



City of Port Orchard Council Meeting Agenda
March 23, 2021
6:30 p.m.

Mayor:

Rob Putaansuu
 Administrative Official

Councilmembers:

Bek Ashby (Mayor Pro-Tempore)
 Finance Committee
 Economic Development & Tourism Committee
 Transportation Committee, **Chair**
 KRCC/KRCC PlanPol-alt /KRCC TransPol
 PSRC-alt/PSRC TransPOL-Alt/PRTPO

Shawn Cucciardi
 Finance Committee
 E/D & Tourism Committee, **Chair**
 Kitsap Economic Development Alliance

Fred Chang
 Economic Development & Tourism Committee
 Land Use Committee

Jay Rosapepe
 Utilities/Sewer Advisory Committee
 Land Use Committee
 Transportation Committee
 Lodging Tax Advisory Committee, **Chair**
 KRCC-alt

John Clauson
 Finance Committee, **Chair**
 Utilities/Sewer Advisory Committee
 Kitsap Public Health District-alt

Cindy Lucarelli
 Festival of Chimes & Lights Committee, **Chair**
 Utilities/Sewer Advisory Committee, **Chair**
 Kitsap Economic Development Alliance

Scott Diener
 Land Use Committee, **Chair**
 Transportation Committee

Department Directors:

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

Tim Drury
 Municipal Court Judge

Noah Crocker, M.B.A.
 Finance Director

Matt Brown
 Police Chief

Brandy Rinearson, MMC, CPRO
 City Clerk

Meeting Location:

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

Contact us:

(360) 876-4407
 cityhall@cityofportorchard.us

Pursuant to the Governor’s “Stay Home - Stay Safe” Order, the City will take actions on necessary and routine business items.

The City is prohibited from conducting meetings unless the meeting is NOT conducted in-person and instead provides options for the public to attend through telephone, internet or other means of remote access, and also provides the ability for persons attending the meeting (not in-person) to hear each other at the same time. Therefore;

Remote access only

Link: <https://us02web.zoom.us/j/86224953344>

Zoom Webinar ID: 862 2495 3344

Zoom Call-In: 1 253 215 8782

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 an Ordinance Amending Port Orchard Municipal Code Chapter 10.12 Establishing Regulations and Fees Related to Parking, Stopping or Standing in Certain Areas of the City (Dorsey) *Page 4*

D. Approval of the Purchase of a Kohler Portable Generator Via Sourcewell Contract 120617-KOH, Formerly Known as National Joint Powers Alliance (NJPA) (Dorsey) *Page 25*

E. Approval of the March 9, 2021 City Council Meeting Minutes *Page 32*

5. PRESENTATION

6. PUBLIC HEARING

7. BUSINESS ITEMS

A. Adoption of an Ordinance Amending the 2021-2022 Biennial Budget Salary Table (Crocker) *Page 37*

- B. Adoption of an Ordinance Authorizing Creation of the Position of Permit Technician (Lund) **Page 41**
- C. Adoption of a Resolution Approving a Contract with Technical Systems, Inc. for the 2021 SCADA Radio Communications Design/Radio Licensing/Implementation Project (Dorsey) **Page 45**
- D. Adoption of a Resolution Approving a Contract with FieldTurf USA, Inc. for the Van Zee Tennis Court Resurfacing Project through Sourcewell (Dorsey) **Page 63**
- E. Adoption of a Resolution Approving a Contract with Katy Isaksen and Associates for the 2021 Utility Financial Program Project (Dorsey) **Page 92**
- F. Approval of the Purchase of (2) Cornell Sewage Pumps and Replacement Parts from PumpTech, Inc. for the Bay Street Sewerage Lift Station (Dorsey) **Page 108**
- G. Approval of Amendment No. 2 to Contract No. 032-18 with BHC Consultants, LLC for the McCormick Lift Station No. 2 Project (Dorsey) **Page 116**
- H. Approval of Amendment No. 2 to Contract No. 039-18 with BHC Consultants, LLC for the Well No. 13 Project (Dorsey) **Page 121**
- I. Approval of Supplemental Agreement No. 2 to Contract No. 072-18 with Tierra Right of Way Services, LTD Regarding the Bay Street Pedestrian Pathway Project (Dorsey) **Page 127**
- J. Approval of Amendment No. 1 to Contract No. 075-20 with Rice Fergus Miller, Inc. for the 2020-2021 City Hall Improvement Project – 30% to 100% Ad Ready PS&E and Bid Support (Dorsey) **Page 135**
- K. Approval of a Contract with G12 Communications for Phone System Services (Crocker) **Page 143**

8. DISCUSSION ITEMS (No Action to be Taken)

- A. Mayor’s State of the City
- B. Retreat Draft Agenda (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. CITY COUNCIL GOOD OF THE ORDER

15. ADJOURNMENT

COMMITTEE MEETINGS

Date & Time

Location

Economic Development and Tourism	April 12, 2021; 9:30am – 2 nd Monday of each month	Remote Access
Utilities	April 13, 2021; 5:00pm – 2 nd Tuesday of each month	Remote Access
Land Use	April 14, 2021; 4:30pm; 2 nd Wednesday of each month	Remote Access

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 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.

Festival of Chimes & Lights	April 19, 2021; 3:30pm; 3 rd Monday of each month	Remote Access
Finance	April 20, 2021; 5:00pm – 3 rd Tuesday of each month	Remote Access
Transportation	April 27, 2021; 5:00pm; 4 th Tuesday of each month	Remote Access
Lodging Tax Advisory	March 22, 2021; 9:00am	Remote Access
Sewer Advisory	TBD, 2021	Remote Access
City Council Retreat	April 23, 2021; 8:30am	City Hall
Outside Agency Committees	Varies	Varies

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 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.:	<u>Consent Agenda 4C</u>	Meeting Date:	<u>March 23, 2021</u>
Subject:	<u>Adoption of an Ordinance Amending Port Orchard Municipal Code Chapter 10.12</u>	Prepared by:	<u>Mark R. Dorsey, P.E.</u>
	<u>Establishing Regulations and Fees Related to Parking, Stopping or Standing in Certain Areas of the City</u>	Atty Routing No:	<u>366922.009 - PW</u>
		Atty Review Date:	<u>March 16, 2021</u>

Summary: The City has codified regulations for parking at Port Orchard Municipal Code (POMC) Chapter 10.12. As a continued housekeeping measure, working in conjunction with the City’s Parking Enforcement staff, the City’s Public Works Department inventories existing parking signage on a continual basis and has compiled corrections, revisions, and modifications to current Port Orchard Municipal Code (POMC) Chapter 10.12.500 to reflect existing needs and conditions (see attached redline of Ordinance 011-21, amending POMC 10.12.500 to assist with review.)

Relationship to Comprehensive Plan: None

Recommendation: Staff recommends adoption of Ordinance No. 011-21, amending POMC Chapter 10.12.500 regarding Parking, Stopping or Standing in Certain Areas of the City.

Motion for Consideration: I move to adopt Ordinance No. 011-21, amending POMC Chapter 10.12.500 regarding Parking, Stopping or Standing in Certain Areas of the City.

Fiscal Impact: None

Alternatives: Do not approve and provide further direction to staff

Attachments: Ordinance Amending POMC 10.12.500 (Redline to assist with review) and Ordinance Amending POMC 10.12.500 (Clean).

ORDINANCE NO. 011-21

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, RELATING TO PARKING ON PUBLIC STREETS; AMENDING SECTION 10.12.500 OF THE PORT ORCHARD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, WAC 308-330-270 authorizes the City to adopt regulations to prohibit, regulate or limit stopping, standing or parking of vehicles in areas of the City; and

WHEREAS, in accordance with that authority, the Port Orchard Municipal Code (POMC) Section 10.12.080(1) authorizes the City Council to from time to time, establish parking prohibitions and restrictions on portions of certain specified streets, and those prohibitions and restrictions are codified at POMC 10.12.500 through 10.12.620; and

WHEREAS, the City Council deems it in the best interest of the City of Port Orchard to periodically review and update such regulations; and

WHEREAS, the City Council choses to codify any updates to the parking regulations in order to aid the public in its ability to access and review said regulations; and

WHEREAS, staff audited the existing regulations and identified necessary, specific revisions to POMC Section 10.12.500 Parking prohibited at all times; and

WHEREAS, the City Council has reviewed the proposed amendments and believes it to be in the best interests of the City to enact the proposed amendments; now, therefore

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

SECTION 1. Section 10.12.500 of the Port Orchard Municipal Code is hereby amended to read as follows:

10.12.500 Parking prohibited at all times.

When signs are erected by the city engineer giving notice thereof, no person shall park a vehicle at any time upon any of the streets or parts of streets described as follows:

1. Ada Street: on the north side of Ada Street, in front of 825 Ada Street.
2. Advantage Avenue: on the west side of the north 350 feet of roadway and on the left-hand side,

- as the traffic flows, of the remainder of the street.
3. Andasio Loop SE: on the outside curb along the entire loop.
4. Arnold Avenue E.: along the west side of Arnold Avenue E., from the Lawrence Street intersection, to the northeast towards Bay St., 100 feet.
5. Arnold Avenue E.: along the east side of Arnold Avenue E., from the Bay Street intersection, to the south 66 feet.
6. Bay Street: on both sides, from the traffic signal on SR 166 (Bay/Maple Street) for a distance of 200 feet northeast of Guy Wetzel Street.
7. Bay Street: at the intersection with Wharf Street (Mitchell Point), along the outside radius of the existing road as delineated by the established guardrail.
8. Bay Street: on the south side from Tracy Avenue, westerly for a distance of 200 feet.
9. Bay Street: on the north side, from the DeKalb Street pedestrian pier westerly for 70 feet and in front of 501 Bay Street.

10. Bay Street: at the southwest corner of the intersection with Arnold Avenue E., from the point of curvature to the point of tangency of the curve radius.
11. Bay Street: on the south side from Dekalb Street, 130 feet to the east.
12. Becky Avenue: on both sides of street, from Dallas Street south to dead end.
13. Bethel Avenue on the west side from the driveway at 1130 Bethel Avenue, 245 feet north.
14. Cedar Canyon: on both sides of the street within 100 feet of the Tremont Street right-of-way.
15. Chanting Circle SW: on both sides of street, from Old Clifton Road 260 feet. Then on the east side to Chanting Circle. Then along the inside curb of the remaining part of Chanting Circle.
16. Chatterton Avenue SW: on the west side of street.
17. Chowchilla Way: on the south side of street.
18. Currant Lane SW: on the west side of the street
- ~~189.~~ Dallas on the right-hand side, as

Street:	the traffic flows.
19 <u>20</u> . DeKalb Street:	on both sides from Cline Avenue easterly to dead end.
20 <u>1</u> . DeKalb Street:	on the south side, from Sidney Avenue westerly for a distance of 100 feet.
21 <u>2</u> . DeKalb Street:	on the north side, from Tracy Avenue easterly to the end of DeKalb Street.
22 <u>3</u> . DeKalb Street:	on the south side, from Mitchell Avenue to the east side of Tracy Avenue.
23 <u>4</u> . Donna Street:	on the south side of street.
24 <u>5</u> . <u>Donnegal Circle SW:</u>	<u>on both sides of the street</u>
25 <u>6</u> . Egret Street:	on the south side of the street.
26 <u>7</u> . Fiscal Street:	on the south side of the street.
27 <u>8</u> . Fantail Place:	on the east side of the street.
28 <u>9</u> . Farragut Avenue:	on both sides, from DeKalb Street to Morton Street; except, on the east side, 160 feet north of DeKalb Street.
29 <u>30</u> . Forest Park Street:	on both sides of the street.
30 <u>31</u> . Glenmore	on the inside radius of the

- Loop: entire loop.
- ~~302~~. Glenwood Road SW: on the north side, from Sidney Road 350 feet west.
- ~~313~~. Grebe Way: on the north side, from Siskin Circle to Swift Avenue.
- ~~324~~. Guy Wetzel Street: on both sides from Bay Street to Perry Avenue.
- ~~35~~. Hibiscus Circle SW: on the outside radius of the entire circle
- ~~336~~. Huntington Street: on both sides from Olney Avenue to Glenmore Loop and the north side from Glenmore Loop to west end terminus.
- ~~347~~. Jabirin Way: on the north side of street.
- ~~358~~. Koda Circle: along fire lanes where marked/posted.
- ~~369~~. Landis Ct. SW: on the northeast side.
- ~~3740~~. Lazuli Street: on the south side, from Wigeon Avenue to Siskin Circle.
- ~~3841~~. Lippert Drive: on both sides, from Pottery Avenue to Advantage Street.
- ~~3942~~. Lloyd Parkway: on both sides from SW Old Clifton Road to Lumsden Road.

~~403~~. Lowren Street: on the right-hand side, as the traffic flows on the one-way portion of the street.

~~414~~. Lumsden Road: on both sides of the street.

~~425~~. Lone Bear Drive: on both sides from Feigley Road to 100 feet west of Chatterton Avenue SW.

~~436~~. Longview Avenue: on east side of street.

~~447~~. Mitchell Avenue: on both sides, from Bay Street to Kitsap Street.

~~458~~. Murrelet Avenue: on both sides, from Old Clifton Road to Siskin Circle.

~~469~~. Pickford Place SW: on the left-hand side as the traffic flows on the street, from SW Colbert Way to end of cul-de-sac.

~~4750~~. Plisko Avenue: on both sides, from Mitchell Avenue to Mile Hill Drive.

~~4851~~. Prospect Street: on the inside radius of the curve between Robert Geiger Street and Frederick Avenue.

~~4952~~. Pottery Avenue: on both sides of the street, within 100 feet of the Tremont Street right-of-way.

~~503~~. Retsil Road: on the west side, from the north corporate limits to

the south property line of
982 Retsil Road.

~~544~~. Robert Geiger Street: other than official city vehicles, parking is prohibited at all times along the south side, from Bay Street to Prospect Street.

~~525~~. Rockwell Avenue: on both sides, from Bay Street to Kitsap Street.

~~536~~. Ross Street: on the south side of the 400 block.

~~547~~. Sage Court: on both sides of street.

~~558~~. Sage Street: on both sides from Pottery Avenue east for a distance of 70 feet and on the left-hand side, as the traffic flows, on the remainder of the street.

~~569~~. Seattle Avenue: on the east side, from Bay Street southerly for a distance of 82 feet.

~~5760~~. Sherman Avenue: on the east side of the 1200-1300 block from the dead end 980 feet north.

~~5861~~. Sidney Avenue: on the west side from Bay Street to Prospect Street.

~~5962~~. Siskin Circle: on the inside curb of Siskin Circle throughout the circle.

~~603~~. Snowridge Avenue: on the left-hand side, as the traffic flows on the

street.

~~614~~. Sprague Street: on the right-hand side, as the traffic flows on the one-way portion of the street.

~~625~~. Sroufe Street: on the south side, from Sidney Avenue to Portland Avenue.

~~636~~. Strathmore Circle SW: on outside of circle traveling either direction.

~~647~~. Sweany Street: on the north side, from Cline Avenue westerly for a distance of 340 feet.

~~658~~. Sweany Street: on the south side, from Sidney Avenue westerly for a distance of 200 feet.

~~696~~. Swift Avenue: on west side, from Siskin Circle to Lazuli Street.

~~670~~. SW Colbert Way: on left-hand side of street as the traffic flows, from Pickford Place SW to Chatterton Avenue SW.

~~6871~~. SW Old Clifton Road: on both sides from Chanting Circle SW to Campus Parkway.

~~6972~~. SW Stanwick Way: on the right-hand side of street as the traffic flows, from Lone Bear Drive to Pickford Place SW.

~~703~~. Tremont Place: on both sides of street from 233 Tremont Place driveway to end of road

guardrail.

~~714~~. Tremont Street: on both sides of the street, within 100 feet of Pottery Avenue right-of-way.

~~75~~. Vardon Circle SW: on both sides of the street

~~726~~. Warbler Way: on both sides of street from Old Clifton Road to Siskin Circle.

~~737~~. Warbler Way: from Siskin Circle to curve (park) on south side and on east side from curve (park) to Grebe Way.

~~748~~. Wilkins Drive: on both sides, from the west terminus, eastward 350 feet.

~~759~~. Lot 4: all of Lot 4, as defined in POMC 10.12.580, Saturdays from 5:00 a.m. to 5:00 p.m., from April 1st through October 31st.

SECTION 2. Authorization to **Post Signs.** The City Engineer is hereby directed to post the signs as required by this Ordinance and as a result of the amendment of Section 10.12.500, upon the effective date of this Ordinance.

SECTION 3. **Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 4. **Effective Date.** This ordinance shall be in full force and effect five (5) days after posting and publication as required by law. A summary of this Ordinance may be published in lieu of the entire ordinance, as authorized by State Law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this 23rd day of March 2021

Robert Putaansuu, Mayor

ATTEST:

Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

Charlotte A. Archer, City Attorney

SPONSORED BY:

Scott Diener, Councilmember

ORDINANCE NO. 011-21

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, RELATING TO PARKING ON PUBLIC STREETS; AMENDING SECTION 10.12.500 OF THE PORT ORCHARD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, WAC 308-330-270 authorizes the City to adopt regulations to prohibit, regulate or limit stopping, standing or parking of vehicles in areas of the City; and

WHEREAS, in accordance with that authority, the Port Orchard Municipal Code (POMC) Section 10.12.080(1) authorizes the City Council to from time to time, establish parking prohibitions and restrictions on portions of certain specified streets, and those prohibitions and restrictions are codified at POMC 10.12.500 through 10.12.620; and

WHEREAS, the City Council deems it in the best interest of the City of Port Orchard to periodically review and update such regulations; and

WHEREAS, the City Council choses to codify any updates to the parking regulations in order to aid the public in its ability to access and review said regulations; and

WHEREAS, staff audited the existing regulations and identified necessary, specific revisions to POMC Section 10.12.500 Parking prohibited at all times; and

WHEREAS, the City Council has reviewed the proposed amendments and believes it to be in the best interests of the City to enact the proposed amendments; now, therefore,

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

SECTION 1. Section 10.12.500 of the Port Orchard Municipal Code is hereby amended to read as follows:

10.12.500 Parking prohibited at all times.

When signs are erected by the city engineer giving notice thereof, no person shall park a vehicle at any time upon any of the streets or parts of streets described as follows:

1. Ada Street: on the north side of Ada Street, in front of 825 Ada Street.
2. Advantage Avenue: on the west side of the north 350 feet of roadway and on the left-hand side,

- as the traffic flows, of the remainder of the street.
3. Andasio Loop SE: on the outside curb along the entire loop.
4. Arnold Avenue E.: along the west side of Arnold Avenue E., from the Lawrence Street intersection, to the northeast towards Bay St., 100 feet.
5. Arnold Avenue E.: along the east side of Arnold Avenue E., from the Bay Street intersection, to the south 66 feet.
6. Bay Street: on both sides, from the traffic signal on SR 166 (Bay/Maple Street) for a distance of 200 feet northeast of Guy Wetzel Street.
7. Bay Street: at the intersection with Wharf Street (Mitchell Point), along the outside radius of the existing road as delineated by the established guardrail.
8. Bay Street: on the south side from Tracy Avenue, westerly for a distance of 200 feet.
9. Bay Street: on the north side, from the DeKalb Street pedestrian pier westerly for 70 feet and in front of 501 Bay Street.

10. Bay Street: at the southwest corner of the intersection with Arnold Avenue E., from the point of curvature to the point of tangency of the curve radius.
11. Bay Street: on the south side from Dekalb Street, 130 feet to the east.
12. Becky Avenue: on both sides of street, from Dallas Street south to dead end.
13. Bethel Avenue on the west side from the driveway at 1130 Bethel Avenue, 245 feet north.
14. Cedar Canyon: on both sides of the street within 100 feet of the Tremont Street right-of-way.
15. Chanting Circle SW: on both sides of street, from Old Clifton Road 260 feet. Then on the east side to Chanting Circle. Then along the inside curb of the remaining part of Chanting Circle.
16. Chatterton Avenue SW: on the west side of street.
17. Chowchilla Way: on the south side of street.
18. Currant Lane SW: on the west side of the street
19. Dallas Street: on the right-hand side, as

the traffic flows.

20. DeKalb Street: on both sides from Cline Avenue easterly to dead end.
21. DeKalb Street: on the south side, from Sidney Avenue westerly for a distance of 100 feet.
22. DeKalb Street: on the north side, from Tracy Avenue easterly to the end of DeKalb Street.
23. DeKalb Street: on the south side, from Mitchell Avenue to the east side of Tracy Avenue.
24. Donna Street: on the south side of street.
25. Donnegal Circle SW: on both sides of the street
26. Egret Street: on the south side of the street.
27. Fiscal Street: on the south side of the street.
28. Fantail Place: on the east side of the street.
29. Farragut Avenue: on both sides, from DeKalb Street to Morton Street; except, on the east side, 160 feet north of DeKalb Street.
30. Forest Park Street: on both sides of the street.
31. Glenmore on the inside radius of the

- Loop: entire loop.
32. Glenwood Road SW: on the north side, from Sidney Road 350 feet west.
33. Grebe Way: on the north side, from Siskin Circle to Swift Avenue.
34. Guy Wetzel Street: on both sides from Bay Street to Perry Avenue.
35. Hibiscus Circle SW: on the outside radius of the entire circle
36. Huntington Street: on both sides from Olney Avenue to Glenmore Loop and the north side from Glenmore Loop to west end terminus.
37. Jabirin Way: on the north side of street.
38. Koda Circle: along fire lanes where marked/posted.
39. Landis Ct. SW: on the northeast side.
40. Lazuli Street: on the south side, from Wigeon Avenue to Siskin Circle.
41. Lippert Drive: on both sides, from Pottery Avenue to Advantage Street.
42. Lloyd Parkway: on both sides from SW Old Clifton Road to Lumsden Road.
43. Lowren on the right-hand side, as

Street:	the traffic flows on the one-way portion of the street.
44. Lumsden Road:	on both sides of the street.
45. Lone Bear Drive:	on both sides from Feigley Road to 100 feet west of Chatterton Avenue SW.
46. Longview Avenue:	on east side of street.
47. Mitchell Avenue:	on both sides, from Bay Street to Kitsap Street.
48. Murrelet Avenue:	on both sides, from Old Clifton Road to Siskin Circle.
49. Pickford Place SW:	on the left-hand side as the traffic flows on the street, from SW Colbert Way to end of cul-de-sac.
50. Plisko Avenue:	on both sides, from Mitchell Avenue to Mile Hill Drive.
51. Prospect Street:	on the inside radius of the curve between Robert Geiger Street and Frederick Avenue.
52. Pottery Avenue:	on both sides of the street, within 100 feet of the Tremont Street right-of-way.
53. Retsil Road:	on the west side, from the north corporate limits to the south property line of

982 Retsil Road.

54. Robert Geiger Street: other than official city vehicles, parking is prohibited at all times along the south side, from Bay Street to Prospect Street.

55. Rockwell Avenue: on both sides, from Bay Street to Kitsap Street.

56. Ross Street: on the south side of the 400 block.

57. Sage Court: on both sides of street.

58. Sage Street: on both sides from Pottery Avenue east for a distance of 70 feet and on the left-hand side, as the traffic flows, on the remainder of the street.

59. Seattle Avenue: on the east side, from Bay Street southerly for a distance of 82 feet.

60. Sherman Avenue: on the east side of the 1200-1300 block from the dead end 980 feet north.

61. Sidney Avenue: on the west side from Bay Street to Prospect Street.

62. Siskin Circle: on the inside curb of Siskin Circle throughout the circle.

63. Snowridge Avenue: on the left-hand side, as the traffic flows on the street.

64. Sprague Street: on the right-hand side, as the traffic flows on the one-way portion of the street.
65. Sroufe Street: on the south side, from Sidney Avenue to Portland Avenue.
66. Strathmore Circle SW: on outside of circle traveling either direction.
67. Sweany Street: on the north side, from Cline Avenue westerly for a distance of 340 feet.
68. Sweany Street: on the south side, from Sidney Avenue westerly for a distance of 200 feet.
96. Swift Avenue: on west side, from Siskin Circle to Lazuli Street.
70. SW Colbert Way: on left-hand side of street as the traffic flows, from Pickford Place SW to Chatterton Avenue SW.
71. SW Old Clifton Road: on both sides from Chanting Circle SW to Campus Parkway.
72. SW Stanwick Way: on the right-hand side of street as the traffic flows, from Lone Bear Drive to Pickford Place SW.
73. Tremont Place: on both sides of street from 233 Tremont Place driveway to end of road guardrail.

74. Tremont Street:	on both sides of the street, within 100 feet of Pottery Avenue right-of-way.
75. Vardon Circle SW:	on both sides of the street
76. Warbler Way:	on both sides of street from Old Clifton Road to Siskin Circle.
77. Warbler Way:	from Siskin Circle to curve (park) on south side and on east side from curve (park) to Grebe Way.
78. Wilkins Drive:	on both sides, from the west terminus, eastward 350 feet.
79. Lot 4:	all of Lot 4, as defined in POMC 10.12.580, Saturdays from 5:00 a.m. to 5:00 p.m., from April 1st through October 31st.

SECTION 2. Authorization to Post Signs. The City Engineer is hereby directed to post the signs as required by this Ordinance and as a result of the amendment of Section 10.12.500, upon the effective date of this Ordinance.

SECTION 3. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 4. Effective Date. This ordinance shall be in full force and effect five (5) days after posting and publication as required by law. A summary of this Ordinance may be published in lieu of the entire ordinance, as authorized by State Law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this 23rd day of March 2021.

Robert Putaansuu, Mayor

ATTEST:

Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

SPONSOR:

Charlotte A. Archer, City Attorney

Scott Diener, Councilmember

PUBLISHED:

EFFECTIVE DATE:



City of Port Orchard

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

Agenda Staff Report

Agenda Item No.:	<u>Consent Agenda 4D</u>	Meeting Date:	<u>March 23, 2021</u>
Subject:	<u>Approval of the Purchase of a Kohler</u>	Prepared by:	<u>Mark Dorsey, P.E.</u>
	<u>Portable Generator Via Sourcwell</u>		<u>Public Works Director</u>
	<u>Contract 120617-KOH, Formerly Known</u>	Atty Routing No.:	<u>366922.0009 – PW</u>
	<u>as National Joint Powers Alliance (NJPA)</u>	Atty Review Date:	<u>March 14, 2021</u>

Summary: The City Council approved of \$80,000.00 as part of the 2021-2022 Biennial Budget for the Public Works Department to purchase of a Portable Generator to replace an existing generator that has reached the end of its useful life. The City is a member of purchasing cooperative Sourcwell, and on February 25, 2021, Public Works Department staff identified Kohler as an approved manufacturer through Sourcwell Contract 120617-KOH for a replacement generator. Consistent with Contract 120617-KOH, Kohler referred the City to its local authorized distributor, Power West Systems, for the purchase. Staff confirmed the procurement process utilized by Sourcwell for this contract and obtained the necessary documentation regarding procurement. On March 11, 2021, consistent with the Sourcwell contract pricing, Kohler authorized distributor Power West Systems provided the City with a quote of \$67,172.00 (plus applicable tax), for a total purchase price of \$73,822.03. The City's Procurement Policy requires Council approval for purchase prices in excess \$35,000.00.

