



# City of Port Orchard Council Meeting Agenda

## January 24, 2023

### 6:30 p.m.

**Mayor:**

Rob Putaansuu  
Administrative Official

**Councilmembers:**

Mark Trenary (Mayor Pro-Tempore)  
E/D & Tourism Committee, **Chair**  
Utilities/Sewer Advisory Committee  
Transportation Committee  
KRCC-alt

Shawn Cucciardi  
Finance Committee  
E/D & Tourism Committee  
Lodging Tax, **Chair**

Fred Chang  
Economic Development & Tourism Committee  
Land Use Committee  
Transportation Committee

Jay Rosapepe  
Finance Committee,  
Land Use Committee  
KRCC, PSRC-alt, PSRC Transpol-alt, KRCC Transpol-alt, KRCC Planpol-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

Tony Lang  
Public Works Director

Tim Drury  
Municipal Court Judge

Noah Crocker, M.B.A.  
Finance Director

Matt Brown  
Police Chief

Brandy Wallace, MMC, CPRO  
City Clerk

**Meeting Location:**

Council Chambers, 3<sup>rd</sup> Floor  
216 Prospect Street  
Port Orchard, WA 98366

**Contact us:**

(360) 876-4407  
cityhall@portorchardwa.gov

*Pursuant to the Open Public Meetings Act, the City Council is conducting its public meeting in the Council Chambers at City Hall. Members of the public may view and provide public comment during the meeting in person at City Hall, via the online platform zoom (link below), or via telephone (number below). The public may also view the meeting live on the City's YouTube channel.*

**Remote access only**

Link: <https://us02web.zoom.us/j/87086170361>

**Zoom Webinar ID:** 870 8617 0361

**Zoom Call-In:** 1 253 215 8782

**Guiding Principles**

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

**1. CALL TO ORDER**

**A. Pledge of Allegiance**

**2. APPROVAL OF AGENDA**

**3. CITIZENS COMMENTS**

*(Please limit your comments to **3 minutes** for items listed on the Agenda and that are not for a Public Hearing. Please keep your comments respectful and no personal attacks. This is a comment period and not a question-and-answer session. When recognized by the Mayor, please state your name for the official record. If you are attending remotely via telephone, enter \*9 from your keypad to raise your hand.)*

**4. CONSENT AGENDA**

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

**A. Approval of Vouchers and Electronic Payments**

**B. Approval of Payroll and Direct Deposits**

**C. Adoption of a Resolution Approving the Purchase of Equipment for the Equipment Rental Revolving Fund 500 and City Street Fund (Lang) Page 4**

**D. Adoption of a Resolution Accepting a Grant Agreement with the Washington State Transportation Improvement Board (TIB) for the 2022 Overlay Award, Old Clifton Rd-SR16 to McCormick Woods Drive (Lang) Page 16**

**E. Adoption of a Resolution Approving a Contract with Systems for Public Safety, Inc., for the Outfitting of Emergency Vehicles (M. Brown) Page 24**

- F. Approval of Amendments No. 2 to Contract Nos. 131-22 and 132-22 with Hillstrom Holdings for Commercial Office Space of 600 Kitsap Street Units 101 and 201 (Archer) Page 42
- G. Approval of the January 10, 2023, City Council Meeting Minutes Page 99

**5. PRESENTATION**

- A. Low-income Utility Discount Program (Crocker)

**6. PUBLIC HEARING**

**7. BUSINESS ITEMS**

- A. Adoption of a Resolution Approving a Contract with CONSOR North America, Inc. for Construction Support and Management Services for the McCormick Village Park Splash Pad Construction Project (Lang) Page 104
- B. Adoption of a Resolution Approving a Multifamily Property Tax Exemption Agreement for the Blueberry Apartments (Bond) Page 130
- C. Adoption of a Resolution Approving a Multifamily Property Tax Exemption Agreement for the Salmonberry Apartments (Bond) Page 145
- D. Adoption of a Resolution Approving a Multifamily Property Tax Exemption Agreement for the 2102 Sedgwick Apartments (Bond) Page 160
- E. Adoption of a Resolution Authorizing the Payment of Additional Relocation Benefits to Ocean and Arlene Williams (Prior Owners of Kitsap County Tax Parcel No. 4027-023-017-0004) for the Bay Street Pedestrian Pathway Project (Lang) Page 190

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

- A. AWC Public Opinion Survey (Mayor) Page 199

**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. If you are attending remotely via telephone, enter \*9 from your keypad to raise your hand.)*

**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	February 27, 2023: 9:30am	Remote Access
Utilities	February 14, 2023; 5:00pm	Remote Access
Finance	TBD, 2023	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.portorchardwa.gov](http://www.portorchardwa.gov) or by contacting the City Clerk's office at (360) 876-4407.

Transportation	January 24, 2023; 4:30pm	Remote Access
Festival of Chimes & Lights	January 30, 2023; 3:30pm	Remote Access
Land Use	January 25, 2023; 4:30pm	Remote Access
Lodging Tax Advisory	February, 2023	Remote Access
Sewer Advisory	March 22, 2023; 5:00pm	Remote Access
Council Retreat	Friday, March 10, 2023;	TBD
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.portorchardwa.gov](http://www.portorchardwa.gov) or by contacting the City Clerk's office at (360) 876-4407.



## City of Port Orchard

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

---

### Agenda Staff Report

Agenda Item No.: Consent Agenda 4C  
Subject: Adoption of a Resolution Approving the  
Purchase of Equipment for the  
Equipment Rental Revolving Fund 500  
and City Street Fund

Meeting Date: January 24, 2023  
Prepared by: Tony Lang  
Public Works Director  
Atty Routing No.: 366922-0009 – PW  
Atty Review Date: January 18, 2023

**Summary:** The Public Works Department has identified new equipment necessary for continued operations in 2023. In particular, staff identified the need to purchase: (1) a City dump truck (scheduled for replacement in 2023 from the Equipment Rental and Revolving Fund 500 (“ER&R”)); and (2) snow and ice equipment/attachments for the dump truck (budgeted from the City Street Fund 002). The 2023-2024 budget includes \$112,000 for the purchase of the vehicle through the ER&R Fund, and \$31,000 for snow/ice equipment from the City Street Fund 002.

Consistent with the City’s Procurement Procedures Policies adopted by Resolution No. 036-22, as amended, staff determined that purchasing through a contract procured by the Washington State Department of Enterprise Services (“DES”) would provide the City with competitive pricing for these purchases. The City maintains an interlocal agreement with DES to permit the City to purchase goods that are procured by DES (“Contract No. C057-13”). For this purchase the City’s Public Works Department identified Bud Clary Ford/Hyundai as an approved vendor via DES Contract No. 05916 (“DES Contract”). Staff reviewed the procurement process utilized by DES for the DES Contract and confirmed the applicable procurement requirements were met and obtained all necessary documentation regarding procurement.

On January 5, 2023, staff requested and received a quote of \$132,912.49 (applicable tax included) from Bud Clary Ford/Hyundai, for (1) the 2023 Ford F550 Dump Truck and all operating add-ons that are not snow/ice related (\$99,988.16); and (2) accessory snow and ice equipment (\$32,924.33). Staff confirmed the quote was consistent with the DES Contract pricing. Staff also confirmed the dump truck and all operating add-ons meets the City’s fleet standardization policies, and at a cost of \$99,988.16 is within the limits of the 2023-2024 Biennial Budget. The snow/ice equipment package exceeds the \$31,000 budgeted amount because the sander requires a stand for unloading and storage needs when the sander is not being utilized. The inclusion of this necessary component in the snow/ice equipment package bumps the total price to \$32,924.33. Staff confirmed that all components of the snow/ice equipment package as quoted are consistent with the DES Contract pricing, but is \$1,924.33 over the amount budgeted in the City Street Fund.

Further, staff have identified additional expenses associated with the dump truck that are anticipated after delivery of the vehicle that are necessary to prepare the vehicle for service. These expenses include licensing, the purchase/installation of a CB radio, and City logo decals. These items are all

estimated to cost \$2,186.00 (within the \$112,000 ER&R budget authority for the dump truck purchase). However, these items are not included in the DES Contract and staff will follow the City's Procurement Procedures Policies for these items.

The City's Procurement Policies require City Council authorization for purchasing budgeted items that cost \$35,000 or more, and unbudgeted purchases are the purview of the Council. On January 9, 2023, the City Public Works Department completed the Interlocal Agreement Purchase Checklist for Bud Clary Ford/Hyundai-DES and confirmed this purchase meets RCW 39.34.030 and the City's Procurement Policies.

**Recommendation:** Staff recommends approving Resolution No. 006-23, providing City Council approval of the purchase of vehicles and equipment in accordance with the City's procurement policies, fleet standardization policies, and the 2023-2024 Biennial Budget.

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

**Motion for consideration:** "I move to adopt Resolution No. 006-23, providing City Council approval of the purchase of vehicles and equipment from Bud Clary Ford/Hyundai under DES Contract No. 05916, and authorizing the Mayor to execute all necessary documents to effectuate the purchase."

**Fiscal Impact: Dump Truck (and non-ice/snow add-ons):** \$99,988.16, including sales tax and miscellaneous expenses. Outfitting of the vehicle and miscellaneous expenses up to \$112,000 are included in the 2023-2024 Budget (GL Code: 500.10.594.42.60).

**Snow/Ice Equipment:** \$32,924.33 (GL Code: 002.05.594.42.60). \$31,000 is included in the 2023-2024 Budget, a budget amendment may be required.

**Licensing/CB radio/logo and decals** (not included in this approval but listed as a component cost of the dump truck for transparency): \$2,186.00. Again, outfitting of the vehicle and miscellaneous expenses up to \$112,000 are included in the 2023-2024 Budget (GL Code: 500.10.594.42.60).

**Total Estimated Cost of dump truck and all related equipment/items:**  
**\$135,098.49.**

**Alternatives:** Do not approve and provide alternative guidance.

**Attachment:** Resolution No. 006-23  
Exhibit A: ER&R Purchase request including DES quote  
ILA Checklist

estimated to cost \$2,186.00 (within the \$112,000 ER&R budget authority for the dump truck purchase). However, these items are not included in the DES Contract and staff will follow the City’s Procurement Procedures Policies for these items.

The City’s Procurement Policies require City Council authorization for purchasing budgeted items that cost \$35,000 or more, and unbudgeted purchases are the purview of the Council. On January 9, 2023, the City Public Works Department completed the Interlocal Agreement Purchase Checklist for Bud Clary Ford/Hyundai-DES and confirmed this purchase meets RCW 39.34.030 and the City’s Procurement Policies.

**Recommendation:** Staff recommends approving Resolution No. 006-23, providing City Council approval of the purchase of vehicles and equipment in accordance with the City’s procurement policies, fleet standardization policies, and the 2023-2024 Biennial Budget.

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

**Motion for consideration:** “I move to adopt Resolution No. 006-23, providing City Council approval of the purchase of vehicles and equipment from Bud Clary Ford/Hyundai under DES Contract No. 05916, and authorizing the Mayor to execute all necessary documents to effectuate the purchase.”

**Fiscal Impact: Dump Truck (and non-ice/snow add-ons):** \$99,988.16, including sales tax and miscellaneous expenses. Outfitting of the vehicle and miscellaneous expenses up to \$112,000 are included in the 2023-2024 Budget (GL Code: 500.10.594.42.60).

**Snow/Ice Equipment:** \$32,924.33 (GL Code: 002.05.594.42.60). \$31,000 is included in the 2023-2024 Budget, a budget amendment may be required.

**Licensing/CB radio/logo and decals** (not included in this approval but listed as a component cost of the dump truck for transparency): \$2,186.00. Again, outfitting of the vehicle and miscellaneous expenses up to \$112,000 are included in the 2023-2024 Budget (GL Code: 500.10.594.42.60).

**Total Estimated Cost of dump truck and all related equipment/items: \$135,098.49.**

**Alternatives:** Do not approve and provide alternative guidance.

**Attachment:** Resolution No. 006-23  
Exhibit A: ER&R Purchase request including DES quote  
ILA Checklist

**RESOLUTION NO. 006-23**

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING THE PURCHASE OF A DUMP TRUCK AND ASSOCIATED EQUIPMENT FROM THE EQUIPMENT RENTAL REVOLVING FUND 500 AND SNOW AND ICE EQUIPMENT/ATTACHMENTS FROM THE CITY STREET FUND AND DOCUMENTING PROCUREMENT PROCEDURES.**

**WHEREAS**, a City Dump Truck is scheduled for replacement in 2023 as part of the Equipment Rental and Revolving Fund 500 (ER&R) replacement process; and

**WHEREAS**, the City has an interlocal agreement with Washington State Department of Enterprise Services (DES) (City Contract No. C057-13) which allows the City to utilize the contracts procured by DES for services and purchases, so long as the City confirms the contract complies with all applicable statutory procurement requirements for the particular purchase or service, per RCW 39.34.030; and

**WHEREAS**; consistent with City Contract No. C057-13 and the City's Procurement Procedures Policies, adopted as Resolution No. 036-22, as amended, the City's Public Works Department identified Bud Clary Ford/Hyundai as an approved vendor for the desired dump truck and associated equipment, awarded via Washington DES Contract No. 05916 (DES Contract); and

**WHEREAS**, Staff reviewed the procurement process utilized by DES for the DES Contract, confirmed the procurement requirements were met, and obtained all necessary documentation from DES and the vendor regarding procurement; and

**WHEREAS**, on January 5, 2023, Public Works staff requested and received a quote from Bud Clary Ford/Hyundai of \$122,613.00 (plus applicable tax), for a total purchase price of \$132,912.49; and

**WHEREAS**, on January 9, 2023, the City's Public Works Department completed the Interlocal Agreement Purchase Checklist for the selected vendor and confirmed the quote was consistent with the DES Contract; and

**WHEREAS**, the 2023-2024 Biennial Budget includes \$112,00 in Equipment Rental and Revolving Fund 500 (ER&R) and \$31,000 from the City Street Fund 002 for the purchases of the dump truck/associated equipment and snow/ice equipment, respectively; and

**WHEREAS**, the City's Procurement Policies require City Council authorization for purchasing budgeted items that cost \$35,000 or more and for unbudgeted purchases; and

**WHEREAS**, the Bud Clary Ford/Hyundai quote, attached as Exhibit A, is for the purchase of ER&R Equipment and Snow and Ice Equipment in an amount that exceeds the \$35,000 authorization limit; 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 purchase 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 the purchase from Bud Clary Ford/Hyundai of a Dump Truck and associated equipment in the amount of \$99,988.16 and snow and Ice equipment in the amount of \$32,924.33, in the total amount of \$132,912.49 (applicable tax included). The Mayor or his designee is authorized to take all actions necessary to effectuate the purchase, consistent with this authorization.

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

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage on this 24<sup>th</sup> day of January 2023.

---

Robert Putaansuu, Mayor

ATTEST:

---

Brandy Wallace, MMC, City Clerk

B



## ER&amp;R

## Replacement or Addition Purchase Request

RCW 43.19.648 – Requires all local governments to convert their vehicle fleets to electricity or biofuel. Local governments are required to transition all vehicles to electricity or biofuels to the extent practicable. WAC 194-29-030 provides further guidance regarding this issue. If it is not practical for local governments to use electricity or biofuel for police, fire or emergency response vehicles, including utility vehicles frequently used for emergency response, it is encouraged to consider alternate fuels and vehicle technologies to displace gasoline and diesel fuel use.

**Please attach the quote for vehicle / equipment.**

Description of item: F550XLT w/ 3yd dump body							
Procurement method: Department of Enterprise Systems (DES)							
<b>Department</b>							
Water	Sewer	Storm	Street	Public Works	DCD	Police	Admin
			X				
<b>Addition or Replacement</b>							
	Addition to Fleet - Please state business case for addition:						
X	Replacement Vehicle / Equipment being replaced: 1031 - F551XL dump truck						
<b>Fleet Standardization</b>							
	Requested Vehicle / Equipment follows fleet standardization						
X	Requested Vehicle / Equipment DOES NOT follow Standardization. List items that are not fleet standard and reason for addition.						
	This dump truck needs to be up-fitted for snow plow controls and wiring for a sander for the dump bed.						



	Requested Vehicle / Equipment does not have a standard
<b>Cost</b>	
\$99,988.16 w/ tax	Fleet standard cost
\$2,186	Additional cost for consideration and business case:  CB Radio, licensing, city logo decals- \$2,000.00
	TOTAL \$102,174.16

**STANDARDS FOR VEHICLES**

## Police Department Standard Vehicle

<u>Model</u>	<u>Chassis</u>	<u>Drive Train</u>	<u>Color</u>	<u>Graphics</u>	<u>Accessories</u>
Ford	Sedans	Automatic	Black	City Decal	Lights
	SUV	2WD		Vehicle Number	Radios
		4WD			Antennas
		AWD			

## Public Works and Planning Standard Truck

<u>Model</u>	<u>Chassis</u>	<u>Cab Size</u>	<u>Drive Train</u>	<u>Color</u>	<u>Graphics</u>	<u>Accessories</u>
Ford	1/2 Ton	Regular	Automatic	White	City Logo	Lights
	3/4 Ton	Extended	2WD		Truck Number	Radios
	1 Ton	Crew Cab	4WD			Antennas
						Tool Boxes

## Administration and Planning Standard Vehicle

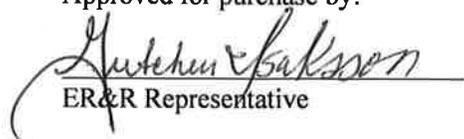
<u>Type</u>	<u>Chassis</u>	<u>Drive Train</u>	<u>Color</u>	<u>Graphics</u>	<u>Accessories</u>
Electric	Sedans	Automatic	White	City Logo	Lights
Biofuel	SUV	2WD		Vehicle Number	Radios
		4WD			Antennas
		AWD			

I have reviewed the vehicles / equipment listed above and request approval for purchase.

As T. Z  
Department Director

1/5/2023  
Date

Approved for purchase by:

  
ER&R Representative

1/5/2023  
Date



## Tony Lang

**From:** NOREPLY@des.wa.gov  
**Sent:** Thursday, January 5, 2023 8:04 AM  
**To:** Tony Lang  
**Cc:** Gideon.Simukonda@des.wa.gov  
**Subject:** Vehicle Quote - 2023-1-49 - PORT ORCHARD, CITY OF - 21802

**Vehicle Quote Number: 2023-1-49**     [Create Purchase Request](#)     [View organization purchase requests](#)

This is a **quote** only. You must create a purchase request to order this vehicle(s)

### Contract & Dealer Information

Contract #: 05916

Dealer: Bud Clary Ford/Hyundai (W403)  
 700 7th Avenue  
 PO Box 127  
 Longview WA 98632

Dealer Contact: Kathleen Brennan  
 Dealer Phone: (360) 423-4321 Ext: 7183  
 Dealer Email: ford.orders@budclary.com

### Organization Information

Organization: PORT ORCHARD, CITY OF - 21802

Email: tlang@portorchardwa.gov

Quote Notes:

Vehicle Location: PORT ORCHARD

### Color Options & Qty

Oxford White (Z1) - 1

Tax Exempt: N

### Vehicle Options

Order Code	Option Description	Qty	Unit Price	Ext. Price
2023-0914-0001	2023 Ford F550 4WD Cab and Chassis	1	\$51,655.00	\$51,655.00
2023-0914-0011	Alternative Wheelbase, Regular Cab, 169WB, 84CA, 18,000# GVWR (F5H/169WB)	1	\$166.00	\$166.00
2023-0914-0021	GVWR Maximum (19,500# GVWR, 4.88 RAR with Limited Slip, High-Capacity Trailer Tow Package) (Increases GCW from 31,000 Lbs to 40,000 Lbs) (Only available with Diesel Engine)(68M/X8L/535)	1	\$2,055.00	\$2,055.00
2023-0914-0022	Alternative Engine, 6.7L 4-Valve OHV PowerStroke V8 Turbo Diesel B20 with manual push-button Engine-Exhaust Braking/TorqShift 10-Speed automatic w/ Selectable Drive Modes and Transmission Power Take-Off Provision (PTO) (Includes Operator Commanded Regeneration, 4.10 RAR, Dual 750CCA Batteries, 250-amp alternator, Intelligent Oil Life Monitor) (18,000# GVWR) (99T/44G)	1	\$9,642.00	\$9,642.00
2023-0914-0024	360-Degree Dual Beacon LED Warning Strobes (Amber) (roof-mounted in front of the CHMSL) (91S/59H)	1	\$628.00	\$628.00
2023-0914-0030	Tires: XL/XLT (all cabs) 225/70Rx19.5G BSW Traction (4WD Only) (includes 4 traction tires on the rear and 2 traction tires on the front) (Not recommended for over the road applications; could incur irregular front tire wear and/or NVH) (If spare tire option is also ordered, spare tire will be matching traction tire) (TGK)	1	\$207.00	\$207.00
2023-0914-0031	Spare tire with wheel (includes hydraulic jack) (512/61J)	1	\$339.00	\$339.00



2023-0914-0032 Front Wheel Well Liners (factory) (61L)	1	\$174.00	\$174.00
2023-0914-0038 Snow Plow Prep Package (to be ordered w/ 6.7L Diesel Engine) (Must also order either 332-Amp Alternator #67A or 410-Amp Dual Alternators #67B) (Not compatible w/ other front suspension packages #67H, 67X or 67P) (473)	1	\$242.00	\$242.00
2023-0914-0041 Cab Steps, Regular Cab (6in Angular Black Running Boards)(18B)	1	\$309.00	\$309.00
2023-0914-0043 Engine Block Heater (41H)	1	\$97.00	\$97.00
2023-0914-0044 Backup Alarm (76C)	1	\$146.00	\$146.00
2023-0914-0046 NEW: XL Chrome Package (Includes chrome front bumper, bright grille, power sliding rear glass w/ rear window defrost on ext/crew cab, remote start, halogen fog lamps) (96V)	1	\$218.00	\$218.00
2023-0914-0047 Rearview Camera and Prep Kit (includes loose camera and wiring bundle) (872) (Info: Upfitters offer rearview camera installation option with body orders)	1	\$400.00	\$400.00
2023-0914-0048 Center High-Mounted Stop Lamp (CHMSL)(59H)(No-charge)	1	\$0.00	\$0.00
2023-0914-0060 120V/400W Outlet (1) (includes one in-dash mounted outlet) (to be ordered w/ 40/20/40 seating) (If ordering w/6.7L Diesel Engine, MUST also order either 332-Amp Dual Alternators #67A or 410-Amp Dual Alternators #67B) (43C/67A)	1	\$170.00	\$170.00
2023-0914-0066 NEW: 410-Amp Dual Alternator (250 amp plus 160 Amp) (diesel engines) (67B)	1	\$110.00	\$110.00
2023-0914-0218 Floor Mats, HD Rubber Molded, Front (Weather Tech) (DLR)	1	\$132.00	\$132.00
2023-0914-0219 Floor Mats, HD Rubber Molded, Rear (Weather Tech) (DLR)	1	\$111.00	\$111.00
2023-0914-0223 Service Manual, CD (DLR)	1	\$221.00	\$221.00
2023-0914-0224 Service Wiring Diagram, Paper (DLR)	1	\$105.00	\$105.00
2023-0914-0333 Spotlight, LED 6 inch, Clear Lens, Pillar Mounted, Driver Side (Unity)	1	\$721.00	\$721.00
2023-0914-1053 Dump Body -11ft with Folding Sides, quick drop tailgate, tapered 1/4 cabshield, double acting electric/hydraulic hoist, and 5in track on dash with universal phone holder, body is painted black (84CA, DRW) (ALL DB-11BFS) (ABW1053)	1	\$19,212.00	\$19,212.00
2023-0914-1533 48in x 18in x 18in Aluminum Underbody Toolbox installed forward of the rear axle, PASSENGER side (84CA or longer) (requires platform, stakeside, or dump body) (ALL ATB-48) (ABW1533)	1	\$1,169.00	\$1,169.00
2023-0914-1561 Heavy Duty 2in Receiver Hitch with equal or greater than 20,000 GTWR includes/ 7-Way Flat RV Plug, Class V (7-Way or 6-Way Round plug available in lieu of 7-Way Flat for no additional cost, must specify at time of order) (Requires Body Order) (ALL-HDHITCH) (ABW1561)	1	\$1,122.00	\$1,122.00
2023-0914-1577 Semi-automatic, spring-rewind tarp system with aluminum housing and premium mesh tarp (requires platform, landscape, or dump body upfit (BUY 554275150) (ABW1577)	1	\$1,140.00	\$1,140.00
2023-0914-1580 Installation of factory provided rearview camera (Must order Ford's Rearview Camera and Prep Kit, which is shipped loose from factory) (ABW1580)	1	\$127.00	\$127.00
2023-0914-1624 Snow Plow Package, V Plow Package, with corrosion resistant dual 304 stainless steel moldboards with 1/2in cutting edges, tubular steel floating A-frame, dual-action angle cylinders, fully enclosed 2 HP power/hydraulic unit and regenerative hydraulics with full size SAE standard cartridge valves and oversize 3/8in rubber hoses, 70 degree attack angle and snow throwing flared wings, dual-beam halogen plow lights with secure double post mounts, 2 independent 6in trip edges, laser cut steel ribs, a full length 2in cross tube, oversized hinge pin, ergonomic in-cab controller with single button control	1	\$11,135.00	\$11,135.00



for all plow functions including v-scoop and angle. (8-1/2 Foot) (BUY VXF85) (Must also order the Factory Snow Plow Prep Package #473) (ABW1624)

2023-0914-1673	Buyers Saltdogg (10ft) 4.5 Cubic Yard Electric Stainless Hopper Spreader. Conveyor and spinner powered by independent electric motors. Capable of spreading bulk salt or a 50/50 salt/sand mix. In cab controls with independent variable speeds for conveyor and spinner. 14in poly spinner broadcasts up to 30ft. 12in chain conveyor drive. Chute is adjustable up to 11-1/2in. High quality 304 stainless steel construction. Stainless steel inverted V improves flow and reduces stress on the drive line. Top screen and tie downs included. Made in the USA. (Requires service body, dump body or flatbed upfit)(BUY 1400550SSE) (ABW1673)	1	\$15,482.00	\$15,482.00
2023-0914-1683	Buyers Saltdogg mid-size spreader stand. Simplifies unloading and storage of your mid-size spreader. Adjustable legs to accommodate your bed height. Built in rollers make loading and unloading your spreader simple and smooth. Built with sturdy 1/4in structural steel tubing for durability. (Requires Buyers Saltdogg 9ft or 10ft Spreader) (BUY 3037294) (ABW1683)	1	\$3,756.00	\$3,756.00
2023-0914-1771	Federal Signal surface mounted Micropulse Ultra amber LED warning lights installed 2 in the front and two in the rear (total of 4) (ALL IPX300PKG) (ABW1771)	1	\$1,622.00	\$1,622.00

**Quote Totals**

<b>Total Vehicles:</b>	1
<b>Sub Total:</b>	\$122,613.00
<b>8.4 % Sales Tax:</b>	\$10,299.49
<b>Quote Total:</b>	\$132,912.49

**CITY OF PORT ORCHARD**  
PURCHASES THROUGH INTERLOCAL AGREEMENTS

**City Contract No.:** 057-13

**Interlocal Agreement with the Host Agency** (government agency or Purchasing Co-Op name): DES

**Item Description:** Dump Truck and snow and ice equipment/attachments

**Do you have an Interlocal agreement signed with the Contract (host) Agency?**

- If yes, where is it filed: City Clerk
- If no, get a mutually signed Agreement in place before you continue.

**State OSP Contract No. #:** 05916

*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?**

- 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?**

- 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?**

- 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 <sup>1</sup> ?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, what state laws apply to Host Agency:
Does the host agency have a requirement to run a newspaper ad in their local paper and did they comply	<input 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 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 type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, obtain documentation to support answer from Host Agency. If No, you cannot use the bid.

<sup>1</sup> 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



**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>January 24, 2023</u>
Subject:	<u>Adoption of a Resolution Accepting a</u>	Prepared by:	<u>Tony Lang</u>
	<u>Grant Agreement with the Washington</u>		<u>Public Works Director</u>
	<u>State Transportation Improvement Board</u>	Atty Routing No:	<u>366922-0009 – PW</u>
	<u>(TIB) for the 2022 Overlay Award, Old</u>	Atty Review Date:	<u>January 18, 2023</u>
	<u>Clifton Rd-SR16 to McCormick Woods</u>		
	<u>Drive</u>		

**Summary:** The City of Port Orchard’s Public Works Department applied for 2022 Overlay Program funding through the Washington State Transportation Improvement Board (TIB) Arterial Preservation Program. On December 2, 2022, the City’s Public Works Department was notified by the TIB that the City’s Old Clifton Rd - SR 16 to McCormick Woods Drive Project (the “Project”) was selected to receive up to \$367,624 in State funding (75% of approved eligible project costs), with a local match of \$122,541. By this action, the Council would authorize the acceptance of the grant funding and approve an agreement with TIB for 2022 Overlay Program funding for the Project.

**Relationship to Comprehensive Plan:** Chapter 8 – Transportation

**Recommendation:** Staff recommends that the City Council adopt Resolution No. 005-23 accepting the 2022 Overlay Program Funding and authorizing the Mayor to execute Contract No. 014-23 (TIB Agreement 3-W-153(001)-1) with the Washington State Transportation Improvement Board and any other associated documentation necessary to effectuate the award for the Old Clifton Rd - SR 16 to McCormick Woods Drive Project.

**Motion for Consideration:** I move that the City Council adopt Resolution 005-23, accepting the 2022 Overlay Program Funding and authorizing the Mayor to execute a contract with the Washington State Transportation Improvement Board for the Old Clifton Rd - SR 16 to McCormick Woods Drive Project.

**Fiscal Impact:** Local match will come from the City Street Fund 002.

**Alternative:** Do not accept Grant and provide alternative direction.

**Attachment:** Resolution No. 005-23, Exhibit A – Agreement No. 3-W-153(001)-1/ (C014-23), TIB Award Letter.

**RESOLUTION NO. 005-23**

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, ACCEPTING THE WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD FUEL TAX GRANT AND AUTHORIZING THE MAYOR TO EXECUTE CONTRACT C014-23 FOR THE 2022 OVERLAY OF OLD CLIFTON ROAD - SR16 TO MCCORMICK WOODS DRIVE PROJECT.**

**WHEREAS**, on December 2, 2022, City of Port Orchard's Overlay Project was awarded a grant from Washington State Transportation Improvement Board (TIB) for the 2022 Overlay of Old Clifton Road - SR16 to McCormick Woods Drive Project; and

**WHEREAS**, TIB provided the City with a grant agreement for the award; and

**WHEREAS**, the Port Orchard City Council has determined it to be in the best interest of the City to accept the grant award and enter into the agreement with the TIB; 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 accepts the TIB 2022 Overlay Program Grant Funding, and approves and authorizes the Mayor to execute Contract No. 014-23 (TIB Agreement 3-W-153(001)-1) with the State of Washington Transportation Improvement Board and any other associated documentation necessary to effectuate the award for the Overlay of Old Clifton Rd - SR 16 to McCormick Woods Drive Project.

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

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 24<sup>th</sup> day of January 2023.

---

Robert Putaansuu, Mayor

ATTEST:

---

Brandy Wallace, MMC, City Clerk



# Washington State Transportation Improvement Board

## TIB Members

Chair  
Mayor Glenn Johnson  
City of Pullman

Vice Chair  
Councilmember Sam Low  
Snohomish County

Amy Asher  
Mason Transit Authority

Aaron Butters, PE  
HW Lochner Inc.

Susan Carter  
Hopelink

Kent Cash, PE  
Port of Vancouver

Barbara Chamberlain  
WSDOT

Elizabeth Chamberlain  
City of Walla Walla

Dongho Chang, PE  
WSDOT

Scott Chesney  
Spokane County

Vicky Clarke  
Cascade Bicycle Club/Washington Bikes

Mike Dahlem, PE  
City of Sumner

Commissioner Al French  
Spokane County

Councilmember Hilda Guzmán  
City of Granger

Commissioner Scott Hutsell  
Lincoln County

Les Reardanz  
Whatcom Transportation Authority

Peter Rogalsky, PE  
City of Richland

Mayor Kim Roscoe  
City of Fife

Maria Thomas  
Office of Financial Management

Jennifer Walker  
Thurston County

Jane Wall  
County Road Administration Board

December 02, 2022

Mr. Chris Hammer, P.E.  
City Engineer  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366-5304

Dear Mr. Hammer:

Congratulations! We are pleased to announce the selection of your project, 2022 Overlay Award, SR 16 to McCormick Woods Dr, TIB project number 3-W-153(001)-1.

TIB is awarding 75.0001% of approved eligible project costs with a maximum grant of \$367,624.

Before any work is permitted on this project, you must complete the following:

- Verify the information on the attached Project Funding Status Form and, revise if necessary. Print, sign and email a scanned copy;
- Sign, scan and email one copy of the Fuel Tax Grant Distribution Agreement; and
- Return the above items to TIB;

You may only incur reimbursable expenses after you receive approval from TIB.

In accordance with RCW 47.26.084, you must certify full funding by December 2, 2023 or the grant may be terminated. Grants may also be rescinded due to unreasonable project delay as described in WAC 479-05-211.

If you have questions, please contact Chris Langhoff, TIB Project Engineer, at [ChrisL@TIB.wa.gov](mailto:ChrisL@TIB.wa.gov).

Sincerely,

Ashley Probart  
Executive Director

Enclosures

Ashley Probart  
Executive Director

P.O. Box 40901  
Olympia, WA 98504-0901  
Phone: 360-586-1140  
Fax: 360-586-1165  
[www.tib.wa.gov](http://www.tib.wa.gov)



City of Port Orchard  
3-W-153(001)-1  
2022 Overlay Award  
SR 16 to McCormick Woods Dr

STATE OF WASHINGTON  
TRANSPORTATION IMPROVEMENT BOARD  
AND  
City of Port Orchard  
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the 2022 Overlay Award, SR 16 to McCormick Woods Dr (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and City of Port Orchard, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

For the project specified above, TIB shall pay 75.0001 percent of approved eligible project costs up to the amount of \$367,624, pursuant to terms contained in the RECIPIENT'S Grant Application, supporting documentation, chapter 47.26 RCW, title 479 WAC, and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT's Grant Application and incorporated by reference into this Agreement. Scope and Budget will be further developed and refined, but not substantially altered during the Design, Bid Authorization and Construction Phases. Any material alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT's submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to the following:

- a) Project Funding Status Form
- b) Bid Authorization Form with plans and engineers estimate
- c) Award Updated Cost Estimate
- d) Bid Tabulations
- e) Contract Completion Updated Cost Estimate with final summary of quantities
- f) Project Accounting History

4.0 BILLING AND PAYMENT

The local agency shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Payment requests may be submitted as



often as the RECIPIENT deems necessary, but shall be submitted at least quarterly if billable amounts are greater than \$50,000. If progress billings are not submitted, large payments may be delayed or scheduled in a payment plan.

## 5.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through closeout of the grant or until terminated as provided herein, but shall not exceed 10 years unless amended by the Parties.

## 6.0 AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

## 7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

## 8.0 GOVERNANCE & VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## 9.0 DEFAULT AND TERMINATION

### 9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.
- c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

### 9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:



- a) RECIPIENT is not making reasonable progress toward correction and compliance.
- b) TIB denies the RECIPIENT's request to amend the Project.
- c) After investigation TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

### 9.3 TERMINATION

- a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.
- b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.
- c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

### 9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

## 10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than highway or roadway system improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9. If Right of Way is purchased using TIB funds, and some or all of the Right of Way is subsequently sold, proceeds from the sale must be deposited into the RECIPIENT's motor vehicle fund and used for a motor vehicle purpose.

## 11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the maximum payable TIB funds for the specific project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All increase requests must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060. If an increase is denied, the recipient shall be liable for all costs incurred in excess of the maximum amount payable by TIB. In the event that final costs related to the specific project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the intended ratio between TIB funds and total project costs, as described in Section 1.0 of this Agreement.



## 12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.

## 13.0 INDEMNIFICATION AND HOLD HARMLESS

The PARTIES agree to the following:

Each of the PARTIES, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, that PARTY's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of the Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this Agreement.

## 14.0 DISPUTE RESOLUTION

- a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.
- b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The PARTIES shall share equally in the cost of the mediator.
- d) Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) The PARTIES agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.



15.0 ENTIRE AGREEMENT

This Agreement, together with the RECIPIENT'S Grant Application, the provisions of chapter 47.26 Revised Code of Washington, the provisions of title 479 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the PARTIES and supersedes all previous written or oral agreements between the PARTIES.

16.0 RECORDS MAINTENANCE

The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement shall be subject at all reasonable times to inspection, review or audit by TIB personnel duly authorized by TIB, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Approved as to Form  
Attorney General

By:

Signature on file

\_\_\_\_\_  
Guy Bowman  
Assistant Attorney General

Lead Agency

Transportation Improvement Board

\_\_\_\_\_  
Chief Executive Officer                      Date  
  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Executive Director                              Date  
  
\_\_\_\_\_  
Print Name



**City of Port Orchard**

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

**Agenda Staff Report**

Agenda Item No.: Consent Agenda 4E  
Subject: Adoption of a Resolution Approving a  
Contract with Systems for Public Safety,  
Inc., for the Outfitting of Emergency  
Vehicles

Meeting Date: January 24, 2023  
Prepared by: Matt Brown  
Chief of Police  
Atty Routing No.: 366922-0012 – PD  
Atty Review Date: January 19, 2023

**Summary:** In 2022, the Police Department recognized the need to update and modernize the City’s fleet of emergency response vehicles. This modernization would include the outfitting of police vehicles with all necessary emergency equipment and lighting.

Pursuant to the City’s Procurement policies, adopted by Resolution No. 036-22, the City’s Police Department prepared an Invitation to Bid (ITB) and solicited bids in the Kitsap Sun. On December 13, 2022, staff uploaded the bid documents to the City’s website.

On December 30, 2022, by the 4:30pm bid deadline, the City Clerk received one (1) bid. After confirming there were no objections made and that there were no challenges to the Public Opening process, the bid was reviewed. The bid received prior to the December 30, 2022, 4:30pm deadline, was as follows:

<i><b>Name of Contractor</b></i>	<i><b>Bid Total</b></i>
Systems for Public Safety, Inc.	\$169,972.65

On January 3, 2023, staff reviewed the bid and confirmed the bidder and bid were compliant with the ITB and all applicable requirements including but not limited to all licensing and state L&I requirements.

**Recommendation:** Staff recommends that the City Council adopt a Resolution approving Contract No. 017-23 for the upfitting of police vehicles with all necessary emergency equipment and lighting in the amount of \$169,972.65 (applicable taxes included).

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

**Motion for consideration:** I move to adopt a Resolution authorizing the Mayor to execute Contract No. 017-23 with Systems for Public Safety, Inc., for the upfitting of police vehicles with all necessary emergency equipment and lighting in the amount of \$169,972.65.

**Fiscal Impact:** Vehicle outfitting costs are budgeted in the 2023-2024 Biennial Budget.

**Alternatives:** Do not approve and offer additional guidance.

**Attachments:** Resolution  
Contract No. 017-23

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

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING CONTRACT NO. 017-23 FOR THE OUTFITTING OF POLICE VEHICLES WITH ALL NECESSARY EMERGENCY EQUIPMENT AND LIGHTING.**

**WHEREAS**, the City identified the need to update and modernize the City's fleet of emergency response vehicles ("Project"); and

**WHEREAS**, in early December 2022, pursuant to the City's Procurement Policies, adopted by Resolution No. 036-22, the City's Police Department prepared an Invitation to Bid ("ITB") for the Project; and

**WHEREAS**, on December 13, 2022, staff solicited bids in the Kitsap Sun, and uploaded the bid documents to the City's website; and

**WHEREAS**, on December 30, 2022, by the 4:00pm bid deadline, the City Clerk received one (1) bid; and

**WHEREAS**, after staff confirmed that there were no objections made and that there were no challenges to the public opening process, the one (1) bid from Systems for Public Safety, Inc. was reviewed; and

**WHEREAS**, staff reviewed the bid in conjunction with all the ITB requirements as well as licensing and state L&I requirements and determined the bidder was responsible and responsive; and

**WHEREAS**, the Police Department reviewed all materials and confirmed that the bidding requirements for this Project have been followed; and

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

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

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

**THAT:** The City Council authorizes the Mayor to execute Contract No. 017-23 with Systems for Public Safety, Inc., for the outfitting of police vehicles with all necessary emergency equipment and lighting.

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

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 24<sup>th</sup> day of January 2023.

---

Robert Putaansuu, Mayor

ATTEST:

---

Brandy Wallace, MMC, City Clerk

City of Port Orchard  
Product and Services Agreement  
With  
Systems for Public Safety, Inc.

This Product and Services Agreement, Contract No. 017-23 ("Agreement"), is entered in to as of the Effective Date specified below between the City of Port Orchard, Washington municipal corporation having its principal place of business at 216 Prospect St., Port Orchard, WA 98366 ("City"), and Systems for Public Safety, Inc., a corporation organized under the laws of the State of Washington, located and doing business at 9412 Front Street S., Lakewood, WA 98499-9386 ("Vendor").

For consideration set forth herein, the parties agree as follows:

1. **Statement of Work.** The City requires purchased services and equipment in connection with outfitting police and emergency vehicles as fully described and set out on the contract documents (defined below), including but not limited to the Exhibit A "Scope of Work" attached hereto and incorporated by this reference. The Vendor will furnish the equipment and services as designated, described, and required by the quote and bid and will complete said services in a good first class and workmanlike manner, all in accordance with the quote and bid and with the other contract documents specified herein below, all of which contract documents form the contract, and are as fully a part thereof as if repeated verbatim herein. All work is to be done under the direct supervision and to the satisfaction of the City.
2. **Incorporation of Provisions Required By Law.** Each provision and clause required by federal, state, or local law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, the contract shall be amended to make such insertion at the request of the either party.
3. **Prevailing Wages.** If this contract, or any portion thereof is a public work, Vendor shall file a "Statement of Intent to Pay Prevailing Wages," with the State of Washington Department of Labor & Industries prior to commencing the Contract work. Vendor shall pay prevailing wages in effect on the date this contract is executed by the Vendor, and comply with chapter 39.12 of the Revised Code of Washington, as well as other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor & Industries is attached.
4. **Compensation and Payment.**
  - a. The City will pay the Vendor for the performance of this contract based upon the quote and bid. Payment will be based on hourly and equipment cost plus markup, in accordance with Attachment B, provided in no event shall the amount paid by the City for full performance of the work set out herein exceed the sum of \$169,972.65, including applicable sales taxes. This amount is the maximum amount to be paid under this Agreement and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement. Payment to the Contractor shall be made in the manner and as specified in the general conditions forming a part hereof.

- b. Vendor shall submit, in a format acceptable to the City, invoices for services performed. Each project shall be the subject of a separate invoice. Vendor shall maintain time and expense records and provide them to the City upon request.
  - c. City shall pay Vendor within thirty (30) days of the receipt of a correct invoice in accordance with the City's usual payment procedures. If City objects to all or any portion of any invoice, it shall so notify Vendor within twenty (20) days from the receipt but shall pay the undisputed portion of any invoice.
  - d. Acceptance of any payment by Vendor shall constitute a release of all payment claims against the City under this Agreement as to such portion of the Services. No payment to Vendor shall constitute a waiver or release by the City of any claim, right, or remedy it may have against the Vendor regarding performance of the services or equipment furnished pursuant to this Contract.
5. **Contract Term.** Vendor will commence work immediately upon the Effective Date or the City's submission of a purchase order, whichever is applicable. For each vehicle outfitting request, Vendor will complete requested work within 90 days from the date of the purchase order. This Contract will expire two (2) years from the Effective Date, unless earlier terminated by the City. Prior to expiration of the term of this Contract, the City may, in its sole discretion, renew the Contract for an additional two (2) year period. The Mayor is authorized to administratively approve such a renewal.
6. **Indemnification/Hold Harmless.** Vendor shall defend, indemnify, and hold harmless the City, its officers, officials, employees, and agents from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages to the extent caused by the 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.

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. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO. ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

7. **Insurance.** The Vendor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with products and materials supplied by the City.

- a. No Limitation. Vendor's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Vendor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
  - b. Minimum Scope of Insurance. Vendor shall obtain insurance of the type described below:
    - i. Commercial General Liability ("CGL") insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. The City shall be named as an insured under the Vendor's Commercial General Liability Insurance policy using ISO Additional Insured-Vendors Endorsement CG 20 15 or a substitute endorsement providing equal coverage. CGL insurance shall be written with limits no less than \$1,000,000 each occurrence, \$1,000,000 general aggregate, and a \$2,000,000 products liability aggregate limit. Vendor's CGL insurance policies are to contain or be endorsed to contain that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Vendor's insurance and shall not contribute with it. The Vendor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
    - ii. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
  - c. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
  - d. Verification of Coverage. Vendor shall furnish the City with original certificates and a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Vendor before goods, materials, or supplies will be accepted by the City, which is attached and incorporated by this reference as Attachment D ("Vendor's Certificate(s) of Insurance"). Failure on the part of the Vendor to maintain insurance as required shall constitute a breach of contract. Vendor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Vendor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
8. **Contract Documents**. Together with this agreement, the additional contract documents consisting of the following: Attachment A (Scope of Work), Attachment B (2023 Price List), Attachment C (Accepted Bid), and Attachment D (Certificate(s) of Insurance), form the contract and are as fully a part of the contract as if hereto attached or herein repeated. Vendor hereby acknowledges receipt of a copy of such documents.
  9. **Entire Agreement**. This Contract is the entire agreement between the parties, and no alterations, change, or additions thereto shall be made, except in writing approved by both parties.
  10. **Termination**. This Agreement may be terminated by the City at any time for public convenience. Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of Vendor pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just

and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Vendor shall not be entitled to any reallocation of cost, profit or overhead. Vendor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

- 11. Discrimination and Compliance with Laws. Vendor 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.
- 12. Inspection. Even though the Vendor is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right inspection to secure the satisfactory completion thereof. The Vendor agrees to comply with all federal, state and municipal laws, rules and regulations that are now effective or become applicable within the terms of this Agreement to the Vendor's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
- 13. Effective Date. This Contract shall be effective as of the last date signed below.

In witness whereof, the parties have executed this agreement.

\_\_\_\_\_  
Rob Putaansuu, Mayor

Date \_\_\_\_\_

Attest:

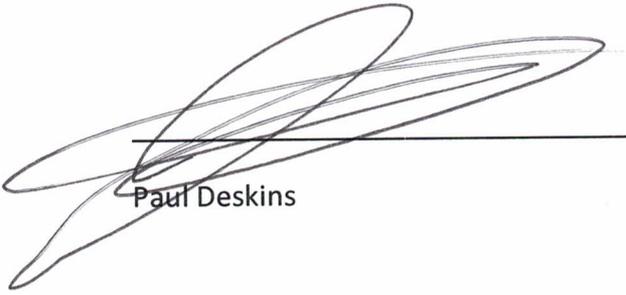
Approved As To Form:

\_\_\_\_\_  
Matt Brown, Chief of Police

\_\_\_\_\_  
Charlotte Archer, Attorney

Vendor:

By:



---

Paul Deskins

Date 01/18/23

---

President/CEO

---

Systems for Public Safety, Inc.

## EXHIBIT A - SCOPE OF WORK

1. The City of Port Orchard requires a Vendor to outfit new police, fire, and emergency vehicles as directed by the City. When the City has need to purchase a new police or emergency vehicle, the City expects the Vendor will assist City in ordering from the state's DES contracts, or other approved cooperative purchasing agreements, to ensure that the City is purchasing a vehicle that will satisfy the City's needs and specifications and that will work with appropriate equipment available from Vendor. Once the City has purchased the vehicle, the City will submit to Vendor a purchase order for outfitting that particular vehicle. Such outfitting will involve equipment, including, but not limited to, emergency lighting, sirens, electronics, radio communications, secured vaults, and prisoner transport equipment. Vendor will then purchase the equipment specified in the purchase order and install the specified equipment into the newly purchased vehicle. The City may also supply previously owned vehicle equipment, such as radios and computer equipment, to be installed by the Vendor.
2. This contract will include the outfitting of no less than nine (9) vehicles over the course of the contract period, with the potential for outfitting additional vehicles as necessary. A variety of vehicle types is expected, including, but not limited to, fully marked patrol and unmarked detective/command vehicles.
3. Currently, the City has nine (9) new vehicles on order that require outfitting. Attachment B contains the equipment package lists and pricing requests for the two (2) types of equipment packages necessary for those nine (9) vehicles. Subsequent outfitting orders during the contract term may be of a different configuration and Vendor pricing must be based upon the general pricing Vendor specifies in Attachment C.
4. All installs must be per City of Port Orchard's standards, including but not limited to:
  - a. All materials used in the installation shall be new (unless materials are specifically provided by the City) and shall be free of defects that would diminish the appearance of the equipment or render it structurally or operationally unsound.
  - b. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the equipment or parts in the proper location.
  - c. All wiring must be consistent with the wiring schematics provided by the Vendor.
  - d. All wire must be labeled every 1" for simpler diagnostics.
  - e. Must use harness wiring that can be used in multiple applications.
  - f. Harness must be transferrable into future replacement vehicles.
  - g. Wiring must be designed for severe under-the-hood temperatures (-20° to 257° F).
5. Factory Product Warranty. All factory warranties must remain in full effect as equipped throughout the factory warranty period and Vendor must ensure that the factory warranties will not be voided by any supplemental warranties and/or accessories.
6. Additional Services and Warranty. In addition to the purchase and installation of equipment, Vendor must provide:
  - a. All material and labor to perform service and maintenance on installed vehicle equipment on an as-needed basis;
  - b. Vendor warranty on workmanship and materials, in addition to factory product warranties;
  - c. Warranted services performed within 72 hours by Vendor when equipment is available; and,

- d. Transportation between Vendor's location and Port Orchard City Hall located at 216 Prospect St., Port Orchard, WA 98366.
7. Delivery. Completely outfitted vehicles must be operational and delivered by Vendor within a reasonable time from the date that requested equipment is available from the manufacturer. The City and Vendor will coordinate pickup and delivery of vehicles. Generally, vehicles will be delivered directly to Vendor from vehicle seller, and Vendor must travel to Port Orchard to deliver outfitted vehicles. When Vendor is required to travel for vehicle pickup or delivery, Vendor will be reimbursed at the Hourly Pickup/Delivery Labor Rate outlined in Attachment C.
  8. Acceptance
    - a. Upon a timely and properly scheduled delivery to the City from the Vendor, the City has up to three (3) business days to inspect a vehicle and accept or reject delivery.
    - b. The City will not accept vehicles until all items listed in the order and these specifications are met to the satisfaction of the City. This will require Vendor to ensure vehicles are delivered with the standard warranty identification cards or certificates and the owner's manuals. The City reserves the right to inspect and/or operate the vehicle prior to acceptance to ensure equipment and accessories meet the City's requirements and expectations.

