



**City of Port Orchard Council Meeting Agenda
February 28, 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, 3rd 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/86450605897>

Zoom Webinar ID: 864 5060 5897

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 an Intergovernmental Cooperative Purchasing Agreement with National Purchasing Cooperative \(BuyBoard\)](#) (Lang) **Page 4**

D. [Approval of Amendment No. 5 to Contract No. 028-21 with Transportation Solutions for On-Call Transportation/Traffic Engineering Services](#) (Lang) **Page 13**

E. [Approval of the February 14, 2023, City Council Meeting Minutes](#)

F. Excusal of Councilmember Cucciardi due to Work Obligation **Page 35**

5. PRESENTATION

6. PUBLIC HEARING

7. 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.

8. BUSINESS ITEMS

- A. [Approval of Amendment No. 1 to Contract No. 075-22 with Ceccanti, Inc. for the McCormick Village Park Splash Pad Treatment Facility Installation Project](#) (Lang) **Page 40**
- B. [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 68**
- C. [Adoption of a Resolution Amending Policies and Procedures for the City’s Annual Spring Clean-up Program](#) (Lang) **Page 94**
- D. [Adoption of a Resolution Establishing an Employee Inclusion Commission to Focus on the City’s Efforts Related to Diversity, Equity, and Inclusion Among City Employees](#) (Lund) **Page 115**
- E. [Adoption of a Resolution Approving a Contract with KPFF Consulting Engineers for the Bay Street Pathway West-Situational Study](#) (Lang) **Page 118**
- F. [Adoption of a Resolution Accepting Transportation Improvement Program Project #1.5C, Documenting Certified Construction Costs and Maximum Transportation Impact Fee Credits Granted Pursuant to Contract No. 035-21](#) (Lang) **Page 198**
- G. [Approval of a Letter of Intent with Kitsap Public Facilities District to Fund Future Construction Costs for the Community Events Center](#) (Bond) **Page 270**
- H. [Approval of Amendment No. 9 to Contract No. 066-20 with Rice Fergus Miller, Inc. for the Design Development and Construction Drawings of the Port Orchard Community Events Center-LEED Feasibility](#) (Bond) **Page 273**

9. DISCUSSION ITEMS (No Action to be Taken)

- A. [Council Choice of RMSA Required Course for 2023](#) (Lund) **Page 306**

10. REPORTS OF COUNCIL COMMITTEES

11. REPORT OF MAYOR

12. REPORT OF DEPARTMENT HEADS

13. 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.)*

14. CITY COUNCIL GOOD OF THE ORDER

15. ADJOURNMENT

COMMITTEE MEETINGS

Date & Time

Location

Economic Development and Tourism	March 20, 2023; 9:30am	Remote Access
Utilities	March 28, 2023; 5:00pm	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.

Finance	TBD; 5:00pm	Remote Access
Transportation	March 14, 2023; 4:30pm	Remote Access
Festival of Chimes & Lights	February 27, 2023; 3:30pm	Remote Access
Land Use	March 15, 2023; 4:30pm	Remote Access
Lodging Tax Advisory	TBD, 2023	Remote Access
Sewer Advisory	March 22, 2023; 5:00pm	Remote Access
Council Retreat	March 10, 2023; 9:00am	Council Chambers
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.



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 an
Intergovernmental Cooperative Purchasing
Agreement with National Purchasing
Cooperative (BuyBoard)

Meeting Date: February 28, 2023
Prepared by: Tony Lang
Public Works Director
Atty Routing No.: 366922-001
Atty Review Date: February 17, 2023

Summary: National Purchasing Cooperative (BuyBoard) is a purchasing cooperative to assist public agencies across the country in reducing the cost of purchased goods and services through pooling the purchasing power of public agencies nationwide. Members of BuyBoard include the City of Poulsbo and many other Washington Cities, School Districts and Fire Districts.

Pursuant to the provisions of RCW 39.34, the City of Port Orchard may enter into intergovernmental cooperative purchasing agreements with other public agencies to cooperatively purchase or acquire supplies, equipment, material, and services. Public Works staff conducted research and confirmed that BuyBoard meets the needs of the City and meets the requirements of both RCW 39.34 and the parallel procurement regulations in the host state of Maryland.

Entering into an intergovernmental agreement with the BuyBoard will allow the Public Works Department and other City Departments to achieve better pricing on products equipment and services.

This is a no-cost agreement that will be automatically renewed annually until terminated by either party.

Recommendation: Staff recommends that the City Council adopt a Resolution authorizing the City of Port Orchard to enter into an Interlocal Purchasing Agreement with the National Purchasing Cooperative (BuyBoard).

Relationship to Comprehensive Plan: N/A.

Motion for consideration: I move to adopt a Resolution authorizing the City of Port Orchard to enter into an Interlocal Purchasing Agreement with the National Purchasing Cooperative (BuyBoard).

Fiscal Impact: None (all associated purchases will follow the City’s adopted procurement policies and procedures).

Alternatives: Do not authorize the Resolution and provide further guidance.

Attachments: Resolution 019-23
National Purchasing Cooperative (BuyBoard) Interlocal Agreement

RESOLUTION NO. 019-23

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING AN INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT BETWEEN THE NATIONAL PURCHASING COOPERATIVE (BUYBOARD) AND THE CITY OF PORT ORCHARD, PURSUANT TO CHAPTER 39.34 RCW.

WHEREAS, pursuant to the provisions of RCW 39.34, the City of Port Orchard may enter into intergovernmental cooperative purchasing agreements with other public agencies in order to cooperatively purchase or acquire supplies, equipment, materials, and services; and

WHEREAS, The National Purchasing Cooperative (BuyBoard) is a political subdivision created in accordance with Maryland state statutes; and

WHEREAS, BuyBoard's purpose is to obtain the benefits and efficiencies that can accrue to members of a cooperative, to comply with state bidding requirements, and to identify qualified vendors of commodities, goods, and services, and to achieve better pricing on products, equipment, and services; and

WHEREAS, RCW 39.34 authorizes cooperative purchasing for public procurement units including agencies that are outside of Washington; and

WHEREAS, consistent with Chapter 39.34 RCW, the Interlocal Cooperation Act, the City of Port Orchard desires to enter into an Interlocal Purchasing Agreement with National Purchasing Cooperative (BuyBoard); and

WHEREAS, this is a no cost agreement that will be automatically renewed annually until terminated by either party; and

WHEREAS, the City Council deems it to be in the best interest of the City and its residents to enter into the Agreement with BuyBoard, attached hereto as Exhibit A and incorporated herein by this reference; 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 of and authorizes the Mayor to execute the Intergovernmental Cooperative Purchasing Agreement with National Purchasing Cooperative (BuyBoard), attached hereto as Exhibit A and incorporated herein by this reference.

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

THAT: Pursuant to RCW 39.34.030, once this Agreement has been executed by both Port Orchard and BuyBoard, the City Clerk is directed to post a copy of this Agreement on the City's website.

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 28th day of February 2023.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk



NATIONAL PURCHASING COOPERATIVE INTERLOCAL PARTICIPATION AGREEMENT

This Interlocal Participation Agreement ("Agreement") is made and entered into on the date indicated below by and between The National Purchasing Cooperative ("Cooperative"), an administrative agency of cooperating local governments, acting on its own behalf and the behalf of all participating local governments, and the undersigned local government ("Cooperative Member").

I. RECITALS

WHEREAS, the National Purchasing Cooperative was formed on May 26, 2010, pursuant to MD. CODE ANN., STATE FIN. & PROC. § 13-110 (West 2009), and R.I.GEN.LAWS § 16-2-9.2 (2009); and

WHEREAS, the purpose of this Agreement is to facilitate compliance with state procurement requirements, to identify qualified vendors of commodities, goods and services, to relieve the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for Cooperative Members;

NOW THEREFORE, in consideration of the mutual covenants, promises and obligations contained herein, the undersigned Cooperative Member and the Cooperative agree as follows.

II. TERMS AND CONDITIONS

1. **Adopt Organizational Interlocal Cooperation Agreement.** The Cooperative Member by the execution or acceptance of this Agreement hereby adopts and approves the Organizational Interlocal Agreement dated May 26, 2010, which agreement is incorporated herein by reference (and is available from the Cooperative upon request). The Organizational Interlocal Agreement established the Cooperative as an administrative agency of its collective participants, and Cooperative Member agrees to become a participant or additional party to that Organizational Interlocal Agreement.
2. **Term.** The initial term of this Agreement shall commence on the date it is executed by both parties and shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this Agreement.
3. **Termination.**
 - (a) **By the Cooperative Member.** This Agreement may be terminated by the Cooperative Member at any time by thirty (30) days prior written notice to the Cooperative, provided any amounts owed to any vendor have been fully paid.

- (b) **By the Cooperative.** The Cooperative may terminate this Agreement by:
- (1) Giving ten (10) days notice by certified mail to the Cooperative Member if the Cooperative Member breaches this Agreement; or
 - (2) Giving thirty (30) days notice by certified mail to the Cooperative Member with or without cause.
- (c) **Termination Procedure.** If the Cooperative Member terminates its participation under this Agreement or breaches this Agreement, or if the Cooperative terminates participation of the Cooperative Member, the Cooperative Member shall bear the full financial responsibility for all of its purchases made from vendors under or through this Agreement. The Cooperative may seek the whole amount due, if any, from the terminated Cooperative Member. In addition, the Cooperative Member agrees it will not be entitled to a distribution which may occur after the Cooperative Member terminates from the Cooperative.
4. **Payments by Cooperative Member.** The Cooperative Member will make timely payments to the vendor for the goods, materials and services received in accordance with the terms and conditions of the bid invitation, instructions, and all other applicable procurement documents. Payment for goods, materials and services and inspections and acceptance of goods, materials and services ordered by the procuring Cooperative Member shall be the exclusive obligation of the procuring Cooperative Member, and not the Cooperative. Furthermore, the Cooperative Member is solely responsible for negotiating and securing ancillary agreements from the vendor on such other terms and conditions, including provisions relating to insurance or bonding, that the Cooperative Member deems necessary or desirable under federal, state or local law, local policy or rule, or within its business judgment.
5. **Payments by Vendors.** The parties agree that the Cooperative will require payment from vendors which are selected to provide goods, materials or services to Cooperative Members. Such payment (hereafter "Vendor Fees") may be up to two percent (2%) of the purchase price paid by Cooperative Members or a flat fee amount that may be set from time to time by the Cooperative Board of Directors. Cooperative Member agrees that these Vendor Fees fairly compensate the Cooperative for the services and functions performed under this Agreement and that these Vendor Fees enable the Cooperative to pay the administrative, endorsement, licensing, marketing, and other expenses involved in successfully operating a program of electronic commerce for the Cooperative Members. Further, Cooperative Member affirmatively disclaims any rights to such Vendor Fees, acknowledging all such fees are the property of the Cooperative. Similarly, in no event shall a Cooperative Member be responsible for payment of Vendor Fees.
6. **Distribution.** From time to time, and at the sole discretion of the Cooperative Board of Directors, the Cooperative may issue a distribution to Cooperative Members under a plan developed by the Cooperative Board of Directors. The Cooperative Member acknowledges that a distribution is never guaranteed and will depend on the overall financial condition of the Cooperative at the time of the distribution and the purchases made by the Cooperative Member.
7. **Administration.** The Cooperative may enter into contracts with others, including non-profit associations, for the administration, operation and sponsorship of the purchasing program provided by this Agreement. The Cooperative will provide reports, at least annually, to the Cooperative Member electronically or by

mail. Cooperative Member will report purchase orders generated under this Agreement to the Cooperative or its designee, in accordance with instructions of the Cooperative.

8. **BuyBoard®.** Cooperative Member will have a non-exclusive license to use the BuyBoard electronic purchasing application (BuyBoard) during the term of this Agreement. Cooperative Member acknowledges and agrees that the BuyBoard electronic application and trade name are owned by the Texas Association of School Boards, Inc., and that neither the Cooperative nor the Cooperative Member has any proprietary rights in the BuyBoard electronic application or trade name. The Cooperative Member will not attempt to resell, rent, or otherwise distribute any part of BuyBoard to any other party; nor will it attempt to modify the BuyBoard programs on the server or acquire the programming code. The Cooperative Member may not attempt to modify, adapt, translate, distribute, reverse engineer, decompile, or disassemble any component of the application. The Cooperative Member will use BuyBoard in accordance with instructions from the Cooperative (or its designee) and will discontinue use upon termination of participation in the Cooperative. The Cooperative Member will maintain equipment, software and conduct testing to operate the BuyBoard system at its own expense.

III. GENERAL PROVISIONS

1. **Amendment by Notice.** The Board may amend this Agreement, provided that prior written notice is sent to the Cooperative Member at least 60 days prior to the effective date of any change described in such amendment and provided that the Cooperative Member does not terminate its participation in the Cooperative before the expiration of said 60 days.
2. **Authorization to Participate and Compliance with Local Policies.** Each Cooperative Member represents that its governing body has duly authorized its participation in the Cooperative and that the Cooperative Member will comply with all state and local laws and policies pertaining to purchasing of goods and services through its membership in the Cooperative.
3. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all written policies and procedures established by the Cooperative. Notwithstanding the foregoing, the Cooperative shall provide written notice to the Cooperative Member of any amendment to the Bylaws of the Cooperative and any written policy or procedure of the Cooperative that is intended to be binding on the Cooperative Member. The Cooperative shall promptly notify all Cooperative Members in writing of any Bylaw amendment, policy or procedure change.
4. **Cooperation and Access.** The Cooperative Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Cooperative. The Cooperative reserves the right to audit the relevant records of any Cooperative Member. Any breach of this provision shall be considered material and shall make the Agreement subject to termination on ten (10) days written notice to the Cooperative Member.
5. **Coordinator.** The Cooperative Member agrees to appoint a program coordinator who shall have express authority to represent and bind the Cooperative Member, and the Cooperative will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Cooperative Member. The Cooperative Member reserves the right to change the coordinator as needed by giving written notice to the Cooperative. Such notice is not effective until actually received by the Cooperative.