Relationship to Comprehensive Plan: N/A

Recommendation: Staff recommends that City Council approve the purchase of Kohler Portable Generator from Power West Systems through Sourcwell Contract 120617-KOH, for a total purchase price of \$73,822.03 (applicable tax included.)

Motion for Consideration: I move to approve the purchase of a Kohler Portable Generator through Sourcwell Contract 120617-KOH, for a total purchase price of \$73,822.03.

Fiscal Impact: The 2021-2022 Biennial Budget allocated \$80,000.00 for this purchase (431.05.594.35.60) 50% (411.05.594.34.60) 50%.

Alternative: Do not approve.

Attachments: Interlocal Purchase Checklist and Power West Systems Quote.

CITY OF PORT ORCHARD
PURCHASES THROUGH INTERLOCAL AGREEMENTS

City Contract No.: C075-14

Interlocal Agreement with the Host Agency (government agency or Purchasing Co-Op name): Sourcewell formerly known as National Joint Powers Alliance (NJPA), a Minnesota public agency

Item Description: Kohler Portable Generator through Contract 120617-KOH

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.

State OSP Contract No.#: _____

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

Is the Host agency a public agency ¹ ?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, what state laws apply to Host Agency: <u>Minnesota</u>
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 the public agency's website?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, state when and the address, and proof of date, address shall be attached or placed into the file. If No, you cannot use the bid.
Did the bid & award comply with the Host agency's state procurement laws?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, obtain documentation to support answer from Host Agency. If No, you cannot use the bid.

¹ RCW 39.34.020 (1), "public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

Page 26 of 171

March 9, 2021

City of Port Orchard

Attn: Michael DeLine

Power Systems West is pleased to submit the following proposal for:
City of Port Orchard - Towable

Sourcewell Quotation # 26732706

Kohler Awarded Contract: 120617-KOH

BILL OF INCLUDED MATERIALS

Qty-1 Kohler Standby Generator Model Number: 120REOZT4

Generator Configuration:

Engine: John Deere 4.5L 4-Cyl, Turbocharged Aftercooled, Tier 4 Final Certified, 1800rpm
Fuel Type: Diesel
Listing: CSA
Output: 105kW/131kVA; 60-Hz
Alternator: Standby 150C Rise
Alternator Frame Size: 4R12X
Volts: 480/277, 3-Ph, 3-W, 0.8-PF
Set mounted Radiator 45-deg C
Electronic Governor
Heavy Duty Air Cleaner w/restriction indicator

Controller Configuration:

DEC3500 Controller with digital meters and gauges,
E-Stop Push button
15 Position Dry Contact Relay

Electrical System Configuration:

Starting Battery, 12-V, rack and cables
Battery Charger: 10-Amp
Cold Weather package includes: Block Heater & Battery Heater pad & wrap
Mainline Breaker: 400-Amp Adjustable trip mainline circuit breaker (standard load lugs)
Voltage Selector Switch & Convenience Receptacles

Trailer/Enclosure & Fuel System Configuration:

Sound Attenuated enclosure, steel construction (Sound Level: 71dBA@23-ft)
Internally mounted muffler, flex connector, rain cap
Stainless steel hinges and lockable latches on doors

Fuel Tank - 192-gall (24-hour operation) Dual wall for containment
DEF Tank – 8.0-gall capacity
Primary and Secondary Tank Emergency E-vent
DOT Compliant - Dual Axle Trailer with electric brake system
Standard Ball 2-5/16-inch Hitch fitting
Spare Wheel & Mounting
Wheel Chock Blocks
Tool & Fire Extinguisher Box

Additional Items

- 1-Set, Operation and Maintenance Manuals
- 3-Year Kohler Limited Warranty
- Factory Freight F.O.B. to Delivery Fife, WA (Customer collection after Start-Up)
- Basic Start-Up Service

Approximate Factory Lead Times:

- Towable Generator (16-18 weeks)

General Exceptions and Clarifications

1. Off-loading and placement at the job site is excluded.
2. All fuel, fuel piping and connections are excluded.
3. No retainage is allowed.
4. Start-up testing and warranty validation includes one trip to jobsite during normal working hours. If equipment is not ready for start-up when we arrive at the jobsite, there may be additional charges for a return trip.
5. Kohler factory recommended field testing provided. NETA ATS testing, or any other 3rd party testing not included unless otherwise noted.
6. Training to be performed at start-up or subject to additional charges.
7. Hardcopy O & M's will be \$150.00 net each.
8. All piping, wiring, anchoring, and permits are by others.
9. Equipment is shipped FOB factory, with freight prepaid and allowed to the job site unless otherwise noted.
10. Compliance with National Electrical Code, NFPA, IFC, and state and local fire codes is the responsibility of the installing contractor. Special fuel tank labeling and venting/filling equipment may be required but is excluded unless otherwise noted.
11. Breaker coordination studies excluded.
12. Local codes may require outdoor generators to have a Service Rated disconnect. We are not providing a Service Rated disconnect unless it is specifically noted in this quotation.
13. TVSS devices for the generator or transfer switch(es) are excluded unless otherwise noted.
14. IBC seismic certification excluded unless otherwise noted.
15. Prices do not include any applicable taxes.
16. All orders are subject to Power Systems West Terms and Conditions.
17. Shipments are subject to manufacturer's lead times and transit times. Power Systems West assumes no responsibility for delays that are beyond our control and will not pay for liquidated damages.

Power Systems West (PSW) – Terms & Conditions

1. WARRANTIES. To the extent that the Goods may be covered by manufacturers' warranty, PSW hereby assigns all rights & benefits under such to Buyer, if assignable, and undertakes to assist Buyer in the coordination of any claims under such warranties. Seller makes no further warranty of any kind with respect to the Goods. PSW DISCLAIMS ANY AND ALL WARRANTIES. THERE ARE NO EXPRESS WARRANTIES AND THERE ARE NO IMPLIED WARRANTIES INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THERE ARE NO OTHER IMPLIED OR EXPRESS WARRANTIES OF ANY NATURE WHATSOEVER.

2. LIMITATION OF PSW'S LIABILITY. Other than the remedy set forth in this paragraph, Customer agrees that no damages, direct, consequential, liquidated, incidental, or other damages or remedy of any kind arising by reason of or related to this Equipment whether arising out of contract, warranty, late or non-delivery, negligence, strict liability, or tort shall now or any time in the future be recoverable from PSW or any of its agents. Customer assumes all risks inherent in the possession or operation of the Equipment. Customer's right, now existing or arising at any time in the future, to recover such damages is hereby fully, finally, irrevocably and unconditionally waived, released and discharged. **Notice of any defect in the Work or Equipment shall be made within 24 hours of the act or omission giving rise to the defect.** The sole and exclusive remedy is replacement of the nonconforming goods or refund of that portion of Customer's payment attributable to such goods at PSW's sole option.

3. Payment Terms. Upon credit approval, full payment is due 30 days from invoice date, unless otherwise agreed to by both parties in writing. **There shall be NO retainage.** Payments not made on their due date shall accrue interest at the rate of 18% per annum. A cancellation charge of 20% of the price will be imposed if customer cancels order without prior written consent of PSW. **PSW must receive 100% payment before start-up services will be performed** (failure to complete proper, authorized startup procedures may void any manufacturer warranty). Terms may not be changed except by written agreement of the parties.

4. Shipping and Delivery. All Equipment shall be shipped F.O.B. manufacturer's factory unless otherwise agreed in writing by PSW and Customer. PSW is not responsible for goods lost or damaged in transit. In the event PSW agrees to delay shipment at Customer's request, Customer is responsible for payment of any storage costs. PSW does not agree, will not agree to and is not obligated to provide any specific goods or any delivery dates or times for any goods. All orders are subject to availability to PSW at its then existing locations, sources, suppliers and costs. All delivery dates and times which may be provided, if any, are estimates only and do not establish agreed delivery date(s).

5. Indemnity and Hold harmless. To the fullest extent permitted by law, Customer shall fully and forever indemnify, defend (with counsel reasonably acceptable to PSW) and hold PSW's employees, directors, successors and assigns harmless from any damage, claim, loss, expense and attorney fees (including those prior to any action, in an action and on any appeal) related to the performance or non-performance of Customer's obligations under this Agreement; the ownership, performance or operation of the Equipment; or PSW's liability, if any, under CERCLA, RCRA, or any other federal or state statute related to toxic, hazardous or other dangerous substances.

Thank you for the opportunity to offer quality Kohler products and our service. For over 75 years, Kohler has been recognized as a leader in the manufacture of standby generator systems. By choosing a Kohler generator provided by Power Systems West, you can be assured you will receive the highest quality standby power system available. Power Systems West has specialized in providing and servicing generator systems in the Northwest for over 50 years. Power Systems West – your best choice for power. If you have any questions, please feel free to call or e-mail.

Ray Bishop

(253) 878-2444 – Cell

(253) 517-1721 - Office

ray.bishop@powersystemswest.com

Sourcewell Quotation # 26732706

120REOZT4 – Kohler List Price \$91,02.00

Sourcewell Member Discount: 30%

Sourcewell Member Price FOB Factory, WI \$63,714.00

Freight to PSW Fife, WA Location (customer collect) \$2,980.00

Member Discount: 5% <\$149.00>

Basic Start-Up Services \$660.00

Member Discount: 5% <\$33.00>

Total Customer Price \$67,172.00

Fife, WA Tax Rate 9.9% \$6,650.03

Total \$73,822.03

Offer Acceptance

I hereby authorize Power Systems West to use this form as a bona fide purchase order of the equipment listed on **QUOTATION # 26732706**, which establishes price and Bill of Materials. Acceptance of this offer is expressly limited to Power Systems West terms and conditions.

Proposed by:

Accepted by:

Company: Power Systems West

Company: _____

Sales Professional: Ray Bishop

Print Name: _____

Title: Power Generation Sales

Title: _____

Signature: *Ray Bishop*

Signature: _____

Date: March 9, 2021

Date: ___ / ___ / _____



**City of Port Orchard
Council Meeting Minutes
Regular Meeting of March 9, 2021**

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 via Remote Access
Councilmember Chang	Present via Remote Access
Councilmember Clauson	Present via Remote Access
Councilmember Cucciardi	Present via Remote Access
Councilmember Diener	Present via Remote Access
Councilmember Lucarelli	Present via Remote Access
Councilmember Rosapepe	Present via Remote Access
Mayor Putaansuu	Present via Remote Access

Staff present via Remote Access: Finance Director Crocker, Community Development Director Bond, Public Works Director Dorsey, Operations Manager Lang, Police Chief Brown, City Attorney Archer, City Clerk Rinearson and Deputy City Clerk Floyd.

Mayor Putaansuu stated pursuant to the Governor’s Stay at Home, Stay Safe order, the City Council will be conducting the meeting via Zoom this evening.

The meeting is also streaming live on Facebook.

A. PLEDGE OF ALLEGIANCE

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

2. APPROVAL OF AGENDA

MOTION: By Councilmember Rosapepe, seconded by Councilmember Diener, to recommend approval of the agenda as presented.

The motion carried.

3. CITIZENS COMMENTS

There were no citizen comments.

4. CONSENT AGENDA

- A. Approval of Voucher Nos. 81569 through 81596 and 81601 through 81699 including bank drafts in the amount of \$748,548.32 and EFT's in the amount of \$55,282.12 totaling \$803,830.44.
- B. Approval of Payroll Check Nos. 81597 through 81600 including bank drafts and EFT's in the amount of \$158,640.62; and Direct Deposits in the amount of \$188,017.61 totaling \$346,658.23.

MOTION: By Councilmember Diener, seconded by Councilmember Clauson, to approve the consent agenda.

The motion carried.

5. PRESENTATION

There were no presentations.

6. PUBLIC HEARING

There were no public hearings.

7. EXECUTIVE SESSION

At 6:34 p.m., Mayor Putaansuu recessed the meeting for a 5-minute executive session to discuss legal risks of a proposed action pursuant to RCW 42.30.110(1)(i). City Attorney Archer and Community Development Director Bond were invited to attend, and City Attorney Archer announced action will likely follow.

At 6:39 p.m., Mayor Putaansuu reconvened the meeting back into session.

8. BUSINESS ITEMS

- A. **Adoption of an Ordinance Adopting the 2021 Periodic Update to the City's Shoreline Master Program**

MOTION: By Councilmember Diener, seconded by Councilmember Cucciardi, to adopt an ordinance amending Ordinance No. 005-13 and the 2013 Shoreline Master Program by adopting the 2021 Periodic Update.

The motion carried.

(Ordinance No. 012-21)

- B. **Adoption of an Ordinance Reclassifying the Property Located at the Northwest Corner of the Intersection of Harold Drive SE and SE Lund Avenue from Residential 2 to Residential 3**

MOTION: By Councilmember Diener, seconded by Councilmember Rosapepe, to adopt an Ordinance granting approval of the site-specific rezone from “Residential 2” to “Residential 3” for the property located at the northwest corner of the intersection of Harold Drive SE identified as Assessor Parcel Number 4625-000-009-0206.

**The motion carried.
(Ordinance No. 013-21)**

C. Adoption of an Ordinance Accepting a Grant with the Association of Washington Cities for the Purchase and Installation of New Evidence Lockers for the Police Department

MOTION: By Councilmember Cucciardi, seconded by Councilmember Lucarelli, to adopt an Ordinance, thereby approving the acceptance of a grant from the Association of Washington Cities in the amount of \$10,000 to partially fund the purchase and installation of new evidence lockers for the Police Department.

**The motion carried.
(Ordinance No. 014-21)**

D. Adoption of a Resolution Approving a Contract with Pacific Northwest Guardrail Services Co. for the Old Clifton Road and Tracy Avenue Guardrail Removal and Replacement

MOTION: By Councilmember Ashby, seconded by Councilmember Diener, to adopt Resolution No. 019-21, authorizing the Mayor to execute Contract No. C034-21 with Pacific Northwest Guardrail Services Company for the Old Clifton Rd and Tracy Ave Guardrail Removal & Replacement in the amount not to exceed \$51,657.

The motion carried.

E. Approval of the February 16, 2021, City Council Work Study Session Meeting Minutes

MOTION: By Councilmember Diener, seconded by Councilmember Lucarelli, to approve the work study meeting minutes of February 16, 2021.

The motion moved. Councilmember Cucciardi abstained.

9. DISCUSSION ITEMS (No Action to be Taken)

A. Impact Fee Annual Report

Development Director Bond noted the City’s Municipal Code, under the impact fee ordinance, requires an annual report to the City Council on impact fee revenue and expenditures. He spoke to

the memo provided in the packet which included background and 2020 financial overview of park impact fees, transportation impact fees, and McCormick Woods Transportation fees.

B. Water Capital Facility Charges

Public Works Director Dorsey explained the Utility Department Program as it relates to sewer capital facility charges, sewer credits, storm plan, sewer GSP [General Sewer Plan] amendment, water CIP/CFC's, [Capital Improvement Plan and Capital Facility Charges] water credits, water and sewer rates, water system plan update, and sewer GSP update.

Mayor Putaansuu mentioned a contract with Katy Isaksen is coming forward in two weeks, and the goal is to have an approved plan by the end of this year.

10. REPORTS OF COUNCIL COMMITTEES

Councilmember Cucciardi reported the Economic Development and Tourism Committee is scheduled to meet April 12th.

Councilmember Lucarelli reported on the March 9th Utilities Committee meeting. The next meeting is scheduled for April 13th. The Festival of Chimes and Lights Committee is scheduled to meet next week [March 13th].

Councilmember Rosapepe reported the Land Use Committee is scheduled to meet April 14th.

Mayor Putaansuu and Councilmember Clauson reported the Finance Committee is scheduled to meet March 16th. The Transportation Committee is scheduled to meet March 23rd.

Councilmember Rosapepe gave a brief report on lodging tax and events for 2021.

Mayor Putaansuu reported the Council retreat is scheduled for April 23rd.

Councilmember Ashby reported on the Kitsap Regional Coordinating Council retreat and Boards, and the Puget Sound Regional Coordinating Council Transportation Policy Board.

11. REPORT OF MAYOR

The Mayor reported on the following:

- South Kitsap Community Event Center;
- Kitsap Public Health Board and COVID-19;
- Southworth passenger only ferry service;
- Approval of the Ruby Creek site for the SR16 Park and Ride lot;
- Puget Sound Regional Council updates;

- Gorst Coalition;
- Docking stations inside City Hall;
- Suspensions of Spring and Fall cleanup and creating a policy for when it starts up;
- Attended Navy demonstration on Navy Seal training;
- Utility payments and eviction moratorium; and
- Facebook live updates.

12. REPORT OF DEPARTMENT HEADS

Community Development Director Bond reported on the countywide planning policies going before Council at their next work study meeting.

Police Chief Brown reported on the police department's accreditation status.

13. CITIZEN COMMENTS

There were no citizen comments.

GOOD OF THE ORDER

Councilmember Clauson asked about the location of the Good of the Order on the Agenda and said it should be moved before adjournment.

Councilmember Lucarelli noted the light does not reach the flag that is located in front of City Hall.

14. ADJOURNMENT

The meeting adjourned at 7:36 p.m. No other action was taken. Audio/Visual was successful.

Brandy Rinearson, MMC, City Clerk

Robert Putaansuu, Mayor



City of Port Orchard

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

Agenda Staff Report

Agenda Item No.:	<u>Business Item 7A</u>	Meeting Date:	<u>March 23, 2021</u>
Subject:	<u>Adoption of an Ordinance</u>	Prepared by:	<u>Noah D. Crocker</u>
	<u>Amending the 2021-2022</u>		<u>Finance Director</u>
	<u>Biennial Budget Salary Table</u>	Atty Routing No.:	<u>366922.008 - HR</u>
		Atty Review Date:	<u>March 18, 2021</u>

Summary: The City Budget is written to capture revenue and expenses over the fiscal period. During the biennial period, changes to the budget in both revenue and expenditures need to be recognized by Budget Amendment. Exhibit A of the 2021-2022 Biennial Budget identifies the Personnel positions of the City as well as pay ranges.

By this Ordinance, the City Council would amend Exhibit A of the 2021 – 2022 Biennial Budget, as adopted by Ordinance No. 035-20, to add a new position and modify existing positions. The proposed budget amendment is intended to amend Exhibit A to create 1 FTE for Permit Technician Position as well as reduce the Permit Clerk positions to 2 FTE. The net impact of these FTE adjustment is an additional of 0.3 FTE from the originally approved Budget. The intent of these adjustments is to promote a Permit Clerk to a Permit Technician position as well as increase a Permit Clerk from part time (0.7 FTE) to full time (1 FTE).

Recommendation: The Finance Director recommends adoption of an Ordinance, amending Exhibit A of the 2021–2022 Biennial Budget.

Relationship to Comprehensive Plan:

Motion for consideration: I move to adopt an Ordinance, amending Exhibit A to Ordinance No. 035-20, the 2021 – 2022 Biennial Budgets for the City of Port Orchard.

Fiscal Impact: Estimated Permit Technician: 2021-2022	\$13,000
Estimated Planning Clerk to Full Time: 2021-2022	\$92,000

These adjustments will be absorbed within the DCD departments biennial budget and if an amendment is needed it will be brought forward at a later date.

Alternatives: Do not authorize and provide alternative guidance.

Attachments: Ordinance.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, AMENDING THE 2021–2022 BIENNIAL BUDGET AS ADOPTED BY ORDINANCE NO. 035-20, TO RECOGNIZE EXPENDITURES AND REVENUES NOT ANTICIPATED AT THE TIME OF THE ADOPTION OF THE 2021–2022 BIENNIAL BUDGET; PROVIDING FOR TRANSMITTAL TO STATE; PROVIDING FOR PUBLICATION; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orchard adopted its 2021 – 2022 Biennial Budget by Ordinance No.035-20; and

WHEREAS, the City desires to keep current on budget amendments; and

WHEREAS, it is necessary to consider adjustments to accounts and/or funds by means of appropriation adjustments that could not have been anticipated at the time of passage of the 2021 – 2022 Biennial Budget; and

WHEREAS, the City desires to create a new Permit Technician Position and fund 1 Full Time Equivalent (1 FTE); and

WHEREAS, the City desires to reduce the Permit Clerk, Full Time Equivalent from 2.7 FTE's to 2.0 FTE's; and

WHEREAS, the City Council has considered the proposed budget amendments and finds that amendments authorized by this Ordinance are consistent with applicable laws and financial policies, and further the public's health, safety and welfare; now, therefore,

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

SECTION 1. Exhibit A to the 2021 – 2022 Biennial Budget is amended as shown on the Exhibit A attached hereto.

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

SECTION 3. Corrections. Upon approval of the city attorney, the city clerk and the codifiers of this ordinance are authorized to make necessary technical corrections to this ordinance, including, without limitation, the correction of clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or section/subsection numbering.

SECTION 4. This Ordinance shall be in full force and effect five (5) days after posting and publication as required by law. A summary of this Ordinance may be published in lieu of the entire ordinance, as authorized by State Law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 23rd day of March 2021.

Robert Putaansuu, Mayor

ATTEST:

Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

SPONSOR:

Charlie A. Archer, City Attorney

John Clauson, Councilmember

PUBLISHED:

EFFECTIVE DATE:

Personnel Position Listing			
Elected Officials	Positions	Wages	
Mayor	1	Hourly	52.96
Council	7	Monthly	1,000
Total Elected	8.00		
Personnel Positions	FTE	Minimum	Maximum
City Clerk	1	45.18	52.38
Chief of Police	1	67.24	77.97
Community Development Director	1	62.67	72.68
Finance Director	1	62.67	72.68
Human Resources Manager	1	46.94	54.44
Public Works Director/City Engineer	1	62.67	72.68
Total Mayoral Direct Reports	6.00		
Deputy City Clerk	1	30.46	35.31
Office Assistant II - Admin	1	24.68	28.63
Total Administration	2.00		
Assistant Finance Director	1	46.94	54.44
Accounting Assistant II	4	27.48	31.86
Accounting Assistant III	2	32.04	37.16
Accounting Assistant III / IT Specialist	1	33.19	38.48
Network Administrator	1	41.61	48.26
IT Support Specialist	1	32.99	38.25
Total Finance/IT	10.00		
Permit Center Manager	1	35.27	40.90
Permit Tech (1FT)	1	27.65	32.07
Permit Clerk (2FT)	2.0	24.68	28.63
Permit Clerk (2FT, 1PT)	2.7	24.68	28.63
Associate Planner	2	36.28	42.08
Associate Planner Long Range	1	40.04	46.43
Building Inspector	1	34.07	39.51
Building Official	1	43.13	50.02
Code Enforcement Officer	1	33.19	38.48
Total Community Development	10.00		
Municipal Court Judge	0.8	62.85	62.85
Court Administrator	1	46.94	54.44
Lead Clerk	1	28.33	33.86
Court Clerk	2.6	23.93	28.58
Total Judicial	5.40		
Deputy Police Chief	1	58.59	67.96
Community Health Navigator	1	33.19	38.48
Public Service Officer / Parking Enforcement Officer (2 PT)	1	26.21	30.40
Office Manager - Police	1	31.56	37.70
Records Evidence Specialist (2FT, 1PT)	2.7	23.60	28.17
Sergeant	4	46.19	51.14
Patrol Officer	17	30.99	42.55
Total Police Department	27.70		
Assistant City Engineer	1	51.51	59.73
Operations Manager	1	45.18	52.38
Utility Manager	1	45.18	52.38
Civil Engineer I	1	36.28	42.08
Civil Engineer II	1	43.13	50.02
Stormwater Program Manager	1	37.80	43.84
GIS Specialist/Development Review Assistant	1	37.80	43.84
Public Works Procurement Specialist	1	35.27	40.90
Office Assistant II - Public Works	1	24.68	28.63
Public Works Foreman	1	39.93	39.93
City Mechanic	1	31.37	34.96
City Electrician	1	31.37	34.96
Public Works Personnel	10	25.13	33.94
WA/SW/Storm Coordinators	3	29.79	35.96
Public Works Laborer	1	19.83	23.00
Total Public Works	26.00		
Seasonal Worker	Hourly	15.00	20.00
Intern	Hourly	15.00	20.00
Temporary Employee	Hourly	15.00	20.00
Grand Totals	87.10		



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 7B
Subject: Adoption of an Ordinance Authorizing
Creation of the Position of Permit
Technician

Meeting Date: March 23, 2021
Prepared by: D. Lund
HR Manager
Atty Routing No.: 366922.008 – HR
Atty Review Date: March 18, 2021

Summary: Staff is requesting authorization to reorganize the Community Development Department to allow for the higher-level position of Permit Technician at the Permit Center. Staff has identified several tasks and routine permit review steps that can be completed at the permit stage by staff with the appropriate training and education for the assigned tasks.

The International Code Council offers training and testing for certification as a Permit Technician. Permit Technicians can help other department staff by providing more customer assistance, more thoroughly reviewing permit applications, and issuing routine permits. This helps to streamline some permitting process while allowing existing staff to focus on other priorities.

One of the Permit Clerks in the Community Development Department has the certification and meets all of the qualifications of a Permit Technician. It is the department’s goal, consisting with the City’s hiring policies, to promote this individual to the position of Permit Technician as soon as possible if the City Council approves of this new position.

The Council previously adopted Ordinance 008-20, which delegates authority to the Mayor to establish and amend job descriptions, provided they are consistent with the general qualifications and duties assigned by the Council. Therefore, attached to the Ordinance for Council’s consideration is a summary of the proposed position.

Recommendation: Staff recommends approval of the attached summary for the new position of Permit Technician.

Relationship to Comprehensive Plan: N/A

Motion for consideration: “I move to adopt an Ordinance authorizing the creation of the Permit Technician position the general qualifications and duties for the position.”

Fiscal Impact: Negligible. Offset by department revenues.

Alternatives: Do not approve the position summary and provide alternative guidance.

Attachments: Ordinance and Appendix A, a summary for the position of Permit Technician.

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON,
TO AUTHORIZE A NEW EMPLOYEE POSITION OF PERMIT
TECHNICIAN AND ESTABLISHING GENERAL QUALIFICATIONS
AND DUTIES THEREOF; PROVIDING FOR SEVERABILITY AND
PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

WHEREAS, the City currently employees 3 people as Permit Clerks in the Community Development Department; and

WHEREAS, the City has determined that the new position of Permit Technician that requires a higher level of training and expertise would be beneficial to the department and the citizens of Port Orchard; and

WHEREAS, the 2021-2022 budget has been amended to include an FTE for the position of Permit Technician; and

WHEREAS, a salary has been recommended and approved by the City Council for the position of Permit Technician; and

WHEREAS, Ordinance 008-20 delegates authority to the Mayor to establish and amend job descriptions provided they are consistent with the general qualification and duties assigned by the council; and

WHEREAS, the Council finds that the addition of this new position with the duties generally described herein is in the best interests to serve the needs of the City and its residents; now, therefore,

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

SECTION 1. The City Council hereby authorizes the creation of the position of Permit Technician, and establishes the general qualifications and duties for that positions as in Appendix A hereto and adopted by reference herein.

