Weather Recirculation System
- 2.5" Hydrant Fill system
- Air Purge Valve
- Variable Volume Delivery
- Low Water Warning Light
- Analog Pressure Display
- Front and Mid Ship Hand Gun Ports

**Electrical:**

- NEMA 4 Control Panel
- Hour Meter (Blower & Water Pump)
- Military Spec. Sealed Switches

**Truck:**

- Mounting to Approved Chassis
- (1) Alum Toolbox 24"x42"x100" - Behind Cab
- (2) Alum Toolbox 18"x18"x30" - Passenger
- (2) Alum Toolbox 18"x18"x24" - Rear\*
- \*N/A ON SINGLE AXLE CHASSIS
- (1) Alum Long Handle Storage
- LED D.O.T. Approved Lighting

**Hose Reel & Hose:**

- Front Mounted Telescoping & Rotating
- 800' x1" Capacity
- 10' Leader Hose
- Single Side Controls

**Accessories:**

- (3) 8" x 6' Extension Tube
- (1) 8" X 4' Extension Tube
- (1) 8" x 6' Crowned Suction Nozzle
- (1) 6" x 10' Flat Discharge Hose
- (6) Quick Clamps
- BB Hose Guide
- Tri-Star (chisel point) nozzle
- DD (high flow) nozzle
- Finned Nozzle extension
- Nozzle Rack (Mounted midship toolbox)
- 25' Fill Hose
- Upstream Pulley Guide
- Washdown gun w/ 50' ext. hose
- Cleaner, Tip, Torch, Small, W/S
- rch, Small, W/Sewer
- (1) Hydrant Wrench
- (1) Paper Owner's Manual

BASE UNIT AS OUTLINED ABOVE	\$235,966.07	1	\$235,966.07
	LIST PRICE OF SELECTED OPTIONS:		\$67,669.00
	LESS PERCENTAGE DISCOUNT (enter % →) 3%		\$ (9,109.05)
	<b>NET PRICE OF UNIT:</b>		<b>\$294,526.02</b>
<b>FACTORY SUPPLIED CHASSIS</b>			\$109,345.00
	ESTIMATED FREIGHT:		\$5,000.00
	<b>ESTIMATED TOTAL:</b>		<b>\$ 408,871.02</b>

FOR ALL NON STANDARD OPTIONS PLEASE CONTACT FACTORY FOR PRICING

**STANDARD OPTIONS:**

HOSE REEL ASSEMBLY:	LIST PRICE		TOTAL
AUTOMATIC LEVEL WIND WITH HYDRAULIC UP/DOWN ACTION	\$7,321.00	1	\$7,321.00
DIGITAL "SMART COUNTER" FOOTAGE METER	\$2,924.00		\$0.00
FOOTAGE METER (mounted on jet hose reel)	\$742.00	1	\$742.00
SECONDARY OPERATORS STATION (controls include analog water and vacuum pressure gages and reel payout/retrieve)	\$1,270.00		\$0.00

PINCH ROLLER (air strut powered sewer hose retention)	\$2,153.00		\$0.00
TESTING FEE (for units with customer supplied sewer hose)	\$448.00		\$0.00
SEWER HOSE (1" I.D., 2500 P.S.I. OPERATING PRESSURE) PER FT	\$4.43		\$0.00
SEWER HOSE (3/4" I.D., 3000 P.S.I. OPERATING PRESSURE) PER FT	\$4.35	700	\$3,045.00
25' LEADER HOSE (in lieu of standard 10')	\$347.00		\$0.00
Upgrade to 1000' Capacity Hose Reel in Lieu of Standard Capacity (Consult Factory for Weight Distribution)	\$3,621.00		\$0.00
<b>CLEANING ATTACHMENTS:</b>			
SIX (6) 28" D.O.T. SAFETY CONES AND HOLDER	\$370.00	1	\$370.00
CENTRAL LUBRICATION SYSTEM	\$2,770.00	1	\$2,770.00
HYDRAULIC TOOL CIRCUIT VIA CHASSIS TRANSMISSION PTO (rated @ 9.5gpm, system engaged via manual diverter valve and supplied with Parker 60 series connectors)	\$3,257.00		\$0.00
<b>WATER PUMPS:</b>			
TRIPLEX PLUNGER STYLE GIANT WATER PUMP RATED AT 80 GPM @ 2000 PSI (includes drain valves)	\$9,149.00		\$0.00
TRIPLEX PLUNGER STYLE GIANT WATER PUMP RATED AT 80 GPM @ 2500 PSI (includes drain valves)	\$10,226.00		\$0.00
TRIPLEX PISTON STYLE WATER PUMP RATED AT 55 GPM @ 3000 PSI (includes drain valves)	\$8,321.00	1	\$8,321.00
SINGLE PISTON 65 GPM @ 2500 PSI WATER PUMP (includes drain valves) Note #1: Not available with 18"x18"x30" aluminum toolbox option. Note #2: Standard 18"x18"x30" passenger side toolboxes not available with Cold Weather Hydro Excavation option.	\$15,622.00		\$0.00
SINGLE PISTON 80 GPM @ 2500 PSI WATER PUMP (includes drain valves) Note #1: Not available with 18"x18"x30" aluminum toolbox option. Note #2: Standard 18"x18"x30" passenger side toolboxes not available with Cold Weather Hydro Excavation option.	\$23,774.00		\$0.00
ACCUMULATOR FOR SINGLE PISTON PUMP	\$3,042.00		\$0.00
<b>WATER TANKS:</b>			
ADDITIONAL 200 GALLON DURAPROLENE™ WATER TANK W/ 10 YEAR WARRANTY- (driver side rail) Note #1: Subject to chassis load capacity specifications.	\$7,680.00		\$0.00
ADDITIONAL 200 GALLON DURAPROLENE™ WATER TANK W/ 10 YEAR WARRANTY - (between rails) Note #1: Subject to chassis load capacity specifications.	\$5,338.00		\$0.00
DIGITAL WATER TANK LEVEL GAUGE	\$912.00		
WATER TANK LOW LEVEL AUDIBLE ALARM (level set point is fixed at 150 gallons)	\$507.00		\$0.00
<b>WATER SYSTEM ATTACHMENTS:</b>			
FILL HOSE STORAGE RACK	\$209.00	1	\$209.00
STANDARD HYDROEXCAVATION CLEANING KIT 20 GPM @ 2000 PSI ( 8" x 6' digging tube, 8gpm rotary digging wand, 10gpm linear nozzle (shipped loose), (2) 5' Extension wands and automatic reel w/ 75' of 3/8" hose)	\$6,153.00	1	\$6,153.00
COLD WEATHER HYDROEXCAVATION CLEANING KIT 10 GPM @ 2000 PSI (includes 400,000 BTU diesel fired boiler in enclosed aluminum cabinet, 8" x 6' digging tube, 8gpm rotary digging wand, 10gpm linear nozzle (shipped loose), (2) 5' Extension wands and automatic reel w/ 75' of 3/8" hose) Note #1: Replaces the (2) standard 18"x18"x30" aluminum toolboxes on passenger side.	\$14,004.00		\$0.00
COLD WEATHER HYDROEXCAVATION CLEANING KIT 20 GPM @ 2000 PSI (includes 800,000 BTU diesel fired boiler in enclosed aluminum cabinet, 8" x 6' digging tube, 8gpm rotary digging wand, 10gpm linear nozzle (shipped loose), (2) 5' Extension wands and automatic reel w/ 75' of 3/8" hose) Note #1: Replaces the (2) standard 18"x18"x30" aluminum toolboxes on passenger side.	\$18,247.00		\$0.00
2" Y-STRAINER ON INLET FILL SYSTEM	\$717.00		\$0.00
gallons of water storage. Mounted drivers side rail)	\$10,980.00		\$0.00
LATERAL LINE CLEANING KIT (200' X ½" hose with nozzle mounted on a rolling cart; includes addition of 1200 psi auxiliary cleaning circuit and mounting on front bumper drivers side)	\$4,671.00		\$0.00
CENTRAL WASHDOWN SYSTEM (includes 50' of 1/2" hose on a spring retracting hose reel mounted mid-ship)	\$1,383.00	1	\$1,383.00

Additional Extension Wand w/ High Flow Quick Connect	\$330.00		\$0.00
Additional Rotary Digging Wand w/ High Flow Quick Connect - (Must Select Flow Rate)	\$475.00		\$0.00
Linear Digging Wand w/ High Flow Quick Connect - (Must Select Flow Rate)	\$549.64		\$0.00
<b>TOOLBOX CONFIGURATIONS:</b>			
ADDITIONAL 18"x18"x30" ALUMINUM TOOLBOX - (2 maximum mounted passenger side rail) Note: Not available with single piston pump option.	\$938.00		\$0.00
BUMPER MOUNTED ALUMINUM TOOL BOX (1) 10"x12"x22" (mounted driver side front bumper)	\$939.00		\$0.00
Drivers Side Tube Storage Rack (Not Available with Extra DS Water Tank)	\$1,100.00		
LONG HANDLED TOOL STORAGE (TWO (2) 4" TUBES) & CABINET	\$752.00	1	\$752.00
<b>DEBRIS BOX &amp; BOOM:</b>			
DEBRIS BODY PUMP OFF SYSTEM (4" hydraulic driven pump rated @ 800 gpm located on rear door of debris box, includes swing out decant screen)	\$12,469.00	1	\$12,469.00
DEBRIS BODY POSITIVE PRESSURE DECANTING SYSTEM (Includes 6" diameter discharge port with cam-lock fitting and cap.)	\$11,845.00		\$0.00
DEBRIS LIQUID LEVEL AUDIBLE ALARM (level set point is adjustable) Note: Tied to vacuum relief and opens vacuum relief valve.	\$853.00		\$0.00
TELESCOPING BOOM SYSTEM (identical reach as standard)	\$4,683.00	1	\$4,683.00
DEBRIS BODY VIBRATOR SYSTEM (12v electric with switch near dump control area)	\$2,844.00		\$0.00
DEBRIS BODY WASH OUT SYSTEM (includes dual nozzles in debris box)	\$1,170.00	1	\$1,170.00
ADDITIONAL 6" KNIFE VALVE ON REAR DOOR COMPLETE WITH INLET STRAINER (in addition to standard valve)	\$1,270.00		\$0.00
DECANT SCREEN ON REAR DOOR PORT (swing out perforated shield)	\$1,380.00	1	\$1,380.00
DEBRIS INLET WATER MISTING SYSTEM Note #1: Not available with telescoping boom option.	\$1,136.00		\$0.00
<b>ELECTRICAL &amp; LIGHTING:</b>			
WIRELESS REMOTE CONTROL PENDANT (controls include hose reel payout/retrieve, water pump on/off, vacuum relief on/off, boom up/down, boom left/right, boom extend/retract and module kill switch)	\$4,326.00	1	\$4,326.00
WIRED REMOTE CONTROL PENDANT W/ 35' CORD (controls include hose reel payout/retrieve, water pump on/off, vacuum relief on/off, boom up/down, boom left/right, boom extend/retract and module kill switch)	\$2,649.00		\$0.00
ENHANCED VISIBILITY CAMERA SYSTEM (includes front and rear mounted camera heads with split screen monitor in cab)	\$1,504.00	1	\$1,504.00
(2) LED FLUSH MOUNTED STROBES: LOCATED ON FRONT BOOM SUPPORT (factory standard)	\$1,036.00	2	\$2,072.00
LED ARROW BOARD (factory standard)	\$1,251.00	1	\$1,251.00
LED ARROW STICK (factory standard)	\$1,053.00		\$0.00
LED MANHOLE AREA WORK LIGHT	\$445.00	1	\$445.00
LED CURBSIDE BODY MOUNTED WORK LIGHT	\$445.00	1	\$445.00
LED BOOM MOUNTED WORK LIGHTS (2) (complete with limb guard)	\$917.00	1	\$917.00
LED REAR MOUNTED WORK LIGHTS (2) : LOCATED ABOVE REAR DOOR	\$917.00	1	\$917.00
LED HANDHELD WIRELESS 12v/110v RECHARGABLE LED SPOTLIGHT W/ STORAGE	\$331.00	1	\$331.00
<b>CHASSIS:</b>			
(DEDUCT) FOR REMOVAL OF "BEHIND THE CAB TOOLBOX"	(\$1,854.00)		\$0.00
NON-STOCK CHASSIS MOUNTING ALTERATIONS	\$3,500.00		\$0.00
AIR PURGE WINTERIZATION SYSTEM (supplied by chassis air system)	\$1,348.00	1	\$1,348.00
TOW HOOKS (2) Note: Location Required (FRONT / REAR / FRONT & REAR)	\$718.00		\$0.00
COMBINATION HEAVY DUTY BALL/PINTLE HITCH (20,000# capacity complete with electric brake controller in cab)	\$1,066.00		\$0.00

HIGH CAPACITY HYDRO-DRIVE SUBSTITUE - 80 gpm @ 2,500 psi pumps - Requires FEPTO on chassis & related 24" frame extension - Trash pump option is NOT compatible - Water recirculation available on a limited duty cycle basis - Requires Allison 3000 or greater transmission - Must have access to both PTO windows	\$8,487.00		\$0.00
STANDARD HYDRO-DRIVE SUBSTITUTE - 80 gpm @ 2,000 psi / 65 gpm @ 2000 psi / 55 gpm @ 3,000 psi pumps - Requires FEPTO on chassis & related 24" frame extension - Water recirculation available on a limited duty cycle basis - Requires Allison 30000 or greater automatic transmission - Must have access to both PTO windows if used in conjunction with trash pump option	\$4,244.00		\$0.00
<b>PAINT:</b>			
DEBRIS BOOM: STANDARD • STERLING WHITE (FDG91327)	STANDARD		
DEBRIS TANK: STANDARD • STERLING WHITE (FDG91327)	STANDARD		
HOSE REEL - UPRIGHT STANDARD • SEWER BLUE (PAN 287)	STANDARD		
FRAME: • STANDARD BLACK (FDG9000)	STANDARD		
SLIDE FRAME: • STANDARD BLACK (FDG9000)	STANDARD		
SPECIAL PAINT: SOLID COLORS	\$2,679.00		\$0.00
SPECIAL PAINT: METALLIC OR CLEAR COAT	CONTACT FACTORY		
<b>MANUALS &amp; TRAINING:</b>			
ADDITIONAL PAPER OPERATORS MANUAL	\$79.00		\$0.00
USB OPERATORS MANUAL	\$58.00		\$0.00
TRAINING - CUSTOMER LOCATION (1 DAY)	\$1,650.00	1	\$1,650.00
TRAINING - CUSTOMER LOCATION (ADDITIONAL DAY)	\$1,229.00		\$0.00
TRAINING - SEWER EQUIPMENT UNIVERSITY (DIXON, IL) (2 DAYS)	\$847.00		\$0.00
<b>SPECIAL ITEMS:</b>			
PDI Predelivery Inspection PDI	\$1,695.00	1	\$1,695.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
SIGNATURE _____ DATE _____			
<b>Please return a signed copy to <a href="mailto:bigequipment@SewerEquipment.com">bigequipment@SewerEquipment.com</a></b>			



**City of Port Orchard**

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

**PURCHASE ORDER**

**HGAC—Cues, Inc.**  
 3600 Rio Vista Avenue  
 Orlando, Florida 32805

**P.O. No. 041-19**  
**Date: September 5, 2019**

**Bill To:**

Attn: Accounts Payable  
 City Of Port Orchard  
 216 Prospect Street  
 Port Orchard, WA 98366


**Ship To:**

City of Port Orchard  
 1535 Vivian Ct  
 Port Orchard, WA 98366

**Ordered By:**

**Authorized Signature:**

Tony Lang  
 Public Works

  
 City Clerk or Authorized Representative Signature

Qty	Description	Unit Price	Total
<b>CCTV Truck</b>			
1	Hi-Cube Van TV Inspection Vehicle (itemization attached)	\$217,492.00	\$217,492.00
	Less Cues sole source discount	-\$19,760.00	-\$19,760.00
	<b>Sourcewell member# 26305</b>		
	<b>Sourcewell contract# 122017-SCA</b>		
	<b>IF TOTAL COST IS OVER \$7,500.00 ATTACH PROCUREMENT DOCUMENTS</b>		
	<i>* See attached proposal for more details*</i>		

<b>Subtotal</b>	\$197,732.00
<b>Tax</b>	\$18,115.02
<b>Est. Freight</b>	\$3,546.00
<b>Add'l Fees</b>	
<b>Bal Due</b>	\$219,393.02

<b>THIS ORDER IS A CONFIRMATION</b>	<b>Yes</b>
<b>THIS ORDER IS NOT A CONFIRMATION</b>	
<b>ACCOUNT CODE:</b>	

Purchases through Interlocal Agreements

CITY OF PORT ORCHARD

**PURCHASES THROUGH INTERLOCAL AGREEMENTS**

City Contract No.: 069.14  
 Interlocal Agreement with (government agency or Purchasing Co-Op name): HGACBY  
 Item Description: CCTV Truck

Do you have an Interlocal agreement signed with the Contract (host) Agency?

- If yes, where is it filed: Clerks
- If no, get a mutually signed Agreement in place before you continue.

HGAC  
~~State~~ OSP Contract No. #: SC01-18

*If you have an Office of State Procurement (OSP) contract number you may skip the remainder of this test because the OSP contracts comply with remaining requirements and retain the documentation on hand for SAO to review in the OSP offices.*

Is this a technology contract? NO

- If yes, do your own rules allow for technology contracts to be negotiated?
- If your own rules allow for negotiated IT contracts, you can skip this test.

Is this a services contract? NO

- If yes, do your own rules allow services to be negotiated?
- If your own rules allow for negotiated services, you can skip the remainder of the test.

Are you using this as only one of multiple quotes, for a small purchase? NO

- If yes, you can skip the remainder of the test. Your purchase will not mandate the sealed bid rules.

**Checklist for Required Compliance**

Does the host agency have a requirement to run a newspaper ad in their local paper and did they comply	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Federal and State contract rules usually don't require a newspaper ad. For others, attach the ad or place into the file
Did they list on a website? If so, state when and the address. Attach proof if possible.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Always required. Indicate date, address and/or attach or place into the file.
Did the bid & award comply with the Host agency's codes and statutes?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If No, you cannot use the bid.
Did bid contain any preference that is illegal in your statutes such as WMBE points?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, you cannot use the bid.

RCW 31.34.030 ESB 5958



**CONTRACT PRICING WORKSHEET**  
For Standard Equipment Purchases

Contract No.:

SCO1-18

Date Prepared:

6/12/2019

**This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.**

Buying Agency:	City of Port Orchard, WA	Contractor:	Elxsi dba CUES
Contact Person:	Tony Lang	Prepared By:	Robin Guthrie
Phone:		Phone:	800-327-7791 ext 224
Fax:		Fax:	
Email:		Email:	

Product Code:	G017	Description:	HI-CUBE VAN TV INSPECTION VEHICLE
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**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:** \$154,800.00

**B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable**  
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
CZ300 OZ II camera in lieu of Nite Lite	\$3,103.00	WB100/WD20 washdown system/workbench in equipment roof	\$3,806.00
MD380-1 Summit System upgrade	\$6,313.00	T1940-1 2 Drawers In Kickplate	\$1,273.00
GX136B Rear Monitor in wall	\$1,530.00	TR286 Portable Air compressor	\$1,285.00
MD320 Auto payout feature	\$3,772.00	EL11505 - addt cable (500')	\$2,500.00
TR1262 Transporter Drawer/Kickplate drawers	\$2,663.00	TR1262 Transporter Drawer/Kickplate drawer	\$2,663.00
GNETBASIC	\$16,197.00		
CC7000 7000 watt generator in lieu of 5500 watt	\$2,707.00		
TR1262 Transporter Drawer/Kickplate drawers	\$2,663.00		
MD604/MD603 - wired and wireless controllers	\$630.00		
SEE- Safe Entry/Exit bumper	\$2,500.00		
		<b>Subtotal From Additional Sheet(s):</b>	
		<b>Subtotal B:</b>	53605

**C. Unpublished Options - Itemize below - Attach additional sheet if necessary**  
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
TB334 REDI-Kit	\$2,195.00		
Electric Awning	\$2,392.00		
Restroom	\$4,500.00		
		<b>Subtotal C:</b>	9087

**Check:** Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). **For this transaction the percentage is:** 4%

**D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)**

Quantity Ordered:	1	X Subtotal of A + B + C:	217492	=	Subtotal D:	217492
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**E. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

Description	Cost	Description	Cost
Delivery	3546		
Less Cues sole source discount	-19760		
WA Sales Tax - 9%	18115.02		
		<b>Subtotal E:</b>	1901.02

**Delivery Date:** 90-120 days **F. Total Purchase Price (D+E):** 219393.02

"The Standard of the Industry"



# CUES

May 6, 2019

Tony Lang  
Port Orchard, WA City of  
1535 Vivian Cr.  
Port Orchard, WA 98367

**RE: Cues CCTV van**

Dear Caleb and Tony,

Here is the pricing information you requested for purchasing a new Cues Hi Cube van. Please see attached component list for greater detail. In summary, the system will include:

**Cues High Cube**

- Ford E450 – gas with 16' box
- Full height walkthrough to cab
- Roof top AC
- EVO 3 interior package
- No rooftop beacons
- Pull out transporter drawer
- Pull out tool drawers
- Work top over reel
- Storage cabinet in control room
- 20 gallon equipment wash down
- 32" rear monitor
- Side door with steps
- 7KW Onan generator
- OZ2 LED camera
- US21 transporter for 6"-24"
- 1500' gold cable on auto payout truck mounted reel
- Summit electronics package with wireless controller
- Gnet Basic software and rack mounted computer and peripherals
- Roller, poles, guides
- Gnet Office
- 2 days training
- delivery

Total	\$222,096 + WA sales tax
<b>HGAC SC01-018 discounted price</b>	<b>\$185,350 + WA sales tax</b>

Optional:	
Spare track set for US21	\$850
Restroom	\$4,500
Redi Kit remote troubleshooting tool	\$1,756
Power boom crane	\$5,054
Power awning	\$2,392
Small air compressor and hose reel	\$982
Rp124 kit	\$400

Loaners are free for the lifetime of your equipment in the event of service need. Cues NW factory direct office located in Portland area offers full field and bench repairs as well as parts and loaner equipment. We look forward to demoing.