**2023 PRICE LIST FOR OUTFITTING PACKAGE(S)**

Two (2) types of equipment packages are necessary for the nine (9) new vehicles that the City intends to order, five (5) in 2023 and four (4) in 2024. Vendor's pricing on these specific equipment packages shall be fixed for one year and, after that period, may increase no more than provided by the general pricing bid included in ATTACHMENT C, which will apply to all other vehicles during the contract term.

Where a brand name or part number is included below, a Vendor may propose a substitution of an equivalent product item. A Vendor proposing such a substitution has the responsibility to demonstrate to the City's satisfaction that a product is "equal" to that specified. The City has no obligation to accept proposed substitutions.

**PACKAGE 1: 2022 POLICE INTERCEPTOR SUV (PATROL)**

Part Description/Part Number	Quantity	Price per Unit	Total Cost
Legacy Duo Core Bundle	1	\$3,380.00	\$3,380.00
Legacy Duo WeCanX	1	\$0.00	\$0.00
WeCanX Knob/Slide Control Head	1	\$0.00	\$0.00
OBDII Canport Kit	1	\$0.00	\$0.00
Cencom CORE Siren Amplifier	1	\$0.00	\$0.00
Core Output Expansion Module	2	\$201.00	\$402.00
100W Siren Speaker, Whelen	1	\$195.75	\$195.75
Universal Siren Speaker Bracket	1	\$24.00	\$24.00
Flush Mount Light Head, Red/Blue	2	\$72.86	\$145.72

DIR, 12 LED, Hide-a-Blast, Twist Lock, B/W	3	\$88.83	\$266.49
DIR, 12 LED, Hide-a-Blast, Twist Lock, R/W	1	\$88.33	\$88.33
3" Round Compartment Light, Red/White	1	\$68.33	\$68.33
Map Light 18" Gooseneck LED Red/White/UV	1	\$81.43	\$81.43
Dome Light, 12 LED Red/White	1	\$99.95	\$99.95
PIU Mid-Height Angled Console	1	\$307.03	\$307.03
Havis Adjustable Arm Rest	1	\$59.07	\$59.07
11" Slide Out Locking Swing Arm/Low Profile Tilt	1	\$251.33	\$251.33
Self-Adjusting Double Cup Holder	1	\$46.87	\$46.87
4.8A USB Dual Port – Water Proof	1	\$54.64	\$54.64
Trio Lighted Push Bumper	1	\$887.75	\$887.75
Fender Protector Wraps Utility PB9	1	\$506.95	\$506.95
#10 VS C RP Coated Poly Partition Tall w/SCA 2020	1	\$832.21	\$832.21
Dual T-Rail Gun Mount SC5 lock	1	\$475.21	\$475.21
Steel Window Barrier	1	\$253.08	\$253.08
Int. Utility Cargo Window Barriers, set of 3	1	\$237.95	\$237.95

Full Hard Seat w/#12 Poly Partition 2020	1	\$1,212.21	\$1,212.21
EZ Lift Dual Drawer System – D2S-P1S simplex locks	1	\$2,998.01	\$2,998.01
Magnetic Mic Conversion Kit, Single Unit	2	\$40.00	\$40.00
Havis Mic Clip Bracket	1	\$16.35	\$16.35
Power Distribution Unit	1	\$499.00	\$499.00
Harness, Main Power	1	\$25.92	\$25.92
Harness, Front End	1	\$174.12	\$174.12
Harness, Control Power	1	\$160.34	\$160.34
Harness, Console Core	1	\$168.79	\$168.79
Harness, Partition	1	\$85.41	\$85.41
Harness, Hatch	1	\$53.70	\$53.70
Harness, Back End	1	\$239.51	\$239.51
2/C 20GA twisted Pair WC cable (per ft)	18	\$4.32	\$77.76
25ft CAT 6E Shielded Ethernet Network Booted Cable	1	\$14.95	\$14.95
6 in 1 Shark-fin black – FTD Ext. Cable	1	\$266.00	\$266.00
NMO Kit 17ft	1	\$18.50	\$18.50

Rain Cap, Black	1	\$8.75	\$8.75
Shop Supplies	1	\$25.00	\$25.00
Labor		\$4,950.00	\$4,950.00
<b>Total Cost, Package 1</b>			<b>\$19,738.91</b>

**PACKAGE 2: 2022 POLICE INTERCEPTOR SUV (DETECTIVE/COMMAND)**

Part Description/Part Number	Quantity	Price per Unit	Total Cost
Inner Edge FST/RST Core Bundle	1	\$2,922.86	\$2,922.86
Inner Edge FST WeCanX, Full Duo PIU	1	\$0.00	\$0.00
Rear Inner Edge WCX CORE DUO	1	\$0.00	\$0.00
WeCanX Knob/Slide Control Head	1	\$0.00	\$0.00
OBDII Canport Cable Kit Ford	1	\$0.00	\$0.00
Cencom CORE Siren Amplifier	1	\$0.00	\$0.00
Core Output Expansion Module	2	\$201.00	\$402.00
Code 3 Siren Speaker w/Universal Bracket	1	\$235.83	\$235.83

ION Slim LED DUO Red/White	1	\$144.99	\$144.99
ION Slim LED DUO Blue/White	1	\$144.99	\$144.99
Flush Mount Headlight, Red/Blue	2	\$72.86	\$145.72
DIR, 12 LED, Hide-a-Blast, Twist Lock, B/W	3	\$88.83	\$266.49
DIR, 12 LED, Hide-a-Blast, Twist Lock, R/W	1	\$88.83	\$88.33
Map Light 18" Gooseneck LED Red/White/UV	1	\$81.43	\$81.43
PIU Mid-Height Angled Console	1	\$307.03	\$307.03
Havis Adjustable Arm Rest	1	\$59.07	\$59.07
3" Accessory Pocket	1	\$36.72	\$36.72
Self-Adjusting Double Cup Holder	1	\$46.87	\$46.87
4.8A USB Dual Port – Water Proof	1	\$54.64	\$54.64
Magnetic Mic Conversion Kit, Single Unit	2	\$40.00	\$80.00
Havis Mic Clip Bracket	1	\$16.35	\$16.35
Int. Utility Cargo Window Barriers, set of 3	1	\$237.95	\$237.95
#12VS 2ND Coated Poly Partition	1	\$467.28	\$467.28
EZ Lift Dual Drawer System – D2S-P1S simplex locks	1	\$2,998.01	\$2,998.01

Cargo Command Module works w/EZ Lift Dual Drawer	1	\$395.88	\$395.88
Power Distribution Unit	1	\$499.00	\$499.00
Harness, Main Power	1	\$25.92	\$25.92
Harness, Front End	1	\$174.12	\$174.12
Harness, Console Power	1	\$160.34	\$160.34
Harness, Console Core	1	\$168.79	\$168.79
Harness, Partition	1	\$85.41	\$85.41
Harness, Hatch	1	\$53.70	\$53.70
Harness, Back End	1	\$239.51	\$239.51
2/C 20GA Twisted Pair WC cable (per ft)	18	\$4.32	\$77.76
25ft CAT 6E Shielded Ethernet Network Booted Cable	1	\$14.95	\$14.95
6 in 1 Shark-fin Black – FTD Ext. Cable	1	\$266.00	\$266.00
NMO Kit 17ft	1	\$18.50	\$18.50
Rain Cap, black	1	\$8.75	\$8.75
Full 360 degree tint 20%	1	\$300.00	\$300.00
Strip Tint 35%	1	\$55.00	\$55.00

Power Port w/Cap	3	\$14.61	\$43.83
Shop Supplies		\$25.00	\$25.00
Labor		\$4,500.00	\$4,500.00
<b>Total Cost, Package 2</b>			\$15,900.14

**ADDITIONAL PRICING INFORMATION**

For products and services not included in the specific packages price list detailed in Attachment B, additional pricing information on the following will apply to all vehicles outfitted during the contract period.

Item	Unit	Unit Price
Current Electrical/Mechanic Labor Rates	Hourly	\$90.00/hour
Anticipated annual license in Electrical/Mechanic Labor Rates	Percentage	10.00% increase
Pickup & Delivery Labor Rates	Hourly	\$25.00/hour
Anticipated annual increase in Pickup & Delivery Labor Rates	Percentage	5.00% increase
Equipment and Supply Costs	Cost, plus percent markup	25.00% markup



**City of Port Orchard**

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

**Agenda Staff Report**

Agenda Item No.: Consent Agenda 4F  
Subject: Approval of Amendments No. 2 to Contract  
Nos. 131-22 and 132-22 with Hillstrom  
Holdings for Commercial Office Space of  
600 Kitsap Street Units 101 and 201

Meeting Date: January 24, 2023  
Prepared by: Charlotte Archer  
City Attorney  
Atty Routing No.: 366922-0004 – Exec  
Atty Review Date: January 5, 2023

**Summary:** The City of Port Orchard staff require additional office space and to accommodate that need, on December 20, 2022, the City Council authorized the Mayor to lease space in the Greenwood Building located on 600 Kitsap Street Port Orchard. The leases are for the 1<sup>st</sup> and 2<sup>nd</sup> floor office space and include some four off street parking spaces for each floor leased. The leases are structured to be for 36 months (with two, three-year optional renewals) beginning January 1, 2023 at a monthly rate of \$1,700 for Unit 201 and \$1,900 for Unit 101 (\$3,600 for the two spaces combined). Due to a drafting error, the lease agreements do not reflect the negotiated 2% annual rent increase for the initial term (rather, the agreements call for a 2% annual rent increase for the renewal periods, if any are triggered by the City). These Amendments would add a 2% annual rent increase, beginning January 1, 2024, for the duration of the lease and any renewal periods. The estimated lease costs are included in the 2023-2024 Biennial Budget and expected to cost approximately \$94,540 over the two years.

**Recommendation:** Staff recommends approving the Mayor to sign the attached lease amendments.

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

**Motion for consideration:** “I move to authorize the Mayor to execute an amendment to the agreements with Hillstrom Holdings to lease commercial office space, as presented.”

**Fiscal Impact:** \$94,540 included in the 2023-2024 Biennial Budget

**Alternatives:** Do not approve and provide alternative guidance.

**Attachment:** Amendments (Unit 101 and Unit 201)  
Copies of Lease Agreements (Unit 101 and Unit 201)

**SECOND AMENDMENT TO  
COMMERCIAL LEASE AGREEMENT**

THIS SECOND AMENDMENT TO COMMERCIAL LEASE AGREEMENT (“**Amendment**”) is entered into and effective upon mutual execution (“**Effective Date**”) by and between Hillstrom Holdings, LLC, a Washington limited liability company (“**Landlord**”), and the City of Port Orchard, a Washington municipal corporation (“**Tenant**”). Landlord and Tenant may be referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

A. Landlord and Tenant entered into the certain Commercial Lease Agreement, dated December 28, 2022, including the First Amendment to Commercial Lease dated December 28, 2022 (together, the “**Lease**”), for lease of the Premises commonly known as Suite 101 (“**Premises**”) located at the property commonly known as the Greenwood Building, 600 Kitsap St. Port Orchard, WA 98366.

B. The Parties desire to acknowledge their intent to increase the base rental rate by 2% on an annual basis, beginning on January 1, 2024, and annually for the duration of the agreement.

C. Landlord and Tenant desire to amend the Lease upon the terms and conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, incorporating the foregoing Recitals herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Amendment.** Section V., Base Rent, of the Lease is hereby amended in part as follows: The net monthly payment shall be dollars (\$ 1,900), payable monthly with the first payment due upon the commencement of the Lease and each monthly installment payable thereafter on the 1<sup>st</sup> day of each month (“**Base Rent**”). Rent payment for any period during the term hereon, which is for less than 1 month shall be a pro-rata portion of the monthly rent. Beginning on January 1, 2024, the Base Rent shall increase by 2% annually on January 1<sup>st</sup> of each subsequent year of the initial term and any renewal period(s).

\*\*\*

2. **Counterparts.** This Amendment may be executed in counterparts and transmitted via facsimile or electronic mail, all of which taken together will constitute one and the same instrument, and any party executing this Amendment may do so by signing any such counterpart.

3. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law.

4. **Full Force and Effect.** Except as specifically amended herein, all of the terms, provisions, covenants and conditions of the Lease as previously amended shall remain unmodified and in full force and effect. This Amendment may not be amended or modified in any manner other than in a writing signed by the Parties hereto, or their respective successors or assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the date set out below.

(Landlord)  
Hillstrom Holdings, LLC,  
A Washington limited liability company

By: *Keith Hillstrom*

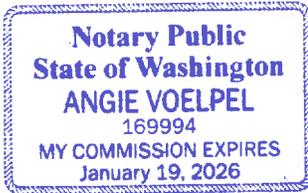
Keith Hillstrom  
Its Manager

Date: 1-10-23

LANDLORD ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Pierce )

This record was acknowledged before me on January 10<sup>th</sup>, 2023 (date), by Keith Hillstrom as Manager of Hillstrom Holdings, LLC.



*Angie Voelpel*  
Name:  
Notary Public in and for the State of Washington  
Residing at  
My appointment expires: 1/19/2026



**SECOND AMENDMENT TO  
COMMERCIAL LEASE AGREEMENT**

THIS SECOND AMENDMENT TO COMMERCIAL LEASE AGREEMENT (“**Amendment**”) is entered into and effective upon mutual execution (“**Effective Date**”) by and between Hillstrom Holdings, LLC, a Washington limited liability company (“**Landlord**”), and the City of Port Orchard, a Washington municipal corporation (“**Tenant**”). Landlord and Tenant may be referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

A. Landlord and Tenant entered into the certain Commercial Lease Agreement, dated December 28, 2022, including the First Amendment to Commercial Lease dated December 28, 2022 (together, the “**Lease**”), for lease of the Premises commonly known as Suite 201 (“**Premises**”) located at the property commonly known as the Greenwood Building, 600 Kitsap St. Port Orchard, WA 98366.

B. The Parties desire to acknowledge their intent to increase the base rental rate by 2% on an annual basis, beginning on January 1, 2024, and annually for the duration of the agreement.

C. Landlord and Tenant desire to amend the Lease upon the terms and conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, incorporating the foregoing Recitals herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Amendment.** Section V., Base Rent, of the Lease is hereby amended in part as follows: The net monthly payment shall be dollars (\$ 1,700), payable monthly with the first payment due upon the commencement of the Lease and each monthly installment payable thereafter on the 1<sup>st</sup> day of each month (“**Base Rent**”). Rent payment for any period during the term hereon, which is for less than 1 month shall be a pro-rata portion of the monthly rent. Beginning on January 1, 2024, the Base Rent shall increase by 2% annually on January 1<sup>st</sup> of each subsequent year of the initial term and any renewal period(s).

\*\*\*

2. **Counterparts.** This Amendment may be executed in counterparts and transmitted via facsimile or electronic mail, all of which taken together will constitute one and the same instrument, and any party executing this Amendment may do so by signing any such counterpart.

3. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law.

4. **Full Force and Effect.** Except as specifically amended herein, all of the terms, provisions, covenants and conditions of the Lease as previously amended shall remain unmodified and in full force and effect. This Amendment may not be amended or modified in any manner other than in a writing signed by the Parties hereto, or their respective successors or assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the date set out below.

(Landlord)  
Hillstrom Holdings, LLC,  
A Washington limited liability company

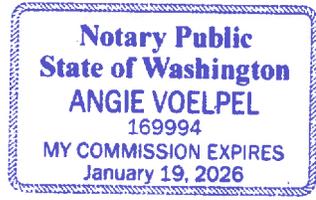
By: Keith Hillstrom  
Keith Hillstrom  
Its Manager

Date: 1-10-23

LANDLORD ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Pierce )

This record was acknowledged before me on January 10<sup>th</sup>, 2023 (date), by Keith Hillstrom as Manager of Hillstrom Holdings, LLC.



Angie Voelpel  
Name:  
Notary Public in and for the State of Washington  
Residing at  
My appointment expires: 1/19/2026

**(Tenant)**  
**City of Port Orchard,**  
**A Washington municipal corporation**

By: \_\_\_\_\_  
Rob Putaansuu,  
Its Major

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

Reviewed and approved:

\_\_\_\_\_  
Charlotte Archer  
City Attorney

**TENANT ACKNOWLEDGMENT**

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF KITSAP            )

This record was acknowledged before me on \_\_\_\_\_, 2023 (date), by Rob Putaansuu as Mayor of the City of Port Orchard.

\_\_\_\_\_  
Name:  
Notary Public in and for the State of Washington  
Residing at  
My appointment expires:

Contract No. 131-22

**FIRST AMENDMENT TO  
COMMERCIAL LEASE AGREEMENT**

THIS FIRST AMENDMENT TO COMMERCIAL LEASE AGREEMENT (“**Agreement**”) is entered into and effective as of 1-1-23, 2022 (“**Effective Date**”) by and between Hillstrom Holdings, LLC, a Washington limited liability company (“**Landlord**”), and the City of Port Orchard, a Washington municipal corporation (“**Tenant**”). Landlord and Tenant may be referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

A. Landlord and Tenant entered into the certain Commercial Lease Agreement, dated 12-28-22, 2022 (“**Lease**”) for lease the Premises commonly known as Suite 101 (“**Premises**”) located at the property commonly known as the Greenwood Building, 600 Kitsap St. Port Orchard, WA 98366 and legally described in Exhibit A (“**Property**”).

B. The Lease, for a 36-month term to begin on January 1, 2023, contains boilerplate language that does not match the intention of Landlord and Tenant with respect to the terms and conditions the Parties desire to enter into with respect to the Lease, and is missing a legal description and acknowledgments.

C. Landlord and Tenant desire to ratify and amend the Lease upon the terms and conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, incorporating the foregoing Recitals herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Base Rent and Operating Costs.** Notwithstanding any other provision to the contrary in the Lease, Landlord and Tenant agree that Tenant shall not be responsible for any Operating Costs, including, without limitation, real property tax assessments, Landlord’s property insurance, storm water, water, sanitary sewer, garbage disposal, janitorial services, restroom supplies, or maintenance, repairs or replacements of all or any portion of the Property or the Common Areas; provided, Tenant shall pay for its electricity costs for the Premises, which electricity costs are metered. Tenant shall pay for such electricity costs upon Landlord delivery of a copy of the applicable electricity bills to Tenant. *ELECTRICITY TO BE PUT INTO TENANT'S NAME* (KN)

2. **Landlord Entry.** Landlord acknowledges that Tenant intends to use the Premises for purposes that may involve confidential information, including criminal investigations and confidential information of the City of Port Orchard. Landlord agrees to exercise its rights to enter the Premises subject to the right of Tenant to maintain security and confidentiality of information and records contained in the Premises, including the right to restrict access during sensitive meetings and the right to restrict access to portions of the Premises containing confidential or sensitive information or records. (KN)

3. **Revision to Section XXIV.** The Parties agree to delete the following portion of Section XXIV of the Lease: “The Tenant also hereby covenants and agrees to indemnify and hold harmless the Landlord from any and all claims or liabilities which may arise from any latent defects in the subject Premises that the Landlord is not aware of at the signing of the lease or at any time during the lease term.”

4. **Parking.** Landlord agrees to provide four (4) off-street parking spaces to Tenant on an exclusive basis at no additional cost.

**5. Maintenance and Repairs.** Landlord shall maintain at its sole cost in good repair and replace, as needed, the Property, including, without limitation, the HVAC systems (including regular filter replacements and regular maintenance of thermostats, ductwork, and diffusers), mechanical systems, electrical systems, interior and exterior lighting systems, plumbing, flooring, windows, signs, elevators (if applicable), interior and exterior walls, all structural components of the building (including the roof, foundation, and siding), restrooms, lobbies, stairways, sidewalks, parking lot (including snow removal, cleaning, and restriping as required), wheel stops, storm water drainage, exterior paint, interior paint in the Common Areas, landscaping and other components of the Property. Landlord shall further continuously satisfy all governmental requirements generally applicable to similar office buildings, including, without limitation, compliance with fire codes, building codes, energy codes, indoor air quality, and Americans with Disabilities Act barrier-free restrooms and access.

**6. Withholding Rent Payments.** In the event Landlord fails to promptly maintain, repair, or improve the Premises or the Property as set forth herein, Tenant shall have the right to withhold 50% of the Base Rent payments without late fees or default interest until such time as Landlord satisfies such maintenance, repair, or improvement obligations.

**7. Compliance with Law.** Landlord shall be responsible for complying with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101-12213) and the Washington State Law Against Discrimination, Chapter 49.60 RCW, as well as regulations adopted thereunder, with respect to the Property and the Premises.

**8. Prevailing Wage.** Landlord agrees to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this Lease when required by state law, and to comply with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries. The rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where this Lease will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this Lease as though fully set forth herein.

**9. Hazardous Substances.** The term "Hazardous Substances" as used in this Agreement shall mean pollutants, contaminants, toxic wastes, or any other substances, the removal of which is required or the use of which is restricted, regulated, prohibited or penalized by any "Environmental Law." The term "Environmental Law" or "Environmental Laws" shall mean any federal, state or local law or ordinance relating to pollution or protection of the environment or public health. Landlord represents and warrants to Tenant that the Property does not contain asbestos or other Hazardous Substances of any kind, except, in the case of Hazardous Substances only and not asbestos, commercially reasonable quantities for construction purposes and cleaning agents and other substances normally used in the construction, operation and maintenance of office buildings and not prohibited by applicable law, all of which shall be stored, used and disposed of at Landlord's cost and without reimbursement from Tenant in accordance with all applicable local, state and federal laws. Landlord agrees not to use, dispose, store or generate any asbestos or Hazardous Substances in violation of any applicable law, rule or regulation in the Property. In the event such laws, rules or regulations require Landlord to remove or otherwise remedy the existence of any asbestos or Hazardous Substances discovered on the Property, Landlord agrees to promptly remove or remedy the violation. Landlord agrees to indemnify and hold Tenant harmless against any losses, damages, costs, liabilities and claims suffered by Tenant in connection with a breach by Landlord of its obligations set forth in this Section 9, except for such losses, damages, costs, liabilities and claims caused by Tenant's negligence or intentional misconduct.

**10. ANTI-TERRORISM AND MONEY LAUNDERING REPRESENTATION AND INDEMNIFICATION.** Landlord certifies that: (i) neither it nor its managers, members or controlling

owners are acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order, the United States Department of Justice, or the United States Treasury Department as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control ("SDN"); (ii) neither it nor its managers, members, or controlling owners are engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and (iii) neither it nor its managers, members, or controlling owners are in violation of Presidential Executive Order 13224, the USA Patriot Act, the Bank Secrecy Act, the Money Laundering Control Act or any regulations promulgated pursuant thereto. Landlord hereby agrees to defend, indemnify, and hold harmless Tenant from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing certification. Should Landlord, during the term of this Lease, be designated an SDN, Tenant may, at its sole option, terminate this Lease.

## **11. General Provisions.**

**11.1 Binding Effect.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by each of the Parties and their permitted successors and assigns, and shall inure to the further benefit of, and be enforceable by, any Tenant or transferee permitted by the Lease.

**11.2 Governing Law.** This Agreement shall be interpreted, governed, and construed under the laws of the State of Washington.

**11.3 Amendment.** Any amendments or waivers to this Agreement must be in writing and signed by each of the Parties.

**11.4 Dispute Costs.** In the event of any conflict, claim or dispute between the Parties hereto and arising out of or relating to the subject matter of this Agreement, whether or not such conflict, claim or dispute has its basis in law or in equity, the prevailing Party shall be entitled to receive from the non-prevailing Party(ies) all reasonable costs and expenses of every sort whatsoever including, but not limited to, arbitrators fees, mediation fees, deposition costs, expert witness fees, accounting expenses relating thereto, and actual attorneys fees incurred or expended whether or not arbitration or court proceedings are initiated, and including all such costs or expenses incurred or expended in arbitration, in trial, on appeal or in any bankruptcy or receivership proceeding.

**11.5 Broker.** Each Party represents that it has worked with no broker with respect to the Lease or this Agreement. Tenant and Landlord (each an "**indemnitor**") agree to indemnify and hold harmless the other Parties hereto, and their respective affiliates, successors and assigns, from and against claims, actions, judgments, liabilities, payments, losses, damages and expenses, including reasonable attorney's fees and court costs, suffered or incurred by reason of the indemnitor's breach of its respective representation in this Section.

**11.6 Legal Representation.** Each Party acknowledges that it has been represented, or has had an opportunity to obtain the representation of counsel with respect to this Agreement. Each Party represents to the others that it has read and understood the terms hereof and the consequences of executing the Lease and this Agreement. The Parties agree that the provisions of this Agreement shall not be construed against the Party who drafted the same.

**11.7 Authority.** Each person signing this Agreement on behalf of a Party represents and warrants that he or she is authorized to execute and deliver this Agreement on behalf of such Party, and that upon such person's execution hereof, this Agreement shall become binding upon such Party.

**11.8 Defined Terms.** Terms not otherwise defined herein shall have the meanings set forth in the Lease.

**11.9 Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law.

**11.10 Full Force and Effect.** Except as specifically amended herein, all of the terms, provisions, covenants and conditions of the Lease shall remain unmodified and in full force and effect. This Agreement shall supersede all prior agreements and understanding of the Parties hereto with respect to the subject matter hereof. In the event of any inconsistencies between any part of this Agreement and the Lease, the provisions of this Agreement shall prevail. This Agreement may not be amended or modified in any manner other than in a writing signed by the Parties hereto, or their respective successors or assigns.

*(Remainder of Page Intentionally Blank)*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Effective Date.

(Landlord)  
Hillstrom Holdings, LLC,  
A Washington limited liability company

By: Keith Hillstrom  
Keith Hillstrom  
Its Manager

LANDLORD ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Kitsap )

This record was acknowledged before me on 12.14.2022, 2022 (date), by Keith Hillstrom as Manager of Hillstrom Holdings, LLC.



Kim E Lundquist  
Name: KIM E Lundquist  
Notary Public in and for the State of Washington  
Residing at Kitsap County  
My appointment expires: 7.1.2026



**Exhibit A  
Legal Description**

LOTS 1, 4, AND 5, BLOCK 7, S.M. STEVENS' TOWN PLAT OF SIDNEY; ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS AT PAGE 1, RECORDS OF KITSAP COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF UNNAMED ALLEY AS CONVEYED BY THE CITY OF PORT ORCHARD UNDER KITSAP COUNTY RECORDING NO. 3221209;

TOGETHER WITH THAT PORTION OF UNNAMED ALLEY AS CONVEYED BY HAZELLE M. SIMMONS UNDER KITSAP COUNTY RECORDING NO. 3221211.



**HILLSTROM HOLDINGS LLC**

11021 CRAMER RD. NW  
GIG HARBOR, WA 98329

**COMMERCIAL LEASE AGREEMENT**

Contract No. 131-22

**I. The Parties.** This Commercial Lease Agreement (“Agreement”) made this 28 day of December, 2022 by and between:

**Landlord.** Hillstrom Holdings [Landlord’s Name], of 11021 CRAMER RD NW - GIG HARBOR [Landlord’s Street Address], State of WASHINGTON, (“Landlord”)

AND

**Tenant.** CITY OF PORT ORCHARD [Tenant’s Name], of 216 PROSPECT STREET, PORT ORCHARD [Tenant’s Street Address], State of WASHINGTON, (“Tenant”). Collectively, the Landlord and Tenant shall be referred to herein as the “Parties”.

The Parties agree as follows:

**II. DESCRIPTION OF LEASED PREMISES.** The Landlord agrees to lease to the Tenant the following described \_\_\_\_\_ square feet (SF) of commercial office space located at 600 KITSAP ST, PORT ORCHARD, WA.

Additional Description: Unit Number Suite #101

Hereinafter known as the “Premises”.

**III. USE OF LEASED PREMISES.** The Landlord is leasing the Premises to the Tenant and the Tenant is hereby agreeing to lease the Premises for the following use and purpose: General office and administrative use.

Any change in use or purpose the Premises other than as described above shall be upon prior written consent of Landlord only.

**IV. TERM OF LEASE.** The term of this Lease shall be for a period of 3 year(s) 0 month(s) commencing on the 1 day of JANUARY, 2023 and expiring at Midnight on the 31 day of DECEMBER, 2025. (“Initial Term”)

**V. BASE RENT.** The net monthly payment shall be \_\_\_\_\_ dollars (\$ 1,900.00 ), payable monthly with the first payment due upon the commencement of the Lease and each monthly installment payable thereafter on the 1st day of each month (“Base Rent”). Rent payment for any period during the term hereon, which is for less than 1 month shall be a pro-rata portion of the monthly rent.

- a. **Payment of Rent.** Tenant shall pay Landlord without notice, demand, deduction or offset, in lawful money of the United States, the monthly Base Rent stated in this section in advance on or before the first day of each month during the Term beginning on the Commencement Date, and shall also pay any other additional payments, including Operating Costs, due to Landlord ("Additional Rent and together with Base Rent, "Rent") when required under this Lease. All payments due to Landlord under this Lease, including late fees and interest, shall also constitute Additional Rent, and upon Tenant's failure to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay Rent.
  
- b. **Late Charges; Default Interest.** If any sums payable by Tenant to Landlord under this Lease are not received within five (5) business days after their due date, Tenant shall pay Landlord an amount equal to the greater of \$100 or 5% of the delinquent amount for the cost of collecting and handling such late payment in addition to the amount due and as Additional Rent. All delinquent sums payable by Tenant to Landlord and not paid within five (5) business days after their due date shall, at Landlord's option, bear interest at the rate of 15% per annum, or the highest rate of interest allowable by law, whichever is less (the "Default Rate"). Interest on all delinquent amounts shall be calculated from the original due date to the date of payment.
  
- c. **Less Than Full Payment.** Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims. Any portion that remains to be paid by Tenant shall be subject to the late charges and default interest provisions of this Section.

**VI. PREPAID RENT.** Upon execution of this lease, Tenant shall deliver to Landlord the sum of \$ 0 as prepaid Rent, to be applied to Base Rent due for the first month of the lease.

**VII. SECURITY DEPOSIT.** Upon execution of this lease, Tenant shall deliver to Landlord a sum of \$ 1,800.00 to be held as a security deposit pursuant to Section [] below. The security deposit shall be in the form of cash, check, or wire transfer.

**VIII. OPTION TO RENEW.** Tenant may have the right to renew the Lease with a total of 2 renewal period(s) with each term being 3 year(s) 0 month(s) which may be exercised by giving written notice to Landlord no less than 60 days prior to the expiration of the Lease or renewal period.

Rent for each option period shall: (check one)

- Increase as calculated by multiplying the Base Rent by the annual change in the Consumer Price Index (CPI) published by the Bureau of Labor Statistics by the most recent publication to the option period start date.

- Increase by 2 % Annually ON 1-1- OF EACH YEAR

- Increase by \_\_\_\_\_ dollars (\$ \_\_\_\_\_)

## IX. OPERATING COSTS

- a. **Definition.** As used herein, "Operating Costs" shall mean all costs of operating, maintaining and repairing the Premises, the Building, and the Property, determined in accordance with generally accepted accounting principles, and including without limitation the following: all taxes and assessments (including, but not limited to, real and personal property taxes and assessments, local improvement district assessments and other special purpose assessments, and taxes on rent or gross receipts); insurance premiums paid by Landlord and (to the extent used) deductibles for insurance applicable to the Property; water, sewer and all other utility charges (other than utilities separately metered and paid directly by Tenant or other tenants); janitorial and all other cleaning services; refuse and trash removal; supplies, materials, tools, and equipment used in the operation, repair, and maintenance of the Property; refurbishing and repainting; carpet replacement; to the extent serving areas other than just the Premises, heating, ventilation and air conditioning ("HVAC") service, repair and replacement when necessary; elevator service and repair and replacement of elevators when necessary; pest control; lighting systems, fire detection and security services; landscape maintenance; management (fees and/or personnel costs); parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; repair, maintenance, and, where reasonably required, replacement of signage; amortization of capital improvements as Landlord may in the future install to comply with governmental regulations and rules or undertaken in good faith with a reasonable expectation of reducing Operating Costs (the useful life of which shall be a reasonable period of time as determined by Landlord); costs of legal services (except those incurred directly relating to a particular occupant of the Building); and accounting services, labor, supplies, materials and tools. Landlord and Tenant agree that if the Building is not 90% occupied during any calendar year (including the Base Year, if applicable), on a monthly average, then those portions of the Operating Costs that are driven by occupancy rates, as reasonably determined by Landlord, shall be increased to reflect the Operating Costs of the Building as though it were 90% occupied and Tenant's Pro Rata Share of Operating Costs shall be based upon Operating Costs as so adjusted. Operating Costs shall not include: Landlord's income tax or general corporate overhead; depreciation or amortization on the Building or equipment therein; loan or ground lease payments; real estate broker's commissions; capital improvements to or major repairs of the Building shell (i.e., the Building structure, exterior walls, roof, and structural floors and foundations), except to the extent expressly permitted above; any costs regarding the operation, maintenance and repair of the Premises, the Building, or the Property paid directly by Tenant or other tenants in the Building or otherwise reimbursed to Landlord, or other cost for which another party is required to pay Landlord (except as part of operating cost recoveries under other tenant leases) so that Landlord shall not recover any item of cost more than once. If Tenant is renting a pad separate from any other structures on the Property for which Landlord separately furnishes the services described in this paragraph, then the term "Operating Costs" shall not include those costs of operating, repairing, and maintaining the enclosed mall which can be separately allocated to the tenants of the other structures. Operating Costs which cannot be separately allocated to the tenants of other structures may include but are not limited to: insurance premiums; taxes and assessments; management (fees and/or personnel costs); exterior lighting; parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; and costs of legal services and accounting services.

- b. **Type of Payment.** As Additional Rent, Tenant shall pay to Landlord on the first day of each month with payment of Base Rent one-twelfth of Tenant's Pro Rata Share of Operating Costs, which amount is determined in the manner set forth in Section IX:(c) below.
- c. **Method of Payment.** Tenant shall pay to Landlord Operating Costs pursuant to the following procedure:
- i. Landlord shall provide to Tenant, on or before the Commencement Date, a good faith estimate of annual Operating Costs for the calendar year in which the Commencement Date occurs. Landlord shall also provide to Tenant, as soon as possible following the first day of each succeeding calendar year, a good faith estimate of Tenant's annual Pro Rata Share of Operating Costs for the then-current year.
  - ii. Each estimate of Tenant's annual Pro Rata Share of Operating Costs determined by Landlord, as described above, shall be divided into 12 equal monthly installments. Tenant shall pay to Landlord such monthly installment of Operating Costs with each monthly payment of Base Rent. In the event the estimated amount of Tenant's Pro Rata Share of Operating Costs has not yet been determined for any calendar year, Tenant shall pay the monthly installment in the estimated amount determined for the preceding calendar year until the estimate for the current calendar year has been provided to Tenant. When the estimate for the current calendar year is received, Tenant shall then pay any shortfall or receive a credit for any surplus for the preceding months of the current calendar year and shall, thereafter, make the monthly installment payments in accordance with the current estimate.
  - iii. As soon as reasonably possible following the end of each calendar year during the Term, Landlord shall provide to Tenant a statement (the "Operating Costs Statement") setting forth the amount of Operating Costs actually incurred and the amount of Tenant's Pro Rata Share of Operating Costs actually payable by Tenant with respect to such calendar year. In the event the amount of Tenant's Pro Rata Share of Operating Costs exceeds the sum of the monthly installments actually paid by Tenant for such calendar year, Tenant shall pay to Landlord the difference within 30 days following receipt of the Operating Costs Statement. In the event the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Operating Costs actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Operating Costs payable by Tenant pursuant to this Section, or if the Term has expired, the excess shall be refunded to Tenant within 30 days after delivery of such Operating Costs Statement.
  - iv. Should Tenant dispute any amount shown on the Operating Costs Statement, Tenant may audit Landlord's books and records for the calendar year covered by such Operating Costs Statement upon written notice to Landlord given within 90 days after Tenant's receipt of such Operating Costs Statement. If Tenant fails to provide notice of dispute within such 90- day period, the Operating Costs Statement shall be final and conclusive. Any audit conducted by Tenant shall be completed within 60 days after Tenant's request therefor. If Landlord concurs with the audit results, and (x) if the audit reveals that Tenant's Pro Rata Share of Operating Costs exceeds the sum of the monthly installments actually paid by Tenant for such calendar year, Tenant shall pay to Landlord the difference within 30 days following completion of the audit; or (y) If the audit reveals that the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Operating Costs

actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Operating Costs payable by Tenant pursuant to this Section, or if the term has expired, the excess shall be refunded to Tenant within 30 days after completion of the audit. If Landlord does not concur with the results of Tenant's audit, the parties shall within twenty (20) days thereafter agree on a neutral auditor who shall complete an audit within thirty (30) days after selection, and the decision of the neutral auditor shall be binding on the parties. The parties shall share evenly in the costs of any such neutral auditor. Landlord and Tenant shall cooperate as may be reasonably necessary in order to facilitate the timely completion of any audit. Nothing in this Section shall in any manner modify Tenant's obligations to make payments as and when provided under this Lease.

#### X. EXPENSES.

**TRIPLE NET (NNN).** Tenant's Initials \_\_\_\_\_ Landlord's Initials KH DOES NOT APPLY RD

It is the intention of the Parties that this Lease shall be considered a "Triple Net Lease".

- a. Operating Expenses. The Landlord shall have no obligation to provide any services, perform any acts, or pay expenses, charges, obligations or costs of any kind whatsoever with respect to the Premises. The Tenant hereby agrees to pay 0 Percent (  %) of any and all Operating Expenses as hereafter defined for the entire term of the Lease and any extensions thereof in accordance with specific provisions hereinafter set forth (Tenant's Pro Rata Share). The Pro Rata Share is based on the ratio of the rentable area of the Premises states in Section II. Tenant's Base Rent and Pro Rata Share shall be proportionally adjusted in the event of any adjustment to the Premises, Building's, or Property's rentable floor area. The term "Operating Expenses" shall include all costs to the Landlord of operating and maintaining the Premises as noted in Section IX.
- b. Taxes. Tenant shall pay all taxes, assessments, liens and license fees ("Taxes") levied, assessed or imposed by any authority having the direct or indirect power to tax or assess any such liens, related to or required by Tenant's use of the Premises as well as all Taxes on Tenant's personal property located on the Premises. Landlord shall pay all taxes and assessments with respect to the Property, all of which shall be included in Operating Costs and subject to partial reimbursement by tenant as set forth in Section IX.
- c. Insurance.
  - a. **Tenant's Liability Insurance.** During the Term, Tenant shall pay for and maintain commercial general liability insurance with broad form property damage and contractual liability endorsements. This policy shall (i) contain an endorsement identifying Landlord, its property manager (if any), and other parties designated by Landlord, as additional insureds using an endorsement form acceptable to Landlord, (ii) insure Tenant's activities and those of Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees with respect to the Premises against loss, damage or liability for personal injury or bodily injury (including death) or loss or damage to property with a combined single limit of not less than \$2,000,000 per occurrence, and a deductible of not more than \$10,000, and (iii) contain a provision requiring the insurer to deliver or mail written notice of cancellation to the named insureds at least (45) days before the effective date of the cancellation. Tenant's insurance will be primary and noncontributory with any

liability insurance carried by Landlord. Landlord may also require Tenant to obtain and maintain at Tenant's sole cost business income coverage for at least six (6) months, business auto liability coverage, and, if applicable to Tenant's Permitted Use, liquor liability insurance and/or warehouseman's coverage

- b. **Tenant's Property Insurance.** During the Term, Tenant shall pay for and maintain special form clauses of loss coverage property insurance (with coverage for earthquake if required by Landlord's lender and, if the Premises are situated in a flood plain, flood damage) for all of Tenant's personal property, fixtures and equipment, Tenant's Work, and Alterations, in the amount of their full replacement value, with a deductible of not more than \$10,000.
- c. **Miscellaneous.** Tenant's insurance required under this Section shall be with companies rated A-/VII or better in Best's Insurance Guide, and which are admitted in the State of Washington. No insurance policy shall be cancelled or reduced in coverage and each such policy shall provide that it is not subject to cancellation or a reduction in coverage except after 30 days prior written notice to Landlord. Tenant shall deliver to Landlord, prior to Tenant's first taking possession of or occupying the Premises, and from time to time thereafter, copies of the insurance policies or evidence of insurance and copies of endorsements required by this Section. In no event shall the limits of such policies be considered as limiting the liability of Tenant under this Lease. If Tenant fails to acquire or maintain any insurance or provide any policy or evidence of insurance required by this Section, and such failure continues for three (3) days after notice from Landlord, Landlord may, but shall not be required to, obtain such insurance for Landlord's benefit and Tenant shall reimburse Landlord for the costs of such insurance upon demand. Such amounts shall be Additional Rent payable by Tenant hereunder and in the event of non-payment thereof, Landlord shall have the same rights and remedies with respect to such non-payment as it has with respect to any other non-payment of Rent hereunder.
- d. **Landlord's Insurance.** Landlord shall carry special form clauses of loss coverage property insurance of the Building shell and core in the amount of their full replacement value, liability insurance with respect to the Common Areas, and such other insurance of such types and amounts as Landlord, in its discretion, shall deem reasonably appropriate. The cost of any such insurance shall be included in Operating Costs, and if such insurance is provided by a "blanket policy" insuring other parties or locations in addition to the Building, then only the portion of the premiums allocable to the Building and Property shall be included in Operating Costs.
- e. **Waiver of Subrogation.** Notwithstanding any other provision of this Lease to the contrary, Landlord and Tenant hereby release each other and any other tenant, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage arising from any cause covered by insurance required to be carried or otherwise carried by each of them. Each party shall provide notice to the insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective insurance carriers to waive all rights of subrogation against the other. This waiver shall not apply to the extent of the deductible amounts to any such policies or to the extent of liabilities exceeding the limits of such policies.

**XI. UTILITIES AND SERVICES.** Landlord shall provide the following services for the Premises (7) days per week, (24) hours per day, the cost of which shall be included in the Operating Costs to the extent not separately metered to and exclusively serving the Premises (with the costs of such separately metered services to be directly billed to and paid by Tenant): water; electricity; sewer; trash and/or recycling removal; and HVAC. Notwithstanding the foregoing, if Tenant's use of the Premises incurs utility service charges which are above those usual and customary for the Permitted Use, Landlord reserves the right to require Tenant to pay a reasonable additional charge for such usage.

Tenant shall furnish all other utilities (including, but not limited to, telephone, internet, and cable service if available) and other services which Tenant requires with respect to the Premises, and shall pay, at Tenant's sole expense, the cost of all utilities separately metered to the Premises, and of all other utilities and other services which Tenant requires with respect to the Premises, except those to be provided by Landlord and included in Operating Expenses as described above. Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of utilities due to any cause whatsoever, and Rent shall not abate as a result thereof.

**XII. LEASEHOLD IMPROVEMENTS.** The Tenant agrees that no leasehold improvements, alterations or changes of any nature, (except for those listed on any attached addenda) shall be made to the leasehold premises or the exterior of the building without first obtaining the consent of the Landlord in writing, which consent shall not be unreasonably withheld, and thereafter, any and all leasehold improvements made to the Premises which become affixed or attached to the leasehold Premises shall remain the property of the Landlord at the expiration or termination of this Lease Agreement. Furthermore, any leasehold improvements shall be made only in accordance with applicable federal, state or local codes, ordinances or regulations, having due regard for the type of construction of the building housing the subject leasehold Premises. If the Tenant makes any improvements to the Premises the Tenant shall be responsible for payment, except the following

\_\_\_\_\_.

Nothing in the Lease shall be construed to authorize the Tenant or any other person acting for the Tenant to encumber the rents of the Premises or the interest of the Tenant in the Premises or any person under and through whom the Tenant has acquired its interest in the Premises with a mechanic's lien or any other type of encumbrance. Under no circumstance shall the Tenant be construed to be the agent, employee or representative of Landlord. In the event a lien is placed against the Premises, through actions of the Tenant, Tenant will promptly pay the same or bond against the same and take steps immediately to have such lien removed. If the Tenant fails to have the Lien removed, the Landlord shall take steps to remove the lien and the Tenant shall pay Landlord for all expenses related to the Lien and removal thereof and shall be in default of this Lease.

Leasehold improvements shall include (i) any of Tenant's Work approved by Landlord; (ii) Tenant's Signage (as further provided in Section []), or (iii) the installation of shelves, movable partitions, Tenant's equipment and trade fixtures that may be installed and removed without damaging existing improvements or the structural integrity of the Premises, the Building, or the Property. Tenant shall perform all work at Tenant's expense and in compliance with all applicable laws and shall complete all Alterations in accordance with plans and specifications approved by Landlord, using contractors approved by Landlord, and in a manner so as not to unreasonably interfere with other tenants. Tenant shall pay when due, or furnish a bond for payment of (as set forth in Section 20), all claims for labor or materials furnished to or for Tenant at, or for use in, the Premises, which claims are or

may be secured by any mechanics' or materialmens' liens against the Premises or the Property or any interest therein.

### **XIII. Common Areas.**

- a. Definition.** The term "Common Areas" means all areas, facilities and building systems that are provided and designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant and other tenants of the Property and which are not leased or held for the exclusive use of a particular tenant. To the extent that such areas and facilities exist within the Property, Common Areas include hallways, entryways, stairs, elevators, driveways, walkways, terraces, docks, loading areas, restrooms, trash facilities, parking areas and garages, roadways, pedestrian sidewalks, landscaped areas, security areas, lobby or mall areas, common HVAC systems, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Tenant shall comply with, and shall use commercially reasonable efforts to cause its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees to comply with, reasonable rules and regulations concerning the use of the Common Areas adopted by Landlord from time to time, and shall not interfere with the use of Common Areas by others. Without advance notice to Tenant and without any liability to Tenant, Landlord may change the size, use, or nature of any Common Areas, erect improvements on the Common Areas or convert any portion of the Common Areas to the exclusive use of Landlord or selected tenants, so long as Tenant is not thereby deprived of the substantial benefit of the Premises. Landlord reserves the use of exterior walls and the roof of the Building and other improvements at the Property, and the right to install, maintain, use, repair and replace pipes, ducts, conduits, and wires leading through the Premises in areas which will not materially interfere with Tenant's use thereof.
- b. Use of the Common Areas.** Tenant shall have the non-exclusive right, in common with such other tenants of the Property to whom Landlord has granted or may grant such rights, to use the Common Areas.
- c. Maintenance of the Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair. This maintenance cost shall be includable in Operating Costs pursuant to Section IX. In performing such maintenance, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises.

**XIV. LICENSES AND PERMITS.** A copy of any and all local, state or federal permits acquired by the Tenant which are required for the use of the Premises shall be kept on site at all times and shall be readily accessible and produced to the Landlord and/or their agents or any local, state, or federal officials upon demand.

**XV. REPAIRS AND MAINTENANCE; SURRENDER.** Tenant shall, at its sole cost and expense, maintain the entire Premises in good condition and promptly make all non-structural repairs and replacements necessary to keep the Premises safe and in good condition, including all HVAC components and other utilities and systems to the extent exclusively serving the Premises. Landlord shall maintain and repair the Building structure, foundation, subfloor, exterior walls, roof structure and surface, and HVAC components and other utilities and systems to the extent serving more than just the Premises, and the Common Areas. the costs of which shall be included as Operating Costs unless otherwise expressly excluded pursuant to Section 8(a). Tenant shall not damage any demising wall or disturb the structural integrity of the Premises, the Building, or the Property and shall promptly repair any damage or injury done to any such demising walls or structural elements caused by Tenant or its employees, officers, agents, servants, contractors,

customers, clients, visitors, guests, or other licensees or invitees. Notwithstanding anything in this Section to the contrary, Tenant shall not be responsible for any repairs to the Premises made necessary by the negligence or willful misconduct of Landlord or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees therein. If Tenant fails to perform Tenant's obligations under this Section, Landlord may at Landlord's option enter upon the Premises after 10 days' prior notice to Tenant and put the same in good order, condition and repair and the cost thereof, together with interest thereon at the Default Rate set forth in Section 4, shall be due and payable as Additional Rent to Landlord together with Tenant's next installment of Base Rent. Upon expiration or earlier termination of the Term, Tenant shall promptly and peacefully surrender the Premises to Landlord, together with all keys, in materially as good condition as when received by Tenant from Landlord or as thereafter improved (but subject to any obligations to remove any Tenant's Work and Alterations and/or restore the same as further provided in this Lease), reasonable wear and tear and insured casualty excepted.

**XVI. ACCESS AND RIGHT OF ENTRY.** After 24 hours' notice from Landlord (except in cases of emergency, when no notice shall be required), Tenant shall permit Landlord and its agents, employees and contractors to enter the Premises at all reasonable times to make repairs, inspections, alterations or improvements, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease. After reasonable notice to Tenant, Landlord shall have the right to enter the Premises for the purpose of (a) showing the Premises to prospective purchasers or lenders at any time, and to prospective tenants within 180 days prior to the expiration or sooner termination of the Term; and (b) posting "for lease" signs within 180 days prior to the expiration or sooner termination of the Term.

**XVII. SIGNAGE.** Tenant shall obtain Landlord's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Tenant shall install and maintain any approved signage ("Signage") at Tenant's sole expense and in compliance with all applicable laws. Any Signage installed by Tenant shall be removed from the Premises, Building and Property at Tenant's expense upon the expiration or earlier termination of the Term. Tenant shall not damage or deface the Premises in installing or removing Signage and shall repair any injury or damage to the Premises caused by such installation or removal.

**XVIII. INSURANCE.** In the event the Tenant shall fail to obtain insurance required hereunder and fails to maintain the same in force continuously during the term, Landlord may, but shall not be required to, obtain the same and charge the Tenant for same as additional rent. Furthermore, Tenant agrees not to keep upon the Premises any articles or goods which may be prohibited by the standard form of fire insurance policy, and in the event the insurance rates applicable to fire and extended coverage covering the Premises shall be increased by reason of any use of the Premises made by Tenant, then Tenant shall pay to Landlord, upon demand, such increase in insurance premium as shall be caused by said use or Tenant's proportionate share of any such increase.