6. **Current Revenue.** The Cooperative Member hereby represents that all payments, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the Cooperative Member.
7. **Defense and Prosecution of Claims.** The Cooperative Member authorizes the Cooperative to regulate the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Cooperative in any litigation, claim or dispute which arises from the services provided by the Cooperative on behalf of its members, collectively or individually. Neither this provision nor any other provision in this Agreement will create a legal duty for the Cooperative to provide a defense or prosecute a claim; rather, the Cooperative may exercise this right in its sole discretion and to the extent permitted or authorized by law. The Cooperative Member shall reasonably cooperate and supply any information necessary or helpful in such prosecution or defense. Subject to specific revocation, the Cooperative Member hereby designates the Cooperative to act as a class representative on its behalf in matters arising out of this Agreement.
8. **Governance.** The Board of Directors (Board) will govern the Cooperative in accordance with the Bylaws.
9. **Legal Authority.** The Cooperative Member represents to the Cooperative the following:
 - a) The Cooperative Member has conferred with legal counsel and determined it is duly authorized by the laws of the jurisdiction in which the Cooperative Member lies to participate in cooperative purchasing, and specifically, the National Purchasing Cooperative.
 - b) The Cooperative Member possesses the legal authority to enter into this Agreement and can allow this Agreement to automatically renew without subsequent action of its governing body.
 - c) Purchases made under this Agreement will satisfy all procedural procurement requirements that the Cooperative Member must meet under all applicable local policy, regulation, or state law.
 - d) All requirements—local or state—for a third party to approve, record or authorize the Agreement have been met.
10. **Disclaimer.** THE COOPERATIVE, ITS ENDORSERS, SPONSORS AND SERVICING CONTRACTORS, INCLUDING THE NATIONAL SCHOOL BOARDS ASSOCIATION (NSBA) AND THE TEXAS ASSOCIATION OF SCHOOL BOARDS, INC. (TASB), DO NOT WARRANT THAT THE OPERATION OR USE OF COOPERATIVE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

THE COOPERATIVE, ITS ENDORSERS, SPONSORS AND SERVICING CONTRACTORS, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. **Limitation of Liability.** Without waiver of the disclaimer or other limitation of liability in this Agreement, the parties agree that:
 - (a) Neither party waives any immunity from liability afforded under law;

- (b) In regard to any lawsuit or formal adjudication arising out of or relating to this Agreement, neither party shall be liable to the other under any circumstance for special, incidental, consequential, or exemplary damages;
- (c) The maximum amount of damages recoverable will be limited to the amount of fees which the Cooperative received as a direct result of the Cooperative Member's purchase activity, within 12 months of when the lawsuit or action was filed; and
- (d) In the event of a lawsuit or formal adjudication the prevailing party will be entitled to recover reasonable attorney's fees.

Without waiver of the disclaimer or other limitation of liability in this Agreement, the parties further agree to limit the liability of the Cooperative's Endorsers, Sponsors and Servicing Contractors (defined in Paragraph 11, above) up to the maximum amount each received from or through the Cooperative, as a direct result of the undersigned Cooperative Member's purchase activity, within 12 months of the filing of any lawsuit or action.

- 12. **Limitation of Rights.** Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.
- 13. **Merger/Entirety.** This Agreement, together with the Cooperative's Bylaws and Organizational Interlocal Agreement, represents the complete understanding of the Cooperative and Cooperative Member. To the extent there exists any conflict between the terms of this Agreement and that of prior agreements, the terms of this Agreement shall control and take precedence over all prior participation agreements.
- 14. **Notice.** Any written notice to the Cooperative may be given by e-mail to NSBA at BuyBoard@nsba.org; by U.S. mail, postage prepaid, and delivered to the National Purchasing Cooperative, 1680 Duke Street FL2, Alexandria, VA, 22314; or other mode of delivery typically used in commerce and accessible to the intended recipient. Notices to Cooperative Member may be given by e-mail to the Cooperative Member's Coordinator or other e-mail address of record provided by the Cooperative Member; by U.S. mail, postage prepaid, and delivered to the Cooperative Member's Coordinator or chief executive officer (e.g., superintendent, city manager, county judge or mayor); or other mode of delivery typically used in commerce and accessible to the intended recipient.
- 15. **Severability.** If any portion of this Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.
- 16. **Signatures/Counterparts.** The failure of a party to provide an original, manually executed signature to the other party will not affect the validity, enforceability or binding effect of this Agreement because either party may rely upon an electronic or facsimile signature as if it were an original. Furthermore, this Agreement may be executed in several separate counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 17. **Authority.** By the execution and delivery of this Agreement, each undersigned individual represents that he or she is authorized to bind the entity that is a party to this Agreement.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, accept this Agreement.

TO BE COMPLETED BY THE NATIONAL PURCHASING COOPERATIVE:

By: _____ Date: _____
Signature of authorized representative

Printed name of person signing
Administrator’s Representative for the National Purchasing Cooperative

TO BE COMPLETED BY COOPERATIVE MEMBER:

[Signature required unless accepted as an Amendment by Notice as described in the Agreement.]

(Name of Local Government)

By: _____ Date: _____
Signature of authorized representative of Cooperative Member

Printed name and title of authorized representative

Coordinator for the
Cooperative Member is:

Heidi Draper
Name

Procurement Specialist
Title

216 Prospect Street
Mailing Address

Port Orchard
City

WA 98366
State Zip Code

360 876-7028
Telephone

360 876-4980
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publicworks@portorchardwa.gov
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City of Port Orchard

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Agenda Staff Report

Agenda Item No.:	<u>Consent Agenda 4D</u>	Meeting Date:	<u>February 28, 2023</u>
Subject:	<u>Approval of Amendment No. 5 to</u>	Prepared by:	<u>Tony Lang</u>
	<u>Contract No. 028-21 with Transportation</u>		<u>Public Works Director</u>
	<u>Solutions for On-Call Transportation/</u>	Atty Routing No.:	<u>366922-006</u>
	<u>Traffic Engineering Services</u>	Atty Review Date:	<u>February 17, 2023</u>

Summary: On February 9, 2021, following a procurement process consistent with Ch. 39.80 RCW, the City executed Contract No. C028-21 with Transportation Solutions, Inc. for On-Call Transportation/Traffic Engineering Services (the “Contract”). Amendments 1, 2 & 3 were approved by Council, increasing the Underlying Agreement’s “not to exceed” amount to a total not to exceed amount of \$65,000 and extending the Underlying Agreement’s termination date to February 12, 2023. Amendment No. 4 extended the duration of the Agreement to December 31, 2024. Additional On-Call Transportation/Traffic Engineering Services are required by the City for the years 2023 and 2024 that will exceed the current value of the Underlying Agreement. Before the Council for approval is Amendment No. 5 to the Agreement, which would increase the contract amount by an additional \$70,000 (The 2023-2024 Budget includes \$35,000 each year for 2023 and 2024) for a “not to exceed” total of \$135,000, inclusive of all compensation paid after execution of the Contract and Amendments 1 through 4 but prior to this Amendment.

Recommendation: Staff recommends the Council authorize the Mayor to execute Amendment No. 5 to Contract No. C028-21 with Transportation Solutions, Inc for On-Call Transportation/Traffic Engineering Services to increase the total contract amount by \$70,000.00, for a total not to exceed amount of \$135,000.

Relationship to Comprehensive Plan: Ch 8- Transportation

Motion for Consideration: I move to authorize the Mayor to execute Amendment No. 5 to Contract No. C028-21 with Transportation Solutions, Inc for On-Call Transportation/Traffic Engineering Services.

Fiscal Impact: The 2023-2024 Biennial Budget includes \$35,000 in 2023 and \$35,000 in 2024. Budgeted under GL Code 002.05.543.30.40.

Alternatives: Do not approve and provide alternative guidance.

Attachments: Amendment No. 5
Amendment Authorization
Courtesy Copy of C028-21

CITY OF PORT ORCHARD

Authorization for Amendment No. 5

Date: February 28, 2023
Project: On-Call Transportation /
Traffic Engineering Services
Contract / Job # C028-21

Contractor: Transportation Solutions, Inc
16392 Woodinville Redmond Rd NW,
Suite A206, Woodinville, WA 98072

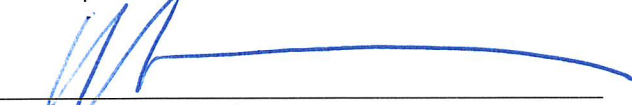
THIS AMENDMENT AUTHORIZES THE FOLLOWING CHANGES TO THE AGREEMENT: Section 4 Compensation - Time and Materials Not to Exceed. Compensation for these services shall not exceed \$135,000 (inclusive of all amounts paid prior to the execution of Amendment No. 5 to this Agreement), without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit B.

Transportation modeling, analysis, and traffic related consulting requires ongoing On-Call Transportation/Traffic Engineering Services. Funds are budgeted in the 2023-2024 budget.

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

Contract History					
	Amount	Sales Tax	Total	Date	Appvd by
Original Contract	\$20,000.00	\$0.00	\$20,000.00	09-Feb-21	Council
Amendment 1	\$5,000.00	\$0.00	\$5,000.00	08-Feb-22	Council
Amendment 2	\$15,000.00	\$0.00	\$15,000.00	12-May-22	Council
Amendment 3	\$25,000.00	\$0.00	\$25,000.00	13-Sep-22	Council
Amendment 4	\$0.00	\$0.00	\$0.00	03-Feb-23	PW Director
Amendment 5	\$70,000.00	\$0.00	\$70,000.00	28-Feb-23	Council
Total Contract	\$135,000.00	\$0.00	\$135,000.00		

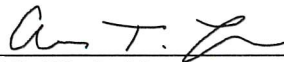
I have reviewed the Amendment information above and certify that to the best of my knowledge descriptions and costs are true and accurate.



Consultant Approval Signature

Victor Salemann, President

Printed Name & Title



Public Works Director

Tony Lang

Printed Name

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

Approved: _____
Mayor

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

Attest: _____
City Clerk

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

Council Approval Date

Amendment No. 5 to Contract No. 028-21
CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT WITH
TRANSPORTATION SOLUTIONS, INC.

THIS AMENDMENT No. 5 to Contract No. 028-21 (“Amendment”) is entered into between the City of Port Orchard, a Washington municipal corporation (“City” or “Port Orchard”) and Transportation Solutions, Inc., a Washington corporation (“Consultant”). City and Consultant are each a “Party” and together “Parties” to this Amendment.

RECITALS:

WHEREAS, on the 9th day of February 2021, the City executed a Professional Services Agreement for On Call Transportation/Traffic Engineering Services with the Consultant (“Underlying Agreement”); and

WHEREAS, Amendments 1, 2 & 3 were approved by Council, extending the Underlying Agreement’s termination date to February 12, 2023, and increasing the Underlying Agreement’s “not to exceed” amount to a total not to exceed amount of \$65,000; and

WHEREAS, Amendment No. 4 extended the duration of the Agreement to December 31, 2024; and

WHEREAS, additional On Call Transportation/Traffic Engineering Services are required by the City in 2023 and 2024 that will exceed the current value of the Underlying Agreement, as amended; and

WHEREAS, the Consultant and the City have conferred and agreed to increase the amount of the contract by \$70,000 in anticipation of additional work in 2023 and 2024; and

WHEREAS, the parties wish to memorialize their agreement and so extend the Underlying Agreement;

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

FIFTH AMENDMENT TO AGREEMENT:

1. **Amendment.** Section 4 of the Agreement is hereby amended to read as follows: Time and Materials Not to Exceed. Compensation for these services shall not exceed \$135,000 (inclusive of all amounts paid prior to the execution of Amendment No. 5 to this Agreement), without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit B.

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

Amendment No. 5 to Agreement between City of Port Orchard and Transportation Solutions, Inc.

Contract No. C028-21

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3. **Entire Agreement.** The written provisions and terms of this Amendment shall supersede all prior verbal statements of any officer or other representative of the parties, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Amendment. The entire agreement between the Parties with respect to the subject matter hereunder is contained in the Agreement and exhibits thereto, any prior executed amendments and this Amendment. Should any language in any of the Exhibits to the Agreement or prior amendments conflict with any language contained in this Amendment, then this Amendment shall prevail. Except as modified by this Amendment, all other provisions of the original Agreement and any amendments thereto not inconsistent with this Amendment shall remain in full force and effect.

4. **Effective date.** This Amendment shall be effective as of February 28, 2023.

DATED this 28th day of February 2023.

CITY OF PORT ORCHARD, WASHINGTON

CONSULTANT

Robert Putaansuu, Mayor



Signature

ATTEST/AUTHENTICATED:

Victor Salemann, President
Printed Name and Title

Brandy Wallace, MMC, City Clerk

APPROVED AS TO FORM:

Charlotte A. Archer, City Attorney



January 20, 2021

TO: K. Chris Hammer, PE, PMP
City of Port Orchard

FROM: Andrew Bratlien, PE

SUBJECT: On-Call Transportation Analysis Scope of Services

This memorandum documents the scope of services for on-call transportation modelling, analysis, and traffic-related consulting for the City of Port Orchard.