Sincerely,

Gillian Wilson  
Cues NW Territory Manager

**Specifications For: PORT ORCHARD, WA**

**1 FORD E-450 GAS CUT-A-WAY 176" WB 2X4 CHASSIS**

- 1 6.8L SOHC EFI Triton V10 Engine
- 1 6-Speed Automatic Transmission with OD
- 1 14,500 lb. GVWR
- 1 176" Wheel Base
- 1 Cab Air Conditioner
- 1 AM / FM Radio

**1 16' CARGO BOX WITH WALKTHRU**

- 1 AeroCap with Walk Thru
- 1 2" X 6" Dense Pine Flooring
- 1 LED Light Package Includes Body Clearance and Stop / Tail / Turn
- 1 Full Width Barn Doors with CAM (Pipe) Locks on Each Door
- 2 Laminated Steel Lock
- 1 Kemlite Covering on Inside Rear Doors
- 1 Back Up Alarm

**1 REAR AWNING FOR PROTECTION FROM SUN AND RAIN**

**1 CUES EXCLUSIVE POWER BOOM CRANE WITH LED LIGHTING**

Power actuated boom extends and retracts up to 24" at the touch of a button for precise deployment/retrieval placement of the transporter/camera, 750 lb. capacity, Yellow Retrieval Hook, 75'x 5/32" Cable Length, Floor Mounted, 12VDC, Push Button 4-Function Detachable 12' Pendant Control, Powder Coat Finish. High intensity LED lighting to help light up the manhole to assist in deployment/retrieval of the transporter/camera.

**1 SAFE ENTRY/EXIT BUMPER**

- 1 Three (3) Steps Evenly Spaced
- 1 Bottom Step Folds Up for Ground Clearance
- 1 Safety Grab Handle

**1 KICKPLATE TRANSPORTER STORAGE**

- 1 Lockable Storage Compartment for Camera and Transporter
- 1 Sliding Drawer
- 1 Notch in rear door threshold of body for TV cable to pass through to transporter storage drawer

**1 KICKPLATE 2 DRAWER STACK ALUMINUM STORAGE**

**1 BULKHEAD WALL BETWEEN CAB AND CONTROL ROOM**

- 1 Door

**1 TV HIGH CUBE VAN EXTERIOR LIGHTING & CONTROL ROOM - EVOLUTION 3.0 TO INCLUDE:**

- ~~2 Amber LED Strobe Warning Beacons Deleted~~
- 2 Adjustable LED Floodlights Rear of Vehicle Area Illumination
- Control Room Interior:
  - 1 Lonseal Lonplate Flooring
  - 1 Kemlite Wall & Ceiling Covering
  - 1 Bulkhead Wall With Passage Door From Control Room to Equipment Room
  - 1 Tinted Viewing Window in Bulkhead Wall

- 1 Tinted Viewing Window in Bulkhead Door
  - 1 Above Desk Control Console with Rack Mount for Electronic Equipment
  - 1 Desktop / Work Area
  - 1 12V High Intensity LED Light Fixture
  - 2 Electrical Outlet with Dual Receptacles
  - 1 Fire Extinguisher with Bracket, 10BC Rating
  - 1 Operators Chair, Swivel With Casters
  - 1 Breaker Box Storage Area with Locking Positive Latch
- 1 CURBSIDE DOOR WITH FOLD-DOWN STEPS FOR EVO 3.0**
- 1 ROOF TOP AIR CONDITIONER, 13,500 BTU WITH HEAT STRIP**
- 1 BENCH SEAT IN CONTROL ROOM**
- 1 CUSHION FOR BENCH SEAT**
- 1 CLOSET IN CONTROL ROOM**
- 1 ENCLOSED LAVATORY TO INCLUDE:**
- 1 RV Type Toilet
  - 1 Ventilation Fan, Roof Mounted
  - 1 Toilet Paper Dispenser
  - 1 Light Fixture & Light
  - 1 Lonseal Lonplate Floor Covering
  - 1 Laminated Surface Wall Covering
  - 1 Kemlite Covered Ceiling
  - 1 Passage Door from Lavatory to Equipment Room
- 1 TV HI-CUBE VAN EQUIPMENT ROOM INTERIOR - EVOLUTION 3.0 TO INCLUDE:**
- 1 Lonseal Lonplate Flooring
  - 1 Kemlite Wall & Ceiling Covering
  - 1 Electrical Outlet with Dual Receptacles
  - 1 12V High Intensity LED Light Fixture
  - 1 15 Minute Courtesy Timer Located at Rear Door Area for 12V LED Interior Lights
- 1 20-GALLON WASHDOWN SYSTEM TO INCLUDE:**
- 1 20-Gallon Fresh Water Tank, **NO Gray Water Tank**
  - 1 Electric Water Pump
  - 1 Retractable Hose Reel with 25'Water Hose and Nozzle
- 1 UPPER AND LOWER STORAGE CABINET IN EQUIPMENT ROOM**
- 1 Lower Storage Cabinet / Work Top with **No Sink**
  - 1 Upper Wall Mounted Storage Cabinet
- 1 ADDITIONAL LIGHTING AND OUTLET**
- 1 Light Mounted Above Work Top
  - 1 Dual Receptacle Outlet Above Work Top

- 1 RETRACTABLE AIR HOSE REEL WITH 25' AIR HOSE, AND CHUCK**
  
- 1 PORTABLE AIR COMPRESSOR**
  - 1 Electric Air Compressor
  - 1 Air Tank
  
- 1 32" REAR FLAT SCREEN MONITOR MOUNTED IN BULKHEAD WALL**
  - 1 Flat Screen Monitor
  - 1 Cable Assembly - Video Monitor to Monitor in Control Room
  - 1 Electrical Outlet
  
- 1 WORKBENCH OVER TV REEL**
  
- 1 7000 WATT GAS ONAN GENERATOR**
  - 1 120 Volt 60 HZ 7000 Watt EFI (Electronic Fuel injection) Commercial Grade Generator
    - 1 Gasoline Powered
    - 1 Electric Start
    - 1 Air Cooled
    - 1 Generator Remote Start/Stop Cable assembly
  
- 1 GENERATOR COMPARTMENT [UNDER CHASSIS MOUNT]**
  - 1 Generator Storage Compartment with Lockable External Access Door
  - 1 Commercial Power Supply Receptacle, 25' Cord, and Plug
  - 1 Electrical Supply Center with Circuit Breaker Box
  - 1 Commercial power and Generator Power Connectors
  - 1 Automatic Power Transfer Switch
  
- 1 SYSTEM ENGINEERING PANEL, FOR POWER INFORMATION AND GENERATOR FUNCTIONS, RACK MOUNTED, TO INCLUDE:**
  - 1 Four Function AC Power Meter displaying Critical Power Information including:
    - 1 Voltage
    - 1 Hertz
    - 1 Amperage
    - 1 Active Power (Watts)
  - 1 Front panel Selector Switch for two modes of operation:
    - 1 Fixed reading
    - 1 Continuous Auto-cycling
  - 1 Generator Battery Meter to Display Starting and Charging Voltage
  - 1 Generator Hour Meter
  - 1 Generator Remote Start/Stop Control Switch
  - 1 On/Off Switch for Emergency Warning beacons (Switch to Illuminate When On)
  
- 1 P&T ZOOM M/C LED CAMERA**
  - 1 Solid State Color Sewer TV Camera
  - 1 Pan & Rotate Camera Head, 40:1 Zoom Ratio, 10x Optical Zoom, 4x Digital Zoom
  - 1 NTSC Color Standard with 4x Light Integration
  - 1 4 x 5W Cluster LED's for 6" through 72" lines
  - 1 Camera Transportation and Storage Case
  
- 1 21" TRAC TRANSPORTER M/C TO INCLUDE:**
  - 1 6" Trac Transporter with Freewheel and Powered Reverse
  - 1 Y Eliminator
  
- 1 8"-15" EXTENDERS FOR 21" TRAC TRANSPORTER**



- 1 SPARE PARTS KIT FOR TRAC TRANSPORTER TO INCLUDE:**
  - 1 Additional Chain Links And Rubber Cleats
- 1 12/5/4 ADAPTER CABLE**
- 1 18" - 24" TRAC TRANSPORTER EXTENSION KIT**
- 2 TRACK ASSEMBLY WITH ROUND CLEAT, 38 COUNT, US21**
- 1 1500' CABLE ASSEMBLY, M/C 12PIN**
  - 1 1500'Gold Multi Conductor Kevlar Fiber Armored Combination TV Transmission / Tow Cable
  - 1 .450 Diameter
  - 1 Kevlar Armored Cable Terminal Connector
  - 1 Cable Strain Relief
- 1 TV REEL ASSEMBLY, MECHANICAL FOOTAGE FOR SUMMIT .450 CABLE**
  - 1 Black Thermoplastic Powder Coated Frame
  - 1 Power Levelwind & Multi Ratio Manual Transmission
  - 1 Footage Meter with Local Counter and Remote Electronic Counter
  - 1 Transmission Control at Viewing Station
  - 1 Local Reel Mount Electrical and Mechanical Control
  - 1 Sealed Continuous Contact Collector Assembly
  - 1 Removable Drip Pan for Cleaning
- 1 AUTOMATIC PAYOUT SYSTEM FOR REEL - INSTALLED**
- 2 19" (MINIMUM) FLATSCREEN COLOR INDUSTRIAL TV MONITOR NTSC / PAL COLOR STANDARDS**
- 1 PCU ASSEMBLY [RACK MOUNT]**
- 1 CCU ASSEMBLY [RACK MOUNT]**
  - 1 Alpha Numeric Information Display, with Multi Paging and Defect Coding
  - 1 Remote "QWERTY" Keyboard
  - 1 On Screen Footage Display
- 1 TEST CABLE**
- 1 8.7" MINI KEYBOARD**
- 1 BRACKET, LOGITECH CONTROLLER, K2**
- 1 WIRED USB CONTROLLER**
  - 1 Joystick Control for Pan and Tilt Zoom Camera to Include:
    - 1 360 Degree Rotate
    - 1 330 Degree Optical Pan
  - 1 Joystick Control for All Steering Functions & Forward / Reverse Directions for Transporter
  - 1 Camera Lift Control for Optional Electronic Camera Lift
  - 1 All Other Controls for Camera to Include:
    - 1 Camera Iris and Focus Override & Zoom
    - 1 Camera Lights & Shutter Control for Light Enhancement

- 1 Camera Diagnostics & Auto Home
- 1 Cruise Control to Set Speed of the Transporter for Hands Off Operation
- 1 All Reel Controls to Include: Retrieve, Release, and Variable Speed [Excluding Dolly Systems]

**1 WIRELESS CONTROLLER**

- 1 Joystick Control for Pan and Tilt Zoom Camera to Include:
  - 1 360 Degree Rotate
  - 1 330 Degree Optical Pan
- 1 Joystick Control for All Steering Functions & Forward / Reverse Directions for Transporter
- 1 Camera Lift Control for Optional Electronic Camera Lift
- 1 All Other Controls for Camera to Include:
  - 1 Camera Iris and Focus Override & Zoom
  - 1 Camera Lights & Shutter Control for Light Enhancement
  - 1 Camera Diagnostics & Auto Home
- 1 Cruise Control to Set Speed of the Transporter for Hands Off Operation
- 1 All Reel Controls to Include: Retrieve, Release, and Variable Speed [Excluding Dolly Systems]

**1 [RACK MOUNT] COMPUTER W/GraniteNet BASIC TO INCLUDE (MINIMUM):\* \*\***

- 1 Motherboard with Intel 8th Gen. LGA 1151 Socket; Intel Z370 Chipset
- 1 Intel Core i7-8700 Processor at 3.2 GHz
- 1 Intel UHD Graphics 630 with HDMI/DVI/VGA
- 1 8 GB DDR4 RAM, 2400 MHz
- 2 Intel Gigabit Network adapters
- 1 Intel AC 7265 Dual Band Wireless adapter; 802.11 a/b/g/n/ac
- 1 Bluetooth 4.2
- 6 USB 3.1 Gen 1 ports (4 rear, 2 front)
- 2 USB 3.1 Gen 2 ports (1 type A, 1 type C)
- 1 250 Gigabyte M.2 Solid State Drive
- 1 1 Terabyte SATA Hard Drive, 7200 RPM
- 1 DVD +/- RW Optical Drive
- 1 USB Video Capture Device for MPEG 1 / 2 / 4 / WMV
- 2 RS232 Serial Comm Ports
- 1 500 Watt 1U ATX Power Supply
- 1 Industrial Hardened Case Slim 2U Design for 19" Rack
- 1 Windows 10 Professional 64-bit Operating System
- 1 GraniteNet Basic Software

\*Spec for computers can change without notice

\*\*International Configuration may vary to comply with the U.S. Department of Commerce, Bureau of Industry & Security regulations on export of technology

**1 USB BLACK COMPUTER KEYBOARD AND MOUSE**

**1 HP OFFICEJET COLOR PRINTER**

**1 GraniteNet BASIC SUPPORT PLAN**

**1 UPS TO INCLUDE THE FOLLOWING:**

- 1 Input 120-Volt / Output 120-Volt
- 1 Cord Management Straps

**1 GraniteNet OFFICE KIT**

**1 GraniteNet OFFICE SUPPORT PLAN**

**1 12P TERMINATION REPAIR KIT METAL PR, SPR, SMM**

**1 REDI EVALUATION KIT TO INCLUDE:**

- 1 Rugged Weather Proof Storage Case
- 1 Digital Hi-Resolution Wide Angle Web Camera
- 1 Diagnostic Test Box To Include:
  - 1 Voltage Test Points
  - 1 Built-In Mini Camera
- 1 Footage Test Box
- 1 Digital Multi-Meter
- 1 USB Diagnostic Tool
- 1 Video Cables And Adaptors

**1 KIT,DOWNHOLE,STD**

- 1 Toproller Assembly, Manhole, TV Only, AI
- 1 Claw Hook, Manhole Adapter, f/WT319
- 1 Hook Assembly, Retrieval (SNGL,SHTY/LMP/PR)
- 6 Pole Assembly, Retrieval / Downhole tl,58"
- 1 Roller Assembly, Invert f/ WT319

**1 MULTI CONDUCTOR TV ONLY TOOL KIT**

- 1 Milliampmeter Tool
- 1 Electrical Tape
- 1 Needle Nose Pliers
- 1 Six-In-One Screwdriver
- 1 6" Adjustable Wrench
- 1 Anti Seize Grease
- 1 9-Piece Allen Wrench kit
- 1 Solder Iron Kit
- 1 Pliers
- 1 5/32 T-Handle Hex Wrench

**1 TRAINING, ON-SITE (TWO DAYS)**

**1 TRUCK DELIVERY-WASHINGTON**

A CONTRACT BETWEEN  
HOUSTON-GALVESTON AREA COUNCIL  
Houston, Texas  
AND  
CUES, INC.  
Orlando, Florida

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, **CUES, Inc.** hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 3600 Rio Vista Avenue, Orlando, Florida 32805.

**ARTICLE 1:** SCOPE OF SERVICES  
The parties have entered into a **Sewer Cleaning, Hydro-Excavating, Inspection Equipment & Miscellaneous Services Contract** to become effective as of January 1, 2018, and to continue through December 31, 2020 (the "Contract"), subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**. **H-GAC** enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as **END USER**, for the purchase of **Sewer Cleaning, Hydro-Excavating, Inspection Equipment & Miscellaneous Services** offered by the **CONTRACTOR**. The **CONTRACTOR** agrees to sell **Sewer Cleaning, Hydro-Excavating, Inspection Equipment & Miscellaneous Services** through the **H-GAC Contract** to **END USERS**.

**ARTICLE 2:** THE COMPLETE AGREEMENT  
The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No:SC01-18, including any relevant suffixes
4. **CONTRACTOR's** Response to Bid No:SC01-18, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

**ARTICLE 3:** LEGAL AUTHORITY  
**CONTRACTOR** and **H-GAC** warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

**ARTICLE 4:** APPLICABLE LAWS  
The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

**ARTICLE 5:** INDEPENDENT CONTRACTOR  
The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of **H-GAC** or **CONTRACTOR**. No provision of this Contract or act of **H-GAC** in performance of this Contract shall be construed as making **CONTRACTOR** the agent, servant or employee of **H-GAC**, the State of Texas or the United States Government. Employees of **CONTRACTOR** are subject to the exclusive control and supervision of **CONTRACTOR**. **CONTRACTOR** is solely responsible for employee payrolls and claims arising therefrom.

**ARTICLE 6:** END USER AGREEMENTS  
**H-GAC** acknowledges that the **END USER** may choose to enter into an End User Agreement with the **CONTRACTOR** through this Contract and that the term of said Agreement may exceed the term of the **H-GAC Contract**. However, this acknowledgment is not to be construed as **H-GAC's** endorsement or approval of the End User Agreement terms and conditions. **CONTRACTOR** agrees not to offer, agree to or accept from **END USER** any terms or conditions that conflict with or contravene those in **CONTRACTOR's H-GAC contract**. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between **CONTRACTOR** and any **END USER** which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that **CONTRACTOR** will no longer be able to enter into any new End User Agreements with **END**

USERS pursuant to this Contract. Applicable H-GAC order processing charges will be due and payable to H-GAC on any End User Agreements surviving termination of this Contract between H-GAC and CONTRACTOR.

**ARTICLE 7:** SUBCONTRACTS & ASSIGNMENTS  
CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to H-GAC. H-GAC reserves the right to accept or reject any such change. CONTRACTOR shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. H-GAC shall be liable solely to CONTRACTOR and not to any of its Subcontractors or Assignees.

**ARTICLE 8:** EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS  
CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to END USER under this Contract. H-GAC, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of CONTRACTOR. Failure to provide access to records may be cause for termination of this Contract. CONTRACTOR shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. CONTRACTOR further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that H-GAC'S duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

**ARTICLE 9:** REPORTING REQUIREMENTS  
CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If CONTRACTOR fails to submit to H-GAC in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

**ARTICLE 10:** MOST FAVORED CUSTOMER CLAUSE  
If CONTRACTOR, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to H-GAC on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to H-GAC, CONTRACTOR shall notify H-GAC within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein CONTRACTOR shall provide the same prices, warranties, benefits, or terms to H-GAC and its END USER. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If CONTRACTOR is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, CONTRACTOR shall within ten (10) business days notify H-GAC in writing, setting forth the detailed reasons CONTRACTOR believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. H-GAC, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between H-GAC and CONTRACTOR shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to H-GAC.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure.  
*EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

**ARTICLE 11:** SEVERABILITY  
All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 12:** DISPUTES  
Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to CONTRACTOR. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, CONTRACTOR requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this

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## City of Port Orchard

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

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### Agenda Staff Report

Agenda Item No.:	<u>Business Item 7G</u>	Meeting Date:	<u>September 10, 2019</u>
Subject:	<u>Approval of Amendment No. 1 to Contract No. 052-18 with Northwest Urban Law, PLLC for Special Projects and Land Use Attorney Services</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:** On June 26, 2018, Council approved a contract with Northwest Urban Law, PLLC. The agreement is for special projects and land use related attorney services.

At the August 13, 2019, Council meeting the Mayor brought it to the Council's attention that in reviewing the contract and the amount of legal services still needed, he is asking the contract to be amended to adjust the compensation portion of the agreement. The amendment is to increase the maximum amount of compensation from \$60,000 to \$100,000; with all the other terms and conditions of the original contract remain the same.

**Recommendation:** Approve Amendment No. 1 to Contract No. 052-18, as presented.

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

**Motion for consideration:** I move to approve Amendment No. 1 to Contract No. 052-18, with Northwest Urban Law, PLLC for special projects and land use attorney services, as presented.

**Fiscal Impact:** N/A

**Alternatives:** Deny and provide staff with direction.

**Attachments:** Amendment No. 1 and Contract No. 052-18

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**AMENDMENT NO. 1 TO CONTRACT NO. 052-18**  
**LEGAL SERVICES AGREEMENT BETWEEN CITY OF PORT ORCHARD**  
**AND NORTHWEST URBAN LAW, PLLC**

THIS AMENDMENT No. 1 to Contract No. 052-18 is made effective as of the September day of 10th 2019, by and between the City of Port Orchard (hereinafter the "City"), and Northwest Urban Law, PLLC (hereinafter the "Attorney").

**RECITALS**

WHEREAS, the City and the Attorney entered into Contract No. 052-18, dated June 26, 2018 ("Underlying Agreement"), for the provision of legal services related to certain special projects and land use issues, to be provided on a periodic basis; and

WHEREAS, the Underlying Agreement includes a compensation amount, which is stated as an amount that will not be exceeded, for the services to be provided by the Attorney, and the costs associated therewith; and

WHEREAS, unforeseeable work has caused the City to seek additional legal counsel services, which requires an increase to the maximum compensation amount set forth in the Underlying Agreement;

NOW, THEREFORE, in consideration of the mutual benefits accruing, it is agreed by and between the parties thereto as follows:

1. The Underlying Agreement between the parties, incorporated by this reference as fully as if herein set forth, is amended in, but only in, the following respect:

Section 3 ("Compensation") is hereby revised to read as follows:

**Section 3. Compensation.**

A. Attorney's Fees. The City shall pay the Attorney for work performed according to the hourly rate of \$250.00. Billing shall be in quarter of an hour increments. Invoices will be submitted on a monthly basis via email.