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 23rd day of March 2021.

Robert Putansuu, Mayor

ATTEST:

Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

SPONSOR:

Charlotte A. Archer, City Attorney

John Clauson, Councilmember

PUBLISHED:

EFFECTIVE DATE:

Appendix A

Position	Permit Technician
Department	Community Development
Major Job Function and Purpose	
The Permit Technician reviews applications, reads and interprets information, explains permitting code concepts to customers, determines level of advanced review required and routes applications as appropriate, issues permits within scope of authority, and performs all duties of a Permit Clerk to support the efficient operations of DCD's Permit Center.	
General Function	
Permit Technician accepts and coordinates applications; answers permit application questions about the process, and applicable codes and regulations; refers complex questions and issues to the appropriate personnel; performs simple plan review which requires interpreting information on applications and plans; reviews low complexity applications for compliance with local, state and federal regulations; calculates permit fees and provides statements of charges to applicants; and issues permits.	
Minimum Qualifications Include*	
ICC Permit Technician Certification, three years office experience, at least two of which include building, engineering, planning, zoning, land use, municipal permitting or similar, and HS diploma/GED, is required. Prior experience with Bluebeam, Adobe Acrobat professional programs, SmartGov or other electronic permit tracking system, public record retention schedules, and Port Orchard Municipal Codes is preferred. Experience as a municipal employee desirable.	

* All position descriptions allow the hiring manager to consider any combination of experience and training that provides the desired skills, knowledge and abilities.



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 Technical Systems, Inc. for</u> <u>the 2021 SCADA Radio Communications</u> <u>Design/Radio Licensing/Implementation</u> <u>Project</u>	Meeting Date: <u>March 23, 2021</u> Prepared by: <u>Mark Dorsey, P.E.</u> <u>Public Works Director</u> Atty Routing No.: <u>366922.0013 – Water</u> Atty Review Date: <u>March 14, 2021</u>
--	---

Summary: On November 30, 2020, the Public Works Department received results from Technical Systems, Inc. (TSI) for the Radio Survey feasibility study that TSI was contracted to perform for the City’s SCADA system in 2020. Upon review of the study and confirmation by CenturyLink that copper service lines will no longer be installed for the city SCADA system, Public Works staff has determined that radio communications for the City SCADA system need to be implemented soon. With current and future development of lift stations/water pump stations it is important that radio communications be designed for the Public Works Shop so that current and future sites will be able to establish communications with the city’s SCADA system. Therefore, on March 1, 2021, the City of Port Orchard Public Works Department reviewed the 2021 MRSC Consultant Roster with the Main-category: Design and Planning; and Sub-category: Telemetry/SCADA for the 2021 SCADA Radio Communications Design/Radio Licensing/Implementation Project. On March 3, 2021, Staff selected three (3) qualified consulting firms from the roster: Charter Controls Inc., Quality Controls Corporation, and Technical Systems, Inc. (TSI). The qualifications of the three selected firms were scored based upon established criteria by three (3) Public Works staff members. Staff determined that TSI was the firm selected, based upon the results of the scoring spreadsheet. On March 10, 2021, the City received a Proposal from TSI in the amount of \$56,700.00 for the 2021 SCADA Radio Communications Design/Radio Licensing/Implementation Project. On March 11, 2020, Public Works Staff successfully completed the Bidder Responsibility Checklist for TSI.

Relationship to Comprehensive Plan: Chapter 7 – Utilities

Recommendation: Staff recommends adoption of Resolution No. 023-21, thereby approving of and authorizing the Mayor to execute Contract No. C041-21 with Technical Systems, Inc. for the 2021 SCADA Radio Communications Design/Radio Licensing/Implementation Project in the amount of \$56,700.00 and documenting the Professional Services procurement procedures.

Motion for Consideration: I move to adopt Resolution No. 023-21, authorizing the Mayor to execute Contract No. C041-21 with Technical Systems, Inc. for the 2021 SCADA Radio Communications Design/Radio Licensing/Implementation Project in the amount of \$56,700.00, and documenting the Professional Services procurement procedures.

Fiscal Impact: \$98,700.00 was allocated for SCADA Design in the 2021-2022 Biennial Budget.
(411.05.534.20.40)- \$32,900.00
(431.05.535.30.40)- \$65,800.00

Alternative: Do not approve.

Attachments: Resolution No. 023-21 w/ Ex. A, Technical System, Inc. Cost Proposal and Contract.

RESOLUTION NO. 023-21

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. C041-21 WITH TECHNICAL SYSTEMS, INC. (TSI) FOR THE 2021 SCADA RADIO COMMUNICATIONS DESIGN/RADIO LICENSING/IMPLEMENTATION PROJECT AND DOCUMENTING THE PROFESSIONAL SERVICES PROCUREMENT PROCEDURES.

WHEREAS, on November 30, 2020, the Public Works Department received results from Technical Systems, Inc. (TSI) for the Radio Survey feasibility study that TSI was contracted to perform for the City's SCADA system in 2020; and

WHEREAS, upon review of the study and confirmation by CenturyLink that copper service lines will no longer be installed for the city SCADA system, Public Works staff has determined that radio communications for the city SCADA system need to be implemented soon because, with current and future development of lift stations/water pump stations it is important that radio communications be designed for the Public Works Shop so that current and future sites will be able to establish communications with the city's SCADA system; and

WHEREAS, on March 1, 2021, the City of Port Orchard Public Works Department reviewed the 2021 MRSC Consultant Roster with the Main-category: Design and Planning; and Sub-category: Telemetry/SCADA for the 2021 SCADA Radio Communications Design/Radio Licensing/Implementation Project; and

WHEREAS, on March 3, 2021, the Staff selected three (3) qualified consulting firms from the roster, Charter Controls Inc., Quality Controls Corporation, and Technical Systems, Inc. (TSI), and their statements of qualifications were scored against the criteria established for this project by three (3) Public Works staff members; and

WHEREAS, on March 3, 2021, Staff determined that Technical Systems, Inc. (TSI) was the most qualified firm, based upon the results of the scoring spreadsheet; and

WHEREAS, on March 10, 2021, the City received a Proposal from Technical Systems, Inc. (TSI) in the amount of \$56,700.00 for the 2021 SCADA Radio Communications Design/Radio Licensing/Implementation Project; and

WHEREAS, on March 11, 2020, Public Works Staff successfully completed the Bidder Responsibility Checklist for Technical Systems, Inc. (TSI); 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 herein for this particular contract by Resolution; now, therefore,

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

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

THAT: The Port Orchard City Council approves of and authorizes the Mayor to execute Contract No. C041-21 with Technical Systems Inc (TSI) for the 2021 SCADA Radio Communications Design/Radio Licensing/Implementation Project.

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

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the Clerk in authentication of such passage this 23rd day of March 2021.

Robert Putaansuu, Mayor

ATTEST:

Brandy Rinearson, MMC, City Clerk

Ex A

Public Agency Name: City of Port Orchard
Roster Type: Consultant Roster
Date: 03/01/2021
Time: 04:07 pm
Main-Category: Design and Planning
Sub-Category: Telemetry/SCADA

Consultant Roster Businesses:

ADCOMM Engineering LLC
Adopt A Stream Foundation
Advanced Industrial Automation Corp
Aqua Tech , llc
BHC Consultants, LLC
Brown and Caldwell
Burns & McDonnell
Casne Engineering, Inc.
CE Engineers, Inc.
Century West Engineering
Charter Controls Inc
Coast Controls & Automation, Inc.
Coffman Engineers
Conley Engineering, Inc
CONTROLFREEK INC
CRW Engineering Group, LLC
David Evans and Associates, Inc.
Elcon Associates, Inc.
EN Engineering LLC
FIFO Networks
GHD Inc.
Gray and Osborne, Inc.
Harris Group Inc.
HDR Engineering, Inc.
INDUSTRIAL SYSTEMS INC
Integrated Electrical Consulting
Jacobs Engineering Group Inc.
Jerome W. Morrissette & Associates Inc., P.S.
Johnston Architects LLC
Keller Associates, Inc.
Kennedy Jenks
Kimley-Horn
KPG
L2 Systems, LLC
Murraysmith
NV5, Inc.
Nw Communications Inc
Pacific CM LLC
Pacific Surveying and Engineering Services
Parametrix
Peninsula Environmental Group, Inc
Pennell Consulting, Inc.
Perteet Inc.
Professional Training Association
QCC-Quality Controls Corp
R&W Engineering, Inc.
RH2 Engineering, Inc
S&B INC.
Salaga Design, LLC
Sazan Group, Inc.
Secure Controls, LLC
Stantec
Systems Integrated
Technical Systems Inc
Tetra Tech, Inc.
THG LLC

Tikor Consulting
Varius Inc.
WSP USA Inc.

CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 23rd day of March 2021, 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 Technical Systems Inc (TSI), a corporation, organized under the laws of the State of Washington, doing business at:

Technical Systems, Inc. (hereinafter the “CONSULTANT”)
2303 196th St SW STE B
Lynnwood, WA 98036-7072

Contact: Tim Hecox Phone: 425.678.4152 Email: timh@tsicontrols.com

for professional services in connection with the following Project:

2021 SCADA Radio Communications Design/Radio Licensing/Implementation

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.” The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City. In performing such services, the Consultant shall at all times comply with all Federal, State, and local laws and regulations applicable to the performance of such services. The Consultant shall perform the services diligently and completely in accordance with professional standards of conduct and performance for Consultant’s profession.

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” and the terms of this Agreement. If delays beyond the Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

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

3. **Terms.** This Agreement shall commence on March 23, 2021 (“Commencement Date”) and shall terminate December 31, 2021, 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 **\$56,700.00** without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit “A.”

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

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.

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 the 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 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 shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
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

Phone: 360.876.4407
Fax: 360.895.9029

CONSULTANT
Technical Systems Inc
2303 196th St SW Suite B
Lynnwood, WA 98036

Phone: 425.678.4152
Email: timh@tsicontrols.com

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 contractor 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

CONSULTANT

By: _____
Robert Putaansuu, Mayor

By: _____

Name: _____

Title: _____

ATTEST/AUTHENTICATE:

By: _____
Brandy Rinearson, MMC
City Clerk

APPROVED AS TO FORM:

By: _____
Charlotte A. Archer, City Attorney

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).

3/10/2021

Tony Lang
City of Port Orchard
Phone # 360-535-2490

Reference: City of Port Orchard – SCADA Headend MTU 450MHz Radio System Design and Implementation

Dear Tony:

Technical Systems, Inc. (TSI) is pleased to provide a scope for the above referenced project. This pricing does not include tax or any bonding for this work.

Tasks:

1. Provide design services for the addition of 450MHz Radio Communications at the two (2) head-end MTUs at the Public Works Shop (one for Water and one for Sewer). Also provide design of the radio/PLC upgrades for the McCormick 450 Reservoir. Submit a complete list of all necessary hardware materials for the City to procure. Submit updated drawings for the sites above showing the installation of the required hardware. Installation is not part of this scope and will be provided by others.
2. Provide radio licensing Frequency Coordination services for four (4) 450MHz licensed bands for the City's use. Separate full duplex frequencies for water and sewer.
3. Provide Implementation services including the following (to be performed after the hardware has been installed by Public Works staff):
 - a. PLC programming at the head end to allow communications to radio sites.
 - b. PLC programming at the McCormick 450 Reservoir
 - c. Provide startup and testing for all equipment described above.
4. Provide Operation and Maintenance Manual (includes as-built drawings of MTUs and McCormick 450 Reservoir RTU).

<u>Pricing:</u>	Design Services:	\$15,800.00
	Radio License Coordination:	\$6,600.00
	Implementation Services:	<u>\$34,300.00</u>
	Total Price:	\$56,700.00

Exclusions:

1. Equipment supply and Installation is not part of this Scope.

Tim Hecox
Technical Systems, Inc.
425-678-4152
timh@tsicontrols.com



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>	Meeting Date:	<u>March 23, 2021</u>
Subject:	<u>Adoption of a Resolution Approving a</u>	Prepared by:	<u>Mark Dorsey, P.E.</u>
	<u>Contract with FieldTurf USA, Inc. for the</u>		<u>Public Works Director</u>
	<u>Van Zee Tennis Court Resurfacing</u>	Atty Routing No.:	<u>366922.0009 (PW)</u>
	<u>Project through Sourcewell</u>	Atty Review Date:	<u>March 17, 2021</u>

Summary: The City of Port Orchard has determined that the Van Zee Tennis Courts need to be resurfaced. Upon verification that the City is a member of the purchasing cooperative Sourcewell, formally known as the National Joint Powers Alliance (NJPA), a Minnesota Public Agency, on February 12, 2021, Public Works Department staff identified FieldTurf USA, Inc. as an approved vendor/service provider through Sourcewell Contract No. 060518-FTU for supplying athletic surfacing with related materials, supplies, installation and services. On March 2, 2021, FieldTurf USA, Inc., in conjunction with its manufacturing partner Beynon Sports, provided a quote of \$25,107.00 (plus applicable tax), for a total installation price of \$27,366.63. Staff confirmed the procurement process utilized by Sourcewell for this contract meets the required procurement processes and obtained the necessary documentation regarding procurement. On March 11, 2021, the City’s Public Works Department completed the Interlocal Agreement Purchase Checklist for Sourcewell. On March 15, 2021, the City’s Public Works Department completed the Mandatory Bidder’s Responsibility Checklist for FieldTurf USA, Inc.

Relationship to Comprehensive Plan: Chapter 4 – Parks.

Recommendation: Staff recommends that City Council approve Contract No. C042-21 with FieldTurf USA, Inc. for the Van Zee Tennis Court Resurfacing Project for the installed amount of \$27,366.63 (applicable tax included) through Sourcewell Contract No. 060518-FTU.

Motion for Consideration: I move to approve Contract No. C042-21 with FieldTurf USA, Inc. for the Van Zee Tennis Court Resurfacing Project for the installed amount of \$27,366.63 (applicable tax included) through Sourcewell Contract No. 060518-FTU.

Fiscal Impact: The 2021-2022 Biennial Budget allocated \$24,000.00 for this purchase. A budget amendment may be required. (001.05.576.80.40).

Alternative: Do not approve.

Attachments: Resolution 024-21, Interlocal Agreement Purchase Checklist, FieldTurf USA, Inc. Quote and Contract No. C042-21.

RESOLUTION NO. 024-21

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. C042-21 WITH FIELDTURF USA, INC. FOR THE VAN ZEE TENNIS COURT RESURFACING PROJECT, AND DOCUMENTING THE SMALL WORKS COOPERATIVE PURCHASING/SERVICES PROCUREMENT PROCEDURES.

WHEREAS, the City of Port Orchard has determined the need for the Van Zee Tennis Courts to be resurfaced; and

WHEREAS, the City is a member of the purchasing cooperative Sourcewell, formally known as the National Joint Power Alliance (NJPA), a Minnesota Public Agency; and

WHEREAS, on February 12, 2021, Public Works Department staff identified FieldTurf USA, Inc. as an approved vendor/service provider through Sourcewell (Contract No. 060518-FTU) for supplying athletic surfacing with related materials, supplies, installation, and services; and

WHEREAS, on March 2, 2021, FieldTurf USA, Inc., in conjunction with its manufacturing partner Beynon Sports, provided a quote of \$25,107.00 (plus applicable tax) for a total installation price of \$27,366.63, and Staff then reviewed the procurement process utilized by Sourcewell for this Contract to confirm the procurement requirements were met, and obtained the necessary documentation regarding procurement; and

WHEREAS, on March 11, 2021, the City's Public Works Department completed the Interlocal Agreement Purchase Checklist for Sourcewell; and

WHEREAS, on March 15, 2021, the City's Public Works Department completed the Mandatory Bidder's Responsibility Checklist for FieldTurf USA, Inc., and they are a qualified bidders; 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 herein for this particular contract by Resolution; now, therefore,

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

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

THAT: The Port Orchard City Council approves of and authorizes the Mayor to execute Contract No. C042-21 with FieldTurf USA, Inc. for the Van Zee Tennis Court Resurfacing Project.

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

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the Clerk in authentication of such passage this 23rd day of March 2021.

Robert Putaansuu, Mayor

ATTEST:

Brandy Rinearson, MMC, City Clerk

CITY OF PORT ORCHARD
PURCHASES THROUGH INTERLOCAL AGREEMENTS

City Contract No.: C075-14

Interlocal Agreement with the Host Agency (government agency or Purchasing Co-Op name): Sourcewell formerly known as National Joint Powers Alliance (NJPA), a Minnesota public agency.

Item Description: Van Zee Tennis Court Resurfacing. Contracting with FieldTurf USA Inc. via Contract #060518-FTU

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.

State OSP Contract No.:#: _____

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? Yes

- 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

Is the Host agency a public agency ¹ ?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, what state laws apply to Host Agency: <u>Minnesota</u>
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 the public agency's website?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, state when and the address, and proof of date, address shall be attached or placed into the file. If No, you cannot use the bid.
Did the bid & award comply with the Host agency's state procurement laws?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, obtain documentation to support answer from Host Agency. If No, you cannot use the bid.

¹ RCW 39.34.020 (1), "public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state

Page 66 of 171

Date: March 15, 2021

To: Tony Lang
Operations Manager
City of Port Orchard
216 Prospect St.
Port Orchard, WA 98366
P-360.535.2490
tlang@cityofportorchard.us

From: Cody Taylor
Beynon Sports
503-539-7930
CTaylor@beynonsports.com

Subject: VanZee Park Tennis Courts

FieldTurf USA, Inc. in conjunction with Beynon Sports is pleased to present the following proposal based on the Sourcewell contract (formerly NJPA) pricing. Sourcewell provides predetermined preferential pricing through approved vendors. Since the products have already been bid at the national level, individual municipalities do not have to duplicate the bidding process per Sourcewell Contract # 060518 - FTU

FieldTurf USA, Inc. holds the Cooperative Purchase contract, any PO for Contract must be made out to FieldTurf USA, Inc. 175 N Industrial Blvd NE. Calhoun, GA 30701

Tony,

As we discussed on the phone: there is failing asphalt emulsion starting to reveal itself and approximately 650+ linear feet of structural cracking. There is no way to tell how long the remaining emulsion will stay adhered to the asphalt and the cracks will re-open. Neither of these conditions will be warranted and reconstruction is recommended. The repairs and resurfacing quoted below will get the courts playable for the short term. Tennis courts include blue interiors and green perimeter. Striping to consist of 2 tennis courts in white and 6 pickleball courts in light blue.

SCOPE #1 – TENNIS COURT SURFACING SPECIFICATIONS:	
Scope:	<ul style="list-style-type: none"> High pressure-wash the entire court surface. Flood court surface, mark low areas that hold water over the depth of a nickel. Proper slope must be present to alleviate birdbaths. Patch and repair low areas, fill *cracks. Apply one coat of Acrylic Resurfacer to the entire court surface. Apply two textured Color Filler coats to the entire court surface. Apply one textured Color Finish coat to the entire court surface. Lines will be accurately laid out, taped, primed and painted with two coats White Textured Line Paint.
Cost:	\$ 25,107.00
Estimated Sales Tax:	\$ 2,259.63
Total Cost:	\$ 27,366.63

VanZee Park Tennis

March 15, 2021

Page 2 of 2

Notes:

- The above pricing includes prevailing wages
- Bonds are included in the above pricing
- Above pricing reflects Sourcwell Contract #060518 – FTU line item # 149

Exclusions:

- This quotation excludes any design costs, bonds, union or labor law levies, agency approval or associated fees, protection of sports surface after completion, permits(owners responsibility), moving/removal/replacing any utilities to include sprinklers, remediation of unsuitable soils, multiple mobilizations, logos or other unforeseen costs.
- Asphalt is manufactured with gravel, sand, and liquid petroleum. Most plants produce asphalt using gravel mined from hillsides. Mined gravel may contain clay balls and iron causing small insignificant voids and rust spots that may migrate to the acrylic surface. Since the producer's source of aggregate may vary from time to time, it is impossible to predict whether a particular batch of asphalt from a producer will contain clay balls or iron. If clay balls and or rust spots develop they will not hinder play or hurt the structural integrity of the court and are almost always eliminated after the first resurfacing. The most common problem with asphalt tennis courts is pavement cracking. Cracking in asphalt is caused, at least in part, by the natural tendency of asphalt to shrink as it weathers, oxidizes and ages. In addition, asphalt loses its flexibility as it ages, making it more brittle. Since shrinking and becoming more brittle with age are properties of the material, cracking in asphalt tennis courts is inevitable. This condition is beyond the control of Beynon Sports, its suppliers and sub-contractors. Therefore Beynon Sports will not assume any responsibility if such conditions appear.
- Quote valid for 30 days.
- *Cracks not treated with Riteway will appear/reappear with ground movement and freeze/thaw cycles. Yearly maintenance on your part will be required to re-seal small cracks.
- There is no warranty on standard crack repair.
- Suitable water source must be provided by owner.

If you have any questions, please call me at 503-539-7930.

Sincerely,

Cody Taylor
Tennis Operations Manager
Beynon Sports Surfacing, Inc.

If you have questions regarding the FieldTurf and Beynon SmartBuy Cooperative Purchasing Program, please contact Eric Fisher at: eric.fisher@smartbuycooperative.com.

If the price above is approved please make the PO or contract out to FieldTurf USA, Inc. 175 N Industrial Blvd NE. Calhoun, GA 30701.

**CITY OF PORT ORCHARD SMALL WORKS 35K AND UNDER
CONSTRUCTION CONTRACT NO. C042-21
PUBLIC WORKS PROJECT NO. PW2021-009**

THIS Agreement is made effective as of the 23rd day of March, 2021, 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

FieldTurf USA Inc. (“CONTRACTOR”)

175 N Industrial Blvd NE

Calhoun, GA 30701-8651

Contact: Cody Taylor Phone: 503.539.7930 Email: CTaylor@beynonports.com

for the following Project:

Van Zee Tennis Court Resurfacing (“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” and/or “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

- 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 **June 28, 2021**. The Contractor shall substantially complete the Work not later than **September 3, 2021**, 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 **\$27,366.63 (applicable sales tax included)**. 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, 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

CONTRACTOR

Robert Putaansuu, Mayor

By: _____
Its: _____

ATTEST/AUTHENTICATE:

Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

Charlotte A. Archer, City Attorney

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ (*Corporate Officer (Not Contract Signer)*)
certify that I am the _____ (*Corporate Title*) of the
corporation named _____ as the Contractor in the Agreement attached hereto; that
_____, (*Contract Signer*) who signed said Agreement on behalf
of the Contractor, was then _____ (*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

Corp. officer signature (not contract signer)

Printed

Title

State of _____)
County of _____)

_____, (*corporate officer (not contract signer)*) being
duly sworn, deposes and says that he/she is _____ (*Corporate Title*)
of _____ (*Name of Corporation*)

Subscribed and sworn to before me this _____ day of _____, 20_____

Notary Public (Signature)

Notary Public (Print)

My commission expires _____

**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 ensure 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.

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. 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.
- *Employers' Liability* coverage to include bodily injury, and bodily injury by disease. Employers Liability coverage may be included in the Contractor's General Liability Coverage or as a stand-alone policy.
- *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.

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.
- *Workers' Compensation* insurance.
- *Employer's Liability* insurance with Washington Stop Gap Employers' Liability minimum limits of \$1,000,000 each accident, \$1,000,000 disease - each employee, \$1,000,000 disease - policy limit.

The City will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor or any sub-Contractor or employee of the Contractor which might arise under the industrial insurance laws during the performance of duties and services under this contract. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the Contractor; the Contractor shall indemnify the City and guarantee payment of such amounts.

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 thirty (30) days written notice by certified mail, return receipt requested, to the City prior to the cancellation or alteration of coverage.

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 AND PAYMENT
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, where applicable, desired by checking the appropriate space.

1. The Contractor shall provide 5% retainage, pursuant to RCW 60.28.011(1)(a).
2. In addition, the Contractor elects to (select one):

_____ (1) Furnish a performance and payment bond in the amount of the total contract sum. An executed performance and payment bond on the required form is included with the executed contract documents.

_____ (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
Bond No. _____

PERFORMANCE AND PAYMENT BOND

**CITY OF PORT ORCHARD
VAN ZEE TENNIS COURT RESURFACING
CONTRACT NO. C042-21**

Bond to City of Port Orchard, Washington

Bond No. _____

We, _____, and _____,
(Principal) (Surety)

a _____ Corporation, and as a surety corporation authorized to become a surety upon Bonds of Contractors with municipal corporations in Washington State, are jointly and severally bound to the City of Port Orchard, Washington (“Owner”), in the penal sum of _____ Dollars (\$ _____), the payment of which sum, on demand, we bind ourselves and our successors, heirs, administrators, executors, or personal representatives, as the case may be. This Performance Bond is provided to secure the performance of Principal in connection with a contract dated _____, 20____, between Principal and Owner for a project entitled **Van Zee Tennis Court Resurfacing** Contract No. **C042-21** (“Contract”). The initial penal sum shall equal 100 percent of the Total Bid Price, including sales tax, as specified in the Proposal submitted by Principal.

NOW, THEREFORE, this Performance and Payment Bond shall be satisfied and released only upon the condition that Principal, its heirs, executors, administrators, successors, or assigns:

- Faithfully performs all provisions of the Contract and changes authorized by Owner in the manner and within the time specified as may be extended under the Contract;
- Pays all laborers, mechanics, subcontractors, lower tier subcontractors, material persons, and all other persons or agents who supply labor, equipment, or materials to the Project; and
- Pays the taxes, increases and penalties incurred on the Project under Titles 50, 51 and 82 RCW on: (A) Projects referred to in RCW 60.28.011(1)(b); and/or (B) Projects for which the bond is conditioned on the payment of such taxes, increases and penalties.

The Surety shall indemnify, defend, and protect the Owner against any claim of direct or indirect loss resulting from the failure:

- Of the Principal (or any of the employees, subcontractors, or lower tier subcontractors of the Principal) to faithfully perform the contract, or
- Of the Principal (or any subcontractor or lower tier subcontractor of the Principal) to pay all laborers, mechanics, subcontractors, lower tier subcontractors, material person, or any other person who provides supplies or provisions for carrying out the work.

The liability of Surety shall be limited to the penal sum of this Performance and Payment Bond.

Principle and Surety agree that if the Owner is required to engage the services of an attorney in connection with enforcement of this bond each shall pay the Owner reasonable attorney’s fees, whether or not suit is commenced, in addition to the penal sum.

No change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed under the Contract shall in any way affect Surety’s obligation on the Performance Bond. Surety

hereby waives notice of any change, extension of time, alteration, or addition to the terms of the Contract or the Work, with the exception that Surety shall be notified if the Contract time is extended by more than twenty percent (20%).

If any modification or change increases the total amount to be paid under the Contract, Surety's obligation under this Performance and Payment Bond shall automatically increase in a like amount. Any such increase shall not exceed twenty-five percent (25%) of the original amount of the Performance and Payment Bond without the prior written consent of Surety.

This Performance and Payment Bond shall be governed and construed by the laws of the State of Washington, and venue shall be in Kitsap County, Washington.