**XIX. SUBLET/ASSIGNMENT.** Tenant shall not assign, sublet, mortgage, encumber or otherwise transfer any interest in this Lease (collectively referred to as a "Transfer") or any part of the Premises, without first obtaining Landlord's written consent, which shall not be unreasonably withheld, conditioned, or delayed. No Transfer shall relieve Tenant of any liability under this Lease notwithstanding Landlord's consent to such Transfer. Consent to any Transfer shall not operate as a waiver of the necessity for Landlord's consent to any subsequent Transfer. In connection with each request for consent to a Transfer, Tenant shall pay the reasonable cost of processing the same, including attorneys' fees, upon demand of Landlord, up to a maximum of \$1,250.

Any transfer of this Lease by merger, consolidation, redemption or liquidation of Tenant, or any change in the ownership of, or power to vote, which singularly or collectively represents a majority of the beneficial interest in Tenant, shall constitute a Transfer under this Section.

As a condition to Landlord's approval, if given, any potential assignee or sublessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor for the payment of Rent and performance of all obligations of Tenant under this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases and assumption agreements and related documents.

**XX. LIENS.** Tenant is not authorized to subject the Landlord's assets to any liens or claims of lien. Tenant shall keep the Property and Premises free from any liens created by or through Tenant. Tenant shall indemnify, defend, and hold Landlord and the Property and Premises harmless from liability for any such liens including, without limitation, liens arising from any of Tenant's Work or Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall have the right to contest the correctness or validity of the lien, provided, however, within 10 days after Landlord's demand, at Tenant's expense, Tenant shall either remove the lien, or shall procure and record a lien release bond issued by a surety satisfactory to Landlord in form and amount sufficient to satisfy statutory requirements for satisfaction and release of the subject lien(s) from the Premises and Property. Tenant shall indemnify landlord, the Premises, and the Property from and against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.

#### **XXI. DAMAGE OR CONDEMNATION.**

- a. **Damage and Repair.** If the Premises or the portion of the Building or the Property necessary for Tenant's occupancy are partially damaged by fire or other insured casualty but not rendered untenable, then Landlord shall diligently restore the Premises and the portion of the Property necessary for Tenant's occupancy to the extent required below and this lease shall not terminate. Tenant may, however, terminate the Lease if Landlord is unable to restore the Premises within six (6) months of the casualty event by giving 20 days' written notice of termination.

The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if 25% or less of each of those areas are damaged. If insurance proceeds are not available or are not sufficient to pay the entire cost of restoring the Premises, or if Landlord's lender does not permit all or any part of the insurance proceeds to be applied toward restoration, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within 60 days of the date of such casualty.

If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or 50% or more of the rentable area of the Property are entirely destroyed, or partially damaged and rendered untenable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises and the portion of the Property necessary for Tenant's occupancy to their previous condition to the extent required below; provided, however, if such casualty event occurs during the last six (6) months of the Term (after considering any option to extend the term timely exercised by Tenant) then either Tenant or Landlord may elect to terminate the Lease. If, within 60 days after receipt by Landlord from Tenant of written notice that Tenant deems the

Premises or the portion of the Property necessary for Tenant's occupancy untenable, Landlord fails to notify Tenant of its election to restore those areas, or if Landlord is unable to restore those areas within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease upon 20 days' notice to Landlord unless Landlord, within such 20 day period, notifies Tenant that it will in fact restore the Premises or actually completes such restoration work to the extent required below, as applicable.

If Landlord restores the Premises or the Property under this Section, Landlord shall proceed with reasonable diligence to complete the work, and Base Rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole Premises, provided that there shall be a Base Rent abatement only if the damage or destruction of the Premises or the Property did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises or the Property. Landlord shall have no obligation to carry insurance of any kind for the protection of Tenant; any Alterations or improvements paid for by Tenant; Signage; Tenant's furniture; or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, and Landlord's restoration obligations hereunder shall not include any obligation to repair any damage thereto or replace the same.

- b. **Condemnation.** If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or 50% or more of the rentable area of the Property are made untenable by eminent domain, or conveyed under a threat of condemnation, this Lease shall terminate at the option of either Landlord or Tenant as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises or the portion of the Property taken by the condemning authority. All Rents and other payments shall be paid to that date.

If the condemning authority takes a portion of the Premises or of the Building or the Property necessary for Tenant's occupancy that does not render them untenable, then this Lease shall continue in full force and effect and Rent shall be equitably reduced based on the proportion by which the floor area of any structures is reduced. The reduction in Rent shall be effective on the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if 25% or less of each of those areas are condemned. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises or the Building or the Property and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate claim against the condemning authority for moving expenses, provided that in no event shall Tenant's claim reduce Landlord's award.

**XXII. DEFAULT AND POSSESSION.** Each of the following events shall be an "Event of Default" by Tenant under this Lease:

- a. **Failure To Pay.** Failure by Tenant to pay any sum, including Rent, due under this Lease following five (5) days' notice from Landlord of the failure to pay.

- b. **Vacation/Abandonment.** Vacation by Tenant of the Premises (defined as an absence for at least 15 consecutive days without prior notice to Landlord), or abandonment by Tenant of the Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Premises shall not be subject to any notice or right to cure.
- c. **Insolvency.** Tenant's insolvency or bankruptcy (whether voluntary or involuntary); or appointment of a receiver, assignee or other liquidating officer for Tenant's business; provided, however, that in the event of any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within 60 days after its institution or commencement.
- d. **Levy or Execution.** The taking of Tenant's interest in this lease or the Premises, or any part thereof, by execution or other process of law directed against Tenant, or attachment of Tenant's interest in this Lease by any creditor of Tenant, if such attachment is not discharged within 15 days after being levied.
- e. **Other Non-Monetary Defaults.** The breach by Tenant of any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section or elsewhere in this Lease, which breach continues for a period of 30 days after notice by Landlord to Tenant of the breach, provided that, if the nature of such default is such that it cannot be cured within such 30 day period, no Event of Default shall occur so long as Tenant commences such cure within 30 days of notice by Landlord and diligently pursues such cure to completion, but in no event longer than 60 days from the date of Landlord's notice.
- f. **Failure to Take Possession.** Failure by Tenant to take possession of the Premises on the Commencement Date following five (5) days notice from the Landlord of Tenant's failure to take possession.

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within 30 days notice to Landlord by Tenant provided that, if the nature of such default is such that it cannot be cured within such 30 day period, Landlord shall not be in default if Landlord commences such cure within 30 days of notice by Tenant and diligently pursues such cure to completion. If Landlord fails to cure any such default within the allotted time, Tenant's sole remedy shall be to seek actual money damages (but not consequential or punitive damages) for loss arising from Landlord's failure to discharge its obligations under this Lease. Nothing herein contained shall relieve Landlord from its duty to perform any of its obligations to the standard prescribed in this Lease.

Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.

**XXIII. REMEDIES.** Landlord shall have the following remedies upon an Event of Default. Landlord's rights and remedies under this lease shall be cumulative and not exclusive.

- a. **Termination of Lease.** Landlord may terminate Tenant's interest und the Lease, but no act by Landlord other than notice of termination from Landlord to Tenant shall terminate this Lease. The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount

equal to t and other sums that would have been owing by Tenant under this Lease for the balance of the Term, less the net proceeds, if any, of any reletting of the Premises by Landlord subsequent to the termination, after deducting all of Landlord's Reletting Expenses (as defined below). Landlord shall be entitled to either collect damages from Tenant monthly on the days on which rent or other amounts would have been payable under the Lease, or alternatively, Landlord may accelerate Tenant's obligations under the Lease and recover from Tenant: (i) unpaid rent which had been earned at the time of termination; (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided; (iii) the amount by which the unpaid rent for the balance of the term of the Lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided (discounting such amount by the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1 %); and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which In the ordinary course would be likely to result from the Event of Default, including without limitation Reletting Expenses described below.

- b. **Re-Entry and Reletting.** Landlord may continue this Lease in full force and effect, and without demand or notice, re-enter and take possession of the Premises or any part thereof, expel the Tenant from the Premises and anyone claiming through or under the Tenant, and remove the personal property of either. Landlord may relet the Premises, or any part of them, in Landlord's or Tenant's name for the account of Tenant, for such period of time and at such other terms and conditions as Landlord, in its discretion, may determine. Landlord may collect and receive the rents for the Premises. To the fullest extent permitted by law, the proceeds of any reletting shall be applied: first, to pay Landlord all Reletting Expenses (defined below); second, to pay any indebtedness of Tenant to landlord other than rent; third, to the rent due and unpaid hereunder; and fourth, the residue, if any, shall be held by Landlord and applied in payment of other or future obligations of Tenant to Landlord as the same may become due and payable, and Tenant shall not be entitled to receive any portion of such revenue. Re-entry or taking possession of the Premises by Landlord under this Section shall not be construed as an election on Landlord's part to terminate this Lease, unless a notice of termination is given to Tenant Landlord reserves the right following any re-entry or reletting, or both, under this Section to exercise its right to terminate the Lease. Tenant will pay Landlord Rent and other sums which would be payable under this Lease if repossession had not occurred, less the net proceeds, if any, after reletting the Premises and after deducting Landlord's Reletting Expenses. "Reletting Expenses" is defined to include all expenses incurred by Landlord in connection with reletting the Premises, including without limitation, all repossession costs, brokerage commissions and costs for securing new tenants, attorneys' fees, remodeling and repair costs, costs for removing persons or property, costs for storing Tenant's property and equipment, and costs of tenant improvements and rent concessions granted by Landlord to any new Tenant, prorated over the life of the new lease.
- c. **Waiver of Redemption Rights.** Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Premises or to have a continuance of this Lease for the Term, or any extension thereof.

- d. **Nonpayment of Additional Rent.** All costs which Tenant is obligated to pay to landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of Rent, and Landlord shall have the same rights it has with respect to nonpayment of Rent.
- e. **Failure to Remove Property.** If Tenant fails to remove any of its property from the Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent, if any.

**XXIV. INDEMNIFICATION.** The Tenant hereby covenants and agrees to indemnify, defend and hold the Landlord harmless from any and all claims or liabilities which may arise from any cause whatsoever as a result of Tenant's use and occupancy of the Premises, and further shall indemnify the Landlord for any losses which the Landlord may suffer in connection with the Tenant's use and occupancy or care, custody and control of the Premises. The Tenant also hereby covenants and agrees to indemnify and hold harmless the Landlord from any and all claims or liabilities which may arise from any latent defects in the subject Premises that the Landlord is not aware of at the signing of the lease or at any time during the lease term. Except to the extent of claims arising out of Landlord's gross negligence or intentional acts of misconduct, Landlord shall not be liable for injury to Tenant's business or assets, or any loss of income therefrom or for damage to any property of Tenant or of its employees, officers, agents, servants, contractors, customers, clients, visitors, quests, or other licensees or invitees, or any other person in or about the Premises or the Property. This provision shall survive expiration or termination of this lease.

**XXV. BANKRUPTCY - INSOLVENCY.** The Tenant agrees that in the event all or a substantial portion of the Tenant's assets are placed in the hands of a receiver or a Trustee, and such status continues for a period of 30 days, or should the Tenant make an assignment for the benefit of creditors or be adjudicated bankrupt; or should the Tenant institute any proceedings under the bankruptcy act or any amendment thereto, then such Lease or interest in and to the leased Premises shall not become an asset in any such proceedings and, in such event, and in addition to any and all other remedies of the Landlord hereunder or by law provided, it shall be lawful for the Landlord to declare the term hereof ended and to re-enter the leased land and take possession thereof and all improvements thereon and to remove all persons therefrom and the Tenant shall have no further claim thereon.

**XXVI. SUBORDINATION AND ATTORNMENT.** This Lease shall automatically be subordinate to any mortgage or deed of trust created by Landlord which is now existing or hereafter placed upon the Premises including any advances, interest, modifications, renewals, replacements or extensions {"Landlord's Mortgage"). Tenant shall attorn to the holder of any Landlord's Mortgage or any party acquiring the Premises at any sale or other proceeding under any Landlord's Mortgage provided the acquiring party assumes the obligations of Landlord under this Lease. Tenant shall promptly and in no event later than 15 days after request execute, acknowledge and deliver documents which the holder of any Landlord's Mortgage may reasonably require as further

evidence of this subordination and attornment. Notwithstanding the foregoing, Tenant's obligations under this Section to subordinate in the future are conditioned on the holder of each Landlord's Mortgage and each party acquiring the Premises at any sale or other proceeding under any such Landlord's Mortgage not disturbing Tenant's occupancy and other rights under this Lease, so long as no uncured Event of Default by Tenant exists.

## **XXVII. MISCELLANEOUS TERMS.**

- I. Usage by Tenant: Tenant shall comply with all rules, regulations and laws of any governmental authority with respect to use and occupancy. Tenant shall not conduct or permit to be conducted upon the Premises any business or permit any act which is contrary to or in violation of any law, rules or regulations and requirements that may be imposed by any authority or any insurance company with which the Premises is insured, nor will the Tenant allow the Premises to be used in any way which will invalidate or be in conflict with any insurance policies applicable to the building. In no event shall explosives or extra hazardous materials be taken onto or retained on the Premises. Furthermore, Tenant shall not install or use any equipment that will cause undue interference with the peaceable and quiet enjoyment of the Premises by other tenants of the building.
- II. Condition of Premises/Inspection by Tenant: The Tenant has had the opportunity to inspect the Premises and acknowledges with its signature on this lease that the Premises are in good condition and comply in all respects with the requirements of this Lease. Furthermore, the Landlord makes no representation or warranty with respect to the condition of the Premises or its fitness or availability for any particular use, and the Landlord shall not be liable for any latent or patent defect therein. Furthermore, the Tenant represents that Tenant has inspected the Premises and is leasing and will take possession of the Premises with all current fixtures present in their "as is" condition as of the date hereof.
- III. Right of Entry: It is agreed and understood that the Landlord and its agents shall have the complete and unencumbered right of entry to the Premises at any time or times for purposes of inspecting or showing the Premises.

**XXVIII. ESTOPPEL CERTIFICATE.** Tenant shall, from time to time, upon written request of landlord, execute, acknowledge and deliver to Landlord or its designee a written statement specifying the following, subject to any modifications necessary to make such statements true and complete: (i) the total rentable square footage of the Premises; (ii) the date the Term commenced and the date it expires; (iii) the amount of minimum monthly Rent and the date to which such Rent has been paid; (iv) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way; (v) that this Lease represents the entire agreement between the parties; (vi) that all obligations under this Lease to be performed by either party have been satisfied; (vii) that there are no existing claims, defenses or offsets which the Tenant has against the enforcement of this Lease by Landlord; (viii) the amount of Rent, if any, that Tenant paid in advance; (ix) the amount of security that Tenant deposited with Landlord; (x) if Tenant has sublet all or a portion of the Premises or assigned its interest in the Lease and to whom; (xi) if Tenant has any option to extend the Term of the Lease or option to purchase the Premises; and (xii) such other factual matters concerning the Lease or the Premises as Landlord may reasonably request. Tenant acknowledges and agrees that any statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest or assignee of any mortgage or new mortgagee of Landlord's interest in the Premises. If Tenant shall fail to respond within 10 days to Landlord's request for the statement required by this Section, Landlord may provide the statement and Tenant shall be deemed to have admitted the accuracy of the information provided by Landlord.

**XXIX. HOLDOVER.** If Tenant shall, without the written consent of landlord, remain in possession of the Premises and fail to return them to Landlord after the expiration or termination of this Lease, the tenancy shall be a holdover tenancy at sufferance, which may be terminated according to Washington law. During such tenancy, Tenant agrees to pay to Landlord 150% of the rate of rental last payable under this Lease, unless a different rate is agreed upon by Landlord. All other terms of the Lease shall remain in effect other than any options to extend the Term. Tenant acknowledges and agrees that this Section does not grant any right to Tenant to holdover, and that Tenant may also be liable to Landlord for any and all damages or expenses which Landlord may have to incur as a result of Tenant's holdover.

**XXX. NON-WAIVER.** Landlord's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of Tenant. The acceptance by Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any previous breach by Tenant.

**XXXI. NOTICES.** All notices under this Lease shall be in writing and effective (i) when delivered in person or via overnight courier to the other party, or (ii) three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section I. The addresses for notices and payment of rent set forth in Section I may be modified by either party only by written notice delivered in conformance with this Section.

**XXXIII. GOVERNING LAW.** This Lease shall be governed by the laws of the State of Washington.

**XXV. COSTS AND ATTORNEYS' FEES.** If Tenant or Landlord engage the services of an attorney to collect monies due or to bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or other payments, or possession of the Premises, the losing party shall pay the prevailing party a reasonable sum for attorneys' fees in such action, whether in mediation or arbitration, at trial, on appeal, or in any bankruptcy proceeding.

**XXVI. TRANSFER OF LANDLORD'S INTEREST.** This Lease shall be assignable by Landlord without the consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for collateral purposes only, upon the assumption of this Lease by the transferee, Landlord shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, including any liability for any retained security deposit or prepaid rent, for which the transferee shall be liable, and Tenant shall attorn to the transferee.

### **35. GENERAL.**

- a. **Heirs and Assigns.** This Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.
- b. **Entire Agreement.** This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Premises. No prior or contemporaneous agreements or understandings pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended except in writing, signed by Landlord and Tenant.

- c. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.
- d. **Force Majeure.** Time periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife; provided in no event shall any of the foregoing events operate to extend the Term of this Lease.
- e. **No Light, Air or View Easement.** Tenant has not been granted an easement or other right for light, air or view to or from the Premises. Any diminution or shutting off of light, air or view by any structure which may be erected on or adjacent to the Building shall in no way affect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.
- f. **Authority of Parties.** Each party to this Lease represents and warrants to the other that the person executing this Lease on behalf of such party has the authority to enter into this Lease on behalf of such party, that the execution and delivery of this lease has been duly authorized, and that upon such execution and delivery, this Lease shall be binding upon and enforceable against such party.
- g. **Time.** "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business in the state where the Premises are situated. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Lease.
- h. **Quiet Enjoyment.** Provided Tenant pays Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.
- i. **Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.
- j. **Counterparts.** This contract may be signed by and returned by one or more counterparts. All signatures are binding on Tenant and Landlord.

**XXVII. AMENDMENT.** No amendment of this Lease shall be effective unless reduced to writing and subscribed by the parties with all the formality of the original.

**XXVIII. BINDING EFFECT.** This Lease and any amendments thereto shall be binding upon the Landlord and the Tenants and/or their respective successors, heirs, assigns, executors and administrators.

//  
 //  
 Signature page to follow.  
 //  
 //

IN WITNESS WHEREOF, the parties hereto set their hands and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Landlord's Signature

[Handwritten Signature]

Printed Name

KEITH HILLSTRÖM

Title

CEO. H. Hillstrom Holdings

Landlord's Signature

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Title

\_\_\_\_\_

Tenant's Signature

[Handwritten Signature]

Printed Name

Robert Robertson Major

Title

Tenant's Signature

\_\_\_\_\_

Printed Name

\_\_\_\_\_

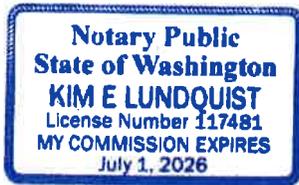
Title

\_\_\_\_\_

**ACKNOWLEDGMENT OF NOTARY PUBLIC**

STATE OF Washington  
COUNTY OF Kitsap

On this 14<sup>th</sup> day of December, 2022, before me appeared Keith Hillstrom, as LANDLORD of this Commercial Lease Agreement who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.



Kim E Lundquist  
Notary Public

My Commission Expires: 7.1.2026

**ACKNOWLEDGMENT OF NOTARY PUBLIC**

STATE OF Washington  
COUNTY OF Kitsap

On this 22<sup>nd</sup> day of December, 2022 before me appeared \_\_\_\_\_, as TENANT(S) of this Commercial Lease Agreement who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.



Brandy Rinearson  
Notary Public

My Commission Expires: 2-1-2025

Contract No. 132-22

**FIRST AMENDMENT TO  
COMMERCIAL LEASE AGREEMENT**

THIS FIRST AMENDMENT TO COMMERCIAL LEASE AGREEMENT ("Agreement") is entered into and effective as of 1-1-23 <sup>(KP)</sup>, 2022 ("Effective Date") by and between Hillstrom Holdings, LLC, a Washington limited liability company ("Landlord"), and the City of Port Orchard, a Washington municipal corporation ("Tenant"). Landlord and Tenant may be referred to herein individually as a "Party" and collectively as the "Parties".

**RECITALS**

A. Landlord and Tenant entered into the certain Commercial Lease Agreement, dated 12-28-22, 2022 ("Lease") for lease the Premises commonly known as Suite 201 ("Premises") located at the property commonly known as the Greenwood Building, 600 Kitsap St. Port Orchard, WA 98366 and legally described in Exhibit A ("Property").

B. The Lease, for a 36-month term to begin on January 1, 2023, contains boilerplate language that does not match the intention of Landlord and Tenant with respect to the terms and conditions the Parties desire to enter into with respect to the Lease, and is missing a legal description and acknowledgments.

C. Landlord and Tenant desire to ratify and amend the Lease upon the terms and conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, incorporating the foregoing Recitals herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Base Rent and Operating Costs.** Notwithstanding any other provision to the contrary in the Lease, Landlord and Tenant agree that Tenant shall not be responsible for any Operating Costs, including, without limitation, real property tax assessments, Landlord's property insurance, storm water, water, sanitary sewer, garbage disposal, janitorial services, restroom supplies, or maintenance, repairs or replacements of all or any portion of the Property or the Common Areas; provided, Tenant shall pay for its electricity costs for the Premises, which electricity costs are metered. Tenant shall pay for such electricity costs upon Landlord delivery of a copy of the applicable electricity bills to Tenant. <sup>See Add. Note</sup> <sup>Electricity To BE PUT INTO TENANT'S NAME (KP)</sup>

2. **Landlord Entry.** Landlord acknowledges that Tenant intends to use the Premises for purposes that may involve confidential information, including criminal investigations and confidential information of the City of Port Orchard. Landlord agrees to exercise its rights to enter the Premises subject to the right of Tenant to maintain security and confidentiality of information and records contained in the Premises, including the right to restrict access during sensitive meetings and the right to restrict access to portions of the Premises containing confidential or sensitive information or records. <sup>(KP)</sup>

3. **Revision to Section XXIV.** The Parties agree to delete the following portion of Section XXIV of the Lease: "The Tenant also hereby covenants and agrees to indemnify and hold harmless the Landlord from any and all claims or liabilities which may arise from any latent defects in the subject Premises that the Landlord is not aware of at the signing of the lease or at any time during the lease term." <sup>(KP)</sup>

4. **Parking.** Landlord agrees to provide ~~four~~ <sup>three (3)</sup> (4) off-street parking spaces to Tenant on an exclusive basis at no additional cost. <sup>(KP)</sup>

5. **Maintenance and Repairs.** Landlord shall maintain at its sole cost in good repair and replace, as needed, the Property, including, without limitation, the HVAC systems (including regular filter replacements and regular maintenance of thermostats, ductwork, and diffusers), mechanical systems, electrical systems, interior and exterior lighting systems, plumbing, flooring, windows, signs, elevators (if applicable), interior and exterior walls, all structural components of the building (including the roof, foundation, and siding), restrooms, lobbies, stairways, sidewalks, parking lot (including snow removal, cleaning, and restriping as required), wheel stops, storm water drainage, exterior paint, interior paint in the Common Areas, landscaping and other components of the Property. Landlord shall further continuously satisfy all governmental requirements generally applicable to similar office buildings, including, without limitation, compliance with fire codes, building codes, energy codes, indoor air quality, and Americans with Disabilities Act barrier-free restrooms and access.

KW

6. **Withholding Rent Payments.** In the event Landlord fails to promptly maintain, repair, or improve the Premises or the Property as set forth herein, Tenant shall have the right to withhold 50% of the Base Rent payments without late fees or default interest until such time as Landlord satisfies such maintenance, repair, or improvement obligations.

KW

7. **Compliance with Law.** Landlord shall be responsible for complying with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101-12213) and the Washington State Law Against Discrimination, Chapter 49.60 RCW, as well as regulations adopted thereunder, with respect to the Property and the Premises.

KW

8. **Prevailing Wage.** Landlord agrees to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this Lease when required by state law, and to comply with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries. The rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where this Lease will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this Lease as though fully set forth herein.

KW

9. **Hazardous Substances.** The term "**Hazardous Substances**" as used in this Agreement shall mean pollutants, contaminants, toxic wastes, or any other substances, the removal of which is required or the use of which is restricted, regulated, prohibited or penalized by any "**Environmental Law**." The term "Environmental Law" or "Environmental Laws" shall mean any federal, state or local law or ordinance relating to pollution or protection of the environment or public health. Landlord represents and warrants to Tenant that the Property does not contain asbestos or other Hazardous Substances of any kind, except, in the case of Hazardous Substances only and not asbestos, commercially reasonable quantities for construction purposes and cleaning agents and other substances normally used in the construction, operation and maintenance of office buildings and not prohibited by applicable law, all of which shall be stored, used and disposed of at Landlord's cost and without reimbursement from Tenant in accordance with all applicable local, state and federal laws. Landlord agrees not to use, dispose, store or generate any asbestos or Hazardous Substances in violation of any applicable law, rule or regulation in the Property. In the event such laws, rules or regulations require Landlord to remove or otherwise remedy the existence of any asbestos or Hazardous Substances discovered on the Property, Landlord agrees to promptly remove or remedy the violation. Landlord agrees to indemnify and hold Tenant harmless against any losses, damages, costs, liabilities and claims suffered by Tenant in connection with a breach by Landlord of its obligations set forth in this Section 9, except for such losses, damages, costs, liabilities and claims caused by Tenant's negligence or intentional misconduct.

10. **ANTI-TERRORISM AND MONEY LAUNDERING REPRESENTATION AND INDEMNIFICATION.** Landlord certifies that: (i) neither it nor its managers, members or controlling

owners are acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order, the United States Department of Justice, or the United States Treasury Department as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control ("SDN"); (ii) neither it nor its managers, members, or controlling owners are engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and (iii) neither it nor its managers, members, or controlling owners are in violation of Presidential Executive Order 13224, the USA Patriot Act, the Bank Secrecy Act, the Money Laundering Control Act or any regulations promulgated pursuant thereto. Landlord hereby agrees to defend, indemnify, and hold harmless Tenant from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing certification. Should Landlord, during the term of this Lease, be designated an SDN, Tenant may, at its sole option, terminate this Lease.

## **11. General Provisions.**

**11.1 Binding Effect.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by each of the Parties and their permitted successors and assigns, and shall inure to the further benefit of, and be enforceable by, any Tenant or transferee permitted by the Lease.

**11.2 Governing Law.** This Agreement shall be interpreted, governed, and construed under the laws of the State of Washington.

**11.3 Amendment.** Any amendments or waivers to this Agreement must be in writing and signed by each of the Parties.

**11.4 Dispute Costs.** In the event of any conflict, claim or dispute between the Parties hereto and arising out of or relating to the subject matter of this Agreement, whether or not such conflict, claim or dispute has its basis in law or in equity, the prevailing Party shall be entitled to receive from the non-prevailing Party(ies) all reasonable costs and expenses of every sort whatsoever including, but not limited to, arbitrators fees, mediation fees, deposition costs, expert witness fees, accounting expenses relating thereto, and actual attorneys fees incurred or expended whether or not arbitration or court proceedings are initiated, and including all such costs or expenses incurred or expended in arbitration, in trial, on appeal or in any bankruptcy or receivership proceeding.

**11.5 Broker.** Each Party represents that it has worked with no broker with respect to the Lease or this Agreement. Tenant and Landlord (each an "**indemnitor**") agree to indemnify and hold harmless the other Parties hereto, and their respective affiliates, successors and assigns, from and against claims, actions, judgments, liabilities, payments, losses, damages and expenses, including reasonable attorney's fees and court costs, suffered or incurred by reason of the indemnitor's breach of its respective representation in this Section.

**11.6 Legal Representation.** Each Party acknowledges that it has been represented, and has had an opportunity to obtain the representation of counsel with respect to this Agreement. Each Party represents to the others that it has read and understood the terms hereof and the consequences of executing the Lease and this Agreement. The Parties agree that the provisions of this Agreement shall not be construed against the Party who drafted the same.

**11.7 Authority.** Each person signing this Agreement on behalf of a Party represents and warrants that he or she is authorized to execute and deliver this Agreement on behalf of such Party, and that upon such person's execution hereof, this Agreement shall become binding upon such Party.

**11.8 Defined Terms.** Terms not otherwise defined herein shall have the meanings set forth in the Lease.

**11.9 Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law.

**11.10 Full Force and Effect.** Except as specifically amended herein, all of the terms, provisions, covenants and conditions of the Lease shall remain unmodified and in full force and effect. This Agreement shall supersede all prior agreements and understanding of the Parties hereto with respect to the subject matter hereof. In the event of any inconsistencies between any part of this Agreement and the Lease, the provisions of this Agreement shall prevail. This Agreement may not be amended or modified in any manner other than in a writing signed by the Parties hereto, or their respective successors or assigns.

*(Remainder of Page Intentionally Blank)*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Effective Date.

(Landlord)  
Hillstrom Holdings, LLC,  
A Washington limited liability company

By: *Keith Hillstrom*  
Keith Hillstrom  
Its Manager

LANDLORD ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Kitsap )

This record was acknowledged before me on 12.14. 2022 (date), by Keith Hillstrom as Manager of Hillstrom Holdings, LLC.



*Kim E Lundquist*  
Name: Kim E Lundquist  
Notary Public in and for the State of Washington  
Residing at Kitsap County  
My appointment expires: 7.1.2026

**(Tenant)**  
**City of Port Orchard,**  
**A Washington municipal corporation**

By: [Signature]  
Rob Putaansuu,  
Its Major Mayor

Reviewed and approved:

DocuSigned by:  
[Signature]  
203701F25520457...  
Charlotte Archer  
City Attorney

**TENANT ACKNOWLEDGMENT**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KITSAP )

This record was acknowledged before me on Dec 22, 2022 (date), by Rob Putaansuu as Mayor of the City of Port Orchard.



[Signature]  
Name:  
Notary Public in and for the State of Washington  
Residing at City Hall  
My appointment expires: 2-1-2025

**Exhibit A  
Legal Description**

LOTS 1, 4, AND 5, BLOCK 7, S.M. STEVENS' TOWN PLAT OF SIDNEY; ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS AT PAGE 1, RECORDS OF KITSAP COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF UNNAMED ALLEY AS CONVEYED BY THE CITY OF PORT ORCHARD UNDER KITSAP COUNTY RECORDING NO. 3221209;

TOGETHER WITH THAT PORTION OF UNNAMED ALLEY AS CONVEYED BY HAZELLE M. SIMMONS UNDER KITSAP COUNTY RECORDING NO. 3221211.



**HILLSTROM HOLDINGS LLC**

11021 CRAMER RD. NW  
GIG HARBOR, WA 98329

**COMMERCIAL LEASE AGREEMENT**

Contract No. 132-22

**I. The Parties.** This Commercial Lease Agreement ("Agreement") made this 28 day of December, 2022 by and between:

Landlord. Hillstrom Holdings [Landlord's Name], of 11021 CRAMER RD NW - GIG HARBOR [Landlord's Street Address], State of WASHINGTON, ("Landlord")

AND

Tenant. CITY OF PORT ORCHARD [Tenant's Name], of 216 PROSPECT STREET, PORT ORCHARD [Tenant's Street Address], State of WASHINGTON, ("Tenant"). Collectively, the Landlord and Tenant shall be referred to herein as the "Parties".

The Parties agree as follows:

**II. DESCRIPTION OF LEASED PREMISES.** The Landlord agrees to lease to the Tenant the following described          square feet (SF) of commercial office space located at 600 KITSAP ST, PORT ORCHARD, WA

Additional Description: Unit Number Suite # 201

Hereinafter known as the "Premises".

**III. USE OF LEASED PREMISES.** The Landlord is leasing the Premises to the Tenant and the Tenant is hereby agreeing to lease the Premises for the following use and purpose: General office and administrative use.

Any change in use or purpose the Premises other than as described above shall be upon prior written consent of Landlord only.

**IV. TERM OF LEASE.** The term of this Lease shall be for a period of 3 year(s) 0 month(s) commencing on the 1 day of JANUARY, 2023 and expiring at Midnight on the 31 day of DECEMBER, 2025. ("Initial Term")

**V. BASE RENT.** The net monthly payment shall be          dollars (\$ 1,700.- ), payable monthly with the first payment due upon the commencement of the Lease and each monthly installment payable thereafter on the 1st day of each month ("Base Rent"). Rent payment for any period during the term hereon, which is for less than 1 month shall be a pro-rata portion of the monthly rent.

- a. **Payment of Rent.** Tenant shall pay Landlord without notice, demand, deduction or offset, in lawful money of the United States, the monthly Base Rent stated in this section in advance on or before the first day of each month during the Term beginning on the Commencement Date, and shall also pay any other additional payments, including Operating Costs, due to Landlord ("Additional Rent and together with Base Rent, "Rent") when required under this Lease. All payments due to Landlord under this Lease, including late fees and interest, shall also constitute Additional Rent, and upon Tenant's failure to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay Rent.
  
- b. **Late Charges; Default Interest.** If any sums payable by Tenant to Landlord under this Lease are not received within five (5) business days after their due date, Tenant shall pay Landlord an amount equal to the greater of \$100 or 5% of the delinquent amount for the cost of collecting and handling such late payment in addition to the amount due and as Additional Rent. All delinquent sums payable by Tenant to Landlord and not paid within five (5) business days after their due date shall, at Landlord's option, bear interest at the rate of 15% per annum, or the highest rate of interest allowable by law, whichever is less (the "Default Rate"). Interest on all delinquent amounts shall be calculated from the original due date to the date of payment.
  
- c. **Less Than Full Payment.** Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims. Any portion that remains to be paid by Tenant shall be subject to the late charges and default interest provisions of this Section.

**VI. PREPAID RENT.** Upon execution of this lease, Tenant shall deliver to Landlord the sum of \$ 0 as prepaid Rent, to be applied to Base Rent due for the first month of the lease.

**VII. SECURITY DEPOSIT.** Upon execution of this lease, Tenant shall deliver to Landlord a sum of \$ 1,500.00 to be held as a security deposit pursuant to Section [ ] below. The security deposit shall be in the form of cash, check, or wire transfer.

**VIII. OPTION TO RENEW.** Tenant may have the right to renew the Lease with a total of 2 renewal period(s) with each term being 3 year(s) 0 month(s) which may be exercised by giving written notice to Landlord no less than 60 days prior to the expiration of the Lease or renewal period.

Rent for each option period shall: (check one)

- Increase as calculated by multiplying the Base Rent by the annual change in the Consumer Price Index (CPI) published by the Bureau of Labor Statistics by the most recent publication to the option period start date.

- Increase by 2 % Annually ON 1-1- OF EACH YEAR

- Increase by \_\_\_\_\_ dollars (\$ \_\_\_\_\_)

## IX. OPERATING COSTS

- a. **Definition.** As used herein, "Operating Costs" shall mean all costs of operating, maintaining and repairing the Premises, the Building, and the Property, determined in accordance with generally accepted accounting principles, and including without limitation the following: all taxes and assessments (including, but not limited to, real and personal property taxes and assessments, local improvement district assessments and other special purpose assessments, and taxes on rent or gross receipts); insurance premiums paid by Landlord and (to the extent used) deductibles for insurance applicable to the Property; water, sewer and all other utility charges (other than utilities separately metered and paid directly by Tenant or other tenants); janitorial and all other cleaning services; refuse and trash removal; supplies, materials, tools, and equipment used in the operation, repair, and maintenance of the Property; refurbishing and repainting; carpet replacement; to the extent serving areas other than just the Premises, heating, ventilation and air conditioning ("HVAC") service, repair and replacement when necessary; elevator service and repair and replacement of elevators when necessary; pest control; lighting systems, fire detection and security services; landscape maintenance; management (fees and/or personnel costs); parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; repair, maintenance, and, where reasonably required, replacement of signage; amortization of capital improvements as Landlord may in the future install to comply with governmental regulations and rules or undertaken in good faith with a reasonable expectation of reducing Operating Costs (the useful life of which shall be a reasonable period of time as determined by Landlord); costs of legal services (except those incurred directly relating to a particular occupant of the Building); and accounting services, labor, supplies, materials and tools. Landlord and Tenant agree that if the Building is not 90% occupied during any calendar year (including the Base Year, if applicable), on a monthly average, then those portions of the Operating Costs that are driven by occupancy rates, as reasonably determined by Landlord, shall be increased to reflect the Operating Costs of the Building as though it were 90% occupied and Tenant's Pro Rata Share of Operating Costs shall be based upon Operating Costs as so adjusted. Operating Costs shall not include: Landlord's income tax or general corporate overhead; depreciation or amortization on the Building or equipment therein; loan or ground lease payments; real estate broker's commissions; capital improvements to or major repairs of the Building shell (i.e., the Building structure, exterior walls, roof, and structural floors and foundations), except to the extent expressly permitted above; any costs regarding the operation, maintenance and repair of the Premises, the Building, or the Property paid directly by Tenant or other tenants in the Building or otherwise reimbursed to Landlord, or other cost for which another party is required to pay Landlord (except as part of operating cost recoveries under other tenant leases) so that Landlord shall not recover any item of cost more than once. If Tenant is renting a pad separate from any other structures on the Property for which Landlord separately furnishes the services described in this paragraph, then the term "Operating Costs" shall not include those costs of operating, repairing, and maintaining the enclosed mall which can be separately allocated to the tenants of the other structures. Operating Costs which cannot be separately allocated to the tenants of other structures may include but are not limited to: insurance premiums; taxes and assessments; management (fees and/or personnel costs); exterior lighting; parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; and costs of legal services and accounting services.

- b. **Type of Payment.** As Additional Rent, Tenant shall pay to Landlord on the first day of each month with payment of Base Rent one-twelfth of Tenant's Pro Rata Share of Operating Costs, which amount is determined in the manner set forth in Section IX.(c) below.
- c. **Method of Payment.** Tenant shall pay to Landlord Operating Costs pursuant to the following procedure:
- i. Landlord shall provide to Tenant, on or before the Commencement Date, a good faith estimate of annual Operating Costs for the calendar year in which the Commencement Date occurs. Landlord shall also provide to Tenant, as soon as possible following the first day of each succeeding calendar year, a good faith estimate of Tenant's annual Pro Rata Share of Operating Costs for the then-current year.
  - ii. Each estimate of Tenant's annual Pro Rata Share of Operating Costs determined by Landlord, as described above, shall be divided into 12 equal monthly installments. Tenant shall pay to Landlord such monthly installment of Operating Costs with each monthly payment of Base Rent. In the event the estimated amount of Tenant's Pro Rata Share of Operating Costs has not yet been determined for any calendar year, Tenant shall pay the monthly installment in the estimated amount determined for the preceding calendar year until the estimate for the current calendar year has been provided to Tenant. When the estimate for the current calendar year is received, Tenant shall then pay any shortfall or receive a credit for any surplus for the preceding months of the current calendar year and shall, thereafter, make the monthly installment payments in accordance with the current estimate.
  - iii. As soon as reasonably possible following the end of each calendar year during the Term, Landlord shall provide to Tenant a statement (the "Operating Costs Statement") setting forth the amount of Operating Costs actually incurred and the amount of Tenant's Pro Rata Share of Operating Costs actually payable by Tenant with respect to such calendar year. In the event the amount of Tenant's Pro Rata Share of Operating Costs exceeds the sum of the monthly installments actually paid by Tenant for such calendar year, Tenant shall pay to Landlord the difference within 30 days following receipt of the Operating Costs Statement. In the event the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Operating Costs actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Operating Costs payable by Tenant pursuant to this Section, or if the Term has expired, the excess shall be refunded to Tenant within 30 days after delivery of such Operating Costs Statement.
  - iv. Should Tenant dispute any amount shown on the Operating Costs Statement, Tenant may audit Landlord's books and records for the calendar year covered by such Operating Costs Statement upon written notice to Landlord given within 90 days after Tenant's receipt of such Operating Costs Statement. If Tenant fails to provide notice of dispute within such 90- day period, the Operating Costs Statement shall be final and conclusive. Any audit conducted by Tenant shall be completed within 60 days after Tenant's request therefor. If Landlord concurs with the audit results, and (x) if the audit reveals that Tenant's Pro Rata Share of Operating Costs exceeds the sum of the monthly installments actually paid by Tenant for such calendar year, Tenant shall pay to Landlord the difference within 30 days following completion of the audit; or (y) If the audit reveals that the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Operating Costs

actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Operating Costs payable by Tenant pursuant to this Section, or if the term has expired, the excess shall be refunded to Tenant within 30 days after completion of the audit. If Landlord does not concur with the results of Tenant's audit, the parties shall within twenty (20) days thereafter agree on a neutral auditor who shall complete an audit within thirty (30) days after selection, and the decision of the neutral auditor shall be binding on the parties. The parties shall share evenly in the costs of any such neutral auditor. Landlord and Tenant shall cooperate as may be reasonably necessary in order to facilitate the timely completion of any audit. Nothing in this Section shall in any manner modify Tenant's obligations to make payments as and when provided under this Lease.

**X. EXPENSES.**

**TRIPLE NET (NNN).** Tenant's Initials \_\_\_\_\_ Landlord's Initials *KH* *DOES NOT APPLY* *RR*

It is the intention of the Parties that this Lease shall be considered a "Triple Net Lease".

a. Operating Expenses. The Landlord shall have no obligation to provide any services, perform any acts, or pay expenses, charges, obligations or costs of any kind whatsoever with respect to the Premises. The Tenant hereby agrees to pay 0 Percent (\_\_\_%) of any and all Operating Expenses as hereafter defined for the entire term of the Lease and any extensions thereof in accordance with specific provisions hereinafter set forth (Tenant's Pro Rata Share). The Pro Rata Share is based on the ratio of the rentable area of the Premises states in Section II. Tenant's Base Rent and Pro Rata Share shall be proportionally adjusted in the event of any adjustment to the Premises, Building's, or Property's rentable floor area. The term "Operating Expenses" shall include all costs to the Landlord of operating and maintaining the Premises as noted in Section IX.

b. Taxes. Tenant shall pay all taxes, assessments, liens and license fees ("Taxes") levied, assessed or imposed by any authority having the direct or indirect power to tax or assess any such liens, related to or required by Tenant's use of the Premises as well as all Taxes on Tenant's personal property located on the Premises. Landlord shall pay all taxes and assessment s with respect to the Property, all of which shall be included in Operating Costs and subject to partial reimbursement by tenant as set forth in Section IX.

c. Insurance.  
a. **Tenant's Liability Insurance.** During the Term, Tenant shall pay for and maintain commercial general liability insurance with broad form property damage and contractual liability endorsements. This policy shall (i) contain an endorsement identifying Landlord, its property manager (if any), and other parties designated by Landlord, as additional insureds using an endorsement form acceptable to Landlord, (ii) insure Tenant's activities and those of Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees with respect to the Premises against loss, damage or liability for personal injury or bodily injury (including death) or loss or damage to property with a combined single limit of not less than \$2,000,000 per occurrence, and a deductible of not more than \$10,000, and (iii) contain a provision requiring the insurer to deliver or mail written notice of cancellation to the named insureds at least (45) days before the effective date of the cancellation. Tenant's insurance will be primary and noncontributory with any

liability insurance carried by Landlord. Landlord may also require Tenant to obtain and maintain at Tenant's sole cost business income coverage for at least six (6) months, business auto liability coverage, and, if applicable to Tenant's Permitted Use, liquor liability insurance and/or warehouseman's coverage

**b. Tenant's Property Insurance.** During the Term, Tenant shall pay for and maintain special form clauses of loss coverage property insurance (with coverage for earthquake if required by Landlord's lender and, if the Premises are situated in a flood plain, flood damage) for all of Tenant's personal property, fixtures and equipment, Tenant's Work, and Alterations, in the amount of their full replacement value, with a deductible of not more than \$10,000.

**c. Miscellaneous.** Tenant's insurance required under this Section shall be with companies rated A-/VII or better in Best's Insurance Guide, and which are admitted in the State of Washington. No insurance policy shall be cancelled or reduced in coverage and each such policy shall provide that it is not subject to cancellation or a reduction in coverage except after 30 days prior written notice to Landlord. Tenant shall deliver to Landlord, prior to Tenant's first taking possession of or occupying the Premises, and from time to time thereafter, copies of the insurance policies or evidence of insurance and copies of endorsements required by this Section. In no event shall the limits of such policies be considered as limiting the liability of Tenant under this Lease. If Tenant fails to acquire or maintain any insurance or provide any policy or evidence of insurance required by this Section, and such failure continues for three (3) days after notice from Landlord, Landlord may, but shall not be required to, obtain such insurance for Landlord's benefit and Tenant shall reimburse Landlord for the costs of such insurance upon demand. Such amounts shall be Additional Rent payable by Tenant hereunder and in the event of non-payment thereof, Landlord shall have the same rights and remedies with respect to such non-payment as it has with respect to any other non-payment of Rent hereunder.

**d. Landlord's Insurance.** Landlord shall carry special form clauses of loss coverage property insurance of the Building shell and core in the amount of their full replacement value, liability insurance with respect to the Common Areas, and such other insurance of such types and amounts as Landlord, in its discretion, shall deem reasonably appropriate. The cost of any such insurance shall be included in Operating Costs, and if such insurance is provided by a "blanket policy" insuring other parties or locations in addition to the Building, then only the portion of the premiums allocable to the Building and Property shall be included in Operating Costs.

**e. Waiver of Subrogation.** Notwithstanding any other provision of this Lease to the contrary, Landlord and Tenant hereby release each other and any other tenant, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage arising from any cause covered by insurance required to be carried or otherwise carried by each of them. Each party shall provide notice to the insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective insurance carriers to waive all rights of subrogation against the other. This waiver shall not apply to the extent of the deductible amounts to any such policies or to the extent of liabilities exceeding the limits of such policies.

**XI. UTILITIES AND SERVICES.** Landlord shall provide the following services for the Premises (7) days per week, (24) hours per day, the cost of which shall be included in the Operating Costs to the extent not separately metered to and exclusively serving the Premises (with the costs of such separately metered services to be directly billed to and paid by Tenant): water; electricity; sewer; trash and/or recycling removal; and HVAC. Notwithstanding the foregoing, if Tenant's use of the Premises incurs utility service charges which are above those usual and customary for the Permitted Use, Landlord reserves the right to require Tenant to pay a reasonable additional charge for such usage.

Tenant shall furnish all other utilities (including, but not limited to, telephone, internet, and cable service if available) and other services which Tenant requires with respect to the Premises, and shall pay, at Tenant's sole expense, the cost of all utilities separately metered to the Premises, and of all other utilities and other services which Tenant requires with respect to the Premises, except those to be provided by Landlord and included in Operating Expenses as described above. Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of utilities due to any cause whatsoever, and Rent shall not abate as a result thereof.

**XII. LEASEHOLD IMPROVEMENTS.** The Tenant agrees that no leasehold improvements, alterations or changes of any nature, (except for those listed on any attached addenda) shall be made to the leasehold premises or the exterior of the building without first obtaining the consent of the Landlord in writing, which consent shall not be unreasonably withheld, and thereafter, any and all leasehold improvements made to the Premises which become affixed or attached to the leasehold Premises shall remain the property of the Landlord at the expiration or termination of this Lease Agreement. Furthermore, any leasehold improvements shall be made only in accordance with applicable federal, state or local codes, ordinances or regulations, having due regard for the type of construction of the building housing the subject leasehold Premises. If the Tenant makes any improvements to the Premises the Tenant shall be responsible for payment, except the following

Nothing in the Lease shall be construed to authorize the Tenant or any other person acting for the Tenant to encumber the rents of the Premises or the interest of the Tenant in the Premises or any person under and through whom the Tenant has acquired its interest in the Premises with a mechanic's lien or any other type of encumbrance. Under no circumstance shall the Tenant be construed to be the agent, employee or representative of Landlord. In the event a lien is placed against the Premises, through actions of the Tenant, Tenant will promptly pay the same or bond against the same and take steps immediately to have such lien removed. If the Tenant fails to have the Lien removed, the Landlord shall take steps to remove the lien and the Tenant shall pay Landlord for all expenses related to the Lien and removal thereof and shall be in default of this Lease.

Leasehold improvements shall include (i) any of Tenant's Work approved by Landlord; (ii) Tenant's Signage (as further provided in Section []), or (iii) the installation of shelves, movable partitions, Tenant's equipment and trade fixtures that may be installed and removed without damaging existing improvements or the structural integrity of the Premises, the Building, or the Property. Tenant shall perform all work at Tenant's expense and in compliance with all applicable laws and shall complete all Alterations in accordance with plans and specifications approved by Landlord, using contractors approved by Landlord, and in a manner so as not to unreasonably interfere with other tenants. Tenant shall pay when due, or furnish a bond for payment of (as set forth in Section 20), all claims for labor or materials furnished to or for Tenant at, or for use in, the Premises, which claims are or

may be secured by any mechanics' or materialmen's liens against the Premises or the Property or any interest therein.

### **XIII. Common Areas.**

- a. **Definition.** The term "Common Areas" means all areas, facilities and building systems that are provided and designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant and other tenants of the Property and which are not leased or held for the exclusive use of a particular tenant. To the extent that such areas and facilities exist within the Property, Common Areas include hallways, entryways, stairs, elevators, driveways, walkways, terraces, docks, loading areas, restrooms, trash facilities, parking areas and garages, roadways, pedestrian sidewalks, landscaped areas, security areas, lobby or mall areas, common HVAC systems, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Tenant shall comply with, and shall use commercially reasonable efforts to cause its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees to comply with, reasonable rules and regulations concerning the use of the Common Areas adopted by Landlord from time to time, and shall not interfere with the use of Common Areas by others. Without advance notice to Tenant and without any liability to Tenant, Landlord may change the size, use, or nature of any Common Areas, erect improvements on the Common Areas or convert any portion of the Common Areas to the exclusive use of Landlord or selected tenants, so long as Tenant is not thereby deprived of the substantial benefit of the Premises. Landlord reserves the use of exterior walls and the roof of the Building and other improvements at the Property, and the right to install, maintain, use, repair and replace pipes, ducts, conduits, and wires leading through the Premises in areas which will not materially interfere with Tenant's use thereof.
- b. **Use of the Common Areas.** Tenant shall have the non-exclusive right, in common with such other tenants of the Property to whom Landlord has granted or may grant such rights, to use the Common Areas.
- c. **Maintenance of the Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair. This maintenance cost shall be includable in Operating Costs pursuant to Section IX. In performing such maintenance, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises.

**XIV. LICENSES AND PERMITS.** A copy of any and all local, state or federal permits acquired by the Tenant which are required for the use of the Premises shall be kept on site at all times and shall be readily accessible and produced to the Landlord and/or their agents or any local, state, or federal officials upon demand.