B. Maximum Contract Amount. During the initial term of this contract, the Attorney will notify the City Clerk by email when the billable amount is approaching \$5,000 in any one calendar month. During the initial term of this contract, the amount due shall not exceed One Hundred Thousand Dollars (\$100,000). If the Attorney is approaching the maximum amount prior to the contract termination date, she will communicate this information to the City Clerk to allow the City the option of either adjusting the Attorney's assigned work load or amending the contract.

C. Reimbursable Costs. The Attorney shall be reimbursed for costs and advances for such items as legal messenger services, court filing fees, large copying or mailing projects and other similar expense items.

2. In all other respects, the Underlying 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 Amendment on the day and year set forth above.

Dated this 10th day of September 2019.

**CITY OF PORT ORCHARD**

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

**ATTEST**

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

**NORTHWEST URBAN LAW, PLLC**

  
\_\_\_\_\_  
Jennifer Robertson, Managing Member

**LEGAL SERVICES AGREEMENT BETWEEN CITY OF PORT ORCHARD  
AND NORTHWEST URBAN LAW, PLLC**

THIS AGREEMENT is entered into by the City of Port Orchard, hereinafter referred to as the "City", and the law firm Northwest Urban Law, PLLC, hereinafter referred to as the "Attorney."

**RECITALS**

WHEREAS, the City has special projects and land use work and would like to hire the Attorney to assist with this work on a periodic basis; and

WHEREAS, the parties desire to define the services to be provided by the Attorney, and the costs associated therewith;

NOW, THEREFORE, The parties hereto agree as follows:

**TERMS**

**Section 1. Term.** The term of this Agreement shall be from the date this Agreement is executed by both parties until December 31, 2019, unless earlier terminated pursuant to the terms hereof. Either party may terminate this Agreement with or without cause, by providing thirty (30) days written notice to the other party.

**Section 2. Duties.**

A. Jennifer Robertson shall serve as the Attorney.

B. The Attorney shall be principally responsible for performing certain civil legal work for the City, including special projects and land use work as assigned. This work will be project-specific work, the scope of which will be established between the parties when matters are assigned and accepted by the Attorney. Upon request, the Attorney will provide legal services on City premises, but it is anticipated that most of the legal services will be provided remotely by e-mail, telephone, and/or video-conference. In-person appointments may be scheduled as required or requested by the City.

The work undertaken with the Attorney shall be as assigned by the City. Nothing in this Agreement requires the City to assign any specific matter to the Attorney. The City has a separate City Attorney to provide the routine legal work for the City. The following list of duties is illustrative of the services that may be performed by the Attorney upon request by the City, but is not necessarily inclusive of all duties and the City may opt to forego some of these services to keep legal costs within budget:

1. Draft City ordinances, Contracts, resolutions, interlocal agreements, correspondence and other legal documents as requested by the City;
2. Approve all legal documents that the Attorney is assigned to work on as to proper form and content;

3. Advise the Mayor, Councilmembers, staff members, committee members, commission members and board members with regard to legal matters relating to issues assigned to the Attorney;
4. Consult with and advise the Mayor, Councilmembers. Department heads and staff if requested by a department head or the Mayor, by telephone, in person and/or by written memo, on assigned matters;
5. Consult with any other legal counsel hired by the City, including the City Attorney, as directed by the City;
6. Attend Council meetings upon request;
7. Attend board meetings, commission meetings, committee meetings or any other type of meeting on an as-needed basis, including meetings with other governmental agencies and elected officials as necessary on matters involving the City projects assigned to the Attorney;
8. Such other duties as are necessary and appropriate in order to provide the City with legal representation on areas assigned to the Attorney.

C. The Attorney's duties shall not include the following:

1. Providing public defense services for indigent defendants;
2. Providing criminal prosecution services;
3. Providing legal services associated with any personnel, employment matters, union negotiations or disciplinary proceedings;
4. Representing the City in any legal matter where the Attorney is prohibited from doing so as a result of a conflict of interest under the Rules of Professional Conduct or other applicable law or regulation;
5. Providing any litigation services beyond the administrative level unless specifically agreed by the Attorney;
6. Providing legal services where the City has insurance coverage that provides for legal services to the City, the City has tendered the defense of the lawsuit to the insurance carrier, and the insurance carrier has assigned the lawsuit to an attorney other than the Attorney.

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**Section 3. Compensation.**

A. Attorney's Fees. The City shall pay the Attorney for work performed according to the hourly rate of \$250.00. Billing shall be in quarter of an hour increments. Invoices will be submitted on a monthly basis via email.

B. Maximum Contract Amount. During the initial term of this contract, the Attorney will notify the City Clerk by email when the billable amount is approaching \$5,000 in any one calendar month. During the initial term of this contract, the amount due shall not exceed Sixty Thousand Dollars (\$60,000). If the Attorney is approaching the maximum amount prior to the contract termination date, she will communicate this information to the City Clerk to allow the City the option of either adjusting the Attorney's assigned work load or amending the contract.

C. Reimbursable Costs. The Attorney shall be reimbursed for costs and advances for such items such as legal messenger services, court filing fees, large copying or mailing projects and other similar expense items.

**Section 4. Equipment and Other Resources.** The Attorney shall provide, at no cost to the City, its own cell phone, access to standard on-line computer legal research services, long distance telephone, cell phone service, mileage, etc.

**Section 5. Entire Agreement.** This Agreement incorporates the entire agreement between the parties with regard to the legal work to be performed on behalf of the City, and the rates to be charged therefore.

**Section 6. Insurance.**

A. The Attorney will procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Attorney, its agents, representatives, or employees.

B. No Limitation. The Attorney's maintenance of insurance as required by this Agreement will not be construed to limit the liability of the Attorney to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

Minimum Scope of Insurance

C. The Attorney will obtain insurance of the types described below:

- 1) Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage will be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy will be endorsed to provide contractual liability coverage.
- 2) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington for any period of time that the Attorney has any employees.
- 3) Professional Liability insurance appropriate to the Attorney's profession.

Minimum Amounts of Insurance

D. The Attorney will maintain the following insurance limits:

- 1) Automobile Liability personal auto policy with a \$250,000 per person for bodily injury and property damage and \$500,000 per accident.
- 2) Professional Liability insurance will be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

E. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Professional Liability insurance:

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

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

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

H. Notice of Cancellation. The Attorney will provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

I. Failure to Maintain Insurance. Failure on the part of the Attorney to maintain the insurance as required will constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to the Attorney to correct the breach, immediately terminate this Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due to the Attorney from the City.

J. Subcontractors. The Attorney will include all subcontractors as insureds under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the same insurance requirements as stated herein for the Attorney.

**Section 7. Independent Contractor.** The Attorney is an independent contractor with respect to the services to be provided under this Agreement. The City shall not be liable for, nor obligation to pay to the Attorney or any of its employees, sick leave, vacation, pay, overtime or any other benefit applicable to employees of the City, nor to pay or deduct any social security, income tax or other tax from the payments made to the Attorney which may arise as an incident

of the Attorney performing services for the City. The City shall not be obligated to pay industrial insurance for the services rendered by the Attorney.

**Section 8. Ownership of Work Product.**

- A. Any records, files, documents, drawings, specifications, data, or information, regardless of form or format, and all other products or materials produced by the Attorney in connection with the services provided to the City, will be the property of the City whether the project for which they are made is executed or not. All such documents, products, and materials will be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products, and materials prepared by the Attorney are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Attorney harmless for such use.
- B. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released to the news media or any other source without the written permission of the City.
- C. The Attorney at such times and in such forms as the City may require, will furnish to the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement. All of the reports, information, data, records, and other related materials, prepared or assembled by the Attorney under this Agreement are potentially subject to public disclosure pursuant to Ch. 42.56 RCW. To the extent allowed by Ch. 42.56 RCW, reports, information, data, records, and other related materials prepared or assembled by the Attorney under this Agreement that contain information that is personal and wherein a right to privacy exists, or that falls under a statutorily-specified exemption from disclosure, will be exempt from disclosure. Generally, Chapter 42.56, RCW requires disclosure of all but the most personal and sensitive information in City hands.

**Section 9. Hold Harmless.** The Attorney agrees to indemnify, hold harmless and defend the City, its elected and appointed officials, employees and agents from and against any and all claims, judgments or awards of damages arising out of or resulting from the acts, errors or omissions of the Attorney. The City agrees to indemnify, hold harmless, and defend the Attorney and its officers, employees and agents from and against any and all claims, judgments or awards of damages, arising out of or resulting from the acts, errors or omissions of the City, its elected and appointed officials, employees and agents.

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

specifically and expressly understood that the indemnification provided herein constitutes the Attorney's waiver of immunity under the Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

**Section 10. Rules of Professional Conduct.** All services provided by the Attorney under this Agreement will be performed in accordance with the Rules of Professional Conduct for attorneys established by the Washington Supreme Court.

**Section 11. Subcontracting or Assignment.** The Attorney may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City.

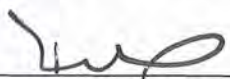
**Section 12. Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

**Attorney:**  
Jennifer S. Robertson  
Northwest Urban Law, PLLC  
8015 SE 28<sup>th</sup> Street, Suite 314  
Mercer Island, WA 98040

**City:**  
City Clerk  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366

Dated this 26 day of June, 2018.

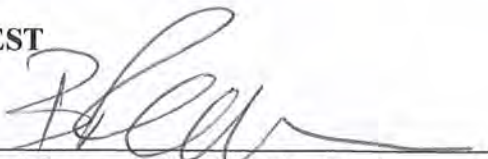
**CITY OF PORT ORCHARD**

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

**NORTHWEST URBAN LAW, PLLC**

  
\_\_\_\_\_  
Jennifer Robertson, Managing Member

**ATTEST**

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







**City of Port Orchard**

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

**Agenda Staff Report**

Agenda Item No.:	<u>Business Item 7H</u>	Meeting Date:	<u>September 10, 2019</u>
Subject:	<u>Approval of Amendment No. 2 to Contract</u>	Prepared by:	<u>Brandy Rinearson, MMC</u>
	<u>No. 029-11 with KeyBank National Assoc.</u>		<u>City Clerk</u>
	<u>to Lease Right-of-Way Adjacent to 1301</u>	Atty Routing No.:	<u>053-19</u>
	<u>Bay Street</u>	Atty Review Date:	<u>September 3, 2019</u>

**Summary:** Staff was contacted by Zach Galyean, a representative of KeyBank, asking the City to continue leasing the right-of-way (ROW) with KeyBank. The ROW is adjacent to KeyBank off of Bay Street and is for approximately 8,250 square feet; which includes a few parking stalls and access to a small portion of the drive thru. The current lease is set to expire on September 30, 2021; exhausting it’s third renewal term initiated in 2006. The yearly lease amount is \$3,000.

Key Bank’s representative stated they know it is early to ask for a renewal, but they are in a position that requires from their building owner to put in a 2-year notice, should they no longer wish to lease the building. They initially were asking the City to entertain a continued lease for an additional 5 years, with three (3) five (5) year options to renew.

Since it had been a while that an appraisal was done, the City was able to use a comparable appraisal that was done in 2016 for the Bruce Titus Lease. Legal counsel agreed it was a comparable and current enough appraisal that the City could use the square foot rate and apply it to the KeyBank lease.

Staff presented this item at the July 1, 2019 and August 26, 2019, Land Use Committee meetings and the following were discussed:

- 1) How much of the leased property is actually needed? Meaning, looking at the map it appears that the City is leasing not only a few parking stalls and the entrance to the drive thru; but also, a portion on the traveled area from the park. It may be better served as having an easement for the travel area and only lease the stalls and the entrance to drive thru area.

Key Bank response: they would like to keep all the area, they propose no change to the leased area.

Clerk response: in Section 5 of the agreement it states the City reserves the right to modify the lease at any time to remove the portion of the lease adjacent to Blackjack creek, for the Park purposes. And it should not interfere with the Bank’s right to vehicular and pedestrian ingress and egress from the banks owned property. In Section 12, it states the lease is for pedestrian and vehicle ingress and egress, and parking.

- 2) How much of the parking is being used? Are they all full or can some of the parking leased area be reduced?

Key Bank response: they would like to keep all the area, they propose no change to the leased area.

- 3) The City could be a violation of the Subdivision Act to lease property without doing a subdivision. This may be different because it may be due to it being on a waterway or could only be relevant to only fee simple property.

Legal Counsel response: In researching the issue it appears there is no violation for this particular type of property and the type of lease. The lease is ROW, not a fee simple property. Legal counsel supports the renewal of the lease for use of the ROW.

- 4) Could be done through a Street Use Permit, rather than an actual lease.

Legal counsel response: This really depends on what the City prefers. If the City feels they need the property on short notice this may be the course of action. If they have no immediate need for it then a lease is the appropriate action.

Key Bank response: they would prefer the lease, as this would be a more secure assurance that they would not have to vacate the premises quickly and disrupt their customers.

- 5) Not in favor of a 20-year lease (5-year lease with three (3) five (5) year options to renewal). The committee would support a two (2) five (5) year options.

Key Bank response: They support the committee and will do the two (2) five (5) year options; after the 2021.

- 6) Not in favor of a fixed lease. However, support for an annual increase of approximate 2%, which would be about \$100-200 a year or possibly applying an increase every five years of an increase of \$400-500.

Key Bank response: They understand, and increases have been added to their revised proposal. They prefer the increase to occur every 5 years, for administrative purposes; with the understanding the 5 years increase would be a 10%, rather than 2% every year.

**Recommendation:** Approve Amendment No. 2, as presented.

**Relationship to Comprehensive Plan:** NA

**Motion for consideration:** I move to approve Amendment No. 2 to Contract No. 029-11 with KeyBank National Association to lease City right-of-way adjacent to 1301 Bay Street, as presented.

**Fiscal Impact:** The City is currently collecting \$250 per month (\$3,000 annually) and this amendment will increase the monthly amount to \$425 (\$5,100 annually), starting in 2021.

**Alternatives:** Deny the amendment and provide staff with direction.

**Attachments:** Amendment and Contract No. 29-11.

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

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON,  
AMENDING CHAPTER 20.212 OF THE PORT ORCHARD  
MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND  
PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, POMC Chapter 20.212 provides for the Board of Building Appeals to hear appeals of abatement orders; and

**WHEREAS**, the Board of Building Appeals is a group of local professionals in building and related trades, established by the Building Code to hear appeals related to the interpretation and application of the Building Code; and

**WHEREAS**, abatement orders issued under Chapter 20.212, and resulting appeals, are typically related to factors other than the application and interpretation of the Building Code; and

**WHEREAS**, an administrative Hearing Officer would be more appropriate to the nature of Chapter 20.212 appeals; and

**WHEREAS**, various amendments are needed to clarify various other provisions; and

**WHEREAS**, the City may adopt amendments to the City's development regulations pursuant to RCW 36.70A.106; and

**WHEREAS**, on August 19, 2019, the City submitted to the Department of Commerce a 60-day request for review of the proposed minor revisions and corrections to Title 20, pursuant to RCW 36.70A.106(1); and

**WHEREAS**, on August 23, 2019, the City's SEPA official issued a determination of non-significance for the proposed revisions and corrections to Chapter 20.212, and there have been no appeals; and

**WHEREAS**, on August 26, 2019, the Land Use Committee of the City Council considered the proposed amendments and recommended bringing them forward for consideration by the Planning Commission and the City Council; and,

**WHEREAS**, on September 2, 2019, the City's Planning Commission held a duly-noticed public hearing and voted unanimously to recommend approval by the City Council; **NOW, THEREFORE**

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

**SECTION 1.** POMC Chapter 20.212 Amended. Port Orchard Municipal Code, Chapter 20.212, is hereby amended to read as follows:

**Chapter 20.212  
DANGEROUS AND UNFIT DWELLINGS, BUILDINGS, AND STRUCTURES**

**Sections:**

- 20.212.010 Purpose – Findings.
- 20.212.020 Definitions.
- 20.212.030 Authority and liability.
- 20.212.040 Criteria for unfit or dangerous buildings or structures.
- 20.212.050 Inspection and complaint.
- 20.212.060 Findings and order.
- 20.212.070 Standards for demolition or repair.
- 20.212.080 Appeals.
- 20.212.090 Enforcement of order.
- 20.212.100 Emergency measures.
- 20.212.110 Sale or disposal of materials and contents.
- 20.212.120 Recovery of expenses.
- 20.212.130 Permits, regulations and workmanship.
- 20.212.140 Remedies not exclusive.
- 20.212.150 Public nuisance.
- 20.212.160 Violations.
- 20.212.170 Penalties and other relief.

**20.212.010 Purpose – Findings.**

The city council finds that there are within the city of Port Orchard dwellings, buildings, structures, and premises or portions thereof, which are dangerous or injurious to the health or safety of the occupants of such dwelling, building, structure or premises, the occupants of neighboring dwellings, or other residents of the city, or which are otherwise unfit for human habitation, occupancy, or other uses, due to: dilapidation; disrepair; structural defects; unpermitted and substandard construction or modification; lack of maintenance; abandonment or neglect; filth and other conditions attracting insects or vermin or likely to spread disease; defects increasing the risks and hazards of fire, accidents, or other calamities; inadequate ventilation and uncleanliness; inadequate light or sanitary facilities; inadequate drainage; overcrowding; violations of various building, health, and safety regulations; and, other conditions which are inimical to the health and welfare of the residents of the city.

Such dwellings, buildings, structures, and premises are dangerous to occupants, threaten the

public health, safety, and welfare, attract and harbor vagrants and criminals, offend public values, lower the value of neighboring properties, contribute to neighborhood or community deterioration, and hamper community and economic development.

When the owners or other persons in possession or control of such properties are unwilling or unable to correct such conditions in a proper and timely manner, it is in the interest of the community and of the occupants of such places for the city to intervene and vacate, secure, correct, repair, or remove such buildings, structures, and conditions, and to pursue all legal means to recover from such persons and/or properties the costs of doing so, including the costs of staff salaries and benefits, materials, contractors, and all other legally recoverable costs and expenses.

### **20.212.020 Definitions.**

For the purposes of this chapter, certain words shall have the meanings as defined in this section. Words, terms, or phrases not defined in this section shall be as defined in the building code, other codes of this jurisdiction, or their commonly accepted meanings. Words used in the singular include the plural. Words in masculine gender include the feminine and in the feminine gender include the masculine.

(1) “Abandoned” or “apparently abandoned” shall mean any dwelling, building, structure or premises that is so neglected, or other characteristics exist, as to support a reasonable conclusion that it is vacant – except as may be temporarily occupied by vagrants – and not cared for by any owner, tenant, or other party.

(2) “Abate” shall mean to remove, repair, correct, put an end to, secure from entry, or otherwise eliminate or diminish the intensity of, any dangerous or unfit dwelling, building, structure, or premises or portion thereof, or any condition causing a dwelling, building, structure, or premises to be dangerous or unfit.

(3) “Building” shall mean any structure used or intended for supporting or sheltering any use or occupancy.

(4) “Building code” shall mean the International Building and Residential Codes, and their referenced codes and standards, and other codes related to the construction, occupancy, and use of buildings and structures, as adopted and amended by Chapter 20.200 POMC or as subsequently amended.

(5) “Director” shall mean the Director of the Department of Community Development or Public Works and his/her designee(s).

(6) “Hearing Officer” shall mean the person designated by the City of Port Orchard to hear appeals of the findings and order issued by the Director, in accordance with POMC 20.212.080

and Chapter 2.82.

(7) "Owner" shall mean the owner or taxpayer shown in the records of the Kitsap County assessor, recorded with the Kitsap County auditor, or as otherwise known to the city of Port Orchard, and shall include any manager, agent, or other representative of the owner, or other person with responsibility for or control over the dwelling, building, structure or premises.

(8) "Person" shall mean and include any individual, business, corporation, organization, or entity.

(9) "Structure" shall mean or include that which is built or constructed or a portion thereof, including but not limited to buildings and such nonhabitable structures as walls, fences, towers, shafts, signs, and other constructed objects, whether temporary or permanent. For the purposes of this chapter, the terms "building" and "structure" may be used interchangeably, and both terms include dwellings and other premises and portions thereof.

#### **20.212.030 Authority and liability.**

(1) The Director is hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter. These powers shall include the following, in addition to others granted in this chapter: (a) to determine which dwellings, buildings, structures, or premises or portions thereof are dangerous or unfit for human habitation or other use; (b) to administer oaths and affirmations, examine witnesses, and receive evidence; (c) to investigate and inspect dwellings, buildings, structures and premises and other property conditions in the city, and to enter into and upon such for the purpose of making examinations when the Director has reasonable ground for believing they are dangerous or unfit for human habitation or other use; provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, to obtain an order for this purpose after submitting evidence in support of an application which is adequate to justify such an order from a court of competent jurisdiction in the event entry is denied or resisted, or to otherwise inspect or observe the building or structure in any lawful manner that does not constitute an unlawful trespass or violate a reasonable expectation of privacy; (d) to direct any utility provider to temporarily or permanently suspend or terminate service to any building or structure deemed dangerous or unfit under this chapter, and to authorize the reconnection or resumption of service once the conditions necessitating such action have been corrected to the satisfaction of the Director; (e) to hire or otherwise receive assistance from such other experts, inspectors, individuals, contractors, agencies, or others as may be appropriate to conduct or assist with such inspections and actions or to provide reports or other information or resources the Director may consider in evaluating such buildings/structures or use in enforcing the provisions of this code; (f) to expend public funds to abate such conditions; and (g) to cause such funds to be recovered by legal means including but not limited to filing liens against the properties upon which such buildings or structures have

been abated.