SCOPE OF SERVICES

Each item of work under this Agreement will be provided by task assignment. Each assignment will be individually negotiated with the Consultant. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by Port Orchard. Port Orchard is not obligated to assign any specific number of tasks to the Consultant, and Port Orchard's and the Consultant's obligations hereunder are limited to tasks assigned in writing.

Task assignments made by Port Orchard shall be issued in writing by a Task Order Document similar in format to Attachment 1. Task assignments using Federal Funding will require a full Local Agency Standard Consultant Agreement as outlined in the Washington State Department of Transportation Local Agency Guidelines.

An assignment shall become effective when a Task Order is signed by the Consultant and Port Orchard, except that emergency actions requiring a 24-hour or less response can be handled by an oral authorization. Such oral authorizations shall be followed up with a Task Order Document within four working days, and any billing rates agreed to orally (for individuals, subconsultants, or organizations whose rates were not previously established in the Agreement) shall be provisional and subject to final negotiation and acceptance by Port Orchard.

BILLING RATES

Services will be billed on a time and material basis according to the billing rates provided in Attachment 2. Transportation Solutions will provide a not-to-exceed fee estimate with each submitted Task Order.

SCHEDULE

Transportation Solutions will propose a schedule in each submitted Task Order.

Attachment 1. Task Order Document

Attachment 2. Transportation Solutions Inc. Staff Billing Rates



CITY OF PORT ORCHARD

216 Prospect Street
Port Orchard, WA 98366
(360) 874-5533

**TASK ORDER:
ON-CALL SERVICES**

CITY'S PROPOSAL

City Task Order No.: _____ Date: _____

City Information:

City Contact: _____

Department: _____

Phone Number: _____ Email: _____

Consultant Information:

Contract Number: _____

Company Name: _____

Contact Name: _____

Phone Number: _____ Email: _____

On-Call Services Project:

Task Name: _____

Site Address / Location: _____

Related Permit Number: _____

Company Name: _____

Company Contact Name: _____

Contact Email Address: _____

Task Order Description / Scope of Work:

The scope of work is described below:

[Large empty text area for task order description]

CONSULTANT'S RESPONSE

Consultant's Project Number:

Work Tasks <i>(Labor, Materials, Supplies, Equipment, Incidentals)</i>	Estimated Hours	Estimated Budget
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		

Anticipated Completion Date:

Total Estimated Budget:

APPROVALS

Scope of work tasks, time and budget estimates

Approved by Consultant:	Authorization to Proceed - City of Port Orchard:
By:	By:
Signature:	Signature:
Title:	Title:
Date:	Date:

Bill to: City of Port Orchard, Accounts Payable, 216 Prospect St., Port Orchard, WA 98366
ap@cityofportorchard.us



Transportation Solutions

INNOVATIVE | PRACTICAL | EQUITABLE

Transportation Solutions, Inc.

2021

HOURLY BILLING RATES

Name	Title	Classification	Hourly Billing Rate
Victor L. Salemann	President	Engineer VIII	\$235.00
Kirk Harris	Principal	Engineer VIII	\$235.00
David D. Markley	Principal Engineer	Engineer VII	\$235.00
Jeffrey P.K. Hee	Sr. Trans Engineer	Engineer V	\$168.50
Andrew L. Bratlien	Sr. Trans Engineer	Engineer V	\$168.50
Michelle L. Mach	Sr. Trans Engineer	Engineer V	\$180.00
Mike Schaefer	Sr. Engineering Tech	Drafting Technician 3	\$155.00
Sam Garcia	Engineer II	Engineer II	\$105.00
Daniel Hodun	Engineer I	Engineer I	\$100.00
Phil McDonald	Sr. Engineering Tech	Drafting Technician 3	\$145.00
Jennifer Salemann	Planner III	Trans. Planning Specialist 3	\$105.00
Jill Berberich	Office Manager	Administrative Assistant 5	\$115.00

EXPENSES

Reimbursable Expenses	No Markup
Sub-consultant invoices	No Markup

Billing rates are subject to change during the year to reflect staff changes.

CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 9th day of February 2021, by and between the City of Port Orchard, a municipal corporation, organized under the laws of the State of Washington, whose address is:

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

Contact: Mayor Robert Putaansuu Phone: 360.876.4407 Fax: 360.895.9029

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

16392 Woodinville Redmond Rd NE, Suite A206 (hereinafter the "CONSULTANT")
Woodinville, WA 98072

Contact: Andrew Bratlien, PE Phone: 425-833-4134 Fax: 425-867-0898

for professional services in connection with the following Project:

On Call transportation/traffic engineering services.

TERMS AND CONDITIONS

1. Services by Consultant.

A. The Consultant shall perform the on-call professional services described in the Scope of Work attached to this Agreement as Exhibit A. The services performed by the Consultant shall be on an on-call, task order basis, and shall not exceed the Scope of Work without prior written authorization from the City. In performing such services, the Consultant shall at all times comply with all Federal, State, and local laws and regulations applicable to the performance of such services. The Consultant shall perform the services diligently and completely in accordance with professional standards of conduct and performance for Consultant's profession.

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

2. Schedule of Work.

A. The Consultant shall perform the services described in the Scope of Work in accordance with task orders issued by the City, utilizing the task order form at Exhibit "A", and in accordance with the procedures set out in Exhibit A and the terms of this Agreement, provided that if the terms of the Agreement conflict with the terms of Exhibit A, the Agreement shall control. If delays beyond the Consultant's

reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

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

3. **Terms.** This Agreement shall commence on February 9, 2021 ("Commencement Date") and shall terminate February 12, 2022, unless extended or terminated in writing as provided herein. **The City reserves the right to offer two (2) one-year extensions prior to contract expiration to retain the selected company's services.**

4. **Compensation.**

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

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed **\$20,000.00** without advance 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 "_____" OTHER.

5. **Payment.**

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

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

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

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

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

6. Discrimination and Compliance with Laws

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

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

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

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

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

8. Suspension and Termination of Agreement

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

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

C. Rights Upon Termination.

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

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

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

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

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

10. **Ownership of Work Product.**

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

B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in the Consultant's possession or known to it, or is rightfully

obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise. The Consultant is permitted to disclose any such information only to the extent required by law, subpoena or other court order.

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

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

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

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

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

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

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

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

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

C. Other Insurance Provisions

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

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

D. Acceptability of Insurers

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

E. Verification of Coverage

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

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

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

Robert Putaansuu
Mayor
216 Prospect Street
Port Orchard, WA 98366

Phone: 360.876.4407
Fax: 360.895.9029

Victor Salemann, PE - Principle
Transportation Solutions, Inc.
16932 Woodinville Redmond Rd. NE, Suite
A206, Woodinville, WA 98072

Phone: 425-833-4134
Fax: 425-867-0898

16. Resolution of Disputes and Governing Law.

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

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

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

17. General Provisions.

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

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

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

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

18. Title VI

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

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

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

the City or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the City or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the Non-discrimination provisions of this Agreement, the City will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding payments to the Consultant under the Agreement until the contractor complies; and/or
 2. cancelling, terminating, or suspending the Agreement, in whole or in part.

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

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

CITY OF PORT ORCHARD,
WASHINGTON

By: 
Robert Putaansuu, Mayor

ATTEST/AUTHENTICATE:

By: 
Brandy Rinearson, MMC
City Clerk

APPROVED AS TO FORM:

By: 
Charlotte A. Archer, City Attorney

CONSULTANT

By: 

Name: Victor Salemann, PE
Title: Principle



APPENDIX A

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

Pertinent Non-Discrimination Authorities:

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



January 20, 2021

TO: K. Chris Hammer, PE, PMP
City of Port Orchard

FROM: Andrew Bratlien, PE

SUBJECT: On-Call Transportation Analysis Scope of Services

This memorandum documents the scope of services for on-call transportation modeling, analysis, and traffic-related consulting for the City of Port Orchard.

SCOPE OF SERVICES

Each item of work under this Agreement will be provided by task assignment. Each assignment will be individually negotiated with the Consultant. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by Port Orchard. Port Orchard is not obligated to assign any specific number of tasks to the Consultant, and Port Orchard's and the Consultant's obligations hereunder are limited to tasks assigned in writing.

Task assignments made by Port Orchard shall be issued in writing by a Task Order Document similar in format to Attachment 1. Task assignments using Federal Funding will require a full Local Agency Standard Consultant Agreement as outlined in the Washington State Department of Transportation Local Agency Guidelines.

An assignment shall become effective when a Task Order is signed by the Consultant and Port Orchard, except that emergency actions requiring a 24-hour or less response can be handled by an oral authorization. Such oral authorizations shall be followed up with a Task Order Document within four working days, and any billing rates agreed to orally (for individuals, subconsultants, or organizations whose rates were not previously established in the Agreement) shall be provisional and subject to final negotiation and acceptance by Port Orchard.

BILLING RATES

Services will be billed on a time and material basis according to the billing rates provided in Attachment 2. Transportation Solutions will provide a not-to-exceed fee estimate with each submitted Task Order.

SCHEDULE

Transportation Solutions will propose a schedule in each submitted Task Order.

Attachment 1. Task Order Document

Attachment 2. Transportation Solutions Inc. Staff Billing Rates



CITY OF PORT ORCHARD

216 Prospect Street
Port Orchard, WA 98366
(360) 874-5533

**TASK ORDER:
ON-CALL SERVICES**

CITY'S PROPOSAL

City Task Order No.: _____ **Date:** _____

City Information:

City Contact:

Department:

Phone Number:

Email:

Consultant Information:

Contract Number:

Company Name:

Contact Name:

Phone Number:

Email:

On-Call Services Project:

Task Name:

Site Address / Location:

Related Permit Number:

Company Name:

Company Contact Name:

Contact Email Address:

Task Order Description / Scope of Work:

The scope of work is described below:

CONSULTANT'S RESPONSE

Consultant's Project Number:

Work Tasks <i>(Labor, Materials, Supplies, Equipment, Incidentals)</i>	Estimated Hours	Estimated Budget
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		

Anticipated Completion Date:

Total Estimated Budget:

APPROVALS

Scope of work tasks, time and budget estimates

Approved by Consultant:	Authorization to Proceed - City of Port Orchard:
By:	By:
Signature:	Signature:
Title:	Title:
Date:	Date:

Bill to: City of Port Orchard, Accounts Payable, 216 Prospect St., Port Orchard, WA 98366
ap@cityofportorchard.us



Transportation Solutions

INNOVATIVE | PRACTICAL | EQUITABLE

Transportation Solutions, Inc.

2021 HOURLY BILLING RATES

Name	Title	Classification	Hourly Billing Rate
Victor L. Salemann	President	Engineer VIII	\$235.00
Kirk Harris	Principal	Engineer VIII	\$235.00
David D. Markley	Principal Engineer	Engineer VII	\$235.00
Jeffrey P.K. Hee	Sr. Trans Engineer	Engineer V	\$168.50
Andrew L. Bratlien	Sr. Trans Engineer	Engineer V	\$168.50
Michelle L. Mach	Sr. Trans Engineer	Engineer V	\$180.00
Mike Schaefer	Sr. Engineering Tech	Drafting Technician 3	\$155.00
Sam Garcia	Engineer II	Engineer II	\$105.00
Daniel Hodun	Engineer I	Engineer I	\$100.00
Phil McDonald	Sr. Engineering Tech	Drafting Technician 3	\$145.00
Jennifer Salemann	Planner III	Trans. Planning Specialist 3	\$105.00
Jill Berberich	Office Manager	Administrative Assistant 5	\$115.00

EXPENSES

Reimbursable Expenses	No Markup
Sub-consultant invoices	No Markup

Billing rates are subject to change during the year to reflect staff changes.



**City of Port Orchard
Council Meeting Minutes
Regular Meeting of February 14, 2023**

1. CALL TO ORDER AND ROLL CALL

Mayor Pro-Tem Trenary called the meeting to order at 6:30 p.m.

Roll call was taken by the City Clerk as follows:

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

Staff present: Public Works Director Lang, Finance Director Crocker, City Attorney Archer, Police Chief Brown, HR Manager Lund, City Clerk Wallace, and Deputy City Clerk Floyd.

The meeting streamed live on YouTube.

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

Mayor Pro-Tem Trenary led the audience and Council in the Pledge of Allegiance.

2. APPROVAL OF AGENDA (Time Stamp: 00:51)

MOTION: By Councilmember Cucciardi, seconded by Councilmember Lucarelli, to approve the agenda as presented.

The motion carried.

3. CITIZENS COMMENTS (Time Stamp: 1:19)

There were no citizen comments.

4. CONSENT AGENDA (Time Stamp: 01:36)

A. Approval of Voucher Nos. 85484 through 85504 and 85513 through 85566 including bank drafts in the amount of \$337,139.65 and EFT's in the amount of \$797,551.99 totaling \$1,134,691.64.