**XV. REPAIRS AND MAINTENANCE; SURRENDER.** Tenant shall, at its sole cost and expense, maintain the entire Premises in good condition and promptly make all non-structural repairs and replacements necessary to keep the Premises safe and in good condition, including all HVAC components and other utilities and systems to the extent exclusively serving the Premises. Landlord shall maintain and repair the Building structure, foundation, subfloor, exterior walls, roof structure and surface, and HVAC components and other utilities and systems to the extent serving more than just the Premises, and the Common Areas. the costs of which shall be included as Operating Costs unless otherwise expressly excluded pursuant to Section 8(a). Tenant shall not damage any demising wall or disturb the structural integrity of the Premises, the Building, or the Property and shall promptly repair any damage or injury done to any such demising walls or structural elements caused by Tenant or its employees, officers, agents, servants, contractors,

customers, clients, visitors, guests, or other licensees or invitees. Notwithstanding anything in this Section to the contrary, Tenant shall not be responsible for any repairs to the Premises made necessary by the negligence or willful misconduct of Landlord or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees therein. If Tenant fails to perform Tenant's obligations under this Section, Landlord may at Landlord's option enter upon the Premises after 10 days' prior notice to Tenant and put the same in good order, condition and repair and the cost thereof, together with interest thereon at the Default Rate set forth in Section 4, shall be due and payable as Additional Rent to Landlord together with Tenant's next installment of Base Rent. Upon expiration or earlier termination of the Term, Tenant shall promptly and peacefully surrender the Premises to Landlord, together with all keys, in materially as good condition as when received by Tenant from Landlord or as thereafter improved (but subject to any obligations to remove any Tenant's Work and Alterations and/or restore the same as further provided in this Lease), reasonable wear and tear and insured casualty excepted.

**XVI. ACCESS AND RIGHT OF ENTRY.** After 24 hours' notice from Landlord (except in cases of emergency, when no notice shall be required), Tenant shall permit Landlord and its agents, employees and contractors to enter the Premises at all reasonable times to make repairs, inspections, alterations or improvements, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease. After reasonable notice to Tenant, Landlord shall have the right to enter the Premises for the purpose of (a) showing the Premises to prospective purchasers or lenders at any time, and to prospective tenants within 180 days prior to the expiration or sooner termination of the Term; and (b) posting "for lease" signs within 180 days prior to the expiration or sooner termination of the Term.

**XVII. SIGNAGE.** Tenant shall obtain Landlord's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Tenant shall install and maintain any approved signage ("Signage") at Tenant's sole expense and in compliance with all applicable laws. Any Signage installed by Tenant shall be removed from the Premises, Building and Property at Tenant's expense upon the expiration or earlier termination of the Term. Tenant shall not damage or deface the Premises in installing or removing Signage and shall repair any injury or damage to the Premises caused by such installation or removal.

**XVIII. INSURANCE.** In the event the Tenant shall fail to obtain insurance required hereunder and fails to maintain the same in force continuously during the term, Landlord may, but shall not be required to, obtain the same and charge the Tenant for same as additional rent. Furthermore, Tenant agrees not to keep upon the Premises any articles or goods which may be prohibited by the standard form of fire insurance policy, and in the event the insurance rates applicable to fire and extended coverage covering the Premises shall be increased by reason of any use of the Premises made by Tenant, then Tenant shall pay to Landlord, upon demand, such increase in insurance premium as shall be caused by said use or Tenant's proportionate share of any such increase.

**XIX. SUBLET/ASSIGNMENT.** Tenant shall not assign, sublet, mortgage, encumber or otherwise transfer any interest in this Lease (collectively referred to as a "Transfer") or any part of the Premises, without first obtaining Landlord's written consent, which shall not be unreasonably withheld, conditioned, or delayed. No Transfer shall relieve Tenant of any liability under this Lease notwithstanding Landlord's consent to such Transfer. Consent to any Transfer shall not operate as a waiver of the necessity for Landlord's consent to any subsequent Transfer. In connection with each request for consent to a Transfer, Tenant shall pay the reasonable cost of processing the same, including attorneys' fees, upon demand of Landlord, up to a maximum of \$1,250.

Any transfer of this Lease by merger, consolidation, redemption or liquidation of Tenant, or any change in the ownership of, or power to vote, which singularly or collectively represents a majority of the beneficial interest in Tenant, shall constitute a Transfer under this Section.

As a condition to Landlord's approval, if given, any potential assignee or sublessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor for the payment of Rent and performance of all obligations of Tenant under this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases and assumption agreements and related documents.

**XX. LIENS.** Tenant is not authorized to subject the Landlord's assets to any liens or claims of lien. Tenant shall keep the Property and Premises free from any liens created by or through Tenant. Tenant shall indemnify, defend, and hold Landlord and the Property and Premises harmless from liability for any such liens including, without limitation, liens arising from any of Tenant's Work or Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall have the right to contest the correctness or validity of the lien, provided, however, within 10 days after Landlord's demand, at Tenant's expense, Tenant shall either remove the lien, or shall procure and record a lien release bond issued by a surety satisfactory to Landlord in form and amount sufficient to satisfy statutory requirements for satisfaction and release of the subject lien(s) from the Premises and Property. Tenant shall indemnify landlord, the Premises, and the Property from and against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.

**XXI. DAMAGE OR CONDEMNATION.**

- a. **Damage and Repair.** If the Premises or the portion of the Building or the Property necessary for Tenant's occupancy are partially damaged by fire or other insured casualty but not rendered untenable, then Landlord shall diligently restore the Premises and the portion of the Property necessary for Tenant's occupancy to the extent required below and this lease shall not terminate. Tenant may, however, terminate the Lease if Landlord is unable to restore the Premises within six (6) months of the casualty event by giving 20 days' written notice of termination.

The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if 25% or less of each of those areas are damaged. If insurance proceeds are not available or are not sufficient to pay the entire cost of restoring the Premises, or if Landlord's lender does not permit all or any part of the insurance proceeds to be applied toward restoration, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within 60 days of the date of such casualty.

If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or 50% or more of the rentable area of the Property are entirely destroyed, or partially damaged and rendered untenable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises and the portion of the Property necessary for Tenant's occupancy to their previous condition to the extent required below; provided, however, if such casualty event occurs during the last six (6) months of the Term (after considering any option to extend the term timely exercised by Tenant) then either Tenant or Landlord may elect to terminate the Lease. If, within 60 days after receipt by Landlord from Tenant of written notice that Tenant deems the

Premises or the portion of the Property necessary for Tenant's occupancy untenable, Landlord fails to notify Tenant of its election to restore those areas, or if Landlord is unable to restore those areas within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease upon 20 days' notice to Landlord unless Landlord, within such 20 day period, notifies Tenant that it will in fact restore the Premises or actually completes such restoration work to the extent required below, as applicable.

If Landlord restores the Premises or the Property under this Section, Landlord shall proceed with reasonable diligence to complete the work, and Base Rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole Premises, provided that there shall be a Base Rent abatement only if the damage or destruction of the Premises or the Property did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises or the Property. Landlord shall have no obligation to carry insurance of any kind for the protection of Tenant; any Alterations or improvements paid for by Tenant; Signage; Tenant's furniture; or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, and Landlord's restoration obligations hereunder shall not include any obligation to repair any damage thereto or replace the same.

- b. **Condemnation.** If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or 50% or more of the rentable area of the Property are made untenable by eminent domain, or conveyed under a threat of condemnation, this Lease shall terminate at the option of either Landlord or Tenant as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises or the portion of the Property taken by the condemning authority. All Rents and other payments shall be paid to that date.

If the condemning authority takes a portion of the Premises or of the Building or the Property necessary for Tenant's occupancy that does not render them untenable, then this Lease shall continue in full force and effect and Rent shall be equitably reduced based on the proportion by which the floor area of any structures is reduced. The reduction in Rent shall be effective on the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if 25% or less of each of those areas are condemned. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises or the Building or the Property and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate claim against the condemning authority for moving expenses, provided that in no event shall Tenant's claim reduce Landlord's award.

**XXII. DEFAULT AND POSSESSION.** Each of the following events shall be an "Event of Default" by Tenant under this Lease:

- a. **Failure To Pay.** Failure by Tenant to pay any sum, including Rent, due under this Lease following five (5) days' notice from Landlord of the failure to pay.

- b. **Vacation/Abandonment.** Vacation by Tenant of the Premises (defined as an absence for at least 15 consecutive days without prior notice to Landlord), or abandonment by Tenant of the Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Premises shall not be subject to any notice or right to cure.
- c. **Insolvency.** Tenant's insolvency or bankruptcy (whether voluntary or involuntary); or appointment of a receiver, assignee or other liquidating officer for Tenant's business; provided, however, that in the event of any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within 60 days after its institution or commencement.
- d. **Levy or Execution.** The taking of Tenant's interest in this lease or the Premises, or any part thereof, by execution or other process of law directed against Tenant, or attachment of Tenant's interest in this Lease by any creditor of Tenant, if such attachment is not discharged within 15 days after being levied.
- e. **Other Non-Monetary Defaults.** The breach by Tenant of any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section or elsewhere in this Lease, which breach continues for a period of 30 days after notice by Landlord to Tenant of the breach, provided that, if the nature of such default is such that it cannot be cured within such 30 day period, no Event of Default shall occur so long as Tenant commences such cure within 30 days of notice by Landlord and diligently pursues such cure to completion, but in no event longer than 60 days from the date of Landlord's notice.
- f. **Failure to Take Possession.** Failure by Tenant to take possession of the Premises on the Commencement Date following five (5) days notice from the Landlord of Tenant's failure to take possession.

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within 30 days notice to Landlord by Tenant provided that, if the nature of such default is such that it cannot be cured within such 30 day period, Landlord shall not be in default if Landlord commences such cure within 30 days of notice by Tenant and diligently pursues such cure to completion. If Landlord fails to cure any such default within the allotted time, Tenant's sole remedy shall be to seek actual money damages (but not consequential or punitive damages) for loss arising from Landlord's failure to discharge its obligations under this Lease. Nothing herein contained shall relieve Landlord from its duty to perform any of its obligations to the standard prescribed in this Lease.

Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.

**XXIII. REMEDIES.** Landlord shall have the following remedies upon an Event of Default. Landlord's rights and remedies under this lease shall be cumulative and not exclusive.

- a. **Termination of Lease.** Landlord may terminate Tenant's interest und the Lease, but no act by Landlord other than notice of termination from Landlord to Tenant shall terminate this Lease. The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount

equal to t and other sums that would have been owing by Tenant under this Lease for the balance of the Term, less the net proceeds, if any, of any reletting of the Premises by Landlord subsequent to the termination, after deducting all of Landlord's Reletting Expenses (as defined below). Landlord shall be entitled to either collect damages from Tenant monthly on the days on which rent or other amounts would have been payable under the Lease, or alternatively, Landlord may accelerate Tenant's obligations under the Lease and recover from Tenant: (i) unpaid rent which had been earned at the time of termination; (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided; (iii) the amount by which the unpaid rent for the balance of the term of the Lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided (discounting such amount by the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1 %); and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which In the ordinary course would be likely to result from the Event of Default, including without limitation Reletting Expenses described below.

- b. **Re-Entry and Reletting.** Landlord may continue this Lease in full force and effect, and without demand or notice, re-enter and take possession of the Premises or any part thereof, expel the Tenant from the Premises and anyone claiming through or under the Tenant, and remove the personal property of either. Landlord may relet the Premises, or any part of them, in Landlord's or Tenant's name for the account of Tenant, for such period of time and at such other terms and conditions as Landlord, in its discretion, may determine. Landlord may collect and receive the rents for the Premises. To the fullest extent permitted by law, the proceeds of any reletting shall be applied: first, to pay Landlord all Reletting Expenses (defined below); second, to pay any indebtedness of Tenant to landlord other than rent; third, to the rent due and unpaid hereunder; and fourth, the residue, if any, shall be held by Landlord and applied in payment of other or future obligations of Tenant to Landlord as the same may become due and payable, and Tenant shall not be entitled to receive any portion of such revenue. Re-entry or taking possession of the Premises by Landlord under this Section shall not be construed as an election on Landlord's part to terminate this Lease, unless a notice of termination is given to Tenant Landlord reserves the right following any re-entry or reletting, or both, under this Section to exercise its right to terminate the Lease. Tenant will pay Landlord Rent and other sums which would be payable under this Lease if repossession had not occurred, less the net proceeds, if any, after reletting the Premises and after deducting Landlord's Reletting Expenses. "Reletting Expenses" is defined to include all expenses incurred by Landlord in connection with reletting the Premises, including without limitation, all repossession costs, brokerage commissions and costs for securing new tenants, attorneys' fees, remodeling and repair costs, costs for removing persons or property, costs for storing Tenant's property and equipment, and costs of tenant improvements and rent concessions granted by Landlord to any new Tenant, prorated over the life of the new lease.
- c. **Waiver of Redemption Rights.** Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Premises or to have a continuance of this Lease for the Term, or any extension thereof.

- d. **Nonpayment of Additional Rent.** All costs which Tenant is obligated to pay to landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of Rent, and Landlord shall have the same rights it has with respect to nonpayment of Rent.
- e. **Failure to Remove Property.** If Tenant fails to remove any of its property from the Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent, if any.

**XXIV. INDEMNIFICATION.** The Tenant hereby covenants and agrees to indemnify, defend and hold the Landlord harmless from any and all claims or liabilities which may arise from any cause whatsoever as a result of Tenant's use and occupancy of the Premises, and further shall indemnify the Landlord for any losses which the Landlord may suffer in connection with the Tenant's use and occupancy or care, custody and control of the Premises. The Tenant also hereby covenants and agrees to indemnify and hold harmless the Landlord from any and all claims or liabilities which may arise from any latent defects in the subject Premises that the Landlord is not aware of at the signing of the lease or at any time during the lease term. Except to the extent of claims arising out of Landlord's gross negligence or intentional acts of misconduct, Landlord shall not be liable for injury to Tenant's business or assets, or any loss of income therefrom or for damage to any property of Tenant or of its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, or any other person in or about the Premises or the Property. This provision shall survive expiration or termination of this lease.

**XXV. BANKRUPTCY - INSOLVENCY.** The Tenant agrees that in the event all or a substantial portion of the Tenant's assets are placed in the hands of a receiver or a Trustee, and such status continues for a period of 30 days, or should the Tenant make an assignment for the benefit of creditors or be adjudicated bankrupt; or should the Tenant institute any proceedings under the bankruptcy act or any amendment thereto, then such Lease or interest in and to the leased Premises shall not become an asset in any such proceedings and, in such event, and in addition to any and all other remedies of the Landlord hereunder or by law provided, it shall be lawful for the Landlord to declare the term hereof ended and to re-enter the leased land and take possession thereof and all improvements thereon and to remove all persons therefrom and the Tenant shall have no further claim thereon.

**XXVI. SUBORDINATION AND ATTORNMENT.** This Lease shall automatically be subordinate to any mortgage or deed of trust created by Landlord which is now existing or hereafter placed upon the Premises including any advances, interest, modifications, renewals, replacements or extensions {"Landlord's Mortgage"}. Tenant shall attorn to the holder of any Landlord's Mortgage or any party acquiring the Premises at any sale or other proceeding under any Landlord's Mortgage provided the acquiring party assumes the obligations of Landlord under this Lease. Tenant shall promptly and in no event later than 15 days after request execute, acknowledge and deliver documents which the holder of any Landlord's Mortgage may reasonably require as further

evidence of this subordination and attornment. Notwithstanding the foregoing, Tenant's obligations under this Section to subordinate in the future are conditioned on the holder of each Landlord's Mortgage and each party acquiring the Premises at any sale or other proceeding under any such Landlord's Mortgage not disturbing Tenant's occupancy and other rights under this Lease, so long as no uncured Event of Default by Tenant exists.

## **XXVII. MISCELLANEOUS TERMS.**

- I. Usage by Tenant: Tenant shall comply with all rules, regulations and laws of any governmental authority with respect to use and occupancy. Tenant shall not conduct or permit to be conducted upon the Premises any business or permit any act which is contrary to or in violation of any law, rules or regulations and requirements that may be imposed by any authority or any insurance company with which the Premises is insured, nor will the Tenant allow the Premises to be used in any way which will invalidate or be in conflict with any insurance policies applicable to the building. In no event shall explosives or extra hazardous materials be taken onto or retained on the Premises. Furthermore, Tenant shall not install or use any equipment that will cause undue interference with the peaceable and quiet enjoyment of the Premises by other tenants of the building.
- II. Condition of Premises/Inspection by Tenant: The Tenant has had the opportunity to inspect the Premises and acknowledges with its signature on this lease that the Premises are in good condition and comply in all respects with the requirements of this Lease. Furthermore, the Landlord makes no representation or warranty with respect to the condition of the Premises or its fitness or availability for any particular use, and the Landlord shall not be liable for any latent or patent defect therein. Furthermore, the Tenant represents that Tenant has inspected the Premises and is leasing and will take possession of the Premises with all current fixtures present in their "as is" condition as of the date hereof.
- III. Right of Entry: It is agreed and understood that the Landlord and its agents shall have the complete and unencumbered right of entry to the Premises at any time or times for purposes of inspecting or showing the Premises.

**XXVIII. ESTOPPEL CERTIFICATE.** Tenant shall, from time to time, upon written request of landlord, execute, acknowledge and deliver to Landlord or its designee a written statement specifying the following, subject to any modifications necessary to make such statements true and complete: (i) the total rentable square footage of the Premises; (ii) the date the Term commenced and the date it expires; (iii) the amount of minimum monthly Rent and the date to which such Rent has been paid; (iv) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way; (v) that this Lease represents the entire agreement between the parties; (vi) that all obligations under this Lease to be performed by either party have been satisfied; (vii) that there are no existing claims, defenses or offsets which the Tenant has against the enforcement of this Lease by Landlord; (viii) the amount of Rent, if any, that Tenant paid in advance; (ix) the amount of security that Tenant deposited with Landlord; (x) if Tenant has sublet all or a portion of the Premises or assigned its interest in the Lease and to whom; (xi) if Tenant has any option to extend the Term of the Lease or option to purchase the Premises; and (xii) such other factual matters concerning the Lease or the Premises as Landlord may reasonably request. Tenant acknowledges and agrees that any statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest or assignee of any mortgage or new mortgagee of Landlord's interest in the Premises. If Tenant shall fail to respond within 10 days to Landlord's request for the statement required by this Section, Landlord may provide the statement and Tenant shall be deemed to have admitted the accuracy of the information provided by Landlord.

**XXIX. HOLDOVER.** If Tenant shall, without the written consent of landlord, remain in possession of the Premises and fail to return them to Landlord after the expiration or termination of this Lease, the tenancy shall be a holdover tenancy at sufferance, which may be terminated according to Washington law. During such tenancy, Tenant agrees to pay to Landlord 150% of the rate of rental last payable under this Lease, unless a different rate is agreed upon by Landlord. All other terms of the Lease shall remain in effect other than any options to extend the Term. Tenant acknowledges and agrees that this Section does not grant any right to Tenant to holdover, and that Tenant may also be liable to Landlord for any and all damages or expenses which Landlord may have to incur as a result of Tenant's holdover.

**XXX. NON-WAIVER.** Landlord's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of Tenant. The acceptance by Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any previous breach by Tenant.

**XXXI. NOTICES.** All notices under this Lease shall be in writing and effective (i) when delivered in person or via overnight courier to the other party, or (ii) three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section I. The addresses for notices and payment of rent set forth in Section 1 may be modified by either party only by written notice delivered in conformance with this Section.

**XXXIII. GOVERNING LAW.** This Lease shall be governed by the laws of the State of Washington.

**XXV. COSTS AND ATTORNEYS' FEES.** If Tenant or Landlord engage the services of an attorney to collect monies due or to bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or other payments, or possession of the Premises, the losing party shall pay the prevailing party a reasonable sum for attorneys' fees in such action, whether in mediation or arbitration, at trial, on appeal, or in any bankruptcy proceeding.

**XXVI. TRANSFER OF LANDLORD'S INTEREST.** This Lease shall be assignable by Landlord without the consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for collateral purposes only, upon the assumption of this Lease by the transferee, Landlord shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, including any liability for any retained security deposit or prepaid rent, for which the transferee shall be liable, and Tenant shall attorn to the transferee.

### **35. GENERAL.**

- a. **Heirs and Assigns.** This Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.
- b. **Entire Agreement.** This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Premises. No prior or contemporaneous agreements or understandings pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended except in writing, signed by Landlord and Tenant.

- c. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.
- d. **Force Majeure.** Time periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife; provided in no event shall any of the foregoing events operate to extend the Term of this Lease.
- e. **No Light, Air or View Easement.** Tenant has not been granted an easement or other right for light, air or view to or from the Premises. Any diminution or shutting off of light, air or view by any structure which may be erected on or adjacent to the Building shall in no way affect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.
- f. **Authority of Parties.** Each party to this Lease represents and warrants to the other that the person executing this Lease on behalf of such party has the authority to enter into this Lease on behalf of such party, that the execution and delivery of this lease has been duly authorized, and that upon such execution and delivery, this Lease shall be binding upon and enforceable against such party.
- g. **Time.** "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business in the state where the Premises are situated. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Lease.
- h. **Quiet Enjoyment.** Provided Tenant pays Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.
- i. **Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.
- j. **Counterparts.** This contract may be signed by and returned by one or more counterparts. All signatures are binding on Tenant and Landlord.

**XXVII. AMENDMENT.** No amendment of this Lease shall be effective unless reduced to writing and subscribed by the parties with all the formality of the original.

**XXVIII. BINDING EFFECT.** This Lease and any amendments thereto shall be binding upon the Landlord and the Tenants and/or their respective successors, heirs, assigns, executors and administrators.

//  
 //  
 Signature page to follow.  
 //  
 //

IN WITNESS WHEREOF, the parties hereto set their hands and seal this 16 day of DECEMBER, 2022.

Landlord's Signature  
[Signature]

Printed Name  
Keith Hillstrom

Title  
CEO Hillstrom Holdings

Landlord's Signature  
\_\_\_\_\_

Printed Name  
\_\_\_\_\_

Title  
\_\_\_\_\_

Tenant's Signature  
[Signature]

Printed Name  
Robert Johnson Mayor

Title  
\_\_\_\_\_

Tenant's Signature  
\_\_\_\_\_

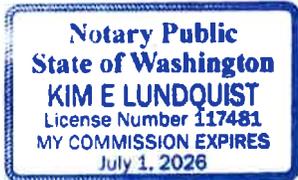
Printed Name  
\_\_\_\_\_

Title  
\_\_\_\_\_

**ACKNOWLEDGMENT OF NOTARY PUBLIC**

STATE OF Washington  
COUNTY OF Kitsap

On this 14<sup>th</sup> day of December, 2022, before me appeared Keith Hillstrom, as LANDLORD of this Commercial Lease Agreement who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.



Kim E Lundquist  
Notary Public

My Commission Expires: 7.1.2026

**ACKNOWLEDGMENT OF NOTARY PUBLIC**

STATE OF Washington  
COUNTY OF Kitsap

On this 22<sup>nd</sup> day of December, 2022 before me appeared Robert Johnson, as TENANT(S) of this Commercial Lease Agreement who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.



Brandy Rinearson  
Notary Public

My Commission Expires: 2-1-2025



**City of Port Orchard  
Council Meeting Minutes  
Regular Meeting of January 10, 2023**

---

**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 Lucarelli	Present
Councilmember Chang	Present
Councilmember Clauson	Present
Councilmember Cucciardi	Present
Councilmember Diener	Present
Councilmember Trenary	Present
Councilmember Rosapepe	Present
Mayor Putaansuu	Present

Staff present: Public Works Director Lang, Operations Manager Heglund, Community Development Director Bond, HR Manager Lund, HR Specialist Spalding, City Attorney Archer, Police Chief Brown, City Clerk Wallace, and Deputy City Clerk Floyd.

The meeting streamed live on YouTube.

**A. PLEDGE OF ALLEGIANCE (Time Stamp: 00:28)**

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

**2. APPROVAL OF AGENDA (Time Stamp: 00:50)**

**MOTION:** By Councilmember Clauson, seconded by Councilmember Cucciardi, to add a Consent Agenda item for a change in the City’s representation to the KEDA (Kitsap Economic Development Alliance) Board from Councilmember Lucarelli to Councilmember Cucciardi, and to remove the 2023 Lodging Tax Allocation discussion from tonight’s agenda.

**The motion carried.**

**MOTION:** By Councilmember Clauson seconded by Councilmember Trenary, to approve the agenda as amended.

**The motion carried.**

### 3. CITIZENS COMMENTS (Time Stamp: 02:46)

There were no citizen comments.

Public Works Director Lang introduced Jeff Heglund, the City's new Operations Manager who introduced himself to the Council and Mayor and spoke to his background.

### 4. CONSENT AGENDA (Time Stamp: 06:06)

- A. Approval of Voucher Nos. 85245 through 85282 and 85290 through 85345 and 85353 through 85386 including bank drafts in the amount of \$465,066.76 and EFT's in the amount of \$228,065.15 totaling \$693,131.91.
- B. Approval of Payroll Check Nos. 85283 through 85289 and 85346 through 85352 including bank drafts and EFT's in the amount of \$478,543.57 and Direct Deposits in the amount of \$464,640.66 totaling \$943,184.23.
- C. Adoption of a Resolution Declaring Certain Personal Property as Surplus and Authorizing its Disposition Thereof (**Resolution No. 007-23**)
- D. Approval of Amendment No. 1 of Contract No. 029-22 with CONSOR North America, Inc. for the 2023 General Sewer Plan Update for the City's Sanitary Sewer System
- E. Approval of the December 20, 2022, City Council Meeting Minutes
- F. **NEW:** Change in the City's Representation to the KEDA (Kitsap Economic Development Alliance) Board from Councilmember Lucarelli to Councilmember Cucciardi

**MOTION:** By Councilmember Clauson, seconded by Councilmember Lucarelli, to approve the Consent Agenda as amended.

**The motion carried.**

### 5. PRESENTATION

#### A. Housing Action Plan-Existing Conditions Report (Time Stamp: 06:32)

Community Development Director Bond introduced Scott Bonjukian with Makers Architecture and Urban Design and Andrew Oliver from Leland Consulting Group who provided a presentation on an updated schedule, housing action plan priorities, population, demographics, households, income, housing type and age, housing population, housing production, project spotlights-middle housing and mixed-use projects, vacancy, housing costs, housing affordability, housing cost burden, housing needs by income-2044, key code observations, stakeholder interviews, housing survey key themes-to date, housing survey-stories and next steps.

#### B. Diversity Equity and Inclusion (DEI) (Time Stamp: 48:33)

HR Specialist Spaulding provided a presentation on where we are going, introduction, lets get acquainted-what do we bring to the table, biases, teasing out buzzwords, definitions, diversity, equity, equality, inclusion, the people DEI programs are designed to lift up, the problem that needs fixing, the problem in the US and in the workplace, solutions, fitting in with the City of Port Orchard priorities, mission, vision and values, Mayor's statements, policies, culture and social norms, creating a path forward, and next steps.

Additional discussion was held regarding bringing forward a resolution to Council supporting the DEI program, looking into creating a staff DEI committee, being more diverse in our government and recruiting, and steps the City is currently taking.

## **6. PUBLIC HEARING**

There were no public hearings.

## **7. BUSINESS ITEMS**

### **A. Appointment of a 2023 Mayor Pro-Tempore (Time Stamp 1:34:05)**

**MOTION:** By Councilmember Lucarelli, seconded by Councilmember Rosapepe, to elect Councilmember Trenary as the Mayor Pro-Tempore for 2023.

**The motion carried.**

### **B. Adoption of a Resolution Confirming the Mayoral Appointment to the Building Board of Appeals (Time Stamp: 1:36:00)**

**MOTION:** By Councilmember Diener seconded by Councilmember Trenary, to adopt a resolution confirming the Mayor's appointment to the Building Board of Appeals, as presented.

**The motion carried.**

**(Resolution No. 008-23)**

### **C. Approval of the December 13, 2022, City Council Meeting Minutes (Time Stamp 1:37:50)**

**MOTION:** By Councilmember Diener, seconded by Councilmember Lucarelli, to approve the minutes of December 13, 2022.

**The motion carried. Councilmember Cucciardi abstained.**

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

### **A. ~~Lodging Tax 2023 Allocation~~**

**9. REPORTS OF COUNCIL COMMITTEES (Time Stamp: 1:38:30)**

Mayor Putaansuu reported the Economic Development and Tourism Committee is scheduled to meet January 23<sup>rd</sup>. The Utilities Committee is scheduled to meet February 14<sup>th</sup>. The Finance Committee is scheduled to meet January 20<sup>th</sup> at 9am. The Transportation Committee is scheduled to meet January 24<sup>th</sup>. The Festival of Chimes and Lights is scheduled to meet January 30<sup>th</sup>. The Land Use Committee is scheduled to meet January 18<sup>th</sup> and the Sewer Advisory Committee is scheduled to meet in March. He also reported on Housing Kitsap, he is now the chair of the Department of Emergency Management and is the vice chair of the Housing Kitsap Executive Committee.

Councilmember Cucciardi reported on a meeting he had earlier in the day with City Clerk Wallace and City Attorney Archer regarding lodging tax.

**10. REPORT OF MAYOR (Time Stamp: 1:43:34)**

The Mayor reported on the following:

- Council Retreat is March 10, 2023;
- Changes to the Lowe's traffic signal;
- Legislative session and house bills;
- Mayor's Exchange and meeting with governor's office;
- Meeting with Port Orchard rotary club regarding Givens Park courts;
- In accordance with Ordinance 008-20 "Delegating Authority to the Mayor for Creating and Modification of Job Descriptions," he reported on the revised job description for Permit Center Manager;
- No work study meeting January 17<sup>th</sup>; and
- Read into record portions of minutes from 50, 75, and 95 years ago.

**11. REPORT OF DEPARTMENT HEADS (Time Stamp 1:51:33)**

Community Development Director Bond reported on ribbon cutting scheduled on January 23<sup>rd</sup> for the Haven Apartments and reported on a meeting with Eric Baker at Kitsap County regarding applications for urban growth area expansion.

Mayor Putaansuu briefly spoke to the impacts of police reform.

Police Chief Brown reported on body cameras, interview rooms, lateral officer, and upcoming oral boards.

City Clerk Wallace reported on annual paper and electronic records, and Council invite to the AWC City Action Days.

**12. CITIZEN COMMENTS (Time Stamp 1:57:34)**

There were no citizen comments.

**13. EXECUTIVE SESSION**

There was no executive session.

**14. GOOD OF THE ORDER (Time Stamp 1:57:57)**

Councilmember Rosapepe reported on receiving compliments for the new downtown sign.

Councilmember Diener said he has also received compliments on the sign as well as comments that the totem pole should be updated/cleaned up.

Councilmember Clauson said the totem pole was from the Makah tribe.

Councilmember Trenary thanked Public Works for their tremendous work during the ice and snowstorm, flooding, and keeping citizens able to move around the City.

Mayor Putaansuu said he knocked on a few doors downtown to check on the businesses to see if they had any flooding damage or issues.

**15. ADJOURNMENT**

The meeting adjourned at 8:31 p.m. No other action was taken. Audio/Visual was successful.

---

Brandy Wallace, 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>January 24, 2023</u>
Subject:	<u>Adoption of a Resolution Approving a</u>	Prepared by:	<u>Tony Lang</u>
	<u>Contract with CONSOR North America,</u>		<u>Public Works Director</u>
	<u>Inc. for Construction Support and</u>	Atty Routing No.:	<u>366922-0009 – PW</u>
	<u>Management Services for the McCormick</u>	Atty Review Date:	<u>January 18, 2023</u>
	<u>Village Park Splash Pad Construction</u>		
	<u>Project</u>		

**Summary:** The City Public Works Department has identified a need for construction support services to support the construction of a Splash Pad at McCormick Village Park. On December 13, 2022, pursuant to the City’s Procurement Policies adopted as Resolution No. 036-22, as amended, the City’s Public Works Department established a list of qualified contractors from the 2022 MRSC Consultant Roster (Roster) for the Main Category – Construction Management and Sub-Category – Project Management, Project Management Oversight. On December 16, 2022, the City’s Public Works Department selected three qualified consultants from the Roster. On January 3, 2023, after staff reviewed, scored, and ranked the qualifications of the three consultants selected from the Roster, the City’s Public Works Department identified the highest-ranking firm as Consor North America, Inc. On January 4, 2023, the City received a defined Scope of Work, Budget and Project Timeline for the Project from Consor, in an amount not to exceed \$57,475.00.

**Recommendation:** Staff recommends adoption of Resolution No. 001-23, approving Contract No. C005-23 with Consor North America, Inc. for Construction Support and Management Services for the McCormick Village Park Splash Pad Construction Project in an amount not to exceed \$57,475.00 and documenting the Professional Services procurement procedures.

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

**Motion for Consideration:** I move to adopt Resolution No. 001-23, thereby approving Contract No. C005-23 with Consor North America, Inc. for Construction Support and Management Services for the McCormick Village Park Splash Pad Construction Project in an amount not to exceed \$57,475.00.

**Fiscal Impact:** A Budget amendment is required. (GL Code 302.05.594.76.60).

**Alternative:** Do not authorize and provide alternate guidance.

**Attachments:** Resolution No. 001-23  
Contract No. C005-23  
Consultant’s Proposal (dated 01/04/2023)

**RESOLUTION NO. 001-23**

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. C005-23 WITH CONSOR NORTH AMERICA, INC. FOR CONSTRUCTION SUPPORT AND MANAGEMENT SERVICES FOR THE MCCORMICK VILLAGE PARK SPLASH PAD PROJECT AND DOCUMENTING PROFESSIONAL SERVICES PROCUREMENT PROCEDURES.**

**WHEREAS**, the City has identified a need for construction support services to support construction of a Splash Pad at McCormick Village Park; and

**WHEREAS**, the City desires the assistance of a consultant with expertise in Construction Project Management and Project Management Oversight; and

**WHEREAS**, on December 13, 2022, pursuant to the City's Procurement Policies adopted as Resolution No. 036-22, as amended, the City's Public Works Department established a list of qualified consultants for the project from the MRSC 2022 Consultant Roster for the Main Category – Construction Management and Sub-Category – Project Management, Project Management Oversight; and

**WHEREAS**, on December 16, 2022, the City's Public Works Department selected three qualified consultants from the MRSC 2022 Consultant Roster; and

**WHEREAS**, on January 3, 2023, after reviewing the Statement of Qualifications and scoring the consultants, based upon overall qualifications, the City's Public Works Department selected Consor North America, Inc., as the responsible and responsive consultant for the project; and

**WHEREAS**, on January 4, 2023, Consor North America, Inc. provided the City's Public Works Department with a viable Proposal; and

**WHEREAS**, upon completion of the Bidder's Checklist on January 3, 2023, the City's Public Works Department recommends the City Council approve Consor North America, Inc., to provide Construction Support and Management Services for the McCormick Village Park Splash Pad Construction Project; and

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

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

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

**THAT:** The City Council approves and authorizes the Mayor to sign Contract No. C005-23 with Consor North America, Inc. to provide Construction Support and Management Services for the McCormick Village Park Splash Pad Construction Project.

**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 24<sup>th</sup> day of January 2023.

---

Robert Putaansuu, Mayor

ATTEST:

---

Brandy Wallace, MMC, City Clerk

**Port Orchard Contract #: C005-23**  
Authorized Amount: \$57,475  
Date Start: January 24, 2023  
Date End: July 31, 2023

**CONSULTANT SERVICES AGREEMENT**  
**McCormick Village Park Splash Pad Construction Support**

**THIS AGREEMENT** is entered into by and between the City of Port Orchard, Washington, a municipal corporation organized under the laws of the State of Washington (“City”) and Conсор North America, Inc., (“Consultant”) organized under the laws of the State of Oregon, located and doing business at 600 University St, Ste 300 Seattle, WA 98101-4196 (hereinafter the "Consultant").

**RECITALS:**

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

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

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

**AGREEMENT:**

**1. Scope of Services to be Performed by Consultant.**

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

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

**2. Compensation.**

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

---

*City of Port Orchard and Conсор North America, Inc.*  
*Professional Service Agreement Contract No. C005-23*  
*McCormick Village Park Splash Pad Construction Support*

- LUMP SUM.** Compensation for these services set forth in Exhibit A shall be a Lump Sum of \$ \_\_\_\_\_.
- TIME AND MATERIALS NOT TO EXCEED.** Compensation for these services shall not exceed **\$57,475** without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."
- TIME AND MATERIALS.** Compensation for these services shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."
- OTHER** \_\_\_\_\_

### **3. Payment.**

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

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

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

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

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

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

#### 4. **Duration of Agreement.**

A. This Agreement shall be in full force and effect for a period commencing on January 24, 2023, and ending July 31, 2023, unless sooner terminated under the provisions of this Agreement. The City reserves the right to offer two (2) one-year extensions prior to expiration of the Agreement to retain the Consultant's services.

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

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

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

#### 5. **Standard of Care.**

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

#### 6. **Ownership and Use of Documents.**

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

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

#### 7. **Relationship of the Parties; Independent Consultant.**

The Parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the

specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives, and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

## **8. Indemnification.**

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

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

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

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

## **9. Insurance.**

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

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

- i. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00

01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

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

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

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

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

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

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

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

G. *Failure to Maintain Insurance.* Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the

contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

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

#### **10. Record Keeping and Reporting.**

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

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

#### **11. City's Right of Inspection and Audit.**

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

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

#### **12. Work Performed at the Consultant's Risk.**

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

### 13. **Termination.**

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

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

C. *Rights Upon Termination.*

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

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

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

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

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

**14. Discrimination Prohibited.**

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

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

**15. Force Majeure.**

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

**16. Assignment and Subcontract.**

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

**17. Conflict of Interest.**

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

## **18. Confidentiality.**

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

## **19. Non-Appropriation of Funds.**

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. This Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the City in the event that the terms of the provision are effectuated.

## **20. Employment of State Retirees.**

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

## **21. Entire Agreement.**

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

## **22. Non-waiver of Breach.**

The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be

construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

**23. Modification.**

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

**24. Notices.**

All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered, in which case the notice or communication shall be deemed given on the date of receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, in which case the notice or communication shall be deemed given three (3) business days after the date of deposit in the United States mail; or (c) sent by overnight delivery using a nationally recognized overnight courier service, in which case the notice or communication shall be deemed given one business day after the date of deposit with such courier. In addition, all notices shall also be emailed, however, email does not substitute for an official notice. Notices shall be sent to the following addresses:

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

City Clerk  
 City of Port Orchard  
 216 Prospect Street  
 Port Orchard, Washington 98366  
[Bwallace@cityofportorchard.us](mailto:Bwallace@cityofportorchard.us)  
 Phone: 360.876.4407 Fax: 360.895.9029

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

600 University St., Ste 300  
 \_\_\_\_\_  
 Seattle, WA 98101  
 \_\_\_\_\_  
 Phone No.: 206-462-7030  
 Email: erika.schuyler@consoreng.com

**25. Resolution of Disputes; Governing Law.**

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

B. If any dispute arises between the City and the Consultant under any of the provisions of

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

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

## **26. Compliance with Laws.**

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

## **27. Title VI.**

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

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

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

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

C. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment.* In all solicitations, either by competitive bidding, or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.

D. *Information and Reports.* The Consultant will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, the Washington State Department of Transportation 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, the Washington State Department of Transportation or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

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

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

F. *Incorporation of Provisions.* The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the City to enter into any litigation to protect the interests of the City. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

## **28. Counterparts.**

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

## **29. Severability.**

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

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

**CONSULTANT**

By: 

Title: Regional Manager

Date: 1/11/2023

**CITY OF PORT ORCHARD**

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

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

**ATTEST/AUTHENTICATE**

\_\_\_\_\_  
Brandy Wallace, MMC, City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
Port Orchard City Attorney's Office

## APPENDIX A

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

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

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

discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to -ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

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

## EXHIBIT A

Scope of Services to be Provided by Consultant. The Consultant shall furnish services including, but not limited to, the following outlined here.

## EXHIBIT A

# SCOPE OF SERVICES

## Splash Pad Engineering Services During Construction (ESDC)

### City of Port Orchard

### Background

This Scope of Services includes engineering services during construction (ESDC) for the City of Port Orchard's (City) Splash Pad project, which was designed by Consor North America, Inc. (Conсор). The scope and fee estimate have been developed based on Consor's understanding of the project needs.

Conсор services are expected to commence in January 2023. ESDC as part of this contract are expected to be completed by July 2023.

### Scope of Services

The Scope of Services consists of the following major tasks.

- Task 1 – Project Management and Coordination
- Task 2 – Engineering Services During Construction
- Task 3 – Contingency

A detailed breakdown of the tasks and subtasks that comprise the Scope of Services follows and aligns with the tasks included in the Fee Estimate (**Exhibit B**).

### Task 1 – Project Management and Coordination

Provide team guidance aligned with City objectives. Coordinate, monitor, and control the project resources to meet the technical, communication, and contractual obligations required for providing the engineering support service activities included in this contract.

#### *Subtask 1.1 Coordination with City*

Coordinate with City staff regarding construction work activities, project needs and issues through e-mails and phone calls.

#### *Subtask 1.2 Invoices and Budget Oversight*

Prepare invoice and monthly progress reports that include work completed, costs incurred, budget status, amendments, variances between planned and actual performance, tasks issues, approved out of scope items and associated costs, and issues that may result in an increase in the total Consor contract price.

### *Subtask 1.3 Pre-Construction Meeting*

Attend the Pre-Construction Meeting with up to one (1) consultant team member in attendance. Provide input on meeting notes following the meeting.

#### Assumptions

- Coordinate with the City via phone for up to ten (10), 30-minute coordination calls
- Contractor's schedule governs the work performed
- Anticipated construction notice-to-proceed is January 2023
- Up to seven (7) months of invoicing and progress reporting are included
- One (1) consultant staff member to attend Pre-Construction Meeting
- Pre-Construction Meeting will be up to three (3) hours in duration, including travel

#### Deliverables

- Monthly invoice with project status reports
- Correspondence, e-mails, and other documentation
- Pre-Construction Meeting Notes Review and Input

## Task 2 – Engineering Services During Construction

Work under this task includes engineering services to support the construction phase of the project.

### *Subtask 2.1 Construction Meetings*

Attend up to ten (10) virtual construction meetings when requested by the City's Construction Management (CM) Representative.

### *Subtask 2.2 Design Modifications*

Provide up to four (4) design modifications and accompanying plan changes to support required field modifications to maintain design intent and functionality.

### *Subtask 2.3 Submittal Reviews*

Review and comment on up to twenty (20) total submittals, shop drawings, and other technical submittals from the Contractor for general conformance with the requirements of the Contract Documents.

### *Subtask 2.4 Requests for Information*

Prepare responses for up to fifteen (15) Contractor requests for information (RFIs).

### *Subtask 2.5 Change Order Review*

Provide review of up to four (4) Contractor proposed change orders.

### *Subtask 2.6 Construction Observation Site Visits*

Attend up to six (6) construction observation site visits, as requested by the City's CM Representative.

### *Subtask 2.7 Review of As-Built Plans and Operations and Maintenance (O&M) Manuals*

Provide review of as-built plans and O&M Manuals.

### *Subtask 2.8 Commissioning Site Visit*

Attend one (1) commissioning site visit with City operations staff.

## Assumptions

- Meetings will be attended virtually by one (1) Consor staff member and will be up to one (1) hour in duration
- Meeting notes will be produced by the City's CM Representative
- An average design modification is anticipated to require up to four (4) hours of effort for the project engineer, with up to two hours of review for QA/QC.
- Not all submittals will require Consor review; submittals will be sent to Consor by the City's CM Representative when design engineer input is desired.
- An average of four (4) hours of review time is assumed per submittal (three hours for first round review, and one hour for resubmittal review). Up to one re-submittal is anticipated per submittal. Submittals requiring more than one resubmittal review require additional effort beyond this scope of services and will require additional budget.
- Submittal review comments will be submitted to the City's CM Representative.
- Not all RFIs will require Consor input; RFIs will be sent to Consor by the City's CM Representative when design engineer input is desired.
- An average of two (2) hours will be required to respond to each RFI
- RFI responses will be submitted to the City's CM Representative.
- Not all change orders will require Consor input; change orders will be sent to Consor by the City's CM Representative when design engineer input is desired.
- An average of four (4) hours will be required per change order review
- Change order review comments will be submitted to the City's CM Representative.
- Each site visit will be up to three (3) hours in duration, including travel time
- Site visit observation report will be developed in Word or similar format and will be submitted to the City's CM Representative.
- As-built plan review will take up to eight (8) hours in duration
- O&M Manual review will take up to sixteen (16) hours in duration

- Commissioning site visit will take up to 8 hours in duration, including travel time, and does not include any commissioning services

## Deliverables

- Design modification
- Design modifications will be stamped by a Professional Engineer licensed in the state of Washington
- Submittal reviews
- RFI responses
- Change order reviews
- Site visit observation report documenting conditions, activities, and summary of discussions and any issues noted.
- As-built plan markups, where needed
- O&M Manuals review
- Commissioning site visit report

## Task 3 – Contingency

Project contingency includes budget for additional, unanticipated labor and/or expenses not specifically identified in the scope of services defined above. Such work items will be undertaken only after written authorization has been provided by the City's Project Manager.

## Assumptions

To be determined.

## Deliverables

To be determined.

## Proposed Schedule

Work will begin upon receipt of a signed contract and notice to proceed, or other agreeable written authorization. Work will proceed in a timely manner with an anticipated completion date seven (7) months from notice to proceed. The project duration is based on timely input, information, City staff availability to access assessed stations, and review comments from City staff.

## Fee Estimate

The detailed fee estimate is provided as **Exhibit B**.

Payment will be made at the Billing rates for personnel working directly on the project, which will be made at the Consultant's Hourly Rates, plus Direct Expenses incurred. Subconsultants, when required by the

Consultant, will be charged at actual costs plus a 10 percent fee to cover administration and overhead. Direct expenses will be paid at the rates shown in the table below.

## Direct Expenses

Expenses incurred in-house that are directly attributable to the project will be invoiced at actual cost. These expenses include the following.

Computer Aided Design and Drafting	\$18.00/hour
GIS and Hydraulic Modeling	\$10.00/hour
Mileage	Current IRS Rate
Postage and Delivery Services	At Cost
Printing and Reproduction	At Cost
Travel, Lodging, and Subsistence	At Cost

## **EXHIBIT B**

Rates for Services to be Provided by Consultant. The Consultant shall furnish the services in accordance with the rates specified attached hereto, as Exhibit B.

SPLASH PAD ENGINEERING SERVICES DURING CONSTRUCTION (ESDC)  
CITY OF PORT ORCHARD  
PROPOSED FEE ESTIMATE

	LABOR CLASSIFICATION (HOURS)							Labor	Expenses	CADD Units \$18/hr	GIS Units \$10/hr	Total
	Principal Engineer VI	Principal Engineer III	Professional Engineer VII	Engineering Designer III	Project Coordinator IV	Administrative III	Hours					
<b>Task 1 - Project Management and Coordination</b>												
Task 1.1 - Coordination with City	2	3					5	\$ 1,446	\$ -	\$ -	\$ -	\$ 1,446
Task 1.2 - Invoices and Budget Oversight					7	9	16	\$ 2,420	\$ -	\$ -	\$ -	\$ 2,420
Task 1.3 - Pre-Construction Meeting			4				4	\$ 888	\$ 38	\$ -	\$ -	\$ 926
<b>Task 1 Subtotal</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>0</b>	<b>7</b>	<b>9</b>	<b>25</b>	<b>\$ 4,754</b>	<b>\$ 38</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 4,792</b>
<b>Task 2 - Engineering Services During Construction</b>												
Task 2.1 - Construction Meetings	2		8				10	\$ 2,394	\$ -	\$ -	\$ -	\$ 2,394
Task 2.2 - Design Modifications	8		8				16	\$ 4,248	\$ -	\$ -	\$ -	\$ 4,248
Task 2.3 - Submittal Reviews	10		10	60			80	\$ 16,230	\$ -	\$ -	\$ -	\$ 16,230
Task 2.4 - Requests for Information	10		10	10			30	\$ 7,130	\$ -	\$ -	\$ -	\$ 7,130
Task 2.5 - Change Order Review	4		6	6			16	\$ 3,660	\$ -	\$ -	\$ -	\$ 3,660
Task 2.6 - Construction Observation Site Visits			9	9			18	\$ 3,636	\$ 225	\$ -	\$ -	\$ 3,861
Task 2.7 - Review of As-Built Plans and Operations and Maintenance (O&M) Manuals			8	16			24	\$ 4,688	\$ -	\$ -	\$ -	\$ 4,688
Task 2.8 - Commissioning Site Visit	8						8	\$ 2,472	\$ -	\$ -	\$ -	\$ 2,472
<b>Task 2 Subtotal</b>	<b>42</b>	<b>0</b>	<b>59</b>	<b>101</b>	<b>0</b>	<b>0</b>	<b>202</b>	<b>\$ 44,458</b>	<b>\$ 225</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 44,683</b>
<b>Task 3 - Contingency</b>												
Task 3.1 - Contingency							0	\$ -	\$ 8,000	\$ -	\$ -	\$ 8,000
<b>Task 3 Subtotal</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ -</b>	<b>\$ 8,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 8,000</b>
<b>TOTAL - ALL TASKS</b>	<b>44</b>	<b>3</b>	<b>63</b>	<b>101</b>	<b>7</b>	<b>9</b>	<b>227</b>	<b>\$ 49,212</b>	<b>\$ 8,263</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 57,475</b>



## 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 a Resolution Approving a  
Multifamily Property Tax Exemption  
Agreement for the Blueberry Apartments

Meeting Date: January 24, 2023  
Prepared by: Nicholas Bond, AICP  
DCD Director  
Atty Routing No.: Development-Matter 11  
Atty Review Date: December 27, 2022

**Issue:** Since 2016, Port Orchard has offered a property tax exemption program to encourage the creation of multi-family housing pursuant to RCW 84.14. The Multifamily Property Tax Exemption program exempts certain new, converted or rehabilitated multifamily developments from ad valorem property taxation (i.e. improvements to vacant land, or to existing buildings) for either 8 or 12 years from issuance of the certification of exemption, depending on whether a project will include at least 20% of housing units to be available below market rents.