(2) The Director or designee, Hearing Officer, or employee charged with the enforcement of this chapter, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be civilly or criminally rendered liable personally and are hereby relieved from personal liability for any damage or loss accruing to persons or property as a result of, or by reason of, any act or omission in the discharge of official duties.

(3) Any action, suit, or criminal proceeding instituted against the Director or designee, Hearing Officer, or city employee, because of an act performed or an omission made by that Director or designee, Hearing Officer, or employee in the lawful discharge of duties under the provisions of this chapter shall be defended by legal representatives of the jurisdiction until the final termination of the action, suit, or proceeding. The Director or designee, Hearing Officer, or employee shall not be liable for the costs of any action, suit, or proceeding that is instituted relating to the provisions of this chapter.

**20.212.040 Criteria for unfit or dangerous buildings or structures.**

The Director may determine that a building or structure is dangerous or unfit for occupancy or other use if he/she finds that conditions exist in such building or structure that are dangerous or injurious to the health, safety, or welfare of the occupants of such structure, the occupants of neighboring structures, or other residents of the city, or is otherwise not safe or fit for the use for which it was designed or intended, or for other appropriate and legal use. Such conditions may include the following, without limitations:

(1) Any door, aisle, passageway, stairway, or other means of exit is too narrow or small, or other factors or conditions exist, so as to be unsafe or to hinder safe exit in case of panic, fire, or other emergency.

(2) The walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn, or other factors or conditions exist, so as to be unsafe or to not provide safe and adequate means of exit in case of panic, fire, or other emergency.

(3) The stress in any materials, member, or portion thereof, due to dead and live loads, is more than one and one-half times the working stress or stresses allowed in the building code for new buildings of similar structure, purpose, or location.

(4) Any portion has been damaged by fire, earthquake, wind, flood, deterioration, neglect, or any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such damage or deterioration and is less than the minimum requirements of the building code for new buildings of similar structure, purpose, or location.

- (5) Any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons, damage property, or render other portions of the structure or premises unsafe or unfit to occupy.
- (6) Any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place as to be capable of resisting a wind pressure of one-half of that specified in the building code for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in the building code for such buildings.
- (7) Any portion thereof is wracked, warped, buckled, settled, deteriorated, or other conditions exist, such that walls or other structural portions have materially less resistance to wind, earthquakes, snow, or other loads, than is required in the case of similar new construction.
- (8) The building or structure, or any portion thereof, because of (a) dilapidation, deterioration, or decay; (b) faulty construction; (c) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (d) the deterioration, decay, or inadequacy of its foundation; or (e) any other cause, is likely to partially or completely collapse.
- (9) For any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used or is designed and intended to be used.
- (10) The exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall within the middle one-third of the base.
- (11) The building, structure, or premises is damaged by fire, wind, earthquake, flood, or any other cause, has become dilapidated, deteriorated, or neglected, or is abandoned or apparently abandoned, so as to: (a) be an attractive nuisance dangerous to children; (b) attract and/or provide harborage for vagrants, criminals, or immoral persons; or (c) enable persons to resort thereto and engage in unlawful, immoral, or dangerous activities, or activities constituting a public nuisance.
- (12) The building or structure has been constructed, exists, or is maintained, occupied, or used in violation of any specific requirement or prohibition applicable to such building or structure provided by the building code or any other law of the state or ordinance of the city relating to the condition, location, structure, occupancy, or use of buildings.
- (13) The building or structure, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member, or portion less than 50 percent – or in any supporting part, member, or portion less than 66 percent – of the (a) strength, (b) fire-resisting qualities or characteristics, or (c) weather-resisting qualities or characteristics required



by law for newly constructed buildings of like area, height, and occupancy in the same location.

(14) Because of neglect, dilapidation, decay, damage, or faulty construction; inadequate light, ventilation, or sanitation facilities; infestation of rodents, roaches, wood-destroying organisms, or other vectors of disease; filth or accumulation of garbage; or, for any other reason, the building, structure, or premises is unsanitary, unfit for human habitation, occupancy, or use, or in a condition that is likely to cause sickness or disease.

(15) Because of obsolescence, deterioration, damage, lack of sufficient or proper fire-resistive construction or fire-protection systems, faulty electric wiring or components, gas connections, or mechanical systems, or for any other cause, the building, structure, or premises is determined by the fire authority to be a fire hazard.

(16) Electrical, plumbing, mechanical, ventilation, or other equipment or systems, or portions thereof, due to damage, deterioration, improper installation or use, or any other cause, are unsafe, unable to perform their required or designed function, or contributing or likely to contribute to deterioration or unsafe conditions of other portions of the structure.

(17) Roofing, siding, vents, or other protective components, systems, or materials are damaged, deteriorated, improperly installed, or for any other reason not functioning properly to prevent the intrusion or retention of moisture into interior components or materials not designed or intended for exposure to moisture.

(18) Vents, cracks, or other exterior openings are not properly covered or otherwise treated to prevent the entrance of insects, birds, rodents, or other animals.

(19) Foundations, footings, and related supporting components are damaged, settled, or otherwise deteriorated, or not properly constructed, anchored, installed, or supported, as to provide the required support, stability, or protection against the elements.

(20) Any portion of a structure remaining on a site after the demolition or destruction of the structure or any structure abandoned or apparently abandoned so as to constitute such structure or portion thereof an attractive nuisance or hazard to the public.

(21) The building or structure is in such a condition as to constitute a public nuisance.

(22) Any vehicle, shipping container, tent, mechanical equipment, or other object, used as a dwelling/sleeping unit, storage structure/building, or other structure or occupancy, or component thereof, except as specifically designed and intended for such use, converted to such use in compliance with all applicable regulations, or otherwise approved for such use, and used in accordance with such design or approval.

(23) Any other condition the building official or other official or expert determines that renders the building or structure unsafe or unfit for habitation, occupancy, or other appropriate and legal use.

**20.212.050 Inspection and complaint.**

If, after a preliminary investigation of any dwelling, building, structure, or premises, the Director finds that it is dangerous or unfit for human habitation, occupancy, or other appropriate and legal use, he or she shall issue a complaint stating in what respects such dwelling, building, structure, or premises is dangerous or unfit. Such complaint shall contain a notice that a hearing will be held before the Director, at a place therein fixed, not less than 10 days nor more than 30 days after the serving of the complaint; and that all parties in interest shall be given the right to file an answer to the complaint, to appear in person, or otherwise, and to give testimony at the time and place in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Director.

The complaint shall be served either personally or by certified mail with return receipt requested, upon all persons having any interest therein, as shown upon the records of the Kitsap County auditor, and shall be posted in a conspicuous place on such property. If the whereabouts of any of such persons is unknown and the same cannot be ascertained by the Director in the exercise of reasonable diligence, and the Director makes an affidavit to that effect, then the complaint may be served upon such persons by mailing a copy by certified mail, postage prepaid, return receipt requested, to each such person at the address of the building or structure involved in the proceedings, and mailing a copy by first class mail to any address of each such person in the records of the Kitsap County assessor or auditor. A copy of the complaint shall also be filed with the Kitsap County auditor and such filing of the complaint shall have the same force and effect as other *lis pendens* notices provided by law.

**20.212.060 Findings and order.**

If the Director determines that the dwelling, building, structure, or premises is dangerous or unfit for human habitation, occupancy, or use, in accordance with this chapter, he/she shall state in writing his/her findings of fact in support of such determination, and shall issue an order that: (1) requires the owner or party in interest, within the time specified in the order, to repair, alter, or improve such dwelling, building, structure, or premises, or otherwise remove or correct the violating condition(s), so as to eliminate the threat and/or nuisance to the occupants and/or community and render it fit for human habitation, occupancy, or other appropriate or legal use, and/or to vacate and close the dwelling, building, structure, or premises, if such course of action is deemed proper on the basis of the standards set forth in POMC 20.212.040; or (2) requires the owner or party in interest, within the time specified in the order, to remove or demolish such dwelling, building, structure, or premises, if this course of action is deemed proper on the basis of those standards.

The findings and order shall be served and posted in the same manner as prescribed in POMC

20.212.050. If no appeal is filed, the order shall be final and a copy of the order shall be filed with the Kitsap County auditor.

**20.212.070 Standards for demolition or repair.**

(1) In ordering the required course of action to be taken by the owner to abate the unfit or dangerous building or structure, the Director may order the building or structure or a portion thereof demolished and not repaired under any of the following circumstances:

(a) The estimated cost to repair the building or structure or portion thereof is more than 50 percent of the appraised or estimated replacement value of the structure;

(b) The building or structure, exclusive of the foundation, has damage or deterioration to 33 percent or more of its supporting members, or 50 percent of its nonsupporting members, enclosing or outside walls or coverings.

(2) In estimating the replacement value of a building or structure, the Director shall use the square foot cost estimating method set forth in the "Residential Cost Handbook," Marshall and Swift, latest available edition, or a cost estimating method or publication that the Director deems comparable.

(3) Appraised value of a structure shall be as determined by a professional real estate appraiser within one year of the date of the order.

(4) In estimating the cost of repairs, the Director shall apply the following standards:

(a) All repair costs shall be based on estimates calculated from the Marshall and Swift's "Residential Cost Handbook," latest available edition, or a cost estimating publication that the Director deems comparable;

(b) Repair estimates shall assume that all work will comply with the requirements of all applicable current codes;

(c) If the extent of damage to a portion of a building or structure cannot be ascertained from visual inspection, the Director shall assume that the relative extent of damage or deterioration identified in the observable portion of the building exists in the unobserved portions; and

(d) Cost estimates for replacing or repairing the building, structure or portion thereof shall include the same type and quality of materials as originally used in the structure, unless different materials are required by current building, mechanical, electrical, plumbing, energy, fire, or other codes. If the building or structure is so damaged that the

original materials cannot be determined, repair costs shall be estimated using the materials identified under the applicable building quality classification in the square foot cost estimating method in the "Residential Cost Handbook" by Marshall and Swift.

#### **20.212.080 Appeals.**

(1) In accordance with RCW 35.80.030(1(g)), as now written or hereafter amended, within 30 days from the date of service upon the owner or any party in interest, and posting of the findings and order issued under POMC 20.212.060, the owner or any party in interest may file a notice of appeal with the city clerk for a hearing before the Hearing Officer.

(2) Upon application for an appeal, enforcement of the order is suspended until the resolution of the appeal, except that emergency measures and orders shall not be suspended.

(3) The City shall establish rules of procedure adequate to assure a prompt and thorough review of matters submitted to the Hearing Officer, including but not limited to the following:

(a) The Hearing Officer must resolve all matters submitted to him/her within 60 days from the date of filing;

(b) The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Hearing Officer; and

(c) A transcript of the Hearing Officer's findings of fact shall be made available to the owner or other party in interest upon demand.

(4) The decision of the Hearing Officer shall be served and posted, within 5 calendar days of issuance, in the same manner as prescribed in POMC 20.212.050 and shall be enforceable as provided herein.

(5) In accordance with RCW 35.80.030(2), as now written or hereafter amended, any person affected by a decision issued by the Hearing Officer pursuant to subsection (1) of this section may, within 30 days after the posting and service of the decision, petition to the superior court for an injunction restraining the Director from carrying out the provisions of the decision. In all such proceedings the court is authorized to affirm, reverse, or modify the decision and such trial shall be heard de novo. Absent such a timely petition for injunction, the decision of the Hearing Officer shall be final.

#### **20.212.090 Enforcement of order.**

(1) If the owner(s) or parties in interest, following exhaustion of their rights to appeal, fail to comply with the final order or decision to secure, repair, alter, improve, vacate, close, remove,

or demolish the dwelling, building, structure, or premises or portion thereof, or otherwise remove or correct the violating condition, the Director may direct or cause such dwelling, building, structure, or premises or portion thereof to be repaired, altered, improved, vacated and closed, removed, or demolished, or such other action as is necessary to remove or correct the violating condition.

(2) In working with an owner or other responsible party who has not appealed the Director's order and is working toward compliance, the Director may grant additional time and/or alternative methods for achieving compliance from those initially ordered by the Director. Such accommodations shall be in writing and signed by both parties, and shall be based on reasonable plans, progress, and/or assurances by the owner or responsible party, or circumstances outside of their control, and upon reasonable interim measures implemented to protect the health, safety, and welfare of the public and/or occupants of the building. Issuance of any permit for work related to the conditions addressed herein may be conditioned on such written agreement. Such accommodations and permit(s) shall be conditioned upon the continued satisfactory performance of the owner or responsible party and may be revoked by the Director upon lack of such satisfactory performance. The granting or revocation of such accommodations/agreements shall not be subject to appeal.

(3) Any owner or responsible party who has appealed to the Hearing Officer must petition the Hearing Officer for any subsequent modification of the time, method, materials, or other provisions of the order issued by the Hearing Officer, unless the Hearing Officer has delegated such authority to the Director. If such authority has been delegated, the Director, at his or her discretion, may consult with or defer any such decision back to the Hearing Officer.

(4) Any owner or responsible party must petition to the superior court for any subsequent modification of the time, method, materials, or other provisions of any order issued by the court, unless the court has delegated such authority to the Director or Hearing Officer. If such authority has been delegated, the Director or Hearing Officer, at their discretion, may consult with or defer any such decision back to the superior court.

#### **20.212.100 Emergency measures.**

Whenever the Director finds that any building, structure, premises, or portion thereof, is an imminent hazard to the public, the building occupants, or surrounding buildings or properties, he/she may, without notice and order, take immediate action to vacate, stabilize, secure from entry, or otherwise protect the occupants, public, and surrounding properties or buildings from the hazard. Such action may include closing and vacating sidewalks, streets, and surrounding properties and buildings. The Director shall, within five working days following completion of such work or action, issue a complaint pursuant to this chapter. Any city funds spent in responding to the emergency shall be included in costs recoverable under this chapter.

Any notice posted by the Director, declaring a building, structure, or premises unsafe or unfit to

enter or occupy may only be removed by the Director or designee, or with the express approval of the Director or designee. Any person who removes, alters, defaces, covers, or otherwise renders such notice ineffective, without such express approval, shall be guilty of a misdemeanor.

**20.212.110 Sale or disposal of materials and contents.**

If the dwelling, building, structure, or premises is removed or demolished by the city, the Director shall, if possible, sell the materials of the dwelling, building, structure, or premises, and shall credit the proceeds of such sale against the cost of the removal or demolition and, if there be any balance remaining, it shall be paid to the parties entitled thereto, as determined by the Director, after deducting the costs incident thereto.

The determination of whether or not it is possible to sell the materials shall be based on factors such as, but not limited to: the type, nature, and condition of the materials; whether or not they can reasonably be removed and separated for sale; and the costs involved in attempting to sell the materials. The salability of the materials may be determined by the Director based on experience, or in consultation with such contractors or experts as deemed appropriate.

The procedures for selling the materials shall be based on the type and quantity of materials involved. Such procedures may include, but not be limited to: listing in local, Internet, or other forums or publications; request for bids for purchase and removal; public auction; and, recycling by abatement contractor.

**20.212.120 Recovery of expenses.**

(1) The amount of the cost of such repairs, alterations or improvements, vacating and closing, removal or demolition, or other action to remove or correct the violation(s) and/or protect the occupants, public, and/or neighboring buildings and properties, taken or caused to be done by the Director, shall be assessed against the real property upon which such cost was incurred, unless such amount is previously paid. Such costs shall include all reasonable expenses, including, but not limited to, the costs of consultants and contractors, legal counsel, staff time, court fees, materials and equipment, incidentals, mailing, publishing, and recording notices. Pursuant to RCW 35.80.030(1)(h), the amount of such costs shall constitute a lien against the property of equal rank with state, county, and municipal taxes.

(2) For purposes of this section, the cost of vacating and closing shall include (a) the amount of relocation assistance payments that a property owner has not repaid to the city of Port Orchard or other local government entity that has advanced relocation assistance payments to tenants under RCW 59.18.085; and (b) all penalties and interest that accrue as a result of the failure of the property owner to timely repay the amount of these relocation assistance payments under RCW 59.18.085.

(3) Upon certification to him/her by the Director, of the assessment amount being due and owing, the county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84.56.020 for delinquent taxes, and when collected to be deposited to the credit of the general fund of the city.

**20.212.130 Permits, regulations and workmanship.**

All repairs, improvements, maintenance, or other work performed in relation to any enforcement under this code shall be performed and completed by the owner, contractor, or other person in interest in a workmanlike manner and in compliance with all permitting and other requirements of all applicable codes and regulations. The owner or other person in interest shall be responsible for identifying and complying with all applicable codes and regulations.

**20.212.140 Remedies not exclusive.**

(1) This section does not abrogate or impair the powers of the courts or of any department of the city to enforce any other of its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

(2) This section does not impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

**20.212.150 Public nuisance.**

Any structure or premises subject to complaint or order under this chapter is also a public nuisance.

**20.212.160 Violations.**

(1) In addition or alternative to any other provisions of this chapter, any person who violates or fails to comply with any of the provisions of this chapter, or who violates or fails to comply with any lawful notice or order made hereunder, shall for each and every such violation and noncompliance respectively be subject to the penalties and provisions specified in POMC 20.212.170.

(2) Each day in which a violation occurs or is allowed to continue shall constitute a separate offense and may be punished as such.

**20.212.170 Penalties and other relief.**

(1) Civil Penalty. In addition or alternative to any other penalty provided herein or by law, any violation of, or failure to comply with, any provision of this chapter or any lawful order issued hereunder, shall constitute a civil infraction subject to a penalty in the amount of \$250.00, not including statutory penalties, per violation.

(2) Criminal Penalty. In addition or alternative to any other penalty provided herein or by law, any violation of, or failure to comply with, any provision of this chapter or any lawful order issued hereunder, shall constitute a misdemeanor, punishable by a fine of not more than \$1,000, or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

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

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

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

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 10<sup>th</sup> day of September, 2019.

\_\_\_\_\_  
Robert Putansuu, Mayor

ATTEST:

SPONSOR:

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

\_\_\_\_\_  
Scott Diener, Councilmember

APPROVED AS TO FORM:

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



PUBLISHED:  
EFFECTIVE DATE:

**AMENDMENT NO. 2 TO LEASE AGREEMENT**  
**City Contract No. 029-11**

This Amendment No. 2 to Lease Agreement (“**Amendment**”) is made and entered into as of the 10<sup>th</sup> day of September 2019, by and between **CITY OF PORT ORCHARD**, a Washington municipal corporation (hereinafter referred to as “**Lessor**”), and **KEYBANK NATIONAL ASSOCIATION**, a national banking association, having offices at 127 Public Square, Cleveland, OH 44114-1306 (hereinafter referred to as “**Lessee**”).

WHEREAS, Lessor and Lessee entered into a certain Lease dated September 28, 2001, as amended by Amendment No. 1 to Lease Agreement dated as of January 25, 2011 (as amended, hereinafter referred to as the “**Lease**”) for a parking lot adjacent to the KeyBank branch at 1301 Bay Street, Port Orchard, WA 98366, as more particularly described in the Lease (hereinafter referred to as “**Premises**”);

WHEREAS, the current term will expire on September 30, 2021; and

WHEREAS, the parties have agreed to amend the Lease by extending the term five (5) years, adding two (2) options to renew for a period of five (5) years each, and otherwise amending the Lease upon the following terms and conditions.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and obligations of the parties contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, and intended to be legally bound, the parties hereby agree as follows:

1. **Defined Terms.** Unless otherwise defined herein or unless the context clearly requires a different meaning, the capitalized and non-capitalized words and phrases defined in the Lease which are used in this Amendment shall have the same meaning ascribed to them in the Lease.
2. **Fourth Renewal Term.** Effective as of the date hereof, the Lease is hereby extended for a five (5) year period commencing October 1, 2021 and expiring September 30, 2026 (“**Fourth Renewal Term**”). Lessee’s obligation to pay rent with respect to the Premises during the Fourth Renewal Term shall continue under the same terms and provisions as set forth in the Lease, except the Rent shall be in the amount of \$5,100.00 per annum payable in monthly installments of \$425 each. Rent shall be delivered to the City of Port Orchard, Finance Department or such other address as Lessor may designate from time to time.
3. **Options to Renew.** Lessee shall have the right and option to extend the Term of the Lease for two (2) additional periods of five (5) years each (the “**Fifth Renewal Term**” and “**Sixth Renewal Term**,” respectively). If exercised, the Fifth Renewal Term shall commence on October 1, 2026 and expire on September 30, 2031; and the Sixth Renewal Term shall commence on October 1, 2031 and expire on September 30, 2036. Lessee, in its sole discretion, may exercise each option to renew by giving Lessor written notice exercising the option not later than ninety (90) days prior to the expiration of the then current Renewal Term of the Lease. Lessee’s lease of the Premises during the Fifth and Sixth Renewal Terms shall be upon the same terms and conditions in effect under the Lease immediately prior to the commencement date of each Renewal Term, except the Rent with respect to the Premises shall be as follows:

<b>Period</b>	<b>Annual Rent</b>	<b>Monthly Rent</b>
<b><i>Fifth Renewal Term</i></b> 10/1/26 – 9/30/31	\$5,610.00	\$467.50
<b><i>Sixth Renewal Term</i></b> 10/1/31 – 9/30/36	\$6,171.00	\$514.25

4. **Notices.** Lessee’s notice address under the Lease shall be changed to the following:

KeyCorp/KeyBank National Association  
Attn: RE Asset Mgr —PID 3895

by mail to: P.O. Box 94839  
Cleveland, Ohio 44101-4839

or by overnight courier to: Mailcode: OH-01-10-0605  
100 Public Square  
Suite 600  
Cleveland, OH 44113-2207

Notices of default, or any notices requiring Lessee to sign any instrument also shall be sent to: KeyBank National Association (PID 3895)  
127 Public Square, Mailcode OH-01-27-0200  
Cleveland, OH 44114  
Attention: Legal Department

by mail to: City of Port Orchard  
Attn: City Clerk  
216 Prospect Street  
Port Orchard, WA 98366  
(360) 876-4407

5. **Ratification of Lease.** This Amendment shall be deemed to form a part of and shall be construed in connection with and as part of the Lease. Except as hereinbefore expressly amended, all of the other terms, covenants and conditions contained in the Lease shall continue to remain unchanged and in full force and effect and are hereby ratified and confirmed. Lessor hereby affirms that to the best of its knowledge on the date hereof no breach or uncured default by Lessee has occurred with respect to the Lease and that the Lease is in full force and effect. Unless specifically provided herein to the contrary, the modifications to the Lease provided for in this Amendment shall be made effective as of the date hereof. To the extent that any of the terms of the Lease are inconsistent with the terms of this Amendment, this Amendment shall govern and control and the Lease shall be deemed to be amended to conform to the terms of this Amendment.