- B. Approval of Payroll Check Nos. 85505 through 85512 including bank drafts and EFT's in the amount of \$238,360.65 and Direct Deposits in the amount of \$227,854.77 totaling \$466,215.42.
- C. Adoption of a Resolution Approving the Purchase of a Skid Steer Compact Track Loader for the Equipment Rental Revolving Fund 500 (**Resolution No. 015-23, Purchase Order No. 013-23**)
- D. Adoption of a Resolution Approving an Intergovernmental Cooperative Purchasing Agreement with Purchasing Cooperative of America (**Resolution No. 017-23, Contract No. 021-23**)
- E. Adoption of a Resolution Approving the Purchase of Equipment for the Equipment Rental Revolving Fund 500 (**Resolution No. 018-23, Purchase Order No. 014-23**)
- F. Approval of an Agreement with Compulink and CDI to Purchase Laserfiche Annual Support, Updates and Additional Licenses (**Contract No. 024-23, Purchase Order No. 008-23**)
- G. Approval of Amendment No. 2 to Contract No. 018-20 with Coastal Custodial for Janitorial Services (Lang)
- H. Approval of the January 24, 2023, City Council Meeting Minutes

MOTION: By Councilmember Clauson, seconded by Councilmember Diener, to approve the Consent Agenda as published.

The motion carried.

5. PRESENTATION

There were no presentations.

6. PUBLIC HEARING

There were no public hearings.

7. BUSINESS ITEMS

- A. **Adoption of an Ordinance Establishing a Low-Income Discount Utility Program (Time Stamp 02:18)**

MOTION: By Councilmember Rosapepe, seconded by Councilmember Clauson, to adopt an ordinance establishing a Low-Income Utility Discount program.

The motion carried.
(Ordinance No. 001-23)

- B. **Adoption of an Ordinance Amending Port Orchard Municipal Code Section 10.12.400 to Extend Payment Deadline for Parking Infractions (Time Stamp: 04:30)**

MOTION: By Councilmember Lucarelli, seconded by Councilmember Diener, to adopt an ordinance amending POMC 10.12.400 in response to changes in state law.

The motion moved.

(Ordinance No. 002-23)

C. Adoption of an Ordinance Adopting Port Orchard Municipal Code Chapter 1.32, Setting the City's Compost Procurement Policy Consistent with HB 1799 (Time Stamp 06:14)

MOTION: By Councilmember Chang, seconded by Councilmember Diener, to adopt an ordinance adopting Port Orchard Municipal Code Chapter 1.32, establishing the City's Compost Procurement Policy.

The motion carried.

(Ordinance No. 003-23)

D. Approval of the 2023 Comprehensive Plan Amendment Docket (Time Stamp 11:28)

MOTION: By Councilmember Diener, seconded by Councilmember Lucarelli, to approve the 2023 Comprehensive Plan amendment agenda pursuant to POMC 20.04.060, as presented.

The motion carried.

8. DISCUSSION ITEMS

A. City Policy Requiring New Employees to be Vaccinated Against the COVID-19 Virus (Time Stamp 15:09)

HR Manager Lund explained on October 26, 2021, the Council considered and passed a policy revision to require all employees to provide proof of having at least one dose of the COVID-19 vaccination prior to employment, and as a condition of continued employment receive the second dose with 30 days, unless approved for a medical or religious exemption. The City no longer tracks vaccination status of current employees.

The Police Department has expressed a concern that the vaccination requirement may be negatively impacting the recruitment for police officers, in particular lateral police officers. All department directors discussed the vaccination requirement at a recent meeting, none were opposed to removing the vaccination requirement.

Additionally, in accordance with the council's guiding principle related to diversity, equity and inclusion, it is worth noting that there remains a vaccination equity gap relative to some populations with American Indian/Alaskan Native, Asian, Native Hawaiian and Other Pacific Islander and those of multiple races falling behind white, non-Hispanic people living in the United States.

Discussion was held between Council and staff. Councilmembers Rosapepe and Chang voiced their concerns with removing the vaccination requirement and Councilmembers Diener, Cucciardi, Lucarelli and Clauson voiced their approval of removing the vaccination requirement.

MOTION: By Councilmember Clauson, seconded by Councilmember Diener, to eliminate 2.04(B) New Hire COVID-19 Vaccination Requirement (effective November 1, 2021) from the City's Personnel Policies.

The motion passed, with 2 dissenting votes. Councilmembers Rosapepe and Chang.

9. REPORTS OF COUNCIL COMMITTEES (Time Stamp: 31:54)

Councilmember Lucarelli said she would like to give the report on the February 14th Utilities Committee meeting when more people in attendance.

10. REPORT OF MAYOR

There was no report of the Mayor.

11. REPORT OF DEPARTMENT HEADS (Time Stamp 32:30)

Finance Director Crocker explained the February 21st Finance Committee agenda is very light and the meeting may be cancelled.

City Attorney Archer reported there will be a robust conversation on the salary commission and Trespass Policy next month.

Police Chief Brown reported Sergeant Main received the 2022 Best Police Officer award, and gave an update on several police officers and police outreach.

In response to Councilmember Rosapepe, he briefly discussed what is currently going on in Olympia regarding pursuit laws.

12. CITIZEN COMMENTS (Time Stamp 38:16)

There were no citizen comments.

13. EXECUTIVE SESSION

There was no executive session.

14. GOOD OF THE ORDER (Time Stamp 38:32)

Councilmember Clauson complimented Mayor Pro-Tem Trenary on chairing the meeting.

Councilmember Rosapepe thanked Council for their dignity and respect towards each other during controversial conversations.

15. ADJOURNMENT

The meeting adjourned at 7:08 p.m. No other action was taken. Audio/Visual was successful.

Brandy Wallace, MMC, City Clerk

Mark Trenary, Mayor Pro-Tem



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 8A</u> Subject <u>Approval of Amendment No. 1 to Contract No. C075-22 with Ceccanti, Inc. for the McCormick Village Park Splash Pad Treatment Facility Installation project</u>	Meeting Date: <u>February 28, 2023</u> Prepared by: <u>Tony Lang</u> <u>Public Works Director</u> Atty Routing No: <u>366922-0009</u> Atty Review Date: <u>February 16, 2023</u>
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Summary: The City owns and operates a splash pad at the McCormick Village Park for its residents and desires to modify the existing flow-through system to a recirculating system. This will be accomplished through the McCormick Village Park Splash Pad Treatment Facility Installation and Retrofitting project (the “Project”). On July 26, 2022, following a procurement process consistent with the City’s Procurement Policies adopted by Resolution 036-22, the City executed Contract No. C075-22 with Ceccanti Inc. for the Project (the “Contract”). Additional modifications are needed beyond the original contracted scope of work for C075-22. These modifications are required based on the Department of Health’s regulations, review, and approval of the designs for the Project, due to additional and unforeseen DOH requirements for the use of recirculated water at the splash pad. An increase to the Washington State Sales Tax rate effective January 1, 2023, also affects the total contract price and is reflected in this amendment. These items will increase the existing contract by \$139,136.33 for a new total contract price of \$729,522.85. Due to the Department of Health’s regulations and time for review, the duration of the contract has been extended to December 31, 2023.

Recommendation: Staff recommends that the City Council authorize the Mayor to execute Change Order No. 1 to Contract C075-22 with Ceccanti, Inc for the McCormick Village Park Splash Pad Treatment Facility Installation project.

Relationship to Comprehensive Plan: Chapter 4: Parks

Motion for Consideration: I move to authorize the Mayor to execute Change Order No. 1 to Contract No. C075-22 with Ceccanti, Inc. for the McCormick Village Park Splash Pad Treatment Facility Installation project.

Fiscal Impact: The 2023-2024 biennial budget includes \$590,400 for this project from Park Impact Fees. A Budget amendment will be required to provide the additional funding from Park Impact Fees. The expenses for this project are budgeted in GL Code 302.05.594.76.60

Alternatives: Do not authorize and provide alternative guidance.

Attachments: Change Order No.1, Attachment A, Courtesy Copy of Contract C075-22

CITY OF PORT ORCHARD

Authorization for Change Order No. 1

Date: <u>February 28, 2023</u> Project: <u>McCormick Village Park</u> <u>Splash Pad Treatment</u> <u>Facility Installation</u>	Contractor: <u>Ceccanti, Inc</u> <u>4116 Brookdale Road East</u> <u>Tacoma, WA 98446</u>
Contract / Job # <u>C075-22</u>	

THIS CHANGE ORDER AUTHORIZES THE FOLLOWING CHANGES TO THE AGREEMENT:

- Sales Tax Increase: January 1, 2023, the Washington State Sales Tax rate increased in the City of Port Orchard from 9.2% to 9.3% increasing the original contract by \$540.65.
- Additional modifications based on Department of Health regulations (see Attachment A). \$126,803 plus WSST \$11,792.68 = \$138,595.68
- Contract Start Date: Due to delays with Department of Health reviews the duration of the contract is extended thru December 31, 2023.

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

Contract History					
	Amount	Sales Tax	Total	Date	Appvd by
Original Contract	\$540,647.00	\$49,739.52	\$590,386.52	26-Jul-22	Council
Change Order 1	\$126,803.00	\$12,333.33	\$139,136.33	28-Feb-23	Council
Total Contract	\$667,450.00	\$62,072.85	\$729,522.85		

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

Contractor Approval Signature

Public Works Director/City Engineer

Printed Name & Title

Tony Lang

Printed Name

Approved: _____
Mayor

Attest: _____
City Clerk

Council Approval Date

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

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

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



February 16, 2023

Serial Letter 01

Attn: Chris Hammer
 City of Port Orchard, Wa
 216 Prospect Street
 Port Orchard, WA 98366

Re: **Change Order Request**
 McCormick Woods Splash Pad
 Treatment Equipment Installation
 Contract No. C075-22

Mr. Hammer:

Ceccanti, Inc. has received revisions to the drawings and equipment specifications for the McCormick Village Park Splash Pad Retrofit project. These drawings were received via email for download on January 11, 2023 and change the work and equipment from what was originally proposed. Ceccanti, Inc. would like to request a change order be issued to cover the additional charges associated with these changes. A listing of the noted changes are shown below.

The installed pricing below does not include interior lining for the vaults.

- Additional Clearing - \$2,500
- Basket Strainer Vault with Internals - \$14,000
- Duplex pumps location moved to overflow vault – no charge \$0
- Overflow vault added (less cost of pumps) - \$11,000
- Added 4" field valves - \$3,500
- Water Reservoir Vault with pump and mechanicals - \$41,000
- Underground piping between bldg/overflow vault/water reservoir - \$18,000
- Floor Drain in building – connect to overflow vault - \$2,800
- Second Pump in building - \$9,000
- (2) eyewash stations - \$1,500
- Misc. for additional piping in building (mounting/misc. fittings) - \$9,800
- 3" Flow Meter - \$1,900
- Indicating Pressure Transmitter - \$2,800
- Additional 3" valves (ball/pressure relief/back pressure) - \$7,000
- Credit (6) vessels and piping - <\$18,000>



- Add Conduit and Wire for one starter and pressure transmitter in pump room. One starter, high and low water cutoff floats, and power for reservoir pump (pumps and floats supplied by others). Conduit and wire for Chlorine analyzer (Analyzer supplied by others). Conduit and wire for backwash (control panel assumed to be integral to backwash and supplied by others). - \$17,860 w/ 12% markup = \$20,003
- Supply pre-manufactured spray park control panel (Budget only) - \$5,000 w/ 12% markup = \$5,600
- Supply engineered custom fabricated spray park control panel (Budget only) - \$25,000 w/ 12% markup = \$28,000

Total request this change order = **\$126,803**

Total request including contingency = **\$160,403**

Please do not hesitate to contact me with any questions regarding this request.

Respectfully,

A handwritten signature in blue ink, appearing to read "Brian DeCapp".

Brian DeCapp
Ceccanti, Inc.
Ph. 253-377-7358
brian@ceccantiinc.com

CONTRACT

CITY OF PORT ORCHARD McCormick Village Park Splash Pad Treatment Facility Installation CONTRACT NO. C075-22

THIS CONTRACT ("Contract") is made and entered into this 26th day of July, 2022, by and between the City of Port Orchard, a municipality incorporated and existing under the laws of the State of Washington, hereinafter called the "City," and Ceccanti, Inc., hereinafter called the "Contractor."

WITNESSETH:

I. General Provisions.

A. Description of Work.

The Contractor, in consideration of the covenants, agreements and payments to be performed and made by the City, hereby covenants and agrees to furnish all labor, tools, materials, equipment and supplies required for, and to execute, construct and finish in full compliance with the Contract Documents, McCormick Village Park Splash Pad Treatment Facility Installation. The Contractor further agrees to perform all such work for the Contract Price stated in the Contractor's Bid Proposal dated June 24, 2022, attached hereto and incorporated herein by this reference as if set forth in full. Contractor further represents that the services furnished under this Agreement will be performed in accordance with and as described in the attached plans and specifications and with the Port Orchard Municipal Code, the City's Public Works Standards, which includes (but is not limited to) the 2021 edition of the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction (which shall apply except where noted otherwise). All of these standards are by this reference incorporated herein and made a part hereof. Contractor further represents that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time such services are performed.

The Contract Documents include:

Exhibit A -a confirmed copy of the Proposal made by the Contractor on June 24, 2022, together with the Instructions to Bidders.

Exhibit B – The Project Manual for the McCormick Village Park Splash Pad Treatment Facility Installation.

Exhibit C – Retainage Options

All Exhibits to this Contract are by this reference incorporated herein and made a part hereof as if set forth in full.

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City of Port Orchard and Ceccanti, Inc.

McCormick Village Park Splash Pad Treatment Facility Installation

Project # PW2022-008

Contract #C075-22

Page 1 of 30

B. Time of Completion.

Time is of the essence of this Contract. It is agreed that the Preconstruction Phase work covered by this Contract shall start within 14 calendar days after Notice to Proceed is issued and that Construction Phase shall begin after September 12, 2022. Construction shall be complete not later than March 31, 2023.