IN WITNESS WHEREOF, the parties have executed this instrument in two (2) identical counterparts this _____ day of _____, 20 ____.

Principal

Surety

Signature of Authorized Official

Signature of Authorized Official

Printed Name and Title

By _____
Attorney in Fact (Attach Power of Attorney)

Name and address of local office of Agent and/or Surety Company:

Surety companies executing bonds must appear on the current Authorized Insurance List in the State of Washington per Section 1-02.7 of the Standard Specifications.

ACKNOWLEDGEMENT

Corporation, Partnership, or Individual

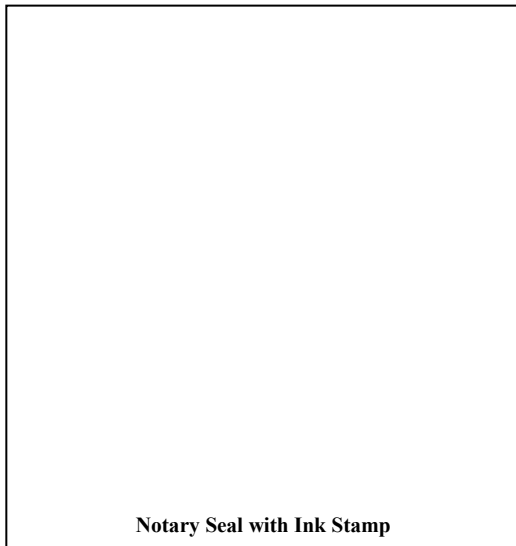
STATE OF _____)
)ss.
COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the (check one of the following boxes):

- _____ of _____, 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.



Print or type name

NOTARY PUBLIC,
in and for the State of Washington

Residing at _____

My Commission expires: _____

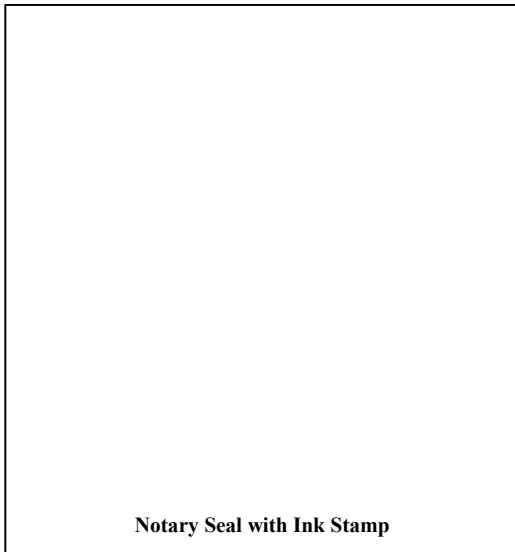
SURETY ACKNOWLEDGEMENT

STATE OF _____)
)ss.

COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Print or type name

NOTARY PUBLIC,
in and for the State of Washington

Residing at: _____

My Commission expires: _____

Notary Seal with Ink Stamp

**CITY OF PORT ORCHARD
MAINTENANCE/WARRANTY BOND**

(Note: Before the Performance Bond can be released the City must receive the two years Maintenance/Warranty Bond)

PROJECT #, PERMIT #, PW2021-009
CONTRACT # C042-21
SURETY BOND #: _____
DATE POSTED: _____
EXPIRATION DATE: _____

RE: Project Name: Van Zee Tennis Court Resurfacing
Owner/Developer/Contractor: _____
Project Address: 300 Tremont St, Port Orchard, WA 98366

KNOW ALL PERSONS BY THESE PRESENTS: That we, _____ (hereinafter called the "Principal"), and _____, a corporation organized under the laws of the State of _____, and authorized to transact surety business in the State of Washington (hereinafter called the "Surety"), are held and firmly bound unto the City of Port Orchard, Washington, in the sum of _____ dollars (\$_____) 20% Total Contract Amount, lawful money of the United States of America, for the payment of which sum we and each of us bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents. THE CONDITIONS of the above obligation are such that:

WHEREAS, the above-named Principal has constructed and installed certain improvements on public property in connection with a project as described above within the City of Port Orchard; and

WHEREAS, the Principal is required to post a bond for the twenty-four (24) months following written and final acceptance of the project in order to provide security for the obligation of the Principal to repair and/or replace said improvements against defects in workmanship, materials or installation during the twenty-four (24) months after written and final approval/acceptance of the same by the City;

NOW, THEREFORE, this Maintenance Bond has been secured and is hereby submitted to the City. It is understood and agreed that this obligation shall continue in effect until released in writing by the City, but only after the Principal has performed and satisfied the following conditions:

A. The work or improvements installed by the Principal and subject to the terms and conditions of this Bond are as follows: (insert complete description of work here)

B. The Principal and Surety agree that the work and improvements installed in the above-referenced project shall remain free from defects in material, workmanship and installation (or, in the case of landscaping, shall survive,) for a period of twenty-four (24) months after written and final acceptance of the same and approval by the City. Maintenance is defined as acts carried out to prevent a decline, lapse or cessation of the state of the project or improvements as accepted by the City during the twenty-four (24) month period after final and written acceptance, and includes, but is not limited to, repair or replacement of defective workmanship, materials or installations.

C. The Principal shall, at its sole cost and expense, carefully replace and/or repair any damage or defects in workmanship, materials or installation to the City-owned real property on which improvements have been installed, and leave the same in as good condition as it was before commencement of the work.

D. The Principal and the Surety agree that in the event any of the improvements or restoration work installed or completed by the Principal as described herein, fail to remain free from defects in materials, workmanship or installation (or in the case of landscaping, fail to survive), for a period of twenty-four (24) months from the date of approval/acceptance of the work by the City, the Principal shall repair and/replace the same within ten (10) days of demand by the City, and if the Principal should fail to do so, then the Surety shall:

1. Within twenty (20) days of demand of the City, make written commitment to the City that it will either:
 - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
 - b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection D(1)(b), the City shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs which exceeded the City estimate, limited to the bond amount.

2. In the event the Principal fails to make repairs or provide maintenance within the time period requested by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of repairing or maintaining the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to repair or maintain such improvements.

E. Corrections. Any corrections required by the City shall be commenced within ten (10) days of notification by the City and completed within thirty (30) days of the date of notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section D above.

F. Extensions and Changes. No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The Surety waives notice of any such change, extension, alteration or addition thereunder.

G. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby

agrees that this bond shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this bond shall be in Kitsap County Superior Court.

H. Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and until released in writing by the City at the request of the Surety or Principal.

DATED this ____ day of _____, 20__.

**SURETY COMPANY
(Signature must be notarized)**

**DEVELOPER/OWNER
(Signature must be notarized)**

By: _____
Its _____

By _____
Its _____

Business Name: _____

Business Name: _____

Business Address: _____

Business Address: _____

City/State/Zip Code: _____

City/State/Zip Code: _____

Telephone Number: _____

Telephone Number: _____

CITY OF PORT ORCHARD

By: _____
Its Public Works Director/City Engineer

Date: _____

CHECK FOR ATTACHED NOTARY SIGNATURE
____ Individual (Form P-1)
____ Corporation (Form P-2)
____ Surety Company (Form P-2)

FORM P-1 / NOTARY BLOCK
(Use For Individual/Sole Proprietor Only)

STATE OF WASHINGTON)
) ss.
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, and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____

FORM P-2 / NOTARY BLOCK
(Use For Partnership or Corporation Only)

(Developer/Owner)
STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

_____ (print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____

(Surety Company)
STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

_____ (print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____

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.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).



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>March 23, 2021</u>
Subject:	<u>Adoption of a Resolution Approving a</u>	Prepared by:	<u>Mark Dorsey, P.E.</u>
	<u>Contract with Katy Isaksen and</u>		<u>Public Works Director</u>
	<u>Associates for the 2021 Utility Financial</u>	Atty Routing No.:	<u>366922.0013 - Water</u>
	<u>Program Project</u>	Atty Review Date:	<u>March 17, 2021</u>

Summary: The City has identified the need for a 2021 update to the City’s Utility Financial Program, including an update of the water capital improvements plan (CIP), updating the Water Capital Facilities Charge (CFC) to match the CIP, and make associated amendments to the Port Orchard Municipal Code (POMC). Accordingly, on February 11, 2021, pursuant to RCW 39.04.155, the City’s Public Works Department established a list of qualified contractors from the 2021 Consultant Roster for the Main Category – Financial Services and Sub-Category – Rate Studies (Attachment 1 to this Staff Report). After staff developed the relevant scoring criteria, and reviewed, scored, and ranked the qualifications of three (3) consultants selected from the roster (Katy Isaksen & Associates, FCS Group and KLJ Financial Consulting), the City’s Public Works Department identified Katy Isaksen & Associates as the highest-ranking firm. Public Works Staff then met with Katy Isaksen & Associates to discuss, clarify, and develop the Project Understanding. On March 10, 2021, the City received a defined Scope of Work, Budget, and Project Timeline from Katy Isaksen & Associates for the Project, in an amount not to exceed \$28,000.00. Staff reviewed the proposal and finds that it meets the needs of the City and the budget authorized.

Recommendation: Staff recommends adoption of Resolution No. 026-21, thereby approving Contract No. C038-21 with Katy Isaksen & Associates for the 2021 Utility Financial Program Project in an amount not to exceed \$28,000.00 and documenting the Professional Services procurement procedures.

Relationship to Comprehensive Plan: Chapter 7 – Utilities

Motion for Consideration: I move to adopt Resolution No. 026-21, authorizing the Mayor to execute, Contract No. C038-21 with Katy Isaksen & Associates for the 2021 Utility Financial Program Project for \$28,000.00 and documenting the Professional Services procurement procedures.

Fiscal Impact: ~ \$28,000 paid from the Water & Sewer Utilities Funds anticipated to be paid within the existing current budget authority.

Alternative: Do not approve.

Attachments: Resolution No. 026-21, Exhibit A to the Resolution, Contract No. C038-21, Exhibit A to Contract No. C038-21, Katy Isaksen & Associates Proposal (dated 03/10/2021), and Attachment 1 to this Staff Report – Copy of the Roster of Consultants.

RESOLUTION NO. 026-21

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. C038-21 WITH KATY ISAKSEN AND ASSOCIATES FOR 2021 UTILITY RATES AND FINANCIAL PROGRAM SERVICES AND DOCUMENTING PROFESSIONAL SERVICES PROCUREMENT PROCEDURES.

WHEREAS, the City has identified the need for a 2021 update to the City's Utility Financial Program, including an update of the water capital improvements (CIP), updating the Water Capital Facilities Charge (CFC) to match the CIP, and make associated amendments to the Port Orchard Municipal Code (POMC); and

WHEREAS, on February 11, 2021, pursuant to RCW 39.04.155, the City's Public Works Department established a list of qualified contractors from the 2021 Consultant Roster for the Main Category – Financial Services and Sub-Category – Rate Studies; and

WHEREAS, after staff reviewed, scored, and ranked the qualifications of consultants selected from the roster (Katy Isaksen and Associates, FCS Group, KLJ Financial Consulting), the City's Public Works Department identified Katy Isaksen and Associates as the highest-ranking firm,; and

WHEREAS, upon successful completion of the Bidder's Checklist on February 17, 2021, the City's Public Works Department recommends the City Council approve of Katy Isaksen and Associates for the 2021 Utility Financial Program Project; and

WHEREAS, on March 10, 2021, Katy Isaksen and Associates provided the City's Public Works Department with a viable Proposal for the 2021 Utility Financial Program Project; and

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

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

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

THAT: The City Council approves and authorizes the Mayor to execute Contract No. C038-21 with Katy Isaksen and Associates for the 2021 Utility Financial Program Project, attached hereto as Exhibit A and incorporated herein by this reference.

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

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the Clerk in authentication of such passage this 23rd day of March 2021.

Robert Putaansuu, Mayor

ATTEST:

Brandy Rinearson, MMC, City Clerk

Public Agency Name: City of Port Orchard
Roster Type: Consultant Roster
Date: 02/11/2021
Time: 02:19 pm
Main-Category: Financial Services
Sub-Category: Rate Studies

Consultant Roster Businesses:

Adekoya Business Consulting LLC
American Aviation Professionals Inc.
Bell & Associates, Inc.
BERK Consulting, Inc.
Brown and Caldwell
BST Associates
Conservation Technix, Inc.
EA Engineering, Science, and Technology, Inc., PBC
EES Consulting, Inc.
FCS GROUP
Fehr & Peers
Gray and Osborne, Inc.
HDR Engineering, Inc.
Jacobs Engineering Group Inc.
JR MILLER & ASSOCIATES INC
Katy Isaksen & Associates, Utility Financial Planning
Keller Associates, Inc.
KLJ Financial Consulting
Murraysmith
Northwest Water Systems
PACE Engineers, Inc.
Peninsula Financial Consulting
Professional Training Association
The Beckett Group
THG LLC
WSP USA Inc.

CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 23rd day of **March, 2021**, 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 **Katy Isaksen and Associates**, a sole proprietorship, organized under the laws of the State of Washington, doing business at:

PO Box 30008 (hereinafter the “CONSULTANT”)
Seattle, WA 98113
Contact: Katy Isaksen Phone: 206-706.8893
Email: Katy@kisaksenassociates.com

for professional services in connection with the following Project:

2021 Utility Financial Program

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." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City. In performing such services, the Consultant shall at all times comply with all Federal, State, and local laws and regulations applicable to the performance of such services. The Consultant shall perform the services diligently and completely in accordance with professional standards of conduct and performance for Consultant’s profession.

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” and the terms of this Agreement. If delays beyond the Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

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

3. **Terms.** This Agreement shall commence on **March 23, 2021** (“Commencement Date”) and shall terminate **December 31, 2021** 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 **\$28,000.00** without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit “1.”

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.

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 the 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 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 shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
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

Phone: 360.876.4407
Fax: 360.895.9029

CONSULTANT
Katy Isaksen and Associates
PO Box 30008
Seattle, WA 98113-2008

Phone: 206.706.8893
Email: katy@kisaksenassociates.com

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 contractor 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

CONSULTANT

By: _____
Robert Putaansuu, Mayor

By: _____

ATTEST/AUTHENTICATE:

Name: _____

By: _____
Brandy Rinearson, MMC
City Clerk

Title: _____

APPROVED AS TO FORM:

By: _____
Charlotte A. Archer, City Attorney

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).

March 10, 2021

**Mark Dorsey
Public Works Director
City of Port Orchard**

Re: City of Port Orchard 2021 Utility Financial Program

As requested, I am pleased to provide this proposed scope of work to assist the City of Port Orchard in updating the Utility Department Financial Program, including updating the water capital improvements (CIP), updating the Water Capital Facilities Charge (CFC) to match the CIP, support POMC changes as needed, and update the water & sewer rates for the approval process.

Project Understanding

KI&A worked with the City in 2020 to update the sewer CFC which was approved by Council on September 22, 2020 (Ord. #027-20). KI&A also prepared the updated water financial program, as a sub to BHC on the Water System Plan (WSP), including a water rate outlook and CFC update. Due to Department of Health scheduling, the water system plan update may not be reviewed until fall 2021. Since 2017, there has been significant investment and planned CIP in the water system, and the water CFC needs to be updated. A result of the previous 2014-15 Gap Analysis was a six-year schedule of water and sewer rates adopted for 2015-2020. It is time to update the sewer rate outlook and refine the water rate outlook to reflect the current CIP. City staff and attorney will be updating language in POMC and may need support to reflect the rate proposals, etc.

Proposed Scope

The 2021 Utility Financial Program will be organized into several tasks that are designed to assist the City in adopting the necessary rates and fees to support the water and sewer utility programs. Telephone or virtual meetings with staff are anticipated within each of the tasks. There is allowance for 1 visit to the City, should it be possible and helpful.

1. Update Water CIP – New information has become available since the draft Water Financial Chapter was prepared in 2020 for the WSP update. The financial model will be revised to reflect the current CIP schedule and costs, and funding sources will be updated, as necessary. (Note that updates to the Financial Chapter will be done under the KI&A subcontract to BHC for the WSP Update.)
2. Revise Water CFC Calculation – Based on the updated CIP in task 1, the draft Water CFC calculation will be updated. A memo will be prepared for staff to bring to the Utilities Committee and City Council.
3. Support POMC Changes – Staff and attorney will be updating POMC language. This task provides time to assist as needed.
4. Water & Sewer Rates – A ten-year water rate outlook was prepared with the draft Water Financial Chapter for the WSP. This will be updated with adopted 2020-21 budget and the water CIP changes from the above tasks to focus on a 6-year rate schedule. The current water fixed base rates include an allowance of water, then customers pay a consumption charge for additional water. This structure will be evaluated for the potential to remove the water allowance from the base rate to reduce the base rate, provide incentive for conservation and leak repair, and give customers more control over their water bill (the bill will go down when they use less water and go up when they use more water). A 10-year sewer rate outlook will be developed based on the adopted 2020-21 budget and current sewer CIP to focus on a 6-year rate schedule. An alternative for sewer rates may be considered to adjust rates by an inflation index until the next General Sewer Plan Update cycle, planned for 2022.

1. Utilities Committee or City Council Meetings – This task provides for presentation of water & sewer rates at up to (3) meetings with Utilities Committee or City Council via virtual platform.
2. Project Management & Coordination – This task provides time for managing, monitoring, and reporting on budget status throughout the project, and coordination with Public Works, Finance, and engineering consultants, as necessary.
3. Management Reserve – A management reserve is proposed to include additional analysis for unforeseen issues that may arise during the study, and time to attend in-person meetings with the City Council, if requested and approved in writing by the Public Works Director.

The schedule is dependent on data collection and will be designed to meet the City's needs. A data request will be submitted upon approval of the agreement.

Estimated Cost

This effort is estimated to be 168 hours at an hourly rate of \$165, plus direct expenses, for a total of

\$28,000 on a time and materials basis. This includes a base estimate of \$21,200, plus a management reserve of \$6,800.

I respectfully submit this proposal and look forward to the opportunity of working with the City of Port Orchard.



Katy Isaksen

EXHIBIT 1

Port Orchard Utility Financial Program		
Prepared by Katy Isaksen & Associates	EST.	\$165
DRAFT 3/10/21	HOURS	AMOUNT
1. Update Water CIP*	16	\$2,640
2. Revise Water CFC calculation	16	\$2,640
3. Support POMC changes as needed	16	\$2,640
4. Water & Sewer Rates	60	\$9,900
5. Utilities Committee/Council Meetings (3 via zoom)	12	\$1,980
6. Project Management, Review & Coordination	8	\$1,320
Subtotal	128	\$21,120
Direct Expenses (incl. mileage, ferry)		\$80
KI&A Subtotal		\$21,200
Management Reserve		
Additional analysis for unforeseen issues	16	\$2,640
Attend Utilities Committee/Council meeting in-person	24	\$3,960
Direct Expenses (incl. mileage, ferry)		\$200
Subtotal Management Reserve	40	\$6,800
Total KI&A Estimate	168	\$28,000
<i>*Updates to the Financial Chapter in the WSP will be done under the BHC contract.</i>		



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 7F</u>	Meeting Date:	<u>March 23, 2021</u>
Subject:	<u>Approval of the Purchase of (2) Cornell Sewage Pumps and Replacement Parts from PumpTech, Inc. for the Bay Street Sewerage Lift Station</u>	Prepared by:	<u>Mark Dorsey, P.E. Public Works Director</u>
		Atty Routing No.:	<u>366922.0014 (Sewer)</u>
		Atty Review Date:	<u>March 16, 2021</u>

Summary: On February 16, 2021, Public Works Department established a list of qualified contractors from the 2021 MRSC Vendor Roster (Ex. A attached) for Main Category; Equipment and Sub-Category; Pumping Equipment, for the purchase of two (2) Cornell Sewage Pumps and Replacement Parts to replace the failing pumps at the Bay Street Sewerage Lift Station. On February 17, 2021, and pursuant to Resolution No. 019-17 (Section 5- Bid Procedures), the City’s Public Works Department identified four (4) qualified Vendors from the MRSC Roster and sent each qualified Vendor a Request for Bids for the purchase of two (2) Cornell Sewage Pumps and Repair Parts. The City received the following responses from the qualified Vendors:

<i>Name of Vendor</i>	<i>Bid Total</i>
PumpTech, Inc.	\$42,973.26 (applicable tax included)
Owens Pump	Does not sell Cornell Pumps
Seattle Pumps	No Response/Bid
Triangle Pumps	No Response/Bid

Staff confirmed that PumpTech, Inc. is a qualified vendor for this purchase. This purchase relates to a City Staff Public Works Project and consistent with the City’s procurement policies and all applicable bidding requirements under state law. Budget authority is already provided for this purchase, and the City’s Procurement Policy requires Council approval for this purchase and the total prices exceeds \$35,000.00.

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

Recommendation: Staff recommends that the City Council approve the purchase of two (2) Cornell Sewage Pumps and Replacement Parts from PumpTech, Inc. for a total purchase price of \$42,973.26 (applicable tax included.)

Motion for Consideration: I move to approve the purchase of two (2) Cornell Sewage Pumps and Replacement Parts from PumpTech, Inc. for a total purchase price of \$42,973.26 (applicable tax included.)

Fiscal Impact: The 2021-2022 Biennial Budget allocates \$100,000.00 for Pump Repair/Parts (431.05.535.30.30).

Attachments: Ex. A - MRSC Roster, PumpTech, Inc. Quote, and Public Works Request for Telephone Quote Sheet.

Ex A

Public Agency Name:	City of Port Orchard
Roster Type:	Vendor Roster
Date:	02/16/2021
Time:	01:47 pm
Main Category:	Equipment
Sub-Category:	Pumping Equipment

Ahem Rentals Inc

AMB Tools and Equipment

American Onsite Services

Apex Hydrovac Tools LLC

Aqua Dive Services, LLC

Aqua Tech , llc

Beisley Enterprises LLC

Ben's Cleaner Sales, Inc.

Bioterra Environmental Engineering Inc

Clear Water Services

Correct Equipment

Don Small and sons oil distributor co.

Empire Well Drilling LLC

Evans Enterprises, Inc

FuelCare

Furrow Pump

Geotech Enironmental Equipment

Granite Construction Company

GRUNDFOS CBS INC

H&N Electric

H.D. Fowler Co. Inc. - East Wentachee

Hurley Engineering Co

Industrial Electric Machinery

jc enterprises

Medical Ophthalmics LLC DBA MedOpsUSA

Mid Mountain Boiler and Steam Inc

NORDHOLM COMPANIES INC

Northwest Aquatic Eco-Systems

Northwest Lift & Equipment LLC

Northwest Thermal Hydronics LLC

NW Relining LLC

Orca Pacific, Inc.

- Owens Pump & Equipment Email: sales@owenspump.com

Prestige WorldWide Technologies

PumpTech Inc Email: belle@pump.com

Reliable Investments LLC

Romtec Utilities

- Seattle Pump and Equipment co Email: sales@seattlepump.com

Star Rentals Inc

Sunbelt Rentals inc

Talco Fire Systems, Inc.

TMG Services, Inc

Traffic Safety Supply

- Triangle Pump & Equipment, Inc. Email: sales@trianglepump.com

Utilities Service Co., Inc.

Vac-Tec Septic & Water LLC.

Vaughan Company, Inc.

Ventilation Power Cleaning, Inc.

Western State Design, Inc.

Western Workboats LLC

Wm. H. Reilly & Co. Inc.

WMS Aquatics

WULUS CONSTRUCTION INC



PumpTech Inc.
 12020 SE 32ND Street Suite 2
 Bellevue, WA 98005
 Phone: 425-644-8501
 Fax: 425-562-9213
 jjoyce@pumptechnw.com

Sales Quotation

Customer#: 0123600

TO:
 Mike DeLine
 Port Orchard, City of
 City Hall 216 Prospect St
 *****Email invoice:
 ap@cityofportorchard.us
 Port Orchard, WA 98366

Salesperson: Jim Joyce / Mike Dunn
Lead Time: 12 to 14 Weeks
FOB: FOB ORIGIN - FFA
Ship Via: OTHER

Quote #: 0159371-A
Date: 2/26/2021
Expires: 3/26/2021

Project Name: Bay Street Lift Station Pump Upgrade

Item	Price	Qty	Extend
PumpTech is pleased to offer the following Cornell Cutter pumps to replace the existing Model 6NHTA SN 148915 & 148916	0.00		0.00

New Cornell Pumps Cornell model # 6NHW-A-F18DB Cutter Pump - To replace the 6NHTA pumps with s/n's 148915 & 148916 - Heat treated 420 SS cutter components - Horizontal frame mounted configuration - Grease lubricated bearing frame with double bearings on drive end - Standard enamel paint - pump rated for 550 gpm @ 22' TDH	0.00	2.00	0.00
Sheave and Belt Set New drive sheaves and belts including: - 2ea drive sheaves - 2ea driven sheaves - 8 drive belts	0.00	1.00	0.00
Gaskets 6" flange gaskets for pump suction and discharge connections.	0.00	4.00	0.00
Freight Ground Freight to Port Orchard Public Works included	0.00	1.00	0.00
Total for the above	39,425.00	1.00	39,425.00

SubTotal 39,425.00

The above order is subject to Pumptech Inc. standard terms and conditions and credit approval which are attached and made part of this agreement. We appreciate your interest in our products and services and if you have any questions on our offerings please do not hesitate to call.
 By signature below, I accept this offering:

Signed: _____
 Name: _____ Title: _____

Sales Tax: 3,548.26
Total: 42,973.26



STANDARD TERMS AND CONDITIONS

FORMATION OF CONTRACT: These standard terms and conditions of sale ("Terms and Conditions") together with the sales covenants, the general specifications, the technical specifications, and any addendum thereto, including any acknowledgement by PUMPTTECH, INC., comprise the "Proposal" or "Sales Quotation" (collectively the "Quotation"), which upon acceptance by Purchaser become the "Agreement." Subject to prior credit approval by PUMPTTECH, INC. (see "Credit Approval and Payment Terms" section below), Purchaser may accept the Quotation through: (i) delivering a purchase order that incorporates the Quotation by reference and payment of the initial deposit; (ii) other written indication by Purchaser of its acceptance of the Quotation along with payment of the initial deposit; (iii) delivering a purchase order or other written indication by Purchaser of its acceptance of the Quotation and agreement by both parties on a standard progress payment plan that does not require an initial deposit (see "Credit Approval and Payment Terms" section below); or (iv) receipt by Purchaser of PUMPTTECH, INC.'s acknowledgement without notice of rejection. The effective date of the Agreement shall be the date that PUMPTTECH, INC. communicates to Purchaser via PUMPTTECH, INC.'s acknowledgement, in writing. PUMPTTECH, INC.'s obligations under the Quotation or the Agreement shall not commence until the effective date. The scope of work for the Agreement is limited to the equipment, machinery, goods, engineering services (if applicable) and/or related commissioning services (if applicable) specifically set forth in the Agreement ("Equipment"). The scope of work does not include installation or any on-site services unless specifically identified as being included in the price in the Agreement. Any terms and conditions contained in any purchase order, plans and specifications, correspondence, or accompanying payment for delivery of the Equipment, which are different from or in addition to the Terms and Conditions herein, shall not be binding on PUMPTTECH, INC., whether or not they would materially alter the Agreement, and PUMPTTECH, INC. hereby objects to and rejects the same unless such terms and conditions are delivered to PUMPTTECH, INC. prior to Quotation and referenced in the Quotation.