6. **Binding Effect.** Each of the provisions of this Amendment shall extend to and shall, as the case may require, bind or inure to the benefit of Lessor and of Lessee, and also to each of their respective legal representatives, successors and permitted assigns.

7. **Representation.** The parties hereby represent and warrant to each other that (a) each of them has the legal power and authority to execute and deliver this Amendment; (b) the official executing this Amendment for each party has been duly authorized to execute and deliver the same and bind such party

with respect to the provisions hereof; and (c) this Amendment constitutes a valid and binding obligation upon such party in every respect.

8. **Severability.** In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Amendment, but this Amendment shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

9. **Counterparts.** This Amendment may be executed in multiple copies and multiple counterparts, each of which shall be deemed an original, but all of which together shall be and form one and the same instrument. Upon the request of either party, each party shall deliver original executed counterparts to the other parties.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment as of the date first set forth on the first page of this instrument.

LESSOR:

**CITY OF PORT ORCHARD**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WASHINGTON )  
COUNTY OF KITSAP )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of City of Port Orchard to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

(Seal or stamp)

\_\_\_\_\_  
Title: \_\_\_\_\_  
My appointment expires \_\_\_\_\_

LESSEE:

**KEYBANK NATIONAL ASSOCIATION**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO                                    )  
COUNTY OF CUYAHOGA                        )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KeyBank National Association to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

(Seal or stamp)

\_\_\_\_\_  
Notary Public  
My appointment expires \_\_\_\_\_

**AMENDMENT NO. 1 TO LEASE AGREEMENT**  
**City Contract No. 029-11**

This Amendment to Lease ("**Amendment**") is made and entered into as of the 25 day of January 2011, by and between **CITY OF PORT ORCHARD**, a Washington municipal corporation (hereinafter referred to as "**Lessor**"), and **KEYBANK NATIONAL ASSOCIATION**, a national banking association, having offices at 127 Public Square, Cleveland, OH 44114-1306 (hereinafter referred to as "**Lessee**").

WHEREAS, Lessor and Lessee entered into a certain Lease on September 28, 2001 (hereinafter referred to as the "**Lease**") for a parking lot adjacent to the KeyBank branch at 1301 Bay Street, Port Orchard, WA, which parking lot is more particularly described in the Lease (hereinafter referred to as "**Premises**");

WHEREAS, Lessor and Lessee have agreed to renew the Term of the Lease for a five (5) year period, add one five (5) year renewal option, and otherwise amend the Lease upon the following terms and conditions.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and obligations of the parties contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, and intended to be legally bound, the parties hereby agree as follows:

1. **Defined Terms.** Unless otherwise defined herein or unless the context clearly requires a different meaning, the capitalized and non-capitalized words and phrases defined in the Lease which are used in this Amendment shall have the same meaning ascribed to them in the Lease.

2. **Second Renewal Term.** Effective as of the date hereof, the Lease is hereby extended for a period commencing October 1, 2011 and expiring September 30, 2016 ("**Second Renewal Term**"). Lessee's obligation to pay rent with respect to the Premises during the Second Renewal Term shall continue under the same terms and provisions as set forth in the Lease, including the Rent which shall continue to be \$250.00 per month. Real estate taxes shall continue to be paid as set forth in the Lease.

3. **Option to Renew.** Provided that Lessee is not then in default under the terms and conditions of the Lease, Lessee shall have the right and option to renew the Term of the Lease for one (1) additional period of five (5) years (the "**Third Renewal Term**"). If exercised, the Third Renewal Term shall commence on October 1, 2016 and expire on September 30, 2021. Lessee, in its sole discretion, may exercise the option to renew by giving Lessor written notice exercising the option not later than ninety (90) days prior to the expiration of the Second Renewal Term of the Lease. Lessee's lease of the Premises during the Third Renewal Term shall be upon the same terms and conditions in effect under the Lease immediately prior to the commencement date of the Third Renewal Term, including the Rent which shall continue to be \$250.00 per month. Real estate taxes shall continue to be paid as set forth in the Lease.

4. **Notices.** All notices and demands to be given by one party to the other party under this Lease shall be given in writing, mailed or delivered to Lessor or Lessee, as the case may be as follows:

If to Lessee: KeyCorp/KeyBank National Association  
Attn: RE Asset Mgr –PID 5512  
by mail to: P.O. Box 94839  
Cleveland, Ohio 44101-4839

by overnight courier to: Mailcode: OH-01-10-0605  
100 Public Square  
Suite 600  
Cleveland, OH 44113-2207

If to Lessor: City of Port Orchard  
Attn: City Clerk  
216 Prospect Street  
Port Orchard, WA 98366

or at such other address as either party may hereafter designate. Notices shall be delivered by hand or by United States certified or registered mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier service. Notices shall be considered to have been given upon the earlier to occur of actual receipt or three (3) business days after posting in the United States mail or one (1) business day after deposit with a national recognized overnight courier service (provided, a signed receipt is obtained).

5. **Ratification of Lease.** This Amendment shall be deemed to form a part of and shall be construed in connection with and as part of the Lease. Except as hereinbefore expressly amended, all of the other terms, covenants and conditions contained in the Lease shall continue to remain unchanged and in full force and effect and are hereby ratified and confirmed. Lessor hereby affirms that to the best of its knowledge on the date hereof no breach or uncured default by Lessee has occurred with respect to the Lease and that the Lease is in full force and effect. To the extent that any of the terms of the Lease are inconsistent with the terms of this Amendment, this Amendment shall govern and control and the Lease shall be deemed to be amended to conform to the terms of this Amendment.

6. **Binding Effect.** Each of the provisions of this Amendment shall extend to and shall, as the case may require, bind or inure to the benefit of Lessor and of Lessee, and also to each of their respective legal representatives, successors and permitted assigns.

7. **Severability.** In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Amendment, but this Amendment shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.



8. **Counterparts.** This Amendment may be executed in multiple copies and multiple counterparts, each of which shall be deemed to be and form one and the same instrument.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment as of the date first set forth on the first page of this instrument.

LESSOR:

**CITY OF PORT ORCHARD**

**KEYBANK NATIONAL ASSOCIATION**

\_\_\_\_\_  
Lary Coppola, Mayor

By: Diane G. Mannarino

Name: DIANE G. MANNARINO

Title: Vice President

ATTEST:

Patricia J. Kirkpatrick  
Patricia J. Kirkpatrick, MMC, City Clerk  
LESSEE:



STATE OF Ohio )  
County of Cuyahoga )

I certify that I know or have satisfactory evidence that Diane G. Mannarino is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Vice president of KeyBank National Association to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2/3/2011

Valerie A. Smoel  
(Seal or stamp)  
Title: VALERIE A. SMOEL  
Notary Public, State of Ohio  
My appointment expires Jan. 3, 2013

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



## RENEWAL OF REAL PROPERTY LEASE

Grantor(Lessor): City of Port Orchard, Washington  
Grantee (Lessee): KeyBank National Association  
Legal Description: SW¼ , SW¼ , Section 25, Township 24N, Range 1E.  
Complete legal description set forth below  
Tax Parcel No.: Public Right-of-Way, no tax parcel assigned  
Reference Recording No:

This renewal of lease is made and executed on the 25<sup>th</sup> day of September 2006, by and between the City of Port Orchard, a Washington municipal corporation ("Lessor") and KeyBank National Association, a national banking association ("Lessee").

WHEREAS, Lessor and Lessee entered into a Lease dated September 28, 2001 for the property described as follows:

Section 25, Township 24 N, Range 1E. W.M., Point of beginning; Intersection of the easterly boundary of the Maple Street Waterway and the northerly boundary of SR166 right-of-way (formerly known as SR160), thence northwesterly a distance of 165 ft. along the easterly boundary of the Maple Street Waterway, thence perpendicular and westerly a distance of 50 ft., thence southeasterly a distance of 165 ft. along a line parallel to the easterly boundary of the Maple Street Waterway, the northerly right-of-way line of SR166 (formerly known as SR160), thence easterly along the northerly right-of-way line of SR166 (formerly known as SR160) to the point of beginning.

WHEREAS, On May 16, 2006, Lessor received written notice from Lessee, pursuant to Paragraph 3 of the Lease, of Lessee's intent to renew the Lease.

WHEREAS, Lessee is not in default under the Lease.

NOW, THEREFORE, the parties agree as follows:

1. The Lease is hereby renewed for a five (5) year period commencing October 1, 2006 and ending on September 30, 2011.

2. All of the terms and conditions of the Lease except as herein modified shall remain in full force and effect and are made a part of this Renewal.

LESSEE:

CITY OF PORT ORCHARD

By: Kim E. Abel  
Kim E. Abel, Mayor

LESSEE:

KeyBank National Association

By: Mark O. Pass  
MARK O. PASS  
VICE PRESIDENT

Attest:

Michelle Merlino  
City Clerk

 200610310083  
Page: 2 of 2  
10/31/2006 11:25A  
PORT ORCHARD CITY OF LEASE \$33.00 Kitsap Co, WA

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

PORT ORCHARD CITY OF

200702260002

Lease Rec Fee: \$ 87.00  
02/26/2007 08:25 AM  
Karen Flynn, Kitsap Co Auditor

Page: 1 of 6



Grantor (Lessor): City of Port Orchard, Washington  
Grantee (Lessee): KeyBank National Association  
Legal Description: SW ¼, SW ¼, Section 25, Township 24 N, Range 1 East. Complete legal description set forth below.  
Tax Parcel No.: Public Right-of-Way, no tax parcel assigned.

**LEASE**

This Lease is made and entered into this day by and between City of Port Orchard, a Washington municipal corporation, hereinafter called "Lessor," and KeyBank National Association, a national banking association, hereinafter called "Lessee":

**WITNESSETH:**

1. **Premises and Term.** In consideration of the covenants and agreements hereinafter set forth and other good and valuable consideration, Lessor hereby leases unto Lessee the following described property situated in Kitsap County, Washington (the "Premises"):

Section 25, Township 24 N, Range 1E., W.M., Point of beginning; Intersection of the easterly boundary of the Maple Street Waterway and the northerly boundary of SR166 right-of-way (formerly known as SR160), thence northwesterly a distance of 165 ft. along the easterly boundary of the Maple Street Waterway, thence perpendicular and westerly a distance of 50 ft., thence southeasterly a distance of 165 ft. along a line parallel to the easterly boundary of the Maple Street Waterway, to the northerly right-of-way line of SR166 (formerly known as SR160), thence easterly along the northerly right-of-way line of SR166 (formerly known as SR160) to the point of beginning.

The term of this lease shall be for five (5) years commencing on October 1, 2001, and ending on September 30, 2006.

2. **Rent.** Lessee agrees to pay to Lessor the sum of Two Hundred Fifty and 00/100 Dollars (\$250.00) per month plus leasehold tax for the monthly rental, due and payable to the City of Port Orchard, located at 216 Prospect, Port Orchard, WA, on or before the first day of each month during the term of the lease beginning October 1, 2001. The parties agree that the rent amount represents the true and fair market value of the leased Premises. In the event payment of the monthly rental is more than ten (10) days late, there shall be added to the rent the amount equal to 10% of the rental payment then due for each such delinquent payment.

3. **Option to Renew:** So long as Lessee is not in default hereunder, Lessee shall have the option to renew this lease for an additional five (5) year period upon the same terms and conditions as set forth herein, except as to rent, upon written notice by Lessee to Lessor of such election at least 90 days prior to the expiration of the original lease term. The annual rental rate to be charged and paid during the renewed lease term shall be renegotiated by the parties prior to the expiration of the original lease term. In the event the parties are not successful in arriving at a mutually agreeable rate by that time, the issue shall be submitted to arbitration for resolution, in the manner provided for arbitrations as set forth below. Provided further, however, in no event shall the rental rate be less than the rental amount charged in the original lease.

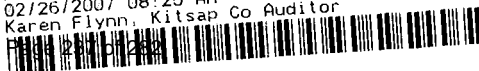
4. **Taxes.** In addition to the rental amount, the Lessee will be responsible to pay before delinquency any real estate taxes and assessments or any leasehold taxes, if any, related to the Premises. Lessee shall have the right to contest any such taxes. Lessor shall reasonably cooperate with Lessee in connection with any such contest.

5. **Reservation of Lessor's Rights.** Lessor reserves the right to modify the Lease at any time to remove from the Lease a portion of the Premises adjacent to Blackjack Creek, if such portion is required for park purposes, subject to the conditions described in this Section 5. That portion of the Premises that may be removed is depicted on Exhibit A attached hereto. Such modification shall be effective upon 90 days written notice to Lessee, and shall not interfere with Lessee's right to vehicular and pedestrian ingress and egress from Lessee's owned property located adjacent to the Premises. Such modification shall change the description of the Premises only, all other provisions of the Lease shall remain in full force and effect.

6. **Maintenance and Repair.** Lessee, at Lessee's sole expense, shall keep in good condition and repair all portions of the Premises. Lessee agrees to keep the Premises neat and clean and in a sanitary condition; and upon surrendering possession, to leave the Premises in condition equal to or better than as of the effective date of this Lease subject to ordinary wear and tear and damage caused solely by Lessor and Lessor's employees. The Lessee will not make any alterations, additions, or improvements without the prior written consent of the Lessor.

7. **Indemnification and Liability.** Lessee agrees to save harmless and indemnify Lessor against and from all demands, claims, causes of action, or judgments, and all reasonable expenses incurred in investigating or resisting the same for injury to person, loss of life, or damage to property occurring on the Premises and arising out of Lessee's use and occupancy (unless due solely to Lessor's negligence or willful misconduct); and Lessee agrees to carry liability insurance to protect Lessor with insurance limits to be reasonably approved by Lessor.

8. **Holding Over.** If Lessee remains in possession of the Premises after the expiration of this Lease, such possession shall, if rent is accepted by Lessor, create a month-to-month



tenancy on the terms herein specified, and said tenancy may be terminated at any time by either party by thirty (30) days' notice to the other party of such termination.

9. **Assignment and Subletting.** Lessee shall not assign this Lease nor sublet the Premises without Lessor's written consent, which written consent shall not be unreasonably withheld. Notwithstanding anything contained in this Lease to the contrary, Lessee shall have the right to assign this Lease or sublet all or any part of the Premises without the consent of Lessor to (1) any entity resulting from a merger or consolidation with Lessee or any organization purchasing substantially all of Lessee's assets, (2) any entity succeeding to substantially all the business and assets of Lessee, (3) any subsidiary, affiliate or parent of Lessee, (4) any entity controlling, controlled by or under common control with Lessee, or (5) any entity resulting from the reorganization of Lessee outside of a bankruptcy organization. In such event, Lessee shall notify Lessor of such transfer within fifteen (15) days after such transfer.

10. **Insolvency.** In the event the Lessee is adjudicated bankrupt or insolvent, or a Receiver or Trustee is appointed for the Lessee, either voluntarily or involuntarily, or if the Lessee makes an assignment for the benefit of creditors, this Lease shall immediately terminate without further action on the part of Lessor or Lessee.

11. **Waivers.** One or more waivers of any covenants or conditions by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant or condition or agreement.

12. **Use of Premises.** Lessee will use and occupy the Premises throughout the entire term hereof for purpose of vehicular and pedestrian ingress, egress, and parking and no other purpose. Lessee agrees not to violate any law, ordinance, rule, or regulations of any governmental authority having jurisdiction of the Premises. Lessee shall not obstruct ingress or egress on the Premises without the prior written consent of Lessor.

13. **Condition of Premises:** The Premises are recognized by the Lessor and the Lessee to be in "as is" condition, with no warranties of any type or nature whatsoever by the Lessor to the Lessee. The Lessor will not incur liability or injuries or property damage suffered because of defects in the Premises at the time of renting or occurring thereafter except as may be caused by breach of warranties expressly set forth herein or Lessor's negligence or failure to perform the terms and conditions of this lease. The Lessee hereby acknowledges that it has had ample opportunity to inspect the Premises.

14. **Default.** It is agreed that if Lessee shall abandon the Premises before the end of the term, or if any rent shall be due and unpaid and such failure continues for ten days after Lessee's receipt of notice describing Lessee's failure to pay such rent when due, or if default is made of any of the covenants and agreements to be performed by Lessee as set forth herein and such failure continues for thirty days after Lessee's receipt of notice describing Lessee's failure, then the Lessor may, at its option, enter upon the Premises and re-let the same for such rent and upon such terms as Lessor may see fit; and if the full rental herein shall not be realized by Lessor over and above any expense to Lessor in such re-letting, Lessee will pay all deficiency promptly upon demand, or the Lessor may declare this Lease terminated and forfeited and take possession of the Premises, and Lessee agrees to pay a reasonable attorney fee and the costs of any Court action should it be necessary to enforce any of Lessor's remedies in this paragraph contained if Lessor is the prevailing party. Lessor agrees to pay a reasonable attorney fee and the costs of any Court action if Lessee should be the prevailing party.



15. **Attorneys Fees and Court Costs:** In the event that any suit, action, or proceeding, including arbitration as hereinafter set forth, shall be instituted to enforce compliance with any of the terms or conditions of this lease, there shall be paid to the substantially prevailing party in such suit, action or proceeding such sums as the court or arbitrator may adjudge and determine to be a reasonable attorney's fee and reasonable costs, with the foregoing applicable to proceedings both in the trial and appellate court levels.

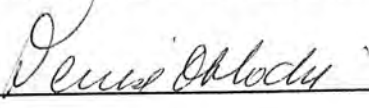
16. **Arbitration:** In the event that there is a dispute arising out of any of the terms or conditions or the amount of rent payable as provided in this lease, said dispute shall be referred to arbitration. The Lessor shall appoint an arbitrator and the Lessee shall appoint an arbitrator. The two arbitrators shall then select a third independent arbitrator. The costs of the third arbitrator shall be divided equally between the Lessor and the Lessee. The three arbitrators shall then resolve the dispute between the Lessor and the Lessee by a majority thereof and the decision shall be reduced to writing. Said arbitration award may then be reduced to judgment by entry in the Kitsap County Superior Court.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this lease the day and year first above written.

LESSOR:  
CITY OF PORT ORCHARD

By:   
LESLIE J. WEATHERILL, Mayor

LESSEE:  
KEYBANKNATIONAL ASSOCIATION

By:   
DENISE OBLOCKI  
ASSISTANT VICE PRESIDENT

ATTEST:

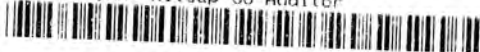
  
Patricia Parks, City Clerk

PORT ORCHARD CITY OF

Lease Rec Fee: \$ 87.00  
02/26/2007 08:25 AM  
Karen Flynn, Kitsap Co Auditor

200702260002

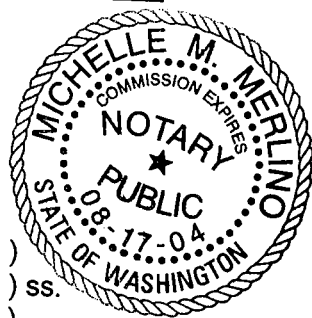
Page 4 of 6



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KITSAP )

I certify that I know or have satisfactory evidence that Leslie J. Weatherill and Patricia Parks are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath, stated that they were authorized to execute the instrument and acknowledged it as the Mayor and City Clerk of the City of Port Orchard, respectively to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 10-3-01



Michelle M. Merlino  
Notary Public in and for the State of  
Washington residing at Port Orchard  
My commission expires 8/17/04

Ohio  
STATE OF WASHINGTON )  
 ) ss.  
Cuyahoga  
COUNTY OF KITSAP )

I certify that I know or have satisfactory evidence that Denise Oblocki is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath, stated that he/she was authorized to execute the instrument and acknowledged it as the Asst VP of KeyBank National Association to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 9/28/01

Linda Rozzo Foutz  
Notary Public in and for the State of  
Ohio ~~Washington~~ residing at Cleveland, OH  
My commission expires \_\_\_\_\_

LINDA ROZZO FOUTZ  
Notary Public, State of Ohio  
My Commission Expires Dec. 15, 2004

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PORT ORCHARD CITY OF  
Lease Rec Fee: \$ 87.00  
02/26/2007 08:25 AM  
Karen Flynn, Kitsap Co Auditor

200702260002  
Page: 5 of 6





POSSIBLE FUTURE PARK AREA

TOE OF SLOPE

RIP-RAP SLOPE

TOP OF SLOPE

ASPHALT PAVEMENT

EXTRUDED CONCRETE CURB

Maple Street Waterway

Blackjack Creek

Scale 1" = 20'

BASIS OF BEARINGS:

BOOK 5 OF SURVEYS, PAGE 48

AUDITOR'S NOTE  
LEGIBILITY FOR RECORDING AND COPYING  
UNSATISFACTORY IN A PORTION OF THIS  
INSTRUMENT WHEN RECEIVED.