C. Liquidated Damages.

It is further agreed that the City will suffer damage and be put to additional expense in the event that the Contractor shall not have the specified portions of the work completed in all its parts in the time specified, and as it may be difficult to accurately compute the amount of such damage, the Contractor expressly covenants and agrees to pay to the City liquidated damages, the sum as calculated by the equation shown in Section 1-08.9 of the WSDOT Standard Specifications, for each and every working day said work is not complete beyond the time shown in the Proposal.

II. Non-Discrimination.

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to compliance with the following 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).

Title VI of the Civil Rights Act of 1964

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 ensure that its contracts comply with these regulations.

Also, in accordance with Title VI, the City is required to include the following clauses in every contract subject to Title VI and its related regulations.

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

1. **Compliance with Regulations:** The Contractor will comply with the Acts and the regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during this Contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix A, attached hereto and incorporated herein by this reference,

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City of Port Orchard and Ceccanti, Inc.

McCormick Village Park Splash Pad Treatment Facility Installation

Project # PW2022-008

Contract #C075-22

including employment practices when this Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, **including** procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the City or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the Non-discrimination provisions of this Contract, the City will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding payments to the Contractor under the Contract until the Contractor complies; and/or
 2. cancelling, terminating, or suspending the Contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the City to enter into any litigation to protect the interests of the City. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

III. Public Records Act Chapter 42.56 RCW

Contractor understands that her/his bid response documents, and any contract documents may be subject to release under the Public Records Act Chapter 42.56 RCW and the City may be required to disclose such documents upon a request. Contractor acknowledges that s/he has

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City of Port Orchard and Ceccanti, Inc.

McCormick Village Park Splash Pad Treatment Facility Installation

Project # PW2022-008

Contract #C075-22

been advised to mark any records believed to be trade secrets or confidential in nature as “confidential.” If records marked as “confidential” are found to be responsive to the request for records, the City as a courtesy to the Contractor, may elect to give notice to Contractor of the request so as to allow Contractor to seek a protective order from a Court. Contractor acknowledges and agrees that any records deemed responsive to a public records request may be released at the sole discretion of, and without notice by, the City.

IV. Termination

The City may terminate this contract for cause or for convenience.

1. **Termination for Cause.** The City may, upon 7 days written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of the City) the contract, or any part of it, for cause upon the occurrence of any one or more of the following events: Contractor fails to complete the work or any portion thereof with sufficient diligence to ensure substantial completion of the work within the contract time; Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; Contractor fails in a material way to replace or correct work not in conformance with the Contract Documents, Contractor repeatedly fails to supply skilled workers or proper materials or equipment; Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or Contractor is otherwise in material breach of any provision of the contract. Upon termination, the City may, at its option, take possession of or use all documents, materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the work, and finish the work by whatever other reasonable method it deems expedient.
2. **Termination for Convenience.** The City may, upon written notice, terminate (without prejudice to any right or remedy of the City) the contract, or any part of it, for the convenience of the City.
3. **Settlement of Costs.** If the City terminates for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus a reasonable allowance for overhead and profit on work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments.

V. Corporate Surety Bond

With this Contract, Contractor is furnishing a Corporate Surety Bond in the amount of Five hundred Ninety thousand Three hundred Eighty Six dollars & Fifty two cents Dollars (\$590,386.52) with Merchants Bonding Company as Surety, to ensure full compliance, execution and performance of this Contract by the Contractor in accordance with all its terms and provisions.

VI. Independent Contractor.

The parties intend that an Independent Contractor-Employer Relationship will be created by this Agreement and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement.

VII. 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.

VIII. Changes.

The City may issue a written change order for any change in the Contract work during the performance of this Agreement. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the Notice provision section of this Agreement, within fourteen (14) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section IX entitled, "Claims," below.

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

IX. Claims. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor may file a claim as provided in this section. The Contractor shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Contractor knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Agreement or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Agreement.

At a minimum, a Contractor's written claim shall include the information set forth in subsections A, items 1 through 5 below.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

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A. Notice of Claim. Provide a signed written notice of claim that provides the following information:

1. The date of the Contractor's claim;
2. The nature and circumstances that caused the claim;
3. The provisions in this Agreement that support the claim;
4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
5. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

B. Records. The Contractor shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Contractor's records needed for evaluating the protest.

The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

C. Contractor's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Agreement.

D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

X. Limitation Of Actions.

CONTRACTOR MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS AGREEMENT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONTRACTOR'S ABILITY TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

XI. Warranty.

Upon acceptance of the contract work, Contractor must provide the City a two-year warranty bond in the amount of twenty percent (20%) of the contract price a form and amount acceptable to the City. The Contractor shall correct all defects in workmanship and materials within two (2) years from the date of the City's acceptance of the Contract work, including replacing vegetation that fails to thrive. In the event any parts are repaired or replaced, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) additional year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

XII. Indemnification.

Contractor shall defend, indemnify, and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Contractor's performance of this Agreement, except for that portion of the injuries and damages caused by the sole negligence of the City.

The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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 Contractor and the City, its officers, officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

XIII. Insurance.

The Contractor 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 Contractor, its agents, representative, employees or subcontractors.

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

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

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

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

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability and Builders Risk insurance:

1. The Contractor's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor'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.

D. Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee-owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation. The Contractor and the City waive all rights against each other any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extend covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

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

G. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that

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McCormick Village Park Splash Pad Treatment Facility Installation

Project # PW2022-008

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includes all applicable conditions, exclusions, definitions, terms and endorsements related to this Project.

H. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor (with the exception of Builders Risk insurance). Upon request the City, the Contractor shall provide evidence of such insurance.

XIV. WORK PERFORMED AT CONTRACTOR'S RISK. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XV. Miscellaneous Provisions.

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the Kitsap County Superior Court, Kitsap County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section XII of this Agreement.

C. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to

any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or 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 Contractor.

F. Entire Agreement. The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the above documents are hereby made a part of this Agreement. However, should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

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

H. 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. IN WITNESS WHEREOF the parties hereto have caused these presents to be duly executed.

CITY OF PORT ORCHARD

DocuSigned by:
By: Robert Putaansuu
F69E88B50DE74EF...
Robert Putaansuu, Mayor



CONTRACTOR

By: [Signature]
Title: Jon Vander Griend
Vice President

Address: 4116 Brookdale Road East
Tacoma WA 98446

ATTEST
DocuSigned by:
Brandy Wallace
58871243F4CB414...
Brandy Wallace, MMC, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

203701E25520457
Charlotte Archer, City Attorney

NOTICES TO BE SENT TO:

CONTRACTOR:

CITY

INSERT NAME Ceccanti, Inc.
ADDRESS 41116 Brookdale Rd E
Tacoma WA 98446
TELEPHONE (253) 537-2990
Email jon@ceccantiinc.com

City of Port Orchard Public Works Department
216 Prospect Street, Port Orchard, WA 98366
TELEPHONE (360) 876-4991
FAX: 360 876-4980
Email: publicworks@cityofportorchard.us

With a copy to the City Clerk at the same address

Start of Construction and Contract Completion

The Bidder further agrees that within **fourteen (14)** calendar days of CONTRACT START DATE, s/he will meet with engineering personnel and begin Preconstruction Phase work no later than **five (5)** days after the CONTRACT START DATE, and complete the construction within **sixty (60)** working days of the Construction Phase START DATE that shall begin after September 12, 2022.

Lump Sum and Unit Price Work

The Bidder further proposes to accept as full payment for the work proposed herein the amounts computed under the provisions of the Contract Documents and based on lump sum and unit price amounts, it being expressly understood that the unit prices are independent of the exact quantities involved. The Bidder agrees that the lump sum prices, and the unit prices represent a true measure of the labor, services, and materials required to perform the work, including all allowances for overhead and profit for each type and unit of work called for in these Contract Documents.

If any material, item, or service required by the Contract Documents has not been mentioned specifically, the same shall be furnished and placed with the understanding that the full cost to the City has been merged with prices named in the proposal.

**SCHEDULE OF CONTRACT PRICES
MCCORMICK VILLAGE PARK SPLASH PAD TREATMENT FACILITY INSTALLATION**

NOTE: Unit prices for all items and the total amount bid must be shown. The Project must be bid in its entirety, including all bid items as specifically listed in the Proposal, in order to be considered a responsive bid. Where conflict occurs between the unit price and the total amount named for any items, the unit price typed or printed and entered in ink shall prevail. The Contracting Agency reserves the right to award all work bid according to the lowest qualified responsive bid tendered, available funds, and as it best serves the interest of the Contracting Agency. All work awarded will be made to the same Contractor/bidder.

Item No.	Estimated Quantity	SP or STD	Description of Items	Unit Price	Amount
1	1	STD	Mobilization ^{BD}		
			\$ 30,000 40,000.00	LS	\$ 40,000.00 30,000 ^{BD.}
			Mobilization consists of preconstruction expenses and the costs of preparatory Work and operations performed by the Contractor which occur before 10 percent of the total original Contract amount is earned from other Contract items. Items which are not to be included in the item of Mobilization include but are not limited to: any portion of the Work covered by the specific Contract item or incidental Work which is to be included in a Contract item or items; profit, interest on borrowed money, overhead, or management costs; any costs of mobilizing equipment for force account Work. Based on the lump sum Contract price for "Mobilization", partial payments will be made as follows: when 5 percent of the total original Contract amount is earned from other Contract items, excluding amounts paid for materials on hand, 50 percent of the amount Bid for mobilization, or 5 percent of the total original Contract amount, whichever is the least, will be paid. 2; when 10 percent of the total original Contract amount is earned from other Contract items, excluding amounts paid for materials on hand, 100 percent of the amount Bid for mobilization, or 10 percent of the total original Contract amount, whichever is the least, will be paid; when the Substantial Completion Date has been established for the project, payment of any amount Bid for mobilization in excess of 10 percent of the total original Contract amount will be paid. (1-09) Per Lump Sum		
A1	1	SP	Demolition and Removals		
			\$ 20,000.00	LS	\$ 20,000.00
			Demolition and Removals lump sum will be full payment for all Work associated with the preparation for and implementation of demolition and removal, as indicated on the plans, except included in or incidental to other bid items (See Drawings)		
A2	1	STD	Erosion Control		
			\$ 5,500.00	LS	\$ 5,500.00

Item No.	Estimated Quantity	SP or STD	Description of Items	Unit Price	Amount
			Erosion control lump sum shall be full payment for the work, materials, tools, labor, and equipment required to install, maintain, and remove all erosion control measures, except Stabilized Construction Entrance (Bid Item A3) or Temporary Fence (Bid Item A4), (See Drawings)		
A3	1	STD	Construction Entrance		
			\$ 7,500.00	EA	\$ 7,500.00
			Stabilized construction entrances will be measured by each entrance constructed. The unit price will include all work, materials, tools, labor, and equipment required to install, maintain, and remove the Construction Entrance. (See Drawings)		
A4	1	STD	Temporary Fence		
			\$ 5,000.00	LS	\$ 5,000.00
			Temporary Fence will be measured by linear foot of completed fence. The unit price for temporary fence shall include all work, materials, tools, labor, and equipment required to install, maintain, and remove Temporary Fence. (See Drawings)		
A5	1	SP	Excavation Export Excess Materials		
			\$ 15,000.00	LS	\$ 15,000.00
			Full payment for all Work associated with transport of excess materials. (See Drawings)		Per Lump Sum
A6	551	SP	Gravel 7-Inch		
			\$ 2.00	SF	1,102.00
			The unit price per square foot shall include hauling, furnishing, placing, and compacting base rock as shown on the Plans and specified in the Contract Documents. The unit price shall also include the removal and proper disposal of material being replaced by the gravel. No additional or separate payment shall be made for sub-grade preparation. (See Drawings)		
A7	315	STD	Base Rock 4-Inch		
			\$ 50.00	SF	15,750.00
				LN	
			The unit price per ton shall include hauling, furnishing, placing, and compacting base rock as shown on the Plans and specified in the Contract Documents. The unit price shall also include the removal and proper disposal of material being replaced by		

\$ 945.00
P.D.