The City has received a multifamily property tax exemption application from Blueberry Apartments QOZB, LLC., for construction of 108 new apartment units in five buildings on approximately 4.21 acres, located in a designated tax exemption target area adjacent near SE Blueberry Rd and Bethel Rd SE. The Developer is seeking an eight-year tax exemption. The project meets the criteria for an 8-year tax exemption and as such, a multifamily housing limited property tax exemption agreement has been prepared for approval.

**Recommendation:** Staff recommends that the City Council approve a resolution authorizing the Mayor to accept and sign a Multifamily Housing Limited Property Tax Exemption Agreement between the City and Blueberry Apartments QOZB, LLC, as presented.

**Relationship to Comprehensive Plan:** The Multifamily Property Tax Exemption (MPTE) implements the Housing Element of the City of Port Orchard’s Comprehensive Plan. Specifically, the MPTE implements Goals 1, 2, 3, 5 and 9 and certain associated policies.

**Motion for consideration:** “I move to adopt a resolution, authorizing the Mayor to execute a Multifamily Housing Limited Property Tax Exemption Agreement between the City and Blueberry Apartments QOZB, LLC, as presented.”

**Fiscal Impact:** The tax exemption will reduce property tax revenue to the city for a period of eight years for the proposed project. The construction of this apartment project will generate other revenue that may not otherwise be generated in the absence of this incentive.

**Alternatives:** Revise the Blueberry Apartments Multifamily Housing Limited Property Tax Exemption Agreement; do not enter into a Multifamily Property Tax Exemption agreement for the project.

**Attachments:** Resolution; Agreement; Exhibit A - site plans and floor plans for multi-family residential housing.

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

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, TO AUTHORIZE THE ACCEPTANCE OF A MULTIFAMILY PROPERTY TAX EXEMPTION AGREEMENT BETWEEN BLUEBERRY APARTMENTS QOZB, LLC AND THE CITY RELATING TO THE TERMS AND CONDITIONS OF THE SUBJECT MULTIFAMILY HOUSING PROJECT AND ITS ELIGIBILITY FOR THE 8-YEAR PROPERTY TAX EXEMPTION AS PROVIDED BY CHAPTER 3.48 OF THE PORT ORCHARD MUNICIPAL CODE.**

**WHEREAS**, the Port Orchard Municipal Code (POMC), Chapter 3.48, provides a multifamily property tax exemption pursuant to the requirements of that chapter; and

**WHEREAS**, POMC 3.48.060 provides that, to be eligible for the multifamily property tax exemption, the subject project must meet the following requirements: (1) the project must be located within a residential targeted area as defined in POMC 3.48.040; (2) the project must not displace existing tenants; (3) existing dwelling units proposed for rehabilitation must fail to comply with one or more standards of the applicable state or city building codes; (4) the new, converted, or rehabilitated multiple-unit housing must provide for a minimum of 50 percent of the space for permanent residential occupancy and must include at least 10 units of multifamily housing; (5) new construction of multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application; and (6) the project must be designed to comply with the city's comprehensive plan, building, housing, and zoning codes, and any other applicable regulations, standards or guidelines; and

**WHEREAS**, POMC 3.48.080 requires that, if the Director of the Department of Community Development approves an application for the multifamily property tax exemption, the applicant must enter into an agreement with the City regarding the terms and conditions of the implementation of the project; and

**WHEREAS**, the multifamily property tax exemption agreement must be approved by the Port Orchard City Council, in the form of a resolution, regarding the terms and conditions of the project and eligibility for exemption under Chapter 3.48 POMC; and

**WHEREAS**, the City received an application for multifamily property tax exemption from Blueberry Apartments QOZB, LLC, pertaining to a project titled Blueberry Apartments (the "subject project") under the "Type 2: Redevelopment Areas" residential targeted area; and

**WHEREAS**, the Director of the Department of Community Development has determined that the subject project meets the eligibility requirements set forth in POMC 3.48.060; has approved the application for the 8-year Type 2 tax exemption; and recommends approval of the attached Multifamily Housing Limited Property Tax Exemption Agreement

Blueberry Apartments QOZB, LLC

Page 1

1752135.2 - 366922 -0021

Multifamily Housing Limited Property Tax Exemption Agreement as accurately setting forth the terms and conditions of the subject project and eligibility for exemption under Chapter 3.48 POMC; and

**WHEREAS**, the Port Orchard City Council has determined to approve the attached Multifamily Housing Limited Property Tax Exemption Agreement; now, therefore,

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

**THAT: Recitals.** The recitals set forth above are hereby incorporated by reference as if set forth in full herein.

**THAT: Authorization for Signature.** The City of Port Orchard hereby authorizes the Mayor to accept and sign the Multifamily Housing Limited Property Tax Exemption Agreement in substantially the form as is attached to this Resolution.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 24<sup>th</sup> day of January 2023.

---

Robert Putaansuu, Mayor

ATTEST:

---

Brandy Wallace, MMC, City Clerk

**CITY OF PORT ORCHARD**  
**MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT**

**THIS AGREEMENT** is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Blueberry Apartments QOZB, LLC, a Washington limited liability company (hereinafter referred to as the “Owner”), and the City of Port Orchard, a municipal corporation of the State of Washington (hereinafter referred to as the “City”).

**WITNESSETH:**

WHEREAS, the City has an interest in stimulating new construction or rehabilitation of multi-family housing in Residential Target Areas in order to reduce development pressure on single-family residential neighborhoods, to increase and improve housing opportunities, and to encourage development densities supportive of transit use; and

WHEREAS, the City has, pursuant to the authority granted to it by Chapter 84.14 RCW, designated various Residential Target Areas for the provision of a limited property tax exemption for new multi-family residential housing; and

WHEREAS the City has, through Chapter 3.48 Port Orchard Municipal code (POMC), enacted a program whereby property owners may qualify for a Final Certificate of Tax Exemption which certifies to the Kitsap County Assessor that the owner is eligible to receive a limited property tax exemption; and

WHEREAS, the Owner is interested in receiving the multiple family property tax exemption for new multifamily residential housing units in a residential targeted area; and

WHEREAS, the Owner has submitted to the City a complete application form for no fewer than ten (10) units of new multifamily housing within a residential structure or as part of an urban development; and

WHEREAS, the Owner has submitted to the City preliminary site plans and floor plans for multi-family residential housing more particularly described in Exhibit A which is attached hereto and incorporated by reference herein (the “Project”) to be constructed on said property (the “Site”) legally described as:

PARCEL 1: LOT B, SHORT SUBDIVISION NO. 2586, RECORDED UNDER AUDITOR'S FILE NO. 8103110065, BEING A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, SECTION 2, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON; EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY FOR BLUEBERRY ROAD SE UNDER AUDITOR'S FILE NO. 200904300075

PARCEL 2: LOT A, SHORT SUBDIVISION NO. 2586, RECORDED UNDER AUDITOR'S FILE NO. 8103110065, BEING A PORTION OF THE NORTHEAST QUARTER OF THE

Multifamily Housing Limited Property Tax Exemption Agreement  
Blueberry Apartments QOZB, LLC

Page 3

1752135.2 - 366922 -0021

SOUTHEAST QUARTER, SECTION 2, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON; EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY FOR BLUEBERRY ROAD SE UNDER AUDITOR'S FILE NO. 200904300075

PARCEL 3: THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, SECTION 2, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT 990 FEET SOUTH OF THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, THENCE SOUTH 330 FEET; THENCE WEST 660 FEET; THENCE NORTH 330 FEET; THENCE EAST 660 FEET TO THE POINT OF BEGINNING; EXCEPT RAMSEY ROAD SE; AND EXCEPT THAT PORTION LYING WITHIN SHORT SUBDIVISION NO. 2586, RECORDED UNDER AUDITOR'S FILE NO. 8103110065; AND EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY FOR BLUEBERRY ROAD SE UNDER AUDITOR'S FILE NO. 200904300075; AND EXCEPT THE EAST 30 FEET FOR BETHEL ROAD.

Kitsap County Tax Assessor Parcel No(s). 022301-4-026-2008, 022301-4-012-2004 and 022301-4-043-2007 located at 4336 Bethel Road SE in the City of Port Orchard

WHEREAS, the City has determined that the improvements will, if completed as proposed, satisfy the requirements of for a Final Certificate of Tax Exemption;

**NOW, THEREFORE,** the City and the Owner do mutually agree as follows:

1. The City agrees to issue the Owner a Conditional Certificate of Acceptance of Tax Exemption.
2. The Owner agrees to construct on the Site multi-family residential housing generally as described in the site plans, floor plans, and elevations on file (22-671, 22-672, 22-673, 22-674 and 22-675) with the City as of the date of administrative approval of this Agreement. Provided however, that the building permits (22-671, 22-672, 22-673, 22-674 and 22-675) as approved by the City will establish the final configuration of the development which may differ from the site plan and other earlier submittals.
3. The Project must comply with all applicable zoning requirements, land use requirements, design review requirements and all building, fire, and housing code requirements contained in the Port Orchard municipal Code (herein referred to as the "POMC") at the time a fully complete application for a building permit is submitted to the City.
4. The new multiple-unit housing must provide for a minimum of fifty (50) percent of the space for permanent residential occupancy. The Project must include at least ten (10) units of multifamily housing within a residential structure or as part of an urban development.

5. The Owner agrees to complete construction of the agreed upon improvements within three years from the date the City issues the Conditional Certificate of Acceptance of Tax Exemption, or within any extension thereof granted by the City.

6. The Owner is requesting an eight-year limited property tax exemption. The Owner agrees, upon completion of the improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, to file with the City's Department of Community Development the following:

- a. A statement of expenditures made with respect to each multi-family housing unit and the total expenditures made with request to the entire site;
- b. A description of the completed work and a statement of qualification for the exemption; and
- c. A statement that the work was completed within the required three (3) year period or any authorized extension.

7. The City agrees, conditioned on the Owner's successful completion of the improvements in accordance with the terms of this Agreement and on the Owner's filing of the materials described in the preceding paragraph, to file an eight or twelve year (as applicable) Final Certificate of Tax Exemption with the Kitsap County Assessor.

8. The Owner agrees, within thirty (30) days following the first anniversary of the City's filing of the Final Certificate of Tax Exemption and each year thereafter for a period of eight years to file a notarized and sworn declaration with the City's Department of Community Development stating all of the following:

- a. A statement of occupancy and vacancy of the multi-family units during the previous twelve (12) months;
- b. A certification that the property has not changed use and continues to be in compliance with this Agreement and with Chapter 3.48 POMC; and
- c. A description of changes or improvements constructed after issuance of the certificate of tax exemption;
- d. The total monthly rent of each multifamily housing unit rented or the total sale amount of each unit sold during the 12 months ending with the anniversary date;
- e. A breakdown of the number, type, and specific multifamily housing units rented or sold during the 12 months ending with the anniversary date;

- f. The value of the tax exemption for the project;
- g. Any information needed by the City to file its annual report pursuant to Port Orchard Municipal Code (POMC) 3.48.120 and any additional information requested by the City in regards to the units receiving a tax exemption.; and
- h. Any additional information requested by the city pursuant to meeting any reporting requirements under Chapter 84.14 RCW.

9. The Parties acknowledge that the units are to be used an occupied for multifamily residential use. The Parties further acknowledge that the certificate of occupancy issued by the City is for multi-family residential units. The Owner acknowledges and agrees that the units shall be used primarily for residential occupancy and any business activities shall only be incidental and ancillary to the residential occupancy.

10. If the Owner converts to another use any of the new multi-family residential housing units constructed under this Agreement, the Owner shall notify the Kitsap County Assessor and the City's Department of Community Development within sixty (60) days of such change in use.

11. The Owner agrees to notify the City promptly of any transfer of Owner's ownership interest in the Site or in the improvements made to the Site under this Agreement.

12. For purposes of this Agreement, "Owner" shall mean the Property Owner if the development is comprised of rental units or shall mean the Owners Association of a condominium complex (if the development contains any ownership units) once such association is established. The Owner shall be responsible for all reporting requirements required herein on behalf of the owners of individual condominium units, if applicable.

13. If the Project includes any owner-occupied units, the Owner is required to form an Owner's Association to be organized under RCW 64.34.300 for all owner-occupied units within the development. Such organization shall remain operational and in effect until at least the length of the exemption period has expired and the final report is filed with the City. This Owner's Association shall assume the responsibility for collecting from all individual unit owners the information and documents required to complete the annual reporting requirements and for filing the required annual report with the City pursuant to Section 8 of this Agreement and Chapter 3.48 POMC.

14. The City reserves the right to cancel the Final Certificate of Tax Exemption should the Owner, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement. If the exemption is cancelled for non-compliance, Owner acknowledges that state law requires that an additional real property tax is imposed in the amount of (A) the difference between the tax paid and the tax that would have been paid if it had included the value of the non-qualifying

improvements, dated back to the date that the improvements became non-qualifying; (B) a penalty of 20% of the difference calculated under paragraph (A) of this paragraph; and (C) interest at the statutory rate on delinquent property taxes and penalties, calculated from the date the tax would have been due without penalty if the improvements had been assessed without regard to the exemptions provided by Chapter 84.14 RCW and POMC Chapter 3.48 POMC. Applicant acknowledges that, pursuant to RCW 84.14.110, any additional tax owed, together with interest and penalty, becomes a lien on that portion of the Property on which the Project is constructed and attaches at the time the portion of the Property is removed from multifamily use or the amenities no longer meet applicable requirements, and that the lien has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the Property may become charged or liable. Applicant further acknowledges that RCW 84.14.110 provides that any such lien may be foreclosed in the manner provided by law for foreclosure of liens for delinquent real property taxes.

15. Nothing in this Agreement shall permit or be interpreted to permit either Party to violate any provision of Chapter 84.14 RCW or POMC Chapter 3.48.

16. Modification. No modifications of this Agreement shall be made unless mutually agreed upon by the Parties in writing.

17. Acknowledgement of Tax Liability. The Owner acknowledges its awareness of the potential tax liability involved if and when the property ceases to be eligible for the incentive provided pursuant to this Agreement. Such liability may include additional real property tax, penalties and interest imposed pursuant to RCW 84.14.110. The Owner further acknowledges its awareness and understanding of the process implemented by the Kitsap County Assessor's Office for the appraisal and assessment of property taxes. The Owner agrees that the City is not responsible for the property value assessment imposed by Kitsap County at any time during the exemption period.

18. City's Right to Audit. The Owner acknowledges and agrees that the City has the right to audit or review appropriate records to assure compliance with this Agreement and POMC Chapter 3.48 and to perform evaluations of the effectiveness of the Multifamily Tax Exemption program. The Owner agrees to make appropriate records available for review or audit upon seven days' written notice by the City.

19. Notice. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered within normal business hours, on the day of delivery when sent via overnight delivery with a common carrier, or two business days after having been mailed, postage prepaid, to the Parties hereto at the addresses set forth below, or to such other place as a Party may from time to time designate in writing.

CITY: Department of Community Development  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366  
Attn: Director

OWNER: Blueberry Apartments QOZB, LLC  
Attn: Steve Novotny  
7809 Pacific Ave  
Tacoma, WA 98408

20. Severability. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement which can be given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.

21. Recording. This Agreement shall be recorded at the Owner's expense and shall be a covenant running with the land and shall be binding on the assigns, heirs, and successors of the Owner.

22. Applicable Law, Resolution of Disputes, and Attorneys' Fees. Jurisdiction of any resulting litigation shall be filed in Kitsap County Superior Court, Kitsap County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing Party in any action brought to enforce this Agreement shall pay the other Parties' expenses and reasonable attorney's fees.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF PORT ORCHARD**

**PROPERTY OWNERS**

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

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

Its: \_\_\_\_\_

\_\_\_\_\_  
Nick Bond, Director  
Dept. of Community Development

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

Its: \_\_\_\_\_

\_\_\_\_\_

---

Noah Crocker  
Finance Director

Attest:

---

Brandy Wallace, MMC, City Clerk

Approved as to Form:

---

Charlotte A. Archer, City Attorney



NOTARY BLOCK FOR CITY OF PORT ORCHARD

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KITSAP     )

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

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

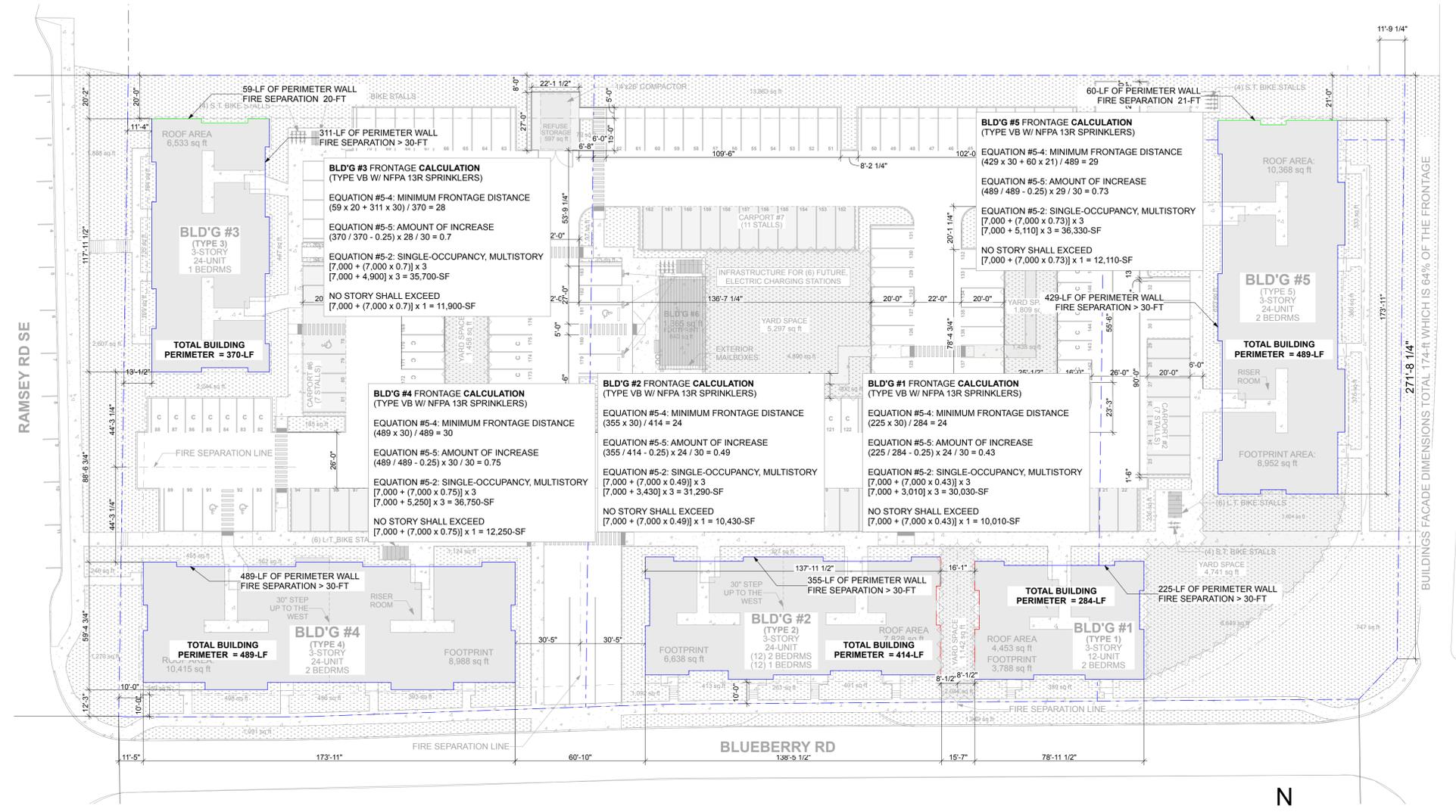
\_\_\_\_\_

\_\_\_\_\_  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing at:

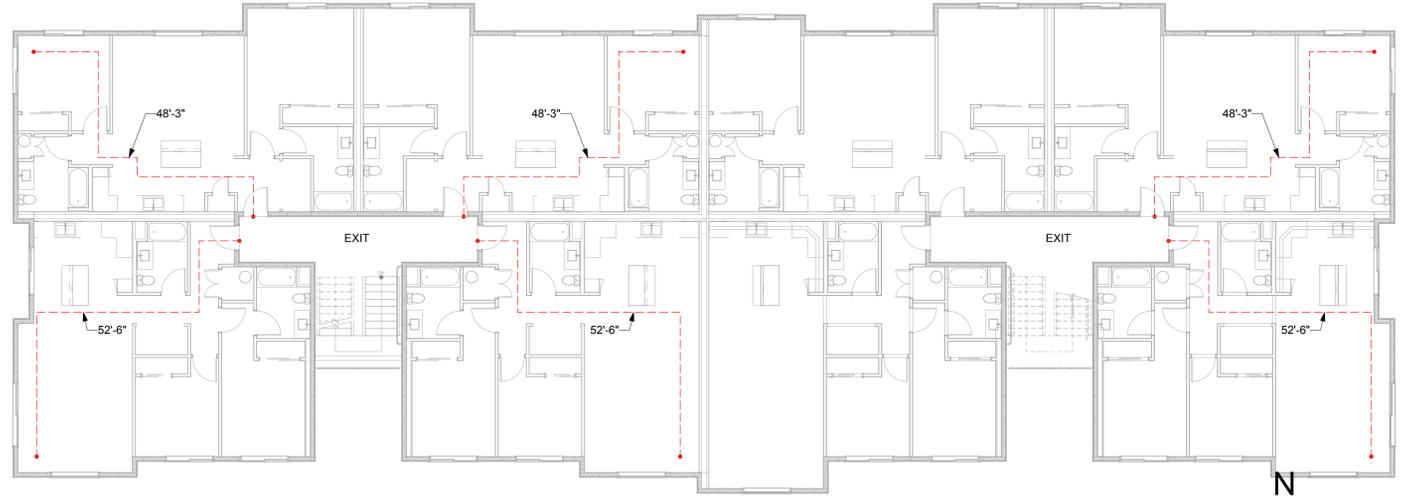
\_\_\_\_\_

My Commission expires: \_\_\_\_\_

# EXHIBIT A



1 FRONTAGE CALCULATIONS  
SCALE: 1" = 30'



3 EXIT DIAGRAM - TYPICAL  
SCALE: 3/32" = 1'-0"



SYNTHESIS 9, LLC  
5214 N. 8TH  
TACOMA, WA 98403

REUSE OF DOCUMENTS  
THIS DOCUMENT AND THE EXHIBITS HEREON  
INCORPORATED HEREIN AS PERMITTED BY THE  
PROFESSIONAL SERVICE ARE THE PROPERTY OF  
SYNTHESIS 9, LLC AND ARE NOT TO BE USED OR  
REPRODUCED IN WHOLE OR IN PART WITHOUT THE  
WRITTEN AUTHORIZATION OF SYNTHESIS 9, LLC.



COUNTER COMPLETE  
Permit Center  
Aug 03, 2022  
City of Port Orchard  
Community Development

THE BLUEBERRY APARTMENTS  
BUILDING 4  
BETHEL RD & BLUEBERRY RD PORT ORCHARD WA

REVISIONS

REVISIONS

DRAWN BY: BL / CM

CHECKED BY: BL

DATE: 22.07.08

TITLE: CODE DIAGRAMS

PROJECT #: 2020

SHEET:

AG1.2

AGENCY REVIEW SUBMITTAL | 22.07.08







## 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 7C  
Subject: Adoption of a Resolution Approving a  
Multifamily Property Tax Exemption  
Agreement for the Salmonberry  
Apartments

Meeting Date: January 24, 2023  
Prepared by: Nicholas Bond, AICP  
DCD Director  
Atty Routing No.: Development-Matter 11  
Atty Review Date: January 4, 2023

**Issue:** Since 2016, Port Orchard has offered a property tax exemption program to encourage the creation of multi-family housing pursuant to RCW 84.14. The Multifamily Property Tax Exemption program exempts certain new, converted or rehabilitated multifamily developments from ad valorem property taxation (i.e. improvements to vacant land, or to existing buildings) for either 8 or 12 years from issuance of the certification of exemption, depending on whether a project will include at least 20% of housing units to be available below market rents.

The City received a multifamily property tax exemption application from Family Legacy Development, LLC. for construction of 24 new apartment units in two buildings on a 1.29-acre site, located in a designated tax exemption area adjacent near SE Salmonberry Rd and Bethel Rd SE. The Developer is seeking a 12-year tax exemption and intends to provide 20% of units at below market rents in accordance with POMC 3.28.040 (1) (c). The project meets the criteria for a 12-year tax exemption and as such, a multifamily housing limited property tax exemption agreement for approval.

**Recommendation:** Staff recommends that the City Council approve a resolution authorizing the Mayor to execute a Multifamily Housing Limited Property Tax Exemption Agreement between the City and Family Legacy Development, LLC, Inc., as presented.

**Relationship to Comprehensive Plan:** The Multifamily Property Tax Exemption (MPTE) implements the Housing Element of the City of Port Orchard’s Comprehensive Plan. Specifically, the MPTE implements Goals 1, 2, 3, 5 and 9 and certain associated policies.

**Motion for consideration:** “I move to adopt a resolution authorizing the Mayor to accept and sign a Multifamily Housing Limited Property Tax Exemption Agreement between the City and Family Legacy Development, LLC, as presented.”

**Fiscal Impact:** The tax exemption will reduce property tax revenue to the city for a period of 12 years for the proposed project. The construction of this apartment project will generate other revenue that may not otherwise be generated in the absence of this incentive.

**Alternatives:** Revise the Salmonberry Apartments Multifamily Housing Limited Property Tax Exemption Agreement; do not enter into a Multifamily Property Tax Exemption agreement for the project.

**Attachments:** Resolution; Agreement; Resolution; Agreement; Exhibit A - site plans and floor plans for multi-family residential housing

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

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, TO AUTHORIZE THE ACCEPTANCE OF A MULTIFAMILY PROPERTY TAX EXEMPTION AGREEMENT BETWEEN FAMILY LEGACY DEVELOPMENT, LLC AND THE CITY RELATING TO THE TERMS AND CONDITIONS OF THE SUBJECT MULTIFAMILY HOUSING PROJECT AND ITS ELIGIBILITY FOR THE 12-YEAR PROPERTY TAX EXEMPTION AS PROVIDED BY CHAPTER 3.48 OF THE PORT ORCHARD MUNICIPAL CODE.**

**WHEREAS**, the Port Orchard Municipal Code (POMC), Chapter 3.48, provides a multifamily property tax exemption pursuant to the requirements of that chapter; and

**WHEREAS**, POMC 3.48.060 provides that, to be eligible for the multifamily property tax exemption, the subject project must meet the following requirements: (1) the project must be located within a residential targeted area as defined in POMC 3.48.040; (2) the project must not displace existing tenants; (3) existing dwelling units proposed for rehabilitation must fail to comply with one or more standards of the applicable state or city building codes; (4) the new, converted, or rehabilitated multiple-unit housing must provide for a minimum of 50 percent of the space for permanent residential occupancy and must include at least 10 units of multifamily housing; (5) new construction of multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application; and (6) the project must be designed to comply with the city's comprehensive plan, building, housing, and zoning codes, and any other applicable regulations, standards or guidelines; and

**WHEREAS**, POMC 3.48.080 requires that, if the Director of the Department of Community Development approves an application for the multifamily property tax exemption, the applicant must enter into an agreement with the City regarding the terms and conditions of the implementation of the project; and

**WHEREAS**, the multifamily property tax exemption agreement must be approved by the Port Orchard City Council, in the form of a resolution, regarding the terms and conditions of the project and eligibility for exemption under Chapter 3.48 POMC; and

**WHEREAS**, the City received an application for multifamily property tax exemption from Family Legacy Development, LLC., pertaining to a project titled Salmonberry Apartments (the "subject project") under the "Type 1: Affordable Housing with Transit Access" residential targeted area; and

**WHEREAS**, the Director of the Department of Community Development has determined that the subject project meets the eligibility requirements set forth in POMC 3.48.060; has approved the application for the 12-year Type 1 tax exemption; and recommends approval of the attached Multifamily Housing Limited Property Tax Exemption Agreement as accurately setting forth the terms and conditions of the subject project and eligibility for exemption under Chapter 3.48 POMC; and

**WHEREAS**, the Port Orchard City Council has determined to approve the attached Multifamily Housing Limited Property Tax Exemption Agreement; now, therefore,

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

**THAT:** Recitals. The recitals set forth above are hereby incorporated by reference as if set forth in full herein.

**THAT:** Authorization for Signature. The City of Port Orchard hereby authorizes the Mayor to accept and sign the Multifamily Housing Limited Property Tax Exemption Agreement in substantially the form as is attached to this Resolution.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 24<sup>th</sup> day of January 2023.

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

ATTEST:

\_\_\_\_\_  
Brandy Wallace, MMC, City Clerk

**CITY OF PORT ORCHARD**  
**MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT**

**THIS AGREEMENT** is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Family Legacy Development, LLC, a Washington limited liability company (hereinafter referred to as the "Owner"), and the City of Port Orchard, a municipal corporation of the State of Washington (hereinafter referred to as the "City").

**WITNESSETH:**

WHEREAS, the City has an interest in stimulating new construction or rehabilitation of multi-family housing in Residential Target Areas in order to reduce development pressure on single-family residential neighborhoods, to increase and improve housing opportunities, and to encourage development densities supportive of transit use; and

WHEREAS, the City has, pursuant to the authority granted to it by Chapter 84.14 RCW, designated various Residential Target Areas for the provision of a limited property tax exemption for new multi-family residential housing; and

WHEREAS, the City has, through Chapter 3.48 Port Orchard Municipal code (POMC), enacted a program whereby property owners may qualify for a Final Certificate of Tax Exemption which certifies to the Kitsap County Assessor that the owner is eligible to receive a limited property tax exemption; and

WHEREAS, the Owner is interested in receiving the multiple family property tax exemption for new multifamily residential housing units in a residential targeted area; and

WHEREAS, the Owner has submitted to the City a complete application form for no fewer than ten (10) units of new multifamily housing within a residential structure or as part of an urban development; and

WHEREAS, the Owner has submitted to the City preliminary site plans and floor plans for multi-family residential housing more particularly described in Exhibit A which is attached hereto and incorporated by reference herein (the "Project") to be constructed on said property (the "Site") legally described as:

LOT C OF SHORT PLAT NO. 2384 AS RECORDED UNDER AUDITOR'S FILE NO. 8009020109, RECORDS OF KITSAP COUNTY, WASHINGTON; BEING A PORTION OF SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 1, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON.>>>>TOGETHER WITH THAT PORTION PER SUPERIOR COURT CAUSE NO. 20-2-01545-18, DESCRIBED AS FOLLOWS: THE SOUTH 10 ACRES OF SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 1, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON; EXCEPT THE WEST 271.77 FEET; EXCEPT ANY

PORTION LYING EAST OF THE WEST 535.77 FEET; EXCEPT SHORT PLAT NO. 2384  
RECORDED UNDER AUDITOR'S FILE NO. 8009020109.

Kitsap County Tax Assessor Parcel No. 012301-2-078-2000 located at  
1695 SE Salmonberry Road in the City of Port Orchard

WHEREAS, the City has determined that the improvements will, if completed as proposed, satisfy the requirements of for a Final Certificate of Tax Exemption;

**NOW, THEREFORE,** the City and the Owner do mutually agree as follows:

1. The City agrees to issue the Owner a Conditional Certificate of Acceptance of Tax Exemption.

2. The Owner agrees to construct on the Site multi-family residential housing generally as described in the site plans, floor plans, and elevations on file (22-980 and 22-981) with the City as of the date of administrative approval of this Agreement. Provided however, that the building permits (22-980 and 22-981) as approved by the City will establish the final configuration of the development which may differ from the site plan and other earlier submittals.

3. The Project must comply with all applicable zoning requirements, land use requirements, design review requirements and all building, fire, and housing code requirements contained in the Port Orchard Municipal Code (herein referred to as the "POMC") at the time a fully complete application for a building permit is submitted to the City.

4. The new multiple-unit housing must provide for a minimum of fifty (50) percent of the space for permanent residential occupancy. The Project must include at least ten (10) units of multifamily housing within a residential structure or as part of an urban development.

5. The Owner agrees to complete construction of the agreed upon improvements within three years from the date the City issues the Conditional Certificate of Acceptance of Tax Exemption, or within any extension thereof granted by the City.

6. The Owner is requesting a twelve-year limited property tax exemption. Therefore, , the Owner by this Agreement commits to renting or selling at least twenty percent (20%) of the multifamily housing units constructed on the site as housing units affordable for low or moderate-income households as defined by Section 3.48.040 (1) (c) POMC as follows:

A. A minimum of 20 percent of all residential units in the development shall be rented for at least 10 percent below fair market rent for 12 years, to tenants whose household annual income is:

- i. At or below 40 percent of median family income, for housing units in congregate residences or small efficiency dwelling units;
- ii. At or below 65 percent of median family income for one-bedroom units;
- iii. At or below 75 percent of median family income for two-bedroom units; and
- iv. At or below 80 percent of median family income for three-bedroom and larger units.

B. If calculations for the minimum 20 percent of the residential units required under this section result in a fraction, then the minimum number of residential units required to meet the affordable housing requirement shall be rounded up to the next whole number.

C. At the time of this Agreement, the Owner is proposing the following unit mix for this 24-unit project:

<b>Building</b>	<b>Studio</b>	<b>1-Bedroom</b>	<b>2-Bedroom</b>	<b>3-Bedroom</b>	<b>Total Units</b>
<b>1</b>	-	-	<b>12</b>	-	<b>12</b>
<b>2</b>	-	<b>12</b>	-	-	<b>12</b>
<b>TOTAL UNITS (includes affordable)</b>	-	<b>12</b>	<b>12</b>	-	<b>24</b>
<b>Affordability Requirements</b>	<b>Studio (40% MFI)</b>	<b>1-Bedroom (65% MFI)</b>	<b>2-Bedroom (75% MFI)</b>	<b>3-Bedroom (80% MFI)</b>	<b>Total Required Affordable Units</b>
<b>Required Affordable Units by Type</b>	-	<b>3</b>	<b>3</b>	-	<b>6</b>

7. This unit count and mix may change but will still be required to comply with Chapter 3.48 POMC with regard to the percentage, affordability and location of units. The Owner agrees, upon completion of the improvements and upon issuance by the City of a temporary or

permanent certificate of occupancy, to file with the City's Department of Community Development the following:

- a. A statement of expenditures made with respect to each multi-family housing unit and the total expenditures made with request to the entire site;
- b. A description of the completed work and a statement of qualification for the exemption; and
- c. A statement that the work was completed within the required three (3) year period or any authorized extension.
- d. If applicable, that the project meets the affordable housing requirements as described in RCW 84.14.020.

8. The City agrees, conditioned on the Owner's successful completion of the improvements in accordance with the terms of this Agreement and on the Owner's filing of the materials described in the preceding paragraph, to file an eight or twelve year (as applicable) Final Certificate of Tax Exemption with the Kitsap County Assessor.

9. The Owner agrees, within thirty (30) days following the first anniversary of the City's filing of the Final Certificate of Tax Exemption and each year thereafter for a period of twelve years to file a notarized and sworn declaration with the City's Department of Community Development stating all of the following:

- a. A statement of occupancy and vacancy of the multi-family units during the previous twelve (12) months;
- b. A certification that the property has not changed use and continues to be in compliance with this Agreement and with Chapter 3.48 POMC; and
- c. A description of changes or improvements constructed after issuance of the certificate of tax exemption;
- d. The total monthly rent of each multifamily housing unit rented or the total sale amount of each unit sold during the 12 months ending with the anniversary date;
- e. A breakdown of the number, type, and specific multifamily housing units rented or sold during the 12 months ending with the anniversary date;
- f. Information demonstrating the owner's compliance with the affordability requirements of this chapter, including, but not limited to, the income of each renter household

at the time of initial occupancy or the income of each purchaser of owner-occupied units at the time of purchase;

g. The value of the tax exemption for the project;

h. A statement of the income of each renter household at the time of initial occupancy and the income of each initial purchaser of owner-occupied units at the time of purchase for each of the units receiving a tax exemption and a summary of these figures;

i. Any information needed by the City to file its annual report pursuant to Port Orchard Municipal Code (POMC) 3.48.120 and any additional information requested by the City in regards to the units receiving a tax exemption.; and

j. Any additional information requested by the city pursuant to meeting any reporting requirements under Chapter 84.14 RCW.

10. The Parties acknowledge that the units are to be used an occupied for multifamily residential use. The Parties further acknowledge that the certificate of occupancy issued by the City is for multi-family residential units. The Owner acknowledges and agrees that the units shall be used primarily for residential occupancy and any business activities shall only be incidental and ancillary to the residential occupancy.

11. If the Owner converts to another use any of the new multi-family residential housing units constructed under this Agreement, the Owner shall notify the Kitsap County Assessor and the City's Department of Community Development within sixty (60) days of such change in use.

12. The Owner agrees to notify the City promptly of any transfer of Owner's ownership interest in the Site or in the improvements made to the Site under this Agreement.

13. For purposes of this Agreement, "Owner" shall mean the Property Owner if the development is comprised of rental units or shall mean the Owners Association of a condominium complex (if the development contains any ownership units) once such association is established. The Owner shall be responsible for all reporting requirements required herein on behalf of the owners of individual condominium units, if applicable.

14. If the Project includes any owner-occupied units, the Owner is required to form an Owner's Association to be organized under RCW 64.34.300 for all owner-occupied units within the development. Such organization shall remain operational and in effect until at least the length of the exemption period has expired and the final report is filed with the City. This Owner's Association shall assume the responsibility for collecting from all individual unit owners the information and documents required to complete the annual reporting requirements and for filing the required annual report with the city pursuant to Section 9 of this Agreement and Chapter 3.48 POMC.

Multifamily Housing Limited Property Tax Exemption Agreement  
Family Legacy Development, LLC

Page 5

1752137.3 - 366922 -0021

15. The City reserves the right to cancel the Final Certificate of Tax Exemption should the Owner, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement. If the exemption is cancelled for non-compliance, Owner acknowledges that state law requires that an additional real property tax is imposed in the amount of (A) the difference between the tax paid and the tax that would have been paid if it had included the value of the non-qualifying improvements, dated back to the date that the improvements became non-qualifying; (B) a penalty of 20% of the difference calculated under paragraph (A) of this paragraph; and (C) interest at the statutory rate on delinquent property taxes and penalties, calculated from the date the tax would have been due without penalty if the improvements had been assessed without regard to the exemptions provided by Chapter 84.14 RCW and POMC Chapter 3.48 POMC. Applicant acknowledges that, pursuant to RCW 84.14.110, any additional tax owed, together with interest and penalty, becomes a lien on that portion of the Property on which the Project is constructed and attaches at the time the portion of the Property is removed from multifamily use or the amenities no longer meet applicable requirements, and that the lien has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the Property may become charged or liable. Applicant further acknowledges that RCW 84.14.110 provides that any such lien may be foreclosed in the manner provided by law for foreclosure of liens for delinquent real property taxes.

16. Nothing in this Agreement shall permit or be interpreted to permit either Party to violate any provision of Chapter 84.14 RCW or POMC Chapter 3.48.

17. Modification. No modifications of this Agreement shall be made unless mutually agreed upon by the Parties in writing.

18. Acknowledgement of Tax Liability. The Owner acknowledges its awareness of the potential tax liability involved if and when the property ceases to be eligible for the incentive provided pursuant to this Agreement. Such liability may include additional real property tax, penalties and interest imposed pursuant to RCW 84.14.110. The Owner further acknowledges its awareness and understanding of the process implemented by the Kitsap County Assessor's Office for the appraisal and assessment of property taxes. The Owner agrees that the City is not responsible for the property value assessment imposed by Kitsap County at any time during the exemption period.

19. City's Right to Audit. The Owner acknowledges and agrees that the City has the right to audit or review appropriate records to assure compliance with this Agreement and POMC Chapter 3.48 and to perform evaluations of the effectiveness of the Multifamily Tax Exemption program. The Owner agrees to make appropriate records available for review or audit upon seven days' written notice by the City.

20. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered within normal business hours, on the day of delivery when sent via overnight delivery with a common carrier, or two business days after having been mailed, postage prepaid, to the Parties hereto at the addresses set forth below, or to such other place as a Party may from time to time designate in writing.

CITY: Department of Community Development  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366  
Attn: Director

OWNER: Family Legacy Development, LLC  
Attn: Steve Novotny  
7809 Pacific Ave  
Tacoma, WA 98408

21. Severability. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement which can be given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.

22. Recording. This Agreement shall be recorded at the Owner's expense and shall be a covenant running with the land and shall be binding on the assigns, heirs, and successors of the Owner.

23. Applicable Law, Resolution of Disputes, and Attorneys' Fees. Jurisdiction of any resulting litigation shall be filed in Kitsap County Superior Court, Kitsap County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing Party in any action brought to enforce this Agreement shall pay the other Parties' expenses and reasonable attorney's fees.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF PORT ORCHARD**

**PROPERTY OWNERS**

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

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

Its: \_\_\_\_\_

\_\_\_\_\_  
Nick Bond, Director  
Dept. of Community Development

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

Its: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Noah Crocker  
Finance Director

Attest:

\_\_\_\_\_  
Brandy Wallace, CMC, City Clerk

Approved as to Form:

\_\_\_\_\_  
Charlotte A. Archer, City Attorney











## 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>January 24, 2023</u>
Subject:	<u>Adoption of a Resolution Approving a</u>	Prepared by:	<u>Nicholas Bond, AICP</u>
	<u>Multifamily Property Tax Exemption</u>		<u>DCD Director</u>
	<u>Agreement for the 2102 Sedgwick</u>	Atty Routing No.:	<u>Development-Matter 11</u>
	<u>Apartments</u>	Atty Review Date:	<u>January 4, 2023</u>

**Issue:** Since 2016, Port Orchard has offered a property tax exemption program to encourage the creation of multi-family housing pursuant to RCW 84.14. The Multifamily Property Tax Exemption program exempts certain new, converted or rehabilitated multifamily developments from ad valorem property taxation (i.e. improvements to vacant land, or to existing buildings) for either 8 or 12 years from issuance of the certification of exemption, depending on whether a project will include at least 20% of housing units to be available below market rents.

The City received a multifamily tax exemption application from 2102 Sedgwick LLC for construction of 192 new apartment units in nine buildings on a 5.7 acre site, located in a designated targeted area on SE Sedgwick Road, adjacent to the recently constructed Pottery Creek apartments, just east of Fred Meyer. The Developer is seeking a 12-year tax exemption and intends to provide 20% of units at below market rents in accordance with POMC 3.28.040 (1) (c). The project meets the criteria for a 12-year tax exemption and as such, a multifamily housing limited property tax exemption agreement for approval.

**Recommendation:** Staff recommends that the City Council approve a resolution authorizing the Mayor to accept and sign a Multifamily Housing Limited Property Tax Exemption Agreement between the City and 2102 Sedgwick LLC, as presented.

**Relationship to Comprehensive Plan:** The Multifamily Property Tax Exemption (MPTE) implements the Housing Element of the City of Port Orchard's Comprehensive Plan. Specifically, the MPTE implements Goals 1, 2, 3, 5 and 9 and certain associated policies.

**Motion for consideration:** "I move to adopt a resolution authorizing the Mayor to execute a Multifamily Housing Limited Property Tax Exemption Agreement between the City and 2102 Sedgwick, LLC, as presented."

**Fiscal Impact:** The tax exemption will reduce property tax revenue to the city for a period of 12 years for the proposed project. The construction of this apartment project will generate other revenue that may not otherwise be generated in the absence of this incentive.

**Alternatives:** Revise the 2102 Sedgwick Multifamily Housing Limited Property Tax Exemption Agreement; do not enter into a Multifamily Property Tax Exemption agreement for the project.

**Attachments:** Resolution; Agreement; Exhibit A – site plans and floor plans for multi-family residential housing

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

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, TO AUTHORIZE THE ACCEPTANCE OF A MULTIFAMILY PROPERTY TAX EXEMPTION AGREEMENT BETWEEN 2102 SEDGWICK, LLC AND THE CITY RELATING TO THE TERMS AND CONDITIONS OF THE SUBJECT MULTIFAMILY HOUSING PROJECT AND ITS ELIGIBILITY FOR THE 12-YEAR PROPERTY TAX EXEMPTION AS PROVIDED BY CHAPTER 3.48 OF THE PORT ORCHARD MUNICIPAL CODE.**

**WHEREAS**, the Port Orchard Municipal Code (POMC), Chapter 3.48, provides a multifamily property tax exemption pursuant to the requirements of that chapter; and

**WHEREAS**, POMC 3.48.060 provides that, to be eligible for the multifamily property tax exemption, the subject project must meet the following requirements: (1) the project must be located within a residential targeted area as defined in POMC 3.48.040; (2) the project must not displace existing tenants; (3) existing dwelling units proposed for rehabilitation must fail to comply with one or more standards of the applicable state or city building codes; (4) the new, converted, or rehabilitated multiple-unit housing must provide for a minimum of 50 percent of the space for permanent residential occupancy and must include at least 10 units of multifamily housing; (5) new construction of multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application; and (6) the project must be designed to comply with the city's comprehensive plan, building, housing, and zoning codes, and any other applicable regulations, standards or guidelines; and

**WHEREAS**, POMC 3.48.080 requires that, if the Director of the Department of Community Development approves an application for the multifamily property tax exemption, the applicant must enter into an agreement with the City regarding the terms and conditions of the implementation of the project; and

**WHEREAS**, the multifamily property tax exemption agreement must be approved by the Port Orchard City Council, in the form of a resolution, regarding the terms and conditions of the project and eligibility for exemption under Chapter 3.48 POMC; and

**WHEREAS**, the City received an application for multifamily property tax exemption from 2102 Sedgwick, LLC, pertaining to a project titled 2102 Sedgwick Multifamily (the "subject project") under the "Type 1: Affordable Housing with Transit Access" residential targeted area; and

**WHEREAS**, the Director of the Department of Community Development has determined that the subject project meets the eligibility requirements set forth in POMC 3.48.060; has approved the application for the 12-year Type 1 tax exemption; and recommends approval of the attached Multifamily Housing Limited Property Tax Exemption Agreement as accurately setting forth the terms and conditions of the subject project and eligibility for exemption under Chapter 3.48 POMC; and

---

**WHEREAS**, the Port Orchard City Council has determined to approve the attached Multifamily Housing Limited Property Tax Exemption Agreement; now, therefore,

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

**THAT:** Recitals. The recitals set forth above are hereby incorporated by reference as if set forth in full herein.

**THAT:** Authorization for Signature. The City of Port Orchard hereby authorizes the Mayor to accept and sign the Multifamily Housing Limited Property Tax Exemption Agreement in substantially the form as is attached to this Resolution.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 24<sup>th</sup> day of January 2023.

---

Robert Putaansuu, Mayor

ATTEST:

---

Brandy Wallace, MMC, City Clerk

**CITY OF PORT ORCHARD  
MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT**

**THIS AGREEMENT** is entered into this \_\_ day of \_\_\_\_\_, 20 \_\_, by and between 2102 Sedgwick, LLC, a Washington limited liability company (hereinafter referred to as the “Owner”), and the City of Port Orchard, a municipal corporation of the State of Washington (hereinafter referred to as the “City”).

**WITNESSETH:**

WHEREAS, the City has an interest in stimulating new construction or rehabilitation of multi-family housing in Residential Target Areas in order to reduce development pressure on single-family residential neighborhoods, to increase and improve housing opportunities, and to encourage development densities supportive of transit use; and

WHEREAS, the City has, pursuant to the authority granted to it by Chapter 84.14 RCW, designated various Residential Target Areas for the provision of a limited property tax exemption for new multi-family residential housing; and

WHEREAS, the City has, through Chapter 3.48 Port Orchard Municipal code (POMC), enacted a program whereby property owners may qualify for a Final Certificate of Tax Exemption which certifies to the Kitsap County Assessor that the owner is eligible to receive a limited property tax exemption; and

WHEREAS, the Owner is interested in receiving the multiple family property tax exemption for new multifamily residential housing units in a residential targeted area; and

WHEREAS, the Owner has submitted to the City a complete application form for no fewer than ten (10) units of new multifamily housing within a residential structure or as part of an urban development; and

WHEREAS, the Owner has submitted to the City preliminary site plans and floor plans for multi-family residential housing more particularly described in Exhibit A which is attached hereto and incorporated by reference herein (the “Project”) to be constructed on said property (the “Site”) legally described as:

THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE  
NORTHWEST QUARTER, SECTION 12, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M.,  
IN KITSAP COUNTY, WASHINGTON; EXCEPT THE NORTH 30 FEET THEREOF;  
TOGETHER WITH THAT PORTION OF THE EAST HALF OF THE WEST HALF OF THE

Multifamily Housing Limited Property Tax Exemption Agreement  
2102 Sedgwick, LLC  
Page 1  
11752136.2 - 366922 -0021

NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON DESCRIBED AS FOLLOWS; BEGINNING AT THE SOUTHWEST CORNER OF THE EAST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 12, THENCE NORTH 01°59'58" EAST ALONG THE WEST LINE OF SAID EAST HALF OF THE WEST HALF 593.97 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 726 FEET OF SAID EAST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 88°04'42" EAST ALONG SAID SOUTH LINE 5.31 FEET; THENCE SOUTH 01°47'41" WEST 6.40 FEET; THENCE SOUTH 02°02'19" WEST 133.09 FEET; THENCE SOUTH 01°42'01" WEST 177.64 FEET; THENCE SOUTH 02°30'09" WEST 104.17 FEET; THENCE SOUTH 02°21'19" WEST 172.68 FEET TO THE SOUTH LINE OF THE EAST HALF OF THE WEST HALF OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12; THENCE NORTH 88°05'15" WEST ALONG SAID SOUTH LINE 4.18 FEET TO THE POINT OF BEGINNING; EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON FOR SE SEDGWICK ROAD IN WARRANTY DEED RECORDED UNDER AUDITOR'S FILE NO. 200804290428; AND EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY IN STATUTORY WARRANTY DEED RECORDED UNDER AUDITOR'S FILE NO. 200805200185.

Kitsap County Tax Assessor Parcel No. 122301-2-094-2007, located at 2102 SE Sedgwick Road in the City of Port Orchard

WHEREAS, the City has determined that the improvements will, if completed as proposed, satisfy the requirements of for a Final Certificate of Tax Exemption;

**NOW, THEREFORE**, the City and the Owner do mutually agree as follows:

1. The City agrees to issue the Owner a Conditional Certificate of Acceptance of Tax Exemption.
2. The Owner agrees to construct on the Site multi-family residential housing general as described in the site plans, floor plans, and elevations on file (22-590, 22-591, 22-592, 22-593, 22-594, 22-595, 22-686, 22-687, 22-688) with the City as of the date of administrative approval of this Agreement. Provided however, that the building permit (22-590, 22-591, 22-592, 22-593, 22-594, 22-595, 22-686, 22-687, 22-688) as approved by the City will establish the final configuration of the development which may differ from the site plan and other earlier submittals.
3. The Project must comply with all applicable zoning requirements, land use requirements, design review requirements and all building, fire, and housing code requirements contained in the Port Orchard municipal Code (herein referred to as the "POMC") at the time a fully complete application for a building permit is submitted to the City.
4. The new multiple-unit housing must provide for a minimum of fifty (50) percent of the space for permanent residential occupancy. The Project must include at least ten (10) units of multifamily housing within a residential structure or as part of an urban development.