CREDIT APPROVAL AND PAYMENT TERMS: Credit approval is required by PUMPTTECH, INC. prior to release of order to manufacturer; however, submittal may begin at the time of receipt of purchase order. PUMPTTECH, INC.'s payment terms are net thirty (30) days from invoice date. In some circumstances PUMPTTECH, INC. may require progress payments. Progress payments are due and payable upon receipt of invoice. PUMPTTECH, INC.'s "Standard Progress Payment Plan" is defined as a payment plan that includes the following terms in the purchase order or the Agreement: 1st: fifteen percent (15%) upon receipt of approved drawings; 2nd: thirty percent (30%) upon order of major components; 3rd: twenty percent (20%) upon receipt of major components at PUMPTTECH, INC.'s facility; 4th: thirty percent (30%) upon shipment; and 5th: five percent (5%) on start-up. If not included within the Quotation, all applicable federal, state and local taxes will be added to each invoice. Time is of the essence with respect to all payments. Payments that are outstanding more than ten (10) days from their respective due date shall bear an interest rate of one and one-half percent (1.5%) per month (eighteen percent (18%) annually) until fully paid, including any interest accruing thereon. If PUMPTTECH, INC. chooses to turn any past-due balances over to a collection agency, Purchaser agrees to pay costs of the collection to the extent that is allowed by law for commercial accounts.

CHANGE ORDERS: Changes to the design, specifications, scope of supply, delivery schedule, Equipment demonstration site or date, shipping instructions of the Equipment, or any material term of the Agreement, may only be made upon execution by Purchaser and PUMPTTECH, INC. in writing ("Change Order"). Such Change Order shall state the parties' agreement on (i) change in the specifications, designs, scope of work, delivery schedule or shipping instructions for the Equipment, (ii) an adjustment to the purchase price, and (iii) an adjustment in the date of shipment of the Equipment and/or the period of performance. Both parties agree and acknowledge that unless a Change Order is agreed upon in writing by both parties, the Agreement shall not be modified in any manner. In addition, PUMPTTECH, INC. has the right to suspend performance of its obligations hereunder without liability during the period while the change is being evaluated and negotiated. In the event Purchaser has communicated proposed changes to PUMPTTECH, INC., PUMPTTECH, INC., at its sole discretion, shall either: (a) accept the Change Order; (b) reject the Change Order and continue performance under the existing Agreement; or (c) cancel the Agreement. In the event that PUMPTTECH, INC. elects (b) above, Purchaser shall either (i) agree to continued performance by PUMPTTECH, INC. pursuant to the Agreement or (ii) cancel the Agreement. In the event of (b)(ii), Purchaser shall pay PUMPTTECH, INC. for all amounts then due and owing under the Agreement plus all incurred costs not yet billed (e.g., labor and materials) plus fifteen percent (15%) for profit on all incurred costs not yet billed.

SHIPMENT: Estimated shipment from manufacturer can proceed as quoted after receipt of approved submittals and purchase order. Although PUMPTTECH, INC. shall use commercially reasonable efforts to have the Equipment delivered within the time estimated, any quoted shipment time is based on information from suppliers and is not intended to be an exact date or a guarantee. Any late delivery charges due to shipment beyond the estimated schedule will not be accepted.

WARRANTY: The only warranty/guarantee implied or applied to this Agreement are those as put forth by the original manufacturer. New equipment manufactured by PUMPTTECH, INC. are warranted to be free from defects in material and workmanship for a period of one (1) year from the date of shipment (ninety (90) days for repaired equipment) provided that the Purchaser has timely made all payments due under the Agreement and the product is properly installed, serviced, and operated under normal conditions. If within one (1) year of installation PUMPTTECH, INC. receives written notice from Purchaser of defective material or workmanship with respect to Equipment, PUMPTTECH, INC.'s sole obligation shall be, at PUMPTTECH, INC.'s option, either to (i) repair the Equipment, (ii) replace the Equipment, or (iii) refund the amount paid by Purchaser. PUMPTTECH, INC. shall have no other obligation or liability whatsoever with respect to any defective material(s) or service. Materials to be replaced or items for which services are to be re-performed shall be shipped by Purchaser to, PUMPTTECH, INC.'s shop in Bellevue, Washington or to such location as PUMPTTECH, INC. may designate. Purchaser is responsible for prepayment of freight and insurance of such shipment. Purchaser shall provide returned items to PUMPTTECH, INC. in such a state that PUMPTTECH, INC. may inspect the item immediately upon PUMPTTECH, INC.'s receipt thereof. If found to be defective, PUMPTTECH, INC. will prepay all freight and insurance costs of the return shipment of the repaired or replaced item. Any repaired or replaced items shall be warranted only for the remaining period of the original warranty. Expedited repairs are subject to expediting fees. Products inspected and proven to be non-defective are subject to service charges and will be returned to Purchaser at Purchaser's expense. THIS AGREEMENT DOES NOT GRANT ANY OTHER WARRANTY OR GUARANTEE OR MAKE ANY REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHETHER ARISING BY LAW, CUSTOM, CONDUCT OR USAGE OF TRADE. THE RIGHTS AND REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ANY OTHER RIGHTS OR REMEDIES. THIS WARRANTY SHALL NOT BE VALID IF THE ITEMS THAT ARE THE SUBJECT MATTER OF THIS AGREEMENT HAVE BEEN SUBJECT TO ABUSE, MISUSE, ACCIDENT, ALTERATION, MODIFICATION, NEGLIGENCE, UNAUTHORIZED REPAIR, OR EXPOSURE TO CONDITIONS BEYOND THE APPLICABLE ENVIRONMENT. THIS WARRANTY SHALL ALSO BE VOID IF THE ITEMS ARE ASSIGNED, SOLD OR TRANSFERRED TO AN ENTITY OTHER THAN PURCHASER.

LIMITATION OF LIABILITY: PUMPTTECH, INC.'s liability on any claim of any kind (excluding bodily injury or death) whether based on contract, warranty, tort (including negligence), strict liability or otherwise, for any loss or damage arising out of, connected with, or resulting from this Agreement, or from the performance or breach thereof, or from all services and Equipment covered by or furnished under this Agreement, shall in no case exceed the price of the specific service or Equipment which gives rise to the claim.

PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT IN NO EVENT WILL PUMPTTECH, INC. BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, THOSE FOR LABOR, EXPENSES, LOSS OF PROFITS OR REVENUE, LOST OPPORTUNITIES, OR SIMILAR DAMAGES OF ANY KIND.

INDEMNIFICATION: Purchaser agrees to defend, indemnify and hold harmless PUMPTTECH, INC. and its respective affiliates, officers, directors, employees, shareholders and agents from and against all losses, costs, expenses, damages, suits or liability of any nature incurred in whole or in part as a result of the conduct, negligence, or willful misconduct of Purchaser, its agents, servants, employees or customers or caused by Purchaser's property or property under the responsibility of Purchaser.

DISPUTE RESOLUTION: All claims, disputes or controversies (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to PUMPTTECH, INC.'s services and/or these Terms and Conditions (collectively "Claims") will be resolved, first, by a formal mediation conducted by an experienced mediator mutually agreed upon by PUMPTTECH, INC. and Purchaser, and, if mediation should fail to resolve the Claims, secondly, by reference to and determination by binding arbitration governed by the Federal Arbitration Act and administered by the American Arbitration Association under its rules for resolution of disputes, or under other mutually agreed procedures. The parties agree that any arbitration proceeding shall be presided over by a neutral arbitrator selected by the parties who shall have at least twenty (20) years of experience practicing law related to sales contract disputes. Any such proceedings under mediation or arbitration shall be conducted in Seattle, Washington. This provision shall survive the termination of the Agreement governed by these Terms and Conditions.

CHOICE OF LAW: This Agreement shall be construed in accordance with the laws of the State of Washington.

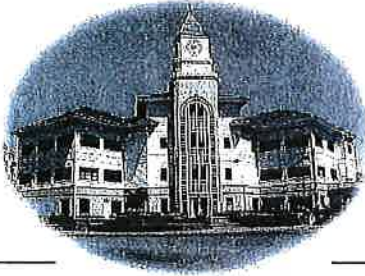
ATTORNEY FEES: In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

FINAL AGREEMENT: This Agreement merges all prior discussions, whether written or oral, and is the entire understanding and agreement of the parties; neither party shall be bound by additional or other representations, conditions, or promises except as subsequently set forth in writing and signed by the party to be bound.

(Purchaser's signature)

Printed Name & Title

(Date)



**CITY OF PORT ORCHARD
Public Works Department**

216 Prospect Street, Port Orchard, WA 98366
Voice: (360) 876-4991 • Fax: (360) 876-4980
dhipps@cityofportorchard.us
www.cityofportorchard.us

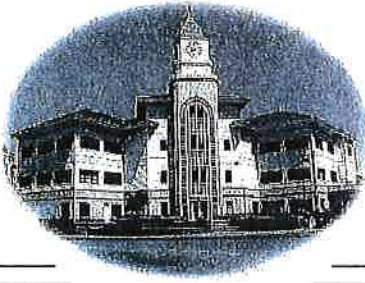
REQUEST FOR TELEPHONE QUOTE

Purchase Order Number:	Quote Required By: (Date) Feb. 26 th , 2021	(Time) 4:00 pm	Name of Person Requesting: Mike Deline City of Port Orchard	
Commodity:		Buyer: City of Port Orchard		
Required Delivery Date: As soon as able dependant on manufacturer	Ship to Address: 1535 Vivian Ct	City: Port Orchard	State: WA	Zip Code: 98367

ITEM NO.	QTY	UNIT	SPECIFICATIONS
1	2	ea	New Connell GNHTA-F16 pumps with cutter option (Connell Pumps also refers to it as GNHTWA-F18DB because of the cutter option) 4" pulley to fit shaft of new pump and for 2 V-belts 8 V-belts sized for two 4 inch pulleys with 26.5 inches center of motor to center of pump shaft. New 6" gaskets for suction and discharge flanges of both new pumps
2	2	ea	
3	8	ea	
4	4	ea	

BIDDER 1		BIDDER 2		BIDDER 3	
Company: Pump Tech NW		Company: Owens Pumps		Company: Seattle Pumps	
Contact: Jim Joyce/Mike Dunn	State: WA	Contact: Rich Owens	State: OR	Contact: Sales@SeattlePumps.com	State: WA
Telephone Number: (425) 644-8501		Telephone Number: (503) 420-8390 ext 222		Telephone Number: (206) 283-5252	
Fax Number: (425) 562-9213		Fax Number: (503) 606-6602		Fax Number: (206) 284-8638	
Quote Date: 2/26/2021		Quote Date: Not able to provide quote for		Quote Date: Did not respond to request	

PRODUCT QUOTED	Unit Price	Total Price	PRODUCT QUOTED	Unit Price	Total Price	PRODUCT QUOTED	Unit Price	Total Price
As package for all items 1-4 9% Tax		\$3,425.00 \$3,548.26	above items. said in email that Pump Tech is only distributor for Connell Pumps in NW.					
Total Price		\$42,973.26	Total Price		NA	Total Price		NA



**CITY OF PORT ORCHARD
Public Works Department**

216 Prospect Street, Port Orchard, WA 98366
Voice: (360) 876-4991 • Fax: (360) 876-4980
dhipps@cityofportorchard.us
www.cityofportorchard.us

REQUEST FOR TELEPHONE QUOTE

Purchase Order Number:		Quote Required By: (Date) Feb 26 th , 2021		(Time) 4:00 pm		Name of Person Requesting: Mike Deline City of Port Orchard		
Commodity:				Buyer: city of port orchard				
Required Delivery Date: As soon as able dependent on manufacturer		Ship to Address: 1535 Vivian Ct		City: Port Orchard		State: WA	Zip Code: 98367	
ITEM NO.	QTY	UNIT	SPECIFICATIONS					
			See Sheet 1 of 2					
BIDDER 4			BIDDER 5			BIDDER 6		
Company: Triangle Pumps			Company:			Company:		
Contact: sales@trianglepump.com		State: WA	Contact:		State:	Contact:	State:	
Telephone Number: (360) 887-9530			Telephone Number:			Telephone Number:		
Fax Number: (360) 887-9540			Fax Number:			Fax Number:		
Quote Date: Did not respond to Request			Quote Date:			Quote Date:		
PRODUCT QUOTED	Unit Price	Total Price	PRODUCT QUOTED	Unit Price	Total Price	PRODUCT QUOTED	Unit Price	Total Price
Total Price		NA	Total Price			Total Price		



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 7G</u>	Meeting Date:	<u>March 23, 2021</u>
Subject:	<u>Approval of Amendment No. 2 to</u>	Prepared by:	<u>Mark Dorsey, P.E.</u>
	<u>Contract No. 032-18 with BHC</u>		<u>Public Works Director</u>
	<u>Consultants, LLC for the McCormick Lift</u>	Atty Routing No.:	<u>N/A</u>
	<u>Station No. 2 Project</u>	Atty Review Date:	<u>N/A</u>

Summary: On May 8, 2018, the Port Orchard City Council Approved Contract No. C032-18 with BHC Consultants, LLC (BHC) for the Project’s Design and Construction Administration/Construction Management (CACM) Support Services. On March 13, 2020, the Public Works Director authorized a time extension only through March 31, 2021, whereby BHC expended additional unanticipated budget during the Final Design phase. At that time, it was thought that with these design modifications, the Project’s overall budget could be managed to reduce both the CACM Services and the Construction Budget. Unfortunately, additional efforts were needed in other CACM areas to accomplish the reduced Construction Budget and does require additional budget authority to complete the remaining work items within the CACM Scope of Services, such as the review and finalizing of all As-built Plans and the creation of the Operation and Maintenance Manuals.

Recommendation: Staff recommends authorizing the Mayor to execute Amendment No. 2 to Contract No. C032-18 with BHC Consultants, LLC For the McCormick Woods Lift Station #2 Project Construction Administration/Construction Management Support Services in the amount of \$33,500.00 for a total amended contract amount of \$562,000.00 and extending the contract expiration date to May 31, 2021.

Relationship to Comprehensive Plan: Chapter 9 – Capital Facilities.

Motion for Consideration: I move to authorize the Mayor to execute Amendment No. 2 to Contract No. C032-18 with BHC Consultants, LLC for the McCormick Woods Lift Station #2 Project Construction Administration/Construction Management Support Services in the amount of \$33,500.00 for a total amended contract amount of \$562,000.00 and extending the contract expiration date to May 31, 2021.

Fiscal Impact: As anticipated, the Total Project Cost expenditures resulted in an overall cost savings of approximately \$100k, given the funding provided within the 2019-2020 and the 2021-2022 Biennial Budgets. This change order will be funded within the current 2021-2022 Sewer Capital Budget authority.

Alternatives: Do not approve.

Attachments: Amendment No. 2, BHC Proposal (dated 2/17/2021), and COPO Amendment Authorization.

Amendment No. 2 to Contract No. 032-18
CITY OF PORT ORCHARD AGREEMENT WITH
BHC CONSULTANTS, LLC

THIS SECOND AMENDMENT to Contract No. C032-18 (“Amendment”), as amended by Amendment No. 1, is made effective as of the 23rd day **of March 2021**, by and between the City of Port Orchard (“City”), a municipal corporation, organized under the laws of the State of Washington, and BHC Consultants, LLC, a limited liability company organized under the laws of the State of Washington, located and doing business at 1601 Fifth Avenue, Suite 500, Seattle, WA 98101 (“Consultant”).

WHEREAS, on May 8, 2018, the City executed a Professional Services Agreement with the Consultant for the 2018-2020 McCormick Sewerage Lift Station #2 Rebuild Project (Ad-Ready Design with Alternatives Analysis, Acquisition Support, CA/CM & Permitting) (“Underlying Agreement”); and

WHEREAS, on March 13, 2020, the City executed Amendment No. 1 to the Underlying Agreement to extend the term without any modification to budgeted authority; and

WHEREAS, the Consultant and City have agreed to increase the Scope of Services needed for both final design adjustments and construction support in an amount not to exceed \$33,500.00 and to extend the contract end date to May 31, 2021; and

WHEREAS, the parties wish to memorialize their agreement to so extend 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 of May 8, 2018 between the parties, as previously amended by Amendment No. 1, is amended in, but only in, the following respect:

A. Paragraph 1A and 2A of the Underlying Agreement are modified to add the to the scope of work (Exhibit A) the work described in the attached February 17, 2021 letter from BHC Consultants, which is Attachment 1 to this Second Amendment and incorporated herein by this reference.

B. Paragraph 4 of the Underlying Agreement is modified as follows: the "time and materials not to exceed" amount is increased by \$33,500.00 from \$528,500.00 in the underlying agreement to a revised total of \$562,000.00.

C. Paragraph 3 of the Underlying Agreement is modified as follows: This agreement shall terminate on May 31, 2021 unless extended or terminated in writing as provided herein.

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.

CITY OF PORT ORCHARD,
WASHINGTON

BHC CONSULTANTS, LLC

Robert Putaansuu, Mayor

Signature

Printed Name and Title

ATTEST/AUTHENTICATED:

Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

Charlotte A. Archer, City Attorney

CITY OF PORT ORCHARD

Authorization for Amendment No. 2

Date: <u>February 18, 2021</u>	Contractor: <u>BHC Consultants</u>
Project: <u>McCormick Sewage Lift Station</u>	<u>1601 Fifth Ave, Ste. 500</u>
Contract / Job # <u>C032-18</u>	<u>Seattle, WA 98101</u>

Additional services where needed for design and construction support services. Additional services have been proposed by the Consultant, the City has evaluated the proposals. BHC and City have agreed to increase the scope of services and associated total not to exceed contract price in the amount of \$33,500.00 and extend the contract end date to May 31, 2021.

Contract History					
	Amount	Sales Tax	Total	Date	Appvd by
Original Contract	\$528,500.00	\$0.00	\$528,500.00	08-May-18	Council
Amendment 1	\$0.00	\$0.00	\$0.00	13-Mar-20	PW Director
Amendment 2	\$33,500.00	\$0.00	\$33,500.00	23-Mar-21	Council
Total Contract	\$562,000.00	\$0.00	\$562,000.00		

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

Contractor Approval Signature

Public Works Director/City Engineer

Printed Name & Title

MARK R. DORSEY, P.E.

Printed Name

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

Approved: _____
Mayor

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

Attest: _____
City Clerk

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

Council Approval Date



1601 Fifth Avenue, Suite 500
Seattle, Washington 98101

p. 206.505.3400
f. 206.505.3406

February 17, 2021

Mark Dorsey, P.E.
Public Works Director and City Engineer
City of Port Orchard
216 Prospect Street
Port Orchard, WA 98366

Re: Request for Amendment No. 2 to Contract Subject 032-18

Dear Mr. Dorsey,

The purpose of this letter is to request an amendment to our contract with the City for the engineering services pertaining to the upgrades to the McCormick Sewer Lift Station #2. Our scope for engineering services during construction assumed we would review and respond to 20 requests for information (RFIs) and 30 submittals. To date, we have reviewed 47 RFIs and 100 submittals.

While construction is almost complete, the operations and maintenance (O&M) manuals and the construction record drawings (CRD) still need to be prepared. We utilized the previously approved budget for those activities to address the additional RFIs and submittals and we are requesting an amendment to increase the budget by \$33,500 so that we may prepare those documents. A breakdown this request is included below.

- CRD Preparation: BHC will develop construction record drawings based on redlined comments received from the Contractor and the City that identify changes to the design that occurred during construction. The amendment will restore the original budget of \$15,500 for this task.
- O&M Manual Preparation: The original budget included \$14,800 to develop the O&M Manuals for the project. Based on discussions with the City, this level of effort may be reduced to \$5,000.
- Held Charges: BHC Consultants is holding approximately \$10,000 pending approval of the amendment. These charges are related to addressing RFIs, submittals, and change order requests by the Contractor.

Please let me know if you have any questions or need additional information. We look forward to successfully completing this project for the City.

Respectfully Submitted,
BHC Consultants

Tony Fisher, P.E.
BHC Project Manager



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>March 23, 2021</u>
Subject:	<u>Approval of Amendment No. 2 to</u>	Prepared by:	<u>Mark R. Dorsey, P.E.</u>
	<u>Contract No. 039-18 with BHC</u>		<u>Public Works Director</u>
	<u>Consultants, LLC for the Well No. 13</u>	Atty Routing No.:	<u>366922.0013 - Water</u>
	<u>Project</u>	Atty Review Date:	<u>March 14, 2021</u>

Summary: On June 26, 2018, the City Council authorized the Mayor to execute Contract No. C039-18 with BHC Consultants, LLC, for the Well #13 Design, Permitting, Bidding Support and the Construction Administration/Construction Management (CACM) Support Services. On August 18, 2020, the City Council authorized Amendment #1 for additional CACM Support Services to address unforeseen changes in conditions (primarily, the well drilling overruns.) In January 2021, the City’s Public Works and Finance Departments met with the State Department of Health (DOH) to seek additional DWSRF Loan funding to help with the overall Project cost overruns anticipated and learned that the DOH would not be able to provide additional funding assistance because of the Water Rights/Foster delays that are impacting the State Department of Ecology. Those discussions illuminated the City’s inability to bring the new well online by the end of 2021, as required under the current DWSRF Agreement.

As a result, DOH has requested—and staff agrees—that the current Well #13 DWSRF Project must be suspended until such time as the Foster/Water Rights issues are resolved. This is accomplished by closing out the current project. Once the water rights issues are resolved, the City will then be able to apply for new DWSRF funding to complete the fourth, and final, phase of work. DOH fully supports this approach and plan of action. As a function of the now-needed Project closeout, additional work is needed by BHC for to wrap up the recently completed third phase of work (Maple Street), and bringing the unfinished fourth, and final, phase of work to a viable point of completion. This work will allow for seamless continuation when the Project resumes. BHC has provided an estimate for this work in the amount of \$27,000.00, to successfully close out the current Well #13 Project in preparation for its pending restart.

Recommendation: Staff recommends that the City Council authorize the Mayor to execute Amendment No. 2 to Contract No. C039-18 with BHC Consultants LLC, for the Well #13 Project in the amount of \$27,000, for a total amended contract amount of \$1,282,110.

Relationship to Comprehensive Plan: Chapter 7 – Utilities (Water).

Motion for Consideration: I move to authorize the Mayor to execute Amendment No. 2 of Contract No. C039-18 with BHC Consultants, LLC, for the for the Well #13 Project in the amount of \$27,000, for a total amended contract amount of \$1,282,110.

Fiscal Impact: Funding provided by the \$6,060,000 DWSRF Loan, within both the 2019-2020 and the 2021-2022 Biennial Budgets have already been exceeded. A budget amendment will be required.

Alternatives: None.

Attachments: Contract No. C039-18, Amendment No. 2, and BHC Consulting Change Request (dated 2/16/2021).



1601 Fifth Avenue, Suite 500
Seattle, Washington 98101

p. 206.505.3400
f. 206.505.3406

February 16, 2021

Mark Dorsey, P.E.
Public Works Director and City Engineer
City of Port Orchard
216 Prospect Street
Port Orchard, WA 98366

Re: Request for Contract Change Order No. 2 to Contract No. 039-18

Dear Mark,

This request includes the work to support the City with closing the DWSRF loan for Well 13 and improving water flow between the 260 and 390 pressure zones associated with the water system rezoning and PRV installations. A breakdown of each task is included below:

- The City will need assistance with providing all the closing documentation required by the DOH DWSRF loan staff on the four projects associated with the Well 13 project. The task includes compiling reports, data, construction documents and certified payrolls, and other information that may be requested by DOH, developing information not previously obtained, responding to DOH comments regarding the first document submittal, and securing final documents as commented by DOH. Fee = \$20,000.00
- With the rezone of the existing water system and associated PRVs, it was recommended to connect existing water mains at two locations to provide better water flow and fire service between the 260 and 390 pressure zones. The locations were: Mitchell Avenue at the high school and at the intersection of Kendall Street and Austin Avenue. The work for this task included utility locates, topo survey, and design at each location. Fee = \$7,000.00

The total additional costs associated with this change order is \$27,000.00.

Please contact me if you have any questions or would like to discuss any of the items listed above. My direct number is (206) 596-5297.

Respectfully Submitted,
BHC Consultants

A handwritten signature in blue ink that reads 'John Gillespie'. The signature is written in a cursive, flowing style.

John Gillespie, P.E.
BHC Project Manager

Amendment No. 2 to Contract No. C039-18
CITY OF PORT ORCHARD AGREEMENT WITH
BHC CONSULTANTS, LLC

THIS AMENDMENT to Contract No. C039-18 (“Amendment”) is made effective as of the 23rd day of March, 2021, by and between the City of Port Orchard (“City”), a municipal corporation, organized under the laws of the State of Washington, and BHC Consultants, LLC (“Consultant”), a limited liability company organized under the laws of the State of Washington, located and doing business at 1601 Fifth Avenue, Suite 500, Seattle, WA 98101.

WHEREAS, on June 26th, 2018, the City executed Contract No. C039-18 for the Well #13 design, permitting, bidding support and construction administration services with BHC Consultants, LLC (“Underlying Agreement”); and

WHEREAS, on August 18th, 2020, the City executed Amendment No. 1 to Contract No. C039-18 for the Well #13 Project’s additional construction administration and support services to address unforeseen conditions with BHC Consultants, LLC; and

WHEREAS, recently, the Consultant was directed to perform additional work to upgrade water mains to adequately tie in a proposed new PRV station on Mitchell to the surrounding system, the consultant has expended the total current contract amount prior to completing 90% design for the final phase of this project, and the 95% on the shelf design for future use now that the project is being suspended as directed, and additional services will be needed for closing out the Federal loan funded project; and

WHEREAS, these additional services are necessary to close out the current DWSRF loan, specifically the final phase design for reuse in the future for the continuation of the Well #13 Project; and

WHEREAS, the parties wish to memorialize their agreement and so extend 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 if herein set forth, is amended in, but only in, the following respect:

A. Paragraph 1.A. and Paragraph 2.A. of the Underlying Agreement are modified to add to the scope of work and Exhibit A to the Underlying Agreement the work described in the attached February 16, 2021 letter from BHC Consultants, which is Attachment 1 to this First Amendment and incorporated herein by this reference.

B. Paragraph 4 of the Underlying Agreement is modified as follows: the “time and materials not to exceed” amount is increased by \$27,000.00 from \$1,255,110.00 in the underlying agreement to a revised total of \$1,282,110.00.

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 Second Amendment on the day and year set forth above.