Item No.	Estimated Quantity	SP or STD	Description of Items	Unit Price	Amount
			the base rock. No additional or separate payment shall be made for sub-grade preparation. (See Drawings)		
A8	10	STD	Concrete		
			\$ 1,500.00	CY	\$15,000.00
			Cement concrete pavement will be measured by the cubic yard for the completed pavement. The volume will be determined from measurements taken as listed: the width measurement will be the width of the pavement shown on the typical cross-section in the Plans, additional widening where called for, or as otherwise specified in writing by the Engineer; the length will be measured along the center of each Roadway or ramp; the depth shall be determined by magnetic pulse induction thickness testing. The depth utilized to calculate the volume shall not exceed the Plan depth plus 0.04 feet. The unit Contract price per cubic yard for "Cement Conc. Pavement" shall be full compensation for all costs incurred to carry out the Work. All costs associated with performing the magnetic pulse induction thickness testing shall be included in the unit Contract price per cubic yard for "Cement Conc. Pavement" (See Drawings)		
A9	236	STD	Asphalt Paving 3-inch	SF. B.D.	
			\$ 180.00 10.00 B.D.	IN	\$42,480.00 2,360 B.D.
			The unit price per ton shall include all work, materials, tools, labor, and equipment required for installation of temporary and permanent asphalt as shown on the Plans and specified in the Contract Documents. The unit price shall also include sawcutting existing asphalt, removal and proper disposal of subgrade and all existing asphalt being replaced by the new asphalt, preparing the sub-grade for paving; cleaning of existing asphalt; joint sealing; grinding at transitions; placing tack coat; furnishing, hauling, placing, and compacting the temporary and permanent asphalt pavement; adjusting all utility covers and monument case covers to the new grade as necessary; replacing all disturbed pavement striping and markings; and all other incidental work to complete the asphalt pavement. No pay factors will be used for temporary or permanent asphalt pavement. The Contractor is hereby advised that existing asphalt pavement varies by depth and material and no additional compensation shall be made for these variances. The unit price per ton shall include all work, materials, tools, labor, and equipment required for installation of temporary and permanent asphalt trench patch, as shown on the Plans, including but not limited to, subgrade preparation, cleaning of existing asphalt, joint sealing, placing tack coat, furnishing, hauling, placing, and compacting the temporary and permanent asphalt pavement, adjusting utility covers and monument case covers to the new grade as necessary,		

Item No.	Estimated Quantity	SP or STD	Description of Items	Unit Price	Amount
			and replacing disturbed pavement striping and markings. The amount of asphalt is determined by the surface area shown on the drawings. (See Drawings)		
A10	1	SP	Landscaping		
			\$ 20,000.00	LS	\$ 20,000.00
			The Landscaping lump sum all work, materials, tools, labor, and equipment required to complete landscaping activities as determined in the Contract Drawings, including but not limited to seeding, mulching, planting, and tree pruning (See Drawings)		
A11	466	SP	Overexcavation		
			\$ 10.00	CY	\$ 4,660.00
			(Words) (See Drawings)	Per Cubic Yard	
A12	1	STD	Pre-Cast Structure		
			\$ 5,000.00	EA	\$ 5,000.00
			The unit cost for each Pre-Cast Structure shall include all work, materials, tools, labor, and equipment required for installation of the pre-cast structure. (See Drawings)		
A13	1	STD	Site Piping		
			\$ 130,000.00	LS	\$ 130,000.00
			The site piping lump sum for site pipe of the kind and size specified in the contract drawings shall be full pay for furnishing, hauling, and assembling in place the completed installation including all wyes, tees, special fittings, joint materials, and bedding and backfill material for the completion of the installation to the required lines and grades (See Drawings)		
B1	252	STD	New Building		199,080.00 B.D.
			\$ 840.00 790.00	SF	\$ 211,680.00
			New building will be measured per square foot for the completed building. The unit price per square foot shall include all work, materials, tools, labor, and equipment required for installation of the new building, as shown in the Contract Drawings, except as included in Building Foundation.(See Drawings)		
C1	3	STD	Building Foundation		
			\$ 1,500.00	CY	\$ 4,500.00
			Building Foundation will be measured by the cubic yard for the completed building foundation. The unit price per cubic yard of building foundation shall be full payment for all costs to perform the Work in		

Item No.	Estimated Quantity	SP or STD	Description of Items	Unit Price	Amount
			connection with constructing building foundation. (Words) (See Drawings)		
D1	1	SP	Grinder Pump Package		
			\$ 3,000.00	LS	\$ 3,000.00
			The Grinder Pump Package lump sum price shall include all work material, tools, labor, and equipment required for installation, testing, and final set up of Grinder Pump Package. (See Drawings)		
D2	1	SP	Media Filter		
			\$ 10,000.00	LS	\$ 10,000.00
			The Media Filter lump sum price shall include all work, materials, tools, labor, and equipment required to furnish and install the media filter. (See Drawings)		
D3	1	SP	Chemical Feed Tanks		
			\$ 40,000.00 18,000	LS	\$ 18,000 B.P.
			The Chemical Feed Tanks lump sum price shall include all work, materials, tools, labor, and equipment required to furnish and install the chemical feed tanks. (See Drawings)		
D4	1	SP	Chemical Feed Pumps		
			\$ 16,000.00 5,000	LS	\$ 5,000
			The Chemical Feed Pumps lump sum price shall include all work, materials, tools, labor, and equipment required to furnish and install the chemical feed pumps. (See Drawings)		
D5	1	SP	Miscellaneous Chemical Equipment		
			\$ 25,000.00	LS	\$ 25,000.00
			The Miscellaneous Chemical Equipment lump sum price shall include all work, materials, tools, labor, and equipment required to furnish and install the miscellaneous chemical equipment as indicated on the Contract Drawings. (See Drawings)		
D6	1	SP	Interior Mechanical Piping		
			\$ 4,000.00	LS	\$ 4,000.00
			The interior mechanical piping lump sum for kind and size pipe specified in the contract drawings shall be full pay for furnishing, hauling, and assembling in place the completed installation including all wyes, tees, special fittings, joint materials, and appurtenances for the completion of the installation as indicated on the Contract Drawings. (See Drawings)		
E1	1	SP	HVAC Equipment		
			\$ 8,000.00	LS	\$ 8,000.00

Rev 1/29/18 by SEC
City of Port Orchard
McCormick Village Park Splash Pad Treatment Facility Installation, Project # PW2022-008, Contract #C075-22
LD-19

Bid Documents

Item No.	Estimated Quantity	SP or STD	Description of Items	Unit Price	Amount
			The HVAC Equipment lump sum price shall include all work, materials, tools, labor, and equipment required to furnish and install the HVAC equipment as indicated on the Contract Drawings (See Drawings)		
F1	1	SP	200 Amp Breaker Sub Panel		
			\$ 2,000.00	LS	\$ 2,000.00
			The 200 Amp Breaker Sub Panel lump sum price shall include all work, materials, tools, labor, and equipment required to furnish and install the 200 amp breaker sub panel as indicated on the Contract Drawings(See Drawings)		

			Sub-Total	\$ 540,647
			Washington State Sales Tax (9.2%)	\$ 49,739.52
			TOTAL	\$ 590,386.52

SALES TAX

Retailing/Retail Sales Tax Rule WAC 458-20-170: Washington State Retail sales tax added as percent (%) in addition to contract bid price; sales tax shown as separate line item.

The undersigned Bidder hereby agrees to start construction on this project, if awarded, no later than **fourteen (14)** calendar days after Notice to Proceed and to complete the project within the time stipulated in the Contract. By signing below, Bidder acknowledges receipt of the following Addenda to the Bid Documents:

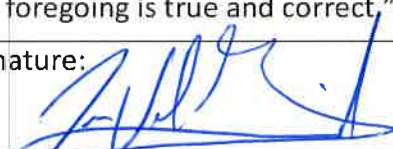
**CITY OF PORT ORCHARD
MCCORMICK VILLAGE PARK SPLASH PAD TREATMENT FACILITY INSTALLATION
CONTRACT NO. C075-22**

1	6/24/2022		
Addendum No.	Date of Receipt	Addendum No.	Date of Receipt
2	6/24/2022		
Addendum No.	Date of Receipt	Addendum No.	Date of Receipt

NOTE: Failure to acknowledge receipt of Addenda may be considered as an irregularity in the Bid Proposal and Owner reserves the right to determine whether the bid will be disqualified.

By signing below, Bidder certifies that s/he has reviewed the insurance provisions of the Bid Documents and will provide the required coverage.

The undersigned Bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date for this Project, the Bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

OFFICIAL AUTHORIZED TO SIGN FOR BIDDER:	
"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."	
Signature: 	Date: 6/24/2022
Printed Name and Title: Jon VanderGriend, Vice President	Location or Place Executed (City, State): Tacoma, WA
Business Address: 4111 Brookdale Rd East Tacoma WA 98446	Business Telephone: (253) 537-2990

NOTES: If the Bidder is a co-partnership, give firm name under which business is transacted; proposal must be executed by a partner. If the Bidder is a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign).

STATE OF Washington)
)ss.
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Jon VanderGriend signed this proposal, on oath stated that he/she was authorized to execute the proposal and acknowledged it as the Vice President (title) of Ceccanti, Inc. (name of party on behalf of whom proposal was executed) and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this proposal.

Dated this 24 day of June, 2022.



Kristie Rojas

Notary Public
Kristie Rojas

Printed Name

My Commission Expires:
01-15-23



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 8B</u>	Meeting Date:	<u>February 28, 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 28th day of February 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
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.

Consor 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								
Task 1 - Project Management and Coordination															
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
Task 1 Subtotal	2	3	4	0	7	9	25	\$ 4,754	\$ 38	\$ -	\$ -	\$ -	\$ -	\$ 4,792	
Task 2 - Engineering Services During Construction															
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
Task 2 Subtotal	42	0	59	101	0	0	202	\$ 44,458	\$ 225	\$ -	\$ -	\$ -	\$ -	\$ 44,683	
Task 3 - Contingency															
Task 3.1 - Contingency							0	\$ -	\$ 8,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,000
Task 3 Subtotal	0	0	0	0	0	0	0	\$ -	\$ 8,000	\$ -	\$ -	\$ -	\$ -	\$ 8,000	
TOTAL - ALL TASKS	44	3	63	101	7	9	227	\$ 49,212	\$ 8,263	\$ -	\$ -	\$ -	\$ -	\$ 57,475	



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 8C</u>	Meeting Date:	<u>February 28, 2023</u>
Subject:	<u>Adoption of a Resolution Amending</u>	Prepared by:	<u>Tony Lang</u>
	<u>Policies and Procedures for the City’s</u>		<u>Public Works Director</u>
	<u>Annual Spring Clean-up Program</u>	Atty Routing No:	<u>366922-006</u>
		Atty Review Date:	<u>February 17, 2023</u>

Summary: On September 14, 2021, the Port Orchard City Council adopted Resolution 057-21 for the “City of Port Orchard Policy and Procedures for Spring Cleanup Program”. The City began this event in the early 1990s, picking up extra solid waste from City residents with existing non-commercial solid waste accounts. The event is held in conjunction with the City’s solid waste residential pickup service provided by Waste Management. The program is valued by the City’s residents as it serves the City of Port Orchard’s public health, safety, and welfare, and helps to facilitate the City’s residents in the disposal of excess solid waste. The City’s Policies and Procedures brochure includes a list of Specialty Items eligible for the program and how much a resident would pay to have these items picked up and disposed of during the Clean-up event. The costs for disposal of these items at the Olympic View Transfer Station increased on January 1, 2023. The attached Policy and Procedures Brochure has been updated with the current rates to keep the fees charged by the City in alignment with the Olympic View Transfer Station rates. City Staff seeks approval to modify these rates and the Clean-up Brochure on an annual basis keeping Specialty Item fees in alignment with the Olympic View Transfer Station fees. By this Resolution, the City Council would approve the revised Policy and Procedures Brochure, adopt the new rates, and allow City staff to modify these rates and the Clean-up Brochure on an annual basis.

Recommendation: Staff recommends adoption of Resolution 016-23, thereby adopting the revised City of Port Orchard Policy and Procedures, updated Spring Cleanup Program Brochure, and allowing City Staff to modify Specialty Item fees on an annual basis so rates are in alignment with Olympic View Transfer Station.

Relationship to Comprehensive Plan: N/A

Motion for Consideration: I move to adopt Resolution 016-23, thereby adopting the Revised City of Port Orchard Policy and Procedures for the City’s Annual Spring Clean-up Program.

Fiscal Impact: In addition to staff time to operate the Program, the City makes an annual payment to Kitsap County Solid Waste for the total cost of all loads in excess of \$3,000. This cost varies each year.

Alternative: Do not approve and provide alternative guidance.

Attachments: Resolution 016-23

City of Port Orchard Policy and Procedures for Spring Cleanup Program Brochure-Clean
City of Port Orchard Policy and Procedures for Spring Cleanup Program-Redlined
2023 Clean-up Brochure

RESOLUTION NO. 016-23

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, ADOPTING REVISED POLICIES AND PROCEDURES FOR THE CITY OF PORT ORCHARD'S ANNUAL SPRING CLEAN-UP PROGRAM.

WHEREAS, The City of Port Orchard has hosted a clean-up event since the early 1990's to pick-up extra solid waste from city residents with existing non-commercial solid waste accounts; and

WHEREAS, on September 14, 2021, the Port Orchard City Council adopted Resolution 057-21 for the "City of Port Orchard Policy and Procedures for Spring Cleanup Program"; and

WHEREAS, The City's Policies and Procedures brochure, as adopted, includes a list of Specialty Items eligible for the program and the corresponding fees residents need pay to have these items picked up and disposed of during the Clean-up event; and

WHEREAS, The costs for disposal of these Specialty Items at the Olympic View Transfer Station was increased effective January 1, 2023; and

WHEREAS, the City would like to keep the fees paid by the Residents in alignment with the rates charged by the Transfer Station to offset the City's costs to haul and dispose of these large items; and

WHEREAS, City Staff seeks approval to modify these rates and the Clean-up Brochure on an annual basis keeping Specialty Item fees in alignment with the Olympic View Transfer Station fees; 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 hereby adopts the revised City of Port Orchard Policy and Procedures, updated Spring Cleanup Program Brochure, and allowing City Staff to modify Specialty Item fees on an annual basis so rates are in alignment with Olympic View Transfer Station.

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 28th day of February 2023.

Robert Putaansuu, Mayor

ATTEST:

City Clerk, Brandy Wallace, MMC



**CITY OF PORT ORCHARD
POLICY AND PROCEDURES
FOR
SPRING CLEAN-UP PROGRAM**

Purpose

The purpose of this policy is to establish guidelines, standards and procedures for the City of Port Orchard’s Spring Clean-up Events (the “Program”). The City, in coordination with its contractor solid waste service provider Waste Management, sets an annual Clean-Up week in the spring. During this week, City residents are provided an efficient means—through curb-side pick-up of additional solid waste items and white goods (i.e., appliances) by City Staff and Waste Management, in addition to the regular refuse pick-up by Waste Management. Providing solid waste services is a fundamental governmental service and this Program is imperative to provide this needed public health and welfare service to residents. This policy and procedures document is intended to govern the implementation of this Program.