(82°35'30" E DEED)  
N 83°49'32" E 89.67'

WOODEN POSTS (TYP.)

WILL

ASPHALT

(S 38°34'30" E DEED)  
S 37°57'50" E 75.52'

HEAT PUMPS (5)

WATER METER

L = 10.9'

L = 11.1'

(N 7°24'30" W DEED)  
N 6°39'45" W 142.00'

BRICK WALL

Key Bank

EXTERIOR BRICK WALL

BRICK WALL

BRICK PAVERS

ASPHALT PAVEMENT

PARKING STRIPE (TYP.)

Bay Street

LANE STRIPING

PORTION OF RIGHT-OF-WAY OF FORT GEORGE

(N 52°24'52" E 150.00')  
(N 31°35'30" E DEED)

EXPANDED CONCRETE CURB

SIGN POSTS

GUARD RAIL

CROSS WALK STRIPE

BRIDGE



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**City of Port Orchard**

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

**Agenda Staff Report**

Agenda Item No.:	<u>Business Item 71</u>	Meeting Date:	<u>September 10, 2019</u>
Subject:	<u>Approval of Special Event Application:</u>	Prepared by:	<u>Brandy Rinearson, MMC</u>
	<u>Kitsap County Sheriff's Office</u>		<u>City Clerk</u>
	<u>Open House</u>	Atty Routing No.:	<u>N/A</u>
		Atty Review Date:	<u>N/A</u>

**Summary:** Maaren Stroble, with Kitsap County Sheriff's Office (KCSO), submitted an application for the KCSO Open House event to be held Saturday, September 14, 2019. The event will be open to the public from 11:00am until 3:00pm, with setup from 9:00am and teardown to be completed by 6:00pm. They are requesting a street closure of Division Street, from Austin Avenue to Cline Avenue.

KCSO Open House purpose is to meet sheriff's patrol deputies, detectives, corrections officers, support services specialists and citizen patrol volunteers. Opportunity to walk through the sheriff's work spaces and the Kitsap County Jail with guided tours, view static displays of equipment, vehicles and demonstrations. They are anticipating 300 visitors to attend.

Port Orchard Municipal Code 5.94.050 (4) requires Council approval of an event with street or highway closures that are not exempt outlined in Resolution No. 024-17. This event falls within the Councils policy on street or highway closures.

City Departments, South Kitsap Fire and Rescue, and Kitsap Transit have reviewed the application and have submitted their recommendations and/or comments, which have been provided to you.

**Recommendation:** If Council finds the event will not seriously inconvenience or impair the general public's use of public property, services, or facilities; then staff recommends approving the special event application, as presented.

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

**Motion for consideration:** I move to approve the special event application for Kitsap County Sheriff's Office to hold their event and allow for a street closure, as presented.

**Fiscal Impact:** N/A

**Alternatives:** Deny the application or approve with conditions.

**Attachments:** Application for Special Event, Map, Comments (on dais), and Flyer.

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## SPECIAL EVENT PERMIT APPLICATION

Thank you for your interest in holding a special event in the City of Port Orchard. This application contains all the information you need to apply for a special event permit. Included is a checklist designed to help you when submitting this application, and tips for a successful event.

### What are the fees associated with a special event?

- There is a **\$50** non-refundable administrative fee to process each application.
- The City may expedite the application for an additional nonrefundable administrative processing fee of **\$50**, if the application is received by the City less than 90 calendar days, but more than 30 calendar days in advance of the event, with no road closures.
- Per Port Orchard Municipal Code (POMC) 5.96, if your event has two or more vendors engaged in public property vending, you are required to have a master multi-vendor event license. The fee is **\$15** per event day.

### When should the special event application be submitted to the City?

- The application shall be filed with the city clerk's office no less than 90 calendar days, nor more than one calendar year, before the date when the proposed special event is to take place. A Special Event Reservation Form can be submitted by February 1<sup>st</sup> of each year to reserve your proposed special event, if the event was held on the same day as the previous year. Please note that it provides no guarantee that your event will be approved.
- **If your event requires any road closures, the application must be submitted at least 120 calendar days before the event date. See Page 5 for more details.**

### What is a special event?

A special event is defined in the Port Orchard Municipal Code (POMC) as "any organized formation of an activity proposed to occur that affects the public's ordinary use of rights-of-way or public parks, including but not limited to runs, street dances, block parties and parades". All special events require approval by the City of Port Orchard.

### Can I hold a special event in a City owned park?

City parks are available on a first-come, first-served basis. The City does not reserve parks for events. However, POMC 9.60 'Park Rules' states in part that no person can solicit, or offer for sale any article or thing, or use any stand, cart or vehicle for the sale or display without authorization from the City Council. In addition, no animals are allowed in City parks other than dogs or cats.

### What types of events are considered special events?

- Parades
- Runs/Walks
- Festivals
- Block Parties
- Car Shows
- Vendor Fairs
- Concerts
- Community awareness events
- Outdoor movies
- Street dances
- Other similar events



**What if my event is outside Port Orchard City limits or on property not owned by the City?**

If your event is outside Port Orchard city limits, you will need to contact Kitsap County at 360.337.5777. If your event is on private property, you will need to contact the property owner. If your event is utilizing the property of the Port of Bremerton, you will need to contact the Port of Bremerton. If your event is utilizing both City property and property that is NOT owned/leased by the City, written approval is required by the owner/manager of the private property and must be included with your application.

**Can I ask for road closures or detours for a 5K run/walk or similar event?**

If the event is a parade or run, the following information is required:

- A map of the route to include the following:
  - Exact location of any marshalling or staging areas.
  - The time at which units of the parade/run will begin to arrive at the staging areas and the times at which all such units will be disbursed there from.
  - The exact route to be traveled, including the starting point, rest areas, and end point.
- The approximate number of persons, animals, and vehicles which will constitute the parade/run, and the types of animals and descriptions of the vehicles.
- A statement as to whether the parade/run will occupy all or only a portion of the width of the street, roadway, or sidewalks to be used.

**What is the special event application process?**

- Submit to the City Clerk's office a Special Event Reservation form (if applicable).
  - Submit the completed application to the City Clerk's office with required fee(s). If the application and/or additional documents are not completed or submitted, the application will not be accepted until fully completed.
  - The City will forward the event application to other departments and agencies for review and comment.
    - If the event requires closure of City streets, the application is also required to be brought before the City Council during a regular City Council meeting. The applicant will be notified of the date of the meeting and the City Council's decision.
    - If the event does not require closure of City streets, and there are no concerns or comments from the other departments or agencies, the applicant will be contacted by the City Clerk's office to let them know the event has been approved. If there are questions or concerns by the other departments or jurisdictions, the applicant will be contacted to address these concerns.
  - Depending upon the event, other licenses or permits may be required. The Special Event application will instruct the applicant on where to apply for the licenses or permits.
  - The City will notify the public of the event and ask if there are any concerns regarding impact to property, business, or quality of life. If the City does receive concerns, the event organizer will be contacted to address the concerns.



## SPECIAL EVENT PERMIT APPLICATION

(PORT ORCHARD MUNICIPAL CODE 5.94 AND 5.96)

STANDARD PROCESSING FEE: \$50.00

ADDITIONAL EXPEDITED FEE (LESS THAN 90 BUT MORE THAN 30 DAYS BEFORE EVENT): \$50.00

### Event Information

Name of event: Kitsap County Sheriff's Office Open House	
Location of event: Kitsap County Sheriff's Office, 614 Division St. Port Orchard	
Description of event: A Community open house to meet sheriff's patrol deputies, detectives, corrections officers, support services specialists and Citizen on Patrol volunteers. Opportunity to walk through the sheriff's work spaces and the Kitsap County Jail with guided tours, view static displays of equipment, vehicles and demonstrations.	
Will you be charging an entry fee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, how much? \$ _____	Anticipated number of visitors: <b>300</b>
Date(s) of the Event: 9/14/19	Time Open to Public: 1100 Time Closed to Public: 1500 Time Open to Vendors (include setup and teardown): 0900 - 1600
Event Web Site	
<b>Type of Event:</b> <input type="checkbox"/> Festival <input type="checkbox"/> Walk/Run <input type="checkbox"/> Parade <input type="checkbox"/> Vendor Fair <input type="checkbox"/> Block Party <input checked="" type="checkbox"/> Other: _____	

### Organization Information

Name of Organization Kitsap County Sheriff's Office					
Do you have an active City Business License? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No      What is your UBI number?					
Point of Contact Name Maaren Stroble					
Street Address 3951 NW Randall Way			Mailing Address (if different from street address) 614 Division St. MS 37		
City Silverdale	State Wa	Zip 98383	City Port Orchard	State Wa	Zip 98366
Phone 360-337-7221		Alternate Phone		Email mstroble@co.kitsap.wa.us	

## Public Health

**Food** – The Kitsap Public Health District may require your organization to apply for a temporary food establishment permit. Please visit their website at [https://kitsappublichealth.org/FoodSafety/food\\_vendors.php](https://kitsappublichealth.org/FoodSafety/food_vendors.php) or call 360-728-2235 for more information.

Will your event have any food service and/or sales?  Yes  No If yes, how many: \_\_\_\_\_

Will your event have professional catering?  Yes  No If yes, how many: \_\_\_\_\_

Will your event have food trucks?  Yes  No If yes, how many: \_\_\_\_\_

Will your event have food booths or food vendors?  Yes  No If yes, how many: \_\_\_\_\_

### **Alcohol:**

Will alcohol be served at the event?  Yes  No

*If yes, you must contact the Washington State Liquor and Cannabis Board for a special liquor license.*

### **Garbage and Recycling:**

Describe your garbage and recycling, plan: \_\_\_\_\_

Garbage receptacles in front of the office \_\_\_\_\_

\_\_\_\_\_

### **Clean-up Plan:**

Describe your cleanup plan and who will be responsible (Note: Runs/Walks can only use washable paint for marks on route and must be removed by organization after event has completed): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### **Restrooms and Sanitation:**

Describe your restroom and sanitation plan (i.e. number of facilities available including; handicap accessible, sani-cans, wash stations, Port of Bremerton facilities): Facilities inside Sheriff's Office

\_\_\_\_\_

\_\_\_\_\_



## Public Safety

### Crowd Control:

Will you be requesting police officers for traffic and crowd control?  Yes  No

Please indicate how public safety, traffic, and crowd control will be provided and how many police officers you anticipate will be needed for (a) traffic control and (b) crowd control: \_\_\_\_\_

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**POMC 5.94.080 'City Assistance'** states the chief of police, fire chief, and/or public works director may require any reasonable and necessary traffic control, including requiring non-city staff to serve as certified flagger(s), use of downtown parking lots, police protection and/or emergency medical services to be provide at the special event at the organizer's expense.

**Resolution 040-18** states Community events or private activities, which have not been previously exempted from reimbursement under prior City ordinance or resolution, and which require enhanced police security shall pay a flat rate of \$100 per hour to the City for each commissioned officer and police reserve. The use of commissioned officers and police reserves shall be at the sole discretion of the Chief of Police.

### Parking Impacts:

Will parking be provided for participants and visitors (including handicapped parking)?  Yes  No  Not Applicable

If yes, please describe below. Also, if an impact is anticipated to neighbors or surrounding businesses, please describe the mitigation plan: Courthouse parking available.

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Have parking impacts been coordinated with neighbors (residential/business)?  Yes  No  Not Applicable

As parking and/or traffic mitigation, the organizers may want to consider coordination for shuttle service and/or park and ride lots. If applicable, has Kitsap Transit or another service provider been contacted (if yes, please attach written verification of commitment for services)?  Yes  No  Not Applicable

If your vehicle requires vehicles to be towed, your organization must accept responsibility and indemnify the City of Port Orchard and other authorizing property owner(s) by agreeing to pay tow/storage charges or damage claims which result from the vehicle being towed, if a court rules in favor of the registered owner and orders payment of such charges or damage claims. **Name of person responsible for rendering payment of tow/storage charges:** \_\_\_\_\_

### Amplified Sound:

Will you have Amplified Sound?  Yes  No  Not Applicable

Noise levels generated shall not be in excess of allowable levels, consistent with WAC Chapter 173-60. (Note: There a 11:00 p.m. curfew for all noise. Any noise past 11:00 p.m. will require City Council approval)

## Use of City Right-of-Way and Parking Impacts

### Use of State Highway:

Will this event require closure of a State Highway Street (Bay Street/SR166)?     Yes     No

*For State Highway Closures (Bay Street), the sponsoring organization must submit the application to the city at least 120 calendar days before the event date. Upon city approval of the event, the sponsoring organization shall seek permission from the Washington State Department of Transportation (WSDOT) by completing an online application. Once permission is granted from WSDOT, a copy of the Letter of Acknowledgment or an Agreement will need to be provided to the city. Online application for WSDOT can be located at: [www.wsdot.wa.gov/operations/traffic/events/htm](http://www.wsdot.wa.gov/operations/traffic/events/htm).*

**Use of City Right-of-Way:** Port Orchard Municipal Code 5.94.020(7) states "Right-of-way (ROW)" means any road, public parking lot, city street, highway, boulevard or place in the city open as a matter of right to public travel and shall include arterials, neighborhood streets, alleys, bicycle paths and pedestrian ways; including streets or portions thereof which are designated as portions of the state highway system."

Will this event require closure of any City right-of-way?     Yes     No

If yes, indicate what type of City right-of-way is requested to be closed and the location(s):

City Parks: \_\_\_\_\_ (Van Zee Park, Paul Powers Park, McCormick Village Park, Central Park, Etta Turner Park, and Givens Park)

Sidewalks: \_\_\_\_\_

Parking Lots: \_\_\_\_\_

(Lot 1: between Orchard and Frederick streets on the north side of Bay Street; Lot 2: between Frederick Street and Sidney Avenue, north of Bay St.; Lot 3: five rows of parking west of Harrison Ave and east of and parallel to the library; Lot 4: all parking east of Lot 3 and Harrison Ave and west of the Marina Park; Lot 5: all parking on City Hall property in front of the Police department; Lot 6: abutting the landscaped area at the SW corner of the Bay St and Dekalb St intersection; Lot 7: all parking spaced located on the library property which is limited to library staff only; and Lot 8: employee parking lot east of City Hall adjacent to Prospect Alley which is between Kitsap Street and Prospect Street.)

Street(s)

**If requesting street closure, please fill out the closure information below and also include a map (indicated on Page 7) of the area impacted.**

SPECIAL EVENT STREET CLOSURE(S):

Street to be closed and/or obstructed: Division St. -Just in front of the courthouse

Between which streets/intersections: Cline Ave. & Austin Ave.

Date(s) of closure/obstruction: 9/14/19

Time(s) of closure/obstruction: 0900-1600

## Site Map

A site map is **required** to be submitted which includes the following:

- |  |                              |                             |  |                             |  |
|--|------------------------------|-----------------------------|--|-----------------------------|--|
| Vendors:   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |                             |  |
| Signage:   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |                             |  |
| Tents:   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not applicable            |                             |  |
| Public entrances and exits:  | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |                             |  |
| Road closures and detours:   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |                             |  |
| Traffic patterns:  | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |                             |  |
| Fire Lanes:  | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |                             |  |
| Garbage/Recycling:   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |                             |  |
| Barricades:  | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |                             |  |
| First Aid:   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |                             |  |
| Parking:   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |                             |  |
| Restrooms:   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |                             |  |
| If event is a run/walk, list start and stop locations and water/rest stations: |                              |                             | <input type="checkbox"/> Yes                       | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Not applicable |

## Event Signage and Vending

### Signage:

Are you planning to put up temporary signs?  Yes  No

**POMC 20.132.270** "Temporary sign" means any sign that is used temporarily and is not permanently mounted, painted or otherwise affixed, excluding portable signs, including any poster, banner, placard, stake sign or sign not placed in the ground with concrete or other means to provide permanent support, stability and rot prevention. They may only be made of nondurable materials including, but not limited to, paper, corrugated board, flexible, bendable or foldable plastics, foamcore board, vinyl canvas or vinyl mesh products of less than 20-ounce fabric, vinyl canvas and vinyl mesh products without polymeric plasticizers and signs painted or drawn with water soluble paints or chalks. Signs made of any other materials or permanently mounted shall be considered permanent and require a permit. Please contact the Community Development Department at (360) 874-5533 if you have questions or if you need to apply for a sign permit.

POMC 20.2014 Does your event include a tent or membrane structure?  Yes  No

#### If yes:

- A permit is required for a tent that has one or more side panels and is 400 square feet or larger.
- A permit is required for a membrane structure that has no side panels and is over 700 square feet.

**Please contact the Department of Community Development for submittal requirements at (360) 874-5533.**

### Vending:

Did you indicate your event will have vendors?  Yes  No

How many anticipated exhibitors/vendors will be at your event? \_\_\_\_\_

**Per POMC 5.96, if your event has two or more vendors engaged in public property vending, you are required to have a Master Multi-Vendor Event License (MMVEL). The MMVEL fee is \$15.00 per day or \$200 per month. POMC 5.96.020(3)(a) states the sponsor of the master event shall provide a list of participating vendors, their business names, their addresses and their State Tax Revenue Identification Numbers to the city clerk within three working days after the first day of the operation.**

- No public vending is allowed within twenty-five (25) feet of any municipal building, monument, or fountain, OR within ten (10) feet of intersection sidewalks;
- Vending devices must be removed from vending sites daily between the hours of 10:00 p.m. and 6:00 a.m.;
- Vending devices and vending sites must be clean and orderly at all times. The vendor must furnish a suitable refuse container and is responsible for the daily disposal of refuse deposited therein. Refuse containers must be removed each day along with vending devices;
- Vendors may engage in public property vending only in the location specified in the public property license. The location shall be deemed the vending site;
- Utility service connections are not permitted, except electrical when provided with written permission from the adjacent property owner. Electrical lines are not allowed overhead or lying in the pedestrian portion of the sidewalk;
- No mechanical audio or noisemaking devices are allowed, and no hawking is allowed;
- A vinyl or canvas umbrella may be added to the vending device, but its open diameter may not exceed eight and one-half feet. Any part of the umbrella must have a minimum of seven feet of vertical clearance to the area on which the vending device stands;
- Individual vendor advertising signs may be placed only upon the vending device. Temporary master event advertising signs may be placed as approved by the city engineer; and
- No conduct shall be permitted which violates any other section of the Port Orchard Municipal Code.





## **Special Event Permit Application Checklist**

Please use this list to ensure you have included all supporting documentation with your special event application.

- If your event coincides with another organizations event in the same location, please provide written approval from the event organizer that indicates their approval of your event.
- Reviewed Special Event Tool Kit
- Special Event Fee (Check, Cash, Credit Card) (**Page 1**)
- Written approval from property owner if location is on non-City owned property (if applicable) (**Page 2**)
- Health Permits (if applicable) (**Page 4**)
- Special Liquor License (if applicable) (**Page 4**)
- Upon event approval, use of State Highway Letter of Acknowledgment or an Agreement that is received from the Department of Transportation if State Highway is requested to be closed (**Page 6**)
- Completed site map (**Page 7**)
- Master Multi-Vendor Event License fee (if applicable) (**Page 8**)
- Contact Department of Community Development for tent permit (if applicable) (**Page 8**)
- Contact Department of Community Development for sign permit (if applicable) (**Page 8**)
- Special Event Application/Release is completed and signed by the President or Chair of organization (**Page 9**)
- Insurance Certificate, with endorsement, provided at least 30 days prior to event date (**Page 9**)

## *Tips for a successful event*

Contact the local media (Kitsap Sun, Port Orchard Independent, etc.).

Post information on social media.

Promote your event by submitting an application for hanging a banner across SR166/Bay Street.

- Permit applications for the placement of banners at Bay Street shall be made to the City.
- The City will collect permit applications for banners at Bay Street beginning on March 1<sup>st</sup> of each year for permit applications for display of a banner from April 1 of that year until March 31<sup>st</sup> of the following year.
- The City will issue Bay Street banner permits on a first-come, first-served basis, dependent on the completeness of the application, eligibility of the application based on the policies outlined herein, and the availability of the requested time period for the banner to be displayed.
- Bay Street banner permits will be granted for a period not to exceed fourteen (14) calendar days.
- No applicant may be awarded more than two (2) Bay Street banner permits within the first 31 days of the application period for a given 1-year permitting period.-
- Bay Street banners are limited to non-commercial messages only. Commercial sponsors may be placed on the banner, but any text or images relating to commercial sponsors must not comprise more than twenty-five percent (25%) of the facial surface area of the banner and must be less noticeable than the primary banner content.
- The City shall collect a \$100 permitting fee (excluding tax) for each permit to cover administration and installation costs.

Contact the Port Orchard Chamber of Commerce.

Attend a City Council meeting and speak during citizen comments to let the Council and public know of your event.



# KITSAP COUNTY SHERIFF'S OFFICE

614 Division Street MS-37  
Port Orchard, WA 98366  
360.337.5698  
www.kitsapgov.com/sheriff

Sheriff  
Gary Simpson  
**News**

**For immediate release:**  
Release #19-027 / 125 / 144

**Tuesday, Sept. 3, 2019**

## Courthouse campus

### **Sheriff's Office to host Open House**

**PORT ORCHARD, Wash.** -- For a second year, Sheriff Gary Simpson and the Kitsap County Deputy Sheriffs Guild will open the doors to the sheriff's office. The public is invited to come meet sheriff's patrol deputies, detectives, corrections officers, support services specialists and Citizen on Patrol volunteers. They will have the opportunity to walk through the sheriff's work spaces and the Kitsap County Jail with guided tours, view static displays of equipment, vehicles and demonstrations.