CITY OF PORT ORCHARD,
WASHINGTON

BHC CINSULTING, LLC

Robert Putaansuu, Mayor

Ron Dorn P.E., President

ATTEST/AUTHENTICATED:

Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

Charlotte A. Archer, City Attorney

CITY OF PORT ORCHARD

Authorization for Amendment No. 2

Date: <u>February 18, 2021</u>	Contractor: <u>BHC Consultants, LLC</u>
Project: <u>Well #13</u>	<u>1601 Fifth Ave, Ste. 500</u>
Contract / Job # <u>C039-18</u>	<u>Seattle, WA 98101</u>

BHC was directed to perform additional work to upgrade water mains to adequately tie in a proposed new PRV station on Mitchell to the surrounding system, the consultant has expended the total current contract amount prior to completing 90% design for the final phase of this project, and the 95% on the shelf design for future use now that the project is being suspended as directed, and services will be needed for closing out the Federal loan funded project.

Contract History					
	Amount	Sales Tax	Total	Date	Appvd by
Original Contract	\$917,910.00	\$0.00	\$917,910.00	26-Jun-18	Council
Amendment 1	\$337,200.00	\$0.00	\$337,200.00	18-Aug-20	Council
Amendment 2	\$27,000.00	\$0.00	\$27,000.00	23-Mar-21	Council
Total Contract	\$1,282,110.00	\$0.00	\$1,282,110.00		

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

Contractor Approval Signature

Public Works Director/City Engineer

Printed Name & Title

MARK R. DORSEY, P.E.

Printed Name

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

Approved: _____
Mayor

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

Attest: _____
City Clerk

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

Council Approval Date



City of Port Orchard

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>March 23, 2021</u>
Subject:	<u>Approval of Supplemental Agreement</u>	Prepared by:	<u>Mark Dorsey, P.E.</u>
	<u>No. 2 to Contract No. 072-18 with Tierra</u>		<u>Public Works Director</u>
	<u>Right of Way Services, LTD Regarding</u>	Atty Routing No:	<u>366922.0009 – PW</u>
	<u>the Bay Street Pedestrian Pathway</u>	Atty Review Date:	<u>March 17, 2021</u>
	<u>Project</u>		

Summary: On November 13, 2018, the City of Port Orchard contracted with Tierra Right-of-Way Services, Ltd. for the continuation of the Bay Street Pedestrian Pathway Project Right-of-Way Acquisition Phase. On September 8, 2020, the City Council approved Supplemental Agreement No. 1 for additional survey and title services for this Phase. For Project continuation and the successful completion of this Phase, additional Right-of-Way Acquisition Services are needed (see Exhibit A attached). These services are set out in Supplemental Agreement No. 2 to Contract C072-18, which WSDOT H/LP’s have reviewed and approved of in advance of submission to the City Council for approval.

Relationship to Comprehensive Plan: Chapter 8 – Transportation.

Recommendation: Staff recommends authorization for the Mayor to execute Supplemental Agreement No. 2 to Contract No. C072-18 with Tierra Right-of-Way Services, Ltd. in the additional amount of \$613,317.05, thereby bringing the total Contract amount to \$813,231.06.

Motion for Consideration: I move to authorize the Mayor to execute Supplemental Agreement No. 2 to Contract No. C072-18 with Tierra Right-of-Way Services, Ltd. in the additional amount of \$613,317.05, thereby bringing the total Contract amount to \$813,231.06.

Alternatives: Do not approve.

Fiscal Impact: Current allowable funds from Capital Street Fund No. 304 of the 2021-2022 Biennial Budget will be exceeded. Additional funding sources will be needed.

Attachments: WSDOT Supplemental Agreement No. 2 (Exhibit A), and COPO Amendment No. 2.



Supplemental Agreement Number _____		Organization and Address	
Original Agreement Number		Phone:	
Project Number	Execution Date	Completion Date	
Project Title	New Maximum Amount Payable		
Description of Work			

The Local Agency of _____ desires to supplement the agreement entered in to with _____ and executed on _____ and identified as Agreement No. _____

All provisions in the basic agreement remain in effect except as expressly modified by this supplement. The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: _____

III

Section V, PAYMENT, shall be amended as follows:

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the Appropriate spaces below and return to this office for final action.

By: _____ By: _____

Consultant Signature

Approving Authority Signature

Date

Exhibit "A"
Summary of Payments

	Basic Agreement	Supplement #1	Total
Direct Salary Cost			
Overhead (Including Payroll Additives)			
Direct Non-Salary Costs			
Fixed Fee			
Total			

Amendment #2

Scope of Work:

To date Tierra Right of Way, Ltd. (Tierra) has completed the extensive title review process. Numerous errors were found, and Agents worked with the title company to get corrections. Due to the amount of time that has passed, updated title reports will be requested, and title reports will be reviewed again.

We have assisted significantly with updating the right of way plans to their current condition.

Out of scope, we provided all documents for a public disclosure request and sat in on several meetings with the City to discuss direction of the project and how we will proceed with each parcel. We have performed a large amount of preliminary work. The project was put on hold and recently started back up. During this extended period, Tierra staffing has changed, and new employees have been introduced to the project.

Therefore, pursuant to the terms of the existing contract (C072-18) executed November 19, 2018, Tierra will now perform acquisition services with twenty-six (26) owners; review two DNR leases and one Port of Bremerton Easement, clear two encroachments (parcels 14 & 16), and provide relocation assistance with three residential displacements and one business displacement. Due to our knowledge and experience to date, the level of effort expected to complete this project is greater than originally anticipated.

For the Leases – there will be possible site meetings, application process, review lease, GIS, etc. For the Easement with the Port of Bremerton – review existing easement, an updated easement may be required if the current one does not cover the rights required for this project.

KPG will update the ROW plans to indicate Access for tidelands, create an ownership table and provide the updated title reports, new title reports for the tideland parcels, as well as legal descriptions and exhibits for the tideland parcels. This amendment also includes an additional \$1,021 to cover additional services performed by KPG and paid by Tierra previously.

The budget already includes a portion of our appraiser’s fee, but an amendment was received to include the new parcels and adjust others.

Tideland Parcel Table:

Parcel	Assessor’s Parcel #	Owner Name	Acquisition Type
22 A	4027-003-003-0002	Lee/Kwon	Access Rights
23 B	4027-002-001-0006	ISB Holdings	Access Rights
24 C	4027-001-013-0004	Estate of Holland	Access Rights
25 D	4027-002-006-0001	DeLucia	Access Rights
26 E	4027-022-015-0008	G. Schiele	Access Rights
27 F	4027-021-013-0002	G. Schiele	Access Rights
28 G	4027-021-011-0103	K. Schiele	Access Rights
29 H	4027-021-008-0108	Sweeney	Access Rights
30	4027-022-005-0000	K. Hannem	Access Rights

34	4027-023-008-0005	B. McQuery	Access Rights
36 J	4027-023-005-0008	Munie	Access Rights
42 O	4027-021-013-0006	William/Michel	Access Rights
44 P	4027-034-001-0009	Haworth	Access Rights
45 Q	4027-034-009-0001	Gadberry	Access Rights
46 R	4027-035-001-0006	Hemiup	Access Rights

Tierra will obtain appraisal and review appraisals for all the following parcels. Appraisal fees have been updated and the increase reflected.

Appraisal & Review Table:

Parcel	Assessor's Parcel #	Owner Name	Appraisal Fee	Review Fee
7	4027-021-004-0003	Anderson	\$3,500.00	\$900.00
9	4027-022-001-0004	Haynes	\$3,500.00	\$900.00
11	4027-023-009-0004	Hannem	\$2,500.00	\$900.00
12	4027-023-016-0005	Davidson	\$2,500.00	\$900.00
13	4027-023-017-0004	Williams	\$3,500.00	\$900.00
14	4027-032-001-0102	Jones	\$3,500.00	\$900.00
20	4027-034-003-0007	Huth	\$3,000.00	\$900.00
16	4027-035-002-0005	Savage,Opstrup, Roy, Curtoni	\$5,200.00	\$900.00
17	4027-035-003-0004	Curtoni	\$5,200.00	\$900.00
18	4027-035-004-0102; 4689-004-001-0001; 4689-004-002-0000	Annapolis Quay	\$5,500.00	\$900.00
19	4689-004-004-0008	Kitsap Transit	\$3,500.00	\$900.00
22 A	4027-003-003-0002	Lee/Kwon	\$4,500.00	\$900.00
23 B	4027-002-001-0006	ISB Holdings	\$4,500.00	\$900.00
24 C	4027-001-013-0004	Estate of Holland	\$2,500.00	\$900.00

25 D	4027-002-006-0001	Delucia	\$3,500.00	\$900.00
26 E	4027-022-015-0008	G. Schiele	\$3,500.00	\$900.00
27 F	4027-021-011-0002	G. Schiele	\$3,500.00	\$900.00
28 G	4027-021-011-0103	K. Schiele	\$3,500.00	\$900.00
29 H	4027-021-008-0108	Sweeney	\$3,500.00	\$900.00
30	4027-022-005-0000	K. Hannem	\$2,500.00	\$900.00
34	4027-023-008-0005	B. McQuery	\$2,500.00	\$900.00
36 J	4027-023-005-0008	Munie	\$2,500.00	\$900.00
42 O	4027-004-013-0006	Michel	\$3,500.00	\$900.00
44 P	4027-034-001-0009	Haworth	\$3,500.00	\$900.00
45 Q	4027-034-009-0001	Gadberry	\$2,500.00	\$900.00
46 R	4027-035-001-0006	Hemiup	\$2,500.00	\$900.00
		Total	\$89,900.00	\$23,400.00

Tierra has been requested to perform review of eight files prepared by Universal Field Services for WSDOT Certification. This work and the fee previously bid anticipated only reviewing, but if something is required to clear WSDOT Certification, we may need an amendment for the additional hours.

Amendment also includes fees for legal guidance from Miller Nash Graham & Dunn (MNGD), to not exceed \$45,000. In the event the City needs legal representation for condemnation, the City will contract directly with MNGD. This work would not be performed through the Tierra contract.

Tierra Right of Way Services, Ltd.						
City of Port Orchard, Bay Street Enhancements, Amendment #2						
Labor Classification	Hours	Direct Salary	OH	Fixed Fee	Total	Total Amount
		<u>Direct Rate</u>	<u>142.18%</u>	<u>30.00%</u>	<u>Billing Rate</u>	
Division Manager	5	\$ 69.72	\$ 99.13	\$ 20.92	\$ 189.76	\$ 948.82
ROW Division Manager	150	\$ 59.23	\$ 84.21	\$ 17.77	\$ 161.21	\$ 24,181.83
Project Manager	50	\$ 45.83	\$ 65.16	\$ 13.75	\$ 124.74	\$ 6,237.00
Project Manager	1470	\$ 44.47	\$ 63.23	\$ 13.34	\$ 121.04	\$ 177,926.52
Senior Right of Way Agent	1250	\$ 41.00	\$ 58.29	\$ 12.30	\$ 111.59	\$ 139,492.25
Senior Right of Way Agent	500	\$ 39.50	\$ 56.16	\$ 11.85	\$ 107.51	\$ 53,755.55
Senior Right of Way Agent	970	\$ 35.00	\$ 49.76	\$ 10.50	\$ 95.26	\$ 92,405.11
Right of Way Agent	0	\$ 34.00	\$ 48.34	\$ 10.20	\$ 92.54	\$ -
Adm. Project Coordinator	260	\$ 27.00	\$ 38.39	\$ 8.10	\$ 73.49	\$ 19,107.04
Right of Way Technician	400	\$ 25.00	\$ 35.55	\$ 7.50	\$ 68.05	\$ 27,218.00
	5055					\$ 541,272.12
Direct Reimbursables						
Travel (Mileage):	5,000	Miles	\$ 0.565	\$ 2,825.00		
Postage	150	Each	\$ 7.50	\$ 1,125.00		
Toll	75	Each trip	\$ 7.00	\$ 525.00		
Ferry	30	Each trip	\$ 16.40	\$ 492.00		
Files	33	Each	\$ 5.50	\$ 181.50		
MNGD	\$ 45,000.00		\$ -	\$ 45,000.00		
SH&H	\$ 59,150.00	-	\$ -	\$ 59,150.00		
Duncan Associates	\$ 16,200.00	-	\$ -	\$ 16,200.00		
KPG	\$ 17,501.00		\$ -	\$ 17,501.00		
			Direct Reimbursables Subtotal:		\$	142,999.50
			Total Maximum Amount Payable		\$	684,271.62
			Balance on Contract		\$	70,954.57
			Amendment #2 Amount		\$	613,317.05
			Previous Maximum Amount Payable		\$	199,914.01
			New Maximum Amount Payable		\$	813,231.06

City of Port Orchard, Bay Street
Right of Way Services, Amendment #2
TROW #18WR00-186.01

CITY OF PORT ORCHARD

Authorization for Amendment No. 2

Date: <u>MARCH 23, 2021</u> <u>BSPP REAL ESTATE</u> <u>PROFESSIONAL ACQUISITION</u> Project: <u>SERVICES</u> Contract / Job # <u>C072-18</u>	Contractor: <u>TIERRA RIGHT-OF-WAY SERVICES, LTD.</u> <u>1575 E. RIVER ROAD</u> <u>TUSCON, AZ 85718</u>
---	--

THIS CHANGE ORDER AUTHORIZES THE ADDITIONAL WORK: ADDITIONAL SERVICES AS NEEDED TO CONTINUE THE RIGHT-OF-WAY ACQUISITION PHGASE (SEE WSDOT SUPP #2.)

Contract History					
	Amount	Sales Tax	Total	Date	Appvd by
Original Contract	\$174,877.87	Included	\$174,877.87	13-Nov-18	COUNCIL
Supp Agreement #1	\$25,036.14	Included	\$25,036.14	08-Sep-20	COUNCIL
Supp Agreement #2	\$613,317.05	Included	\$613,317.05	23-Mar-21	COUNCIL
Total Contract			\$813,231.06		

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

 Consultant Approval Signature

 Public Works Director/City Engineer

 Printed Name & Title

MARK R. DORSEY, P.E.

 Printed Name

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

Approved: _____
 Mayor

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

Attest: _____
 City Clerk

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

 Council Approval Date



City of Port Orchard

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

Agenda Staff Report

Agenda Item No.:	<u>Business Item 7J</u>	Meeting Date:	<u>March 23, 2021</u>
Subject:	<u>Approval of Amendment No. 1 to</u>	Prepared by:	<u>Mark Dorsey, P.E.</u>
	<u>Contract No. 075-20 with Rice Fergus</u>		<u>Public Works Director</u>
	<u>Miller, Inc. for the 2020-2021 City Hall</u>	Atty Routing No.:	<u>366922.0009 – PW</u>
	<u>Improvement Project-30% to 100% Ad</u>	Atty Review Date:	<u>March 17, 2021</u>
	<u>Ready PS&E and Bid Support</u>		

Summary: On October 13, 2020, the Port Orchard City Council approved Contract C075-20 with Rice Fergus Miller, Inc. (RFM) for the 2020-2021 Schematic Design (30%) City Hall Improvement Project. On February 16, 2021, at the conclusion of the Schematic Design Phase, RFM presented to the City Council the Port Orchard City Hall Re-Skin Project. The RFM Team is now ready to advance the Project to the 100% Ad Ready PS&E and Bid Support Phase and has provided a Scope and Budget for that phase in the amount of \$394,676.00. Please recall that on January 31, 2020, and February 7, 2020, the City of Port Orchard Public Works Department published a Request for Qualifications (RFQ) for the 2020-2021 Ad Ready (100% PS&E) City Hall Improvement Project therefore the City is able to directly award this next phase of work.

Recommendation: Staff recommends authorizing the Mayor to execute Amendment No. 1 to Contract No. C075-20 with Rice Fergus Miller, Inc. for the 2020-2021 City Hall Improvement Project - 30% to 100% Ad Ready PS&E and Bid Support in an amount of \$394,676.00.

Relationship to Comprehensive Plan: Chapter 9 – Capital Facilities

Motion for Consideration: I move to authorize the Mayor to execute Amendment No. 1 to Contract No. C075-20 with Rice Fergus Miller, Inc. for the 2020-2021 City Hall Improvement Project - 30% to 100% Ad Ready PS&E and Bid Support in an amount of \$394,676.00.

Fiscal Impact: A budget amendment may be required as this exceeds the current 2021-2022 Biennial Budget authority.

Alternatives: Do not approve.

Attachments: Amendment No. 1, RFM Proposal (dated 2/17/2021), and COPO Amendment Authorization.

Amendment No. 1 to Contract No. 075-20

**CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT WITH
RICE FERGUS MILLER, INC.**

THIS AMENDMENT to Contract No. 075-20 (“Amendment”) is made effective as of the **23rd** day of **March, 2021**, by and between the City of Port Orchard (“City”), a municipal corporation, organized under the laws of the State of Washington, and Rice Fergus Miller, Inc., a company organized under the laws of the State of Washington, located and doing business at 275 Fifth Street, Bremerton, WA 98337 (“Consultant”).

WHEREAS, the City issued a Request for Qualifications Advertisement called for the 2020-2021 Ad Ready (100% PS&E) City Hall Improvement Project, including Schematic (30%), and Design Development (60%) and selected the Consultant as the most qualified firm for this project; and

WHEREAS, on October 13, 2020, the City executed a Professional Services Agreement with the Consultant, for the 2020-2021 Schematic Design (30%) City Hall Improvement Project (“Underlying Agreement”); and

WHEREAS, the parties desire to expand the scope to include all work to advance to the 100% Ad Ready PS&E and Bid Support Phase of the project;

NOW, THEREFORE, in consideration of the mutual benefits accruing, it is agreed by and between the parties thereto as follows:

1. The Underlying Agreement of October 13, 2020, between the parties, is amended in, but only in, the following respect:

The professional services in connection with the Following Project shall now read as: “The 2020-2021 City Hall Improvement Project – 30% to 100% Ad Ready PS&E and Bid Support.”

Section 1.A. and Exhibit A are amended to include the work identified in the February 17, 2021 letter from Consultant to the City describing the work necessary to advance to the 100% Ad Ready PS&E and Bid Support Phase of the Project, a copy of which is attached hereto as Attachment 1 and incorporated herein by this reference.

Section 4. Compensation. LUMP SUM. Compensation for these additional services shall be for the Lump Sum of \$394,676.00, for a total contract price for all work of \$501,176.00.

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.

CITY OF PORT ORCHARD,
WASHINGTON

RICE FERGUS MILLER, INC.

Robert Putaansuu, Mayor

Signature

Printed Name and Title

ATTEST/AUTHENTICATED:

Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

Charlotte A. Archer, City Attorney

CITY OF PORT ORCHARD

Authorization for Amendment No. 1

Date: <u>MARCH 9, 2021</u> <u>2020-2021 CITY HALL</u> Project: <u>IMPROVEMENTS</u> Contract / Job # <u>C072-18</u>	Contractor: <u>RICE FERGUS MILLER, INC.</u> <u>275 FIFTH STREET, SUITE 100</u> <u>BREMERTON, WA 98337</u>
--	--

THIS CHANGE ORDER AUTHORIZES THE ADDITIONAL WORK: ADDITIONAL SCOPE AND BUDGET ASSOCIATED WITH ADVANCING THE CURRENT 30% SCHEMATIC DESIGN TO 100% AD READY PS&E AND BID SUPPORT.

Contract History					
	Amount	Sales Tax	Total	Date	Appvd by
Original Contract	\$106,500.00	Included	\$106,500.00	13-Oct-20	COUNCIL
Amendment #1	\$394,676.00	Included	\$394,676.00	09-Mar-21	COUNCIL
Total Contract			\$501,176.00		

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

 Consultant Approval Signature

 Printed Name & Title

 Public Works Director/City Engineer

 MARK R. DORSEY, P.E.

 Printed Name

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

Approved: _____
 Mayor

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

Attest: _____
 City Clerk

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

 Council Approval Date

February 17, 2021

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

Re: City of Port Orchard City Hall
RFM Project Number: 2020013.00
Amendment 01 – 30% Design – Bid Support

Dear Mark,

Rice Fergus Miller is pleased to present the following Amendment Request 01 to provide architectural services for the City Hall Improvement Project.

I. Project Description

The existing City Hall building has had an ongoing maintenance issue for many years with a failing building envelope and issues with the current electrical service and generator connections to the building. This project will provide solutions to remedy these problems, including a new roofing assembly, new clock tower weatherization and new digital clock components, new siding and weather barrier, new windows, new exterior doors, sealing of the existing brick veneer, and added exterior installation to comply with the current building code. We will also be adding a new canopy at the lower-level entry. Inside the building we will provide a new HVAC system while re-using some of the existing ducting and a complete LED retrofit for all the lighting. Outside of the building, there will be a new electrical service with modified generator connections and a solar panel array located over the existing pump house. We are basing our proposal on a total construction budget of \$5,049,100 which was determined from the 30% cost estimate.

II. Scope of Services

This proposal takes the project to 100% Plans and Specifications, Ad Ready through Bid Support.

Basic Services: 30% Design through Bid Support include:

- Architectural, Mechanical, Electrical, and Structural services to prepare an Ad Ready package including Bid drawings and Specifications. Drawings will include site plan, all levels of demo plans, all levels of construction plans, wall sections, details, and schedules.
- Bidding support to include Bidding RFI responses and Addenda if required.
- Up to (4) Zoom meetings including a team kick-off with all consultants and project progress meetings.

Supplemental Services 30% Design through Bid Support include:

- Envelope Consultant
- (2) Cost Estimates for Design Development and Construction Document level designs
- Enhanced Management Services
 - Includes (1) City Council Meeting or Work Session with support material
- Full Mechanical/Plumbing Commissioning Services
- Phasing of Interior Work
 - Provide a document in the bid set to assist contractors in factoring additional scope related to interior work while allowing current City operations to continue.
- Permit fees and submission for permit review plus (1) round of response comments.

III. Additional Services

The following services, though they could be provided by RFM, are not included in our Scope of Basic Services and, if requested, would be billed as Additional Services.

- *Additional meetings*
- *Design Review Board approval*
- *Additional Consultants*
 - *Civil Engineering*
 - *Landscape Architecture*
 - *Lighting Design*
 - *Traffic Engineering*
 - *A/V, IT and Telecommunications*
- *LEED or other certifications requiring planning & documentation*
- *FF & E Design & Specifications*
- *Construction Administration*
- *Additional rounds of response comments from Jurisdiction*

IV. Owner Responsibilities

It is our understanding that the City of Port Orchard will provide full information, including a program, setting forth its design objectives, constraints and criteria; a legal description and certified land survey showing boundary and topography of the site, if one exists; existing buildings drawings; and the services of soil engineers, hazardous materials surveyors, or other specialty consultants when such services are deemed to be necessary.

V. Schedule

Project schedule is assumed to be 20 weeks for 30% through 100% Plans and Specifications, Ad Ready plus an additional 4 weeks for Bid Support. Assuming the design team has a notice to proceed by the end of March 2020, the current schedule for Ad Ready documents will be concluded by August 31, 2021. Bid support will be an additional 4 weeks after bid documents are advertised.

VI. Compensation

For the Basic Services outlined above, compensation shall be as a Fixed Fee of three hundred forty thousand one hundred twenty-nine dollars (\$340,129), plus reimbursable expenses, plus any applicable tax.

For Supplemental Services outline above, compensation shall be billed as a Fixed Fee of fifty-four thousand five hundred forty-seven dollars (\$54,547), plus any applicable taxes. Supplemental Services includes an estimated reimbursable budget of \$12,000.00 for permit fees.

Additional Services, when requested, will be billed on an hourly basis at our standard hourly rates, as listed in the attached 2021 Hourly Billing Rate Sheet, or as agreed to prior to commencement of the Additional Services.

VII. Terms of Agreement

This amendment request, when accepted, will become an exhibit to our executed contract with the City of Port Orchard dated October 13, 2020.

VIII. Summary

Thank you for this important opportunity! If this Amendment is acceptable, please sign in the space provided below. We look forward to discussing our proposal with you and getting to work.

Sincerely,
Rice Fergus Miller, Inc.



Approved for Rice Fergus Miller by,
Steve Rice, Principal

Authorized for Owner by:

Name Title

Attachments: 2021 RFM Hourly Rate Sheet



ARCHITECTURE INTERIORS PLANNING VIZLAB

275 Fifth Street, Suite 100
Bremerton, WA 98337
Phone: (360) 377-8773
rfmarch.com

2021 Hourly Billing Rates

Date of Proposal: February 17, 2021
Project: Port Orchard City Hall Improvement – 30% - Bid Support
Project No.: 2020013.00

The hourly billing rates shall be annually adjusted in accordance with normal salary review practices of Rice Fergus Miller.

Principal in Charge:	\$ 275.00
Senior Planner:	\$ 175.00 - \$ 275.00
Project Manager:	\$ 130.00 - \$ 190.00
Project Architect:	\$ 120.00 - \$ 190.00
Staff Architect:	\$ 125.00 - \$ 160.00
Project Designer:	\$ 115.00 - \$ 190.00
Staff Designer:	\$ 115.00 - \$ 155.00
Interior Designer:	\$ 90.00 - \$ 160.00
Technical Designer:	\$ 95.00 - \$ 155.00
Production Support:	\$ 85.00 - \$ 155.00
Graphics Visualization:	\$ 115.00 - \$ 125.00
Project Coordinator:	\$ 80.00 - \$ 120.00
Administrative Support Staff:	\$ 80.00 - \$ 120.00



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 7K
Subject: Approval of a Contract with G12
Communications for Phone System
Services

Meeting Date: March 23, 2021
Prepared by: Noah Crocker
Finance Director
Atty Routing No.: 366922.007 – Finance
Atty Review Date: March 17, 2021

Summary: The City’s current phone system has become outdated and is having maintenance issues. The City has been exploring options of phone system replacements since early 2020. The IT department has followed appropriate procurement policies and procedures. In our procurement policy there is an exemption to the standard competitive bidding process for the purchase of Telecommunications Systems/Services. Consistent with the procurement policies, the City followed RCW 39.04.270 which provides a municipality to acquire electronic data processing or telecommunication equipment, software, or services through competitive negotiation. The competitive negotiation procedures were followed and a notice of the request for the proposal was published in the Kitsap Sun for at least thirteen days before the last date upon which proposals will be received. The City provided reasonable standards and procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for awarding the contract. The award was made to the qualified bidder whose proposal is most advantageous to the city with price and other factors considered.

The recommended vendor is G12 Communications, based in Kirkland, WA. Their service will provide all the features and functionality of our current phone system plus some significant new ones. A critical feature is the ability to use the system from anywhere there is an Internet connection. This will allow teleworkers to have a desk phone in their home office or use their cell phone or laptop as their city phone. Calls to their city direct phone number will ring on their desk phone and/or mobile device wherever it is located. In addition, intra-employee calls can be made using individual extensions no matter where the employee is located. Another important feature is the transcription of voice mails to text. This will make it easier to capture these for records retention purposes.

Recommendation: Staff recommends approving the Mayor to enter into an agreement with G12 Communications, as proposed.

Relationship to Comprehensive Plan: N/A

Motion for consideration: “I move to approve the Mayor to enter into an agreement with G12 Communications to provide a phone system and services to the City.”

Fiscal Impact: Est. Monthly Cost~\$1,200+tax
Est. Annual Cost~\$14,000+tax
\$42,000 (excluding tax) for 36 months (3 years)

Alternatives: Do not approve and provide alternative guidance.

Attachment: Contract.