Background

The City of Port Orchard has hosted a clean-up event since the early 1990s, consistently providing this vital service for its residents. For this program, the City has coordinated with its solid waste providers, beginning with Brem-Air and now with Waste Management. The current contract with Waste Management states, in pertinent part:

6.1 General

The Contractor shall provide two (2) city cleanup weeks annually (Spring and Fall), upon 90 days’ notice from the City. At each City cleanup, Contractor will pick up additional household refuse from each single-family residence at the curb (limit 2 cubic yards) and from multi-family premises. The City will provide equipment and manpower to pick up Bulky Material. Additional tonnage picked up by the Contractor and the City during these weeks will be paid for by the Contractor (maximum of \$3,000.00 per event).

As the City has grown in size, the service area for the Program and associated costs have

increased.

Program Parameters

- *Date/Timing.*
 - o The Program involves a Spring event (typically in the month of April).
 - o Each event takes place over the course of five (5) consecutive weekdays, from approximately 7am to 6pm.
 - o The Program involves the retrieval of refuse from individual, qualified residential customers on the same regularly scheduled garbage collection date for that particular customer.
 - o The event occurs during a week that is off-recycle (meaning not on a week when Waste Management recycling service is occurring).
 - o Eligible refuse must be placed on the street curb the evening before the qualified residential customer’s regular garbage day during the event’s window.

- *Qualified Residential Customers.*
 - o The Program’s service area and route are dictated by Waste Management’s Residential Garbage Service Route. Properties that are served by this Program are, therefore, those individual account holders who have a current Residential Garbage Account with Waste Management.
 - Per Port Orchard Municipal Code (“POMC”) 6.04.010, the City requires in pertinent part: “the maintenance of the public health, safety, sanitation and aesthetics requires that all generators of solid waste in the city of Port Orchard accept, arrange for, and pay for solid waste collection and disposal services established by the city.”
 - Waste Management offers two types of accounts: commercial and residential. Those eligible for Residential Garbage Accounts include: single family residential properties and multi-family dwelling units (duplexes, triplexes, etc.) where there is wagon service capabilities (not dumpster service, which are offered through a commercial account).

- *Eligible Refuse.*
 - o Waste Management will collect an additional two (2) cubic yards of household trash per Eligible Residential Customer without an additional charge (in addition to the regular waste management wagon) during the Program.
 - o General Household Items. City Staff will collect from qualified residential accounts the following items on the street curb adjacent to the regular garbage cans for pick-up, so long as the items – collectively – do not exceed a volume

of four (4) feet by four (4) feet, without the payment of any associated fee to the City:

- Baby Crib (dismantled) / Highchair / Playpen / Stroller
- Barbecue (no propane tank)
- Baseboard Heater
- Bicycle
- Coffee or End Table
- Computer Monitors / CPU
- Countertop
- Dresser
- Electric Fan
- Electric Space Heater (small)
- File Cabinet
- Furniture (made of wood, fiberboard, plastic, etc.)
- Garbage Disposal
- Lawn Table
- Lawn Chair
- Lawn Mower (oil and gas must be drained)
- Masonite
- Medicine Cabinet
- Rugs (small, no rolls of carpeting)
- Stereo
- Swimming pool (plastic, folded into a bundle)
- Swing set (disassembled and bundle)
- Home Gym Equipment (Treadmill, Bowflex, etc)
- TVs 30" or less will be picked up. Anything over 30" will not be picked up.
- Vacuum Cleaner
- VCR or DVD players
- Wheelchair (collapsible)
- Yard Toys
- Fencing, chain link/wire (rolled & secured)

- Specialty Items. Qualified residential accounts may also place the following items on the street curb adjacent to the regular garbage cans for pick-up, provided the account holder pays a fee to offset the City's costs to haul and dispose of these large items as follows to the City Clerk no later than one (1) week prior to the start date of the event, receives a tag from the City Clerk and places the tag on the item:

- Air Conditioner..... ~~\$20~~ \$28

▪ Bathtub (fiberglass/no cast iron).....	\$15 \$15
▪ Chair (upholstered).....	\$12 \$16
▪ Copier/Printer (small home type).....	\$10 \$10
▪ Couch/Love Seat (each piece).....	\$15 \$54
▪ Dishwasher.....	\$20 \$28
▪ Dryer.....	\$20 \$28
▪ Freezer (Household- No Commercial)....	\$20 \$28
▪ Gas Heater.....	\$20 \$28
▪ Mattress or Box Spring.....	\$12 \$16
▪ Microwave.....	\$12 \$12
▪ Range/Stove.....	\$20 \$28
▪ Refrigerator (large-No Commercial)	\$20 \$28
▪ Refrigerator (small)/Wine Cooler.....	\$20 \$20
▪ Sinks (no cast iron).....	\$10 \$10
▪ Sleeper Couch.....	\$30 \$66
▪ Toilet.....	\$15 \$15
▪ Washer.....	\$20 \$28
▪ Water heater.....	\$20 \$28
▪ Water Softener System.....	\$20 \$20
▪ Wheel Chair (non-collapsible).....	\$15 \$15

*City Staff shall update the above disposal rates on an annual basis so they are in alignment with Olympic View Transfer station’s disposal rates.

- *Ineligible Refuse.*

- All items not listed above are ineligible for pick-up as part of the program and will be left on the curb with a “We’re Sorry” tag that identifies the reason for rejection, including but not limited to the following:
 - Hazardous Waste
 - Construction/Demolition Debris
 - Roofing Materials
 - Carpets
 - Vinyl
 - Tile
 - Cabinets
 - Oil or Paint Cans
 - Batteries
 - Waste management cans
 - Pool Tables
 - Furnaces

- Recycling
 - Tires
 - Car Parts
 - Boats
 - Fluorescent Lights
 - Motorcycles
 - Wood Burning Stoves/Fireplaces
 - Satellite Dish (large)
 - Wood (firewood or construction)
 - Plate Glass, Glass window or Glass Shower doors
- Items in excess of the size parameters described above are ineligible for pick-up from the program.
 - Loose debris is ineligible for pick-up; all items must be boxed, bound or contained (but any containers utilized will not be returned).
 - Items that require a fee but the fee is not pre-paid are ineligible for pick-up.

Responsibilities of Public Works

- The Public Works Department is tasked with the execution of the Program. This role involves the following:
 - During the event:
 - Typically, all staff report for the events and provide pick-up service for the duration of the Program.
 - The Program utilizes two (2) dump trucks, a backhoe and 2-4 pick-up trucks for the pick-up service.
 - Staff will retrieve the refuse and load it into the City’s vehicles.
 - Staff will transport the refuse to the Olympic View Kitsap County Transfer Station, managed by Waste Management, or an appropriate recycling facility.
 - In advance of the events, staff will:
 - **Update fees and obtain Council approval, as appropriate;**
 - Prepare the route map (utilizing the Waste Management residential service map);
 - Prepare advertising materials for the event and advertise for the public;
 - Prepare the “We’re Sorry” tag for rejected items, and prepare a log for tracking rejected items for code enforcement;
 - Obtain from the Clerk’s Office the log of pre-paid items.

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- After the events, staff will:
 - Staff will maintain records of deposited loads/items, and route any received invoices from the County to the Finance Department.

Responsibilities of City Clerk

- The City Clerk is tasked with support of this Program. This role involves:
 - Coordination of the pre-payment of fees for Specialty Items. The Clerk shall develop an application short form for the use by members of the public who seek the collection of a Specialty Item.
 - The Clerk may accept applications and the associated fees during the regular business hours for City Hall, provided applications must be received and processed at least one (1) week prior to the date of the event.
 - The Clerk will issue a “sticker” to those applicants who submit an application for a valid Specialty Item and the associated fee.
 - The Clerk will route the payment to the Finance Department.
 - The Clerk will prepare a list of pre-paid items and associated property addresses and send to the Public Works Department in advance of the event’s start date.

Responsibilities of Finance Department

- The Finance Department is tasked with support of this Program. This role involves:
 - Collection and deposit of fees collected by the Clerk for Specialty Items, consistent with the fee schedule set out in this Policy (as may be amended by **City Staff and/or the City Council**).
 - Funding shall be held in the General Fund to offset the operational costs of the Program, including but not limited to staff time and use of City equipment.
 - Payment of any invoice received from Kitsap County Solid Waste for loads taken ~~to -Olympic View to the Kitsap County~~ Transfer Station as part of this Program in excess of \$3,000 (per the contract with Waste Management, referenced above).

Responsibilities of Code Enforcement

- The City’s Code Enforcement Officials are tasked with support of this Program. This role involves:
 - Following the event, Ineligible Refuse abandoned in the right of way or on

- private property may be prosecuted as a nuisance, consistent with POMC 9.30.
- Code Enforcement will respond to complaints of abandoned refuse and may take action consistent with the POMC and the City's applicable procedures.

Relevant Materials

- Attachment 1: Clean-up Brochure
- Attachment 2: "We're Sorry" Tag
- Attachment 3: Waste Management Franchise Agreement (excerpt)

*Approved by the City Council on **(September 14, 2021)***



**CITY OF PORT ORCHARD
POLICY AND PROCEDURES
FOR
SPRING CLEAN-UP PROGRAM**

Purpose

The purpose of this policy is to establish guidelines, standards and procedures for the City of Port Orchard’s Spring Clean-up Events (the “Program”). The City, in coordination with its contractor solid waste service provider Waste Management, sets an annual Clean-Up week in the spring. During this week, City residents are provided an efficient means—through curb-side pick-up of additional solid waste items and white goods (i.e., appliances) by City Staff and Waste Management, in addition to the regular refuse pick-up by Waste Management. Providing solid waste services is a fundamental governmental service and this Program is imperative to provide this needed public health and welfare service to residents. This policy and procedures document is intended to govern the implementation of this Program.

Background

The City of Port Orchard has hosted a clean-up event since the early 1990s, consistently providing this vital service for its residents. For this program, the City has coordinated with its solid waste providers, beginning with Brem-Air and now with Waste Management. The current contract with Waste Management states, in pertinent part:

6.1 General

The Contractor shall provide two (2) city cleanup weeks annually (Spring and Fall), upon 90 days’ notice from the City. At each City cleanup, Contractor will pick up additional household refuse from each single-family residence at the curb (limit 2 cubic yards) and from multi-family premises. The City will provide equipment and manpower to pick up Bulky Material. Additional tonnage picked up by the Contractor and the City during these weeks will be paid for by the Contractor (maximum of \$3,000.00 per event).

As the City has grown in size, the service area for the Program and associated costs have

increased.

Program Parameters

- *Date/Timing.*
 - o The Program involves a Spring event (typically in the month of April).
 - o Each event takes place over the course of five (5) consecutive weekdays, from approximately 7am to 6pm.
 - o The Program involves the retrieval of refuse from individual, qualified residential customers on the same regularly scheduled garbage collection date for that particular customer.
 - o The event occurs during a week that is off-recycle (meaning not on a week when Waste Management recycling service is occurring).
 - o Eligible refuse must be placed on the street curb the evening before the qualified residential customer's regular garbage day during the event's window.

- *Qualified Residential Customers.*
 - o The Program's service area and route are dictated by Waste Management's Residential Garbage Service Route. Properties that are served by this Program are, therefore, those individual account holders who have a current Residential Garbage Account with Waste Management.
 - Per Port Orchard Municipal Code ("POMC") 6.04.010, the City requires in pertinent part: "the maintenance of the public health, safety, sanitation and aesthetics requires that all generators of solid waste in the city of Port Orchard accept, arrange for, and pay for solid waste collection and disposal services established by the city."
 - Waste Management offers two types of accounts: commercial and residential. Those eligible for Residential Garbage Accounts include: single family residential properties and multi-family dwelling units (duplexes, triplexes, etc.) where there is wagon service capabilities (not dumpster service, which are offered through a commercial account).