#### Location:

Kitsap County  
Sheriff's Office and  
Kitsap County Jail  
614 Division Street  
Port Orchard  
(courthouse campus)

All activities will take place on Division Street in front of the sheriff's office.

#### Times and date

11 a.m. - 3 p.m.,  
Saturday, Sept. 14



Sheriff's Sgt. Kurtis Lont speaks with youngsters as they climb aboard the sheriff's SWAT Team tactical vehicle during the 2018 sheriff's office open house. Visitors may have the opportunity to explore the WSP Bomb Disposal Team vehicle, the SWAT team tactical vehicle and see sUAS (drone) demonstrations, and more, during the Sept. 14 open house in Port Orchard.

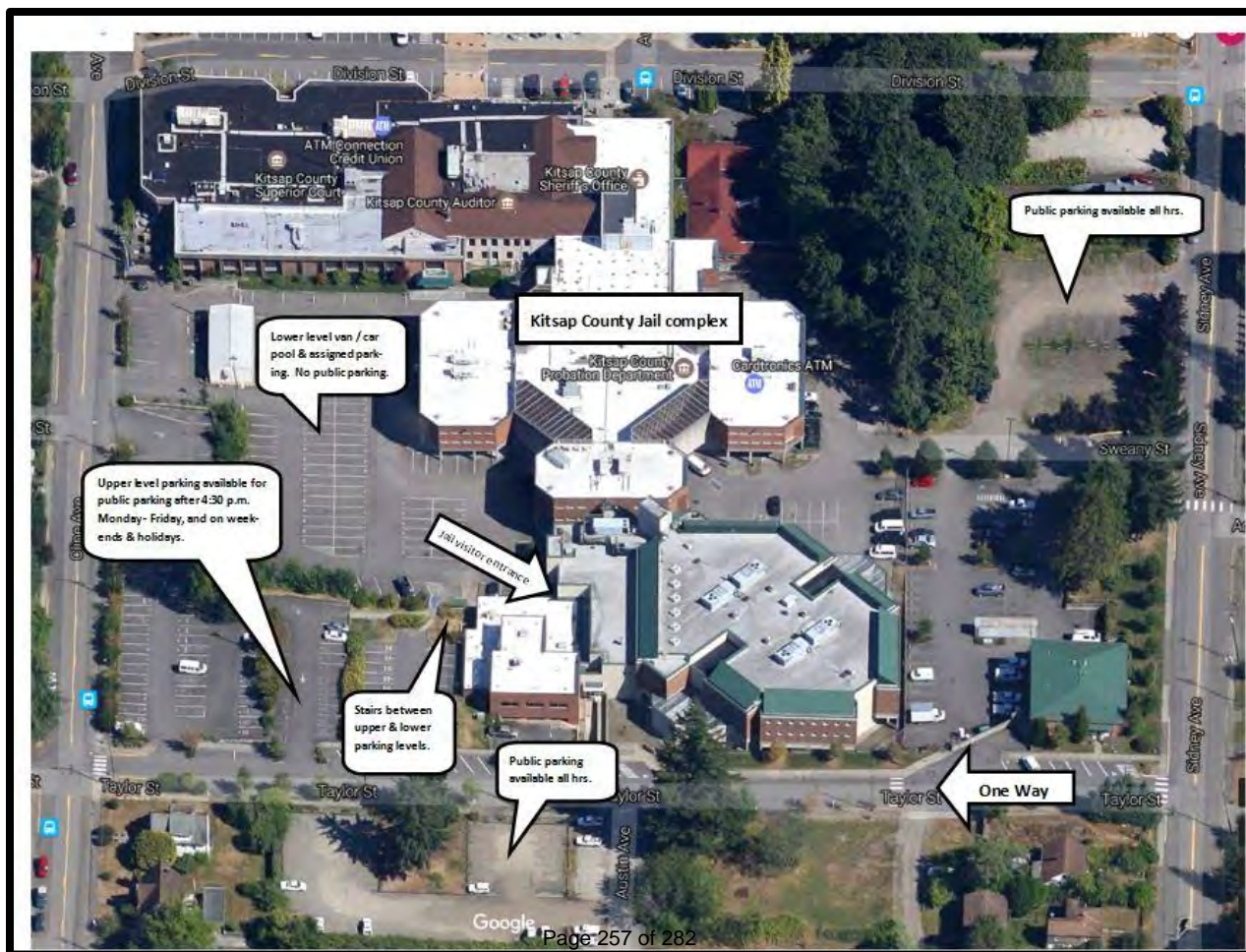


The weather forecast is favorable... take an hour (+) to visit with your sheriff's office, Sept. 14, 11 a.m. - 3 p.m.



Sheriff's Lt. Earl Smith conducts a capabilities demonstration of one of the sheriff's small Unmanned Aerial System units (drone) at the 2018 sheriff's office open house in Port Orchard.

See parking map below.



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**City of Port Orchard  
Council Meeting Minutes  
Regular Meeting of August 13, 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	Absent
Councilmember Cucciardi	Present
Councilmember Diener	Present
Councilmember Lucarelli	Present
Councilmember Rosapepe	Present
Mayor Putaansuu	Present

Staff present: Public Works Director Dorsey, Community Development Director Bond, City Attorney Cates, City Clerk Rinearson and Deputy City Clerk Floyd.

**A. PLEDGE OF ALLEGIANCE**

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

**2. APPROVAL OF AGENDA**

**MOTION:** By Councilmember Cucciardi, seconded by Councilmember Lucarelli, to excuse Councilmember John Clauson for personal reasons.

**The motion carried.**

**MOTION:** By Councilmember Ashby, seconded by Councilmember Cucciardi, to approve the agenda as amended.

**The motion carried.**

**3. CITIZENS COMMENTS**

There were no citizen comments.

#### **4. CONSENT AGENDA**

- A.** Approval of Voucher Nos. 77284 through 77319, and 77324 77428 including bank drafts in the amount of \$1,968,582.97 and Electronic Payments in the amount of \$146,379.99 totaling \$2,114,962.96.
- B.** Approval of Payroll Check Nos. 77320 through 77323 including bank drafts and EFT's in the amount of \$150,015.80; and Direct Deposits in the amount of \$182,417.36 totaling \$332,433.16.
- C.** Approval of a Contract with South Kitsap School District for a School Resource Officer
- D.** *New Item:* Excusal of Councilmember John Clauson for Personal Reasons

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

**The motion carried.**

#### **5. PRESENTATION**

##### **A. Saints Car Club**

Roger Jensen said this is the Cruz's 32<sup>nd</sup> year and noted this event could not happen without the approval of the Mayor, Council, and city staff. He provided brief information on this year's attendance at the event.

Bill Hubbell spoke to the number of cars in the event and amount of ferry passengers who came to town.

##### **B. Fathoms O' Fun Festival, Inc.**

Sharron King presented a Certificate of Special Appreciation to the City for dedication and commitment to service in working with Fathoms O' Fun Festival, Inc. for the past 52 years, and spoke about the Battle of the Bands and Grand Parade.

#### **6. PUBLIC HEARING**

##### **A. New Chapter 6.20 Plastic Bag Reduction of the Port Orchard Municipal Code**

Mayor Putaansuu opened the public hearing at 6:43 p.m.

**Tony D'Onofrio**, Sustainability Director for Town and Country and Central Markets and representing the Washington Food Industry Association (WFI), stated WFI acknowledged their support of the plastic bag ban for several reasons including environmental consequences. WFI recognizes the 8 cent pass through charge is a good solid fee to offset some of the costs.

**Heather Trim**, Executive Director of Zero Waste Washington, is pleased the ordinance is being considered tonight. Kitsap County last night voted in favor to an identical ordinance. Number of other cities are considering the same ban. They are concerned about the plastics in the environment because of the impact on wildlife and recycling systems. They support the ordinance and the charge.

**Susan Thoman**, Port Orchard resident and founder of the Compost Manufacturing Alliance, has worked in solid waste for 30 years. She stands in support of the plastic bag reduction ordinance. She spoke to compost and recycling.

**Chris Piercy**, program supervisor with Kitsap County Public Works, said yesterday Kitsap County Commissioners did approve the countywide ordinance. We are all hopefully going to be living under the same umbrella bag laws. We are happy to support the City in their outreach efforts should we move this ordinance forward. The downtown library has reusable bags for any resident to pick up.

**MOTION:** By Councilmember Rosapepe, seconded by Councilmember Lucarelli, to close the public hearing at this time.

**The motion carried.**

At 6:52 p.m., Mayor Putaansuu closed the public hearing.

Mayor Putaansuu noted we will have an ordinance to deliberate next week as well as reopen the public hearing for additional testimony.

## **7. BUSINESS ITEMS**

### **A. Adoption of an Ordinance Adopting Amendments to Chapters 20.12, 20.80 and 20.86 to the Port Orchard Municipal Code to Allow Nine-Lot Short Plats**

**MOTION:** By Councilmember Diener, seconded by Councilmember Cucciardi, to adopt an ordinance amending POMC Chapters 20.12, 20.80 and 20.86 to allow nine-lot short plats, as presented.

**The motion carried.**

**(Ordinance No. 028-19)**

### **B. Adoption of an Ordinance Adopting Revisions to Chapters 20.22, 20.140 and 20.150 of the Port Orchard Municipal Code Clarifying Requirements for Minor Land Disturbing Activity Permits and Tree Cutting Activities**

**MOTION:** By Councilmember Diener, seconded by Councilmember Ashby, to adopt an ordinance amending POMC Chapters 20.22, 20.140 and 20.150 to streamline and simplify the permit and review process for minor land disturbing activities and select tree cutting activities, as presented.

**The motion carried.  
(Ordinance No. 029-19)**

**C. Adoption of an Ordinance Adopting Chapter 20.100.130 Onsite Recreation Space for Subdivisions of the Port Orchard Municipal Code**

**MOTION:** By Councilmember Lucarelli, seconded by Councilmember Cucciardi, to adopt an ordinance adopting new section POMC Chapters 20.100.130 to require new residential subdivisions to provide onsite recreational space for their residents, as presented.

**The motion carried.  
(Ordinance No. 030-19)**

**D. Adoption of an Ordinance Adopting the Revised 2019 Zoning Map**

**MOTION:** By Councilmember Cucciardi, seconded by Councilmember Rosapepe, to adopt an ordinance to adopt the revised 2019 City Zoning Map, as presented.

**The motion carried.  
(Ordinance 031-19)**

**E. Adoption of a Resolution of Intent Related to SHB 1406**

**MOTION:** By Councilmember Ashby, seconded by Councilmember Chang, to adopt a resolution declaring the City of Port Orchard's intent to adopt legislation to authorize a sales and use tax for affordable housing in accordance with SHB 1406.

**The motion carried.  
(Resolution No. 023-19)**

**F. Adoption of a Resolution Supporting the TIB 2019 Urban Arterial Program Funding Application for the SW Old Clifton Road/Anderson Hill Road SW Intersection Project**

**MOTION:** By Councilmember Cucciardi, seconded by Councilmember Rosapepe, to adopt a resolution, thereby supporting the 2019 Urban Arterial Program (UAP) Funding Application for the SW Old Clifton Road/ Anderson Hill Road SW Intersection Project, as a requirement to obtain grant funding for a fully funded project phase.

**The motion carried.  
(Resolution No. 024-19)**

**G. Approval of Change Order Nos. 25, 26, and 27 to Contract No. 037-17 with Active Construction, Inc. for the Tremont Street Widening Project**

**MOTION:** By Councilmember Diener, seconded by Councilmember Rosapepe, to authorize the Mayor to execute Change Orders No. 25 through 27, with Active Construction, Inc. in an amount not to exceed \$145,010.18.

**H. Community Development Block Grant Entitlement Grantee**

**MOTION:** By Councilmember Lucarelli, seconded by Councilmember Diener, to move that the City of Port Orchard notify the US Department of Housing and Urban Development of the City's preference for Option 3, deferring status as an entitlement community and continuing as part of the Kitsap County Urban County for 2020-2022.

**The motion carried.**

**I. Approval of the July 16, 2019, Council Work Study Session Minutes**

**MOTION:** By Councilmember Rosapepe, seconded by Councilmember Lucarelli, to approve the July 16, 2019, Council work study session minutes.

**The motion carried. Councilmember Cucciardi abstained.**

**J. Approval of the July 23, 2019, Council Meeting Minutes**

**MOTION:** By Councilmember Rosapepe, seconded by Councilmember Cucciardi, to approve the July 23, 2019, Council meeting minutes.

**The motion carried. Councilmember Diener abstained.**

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

**A. Public Facilities District (PFD) – Next Steps**

Mayor Putaansuu said we were the top rated project in PFD rankings for projects. He provided a document which outlined the next steps.

Mayor, Council, and staff discussed a draft agreement with PFD; funding studies; meetings with Kitsap County and PFD; bonding capacities; staff time in managing the process and project; cash contributions; possible Kitsap Bank financing; public outreach and community support; and project scope of work which included planning, outreach, design, cost estimates, shoreline permits, property acquisition, and construction documents and applications.

**Council Direction:** Council agreed to let Mayor Putaansuu provide the City's framework for tasks and deliverables and funding commitment to the PFD this week.

## 9. REPORTS OF COUNCIL COMMITTEES

Councilmember reported on the August 5<sup>th</sup> Economic Development and Tourism Committee. The next meeting is scheduled for September 7<sup>th</sup> [September 9<sup>th</sup>].

Councilmember Lucarelli reported on August 19<sup>th</sup> Utilities committee. The next meeting is scheduled for September 16<sup>th</sup>. The Sewer Advisory Committee is scheduled to meet this week [August 14<sup>th</sup>]

Mayor Putaansuu and Councilmember Diener reported the Land Use Committee is scheduled to meet August 26<sup>th</sup>.

Councilmember Rosapepe reported it was brought to his attention that the Lodging Tax Committee is down one member and the Mayor has been looking for additional members.

In response to Mayor Putaansuu, City Clerk Rinearson noted the Comfort Inn and Days Inn are both participating in the Lodging Tax committee this year. Additionally, she said the lodging tax application will be online this week and the committee will be meeting the week of September 23<sup>rd</sup>.

## 10. REPORT OF MAYOR

The Mayor reported on the following:

- Parking along Old Clifton Road by the McCormick Village Park;
- Replacing switches for our fiber;
- Bay Street parking stall updates and City vehicles;
- Chimes should be installed in the next 60 days;
- Councilmember and non-union employee life insurance policy changes;
- Personal policy changes;
- Land use attorney and billing; and
- No work study this month but there is a business meeting next week.

## 11. REPORT OF DEPARTMENT HEADS



Community Development Director Bond reported on the release draft Vision 2050.

City Clerk Rinearson reported she has been asked if the City would reconsider the pet sales ban ordinance and is asking for direction from Council.

Councilmember Diener would like to see this added to a work study meeting.

Councilmember Cucciardi asked to see an estimate of staff and attorney time to complete bring this to the finish line.

## **12. CITIZEN COMMENTS**

Mayor Putaansuu read into the record that the City of Port Orchard has never received a formal request from the owners of Whiskey Gulch to move our multi-model path to the waterside of their property. If they were to make such a request, the City would gladly consider it, but we are aware of a Phase 1 ESA or an environmental records search that was performed by Kitsap Transit for their project on the adjoining property. This research indicates that contaminants may exist on Whiskey Gulch site. Should the City move forward on potentially moving the path to the waterside of the property, the owner would need to provide access to the property so the City could perform additional environmental testing. In the event the contaminants were found on the property, the owner would be responsible for the environmental cleanup similar to what was done at the Titus Ford site at the base of our bridge by Blackjack Creek. If our testing finds no environmental concerns, then our engineering staff could evaluate routes on the waterway side of the property. This route would also require the owner provide easements necessary to facilitate the pathway.

**Robert McGee, Albon Dougherty, Renee Curtoni, Christi McGee, Chuck Huck, Lindsey Dougherty, Shawn O'Dell, Connie Haworth, Samantha Smith, Gregory Godby, Stephen Sweeney, Jason (Whiskey Gulch employee), Carol Seversen, Nate Worder, and Harlan Morgan,** voiced concerns and displeasure with the proposed bike bath in Annapolis including lack of communication and transparency from the City; parking spaces; pedestrian safety; bicyclists; loss of business and property; concerns for employees; small businesses, speeders on Bay Street; jersey barriers; and urging the City to work with, and listen to their community.

**Astrid Gruenert, Nicole Vaught, Gregory Vance Vaught,** residents of Tremont Place, voiced concerns with the City's communication skills and the gas station to be built near their home.

**Cheryl Fowler,** is an ex-employee of Kitsap Transit. She personally did the Annapolis run and noted the boat can only take on 10 bikes at a time. If there are more bikes, they must remove passengers.

**Kim Seibens, Leah Spaulding, Ashley Dale, Margi Moore, and Elizabeth Droun**, spoke against puppy mills and encouraged Council to adopt an ordinance banning puppy mills in Port Orchard. Thanked Council for adding this discussion to the work study meeting in September.

Mayor Putaansuu noted Grocery Outlet is having a grand opening this Thursday.

At 8:58 p.m., Mayor Putaansuu recessed the meeting for a 5-minute break.

At 9:03 p.m., Mayor Putaansuu reconvened Council back into regular session.

### **13. EXECUTIVE SESSION**

At 9:03 p.m., Mayor Putaansuu recessed the meeting for a 30-minute executive session to discuss potential and ongoing litigation pursuant to RCW 42.30.110. City Attorney Cates, Development Director Bond, Public Works Director Dorsey and legal counsel Robertson via telephone were invited to attend and Mayor Putaansuu announced no action would be taken.

At 9:33 p.m., Mayor Putaansuu extended the executive session an additional 20 minutes.

At 9:53 p.m., Mayor Putaansuu reconvened Council back into regular session.

### **14. ADJOURNMENT**

The meeting adjourned at 9:53 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  
Council Meeting Minutes  
Regular Meeting of August 20, 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	Absent
Councilmember Lucarelli	Present
Councilmember Rosapepe	Present
Mayor Putaansuu	Present

Staff present: Public Works Director Dorsey, HR Coordinator Lund, Community Development Director Bond, City Attorney Cates, Police Chief Brown, City Clerk Rinearson and Deputy City Clerk Floyd.

**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 Cucciardi, to add under Business Item 7F to amend a previously adopted Ordinance No. 029-19.

**The motion carried.**

**MOTION:** By Councilmember Cucciardi seconded by Councilmember Clauson, to add under Consent Agenda Item C the excusal of Councilmember Diener for work obligations.

**The motion carried.**

**MOTION:** By Councilmember Ashby, seconded by Councilmember Cucciardi, to approve the agenda as amended.

**The motion carried.**

**3. CITIZENS COMMENTS**

There were no citizen comments.

#### **4. CONSENT AGENDA**

- A.** Approval of Voucher Nos. 0 through 0, including bank drafts in the amount of \$0 and Electronic Payments in the amount of \$0 totaling \$0.
- B.** Approval of Payroll Check Nos. 0 through 0, including bank drafts and EFT's in the amount of \$0; and Direct Deposits in the amount of \$0 totaling \$0.
- C.** New Item: Excusal of Councilmember Diener for Work Obligations

**MOTION:** By Councilmember Cucciardi, seconded by Councilmember Rosapepe, to approve the consent agenda

**The motion carried.**

#### **5. PRESENTATION**

There were no presentations.

#### **6. PUBLIC HEARING**

##### **A. New Port Orchard Municipal Code Chapter 6.20 Plastic Bag Reduction**

Mayor Putaansuu opened the public hearing at 6:35 p.m.

**Bob Showers** questioned the findings and research and asked where it came from. Why are we exempting people on the federal and state programs? Also, where did the 8 cents come from?

In response to Mr. Showers, Mayor Putaansuu said Kitsap County has adopted a ban, and if we adopt one as well, the only place in Kitsap County that would not have a ban would be the City of Poulsbo. We are following what the County, Bremerton, and Bainbridge Island have done. Additionally, the language we have is similar to what the State was proposing to do, but they did not take action at the time.

**Katherine Holm**, Washington Food Industry Association, said in regard to the exemptions, in 2011, they worked with the USDA and the US Attorney's Office, and this was the guidance they gave us as a way to make sure we are federally compliant. The idea is so we are not impacting low income who cannot afford to pay the 5, 8, or 10 cents.

**MOTION:** By Councilmember Ashby, seconded by Councilmember Cucciardi, to close the public hearing on the plastic bag reduction.

**The motion carried.**

At 6:41 p.m., Mayor Putaansuu closed the public hearing.

**7. BUSINESS ITEMS**

**A. Adoption of an Ordinance Adopting a New Port Orchard Municipal Code Chapter 6.20 Plastic Bag Reduction**

**MOTION:** By Councilmember Ashby, seconded by Councilmember Rosapepe, to adopt the ordinance adopting POMC Chapter 6.20, as presented.

**The motion carried.  
(Ordinance No. 033-19)**

**B. Adoption of an Ordinance Providing Life and Accidental Death and Dismemberment Insurance for Councilmembers and Non-Union Employees**

**MOTION:** By Councilmember Rosapepe, seconded by Councilmember Clauson, to adopt an Ordinance which provides for life and accidental death and dismemberment insurance benefits for city council members and non-represented City employees.