G12 Sales Proposal and Contract

Prepared for (client):

Prepared by (sales executive):

Noah Crocker
City of Port Orchard

Rick Garcia
G12 Communications

Customer Information

Requested Due Date:

Account Information



Contract Contact Name:	Noah Crocker	Term Years:	3 Year
Primary Account Name:	City of Port Orchard	Service Address:	216 Prospect Street Port Orchard, WA 98366
Email:	ncrocker@cityofportorchard.us		
Contract Contact Phone:	3608764407	Agent:	Tri-Tec Communications, Inc.

Parent Account Information

Acct Name:	N/A	Acct Number:	N/A
------------	-----	--------------	-----

Accounts Payable Information

A/P Contact Name:	A/P Contact Phone:
A/P Email (Invoicing):	Billing Address:

Monthly Recurring Charges	Price	QTY	Subtotal
<p>Cloud PBX User</p> <p>Unlimited calling US and Canada, G12 Lite SoftPhone Access, Incoming call control, Professionally recorded greetings, Call Center w/Analytics, Voicemail Transcription, Web Portal Management, Live-Premium Support</p>	\$16.99	55	\$934.45
<p>G12 Mobility Standard</p> <p>Free - Included with all G12 Users</p> <p>G12 Mobility WebRTC/iOS/Android</p> 	\$0.00	55	\$0.00
<p>Equipment Rental - G12 Mobility Enterprise</p> <p>Desktop/Mobile/Smartphone</p>	\$4.00	8	\$32.00
<p>Yealink T53W - (Rental)</p> <p>Especially designed for busy executives and professionals, Yealink SIP-T53W is an easy-to-use Prime Business Phone with an adjustable 3.7-inch graphical LCD that you can easily and flexibly find the comfortable viewing angle according to the personal and environmental needs. With the built-in Bluetooth 4.2 and the built-in dual band 2.4G/5G Wi-Fi, the SIP-T53W IP Phone ensures you to keep up with the modern wireless technology and take the first chance in the future wireless age. Its built-in USB 2.0 port allows for USB recording or a direct wired/wireless USB headset or up to three Yealink EXP50 expansion modules connection.</p> 	\$6.00	37	\$222.00

Monthly Recurring **\$1,188.45**

One-Time Charges	Price	QTY	Subtotal
Number Port	\$2.00	69	\$138.00
Directory Listing Per Location	\$7.50	3	\$22.50
Self-Install Equipment Self-Install **Professional Installation Available. \$500.00 Minimum/\$50.00 per User	\$0.00	0	\$0.00

Subtotal **\$160.50**

Equipment Costs	Price	QTY	Subtotal
-----------------	-------	-----	----------

Subtotal **\$0.00**

General Terms and Conditions for Delivery of Service

These General Terms and Conditions are between G12 Communications LLC ("G12") and the individual or entity identified as the customer ("Customer") in the Service Order Form ("SOF") executed by G12 and Customer, each individually referred to as a "Party" and collectively referred to as the "Parties". This "Agreement" consists of (i) the Service Order Form(s) and any forms or authorizations attached thereto and/or incorporated therein by reference, (ii) these General Terms and Conditions, (iii) VOIP 911 Service Disclaimer and Customer Acknowledgement ("911 Notice") and (iv) Acceptable Use Policy ("AUP"), (v) Texting Supplemental Terms and (vi) Completion Notice. This Agreement sets forth general terms and conditions under which Customer is purchasing G12 services pursuant to the SOF. The Parties agree to be bound by this Agreement as of the day the SOF is fully executed by the Parties (the "Effective Date"), and affirm that each have caused this Agreement to be executed by their respective duly authorized representatives on the dates written below their names on the SOF.

1. **Services and Definitions.** G12 Broadband Phone Service is an enhanced voice communications service which uses a data network (like the Internet) to transport voice and text communications that have been converted into data packets. The term "Service" shall mean G12 broadband phone and text services including all software, equipment, and other features, products and services provided by G12 under the pricing plan(s) selected by the Customer in the applicable SOF(s). G12 will provide the Services referenced on the SOF(s) in accordance with the terms of this Agreement. G12 reserves the right, at its sole discretion, to decline orders and require Customer to post appropriate advanced deposits for new and existing Services.
2. **Obligations of the Customer.** The Customer agrees to provide all information, access, and support for timely installation and proper use of the Service and to comply with all of the terms and conditions of this Agreement. The Customer also agrees that Customer's use of the Service will at all times consistent with the terms outlined in the G12 Communication's AUP and will not be used in an unlawful manner, and will be used in such a manner as to prevent damage to G12 network and equipment.
3. **Customer Representations.** The Customer represents and warrants that: (i) their primary residence or business address is in the United States, (ii) they are at least eighteen (18) years of age and possesses the legal right and ability to enter into this Agreement, and (iii) the Customer name, contact information and registered location are true and correct and, if for business use, the Customer is authorized to act on behalf of such business. Customer

acknowledges and agrees that G12 relies on the information supplied by Customer and that providing false or incorrect information may result in delays in the provision and delivery of the Services, the suspension or termination of the Services, additional fees or charges, and the inability of a 911-dialed call to be correctly routed to emergency service personnel (as further described in the 911 Notice executed by Customer contemporaneously with the SOF). Customer agrees to promptly notify G12 whenever personal or billing information changes, including, but not limited to, Customer's name, address, e-mail address, telephone number, and credit card information.

4. **Term Commitment.** For each Service, THE SERVICE WILL BEGIN THE DAY WHEN ALL OR ANY PORTION OF THE SERVICE IS FIRST INSTALLED AND MADE AVAILABLE TO THE CUSTOMER OR 30 DAYS FROM THE DATE THE SERVICE ORDER IS EXECUTED, WHICHEVER IS EARLIER ("Commencement Date"). On or after the Commencement Date Customer may receive a Notice of Completion setting forth the quantity of Services actually provisioned to Customer and Customer agrees to pay for the quantity of Services actually provisioned even if such quantity differs from the SOF. The Service will begin on the Commencement Date and continue for the number of months/years set forth in the applicable SOF (the "Initial Service Term"). If the SOF does not state a term, the Initial Service Term will be one (1) year. Upon expiration of the Initial Service Term, the Service automatically renews for successive one (1) year terms(the "Renewal Service Terms") at the rates in Customer's SOF unless either Party provides notice of intent to terminate the Service at least thirty (30) days prior to the end of the Initial Service Term or the Renewal Service Terms, whichever is applicable at the time of termination (the Initial Service Term and Renewal Service Terms may be collectively referred to hereinafter as, the "Term" or the "Service Term").
5. **Fees and Charges.** Customer shall pay for all Services that G12 supplies to Customer. Each SOF specifies the fee that the Customer will pay for each Service during the Service Term. The charges and fees for G12 services are categorized on the applicable SOF as (1) "Monthly Recurring Charges", (2) "Non-Recurring Charges", (3) "Usage Charges", and (4) "Equipment Charges". MONTHLY RECURRING CHARGES WILL BE BILLED MONTHLY TO CUSTOMER BEGINNING ON THE COMMENCEMENT DATE. Non-Recurring shall be billed as they occur. Usage Charges for international and toll-free inbound calls will be billed based on the duration of each call with a one-minute minimum and then in six-second increments after the first minute. Equipment Charges will be billed upon receipt of actual equipment when purchased from G12. In addition, G12 may bill the Customer for other legally applicable charges, including, but not limited to, Federal and State Universal Service Fund (USF), 911 and E911 Fees, LNP Administration Fees, and any other applicable state and federal taxes or fees.

The charges for the Services, not including the taxes and regulatory charges, are hereby referred to as the "Rate(s)". The Rates set out on the Customer's SOF will vary depending on the Customer's Service Term and do not include taxes and other regulatory charges. G12 may modify its Rates at any time. Customer will be liable for all reasonable charges, including, but not limited to attorneys' fees and costs, incurred by G12 to enforce the terms of this Agreement or due to Customer's non-compliance with the terms herein.

6. **Payment.** G12 will provide to Customer monthly invoices covering thirty (30) day periods which will be due and payable thirty (30) days from the invoice date (the "Due Date"). All Monthly Recurring Charges are billed one (1) month in advance and Usage Charges are billed in arrears. A late payment fee will be applied on balances that remain unpaid thirty (30) days following the date of the invoice in the amount of 1.5 % per month of the amount of the unpaid balance from the date of invoice or the maximum interest amount allowed by applicable law. Customer and G12 hereby acknowledge and agree that G12 shall have no liability to Customer resulting from any termination of Services due to non-payment by Customer in accordance with the terms of this Agreement. G12 reserves the right to bill Customer retroactively for any Services Customer received which G12 had not billed. In addition to the remedies contained in this Agreement, G12 reserves its rights in law and equity, including, but not limited to, its rights under the Uniform Commercial Code.
7. **Taxes.** Customer hereby acknowledges and agrees that all pricing for Services and other charges due hereunder are exclusive of all applicable taxes, including without limitation, value added tax, sales taxes, duties, fees, levies or surcharges (including where applicable any Universal Service Fund or similar surcharges) imposed by, or pursuant to the laws, statutes or regulations of any governmental agency or authority, all of which shall be the sole responsibility of Customer and paid promptly when due by Customer, and furthermore, Customer agrees to indemnify and hold G12 harmless from any liability therefor. Except as set forth herein, all amounts payable by Customer under this Agreement shall be made without any deduction or withholding and, except to the extent required by any law or regulation, free and clear of any deduction or withholding on account of any tax, duty or other charges of whatever nature imposed by any taxing or governmental authority. If Customer is required by any law or regulation to make any such deduction or withholding Customer shall, together with the relevant payment, pay such additional amount as will ensure that G12 actually receives and is entitled to retain, free and clear of any such deduction or withholding, the full amount which it would have received if no such deduction or withholding had been required. Notwithstanding the foregoing, a monthly Universal Service Fund charge shall be added to each invoice for Services based upon the total billed revenues,

the amount of which shall be based upon the Federal Communications Commission assessment.

8. **Unauthorized Use of the Services.** The Customer accepts full responsibility for the charges, taxes and fees invoiced for G12 provision of all Services to Customer, including, but not limited to, outbound and toll free Services, regardless of whether Customer authorized the use of the Services and Customer agrees that it is solely responsible for the security of all user names and passwords associated with the Service and that Customer will be responsible for any fees, costs or expenses associated with any theft or unauthorized access, use, or disclosure of such username or passwords. Customer shall indemnify, defend and hold G12 harmless from any and all costs, expenses, damages, claims or actions arising from any fraudulent or unauthorized use of the Services. Customer shall not be excused from paying G12 for Services provided to Customer or any portion thereof on the basis that fraudulent use of the Services comprised a corresponding portion of the Services for which charges, taxes and fees are invoiced. In the event G12 discovers or reasonably believes that the Services are being used fraudulently, nothing contained herein shall prohibit G12 from taking immediately any and all reasonable actions to prevent the fraudulent use of the Services, including without limitation, suspension or termination of Services.
9. **Inappropriate Use / Back-Up Power.** Customer acknowledges that the services are not designed, manufactured, intended, or recommended for use for any high-risk or fail-safe purpose or activity or in any environment where failure, interruption, malfunction, error, or unavailability could result in any liability or damages, physical harm or personal injury, death or dismemberment, or property or environmental damage. Customer represents and warrants that customer and its end users will not use services for any such purpose or activity or in any such environment. In addition, Customer acknowledges and agrees that, if access to and use of the Services (including, but not limited to, emergency 911 and E911 Services) is desired or required during a power outage, Customer is solely responsible for providing appropriate back-up power to any equipment located on Customer's premises to the extent such equipment may be used to access and use or is otherwise related to the use of the Services. G12 shall not be responsible or liable to Customer or any third party for Customer's the unavailability of the Services during a power outage as a result of Customer's failure to provide necessary back-up or secondary power facilities for use of the Services.
10. **Toll-Free Service.** Customer is responsible for all charges for toll free Services provided by G12. G12 assumes no liability where any claim arises out of Customer being provided with any toll-free number(s) other than the toll-free number(s) requested by Customer. G12 shall not be liable whatsoever for the use, misuse or abuse of a Customer's toll free Service by third

parties, including without limitation, the Customer's employees or members of the public who dial the Customer's toll free number by mistake and Customer will be responsible for all such charges.

11. **Interruption of Service Credit.** In the event that there is any defect, error, omission, delay, mistake, interruption, suspension, or other failure in connection with furnishing the Services or maintenance of the Services and the same is reported to and confirmed by G12 (an "Interruption"), the liability, if any, of G12 shall in no event exceed an amount equivalent to the proportionate charge to Customer for the affected Service for the time period during which the interruption occurred (the "Interruption Credit"). G12 shall not be liable nor shall any Interruption Credit be given to a Customer, for any Interruption which is: (1) caused by the willfulness or negligence of a third-party or any other entity other than G12; (2) due to failure of equipment, systems provided by G12, Customer or any other entity; (3) due to a force majeure event as set forth in Section 26 below; or (4) during periods when the Customer elects to use the Service on an impaired basis. Customer hereby acknowledges and agrees that its sole and exclusive remedy for an Interruption shall be an Interruption Credit. Customer will not be entitled to any Interruption Credits or other damages related to any delay in installing the Service.
12. **Termination by G12.** In the event that Customer is in breach of any terms of this Agreement, G12 may provide written or emailed notice to Customer of such a breach, upon receipt of which Customer shall have ten (10) days to cure such a breach. If such breach is not cured by Customer to G12 Communication's satisfaction, in its sole discretion, within the applicable cure period set forth above, G12 may terminate any and all Services provided to Customer under any Agreements between the Parties, effective immediately, without liability to Customer and Customer will be responsible for all obligations and unpaid amounts under those Agreements, including without limitation, Early Termination Charges. Notwithstanding the foregoing, in the event that the Customer's use of the Services violates G12' AUP, G12 may, upon email, fax, telephonic or written notice, terminate any and all Services provided to Customer under any Agreements between the Parties, effective immediately, without liability to Customer and Customer will be responsible for all obligations and unpaid amounts under those Agreements, including without limitation, Early Termination Charges.
13. **Termination by Either Party.** Either Party shall have the right to terminate the Service(s) without liability, including Early Termination Charges, (i) if G12 is prohibited from furnishing the Service(s) under this Agreement, or (ii) if any material rate or term contained herein is substantially changed by order of the highest court of competent jurisdiction to which the

matter is appealed, the Federal Communications Commission, or other local, State or other federal government authority.

14. **Early Termination Charges.** If a Service is terminated prior to the end of the Service Term, then, commencing on the effective date of such termination, Customer will be subject to Early Termination Charges equal to one hundred percent (100%) of the Monthly Recurring Charges times the number of months remaining in the Service Term, plus any waived installation charges and discounts from G12 standard rates times the number of months of discounts applied (“Early Termination Charges”). Customer and G12 acknowledge and agree that (i) the Early Termination Charges are a fair and reasonable estimate of damages that would occur in the event that the Service is terminated prior to the end of the Service Term; (ii) actual damages incurred by G12 as a result of the early termination of the Service would be difficult to determine ; (iii) and the provisions regarding the Early Termination Charges in this paragraph are reasonable and appropriate measures of the damages for such early termination and not a penalty. Customer agrees to pay all such Early Termination Charges within 30 days of Customer’s notice of termination of Services immediately upon written receipt of G12 last invoice to Customer (“Final Invoice”). All requests to terminate Services must be received, in writing to G12 thirty (30) days prior to the termination effective date. A minimum of thirty (30) days will always be billed to Customer from the date that the termination notice is submitted.
15. **Bill Disputes.** Customer’s billing disputes or request for adjustments, together with all supporting documentation, must be made in good faith, and must be received in writing by G12 within thirty (30) days from the date of the invoice, or Customer’s right to raise such billing disputes is waived. Customer shall otherwise timely pay any undisputed amount. If G12 determines that a disputed charge was billed in error, G12 will issue a credit to reverse the amount that was incorrectly billed. If G12 determines that the disputed amount was billed correctly, G12 will inform Customer of such determination and provide Customer proof of correct billing. If Customer does not accept such proof as definitive, the dispute will be escalated for an officer review/resolution with G12 and Customer in accordance with this Agreement. In the event that the escalated dispute is resolved against Customer, or in the event that Customer accepts the foregoing proof as definitive (or if Customer fails to notify G12 within thirty (30) days that Customer does not accept proof as definitive), Customer shall pay the previously disputed amount within ten (10) days thereafter.
16. **Resolution of Disputes.** Except as otherwise provided herein, any disputes, controversy or claim (individually and collectively referred to hereinafter as a “Dispute”) arising under this Agreement shall be resolved in accordance with the procedures set forth herein. In the event

of a dispute, and upon the written request of either Party, each of the Parties shall appoint, within five (5) business days after a Party's receipt of such request, a designated representative who has authority to settle the Dispute and who is at the higher level of management than the persons with the direct responsibility for administration of the Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant information made by one Party to the other shall be honored. If the Parties are unable to resolve issues related to the Dispute within thirty (30) days after a Party's request is made for appointment of designated representatives as set forth above, either Party may seek any relief to which it is entitled, whether at law or in equity.

17. **Upgrades and Downgrades.** An "Upgrade" is defined as a change to Customer's existing Services, agreed to by G12, that will result in the increase in Customer's Monthly Recurring Charges and/or Non-Recurring Charges. If the Customer Upgrades the Services, Early Termination Charges will not be assessed. However, Customer will be required to purchase the Upgrade for a term commitment that extends at least to the end of Customer's existing Service Term. A "Downgrade" is defined as a change to Customers' existing Services or partial disconnect, agreed to by G12, that results in a decrease in Customers Monthly Recurring Charges. If Customer Downgrades the Services before the end of the Service Term, G12, in its sole discretion, may charge Customer Early Termination Charges. Customer shall provide G12 with thirty (30) days prior written request for all Downgrades and G12 may, in its sole discretion agree to or deny such request. Any Downgrade of a Service must have a Term that extends at least to the end of Customer's existing Service Term.
18. **G12 Owned Customer Premise Equipment.** Any equipment installed by G12 to perform the Services under this Agreement and associated software, which was not purchased by the Customer, is the sole property of G12, and is referred to as "Customer Premise Equipment" or "CPE". For the Service Term, G12 grants Customer a limited, personal, revocable, non-exclusive license to use the CPE provided in conjunction with the Service solely for Customer's own internal business use that may not be assigned, sold, sublicensed or transferred. Upon termination of the Service, all of Customer's rights with respect to CPE will immediately terminate. Except as expressly provided herein, the limited license granted to Customer does not convey any ownership or other rights, express or implied in the CPE or in any Intellectual Property. G12 has the right to access, maintain, remove, replace or take any other action in connection with the CPE at any time for any reason. At all times Customer

shall: (1) refrain from physically tampering with or modifying CPE, or authorizing another to do the same; and (2) provide G12 with reasonable, sufficient, and necessary access to Customer's facilities in order for G12 to fulfill its obligations under this Agreement. Customer shall provide G12 reasonable and necessary access to G12 CPE at all reasonable times in the event G12 needs to retrieve the CPE during, or upon the expiration or termination of the applicable Service Term. Customer also agrees to cooperate with G12 in all communications with the landlord at the Customer's premises if requested by G12 even after the expiration or termination of the applicable Service Term so that G12 may retrieve physical possession of the CPE. Customer shall be responsible for any and all damages to the CPE, caused by Customer or its end-users. Furthermore, G12 will not be responsible for any interference or interruption in Services that are related to or caused by CPE. Customer is responsible for the initial and ongoing configuration of any equipment provided by Customer. If any equipment provided by Customer is not compatible or may not be used with the Services, and Customer terminates the Service as a result, Customer will be responsible for all Non-Recurring Charges for the Services that are noted on the SOF, as well as Early Termination Charges and any third-party costs G12 may have incurred.

19. Limitation of Liability. G12 AND IT'S OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, VENDORS AND SUPPLIERS ("G12 ENTITIES") SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING: (1) THE CONTENT OF THE INFORMATION PASSING OVER G12 NETWORK; (2) UNAUTHORIZED ACCESS TO CUSTOMER TRANSMISSION FACILITIES OR TO CUSTOMER OWNED EQUIPMENT; (3) UNAUTHORIZED ACCESS OR DAMAGE TO, ALTERATION, THEFT, DESTRUCTION OR LOSS OF CUSTOMER RECORDS OR DATA; (4) CLAIMS FOR DAMAGES CAUSED BY CUSTOMER, THROUGH FAULT, NEGLIGENCE OR FAILURE TO PERFORM CUSTOMER'S RESPONSIBILITIES; (5) CLAIMS AGAINST CUSTOMER BY ANY OTHER PARTY; (6) ANY ACT OR OMISSION OF ANY OTHER PARTY FURNISHING SERVICES TO CUSTOMER, OR THE INSTALLATION AND /OR REMOVAL OF ANY AND ALL EQUIPMENT SUPPLIES BY ANY OTHER SERVICES PROVIDER, INCORRECT PUBLICATION LISTINGS OR ADVERTISEMENTS OF PHONE NUMBERS; (7) CLAIMS FOR ANY LOSS OR DAMAGES RELATED TO ANY DELAY IN INSTALLING OR TERMINATING THE SERVICE, OR (8) CLAIMS FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICE. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE AGGREGATE LIABILITY OF ALL G12 ENTITIES, IF ANY, ARISING OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS IN THE SERVICE OR EQUIPMENT PROVIDED BY G12 ENTITIES SHALL IN NO EVENT EXCEED THE MONTHLY RECURRING CHARGES FOR THE

SERVICE PAID BY THE CUSTOMER DURING THE AFFECTED TIME PERIOD (NOT TO EXCEED 12 MONTHS) THAT IS THE SUBJECT OF THE CLAIM AND CUSTOMER WAIVES ANY AND ALL CLAIMS FOR SUMS IN EXCESS OF THAT AMOUNT. IF ANY LIABILITY IS IMPOSED ON G12 ENTITIES, SUCH LIABILITY SHALL BE LIMITED AS PROVIDED IN THIS AGREEMENT, WHICH SHALL BE G12 ENTITIES' SOLE AND EXCLUSIVE LIABILITY REGARDLESS OF WHETHER LOSS OR DAMAGE IS CAUSED BY PERFORMANCE, NON-PERFORMANCE, OR NEGLIGENCE OF G12 ENTITIES UNDER THIS AGREEMENT. TO THE EXTENT PERMITTED BY LAW, ANY LIABILITY OF G12 ENTITIES SHALL BE LIMITED TO DIRECT AND ACTUAL DAMAGES ONLY AND G12 ENTITIES SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY THIRD-PARTY WITH RESPECT TO ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE OR FOR THE LOSS OF REVENUE, LOST PROFITS, LOSS OF BUSINESS, LOSS OF POTENTIAL BUSINESS, REPLACEMENT COST OR COVER, OR ECONOMIC LOSS OF ANY KIND FOR ANY REASON WHATSOEVER, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER THEORY OF LIABILITY, EVEN IF G12 ENTITIES HAVE BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF – OR COULD HAVE FORESEEN SUCH COSTS, LOSSES, OR DAMAGES. THIS LIMITATION AND WAIVER ALSO APPLIES TO ANY CLAIMS YOU MAY BRING AGAINST ANY OTHER PARTY TO THE EXTENT THAT G12 ENTITIES WOULD BE REQUIRED TO INDEMNIFY THAT PARTY FOR SUCH CLAIM. TO THE EXTENT PERMITTED BY LAW, YOU AND WE EACH ALSO AGREE THAT ALL CLAIMS MUST BE BROUGHT WITHIN 2 YEARS OF THE DATE THE CLAIM ARISES.

20. Liability of Customer. To the maximum extent permitted by law, Customer shall indemnify, defend and hold harmless, individually and collectively, G12 Entities from and against any and all liability, claims, losses (including loss of profits, revenue and goodwill), damages, fines, penalties, injuries to persons or property, costs, and expenses (including reasonable attorneys' fees and dispute resolution expenses) made or asserted against G12 Entities by any third-party that arises out of, or is directly or indirectly related to: (i) breach of the Agreement or Service by Customer or any users of the Service; (ii) breach of any representations or warranties by Customer; (iii) use of or reliance upon the Service by Customer or any third party; (iv) any negligent acts, omissions to act or willful misconduct by Customer or any users of the Service; (v) the inability to use the Services or failure or outage of the Service for any reason, including but not limited to those related to calling 911, E911 or other emergency responders; (vi) use of the Services in connection with a violation of any applicable Laws (defined below); (vii) misappropriation, breach, violation, or infringement of any right, title or interest of any third party, including but not limited to, contractual rights, Intellectual Property rights, rights of privacy, and rights of publicity and personality; or any

act or omission of Customer, its users or customers. Additionally, the Customer shall reimburse G12 Entities for damage to G12 facilities or due to any malfunction of any facilities or equipment provided by an entity other than G12 for the damages to the extent of such payment.

21. Warranties. G12 DOES NOT WARRANT UNINTERRUPTED OPERATION, DEGRADATION, DELAY, INTERRUPTION, ERROR OR OMISSION OF THE SERVICES, SOFTWARE OR EQUIPMENT OR LOSS OF CONTENT, DATA OR INFORMATION. G12 COMMUNICATIONS SPECIFICALLY DISCLAIMS AND CUSTOMER WAIVES ALL WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OR ANY WARRANTIES ARISING OUT OF USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.
22. Letters of Authorization. Customer will be required to execute a Letter of Authorization (“LOA”) in the event Customer seeks G12 to act as an authorized agent for ordering and coordination of local and long distance access circuits for services outside of this Agreement. The LOA, when executed, shall be incorporated into this Agreement by reference.
23. E911 Disclosure Statement. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE VOIP TELEPHONY SERVICES MAY, UNDER CERTAIN CIRCUMSTANCES, HAVE SIGNIFICANT LIMITATIONS WITH RESPECT TO 911 AND E911. THE 911 NOTICE DESCRIBES SOME OF THOSE CIRCUMSTANCES AND CONTAINS SIGNIFICANT INFORMATION, REQUIREMENTS AND LIMITATIONS OF LIABILITY WITH RESPECT TO 911 AND E911. CUSTOMER AGREES TO ALL OF THE TERMS AND CONDITIONS OF THE 911 NOTICE, THAT IT IS A MATERIAL PART OF THIS AGREEMENT AND THAT G12 WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT CUSTOMER READING AND AGREEING TO IT.
24. Deposit. G12 reserves the right to withhold initiation of full implementation of the Services until G12 has conducted a credit review of Customer. Depending on the credit review, G12 may require Customer to provide G12 a security deposit. If Services are being provided to Customer without a security deposit and then Customer fails to pay any sums when due, G12 may require that Customer provide a security deposit as a condition for continued Service and if Customer refuses to provide the requested deposit G12 may terminate any or all Services to Customer and Customer will be responsible for any Early Termination Charges as a result of such termination.
25. Transfer and Assignment. Customer may not sell, assign or transfer any of Customers rights or obligations under this Agreement without G12 prior written consent. G12 may assign this Agreement upon notice to customer.