**Commented [JSR1]:** We need to incorporate these documents either by attachment as an exhibit or by a very specific description. Exhibit is preferred.

**Commented [JF2R1]:** Perhaps we should only reference the building permit application by permit number as the materials will change over time and we will not have an application in final form by the time the MFTE is passed by Council. Any exhibit attached here would shortly be out of date and inconsistent with approved Building Permit.

**Commented [JSR3R1]:** OK, but if you want to include the site plan but leave room for flexibility, how about the language as revised?

5. The Owner agrees to complete construction of the agreed upon improvements within three years from the date the City issues the Conditional Certificate of Acceptance of Tax Exemption, or within any extension thereof granted by the City.

6. The Owner is requesting a twelve-year limited property tax exemption. Therefore, the Owner by this Agreement commits to renting or selling at least twenty percent (20%) of the multifamily housing units constructed on the site as housing units affordable for low or moderate-income households as defined by Section 3.48.040 (1) (c) POMC as follows:

A. A minimum of 20 percent of all residential units in the development shall be rented for at least 10 percent below fair market rent for 12 years, to tenants whose household annual income is:

- i. At or below 40 percent of median family income, for housing units in congregate residences or small efficiency dwelling units;
- ii. At or below 65 percent of median family income for one-bedroom units;
- iii. At or below 75 percent of median family income for two-bedroom units; and
- iv. At or below 80 percent of median family income for three-bedroom and larger units.

B. If calculations for the minimum 20 percent of the residential units required under this section result in a fraction, then the minimum number of residential units required to meet the affordable housing requirement shall be rounded up to the next whole number.

C. At the time of this Agreement, the Owner is proposing the following unit mix for this 192-unit project:

<b>Building</b>	<b>Studio</b>	<b>1-Bedroom</b>	<b>2-Bedroom</b>	<b>3-Bedroom</b>	<b>Total Units</b>
<b>A</b>	9	9			18
<b>B</b>	6	12		6	24
<b>C</b>	6	12	6		24
<b>D</b>	8	14	6		28

<b>E</b>	6	12	6		24
<b>F</b>	6	12		6	24
<b>G</b>		4	8		12
<b>H</b>	6	12	6		24
<b>J</b>	8	6			14
<b>TOTAL UNITS (includes affordable)</b>	<b>55</b>	<b>93</b>	<b>32</b>	<b>12</b>	<b>192</b>
<b>Affordability Requirements</b>	<b>Studio (40% MFI)</b>	<b>1-Bedroom (65% MFI)</b>	<b>2-Bedroom (75% MFI)</b>	<b>3-Bedroom (80% MFI)</b>	<b>Total Required Affordable Units</b>
<b>Required Affordable Units by Type</b>	<b>11</b>	<b>19</b>	<b>7</b>	<b>3</b>	<b>39</b>

7. This unit count and mix may change but will still be required to comply with Chapter 3.48 POMC with regard to the percentage, affordability, and location of units. The Owner agrees, upon completion of the improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, to file with the City's Department of Community Development the following:

- a. A statement of expenditures made with respect to each multi-family housing unit and the total expenditures made with request to the entire site;
- b. A description of the completed work and a statement of qualification for the exemption; and
- c. A statement that the work was completed within the required three (3) year period or any authorized extension.
- d. If applicable, that the project meets the affordable housing requirements as described in RCW 84.14.020.

8. The City agrees, conditioned on the Owner's successful completion of the improvements in accordance with the terms of this Agreement and on the Owner's filing of the materials described in the preceding paragraph, to file an eight or twelve year (as applicable) Final Certificate of Tax Exemption with the Kitsap County Assessor.

9. The Owner agrees, within thirty (30) days following the first anniversary of the City's filing of the Final Certificate of Tax Exemption and each year thereafter for a period of twelve years to file a notarized and sworn declaration with the City's Department of Community Development stating all of the following:

a. A statement of occupancy and vacancy of the multi-family units during the previous twelve (12) months;

b. A certification that the property has not changed use and continues to be in compliance with this Agreement and with Chapter 3.48 POMC; and

c. A description of changes or improvements constructed after issuance of the certificate of tax exemption;

d. The total monthly rent of each multifamily housing unit rented or the total sale amount of each unit sold during the 12 months ending with the anniversary date;

e. A breakdown of the number, type, and specific multifamily housing units rented or sold during the 12 months ending with the anniversary date;

f. Information demonstrating the owner's compliance with the affordability requirements of this chapter, including, but not limited to, the income of each renter household at the time of initial occupancy or the income of each purchaser of owner-occupied units at the time of purchase;

g. The value of the tax exemption for the project;

h. A statement of the income of each renter household at the time of initial occupancy and the income of each initial purchaser of owner-occupied units at the time of purchase for each of the units receiving a tax exemption and a summary of these figures;

i. Any information needed by the City to file its annual report pursuant to Port Orchard Municipal Code (POMC) 3.48.120 and any additional information requested by the City in regards to the units receiving a tax exemption.; and

j. Any additional information requested by the city pursuant to meeting any reporting requirements under Chapter 84.14 RCW.

10. The Parties acknowledge that the units are to be used an occupied for multifamily residential use. The Parties further acknowledge that the certificate of occupancy issued by the City is for multi-family residential units. The Owner acknowledges and agrees that the units shall be used primarily for residential occupancy and any business activities shall only be incidental and ancillary to the residential occupancy.

11. If the Owner converts to another use any of the new multi-family residential housing units constructed under this Agreement, the Owner shall notify the Kitsap County Assessor and the City's Department of Community Development within sixty (60) days of such change in use.

12. The Owner agrees to notify the City promptly of any transfer of Owner's ownership interest in the Site or in the improvements made to the Site under this Agreement.

13. For purposes of this Agreement, "Owner" shall mean the Property Owner if the development is comprised of rental units or shall mean the Owners Association of a condominium complex (if the development contains any ownership units) once such association is established. The Owner shall be responsible for all reporting requirements required herein on behalf of the owners of individual condominium units, if applicable.

14. If the Project includes any owner-occupied units, the Owner is required to form an Owner's Association to be organized under RCW 64.34.300 for all owner-occupied units within the development. Such organization shall remain operational and in effect until at least the length of the exemption period has expired and the final report is filed with the City. This Owner's Association shall assume the responsibility for collecting from all individual unit owners the information and documents required to complete the annual reporting requirements and for filing the required annual report with the city pursuant to Section 9 of this Agreement and Chapter 3.48 POMC.

15. The City reserves the right to cancel the Final Certificate of Tax Exemption should the Owner, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement. If the exemption is cancelled for non-compliance, Owner acknowledges that state law requires that an additional real property tax is imposed in the amount of (A) the difference between the tax paid and the tax that would have been paid if it had included the value of the non-qualifying improvements, dated back to the date that the improvements became non-qualifying; (B) a penalty of 20% of the difference calculated under paragraph (A) of this paragraph; and (C) interest at the statutory rate on delinquent property taxes and penalties, calculated from the date the tax would have been due without penalty if the improvements had been assessed without regard to the exemptions provided by Chapter 84.14 RCW and POMC Chapter 3.48 POMC. Applicant acknowledges that, pursuant to RCW 84.14.110, any additional tax owed, together with interest and penalty, becomes a lien on that portion of the Property on which the Project is constructed and attaches at the time the portion of the Property is removed from multifamily use or the amenities

no longer meet applicable requirements, and that the lien has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the Property may become charged or liable. Applicant further acknowledges that RCW 84.14.110 provides that any such lien may be foreclosed in the manner provided by law for foreclosure of liens for delinquent real property taxes.

16. Nothing in this Agreement shall permit or be interpreted to permit either Party to violate any provision of Chapter 84.14 RCW or POMC Chapter 3.48.

17. Modification. No modifications of this Agreement shall be made unless mutually agreed upon by the Parties in writing.

18. Acknowledgement of Tax Liability. The Owner acknowledges its awareness of the potential tax liability involved if and when the property ceases to be eligible for the incentive provided pursuant to this Agreement. Such liability may include additional real property tax, penalties and interest imposed pursuant to RCW 84.14.110. The Owner further acknowledges its awareness and understanding of the process implemented by the Kitsap County Assessor's Office for the appraisal and assessment of property taxes. The Owner agrees that the City is not responsible for the property value assessment imposed by Kitsap County at any time during the exemption period.

19. City's Right to Audit. The Owner acknowledges and agrees that the City has the right to audit or review appropriate records to assure compliance with this Agreement and POMC Chapter 3.48 and to perform evaluations of the effectiveness of the Multifamily Tax Exemption program. The Owner agrees to make appropriate records available for review or audit upon seven days' written notice by the City.

20. Notice. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered within normal business hours, on the day of delivery when sent via overnight delivery with a common carrier, or two business days after having been mailed, postage prepaid, to the Parties hereto at the addresses set forth below, or to such other place as a Party may from time to time designate in writing.

CITY: Department of Community Development  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366  
Attn: Director

OWNER: 2102 Sedgwick, LLC  
Attn: Steve Yester

Multifamily Housing Limited Property Tax Exemption Agreement  
2102 Sedgwick, LLC  
Page 7  
71752136.2 - 366922 -0021

6622 Wollochet Dr.  
Gig Harbor, WA 98335

21. Severability. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement which can be given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.

22. Recording. This Agreement shall be recorded at the Owner's expense and shall be a covenant running with the land and shall be binding on the assigns, heirs, and successors of the Owner.

23. Applicable Law, Resolution of Disputes, and Attorneys' Fees. Jurisdiction of any resulting litigation shall be filed in Kitsap County Superior Court, Kitsap County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing Party in any action brought to enforce this Agreement shall pay the other Parties' expenses and reasonable attorney's fees.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF PORT ORCHARD**

**PROPERTY OWNERS**

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

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

\_\_\_\_\_  
Nick Bond, Director  
Dept. of Community Development

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

\_\_\_\_\_  
Noah Crocker  
Finance Director

Attest:

Multifamily Housing Limited Property Tax Exemption Agreement  
2102 Sedgwick, LLC  
Page 8  
81752136.2 - 366922 -0021

---

Brandy Wallace, CMC, City Clerk

Approved as to Form:

---

Charlotte A. Archer, City Attorney

Multifamily Housing Limited Property Tax Exemption Agreement  
2102 Sedgwick, LLC  
Page 9  
91752136.2 - 366922 -0021

NOTARY BLOCK FOR 2012 SEDGWICK, LLC

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 that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of 2102 Sedgwick, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_

\_\_\_\_\_  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing at:

\_\_\_\_\_

My Commission expires: \_\_\_\_\_

NOTARY BLOCK FOR CITY OF PORT ORCHARD

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KITSAP        )

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

Dated: \_\_\_\_\_20\_\_\_\_

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



**SITE PLAN**  
1" = 30'



**SITE INFORMATION:**  
ADDRESS: 2102 SE SEDGWICK RD.  
PORT ORCHARD, WA 98366  
PARCEL NUMBER: 122302094-007  
SITE AREA = 5.70 ACRES (+/-) 248,292 SF  
ZONING: CMU  
SETBACKS:  
PRIMARY ST. 0' MIN./10' MAX.  
SIDE INTERIOR 0' MIN.  
REAR 20' MIN.  
BUILD TO ZONE PRIMARY STREET: 70% MIN.  
(SEE CALCULATION THIS SHEET)  
BUILDING HEIGHT: 3.5 STORES/40'  
MAX. HARDSCAPE: 80%  
OTHER BLOCK FRONTAGE STANDARDS  
(DS127.210)  
10' MIN. SETBACK  
10% GLAZING REQUIREMENT  
(SEE BUILDING ELEVATION SHEETS FOR COMPLIANCE)  
SPECIAL RESIDENTIAL FRONTAGE STANDARDS  
ALONG SIDEWALKS AND INTERNAL WALKWAYS  
(DS127.210)  
OPTION 2 - LANDSCAPED 10' SETBACK FROM  
SIDEWALK  
(SEE SITE PLAN DIMENSIONS FOR COMPLIANCE)

**SITE STATISTICS:**  
TOTAL UNITS = 192 UNITS  
UNIT COUNT:  
55 STUDIO (28%)  
48 1 BED (25%)  
47 1 BED+ (25%)  
30 2 BED (15%)  
12 3 BED (6%)  
PARKING REQUIREMENTS (STALLS PER UNIT):  
STUDIO = 1.25 68.75  
1 BED = 1.5 72.00  
2 BED = 1.75 84.00  
3 BED = 2 40.00  
TOTAL 285.75 = 288 STALLS  
PARKING PROVIDED - SEE CHART TO RIGHT  
OPEN SPACE REQUIREMENTS:  
100 SF PER STUDIO/1-BED UNITS  
150 SF PER 2+ BED UNITS  
STUDIO = 55 5,500SF  
1 BED = 95 9,500SF  
2 BED = 30 4,500SF  
3 BED = 12 1,800SF  
TOTAL 21,300SF  
PROVIDED:  
COURTYARD A = 4300SF  
COURTYARD B = 8000SF  
COURTYARD C = 1700SF  
CLUB/AMENITY = 7200SF  
TOTAL = 21500SF

**PARKING SUMMARY**

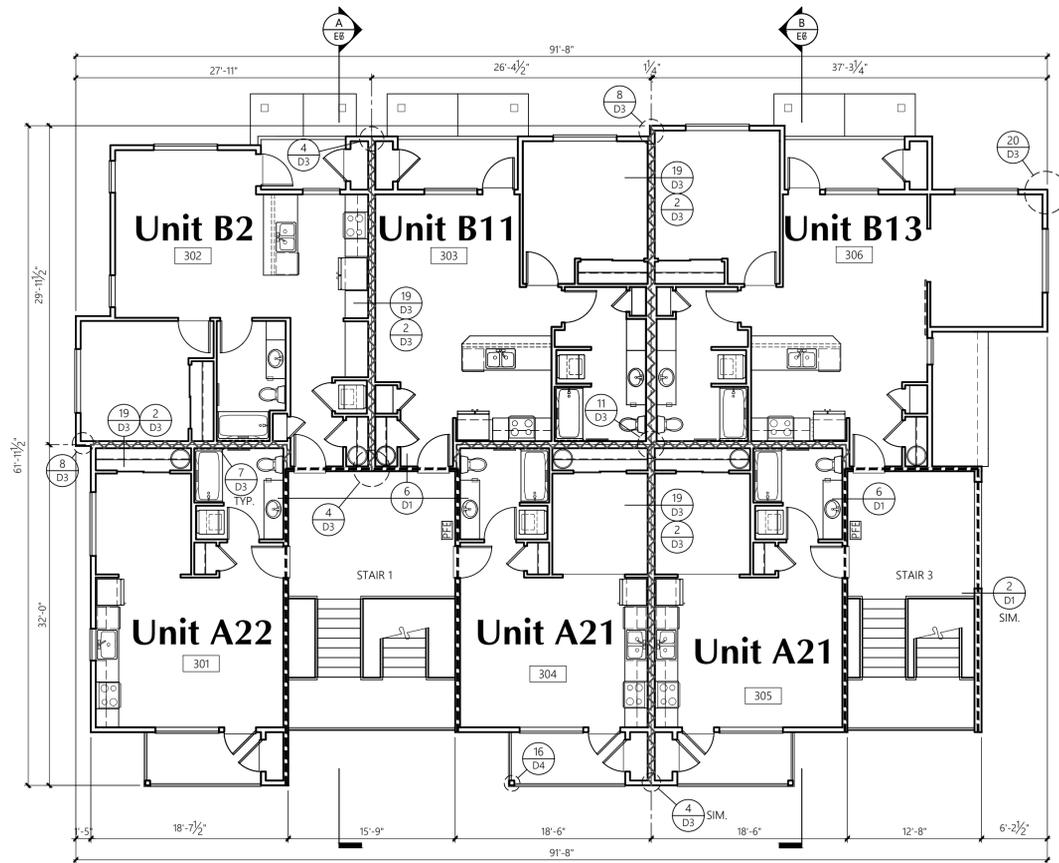
Parking Stalls Required	288
Standard Stalls	74
Compact Stalls	93
Parallel Stalls	0
Carpool Stalls	102
Attached Garage Stalls	0
Detached Garage Stalls	0
Accessible Standard Stalls	9
Accessible Van Stalls	3
Accessible Parallel Stalls	0
Accessible Carpool Stalls	0
Accessible Garage Stalls	0
Tandem Stalls	0
Tandem Garage Stalls	0
Subtotal	283
Aprons	0
Total Parking Stalls Provided	283

18 OF 102 COMPACT STALLS INCLUDING (2) EV STALLS

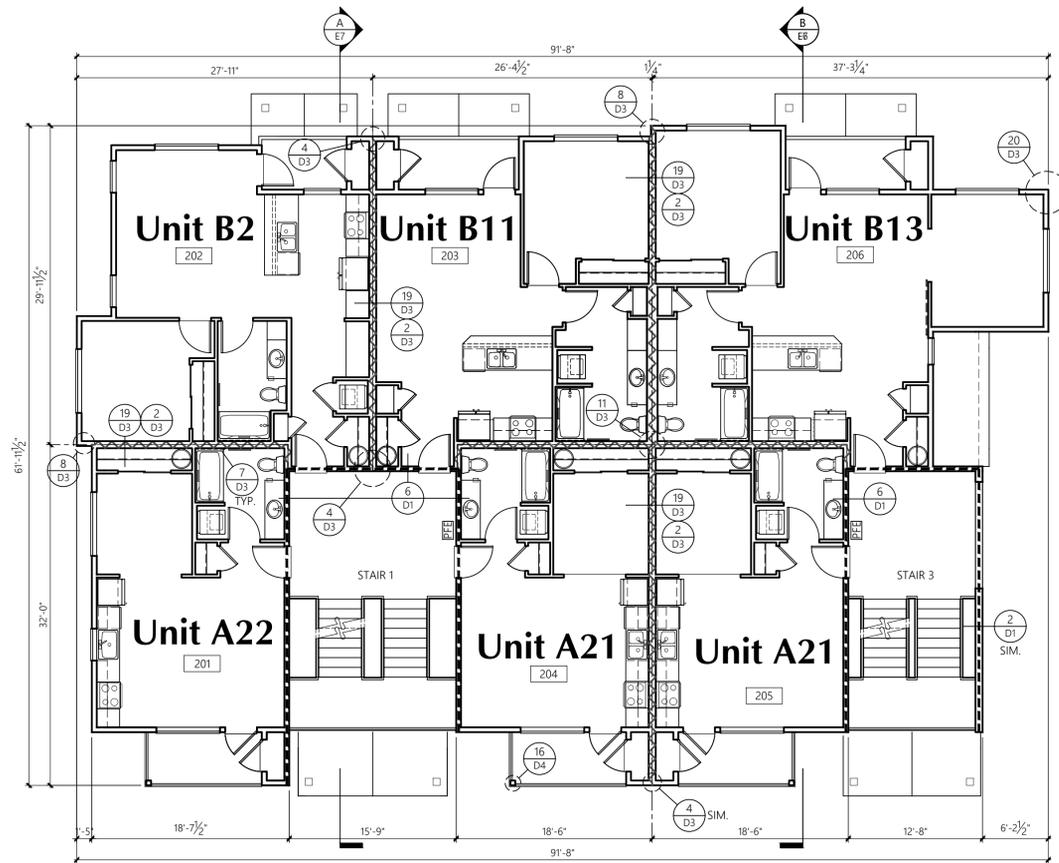
**BUILD-TO CALCULATION:**  
70% STRUCTURE FRONTAGE REQUIREMENT AT PRIMARY ST.  
LOT FRONTAGE = 330.7'  
70% = 231.5'  
STRUCTURE FRONTAGE = 91.67' + 140.75' = 232.42'

MAXIMUM COMPACT SPACES ALLOWED = 40% OF TOTAL  
111/283 = 39.2%  
ELECTRIC VEHICLE CHARGING REQUIREMENTS: 10% INSTALLED, 20% FOR EXPANSION PROPOSED:  
30 STALLS INSTALLED (10%)  
40 STALLS FOR EXPANSION (20%)  
INSTALLED EV STALL  
FUTURE EXPANSION EV STALL  
REQUIRED BIKE PARKING:  
14 STALLS FOR RESIDENTIAL USE  
36 ADDITIONAL STALLS TO SUBSTITUTE FOR UP TO 6 REQUIRED PARKING STALLS NOT PROVIDED  
TOTAL = 60 STALLS  
(SEE BUILDING PLANS AND SITE PLAN FOR BIKE STALL LOCATIONS)

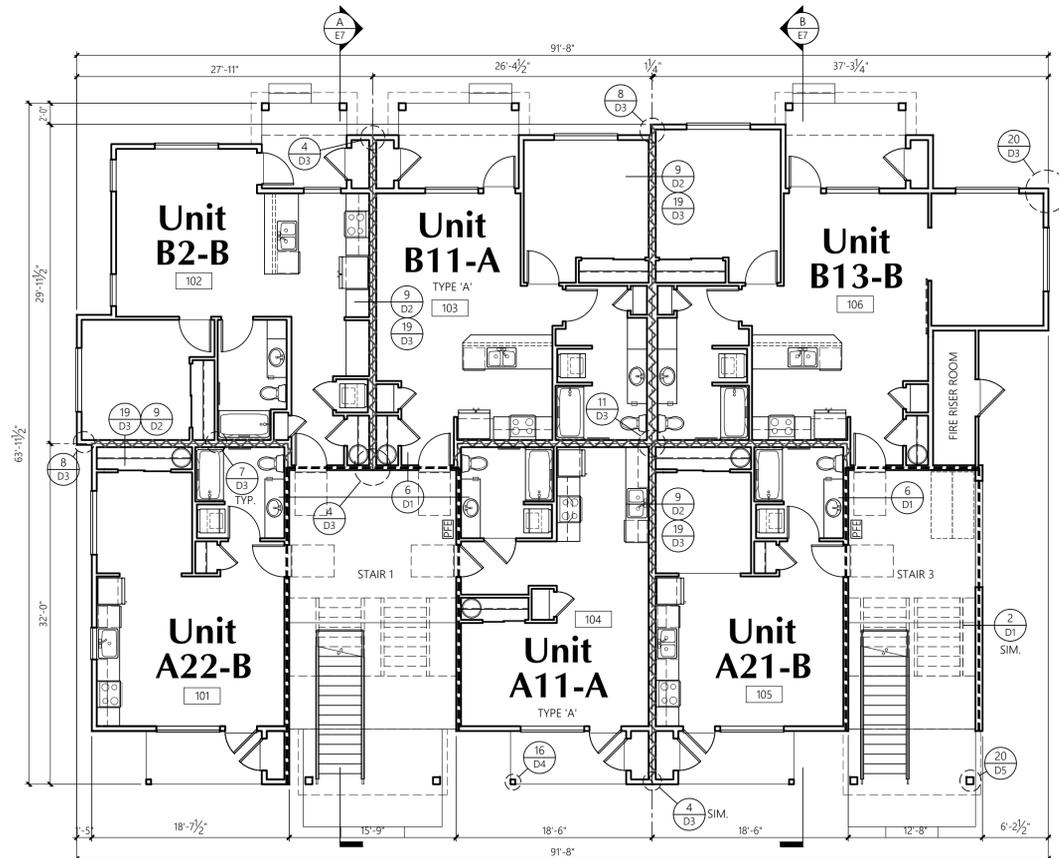
SSNH 29 4  
RPM 32 55  
RPM 32 55



**BUILDING A**  
1/8" = 1'-0"  
**THIRD LEVEL PLAN**  
BUILDING TYPE IV



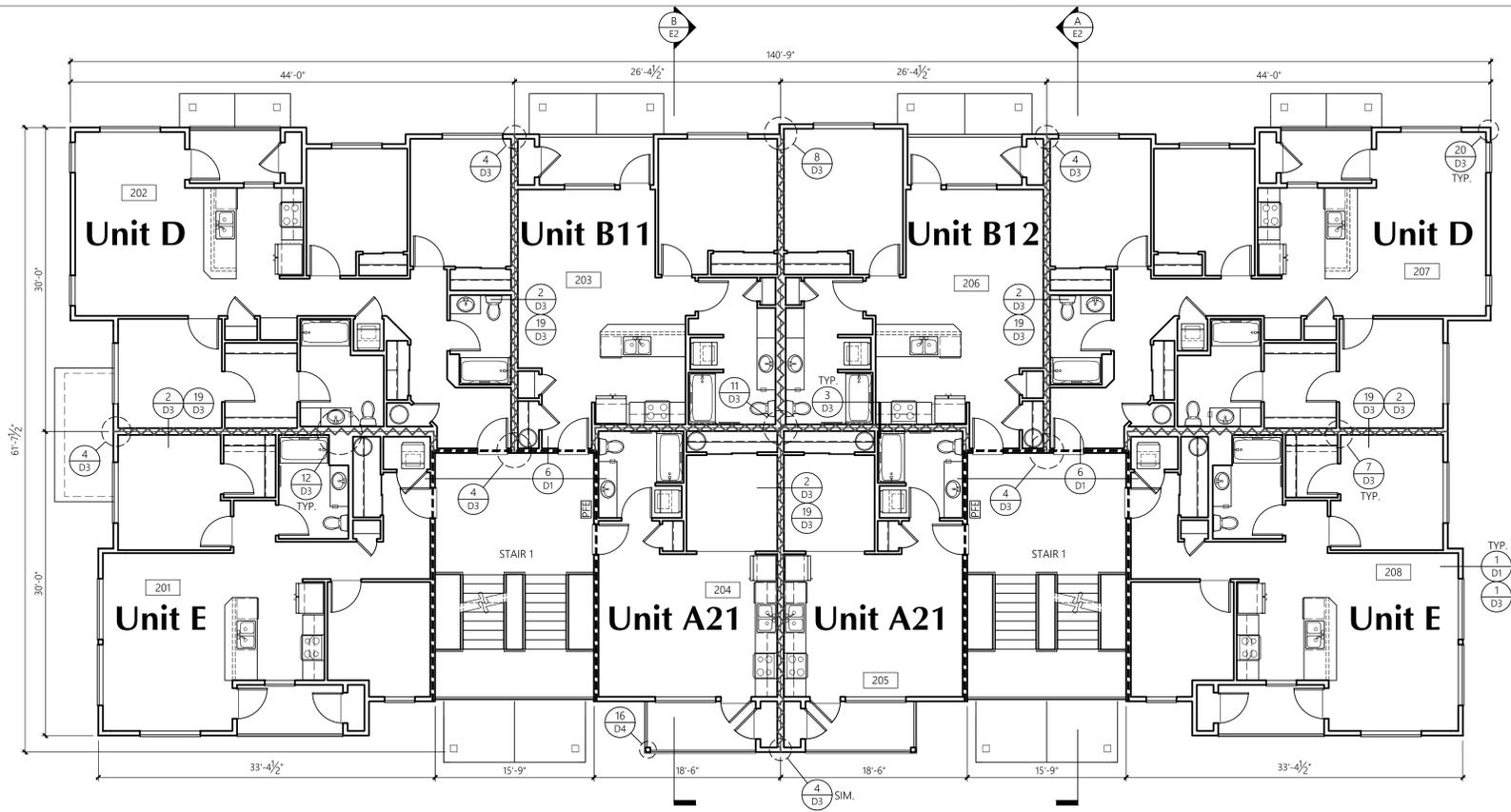
**BUILDING A**  
1/8" = 1'-0"  
**SECOND LEVEL PLAN**  
BUILDING TYPE IV



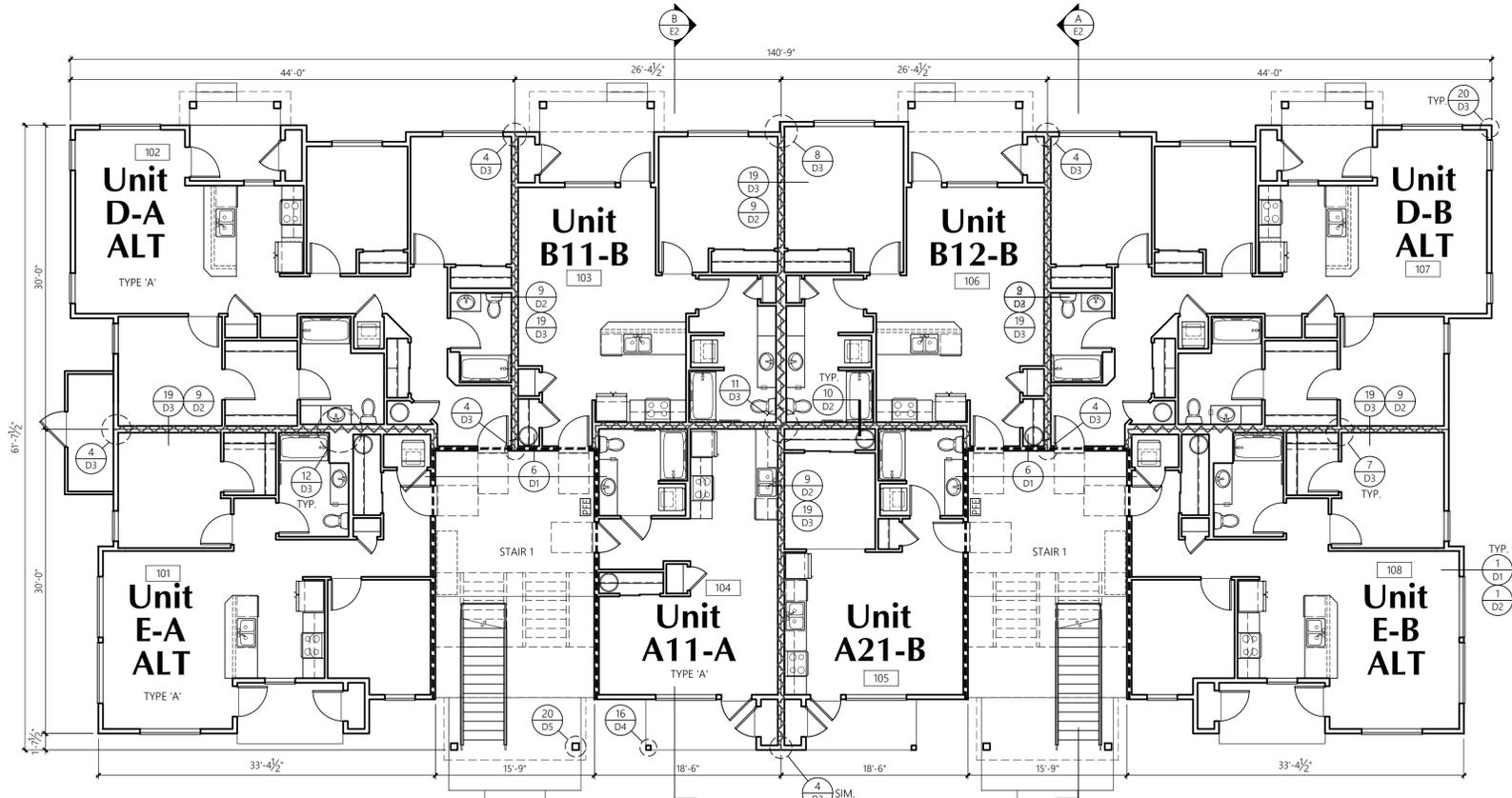
**BUILDING A**  
1/8" = 1'-0"  
**FIRST LEVEL PLAN**  
BUILDING TYPE IV

**LEGEND**

	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'. SEE DETAIL 20/D1



**BUILDING B** SECOND LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE I-B



**BUILDING B** FIRST LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE I-B

**LEGEND**

	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION. SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION. SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION. SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.). MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'. SEE DETAIL 20/D1

**MILBRANDT**  
ARCHITECTS

25 Central Way, Suite 210  
Kirkland, Washington 98033  
P: 425.454.7130 F: 425.658.1208  
Web: www.milbrandtarch.com

© Copyright 2022  
Milbrandt Architects, INC., P.S.  
All rights reserved

11326 REGISTERED ARCHITECT  
*David J. Vincent*  
DAVID J. VINCENT  
STATE OF WASHINGTON

**Building B**  
Floor Plans  
Enhanced Elevation at Sedgwick Rd.

RECEIVED  
Permit Center  
Nov 08, 2022  
City of Port Orchard  
Community Development

**2102 Sedgwick Apartments**  
Port Orchard, WA

**The Rush Companies**

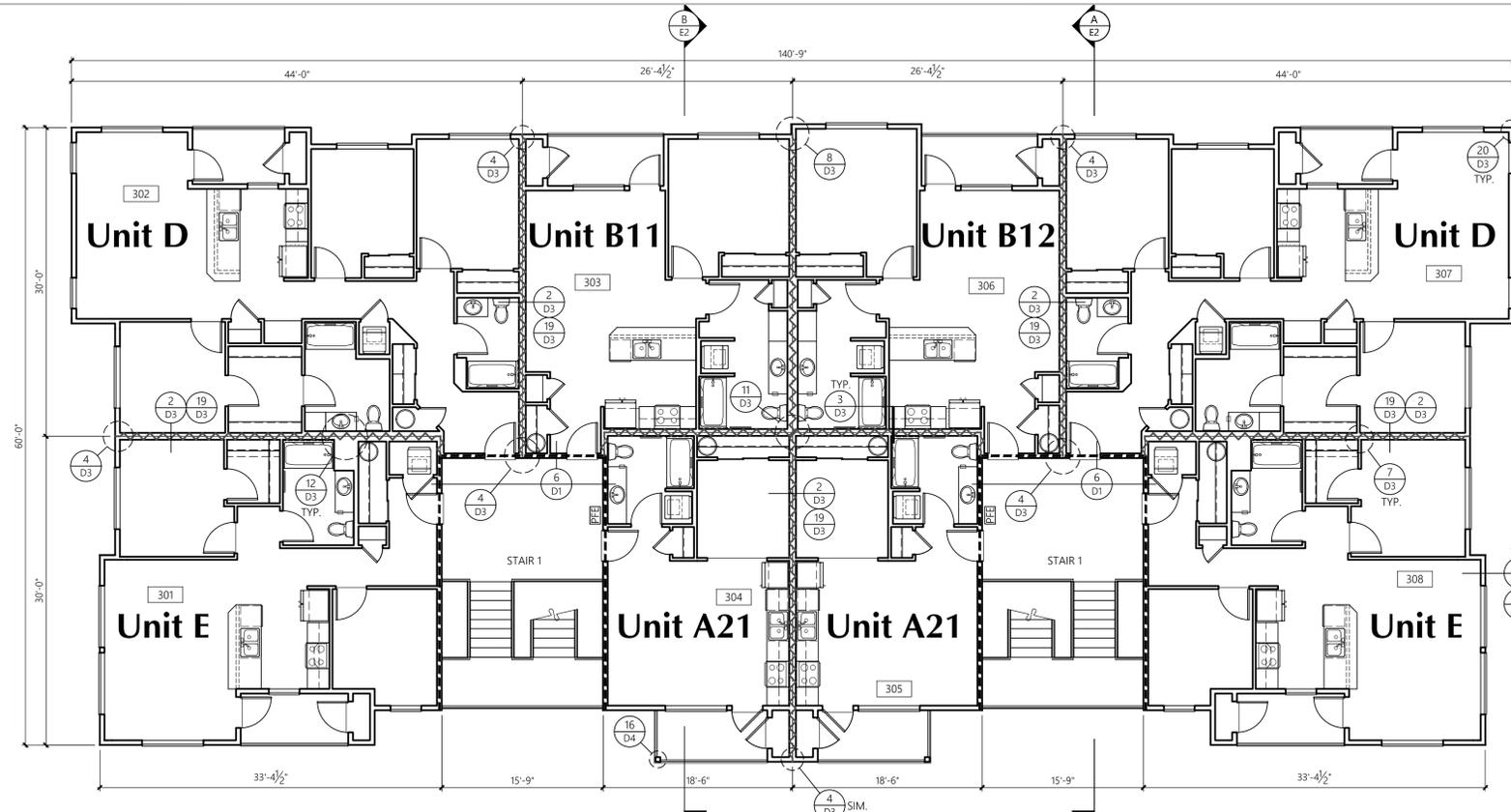
**Revisions**  
No. Date Description

REVISED  
Nov 08, 2022

Initial Publish Date: 6-24-22  
Date Plotted: 9-29-22  
Job No.: 21-35  
Drawn By: AJC/RK  
Sheet No.:

**B3**

**22-591**



**BUILDING B** THIRD LEVEL PLAN  
 1/8" = 1'-0" BUILDING TYPE I-B

LEGEND	
	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'. SEE DETAIL 20/D1

**MILBRANDT**  
ARCHITECTS

25 Central Way, Suite 210  
 Kirkland, Washington 98033  
 P: 425.454.7130 F: 425.658.1208  
 Web: www.milbrandtarch.com

© Copyright 2022  
 Milbrandt Architects, INC., P.S.  
 All rights reserved

11326 REGISTERED ARCHITECT  
  
 DAVID J. VINCENT  
 STATE OF WASHINGTON

**Building B**  
**Floor Plans**  
 Enhanced Elevation at Sedgwick Rd.

RECEIVED  
 Permit Center  
 Nov 08, 2022  
 City of Port Orchard  
 Community Development

**2102**  
**Sedgwick**  
**Apartments**  
 Port Orchard,  
 WA

**The Rush**  
**Companies**

**Revisions**

No.	Date	Description

REVISED  
 Nov 08, 2022

Initial Publish Date: 6-24-22  
 Date Plotted: 9-29-22

Job No.:	Drawn By:
21-35	AJC/RK
Sheet No.:	

**B4**

**22-591**

F:\2135\BUILDING TYPE I.B.M



RECEIVED  
Permit Center  
Nov 08, 2022  
City of Port Orchard  
Community Development

**Building C**  
Floor Plans

REVISED  
Nov 08, 2022

**2102  
Sedgwick  
Apartments**

Port Orchard,  
WA

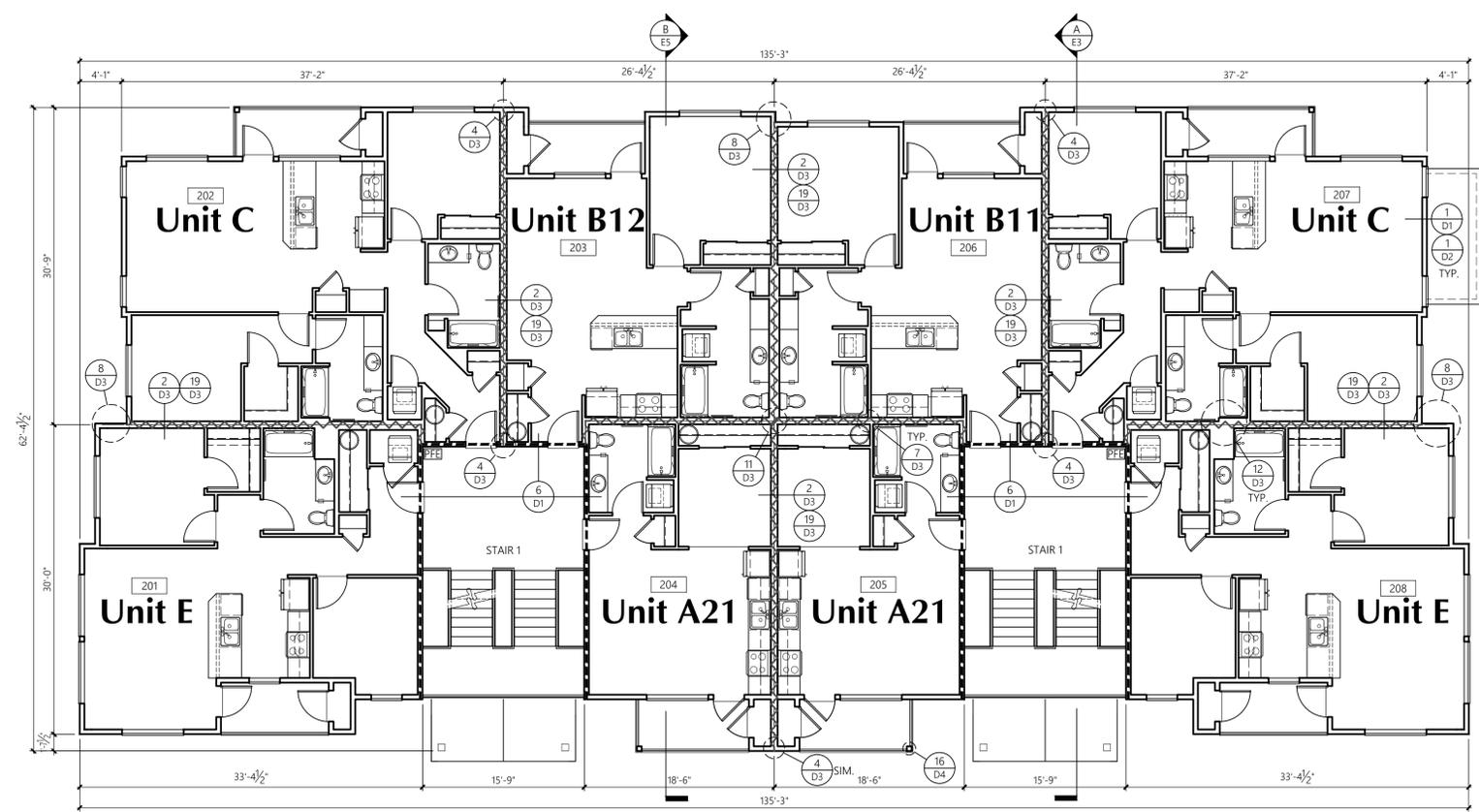
**The Rush  
Companies**

**Revisions**  
No. Date Description

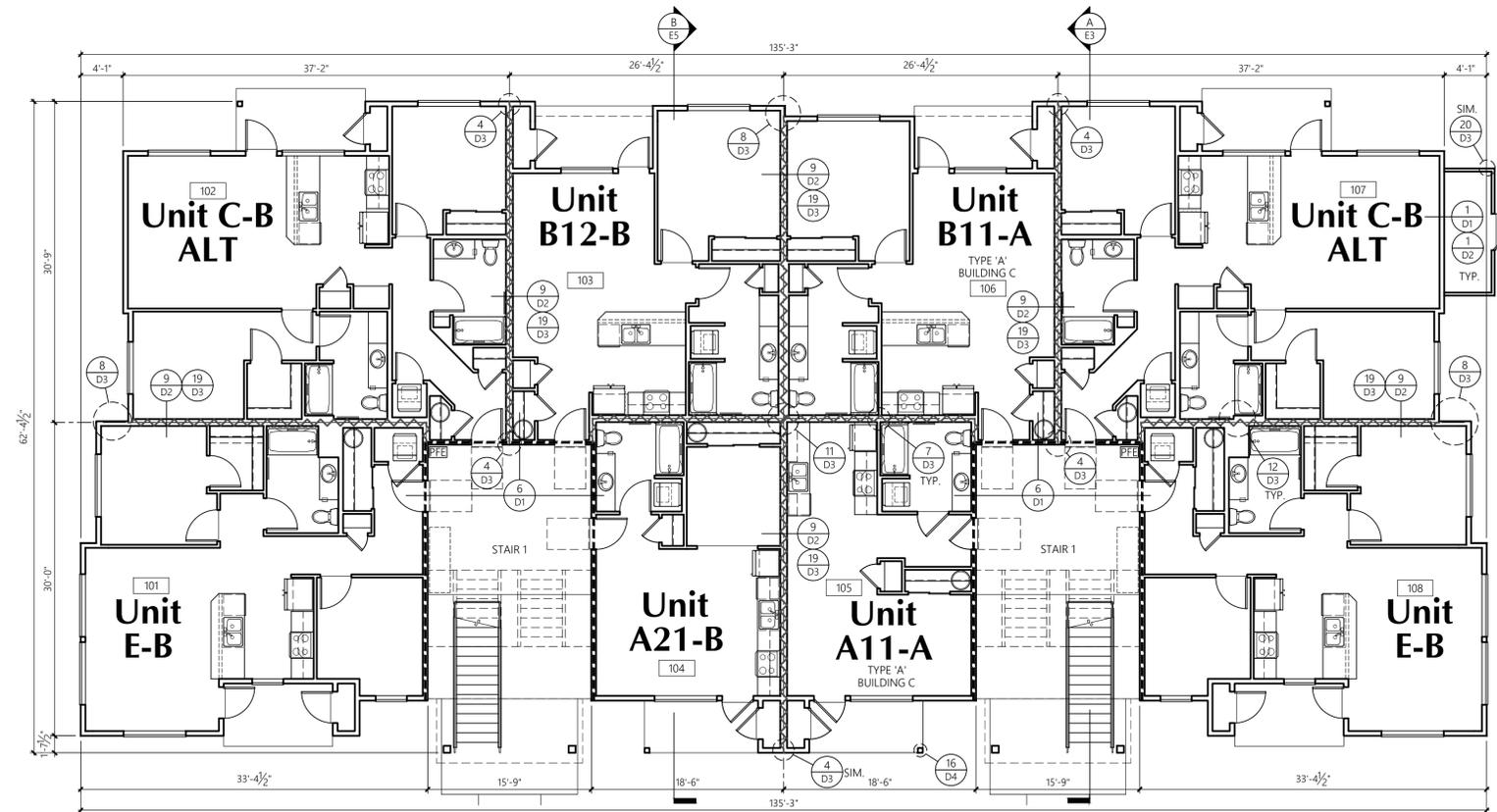
Initial Publish Date: 6-24-22  
Date Plotted: 9-29-22  
Job No.: 21-35  
Drawn By: AJC/RK  
Sheet No.:

**B5**

22-592



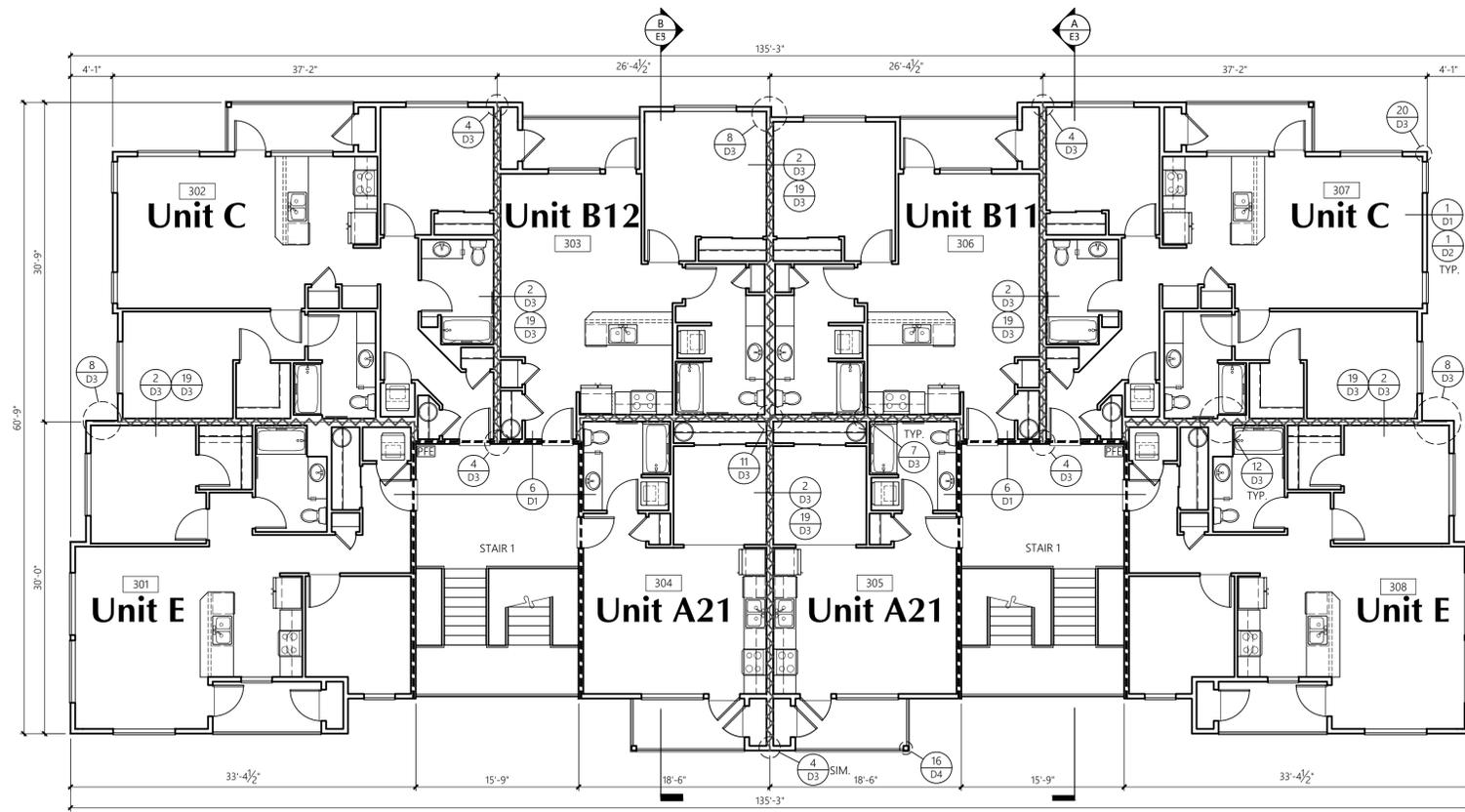
**BUILDING C** SECOND LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE II



**BUILDING C** FIRST LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE II

**LEGEND**

	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75', SEE DETAIL 20/D1



**BUILDING C** THIRD LEVEL PLAN  
 1/8" = 1'-0" BUILDING TYPE II

LEGEND	
	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'. SEE DETAIL 20/D1

**MILBRANDT**  
ARCHITECTS

25 Central Way, Suite 210  
 Kirkland, Washington 98033  
 P: 425.454.7130 F: 425.658.1208  
 Web: www.milbrandtarch.com

© Copyright 2022  
 Milbrandt Architects, INC., P.S.  
 All rights reserved

11326 REGISTERED  
 ARCHITECT  
  
 DAVID J. VINCENT  
 STATE OF WASHINGTON

RECEIVED  
 Permit Center  
 Nov 08, 2022  
 City of Port Orchard  
 Community Development