**The motion carried.  
(Ordinance No. 034-19)**

**C. Adoption of a Resolution Approving Mayoral Appointments to the Lodging Tax Advisory Committee**

**MOTION:** By Councilmember Clauson, seconded by Councilmember Cucciardi, to adopt a resolution approving the Mayor's appointment of a representative from the Days Inn and Comfort Inn as businesses required to collect the tax; and the Port Orchard Chamber of Commerce and Port Orchard Bay Street Association as organizations involved in activities; to serve on the Lodging Tax Advisory Committee, and to confirm the appointment of Councilmember Rosapepe as Chair of the committee.

**The motion carried.  
(Resolution No. 025-19)**

**D. Approval of Change Order No. 2 to Contract No. 077-18 with Schneider Equipment, Inc. for the Well No. 13 Drilling Project**

**MOTION:** By Councilmember Lucarelli, seconded by Councilmember Clauson, to authorize the Mayor to execute Change Orders No. 2 with Schneider Equipment, Inc. in an amount not to exceed \$512,399.19.

**The motion carried.**

**E. Approval of Change Order No. 4 to Contract No. 023-18 with Neptune Marine LLC for the Bay Street Pedestrian Pathway Segment 3 Construction**

**MOTION:** By Councilmember Ashby, seconded by Councilmember Cucciardi, to authorize the Mayor to execute Change Order No. 4 with Neptune Marine LLC in an amount not to exceed \$24,561.47 for the 2018 Bay Street Pedestrian Pathway – Segment #3 Construction.

**The motion carried.**

**F. New Item: To Amend A Previously Adopted Ordinance No. 029-19.**

Development Director Bond said the ordinance before you tonight shows the amendments that were supposed to be included in the version that came to you for your vote on August 13<sup>th</sup>. The wrong version of this ordinance was included in the folder for August 13<sup>th</sup>. This ordinance is to make sure that what was adopted last week matches what was reviewed at the July 16<sup>th</sup> work study meeting. The changes in this ordinance relate to simplifying the process for getting permits for minor land disturbing activities.

**MOTION:** By Councilmember Ashby, Seconded by Councilmember Lucarelli, to amend Ordinance No. 029-19 relating to clarifying requirements for minor land disturbing activity permits and amending certain sections of Title 20 of the Port Orchard Municipal Code by incorporating the strikeout deletions and the underline additions to Port Orchard Municipal Code 20.140.070 subsection (2)(l) and Port Orchard Municipal Code 20.140.080, subsections 1, 2, 4 and 7 as set forth in the revised document presented by the Department of Community Development.

**The motion carried.**

**(Amended Ordinance No. 029-19)**

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

**A. Vision 2050 Draft Plan**

Community Development Director Bond explained on July 19, 2019, the Puget Sound Regional Council (PSRC) released the draft VISION 2050 regional plan, which is intended to guide development in the central Puget Sound region over the new few decades. The regional policies of VISION 2050 will directly

influence the City's next Comprehensive Plan update in 2024. In particular, the City will need to accommodate any changes in population and employment targets through its zoning and infrastructure policies.

In March 2018, comments were provided to PSRC on some of the draft policies that were being vetted through the Growth Management Policy Board and Regional Staff Committee. We later worked with other jurisdictions to have minor changes made to allocations coming to Kitsap County. Those policies are in the draft document which we briefly discussed.

Mr. Bond asked Council if they have other concerns to communicate to PSRC. If no concerns, we should write letter of support of the plan that is presented.

After a brief discussion, Mayor Putaansuu suggested bringing this back to Council on September 10<sup>th</sup> as an action item. The Land Use Committee will also discuss during their August 26<sup>th</sup> meeting.

## **9. REPORTS OF COUNCIL COMMITTEES**

Mayor Putaansuu reported the Finance Committee is scheduled to meet September 10<sup>th</sup>.

Councilmember Ashby reported the Economic Development and Tourism Committee is scheduled to meet September 9<sup>th</sup>.

Councilmember Lucarelli reported the Utilities Committee is scheduled to meet September 16<sup>th</sup> [September 23<sup>rd</sup>] She reported on the August 14<sup>th</sup> Sewer Advisory Committee meeting. The next meeting is scheduled for November 6<sup>th</sup>. She reported on the August 26<sup>th</sup> Chimes and Lights Committee meeting. The next meeting is scheduled for September 23<sup>rd</sup>.

Councilmember Cucciardi reported the Land Use Committee is scheduled to meet August 26<sup>th</sup>.

Councilmember Rosapepe reported the City Clerk is getting ready to set a date for the Lodging Tax Advisory Committee.

Councilmember Ashby reported the KRCC Legislative Reception is scheduled for November 14<sup>th</sup>.

## **10. REPORT OF MAYOR**

The Mayor reported the following:

- Council meeting schedule and September 17<sup>th</sup> work study agenda items;
- No high speed ferries coming to Annapolis; and
- Kitty Hall Day.

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

Public Works Director Dorsey reported the pathway project will be discussed during the September 17<sup>th</sup> work study meeting.

HR Coordinator Lund reported on life insurance enrollment forms due to change in carrier.

Community Development Director Bond reported on speed limit ordinance study.

## **12. CITIZEN COMMENTS**

**Chuck Huck, Robert McGee, Julie Schroath, Tim Wiles, Christina Foreman and Kristi McGee**, spoke to the Annapolis pathway including urging Council to listen to the community; voiced concerns with Kitsap Transit using the Annapolis dock; lack of transparency; parking in Annapolis; citizen complaints against the City; speed bumps on Bay Street; painted pathway; lack of bicyclists; putting together an unbiased group or committee for whom citizens could ask questions; revitalizing Port Orchard; and thanked Councilmembers who reached out to them after the last Council meeting.

Councilmember Clauson said the Kitsap Transit Waterman vessel is not a high speed vessel and would not be able to go to the Annapolis dock. The Annapolis dock needs to be made more accessible.

## **13. EXECUTIVE SESSION**

At 7:48 p.m., Mayor Putaansuu recessed the meeting for a 15-minute executive session to discuss ongoing and potential litigation pursuant to RCW 42.30.110. City Attorney Cates and Development Director Bond were invited to attend and Mayor Putaansuu announced no action would be taken.

At 8:03 p.m., Mayor Putaansuu extended the executive session an additional 10 minutes.

At 8:13 p.m., Mayor Putaansuu extended the executive session an additional 10 minutes.

At 8:23 p.m., Mayor Putaansuu reconvened Council back into regular session.

## **14. ADJOURNMENT**

The meeting adjourned at 8:23 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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August 13, 2019

Mr. Thomas Knuckey, P.E.  
Public Works Director  
City of Bremerton Public Works Department  
345 6<sup>th</sup> Street, Suite 500  
Bremerton, WA 9836

RE: Request for Additional Interim Source - 580 Zone

Dear Tom,

On June 17, 2019 the City of Port Orchard informed the City of Bremerton that the storage capacity of the shared 450,000-gallon water storage reservoir for the 580 Zone was recently found to be exceeded and that an emergency water moratorium had been issued by the City of Port Orchard on June 11, 2019. On July 24, 2019 the City of Port Orchard, HDR, Inc., BHC Consultants and McCormick Communities met with City of Bremerton staff to work towards a viable resolution to this pressing issue, being both Storage and Source related within the 580 Zone. Subsequently, on July 31, 2019, BHC Consultants, the firm responsible for portions of both the City of Bremerton and the City of Port Orchard water system plans, concurred with the McCormick Communities Engineering Support Memo prepared by HDR, Inc (please see attached.)

During the July 24, 2019 meeting, several water use factors and demands needed to assess the true capacity of the 580 Zone storage reservoir were agreed upon, but were contingent upon the City of Bremerton's ability to provide a Seasonal Firm Peak Day (SFPD) supply of 600 GPM for the City of Port Orchard and 450 GPM for the City of Bremerton, until additional source for Port Orchard could be provided by the pending Well No. 12 project. In the concurred July 31, 2019 Memo, required SFPD supply from the City of Bremerton to the City of Port Orchard needed to accommodate additional ERU's associated with platted and sold lots that are currently unable to be permitted, has now increased the SFPD to 792.3 GPM, being the currently committed 350 GPM (2001 580 Zone ILA) plus an additional 442.3 GPM. Please note, this value is not only seasonal peak day, but is also an interim requirement until a new 580 Zone 'stacked' water storage reservoir can be constructed, and the additional source (Well No. 12) provided.

The City of Port Orchard is currently working towards finalizing an Agreement with McCormick Communities in which 1) the new 580 Zone 'stacked' reservoir and 2) a second water transmission main will be constructed within an approximate 18-month time period. In addition, the Agreement will also provide for the construction of the much-needed Well No. 12 facility, a new well that already has a Permit to commence drilling. Please be advised that the City of Port Orchard will be requiring a Performance Bond in the amount of 150% of the value of the new Reservoir, Water Main and Well to ensure that the completion of these storage and source needs are met in a timely manner.

Additionally, the City of Port Orchard is investigating viable alternatives to modify the Splash Pad at McCormick Village Park from a flow-through to a recycled water supply system. Also, the City has already discussed the matter of stacked vs. nested reservoir storage with South

Kitsap Fire and Rescue (SKFR), whereby the existing shared 450,000-gallon storage reservoir will be allowed to be calculated as a 'nested' reservoir, until such time as the new 580 Zone 'stacked' Reservoir is completed within the anticipated 18-month time period mentioned above. Please understand that it is the City of Port Orchard's belief that the time period needed for the completion of ALL three required elements of the 580 Zone Water Campus (580 Stacked Reservoir, New Water Main and Well No. 12) is not expected to exceed 5-years and that the details of this matter will be resolved within the Agreements with McCormick Communities, South Kitsap Fire and Rescue, and in the restructuring of both the 580 Zone ILA and the 260 Zone ILA with the City of Bremerton, which will include the transfer of the existing 450,000 gallon reservoir with associated land and the existing transmission water main from the City of Port Orchard to the City of Bremerton in exchange for wholesale water (see Future Water Campus Exhibit attached.)

***Therefore, the City of Port Orchard is requesting that the City of Bremerton agree to a SFPD supply commitment within the 580 Zone of 792.3 GPM, for an interim period not expected to exceed 5-years.***

If you concur and are willing to support the City of Port Orchard's desire to continue to develop and finalize the needed Agreements between the City of Port Orchard, the City of Bremerton, McCormick Communities and SKFR, please indicate by signing below. Thank you for your time and consideration on this matter. If you should have any additional questions or need additional information, please feel free to contact me at this office.

Sincerely,

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

MRD:mrd

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Thomas Knuckey, P.E., Public Works Director

Date

Cc: Rob Putansuu – Mayor  
Noah Crocker – Finance Director  
Nick Bond – Development Director  
Jacki Brown – Utility Manager  
Michael Pleasants, P.E. – Asst. City Engineer  
Tony Lang – Operations Manager  
Jennifer Robertson – City Attorney  
Jim Gross, P.E. – BHC Consultants  
Cami Apfelbeck – Water Utility Manager/Bremerton  
Ned Lever, P.E. – City Engineer/Bremerton  
file

**From:** [Mark Dorsey](#)  
**To:** [Rob Putaansuu](#); [Nick Bond](#); [Jacki Brown](#); [Mike Pleasants](#)  
**Subject:** FW: Request for Additional Interim Source - 580 Zone DRAFT  
**Date:** Friday, August 30, 2019 8:47:32 AM  
**Attachments:** [COB GPM Request Letter 081319 v3.pdf](#)  
**Importance:** High

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See below.....

**From:** Thomas Knuckey <[Thomas.Knuckey@ci.bremerton.wa.us](mailto:Thomas.Knuckey@ci.bremerton.wa.us)>  
**Sent:** Thursday, August 29, 2019 4:10 PM  
**To:** Mark Dorsey <[mdorsey@cityofportorchard.us](mailto:mdorsey@cityofportorchard.us)>  
**Cc:** Ned Lever <[Ned.Lever@ci.bremerton.wa.us](mailto:Ned.Lever@ci.bremerton.wa.us)>; Cami Apfelbeck <[Cami.Apfelbeck@ci.bremerton.wa.us](mailto:Cami.Apfelbeck@ci.bremerton.wa.us)>; Roger Lubovich <[Roger.Lubovich@ci.bremerton.wa.us](mailto:Roger.Lubovich@ci.bremerton.wa.us)>; Greg Wheeler <[Greg.Wheeler@ci.bremerton.wa.us](mailto:Greg.Wheeler@ci.bremerton.wa.us)>  
**Subject:** FW: Request for Additional Interim Source - 580 Zone DRAFT  
**Importance:** High

Mark, I'm sorry for my delay in getting back to you, but please don't take this as reluctance to work collaboratively with you to effect the proper solution to the water supply and storage issues in the 580 zone. The 580 zone issues are uncharted territory for us and we need to ensure we're making the right decisions as we define the path forward. I think all parties involved are committed to an expedited solution that restores reliable water service in both of our service areas.

That said, I can say that the general approach outlined in your letter dated August 13, 2019 is acceptable in concept. There are still some specific issues to resolve, including conversion of the water service for the park and splash pad within our service area to be a Bremerton customer, working out agreements with McCormick Communities for improvements to our Well 1R to increase supply, and establishing the appropriate amount of interim source water that we can commit to contractually with Port Orchard. Please note that it is critical for us to have an executed agreement with McCormick Communities for the Well 1R improvements, with appropriate bonding, before we can execute a commitment with Port Orchard for more water supply. Also note that since the proposed additional supply commitment during the interim period would take effect before improvements to well 1R are made, that additional commitment will need to be conditioned on our ability to provide that supply. Further, all formal agreements with Port Orchard and McCormick Communities, including the ILA will require approval of the City Council.

At this time we're actively working with McCormick Communities on the Well 1R construction agreement, and I think we should start drafting a new ILA that reflects the clear path forward identified in your letter. I am sure there will be finer points that will need further discussion and negotiation, however, from our perspective, the general approach you identified in your letter is the proper solution.

Finally, I would like to say that we very much appreciate your leadership in helping resolve this difficult and complicated issue. Ned indicates that your counsel has been instrumental in pinning down the various issues, and in identifying what we agree to be an innovative interim solution to a

difficult problem. I hope this email will address your request for a commitment from Bremerton and allow us to actively move forward with the ILA.

Please feel free to give me a call if you would like to discuss this issue.

**Tom Knuckey, P.E.**

Director of Public Works and Utilities  
City of Bremerton  
Desk (360) 473-2376/Cell (360) 509-0870  
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**From:** Mark Dorsey [<mailto:mdorsey@cityofportorcharard.us>]  
**Sent:** Thursday, August 22, 2019 12:35 PM  
**To:** Thomas Knuckey <[Thomas.Knuckey@ci.bremerton.wa.us](mailto:Thomas.Knuckey@ci.bremerton.wa.us)>  
**Cc:** Ned Lever <[Ned.Lever@ci.bremerton.wa.us](mailto:Ned.Lever@ci.bremerton.wa.us)>; Cami Apfelbeck <[Cami.Apfelbeck@ci.bremerton.wa.us](mailto:Cami.Apfelbeck@ci.bremerton.wa.us)>  
**Subject:** RE: Request for Additional Interim Source - 580 Zone

Good afternoon, Tom. Are you able to provide me with an update? It is my understanding the City of Bremerton has met with McCormick Communities in regards to potential improvements to address operational concerns? Thanks

**From:** Thomas Knuckey <[Thomas.Knuckey@ci.bremerton.wa.us](mailto:Thomas.Knuckey@ci.bremerton.wa.us)>  
**Sent:** Tuesday, August 13, 2019 2:07 PM  
**To:** Mark Dorsey <[mdorsey@cityofportorcharard.us](mailto:mdorsey@cityofportorcharard.us)>  
**Cc:** Ned Lever <[Ned.Lever@ci.bremerton.wa.us](mailto:Ned.Lever@ci.bremerton.wa.us)>; Cami Apfelbeck <[Cami.Apfelbeck@ci.bremerton.wa.us](mailto:Cami.Apfelbeck@ci.bremerton.wa.us)>  
**Subject:** FW: Request for Additional Interim Source - 580 Zone  
**Importance:** High

Hi Mark – thank you for your letter and for establishing a firm request, this is very helpful in moving this issue forward. Unfortunately, the requested flow causes us operational concerns that we need to better understand before any agreement can be made. We will work diligently on this request; however, it will take some time to give you a firm response.

**Tom Knuckey, P.E.**

Director of Pubic Works and Utilities  
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**From:** Mark Dorsey <[mdorsey@cityofportorcharard.us](mailto:mdorsey@cityofportorcharard.us)>  
**Sent:** Tuesday, August 13, 2019 12:10 PM

**To:** Thomas Knuckey <Thomas.Knuckey@ci.bremerton.wa.us>

**Cc:** Rob Putaansuu <rputaansuu@cityofportorchard.us>; Noah Crocker <ncrocker@cityofportorchard.us>; Nick Bond <nbond@cityofportorchard.us>; Jacki Brown <jbrown@cityofportorchard.us>; Mike Pleasants <mpleasants@cityofportorchard.us>; Tony Lang <tlang@cityofportorchard.us>; Jennifer Robertson <jrobertson@comcast.net>; Jim Gross <Jim.Gross@bhconsultants.com>; Cami Apfelbeck <Cami.Apfelbeck@ci.bremerton.wa.us>; Ned Lever <Ned.Lever@ci.bremerton.wa.us>

**Subject:** Request for Additional Interim Source - 580 Zone

**Importance:** High

Good afternoon, Tom.....please find the attached letter and documents for your review. In summary, I am very optimistic that we are now ready to finalize the agreements necessary to resolve both the source and storage issues within the 580 Zone. At this juncture, I am hoping that you will 'agree to agree' with the proposed measures, so that we can work diligently towards finalizing the necessary agreements. Thanks.

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

City of Port Orchard  
Department of Public Works  
216 Prospect Street  
Port Orchard, WA 98366  
360.876.4991  
360.535.4016 Cell



# MCCORMICK

The Honorable Rob Putaansuu, Mayor  
City of Port Orchard  
216 Prospect Street  
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Nick Bond, Director  
Department of Community Development  
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Re: McCormick Communities, LLC's commitment . . .

Dear Mayor Putaansuu, Director Dorsey, and Director Bond:

In response to the moratorium imposed by Ordinances No. 020-19 and 020-19-A, McCormick Communities, LLC (McCormick) has been meeting and talking with representatives of both Port Orchard and Bremerton about how McCormick can help fund and construct water infrastructure in both cities.

Port Orchard has been purchasing water from the City of Bremerton to help provide service to Port Orchard's portion of the 580 pressure zone, and Port Orchard needs to purchase additional water to serve new residences in this portion of the zone. Bremerton, however, will not agree to a new interlocal agreement with Port Orchard to provide additional water unless McCormick first agrees to open Bremerton's well 1R and construct a new water line from well 1R to the existing main in Anderson Hill Road.



McCormick has agreed in principle with Bremerton to open this well and construct the new main, so that Bremerton will provide the additional water that Port Orchard needs to serve its portion of the 580 zone: McCormick is negotiating detailed agreements with Bremerton's Department of Public Works and its City Attorney to fund and perform this work. McCormick expects to finalize these agreements within the next ten days, so that they can be approved by the Bremerton City Council.

McCormick also will fund and construct the following infrastructure within Port Orchard, and this letter constitutes McCormick's commitment to do so, provided that Port Orchard in turn commits to working with McCormick in good faith, as Bremerton is doing, to promptly negotiate detailed construction and funding agreements.

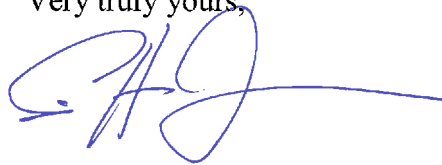
- By end the first quarter 2020, McCormick will drill and make operational a pilot well at the proposed location of new Well 12. The purpose of this pilot well is to establish:
  - The possible rate of supply from the future Well 12 so that Port Orchard can secure the appropriate water right;
  - Design parameters for the final Well 12 casing specification, pump requirements, and water quality treatment requirements.
- In the fall of 2019 McCormick will start construction activities (clearing, grading, erosion control) on the Well 12 water campus. In addition to site development, improvements will include:
  - By end of the third quarter 2020, McCormick will construct a second transmission main between the new 580 zone reservoir, which will then be under construction, and the water system within McCormick Woods, in order to facilitate the future separation of the Port Orchard and Bremerton water service areas.
  - By end of the fourth quarter 2020, McCormick will finish construction of a new 580 reservoir and related site improvements, at a size to be agreed upon that includes stacked fire storage.
  - By end of the second quarter of 2023, provided the City has obtained the required permits, McCormick will commence drilling Well 12 and install the casing, pumping and water quality equipment necessary to put this well in service

Construction plans for all elements of the water campus construction will be provided by McCormick in a timely fashion to accommodate the schedule above. To ensure that the 580 zone reservoir can be constructed, a bond for the cost of a 1.1 mg reservoir will be posted by McCormick until a final tank size is agreed upon by Port Orchard, McCormick and their consultants.

A detailed agreement that addresses an appropriate reimbursement mechanism that includes separation of the McCormick water service area into a separate area for the purpose of calculating capital facility charges (CFC) will be drafted after the moratorium is lifted.

McCormick is devoting its private resources to constructing water infrastructure for both cities so that Port Orchard will lift the moratorium that it imposed on McCormick. McCormick is motivated to see that this infrastructure is built as quickly as possible since the moratorium is costing McCormick millions of dollars. I suggest that the City Council has sufficient assurance that additional water will be available before it is needed within the 580 zone, and I request that the City Council immediately lift the moratorium so that McCormick does not continue to be damaged while McCormick prepares to begin construction this fall and detailed agreements are prepared with both cities.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Eric Campbell', with a long horizontal flourish extending to the right.

Eric Campbell  
McCormick Communities