26. Force Majeure. Any delay, interruption, or nonperformance of any provision of this Agreement on the part of G12 caused by conditions beyond G12 Communication's reasonable control shall not constitute a breach of the Agreement, and the time for performance of such provision shall be deemed to extend for a period equal to the duration of the conditions preventing performance. Such examples include but are not limited to, acts of god, elements, weather conditions, earthquakes, settlements, fire, accidents, power failures, cable cuts caused by third-parties, acts or omissions of governmental authorities, moratoriums or injunctions related to the construction and shortage of labor and materials.
27. Installation Requested Information. In order to install Customer's Service, G12 may need Customer to provide G12 with certain information to enable the Services to be provisioned. Customer will be required to provide the requested information in a timely fashion, as time is of the essence with respect to this information. If G12 does not receive the required information in a commercially reasonable time frame, and Customer terminates the Service, Customer will continue to be responsible for all Non-Recurring and Early Termination Charges.
28. Press Release Announcements, Publicity and/or Trademarks. Customer agrees that G12 may issue a press release announcing the relationship between the parties and may use, copy, transmit, display, and distribute Customer name, logo, quotes, case studies and testimonials in connection with G12 services. Such use shall include but not be limited to sales materials, websites, advertising and other associated activities involving applicable external communications, using all media known and hereafter developed following effectiveness of this Agreement, provided that any press releases, public announcements, postings or other advertising or public relations activities concerning this Agreement or the relationship between Customer and G12 must be reviewed and approved by both parties in advance. Customer agrees to provide comments of approval or changes within forty-eight (48) hours of receipt or request for such approval. Customer hereby grants to G12 a non-exclusive, non-transferable license, without the right to sublicense, to use Customer's name and logo in connection with publicity and marketing materials, provided that any use of Customer's name or logo must be approved in writing by Customer in advance and used in accordance with Customer's guidelines for logo use.
29. Notices. Except as otherwise provided herein, all notices, with the exception of invoices and requests for payment, given in connection with this Agreement shall be made in writing and either delivered in person, or by recognized overnight courier service, or sent via first class, postage prepaid, certified mail, return receipt requested. All notices will be sent to the address set out on the SOF. Invoices and requests for payment may be delivered in writing or

electronically, including email or email attachments, and such email or email attachment will be deemed delivered when sent. All notices, including but not limited to invoices, will be deemed served relative to the date of personal delivery, the first business day after the date notice is sent via overnight mail, on the third (3rd) business day after notice is sent via first class U.S. main Delivery. All notices to G12 should be addressed to G12 Communications, LLC, 150 Lake Street South, Kirkland, Washington 98033, attention Customer Care. All legal notices and copies of notices shall be sent to G12 Communications, 150 Lake Street South, Kirkland, Washington 98033, attention President. The notice address as provided above may be changed by written notice given as provide above.

30. Governing Law and Venue. This Agreement shall be construed and governed in accordance with the laws of the state of Washington and venue for any actions arising under this Agreement shall be in the courts of King County, Washington.
31. Entire Agreement. This Agreement is the complete agreement between the parties concerning any telecommunications services provided by G12 hereunder, and replaces any prior oral or written communications between the parties. Except for prior obligations of confidentiality and/or nondisclosure, there are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified in this Agreement.
32. Addition/Modification. Except as set forth in the Agreement, the Agreement can only be modified, amended or waived through a writing signed by an authorized employee of each party. G12 reserves the right to change its fees and charges upon notice to Customer provided that such changes will not affect any Service Orders until expiration of the then-current Service Term. G12 further reserves the right to alter or eliminate Services or to change or eliminate areas where G12 provides service upon thirty (30) days prior written notice to Customer provided that such changes will not affect any Service Orders until expiration of the then-current Service Term.
33. Severability. In the event that any of the terms of this Agreement or the applications of any such term shall be invalid by any court of any competent jurisdiction, the remaining terms of this Agreement or their application shall not be affected thereby and shall remain in full force and effect.
34. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one Agreement. Facsimile signatures and electronic signatures (including electronically transmitted signed documents) shall be accepted and treated the same as an original.
35. Compliance With Laws. Customer represents and warrants that Customer and all use of the Service will at all times comply with all applicable laws, rules and regulations including but

not limited to the rules, policies and regulation of the Federal Communications Commission (“FCC”), and all laws relating to Do-Not-Call provisions; unsolicited marketing; faxing; telemarketing; email marketing; spamming or phishing; data security or privacy; international communications; account or debt collection; recording of calls or conversations; export control; export of technical or personal data; end user, end-use, and destination restrictions imposed by the United States or foreign governments; consumer protection; pornography; trade practices; false advertising; unfair competition; anti-discrimination; harassment; defamation; intellectual property; or securities, electronic commercial communications, telemarketing and other similar laws, which include without limitation the U.S. Telephone Consumer Protection Act of 1991, U.S. Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 and the Canada Anti-SPAM Legislation, if applicable, and each as amended (“Laws”). Customer agrees to indemnify, defend and hold harmless G12 and any third-party provider(s) from any and all claims, losses, damages, fines, or penalties arising out of Customer’s or its user’s violation or alleged violation of any Laws.

36. Recording Calls. Certain Services may enable Customer and its users of the Service to record calls or other communications and that the recording of such calls is solely under Customer and its users control. Customer acknowledges that certain Laws impose requirements, restrictions and prohibitions with respect to recording calls or communications, including without limitation, notice and consent from all of the entities on the call prior to recording the call or communication and Customer acknowledges that it is solely responsible for informing itself and its users of the Service of such Laws. Customer represents and warrants that Customer and all other users of the Service will, at all times, comply with all Laws with respect to recording calls.
37. No Storage of Personal Health Information. Customer acknowledges and agrees that the Services are not designed, intended, or recommended to store “protected health information,” as defined under the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and similar legislation in other jurisdictions, and the regulations promulgated pursuant thereto (such laws and regulations, “HIPAA”; such information, “PHI”) and Customer represents and warrants that its Services will not be used for such purpose.
38. Survival. All provisions of the terms and Conditions in the Agreement, which by their nature should survive, shall survive termination of Services or the Agreement, including without limitation, ownership provisions, warranty disclaimers, limitations of liability, indemnities, accrued rights (including any payment obligations).

G12 Communications Acceptable Use Policy (AUP)

This AUP is part of the Agreement between G12 Communications, LLC (“G12”) and Customer. All capitalized terms not otherwise defined in this AUP are defined in the General Terms and Conditions.

- 1. Unlimited Voice Services.** Customer agrees to use the unlimited service plans (“Unlimited Plan”) for traditional voice or fax calling of duration comparable to that of an average residential or business customer and not for commercial purposes where telecommunications is the primary purpose or significant cost for the business. Customer agrees that they will not employ methods, devices or procedures to take advantage of Unlimited Plans by using the voice or fax services excessively or for means not intended by G12. Excessive use is defined by G12 as use that substantially exceeds the average call volume or duration per hosted PBX or SIP Trunk used by all other G12’s Unlimited Plan customers. G12 has the right to terminate Customer’s Unlimited Plan or change Customer’s Service plan if, in its sole discretion, G12 determines that Customer’s use of the Unlimited Plan violates this prohibition or is otherwise unreasonable or results in abuse of the Unlimited Plan, including, but not limited to, the following:
 - Excessive local number conference calling
 - Monitoring services
 - Data transmissions
 - Transmissions of broadcasts or transmission of recorded material
 - Re-selling, re-branding, re-supplying, re-marketing or commercially exploiting the Unlimited Plan, without written consent, in order to aggregate traffic from more than one customer over a line or trunk that serves an Unlimited Plan
 - Setting up routing functionality such that only outbound long-distance traffic is sent over the Unlimited Plan
 - Using the Unlimited Plan for call-centers, hotlines, or chat rooms
 - Engaging in any other conduct which is fraudulent or results in significant network congestion, or degradation
 - Autodialing
 - Continuous, repetitive or extensive call forwarding
 - Continuous call session connectivity
 - Fax broadcasting
 - Fax blasting

- Telemarketing, or
 - Any other activity that would be inconsistent with reasonable personal, residential and business use that may cause network congestion or jeopardizes the integrity of G12's network.
2. **Lawful purposes only.** Customer may use Services for lawful purposes only. The Customer may not use G12's Service or equipment in any way that is illegal, improper, or inappropriate, including, but not limited to, the following:
- Interfering with the ability to provide Service to the Customer or other customers, or avoiding the obligation to pay for the Service within the time frame designated for payment.
 - Use of the Service to threaten, abuse, harass, defame, deceive, defraud, interfere or invade another's privacy or engage in any similar behavior.
 - Use of the Service for auto-dialing, continuous, repetitive or extensive call forwarding, telemarketing (including charitable or political solicitation or polling), fax or voicemail broadcasting or blasting.
 - Use of the Service to impersonate another person, send bulk unsolicited messages, use data mining techniques, or other automated devices or programs to catalog, download, store, or otherwise reproduce or distribute information from G12 or use any automated means to manipulate the Service
 - Use the Service for transmitting or receiving any communication or material of any kind which would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law or encourage conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law.
3. **Right of Termination.** G12 reserves the right to terminate the Service immediately and without advance notice if G12, in its sole discretion, believes that the Customer has violated any of the terms of this AUP and Customer will be responsible for all fees and charges through the end of the Service Term, including without limitation, Early Termination Fees, unbilled charges, and disconnect fees, all of which immediately become due and payable, and G12 will not be liable for any damages incurred by Customer or any third-party as a result of such disconnection.
4. **Monitoring.** G12 may monitor the use of the Service for violations of the Agreement, including this AUP. G12 may, without liability, remove or block all communications if G12 suspects a violation of the Agreement, including this AUP, or if G12 finds it necessary to protect the Services, other customer's services or G12.

5. **Providing information to authorities and third parties.** If G12 believes that the Customer has used the Service for unlawful purposes, G12 may, to the extent permitted by law, forward the relevant communication and other information, including Customer's identity, to the appropriate authorities for investigation and prosecution and Customer consents to the forwarding of any such communications and information to the authorities. In addition, to the extent permitted by law, G12 may disclose the Customers' personal information, any communications sent or received by the Customer, and any other information that G12 may have about the Customer's account, including but not limited to, types of Service, length of Service, MAC addresses, IP addresses, email addresses, registered 911 address, and all other account information, as deemed necessary by G12, including, but not limited to the following: In response to law enforcement or other governmental agency requests; as required by law, regulation, rule, subpoena, search warrant, or court order; as necessary to identify, contact, or bring legal action against someone who may be misusing the Service; to protect G12 rights and property; or in emergency situation where disclosure of such information is necessary to protect G12, other G12 customers or third parties from harm or damage.
6. **Use of Service or Telephone Device by Customer Outside of the United States.** G12 services are designed to originate calls within the United States and work with unencumbered high-speed Internet connections. If the high-speed Internet connection is not within G12's service area or the ISP or broadband provider places restrictions on using VoIP services, Service may be unavailable and Customer will not be entitled to any Interruption Credits. The Customer will be solely responsible for any violations of local laws and regulations or violations of ISP and broadband provider terms of service because of the Customers' use of the service. All use of G12's service to or from areas outside the United States is at your own risk
7. **No Transfer of Service.** The Customer may not resell or transfer the Service without first obtaining prior written consent from G12.
8. **No Alterations or Tampering.** If Customer copies or alters or has someone else copy or alter the firmware or software of the equipment or device in any way that facilitates a compromise of the Service, Customer is responsible for any charges that result. Customer may not attempt to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose.
9. **Theft of Service.** No one may use or obtain a service in any manner that avoids entering into an Agreement with G12 and using it in compliance with all of G12's policies and procedures. Customer will notify G12 immediately by telephone, email, text or similar real-time method (and subsequently confirm it in writing) if Customer believes or should have known the Service has been stolen, used fraudulently, or is otherwise being used in an unauthorized

manner and will provide an account number and a detailed description of the circumstances of theft, fraudulent use, or unauthorized use of the Service. G12 may suspend or disconnect the Service if such Service has been used in violation of this section and Customer will remain liable for all fees and charges for use of the Service until G12 is notified by Customer of such unauthorized use and has had a reasonable opportunity to prevent such use.

10. **Revisions to this Acceptable Use Policy**

G12 reserves the right to revise, amend, or modify this AUP at any time and in any manner. Any revision, amendment, or modification will be effective when G12 publishes such revision, amendment, or modification. Your continued use of our services after such revision, amendment, or modification shall constitute your acceptance of the modifications to this AUP. Therefore, it is important that you review this AUP from time to time. If you have questions about the AUP, or about your rights and responsibilities as a G12 customer, please contact us at support@G12com.com.

IT IS YOUR RESPONSIBILITY TO CHECK THIS WEBSITE REGULARLY, AS ALL OR ANY PART OF THIS AUP MAY CHANGE WITHOUT NOTICE.

VOIP 911 Service Disclaimer and Customer Acknowledgement

This VOIP 911 Service Disclaimer and Customer Acknowledgement (“911 Disclaimer”) constitutes a part of your Agreement with G12 Communications, LLC (“G12”). By signing this 911 Disclaimer Customer and anyone using the Service (“You” or “User”) agree to be bound by the terms and conditions set forth herein. All capitalized terms are as defined herein or as otherwise defined in the Agreement as described in the General Terms and Conditions.

1. GENERAL INFORMATION.

Thank you for selecting G12 as your Voice-Over-Internet Protocol (“VoIP”) telephony provider. Before You begin using G12's VOIP Service, there are a few important things to understand about the Service and its emergency calling (911 and enhanced 911 (“E911”)) limitations as compared to traditional 911 and E911 service. Portable interconnected VOIP services can be used anywhere from virtually any internet connected device, such as VOIP enabled handsets, headsets, conference calling stations, computers, smartphone, tablet or any device capable of communicating over the internet (“Softphone”), which raises challenges for the emergency services community in determining the location from which a 911 call has originated. With basic 911, the public safety answering point operator (or “911 Operator”) will NOT have automatic access to your telephone number or location so you must be prepared to give the basic 911 Operator this information. With E911, your telephone number and registered address will be automatically provided to the 911 Operator located in or near the city or county of your *registered address* to assist them in responding to your emergency call, *regardless of your actual location* so it is critical that your registered address reflect your actual location. Some locations do not support E911 (i.e., automatically providing your telephone number and registered location) so you should always be prepared to provide your telephone number and actual location when dialing 911.

2. VOIP LIMITATIONS

2.1 EMERGENCY CALLING (911 AND E911) AND SERVICE LIMITATIONS. 911 and E911 Service may be limited or unavailable in the following circumstances:

2.1.1 Power outage or disruption to the equipment or Softphone providing Your Service (following a power outage, You must reset or reconfigure the terminal adapter equipment prior to utilizing the Service, including 911 and E911 Service);

- 2.1.2 Broadband outage, interruption or malfunction that affects Your Service;**
- 2.1.3 Relocating Your Softphone to a location other than to the location that You registered with us;**
- 2.1.4 Delays in making Your Registered Location available to the database accessed by the 911 Operator;**
- 2.1.5 Using a telephone number other than the one that is registered for Your Device, using a non-native telephone number or blocking Your caller ID;**
- 2.1.6 Network congestion, disruptions, or other problems with Your ISP or G12's network;**
- 2.1.7 VoIP Service interruption or termination any reason, including the suspension or termination of your account with G12 for non-payment or improper use of the Service;**
- 2.1.8 Changing your phone number or adding a new phone numbers to your account without updating the location you have Registered with us;**
- 2.1.9 Delays or disruptions of Service in the network or Services of G12's underlying E911 provider;**
- 2.1.10 You cannot text a 911 Operator using the Service;**
- 2.1.11 If Your Softphone is used in an office environment with multiple other Users located in the same office then: (1) the registered location for Your Softphone will be the location of Your office so if you remove Your Softphone from that location and call 911 from another location, the location of the office will still appear to the 911 Operator as Your Registered Location regardless of Your actual location and (2) If Your telephone number is not the 911 TN from Your office (defined below), You will need to register Your telephone number as a 911 TN for an additional charge - If You do not know whether the 911 Operator has E911 capabilities, You should always be prepared to provide Your call-back telephone number and actual location;**
- 2.1.12 Internet viruses that affect Your Softphone or internet connectivity and speed;**
- 2.1.13 In certain geographic areas where G12's underlying E911 provider has limited access (or no access at all) to the 911 Operator's facilities.**

2.2 Non-VoIP Devices. Home alarm systems, fax machines and other equipment that attach to your home computers, local telephone service, cable system or other networks may not work with the Service and G12 MAKES NO REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, WHATSOEVER THAT THE SERVICE WILL WORK WITH THOSE DEVICES.

Except as otherwise described in the General Terms and Conditions, G12 will have no obligations or liability with respect to any Service outages, interruptions or degradations for

any reason. Additional Service limitations can be found on the FCC's website at: transition.fcc.gov/cgb/consumerfacts/voip911.pdf.

3. USER OBLIGATIONS.

3.1. You Must Register the Location of Your Softphone.

3.1.1. Single Softphone/Telephone Number. If You are using a single Softphone and telephone number, then prior to using any telephone numbers provided to You by G12, the current physical location of Your Softphone and telephone number must be registered with G12 ("**Registered Location**") so that if a 911 call is made from that Softphone, the telephone number and the Registered Location of the Softphone will be available to the E911 Operator.

3.1.2. Multiple Softphones/Telephone Numbers. (i) Single Location/Office: If multiple Softphones are used in a single location or office, the Registered Location for Your Softphone will be the location of Your office. If you remove Your Softphone from that location and call 911 from another location, the Registered Location of the office will appear as Your location regardless of Your actual location. **(ii) Multiple Locations/Offices:** If You have Softphones in multiple offices, the Registered Location of each Softphone must correspond to the office where that Softphone is located and being used. You may not use a single office location as the Registered Location for Softphones located in other offices or locations. **(iii) The Office 911 Telephone Number.** Multiple Softphones located in an office will likely only have one telephone number (the "**911 TN**") from that office that is able to register its location with G12's 911 provider so if any other User from that office calls 911, the Registered Location of the 911 TN will be provided to the 911 Operator (the User's actual telephone number will still be provided to the 911 Operator provided caller-ID is not blocked). If You intend to use Your Softphone at a location other than Your office, You will need to upgrade your telephone number to a 911 TN and register the actual location where your softphone is being used each time it is moved.

3.1.3. "Registered Location" Process. (i) If You have an office administrator that manages Your telecommunications Services, contact that administrator for their then-current procedures for registering Your Softphone and location. **(ii)** If You manage the telecommunications Services for Yourself and/or others, contact G12 at SUPPORT@G12COM.COM and follow their then-current procedures for registering Your

Softphone(s) and location(s). If You have a non-hosted Service and manage the private branch exchange server or its generic server or technological equivalent (the “PBX), this will include loading the 911 TN(s) that correspond to the location and telephone number of each Softphone onto Your PBX.

3.2. Moving a Softphone. If a Softphone in a Registered Location is moved to another location, before using the Service You must register the new location of that. If you do not register the new location of your Softphone, any calls you make using E911 will be sent to the 911 Operator near your old address and register an incorrect location for that Softphone. For example, if Your Softphone is registered to an address in Seattle and You take the Softphone to Denver and call 911, the call will be routed to the 911 Operator in Seattle rather than Denver and it will identify the Seattle address as Your Registered Location. Consequently, IT IS CRITICALLY IMPORTANT THAT THE NEW LOCATION FOR ANY SOFTPHONE THAT IS MOVED IS PROPERLY REGISTERED.

3.3. Mobile Softphones. Unless you are in Your Registered Location, IF YOU NEED TO DIAL 911 WITH A MOBILE DEVICE (LIKE A SMARTPHONE, COMPUTER OR TABLET) YOU SHOULD ALWAYS USE YOUR CELLULAR NETWORK AND NOT G12’S 911 SERVICE. Unless you are using Your cellular network, if You call 911 to an E911 enabled 911 Operator Your mobile Softphone will only provide the Registered Location to the 911 Operator regardless of Your actual location so if you are using a mobile Softphone in a location other than its Registered Location or while in motion (e.g. driving or walking), E911 service will provide inaccurate information to the 911 Operator so you must provide your actual location to the 911 Operator. In addition, please note that some forms of wireless service do not support automatic location identification or have other E911 calling limitations so you must be prepared to provide Your actual location when calling 911.

3.4. Alternative 911 Access. Customer acknowledges the limitations of VOIP telephony as discussed above (e.g., power outages, internet access outages, overloading, registration requirements, etc.) and, given those limitations, Customer agrees that all users of G12 Services will have access to 911 or E911 through an alternative service or device other than through the Services provided by G12.

3.5. Broadband Access. To use G12 VOIP telephony Services You must have a broadband internet connection provided to You through a third-party ISP or broadband service provider.

Also, G12 is not a traditional telecommunications carrier and provides only VOIP telephony that relies on Your broadband internet connection rather than traditional telephone lines. G12 is not responsible for any Service outage, interruption or degradations related to Your internet connectivity.

3.6. Power Outages. Following a power outage, You must reset or reconfigure the terminal adapter equipment prior to utilizing the Service, including 911 and E911 Service.

3.7. Customer Obligation to Give Others Notice of VoIP Service and Emergency 911 Limitations.

Customer agrees to be fully responsible at all times during the term of this agreement for notifying anyone that uses the Services of (i) the **EMERGENCY CALLING (911 AND E911) LIMITATIONS** described above, (ii) VoIP Service limitations described above, (iii) User Obligations described above and (iv) G12's Limitation of Liability described below. **It is especially important that Users understand that the loss of internet connectivity, loss of power to their Softphone or failure to provide a current Registered Location could result in losing the ability to call 911 and that they must have an alternative method for call 911. G12 will provide 911 warning labels to Customer and Customer agrees to place the label on or near the Softphone that uses the Service.**

3.8 Multi-story Offices or Campus. In a multi-story building be prepared to give the 911 Operator the floor You are on and the location within that floor (e.g., office number, break room, etc.). On a campus or in a multibuilding office-park, be prepared to give the 911 Operator Your exact location on the campus (e.g., cafeteria, gym, etc.) or office-park building number and location within that building.

4. LIMITATION OF LIABILITY.

TO THE EXTENT PERMITTED BY LAW, YOU AGREE THAT IN NO EVENT WILL G12 OR ITS MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, OR AGENTS (COLLECTIVELY "**G12 PARTIES**") BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (COLLECTIVELY, "**DAMAGES**") ARISING, DIRECTLY OR INDIRECTLY, FROM OR IN CONNECTION WITH ANY USE OF (OR INABILITY TO USE) THE SERVICE OR WITH ANY USE OF (OR INABILITY TO USE) EMERGENCY 911 OR E911 SERVICES IN CONNECTION THEREWITH. YOU ALSO AGREE TO RELEASE, DISCHARGE AND HOLD HARMLESS G12 PARTIES FROM ANY AND AGAINST ALL ACTIONS, LAWSUITS, CLAIMS, DAMAGES, JUDGMENTS,

LIABILITIES AND EXPENSES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES, WHATSOEVER THAT YOU MAY OTHERWISE HAVE IN CONNECTION WITH THE USE (OR INABILITY TO USE) THE SERVICES (WHETHER BY YOU OR BY ANY OTHER PERSON) THAT ARE PROVIDED TO YOU UNDER THIS AGREEMENT (COLLECTIVELY, "**CLAIMS**"). TO THE FULLEST EXTENT PERMITTED BY LAW, YOU WAIVE YOUR RIGHT AND COVENANT NOT TO SUE FOR SAID CLAIMS AGAINST G12 PARTIES.

G12 has no physical control over whether, or the manner in which, calls using our 911 Service are delivered by our underlying 911 provider or whether or if they are properly answered or addressed by any local emergency response center. Also, G12 relies on its underlying 911 provider and other third parties to route 911 Emergency calls to the proper emergency response center.

ACCORDINGLY, YOU AGREE TO RELEASE, DISCHARGE AND HOLD HARMLESS G12 PARTIES FROM ANY AND ALL CLAIMS AND DAMAGES THAT DIRECTLY, INDIRECTLY OR ARISE OUT OF THE HANDLING OF SUCH CALLS BY ANY THIRD PARTY OR FOR ANY OTHER CONDUCT OF THE LOCAL EMERGENCY RESPONSE CENTER, THE PUBLIC SAFETY ANSWERING POINT OR OF THE NATIONAL EMERGENCY CALLING CENTER USED BY G12'S UNDERLYING 911 PROVIDER. BY USING THE SERVICES, YOU AGREE THAT G12 PARTIES WILL NOT HAVE ANY SUCH LIABILITY OR RESPONSIBILITY AND, TO THE FULLEST EXTENT PERMITTED BY LAW, YOU HEREBY WAIVE YOUR RIGHT TO BRING ANY CLAIM AGAINST G12 PARTIES, ARISING FROM OR IN CONNECTION WITH THE EMERGENCY 911 SERVICE, EXCEPT WHERE SUCH CLAIMS RESULT FROM G12'S (OR ITS EMPLOYEES' OR AGENTS') WILLFUL MISCONDUCT. FURTHERMORE, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO DEFEND, INDEMNIFY AND HOLD G12 PARTIES HARMLESS FROM ANY CLAIMS AND DAMAGES BROUGHT, ASSERTED OR THREATENED BY ANY THIRD PARTY AGAINST G12 PARTIES ARISING, DIRECTLY OR INDIRECTLY, FROM OR IN CONNECTION WITH ANY USE OF (OR INABILITY TO USE) THE SERVICE, INCLUDING WITHOUT LIMITATION, 911 AND E911 SERVICE, AND ANY OTHER CONDUCT REFERRED TO IN THIS SECTION UNLESS CAUSED BY G12'S (OR ITS EMPLOYEES' OR AGENTS') WILLFUL MISCONDUCT.

YOU SHOULD NOT SIGN UP FOR THE SERVICE UNLESS YOU FULLY UNDERSTAND AND AGREE WITH THESE LIMITATIONS AND DISCLAIMERS. BY ENTERING INTO THIS AGREEMENT, YOU AGREE TO ASSUME THE RISK OF LOSING EMERGENCY 911 DIALING CAPABILITIES AND CONSENT TO THE DISCLOSURE OF YOUR TELEPHONE NUMBER AND OTHER IDENTIFYING INFORMATION TO EMERGENCY 911 AUTHORITIES AS G12 DEEMS NECESSARY IN ITS SOLE OPINION AND DISCRETION.

5. Customer Acknowledgement. By signing this 911 Disclaimer, Customer acknowledges and agrees to the VoIP Service 911 and E911 limitations, Customer Obligations and G12 Parties limitations of liability described above. In addition, Customer agrees that, prior to use of any G12Services, all Users of G12 Services have been made aware of the VoIP Service 911 and E911 limitations and Customer Obligations AND will ensure that all Softphones have the 911 label attached to or near all of the Softphones using G12 Services. Customer agrees to obtain an acknowledgement from each User of G12 Services of the VoIP 911 and E911 limitations and to forward such acknowledgement to G12. G12 reserves the right to not provide the Service to You until G12 has received your signature below. If You have questions, please contact us at **support@G12com.com**.

If You have questions, please contact us at **support@G12com.com**.

Acknowledged and Agreed:

CUSTOMER SIGNATURE

Signature

Date

Name

Title

G12 COMMUNICATIONS LLC.

Signature

Date

Name

Title