**Building C**  
**Floor Plans**

REVISED  
 Nov 08, 2022

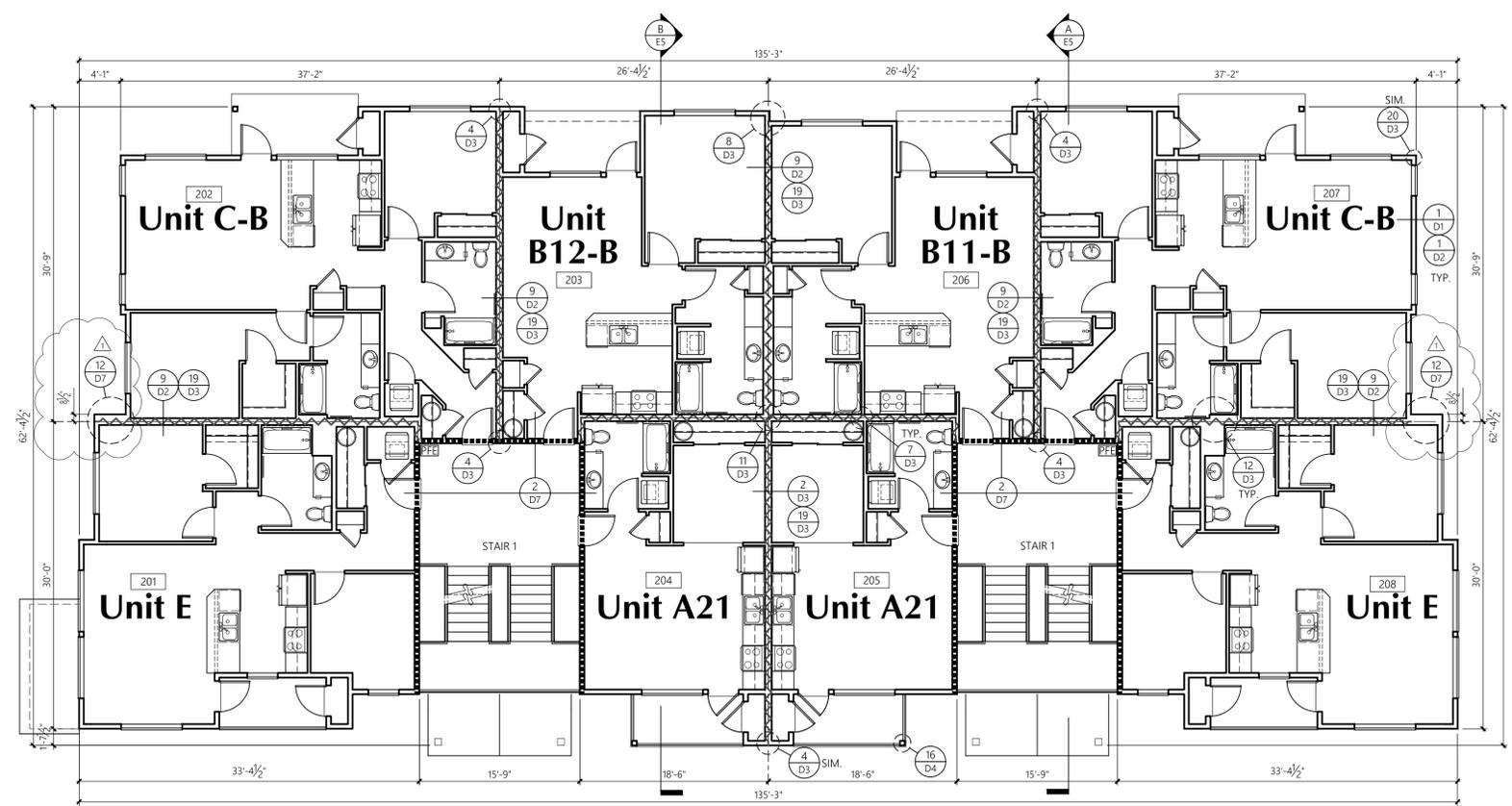
**2102**  
**Sedgwick**  
**Apartments**  
 Port Orchard,  
 WA

**The Rush**  
**Companies**

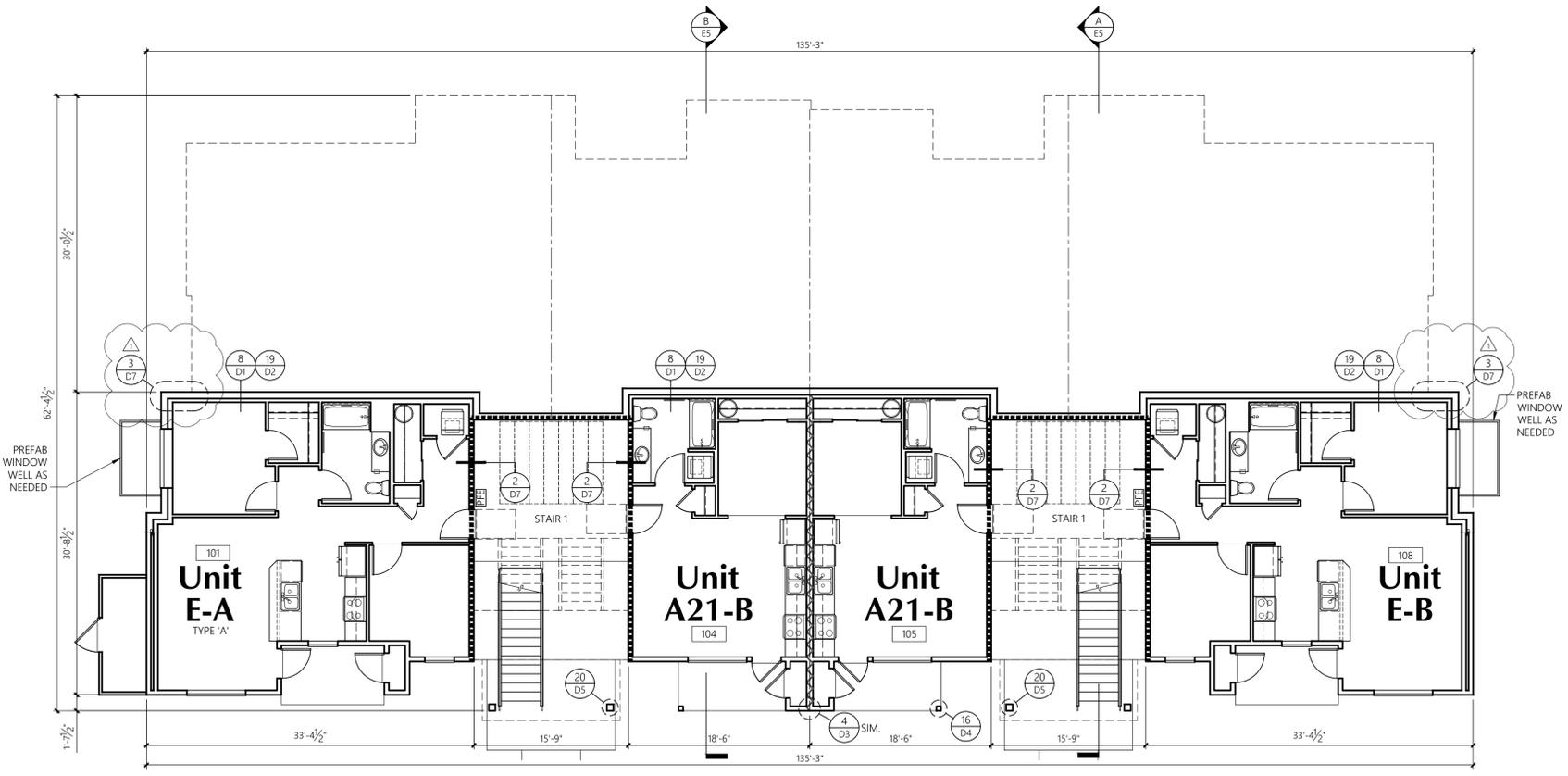
**Revisions**  
 No. Date Description

Initial Publish Date: 6-24-22  
 Date Plotted: 9-29-22  
 Job No.: 21-35  
 Drawn By: AJC/RK  
 Sheet No.:

**B6**  
 22-592



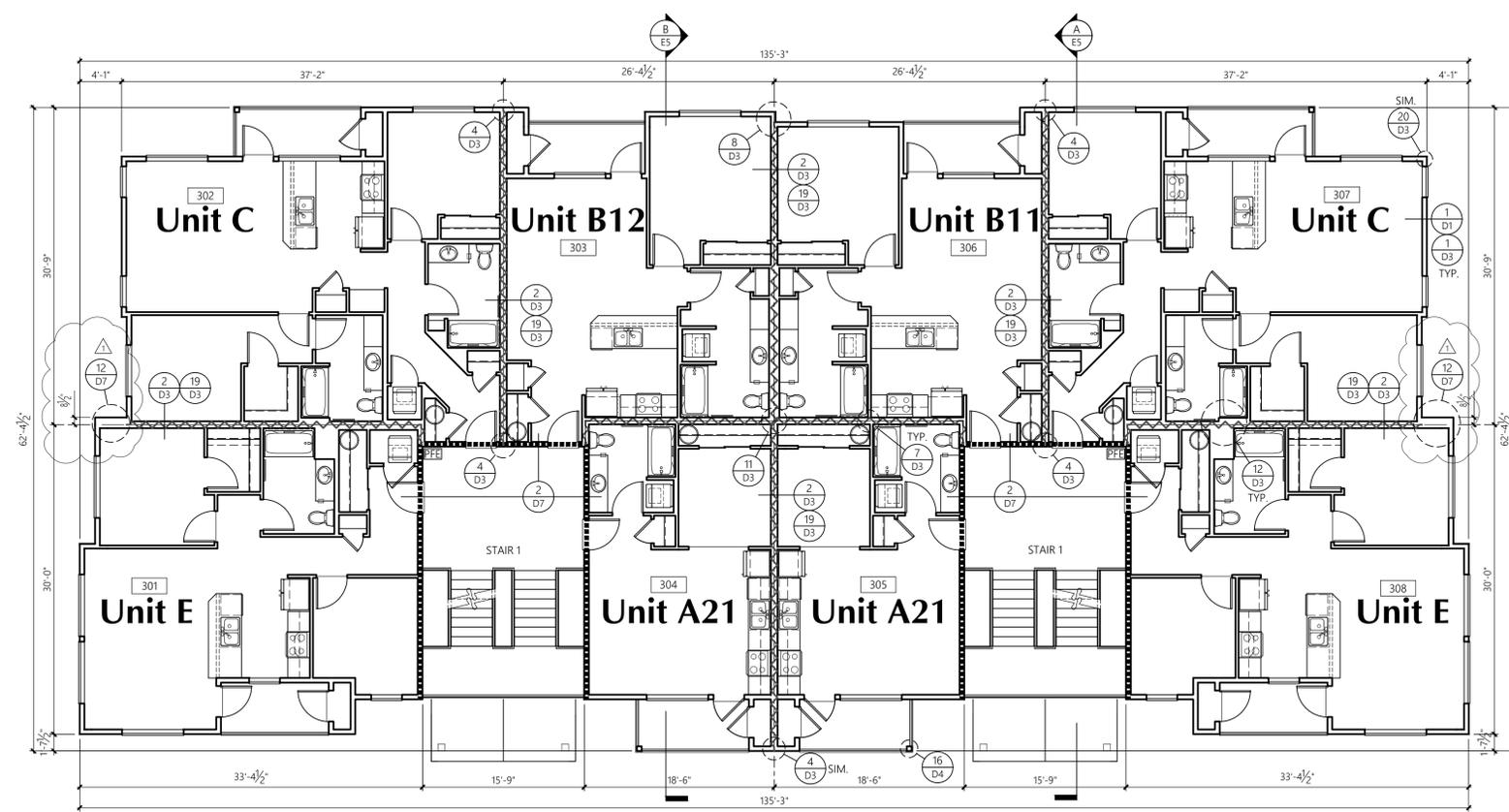
**BUILDING D** FIRST LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE II-B



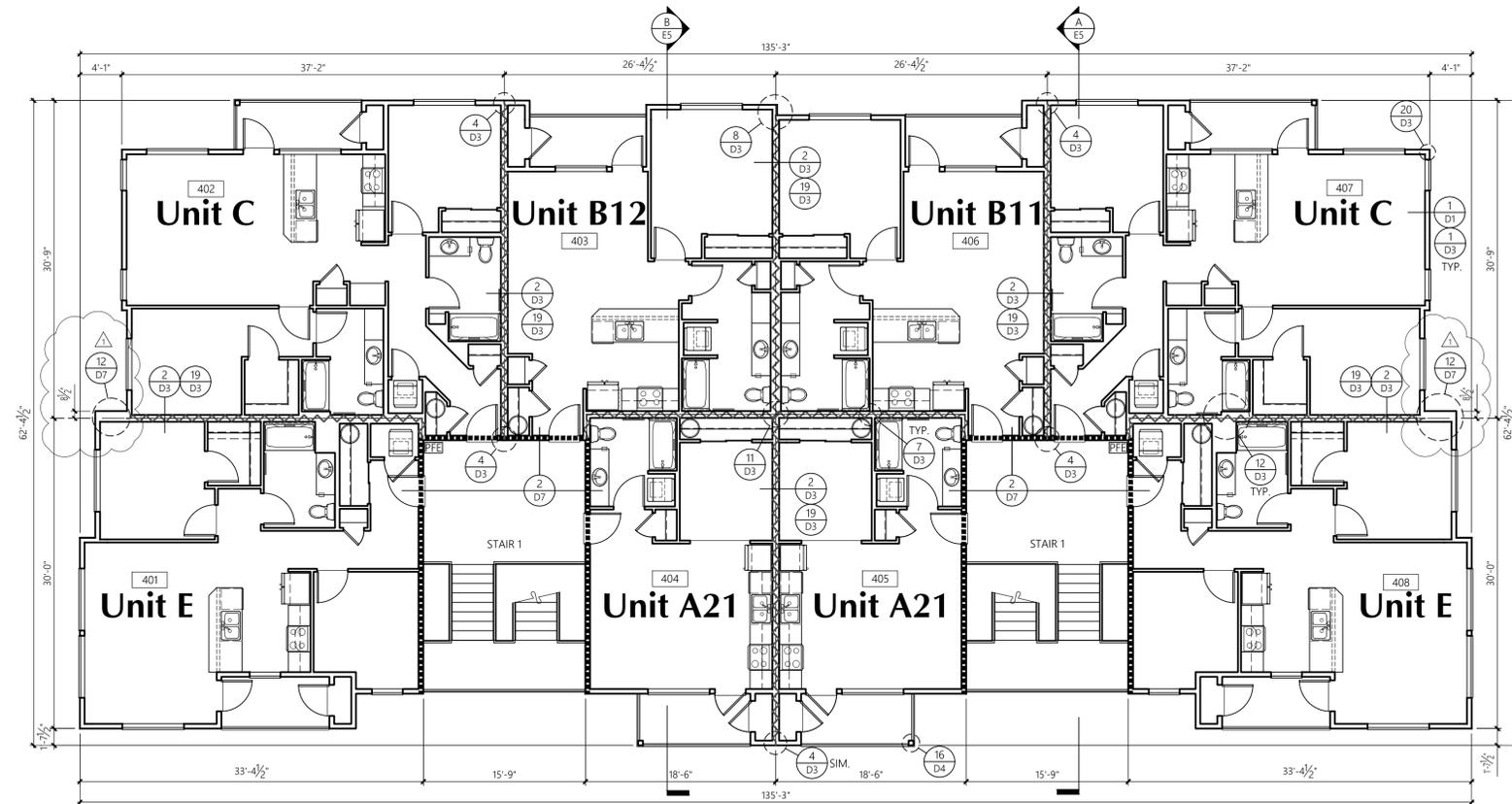
**BUILDING D** BASEMENT LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE II-B

**LEGEND**

	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'; SEE DETAIL 20/D1



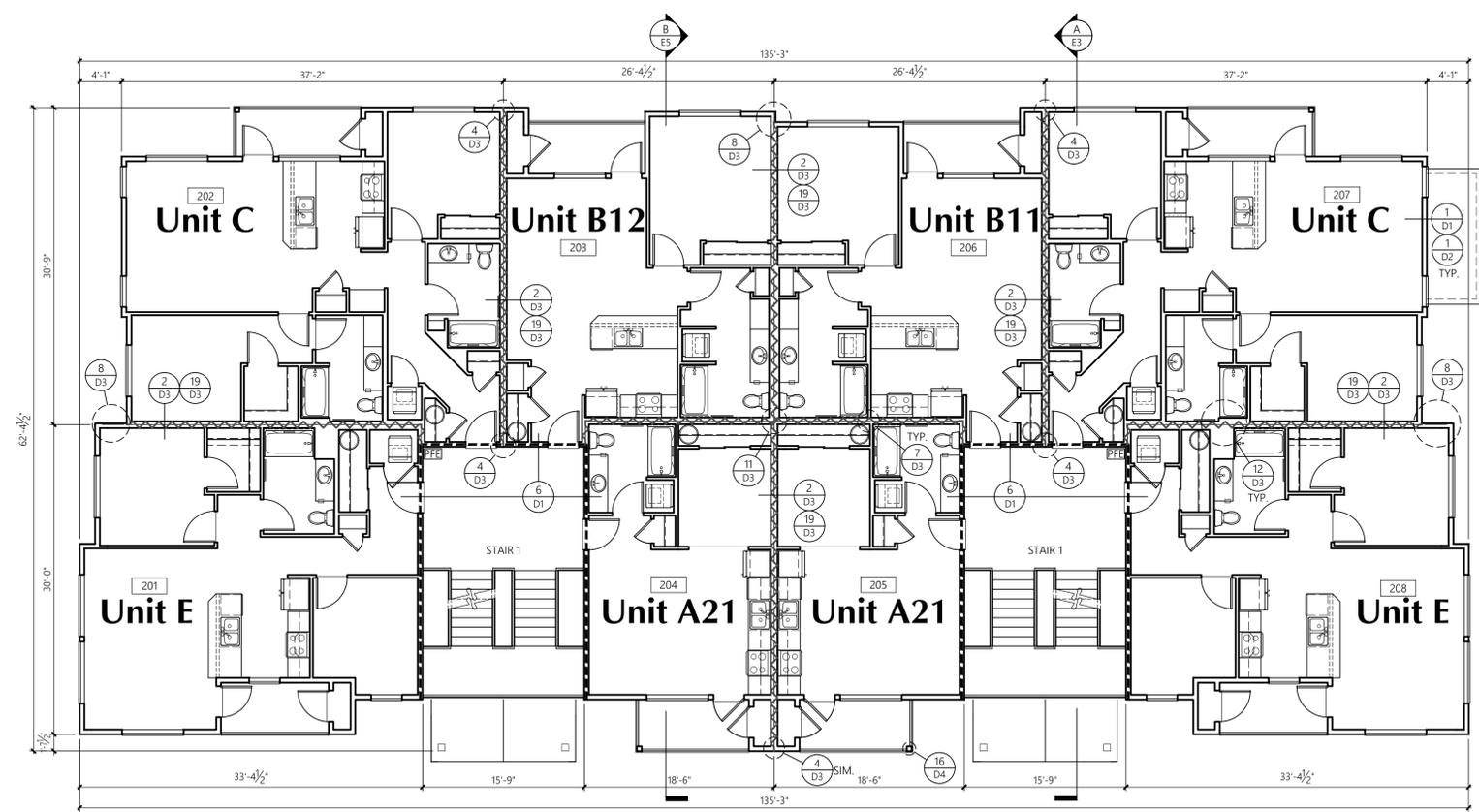
**BUILDING D** SECOND LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE II-B



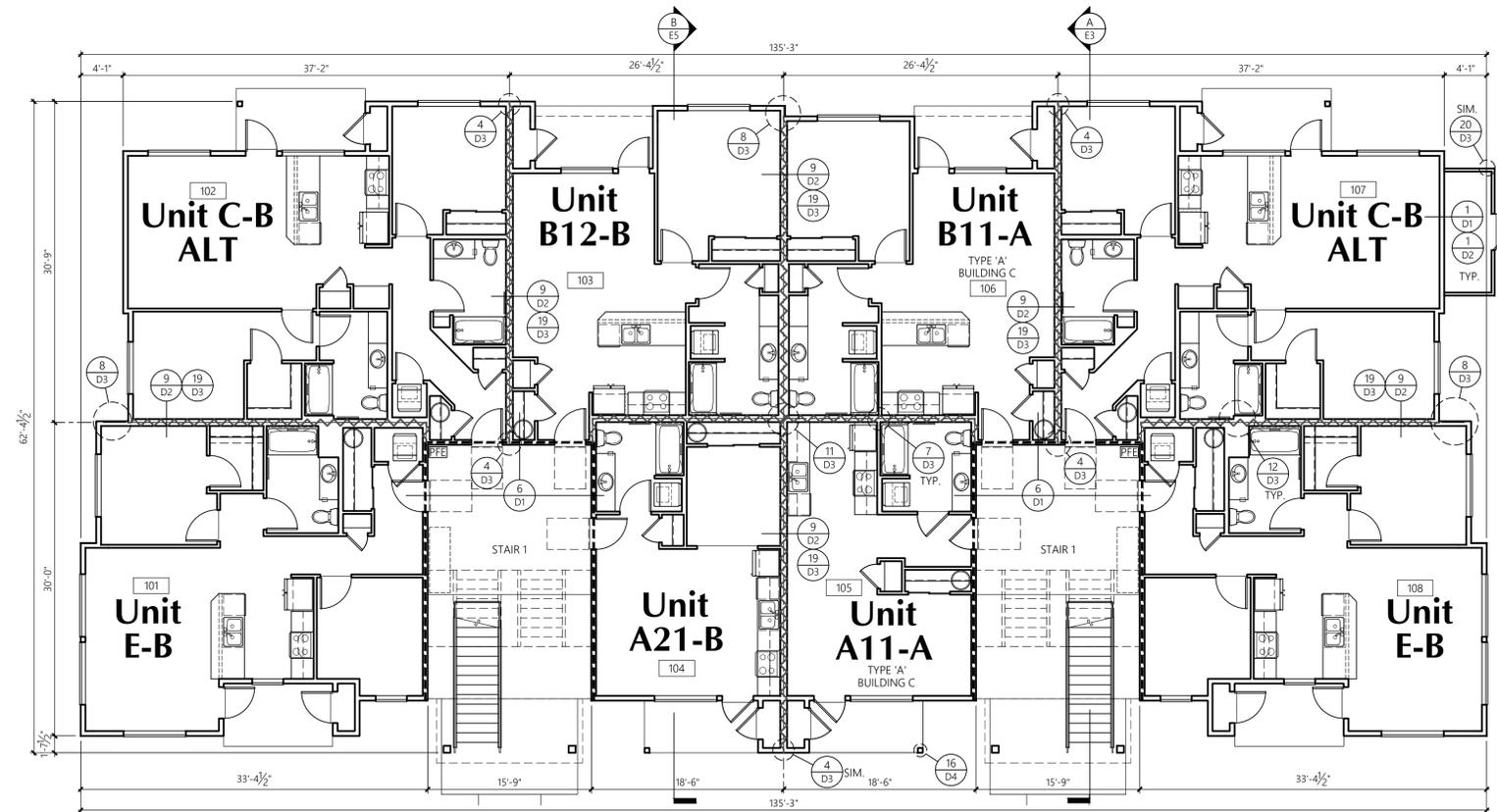
**BUILDING D** THIRD LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE II-B

**LEGEND**

	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'; SEE DETAIL 20/D1



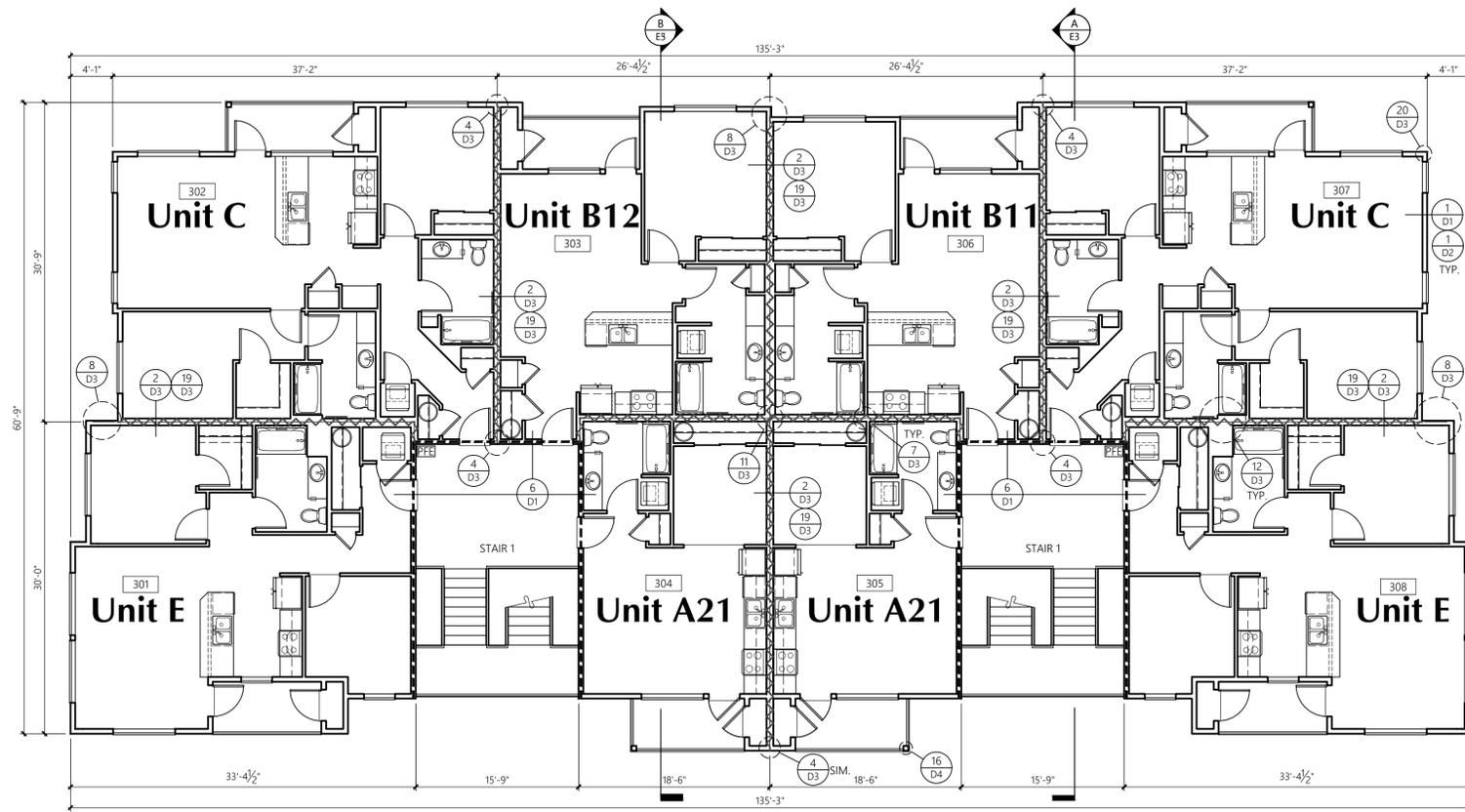
**BUILDING E** SECOND LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE II



**BUILDING E** FIRST LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE II

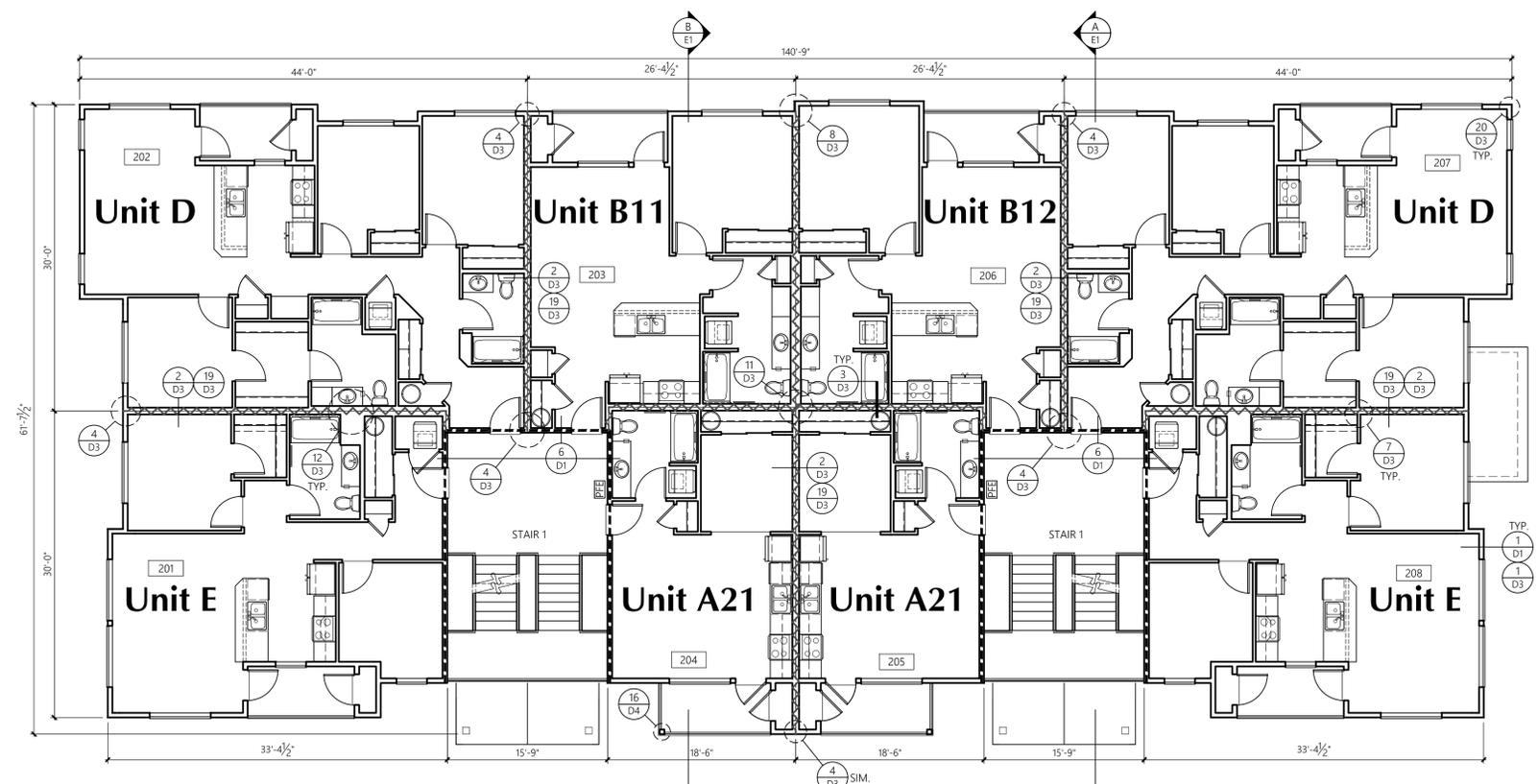
**LEGEND**

	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75', SEE DETAIL 20/D1

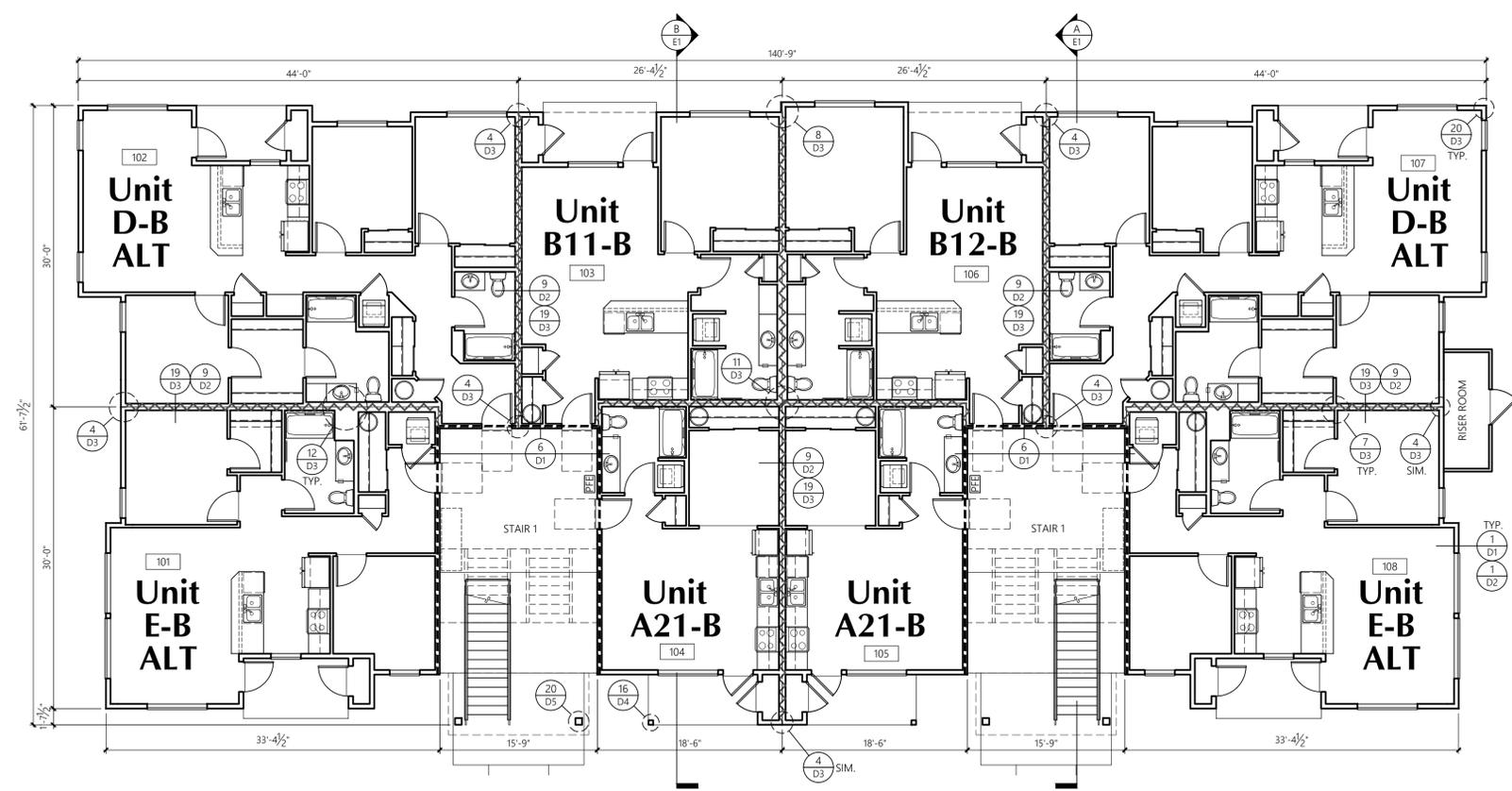


**BUILDING E** THIRD LEVEL PLAN  
 1/8" = 1'-0" BUILDING TYPE II

LEGEND	
	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'. SEE DETAIL 20/D1



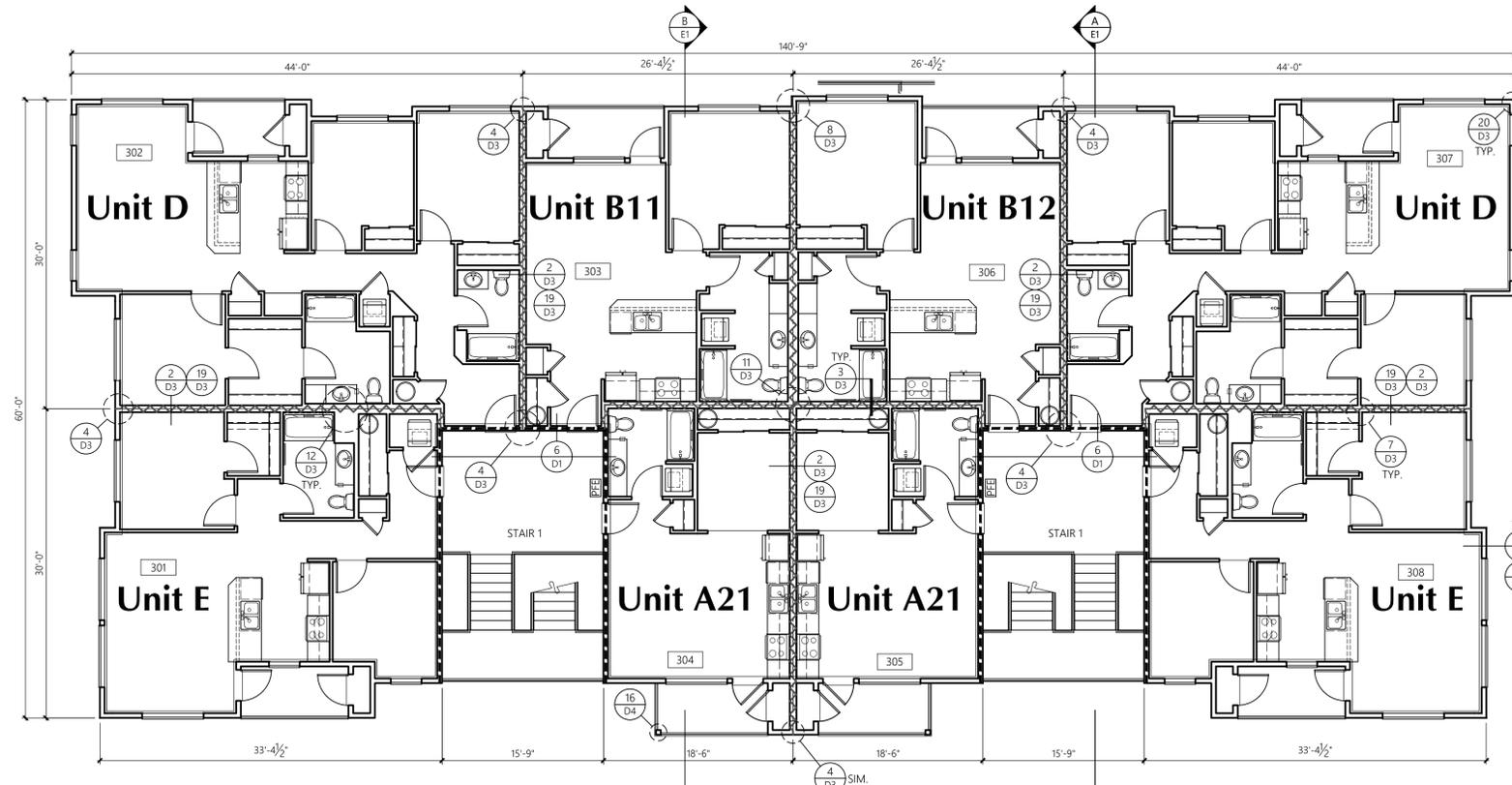
**BUILDING F** SECOND LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE I



**BUILDING F** FIRST LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE I

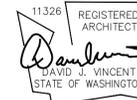
**LEGEND**

	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION. SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION. SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION. SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'. SEE DETAIL 20/D1



**BUILDING F**  
THIRD LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE 1

LEGEND	
	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'. SEE DETAIL 20/D1



RECEIVED  
Permit Center  
Nov 08, 2022  
City of Port Orchard  
Community Development

**2102**  
**Sedgwick**  
**Apartments**  
Port Orchard,  
WA

**The Rush**  
**Companies**

Revisions		
No.	Date	Description

REVISED  
Nov 08, 2022

Initial Publish Date: 6-24-22

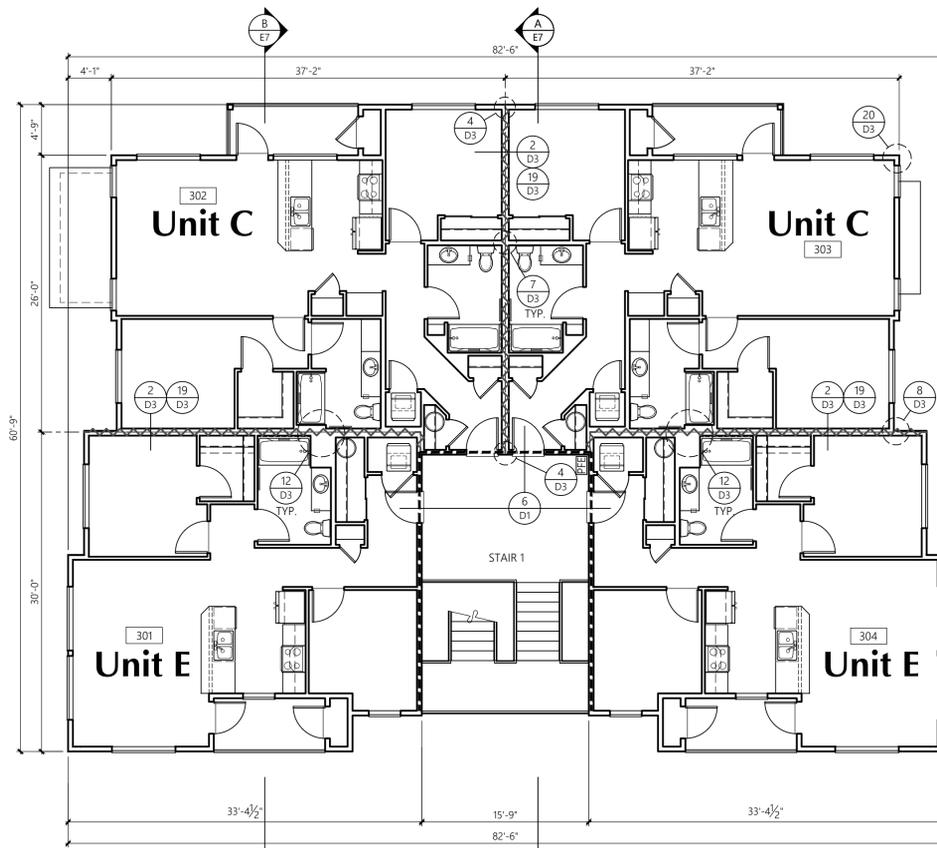
Date Plotted: 9-29-22

Job No.: 21-35  
Drawn By: AJC/RK

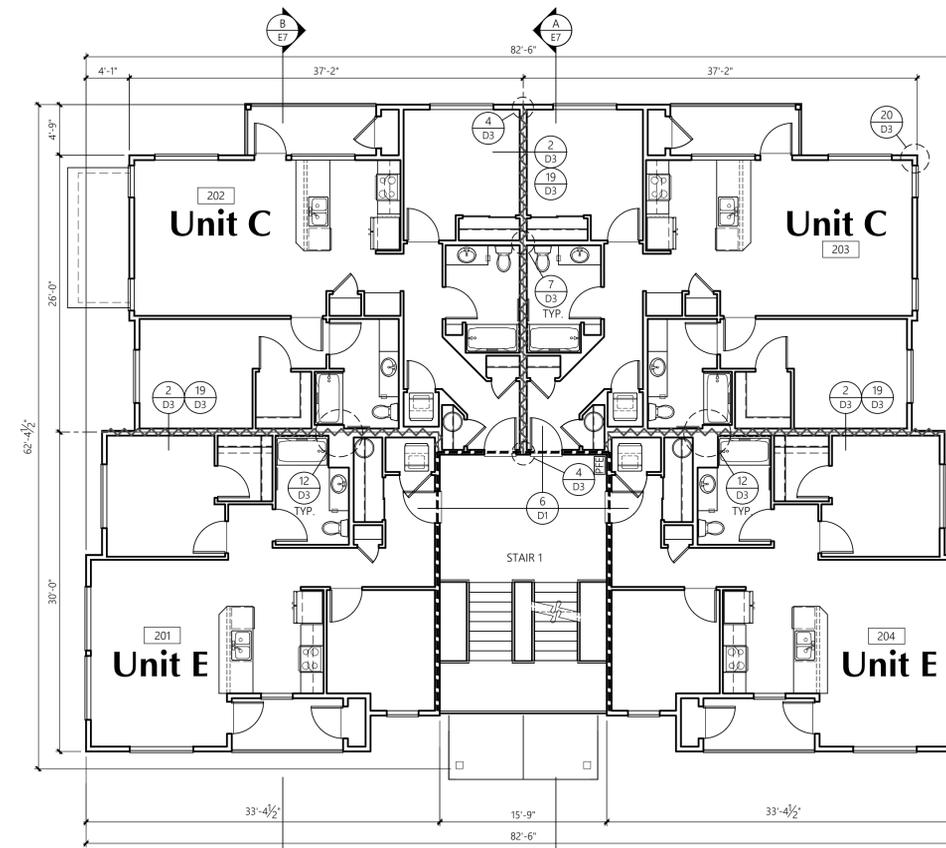
Sheet No.:

**B2**

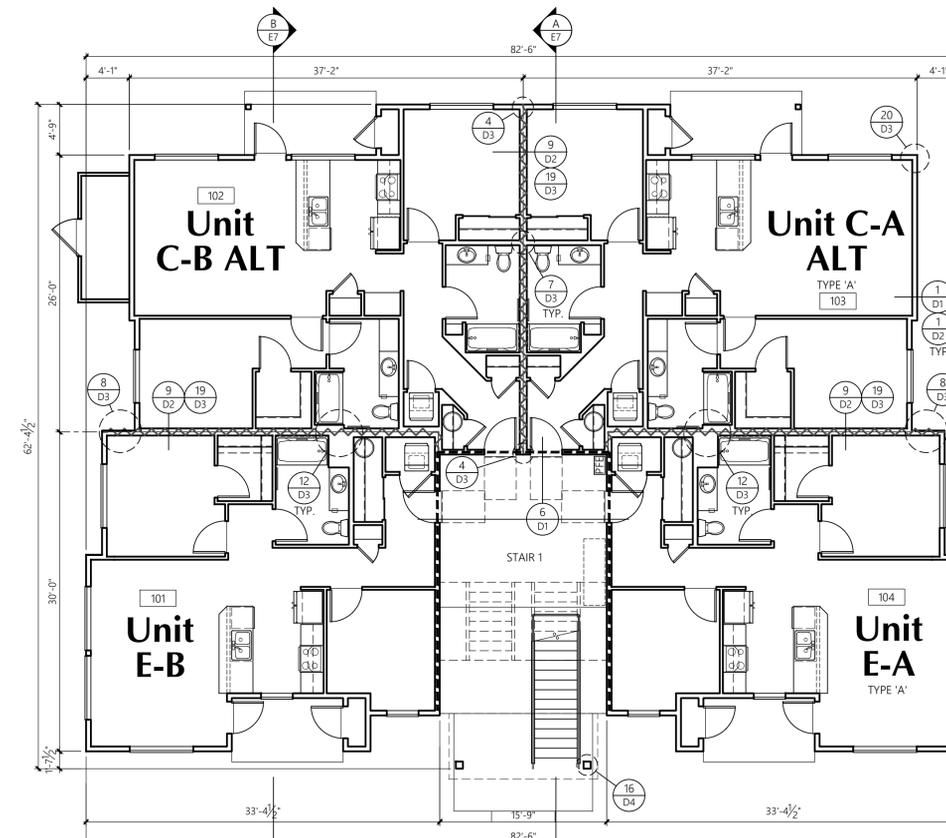
22-594



**BUILDING G** THIRD LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE V



**BUILDING G** SECOND LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE V

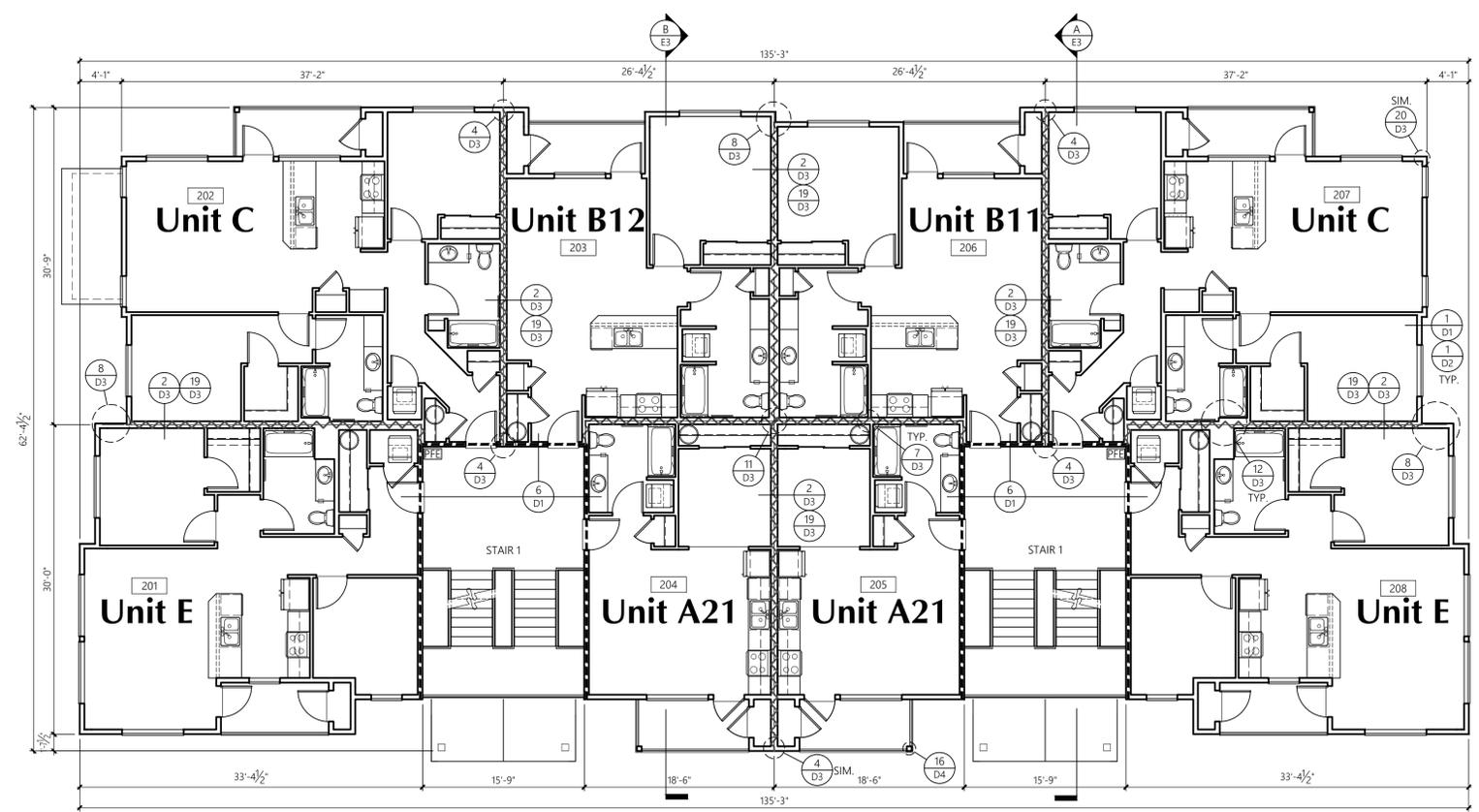


**BUILDING G** FIRST LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE V

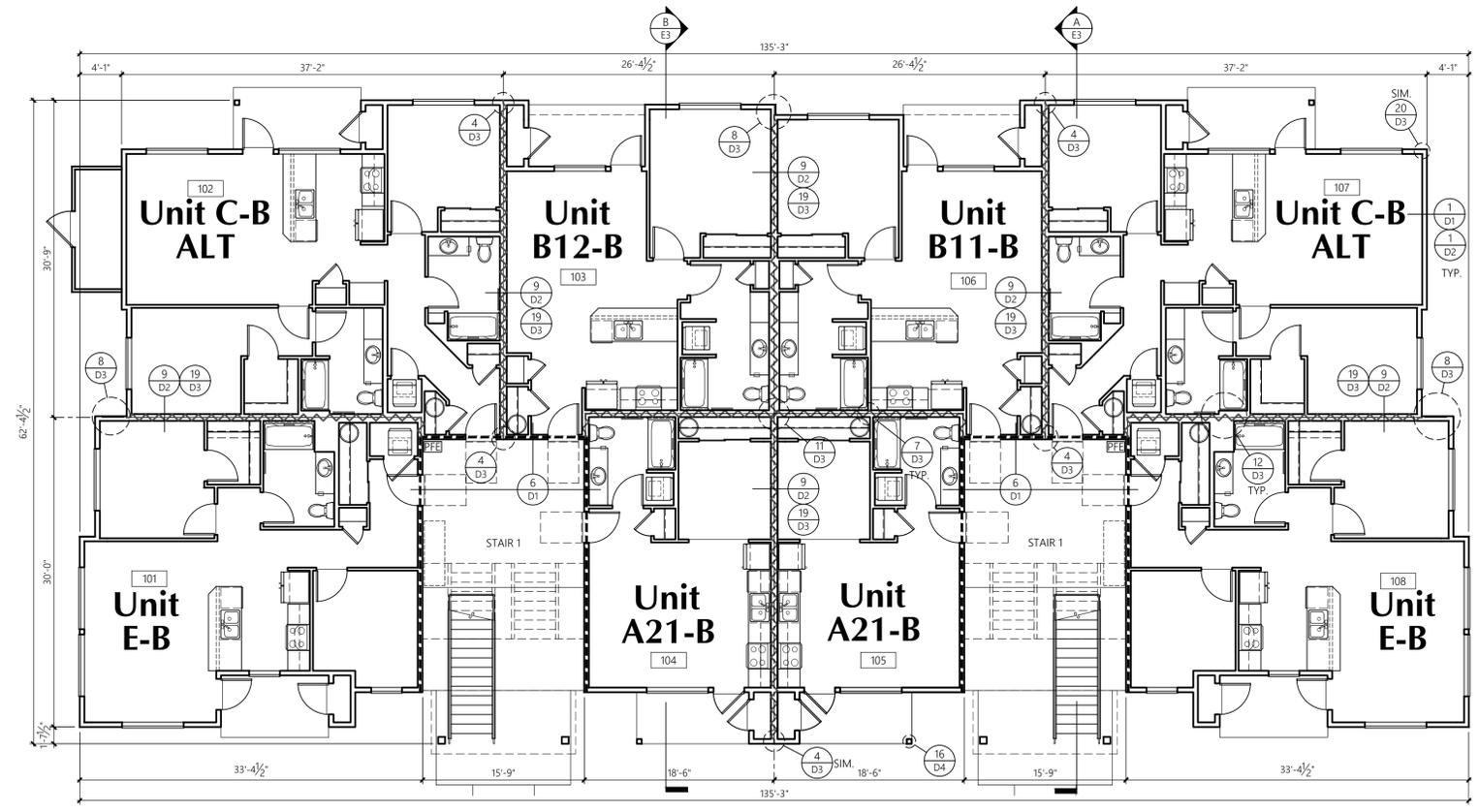
**LEGEND**

- EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
- EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
- EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
- PORTABLE FIRE EXTINGUISHER (CLASS 3A-10B-C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'. SEE DETAIL 20/D1

No.	Date	Description
1	Nov 08, 2022	REVISION



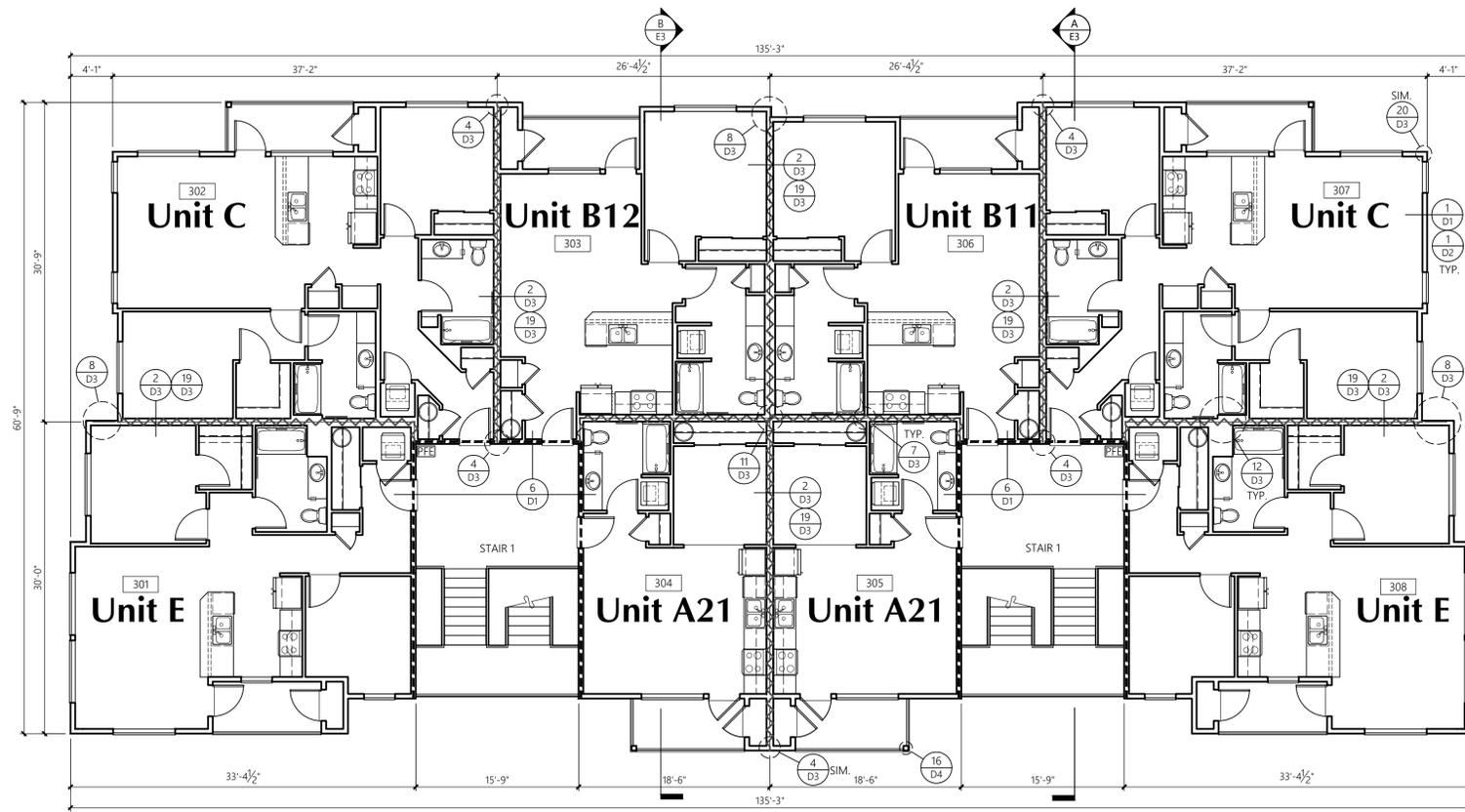
**BUILDING H** SECOND LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE II-A



**BUILDING H** FIRST LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE II-A

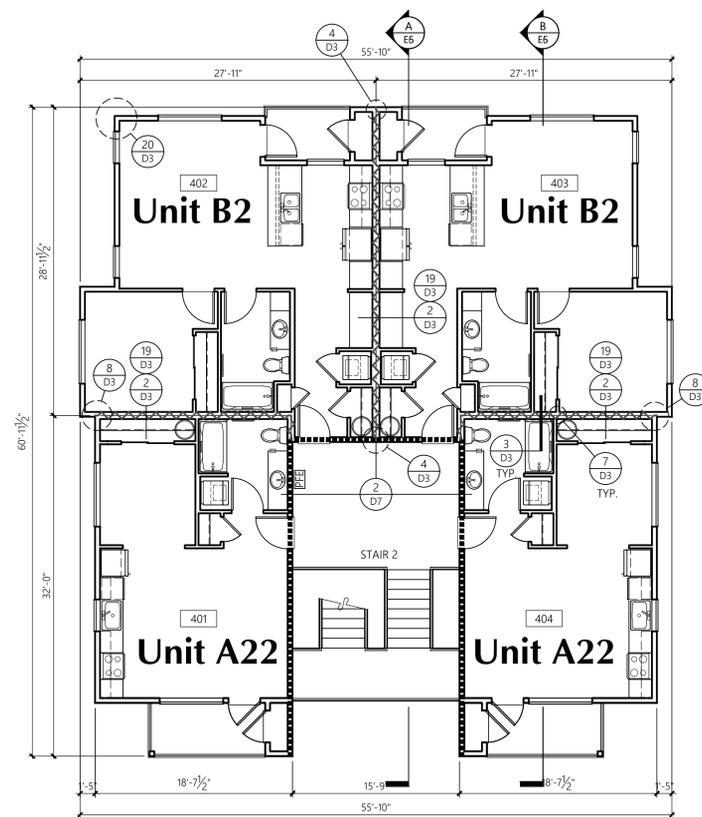
**LEGEND**

	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75', SEE DETAIL 20/D1

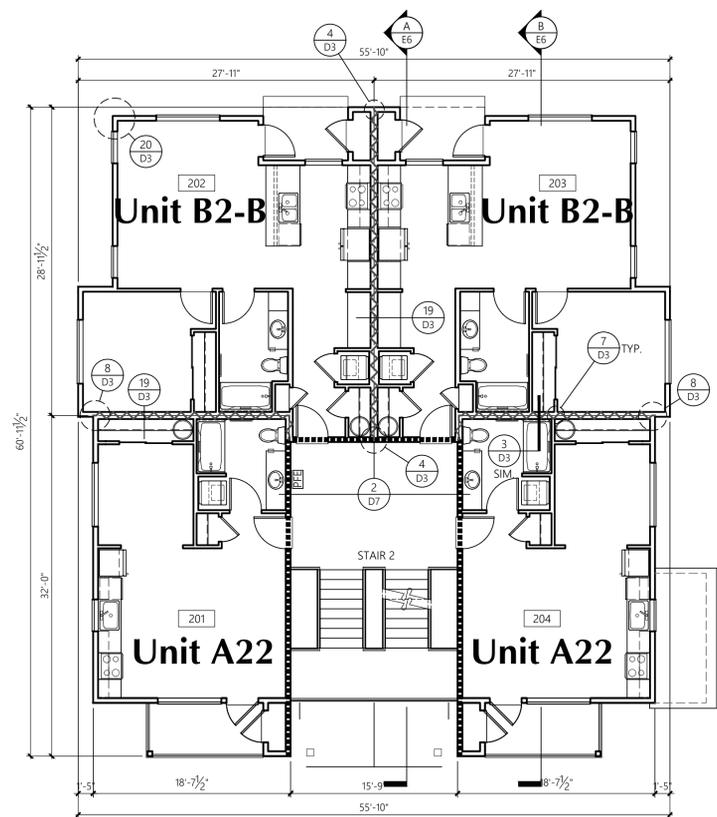


**BUILDING H** THIRD LEVEL PLAN  
 1/8" = 1'-0" BUILDING TYPE II-A

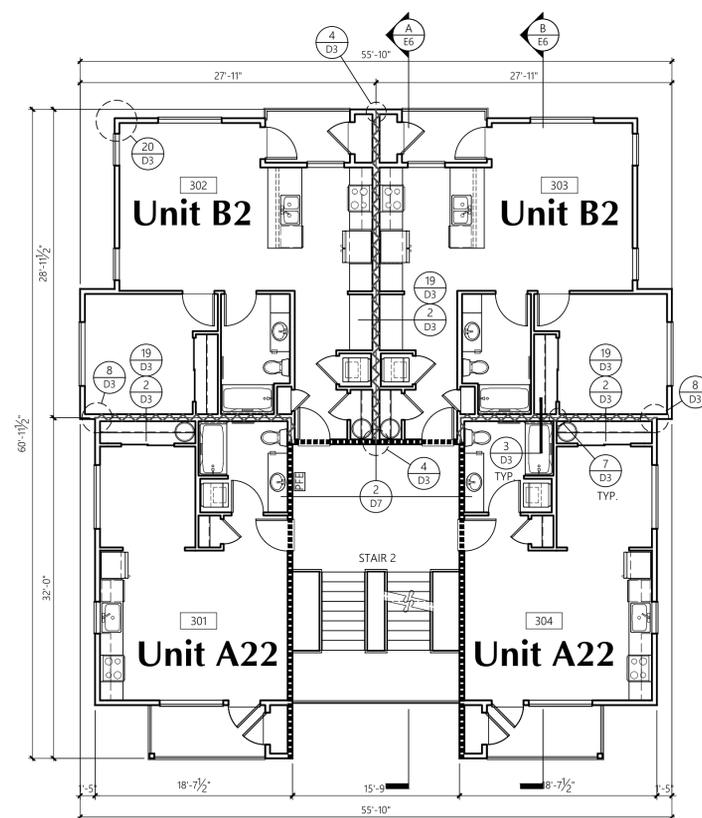
LEGEND	
	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'. SEE DETAIL 20/D1



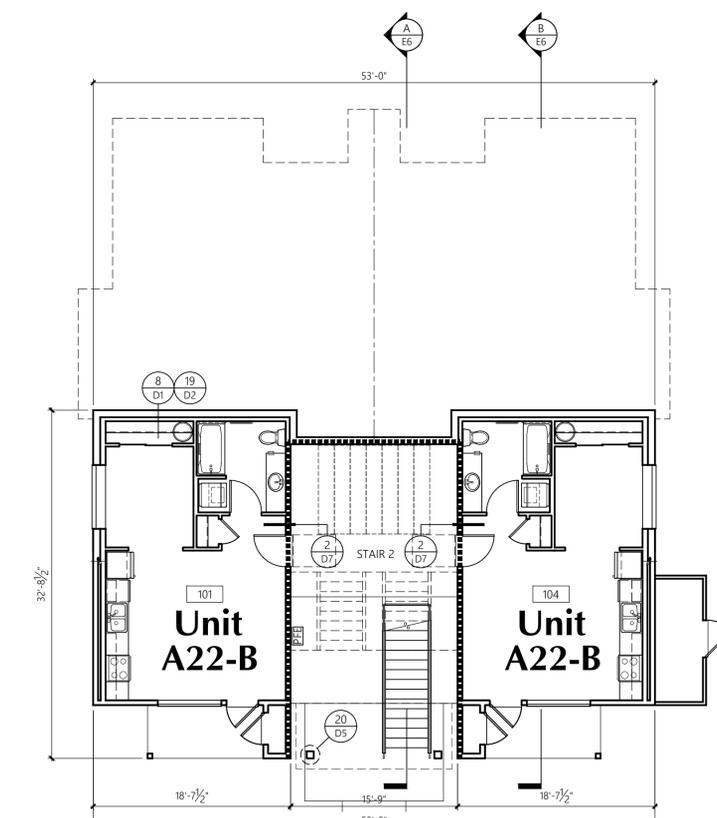
**BUILDING J** THIRD LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE III



**BUILDING J** FIRST LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE III



**BUILDING J** SECOND LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE III



**BUILDING J** BASEMENT LEVEL PLAN  
1/8" = 1'-0" BUILDING TYPE III

**LEGEND**

	EXTENT OF 1-HR FIRE PARTITION UNIT/UNIT SEPARATION, SEE DETAIL 19/D3
	EXTENT OF 1-HR FIRE PARTITION UNIT/STAIR SEPARATION, SEE DETAIL 6/D1
	EXTENT OF 2-HR SHAFT WALL UNIT/STAIR SEPARATION, SEE DETAIL 2/D7
	PORTABLE FIRE EXTINGUISHER (CLASS 3A:10B:C - U.N.O.), MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER TO BE 75'. SEE DETAIL 20/D1



**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>January 24, 2023</u>
Subject:	<u>Adoption of a Resolution Authorizing the</u>	Prepared by:	<u>Tony Lang, PW Director</u>
	<u>Payment of Additional Relocation Benefits</u>		<u>Charlotte Archer, Atty</u>
	<u>to Ocean and Arlene Williams (Prior</u>	Atty Routing No.:	<u>366922-0009 - PW</u>
	<u>Owners of Kitsap County Tax Parcel No.</u>	Atty Review Date:	<u>N/A</u>
	<u>4027-023-017-0004) for the Bay Street</u>		
	<u>Pedestrian Pathway Project</u>		

**Summary:** In 2022, the City purchased Kitsap County Tax Parcel No. 4027-023-017-0004 (the “Property”) from Ocean and Arlene Williams as a necessary acquisition for the Bay Street Pedestrian Pathway Project. Prior to the purchase and in accordance with the City’s Relocation Assistance Program, the Uniform Relocation Act, 42 U.S.C. Ch. 61, Chapter 8.26 Revised Code of Washington (RCW), and Chapter 468-100 Washington Administrative Code (WAC), the City authorized the payment of relocation benefits at the recommendation of the City’s Relocation Agent, Tierra Right of Way Services, Ltd., to the Williams in accordance with Resolution No. 033-22 (Right-of-Way Acquisition Procedures) and the City’s Relocation Assistance Program. By Resolution No. 033-22, the City Council authorized payment of moving benefits in the amount of \$8,000 and 12-month temporary storage relocation benefits in the amount of \$4,440, payable in 3-month increments of \$1,110.

During the move, the City’s Relocation Agent identified additional personal property that required moving that was not disclosed during the initial walk-through of the Property prior to the sale. Tierra recommends, and Staff have reviewed and concur, the Council authorize the payment of an additional \$3,180 in reimbursable moving costs (based on the actual cost of the move, which increased from the original \$8,000 authorized due to the undisclosed additional personal property). Please note: all expenditures associated with the Bay Street Pedestrian Pathway Project have been identified within the Project Funding Estimate (PFE) and are Grant eligible.

**Relationship to Comprehensive Plan:** Chapter 8 - Transportation

**Recommendation:** The City’s Relocation Agent and staff recommend the payment of an additional \$3,180 in moving costs, for a total authorized payment of relocation benefits to Ocean and Arlene Williams of \$15,620 for the Bay Street Pedestrian Pathway Project, broken down as follows:

1. Previously-approved Initial Relocation Move Payment in the amount of \$8,000.00
2. Previously-approved Moving Storage Benefit in the amount of \$4,440.00
3. Additional Relocation Move Payment of \$3,180

**Motion for Consideration:** I move to adopt a Resolution authorizing the payment of an additional \$3,180 in relocation benefits to Ocean and Arlene Williams for the Bay Street Pedestrian Pathway Project, and authorizing the Mayor to execute all necessary documents.

**Fiscal Impact:** Grant and Local Match funding for this acquisition expenditure is allocated within the Project Funding Estimate (PFE) for the Project and the 2021-2022 Biennial Budget.

**Alternatives:** None

**Attachments:** Resolution

Exhibit A to Resolution - Relocation Assistance Voucher No. 2

Courtesy copies of eligibility documentation:

- Attachment 1 – Tierra Memo re Move Estimate-Approved by PW Director 7/13/22

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

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING ADDITIONAL RELOCATION BENEFITS FOR THE PREVIOUS OWNERS OF KITSAP COUNTY TAX PARCEL NO. 4027-023-017-0004 FOR THE BAY STREET PEDESTRIAN PATHWAY PROJECT, AND AUTHORIZING THE MAYOR TO EXECUTE ALL NECESSARY DOCUMENTS TO EFFECTUATE RELOCATION PAYMENTS.**

**WHEREAS**, the City recently acquired Kitsap County Tax Parcel No. 4027-023-017-0004 (the “Property”) to support the construction of the Bay Street Pedestrian Pathway Project (the “Project”); and

**WHEREAS**, in accordance with the City’s Relocation Assistance Program, the Uniform Relocation Act, 42 U.S.C. Ch. 61, Chapter 8.26 Revised Code of Washington (RCW), and Chapter 468-100 Washington Administrative Code (WAC), prior to the purchase the City issued an offer and Notice of Relocation Eligibility, Entitlements and 90-Day Assurance-Personal Property Only for Relocation Assistance to the then-owners of the Property; and

**WHEREAS**, pursuant to the aforementioned authorities and notices issued to the owners of the Property, and in conjunction with the Washington State Department of Transportation, Local Programs, serving as Contract Administrator for the Project, by Resolution in early 2022, and at the recommendation of the City’s consulting Relocation Agent, Tierra Right of Way Services, Ltd., the City Council authorized payment of \$8,000 for personal property only-moving expenses and \$4,440 in personal property storage costs as eligible relocation expenses for the owners of the Property, payable upon the owners’ completed move from the Property; and

**WHEREAS**, in mid 2022, the City Council authorized the purchase of the Property, the sale was completed in December 2022; and

**WHEREAS**, during the moving process, the City’s Relocation Agent was made aware of additional personal property that was not previously disclosed and expanded the scope and associated cost of the move; and

**WHEREAS**, the City’s Relocation Agent recommends an additional moving entitlement payment of \$3,180 for the additional moving expenses, for a total eligible moving expense payment of \$11,180 (inclusive of monies previously paid); and

**WHEREAS**, the Port Orchard City Council finds it is in the best interest of the City to authorize all relocation payments identified herein, consistent with the City’s Relocation Assistance Program and the aforementioned authorities; now, therefore,

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

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

**THAT:** The City Council authorizes a Relocation Payment to Ocean and Arlene Williams in the amount of \$3,180.00 for personal property-only moving expenses as identified on Exhibit A hereto and incorporated herein by this reference, pursuant to the Relocation Assistance Program, and authorizes the Mayor to execute all necessary documents to effectuate the payment; and

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage on this 24<sup>th</sup> day of January 2023.

---

Robert Putansuu, Mayor

ATTEST:

---

Brandy Wallace, MMC, City Clerk

**Relocation Assistance Voucher No. 2**

<b>Agency Name:</b> Mark R. Dorsey, P.E., Public Works Director City of Port Orchard 216 Prospect Street Port Orchard, WA 98366		I hereby certify under penalty of perjury that the items and amounts listed herein are proper charges against the Agency. That the same or any part thereof has not been paid, and that I am authorized to sign for the claimant. I further certify that I am a citizen of the United States of America or am an alien lawfully present in the United States of America.	
<b>Displaced Person(s) or Claimant</b> Ocean and Arlene Williams 1763 Bay Street Port Orchard, WA 98366		Signature (Blue ink) for each claimant	Date
		Ocean Williams 	7/13/2022
		Arlene Williams 	7/13/2022
<b>Project Title:</b> City of Port Orchard Pedestrian Enhancement Project (Mosquito Fleet Trail)			
Parcel No.: 4027-023 017-0004	Displacee No.: 2	Displacee Name: Ocean and Arlene Williams	Date Parcel Vacated: 4/14/2022
<b>Replacement Housing Payments</b>			<b>\$ Amounts</b>
Price Differential – 90-day owner for amounts up to \$31,000			\$0.00
MIDP - Increased Mortgage Interest Payment			\$0.00
Incidentals (JN75 / JN79)			\$0.00
Last Resort Housing – owner for amounts over \$31,000			\$0.00
Rental Supplement – 90-day tenants and certain others amounts up to \$7,200			\$0.00
Down Payment Assistance – 90-day tenants and certain others			\$0.00
Last Resort Housing – tenants amount over \$7,200			\$0.00
Comments / other (describe):			\$
<b>Moving Expense Payments</b>			<b>\$ Amounts</b>
Self-Move / Schedule Payments – residential			\$0.00
Actual Expenses (Commercial Move/Actual Cost Self Move) – residential			\$3,180.00
Fixed Payment (in lieu of all other moving expenses) - Non-Residential			\$0.00
Actual Costs / Self Move / Commercial - Non-Residential			\$0.00
Reestablishment Costs - Non-Residential			\$0.00
Personal Property Only-Move			\$8,000.00
Comments / Other (describe): Additional increase cost of eligible moving expenses.			\$3,180.00
Deductions:			- \$0.00
<b>TOTAL</b>			<b>\$3,180.00</b>

Invoice No.:		Date:		Amount: \$					
<b>ACCOUNT CLASSIFICATION</b>									
PARCEL	JOB NUMBER		WORK OP	ACCOUNT		CONTROL SECTION	ORG. NO.	NON-PART	TOTALS DOLLARS
	WORK ORDER	GRP		OBJ	SUB				
									\$
<b>TOTAL \$3,180.00</b>									
RELOCATION SPECIALIST: Paula Ferreira-Smith 			DATE: 7/13/2022	RELOCATION SUPERVISOR: Leslie Findlay 			DATE: 7/13/2022 7/14/2022		
I, the undersigned, certify that the above information is correct, that the payment is necessary for the above relocation assistance, that it has been performed in accordance with prescribed procedures, and that this payment is not considered income or resources to a "DISPLACED PERSON" pursuant to Section 216 of Public Law 91-646 and RCW 8.26.115.:									
Mark R. Dorsey, P.E., Public Works Director 				DATE: 7/13/22	Warrant Register No.:		Voucher No.:		

RES-537





**MEMORANDUM**

To: Mark Dorsey, Director of Public Works/Engineering

From: Leslie Findlay, ROW Operations Manager  
Mage Bailey, Project Manager  
Paula Ferreira-Smith, Relocation Agent

Date: July 13, 2022

Project Title: City of Port Orchard Pedestrian Enhancement Project (Mosquito Fleet Trail)  
Parcel No.: 4027-023-017-0004  
Displacee: Ocean & Arlene Williams, Personal Property Only Relocation  
Federal Aid No: STPE-STPUS-0166(008)  
Displacee No.: 02  
Subject: Amendment: Agent Move Estimate Recommendation - Increase Cost Moving Expenses

**Background Information**

Ocean and Arlene Williams purchased the displacement site in 2007. The dwelling, located at 1763 Bay St, Port Orchard, WA 98366, is a furnished house and is used as a vacation home. The Williams do not occupy the home as their main residence; therefore, they are only eligible for a Personal Property Only move to remove their personal property from the site. The two-story home contains a first floor with approximately 1,270 sq. ft., which includes a 396 sq. ft. garage that has been converted into a master bedroom/den, and a second floor with approximately 275 sq. ft. The property also has a deck, which is approximately 992 sq. ft., which has an assortment of wooden outdoor furniture, planters, art, BBQs, a propane tank, outdoor sporting equipment, and a kayak. The side deck also contains outdoor items including an outdoor moveable fireplace, wooden chairs, and a pedal boat. The property owner indicated that he stores four additional kayaks/boats under the house. Because the displacement site consists of a dwelling that is constructed on pilings over tidelands, those items could not be photographed for verification.

**Personal Property Inventory**

The attached inventory sheet, dated June 4, 2021, gives a detailed description of the personal property that is located at the displacement site. All personal property at the displacement site is owned by Ocean and Arlene Williams. Because this has been determined to be a non-complex move, under \$10,000, I have prepared an Agent Estimate using the Washington Utilities and Transportation Commission (WUTC) Tariff 15-C rates for personnel, packing materials and equipment. For labor, the WUTC prices for a move of more than 3 hours range from \$37.93 to \$96.70 for a truck and driver, and \$29.63 to \$84.03 for a helper, if the move were to take place Monday through Friday, between 8:00 a.m. and 5:00 p.m. (WUTC Tariff 15-C-Household Goods, Section 3-Local Moves, Revised in Docket TV-190664, Effective, February 21, 2021).



---

Using the WUTC rates, the agent estimate calculation is less than the \$10,000.00 threshold set forth in the WSDOT Right of Way Manual, Chapter 12.8.4. The City of Port Orchard offered Mr. and Mrs. Williams a moving entitlement of **\$8,000.00** as actual, reasonable, and necessary to move the residential displacee personal property.

During the moving process, Mr. and Mrs. Williams disclosed the additional personal property that they owned which was stored in the attic, closets, under the bed, and inside the cabinets. This additional personal property was not revealed during the initial walkthrough. The displacee started to pack to do a self-move and realized that the move was going to be larger than a project they could personally handle. Mr. Williams is a busy Doctor for SeaMar Clinic and Mrs. Williams is an advisor for Global Civil Rights. They are also parents of two elementary school age children. The displacee selected to hire the moving company Advance Relocation Experts, LLC, (206) 391-0204, located at 707 S. Grady Way, Renton, WA 98057. The movers completed the move during a three-day period, with four movers, and one truck as follows:

- Packaged the entire house minus a credit of \$680.00 for packaging completed by the Williams.
- Loaded storage container, order number 3388131, to be stored at 2341 South 208<sup>th</sup> Suite D, Des Moines, WA, and transported by the company PODS.com.
- Loaded a U-Haul container and delivered to a local church in Port Orchard.
- Loaded water toys, kayak, boats, and camping gear into a U-Haul van with items delivered at 5124 Storm Lake Road, Snohomish WA
- Trip number 1 to storage: Loaded the rest of the items and attempted to deliver the personal property. The storage facility at 10020 Martin Luther King Way S, Seattle, was closed when they arrived. The movers drove the loaded truck to their facility in Renton. They charged \$275.00 for security and storage of the loaded truck.
- Trip number 2 to storage: Delivered to the storage facility at 10020 Martin Luther King Way S, unit number 1119.

After the move was completed, Advance Relocation Experts, LLC provided a bill of lading in the amount of \$11,180.00. Due to the increased move cost, it is recommended that the displacee received the additional relocation benefits in the amount of \$3,180.00 (\$11,180.00-\$8,000) as a reasonable and necessary eligible moving expense.

Sincerely,

*Paula Ferreira*

Paula Ferreira-Smith, RW-RAC

Relocation Agent/Specialist

Tierra Right of Way Services, Ltd.

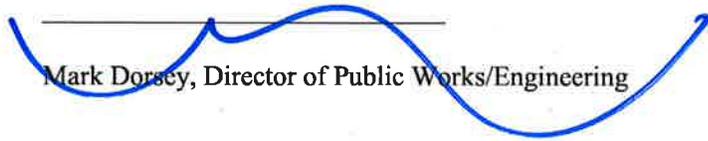
8685 Martin Way E. #203, Lacey, WA 98516

206.363.1556 office | 800.887.0847 | [www.tierra-row.com](http://www.tierra-row.com)

---

The undersigned has reviewed and approves the above Agent Move Estimate Recommendations for Personal Property Only Relocation benefits determination.

City of Port Orchard

  
\_\_\_\_\_  
Mark Dorsey, Director of Public Works/Engineering

7/13/22  
\_\_\_\_\_  
Date

# AWC Public Opinion Survey

Conducted December 2022



1

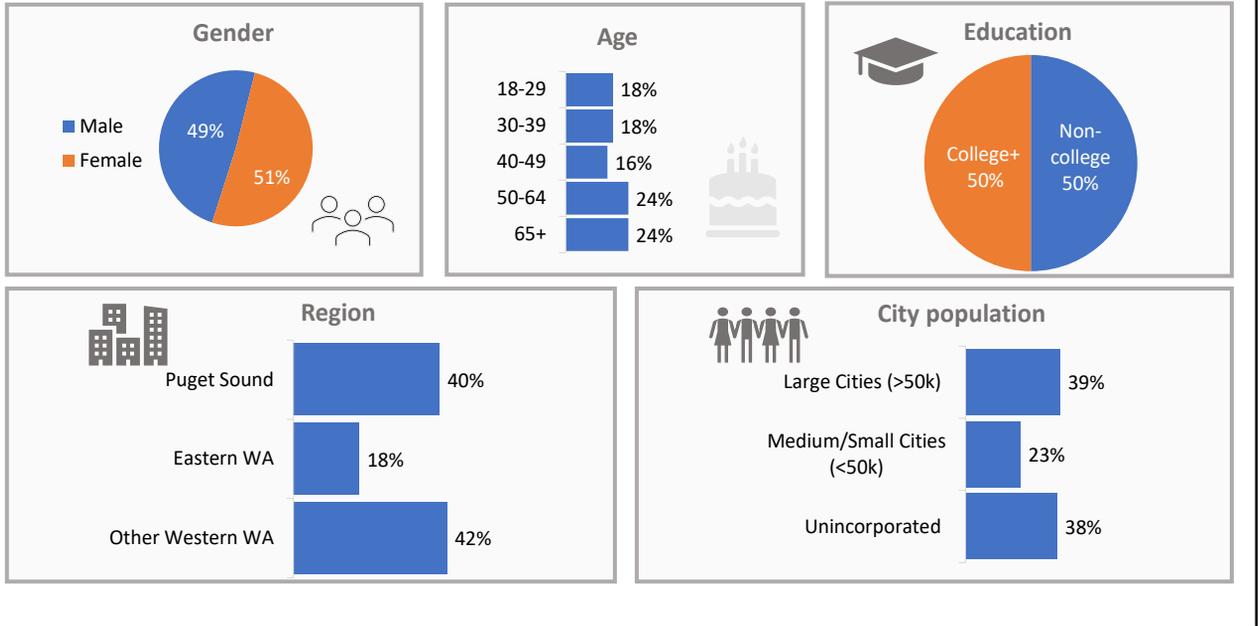
## Methodology

- 500 interviews
- 2022 “likely” voters
- December 5-11, 2022
- Margin of error +/- 4.4 percentage points
- Interviews conducted via hybrid telephone, email, and text-to-web
- Anonymous about who was conducting the survey



2

## Demographic profile of respondents

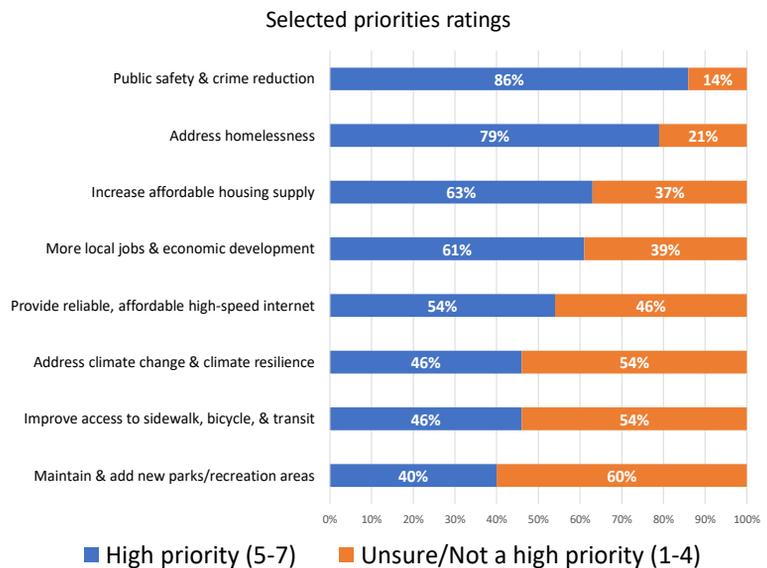


3

## Selected priorities for city government

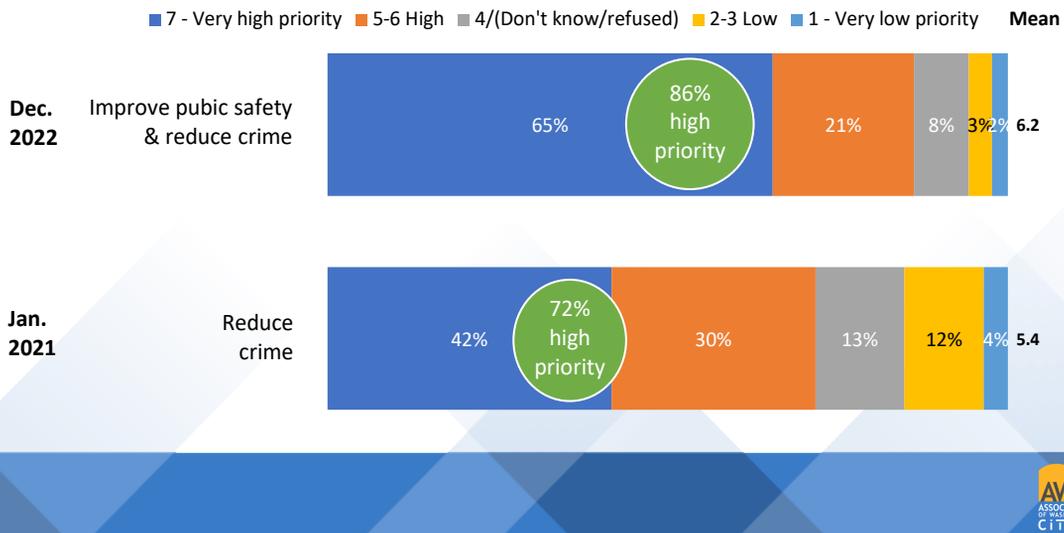
### • Top five high priorities:

- Public safety
- Homelessness
- Affordable housing
- Jobs & economy
- Broadband



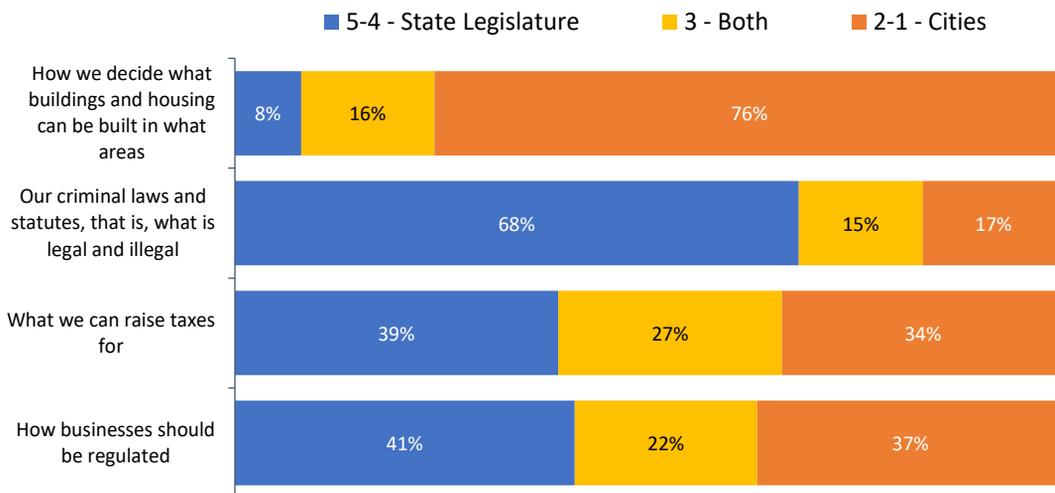
4

# Public safety comparison - 23 months apart



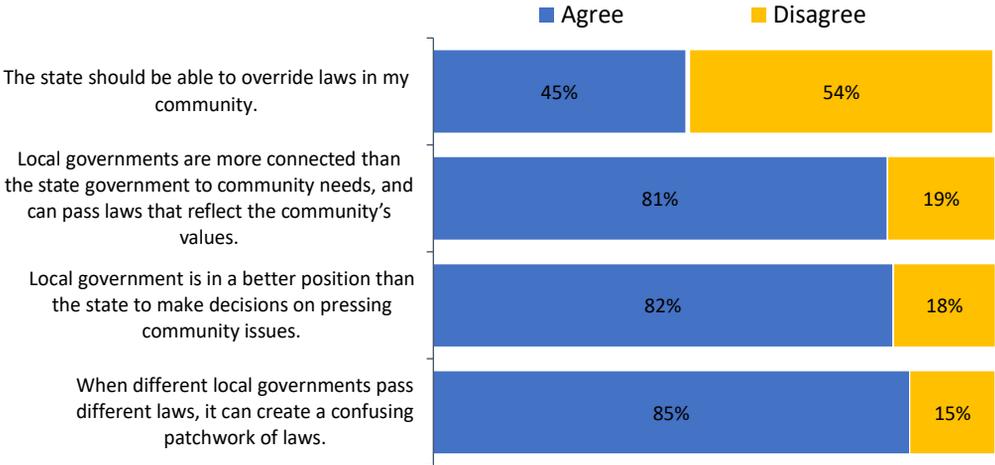
5

# Which government should be responsible?



6

# Local government decision-making is popular



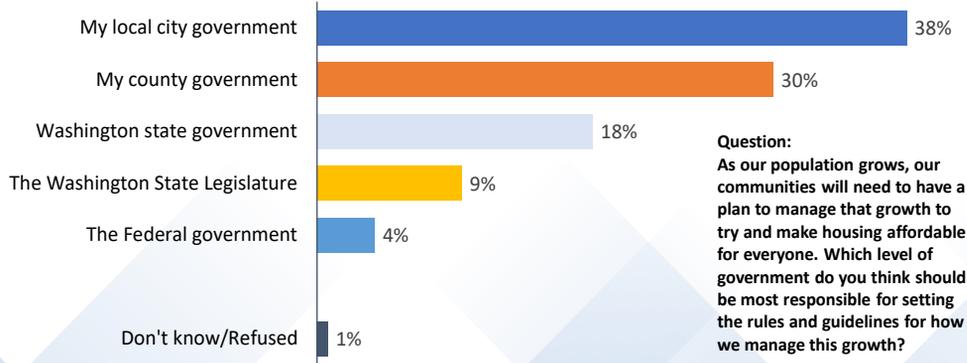
7

# Housing



8

# 68% of voters prefer local governments to make growth decisions



**Question:**  
As our population grows, our communities will need to have a plan to manage that growth to try and make housing affordable for everyone. Which level of government do you think should be most responsible for setting the rules and guidelines for how we manage this growth?

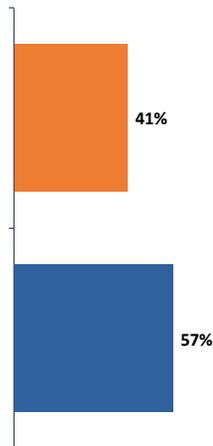


9

# Most residents believe increasing housing density will make housing more affordable

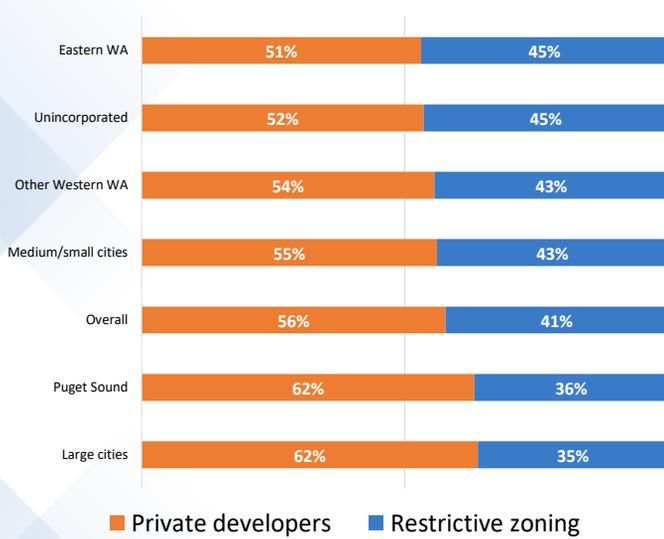
**Answered:**  
It is clear that the housing market won't create more affordable housing on its own. To build substantially more housing that is affordable, we must increase the money government spends on it.

**Answered:**  
We can make housing more affordable by allowing for more housing density throughout our cities with townhomes, triplexes, and condos in areas that allow for single-family homes. Natural market forces will drive down costs.



10

## Residents believe the affordable housing crisis is caused by private developers rather than overly restrictive zoning



### Private developers:

The affordable housing crisis in Washington is caused by private developers who focus mostly on building expensive homes so they can make money.

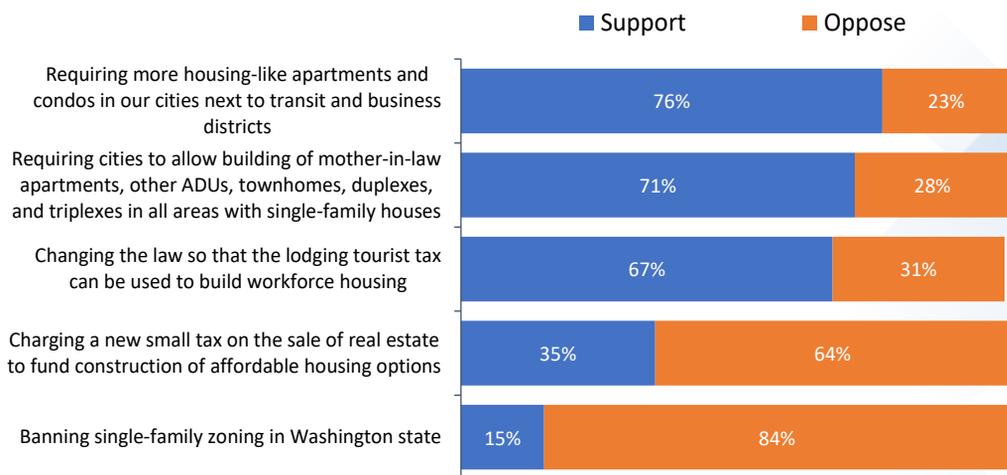
### Overly restrictive zoning:

The affordable housing crisis in Washington is driven by overly restrictive zoning, which has limited the supply of housing.

Higher in Puget Sound and large cities

11

## Response to topics covered by AWC Housing Solutions Group proposal



12

# Public safety



13

## Strong voter support for changing the vehicular pursuit standard

**Answered:**  
High speed pursuits are dangerous to the public and may have a disparate impact on certain community members. Officers should only be able to pursue a suspect for serious violent or sexual crimes, and only when they have enough evidence to arrest them.

21%

**Answered:**  
While high speed pursuits can be dangerous, the new law goes too far and can lead to criminals evading the police and creating additional dangers to the community. Officers need to be able to pursue a fleeing suspect if they have a reasonable suspicion that the person they are pursuing has committed a crime against a person, if the risks of not apprehending the person are greater than the risk of the pursuit.

79%



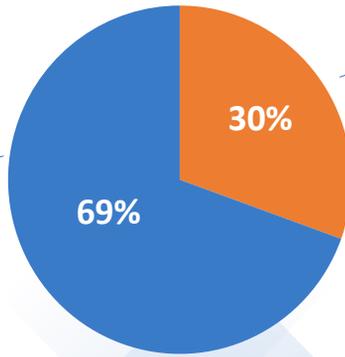
14

### *Blake decision question*

Residents believe there should be legal consequences for treatment refusal

**Answered:**

It's great to offer drug treatment, but there should be consequences for those who refuse treatment. If people break the law and refuse treatment, they should be held accountable and be subject to fines and jail time.



**Answered:**

The best way to deal with people using drugs is to offer them treatment. We can't stop people from using drugs, so the best approach is to fund drug treatment programs so we can prevent or end addiction.

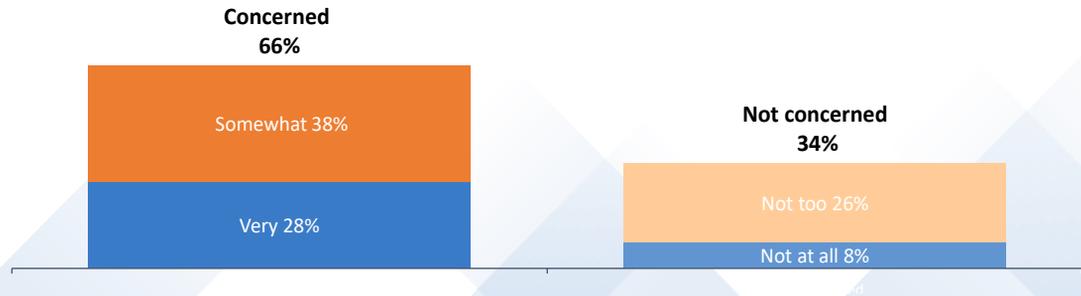


# Infrastructure



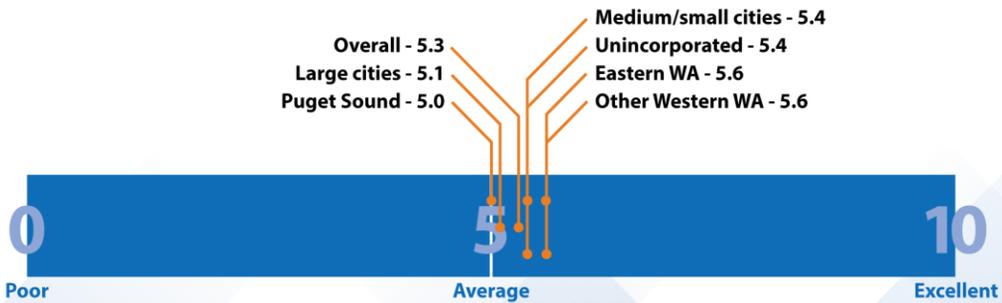
# 66% of residents are concerned about failing city infrastructure

*How concerned are you about infrastructure failing in your community?*



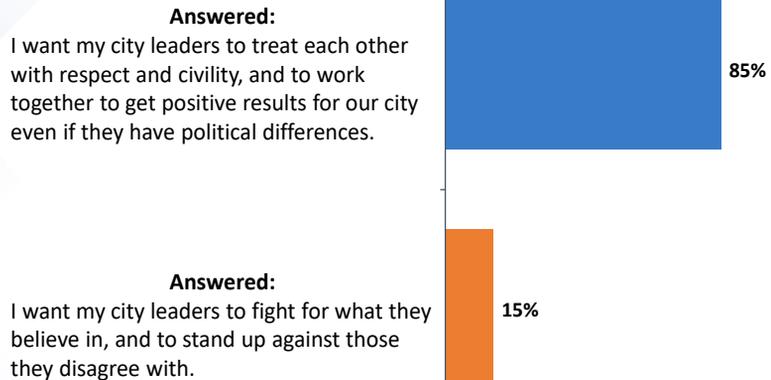
17

# How do you feel your city responds to resident needs?



18

## Most residents want their city leaders to be civil and work together



## Questions?