- *Eligible Refuse.*
 - o Waste Management will collect an additional two (2) cubic yards of household trash per Eligible Residential Customer without an additional charge (in addition to the regular waste management wagon) during the Program.
 - o General Household Items. City Staff will collect from qualified residential accounts the following items on the street curb adjacent to the regular garbage cans for pick-up, so long as the items – collectively – do not exceed a volume

of four (4) feet by four (4) feet, without the payment of any associated fee to the City:

- Baby Crib (dismantled) / Highchair / Playpen / Stroller
 - Barbecue (no propane tank)
 - Baseboard Heater
 - Bicycle
 - Coffee or End Table
 - Computer Monitors / CPU
 - Countertop
 - Dresser
 - Electric Fan
 - Electric Space Heater (small)
 - File Cabinet
 - Furniture (made of wood, fiberboard, plastic, etc.)
 - Garbage Disposal
 - Lawn Table
 - Lawn Chair
 - Lawn Mower (oil and gas must be drained)
 - Masonite
 - Medicine Cabinet
 - Rugs (small, no rolls of carpeting)
 - Stereo
 - Swimming pool (plastic, folded into a bundle)
 - Swing set (disassembled and bundle)
 - Home Gym Equipment (Treadmill, Bowflex, etc)
 - TVs 30" or less will be picked up. Anything over 30" will not be picked up.
 - Vacuum Cleaner
 - VCR or DVD players
 - Wheelchair (collapsible)
 - Yard Toys
 - Fencing, chain link/wire (rolled & secured)
- Specialty Items. Qualified residential accounts may also place the following items on the street curb adjacent to the regular garbage cans for pick-up, provided the account holder pays a fee to offset the City's costs to haul and dispose of these large items as follows to the City Clerk no later than one (1) week prior to the start date of the event, receives a tag from the City Clerk and places the tag on the item:
- Air Conditioner..... ~~\$20~~ **\$28**

▪ Bathtub (fiberglass/no cast iron).....	\$15 \$15
▪ Chair (upholstered).....	\$12 \$16
▪ Copier/Printer (small home type).....	\$10 \$10
▪ Couch/Love Seat (each piece).....	\$15 \$54
▪ Dishwasher.....	\$20 \$28
▪ Dryer.....	\$20 \$28
▪ Freezer (Household- No Commercial)....	\$20 \$28
▪ Gas Heater.....	\$20 \$28
▪ Mattress or Box Spring.....	\$12 \$16
▪ Microwave.....	\$12 \$12
▪ Range/Stove.....	\$20 \$28
▪ Refrigerator (large-No Commercial)	\$20 \$28
▪ Refrigerator (small)/Wine Cooler.....	\$20 \$20
▪ Sinks (no cast iron).....	\$10 \$10
▪ Sleeper Couch.....	\$30 \$66
▪ Toilet.....	\$15 \$15
▪ Washer.....	\$20 \$28
▪ Water heater.....	\$20 \$28
▪ Water Softener System.....	\$20 \$20
▪ Wheel Chair (non-collapsible).....	\$15 \$15

*City Staff shall update the above disposal rates on an annual basis so they are in alignment with Olympic View Transfer station’s disposal rates.

- *Ineligible Refuse.*

- All items not listed above are ineligible for pick-up as part of the program and will be left on the curb with a “We’re Sorry” tag that identifies the reason for rejection, including but not limited to the following:
 - Hazardous Waste
 - Construction/Demolition Debris
 - Roofing Materials
 - Carpets
 - Vinyl
 - Tile
 - Cabinets
 - Oil or Paint Cans
 - Batteries
 - Waste management cans
 - Pool Tables
 - Furnaces

- Recycling
 - Tires
 - Car Parts
 - Boats
 - Fluorescent Lights
 - Motorcycles
 - Wood Burning Stoves/Fireplaces
 - Satellite Dish (large)
 - Wood (firewood or construction)
 - Plate Glass, Glass window or Glass Shower doors
- Items in excess of the size parameters described above are ineligible for pick-up from the program.
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 - Staff will retrieve the refuse and load it into the City’s vehicles.
 - Staff will transport the refuse to the Olympic View Kitsap County Transfer Station, managed by Waste Management, or an appropriate recycling facility.
 - In advance of the events, staff will:
 - Update fees and obtain Council approval, as appropriate;
 - Prepare the route map (utilizing the Waste Management residential service map);
 - Prepare advertising materials for the event and advertise for the public;
 - Prepare the “We’re Sorry” tag for rejected items, and prepare a log for tracking rejected items for code enforcement;
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- After the events, staff will:
 - Staff will maintain records of deposited loads/items, and route any received invoices from the County to the Finance Department.

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Responsibilities of Code Enforcement

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 - Following the event, Ineligible Refuse abandoned in the right of way or on

- private property may be prosecuted as a nuisance, consistent with POMC 9.30.
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Relevant Materials

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- Attachment 2: "We're Sorry" Tag
- Attachment 3: Waste Management Franchise Agreement (excerpt)

*Approved by the City Council on **(September 14, 2021)***

CLEAN UP WEEK

Week of April 10th—14th

This is a non-recycle or yard waste week. Please do not put out your Waste Management recycle or yard waste cans as they will not be picked up.

City of Port Orchard
216 Prospect Street

General Information	2
Major Appliances	3
Excluded Items	3
Clean Up List	4

IMPORTANT INFORMATION FOR THE PROGRAM

Due to an increase of residents taking part in the clean-up program and to avoid confusion of items allowed, the City has implemented a “tagging” system for articles not collected that do not meet the program requirements.

Please pay attention to the item(s) you are placing out and verifying that the constraints listed in this flyer are being met.

If you have any questions, please email us at
publicworks@portorchardwa.gov.

Thank you for your understanding.

GENERAL INFORMATION

The City of Port Orchard and Waste Management schedule one (1) annual Spring clean-up for city residents. During this week, City residents are provided an efficient means to have household refuse and other household items disposed of. Some items are free to set out, while others require a small fee. The City resident must pay for certain items one week in advance in the Treasurer's Office at City Hall and place all items at the street curb (next to garbage cans) on their regularly scheduled pick up day. **The City will not carry items from private property.** There is no charge for the collection and disposal of most smaller items. Items must be boxed, bagged, bundled, or easily handled. **The total volume of the collection must fit into a space 4 feet by 4 feet wide and 4 feet high. The City will not dump any Waste Management cans.**

If the items do not comply with the City requirements, the City will not pick them up. The items will not be allowed to remain at the street or in the right-of-way after the event.

YOU MUST BE A RESIDENT INSIDE PORT ORCHARD CITY LIMITS IN ORDER TO PARTICIPATE IN CLEAN-UP WEEK.

Please remember the following:

- Pick up is on your regularly scheduled garbage collection day. No recycling or yard waste will be picked up.
- All fee items must be paid for prior to the week of pick-up at the Treasurer's Office in City Hall. See list on page 4 for prices.
- All items to be disposed of must be on the street curb with the regular garbage cans on the evening before the resident's normal garbage collection day. The City crew will collect these item on the normal collection day. **THE CITY CREW WILL NOT BACKTRACK FOR ITEMS THAT WERE NOT PLACED OUT AT THE PROPER TIME OR PAID FOR IN ADVANCE.**
- Waste Management will collect an additional two (2) cubic yards of contained extra household trash per eligible residential customer without an additional charge during the Program. City crews will dump large bulky materials that are not easily handled by the Waste Management driver. The City will not dump any Waste Management cans.
- No loose debris is allowed.



Major Appliances

White goods such as stoves, washers, dryers, refrigerators, and freezers can be included for Clean-Up Week. For a fee, the City crew will haul appliances to be recycled. Fees for white goods must be paid one (1) week prior to the day of pick-up in the Treasurer's Office. The City will take these items that have been paid for to the recycle site. **Appliances must be placed at the curb next to your garbage can.**

Excluded Items

This list contains examples of items that are prohibited and will not be collected. This is not a comprehensive list. Please do not leave these items out as we will not collect them. Unacceptable items will be left with a "We're sorry" tag identifying the reason.

- Hazardous Waste
- Construction/Demolition Debris
- Roofing Materials
- Carpets
- Vinyl
- Tile
- Cabinets
- Oil or Paint Cans
- Batteries
- Waste Management cans
- Pool Tables
- Furnaces
- Recycling (Cardboard, etc)
- Tires
- Car Parts
- Boats
- Fluorescent Lights
- Motorcycles
- Wood Burning Stoves/Fireplaces
- Satellite Dish (large)
- Wood (firewood or construction debris)
- Plate Glass, Glass window or Glass Shower doors



Please do not leave these items out as we will not collect them.

Kitsap County residents may bring **hazardous** products to the Kitsap County Moderate Risk Waste Collection Facility for proper handling. There is no charge for residential disposal. They are open Thursday through Saturday, 10:00am–4:00pm. **Residential customers only! Business customers must call for an appointment.** For additional information, please visit their website at <https://spf.kitsapgov.com/pw/Pages/HHWFacility.aspx> or call 360.337.5777.

Clean Up List

Due to limited space, we can't list all items. If an item is not on this list, please email us at publicworks@portorchardwa.gov to find out if we take the item and if there is a fee.

- Baby Crib (dismantled)/High Chair/Playpen
- Stroller
- Barbecue (no propane tank)
- Baseboard Heater
- Bicycle
- Coffee or End Table
- Computer Monitors/CPU
- Countertop
- Dresser
- Electric Fan
- Electric Space Heater (small)
- File Cabinet
- Furniture (made of wood, fiberboard, plastic, etc.)
- Garbage Disposal
- Lawn Table
- Lawn Chair
- Lawn Mower (Oil and gas has to be drained)
- Masonite
- Medicine Cabinet
- Swimming Pools (plastic, folded into bundle)
- Swing set (disassembled and bundled)
- Home Gym Equipment (Treadmill, Bowflex, etc.)
- TV's 30" or less. TV's over 30" will not be picked up.
- Vacuum Cleaner
- VCR or DVD Player
- Wheel Chair (collapsible)
- Yard Toys
- Fencing, chain link/wire (rolled & secured)

FEE ITEMS

- | | |
|---|------|
| • Air Conditioner | \$28 |
| • Bathtub (fiberglass/no cast iron) | \$15 |
| • Chair (upholstered) | \$16 |
| • Copier/Printer (small home type) | \$10 |
| • Sofa/Love Seat (each piece) | \$54 |
| • Dishwasher | \$28 |
| • Dryer | \$28 |
| • Freezer (Household, no commercial) | \$28 |
| • Gas Heater | \$28 |
| • Mattress or Box Spring | \$16 |
| • Microwave | \$12 |
| • Range/Stove | \$28 |
| • Refrigerator (household, no commercial) | \$28 |
| • Refrigerator (small)/Wine Cooler | \$20 |
| • Sinks (no cast iron) | \$10 |
| • Sleeper Couch | \$66 |
| • Toilet | \$15 |
| • Washer | \$28 |
| • Water Heater | \$28 |
| • Water Softener System | \$20 |
| • Wheel Chair (non-collapsible) | \$15 |



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 8D</u>	Meeting Date:	<u>February 28, 2023</u>
Subject:	<u>Adoption of a Resolution Establishing an</u>	Prepared by:	<u>Debbie Lund</u>
	<u>Employee Inclusion Commission to focus</u>		<u>HR Director</u>
	<u>on the City’s Efforts Related to Diversity,</u>	Atty Routing No.:	<u>366922-0008</u>
	<u>Equity and Inclusion Among City</u>	Atty Review Date:	<u>February 22, 2023</u>
	<u>Employees</u>		

Summary: On January 10, 2023, Human Resources Specialist Beth Spalding presented to the City Council the culmination of nearly a year’s worth of work related to diversity, equity and inclusion (DEI) at the City of Port Orchard. After that presentation, the Council expressed a desire to continue the City’s work toward DEI and incorporate Ms. Spalding’s recommendation to form an employee Inclusion Commission to focus on DEI efforts at the employee level.

The proposed Inclusion Commission would operate on much the same basis as the City’s current employee Wellness Committee. The Inclusion Commission will research, study and recommend to the Mayor goals, programs, and strategies to improve the DEI efforts of the City. The Inclusion Commission will report their progress to the City Council at least annually.

Recommendation: In line with the Council’s guiding principle of positively impacting diversity, equity and inclusion, staff recommends the Council adopt the attached resolution approving an employee Inclusion Commission.

Relationship to Comprehensive Plan: The establishment of an employee Inclusion Commission should complement the goals of the City’s Comprehensive Plan by supporting a diverse workforce, aiming to mirror the community the City serves, and embracing and celebrating the differences between individuals.

Motion for consideration: “I move to adopt a Resolution establishing an employee Inclusion Commission to focus on the City’s efforts related to diversity, equity and inclusion among City employees.”

Fiscal Impact: Any unbudgeted costs for the operations and proposed recommendations of the Inclusion Commission will be brought to the City Council in the future for consideration.

Alternatives: Do not approve the proposed resolution and provide alternative guidance.

Attachments: Proposed Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, ESTABLISHING AN EMPLOYEE INCLUSION COMMISSION TO FOCUS ON THE CITY'S EFFORTS RELATED TO DIVERSITY, EQUITY, AND INCLUSION AMONG CITY EMPLOYEES.

WHEREAS, the City Council of the City of Port Orchard recognizes that organizations that employ diverse populations have been shown to enjoy a number of positive benefits as compared to less diverse organizations, including higher productivity, innovation, accuracy, revenue, employee retention, and employee engagement; and

WHEREAS, the City of Port Orchard's racial and ethnic demographics have become increasingly diverse over the past few decades; and

WHEREAS, the Port Orchard City Council recognizes that a workforce that is representative of the population improves the delivery of municipal government services; and

WHEREAS, "diversity" describes a group with characteristic differences in areas such as sex, race, ethnicity, sexual orientation, gender, religion, socioeconomic status, physical or mental ability, etc.; and

WHEREAS, "equity" refers to designing and altering processes, programs, laws, etc. to result in fair outcomes for all individuals; and

WHEREAS, "inclusion" refers to establishing a workplace culture designed to foster feelings of belonging and welcome for each individual; and

WHEREAS, the Port Orchard City Council recognizes that improvements to workplace inclusion, achievable through workplace education, promotions, and activities, can result in a more welcoming and diverse workplace; now, therefore,

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

SECTION 1. ADOPTION AND PURPOSE STATEMENT. The City of Port Orchard hereby establishes an Inclusion Commission consisting of City employees. The purpose of the Inclusion Commission is to foster a culture of inclusion at the City through education, promotions, and activities surrounding issues of diversity, equity, and inclusion. The Inclusion Commission will be advisory to the Mayor and City Council on matters related to diversity, equity and inclusion.

SECTION 2. PARTICIPATION. Unless otherwise directed by the Mayor, participation on the Inclusion Commission and organized programs and events will be voluntary. Employees serving on the Inclusion Commission shall not be entitled to additional compensation above their regular rate of pay.

SECTION 3. COMMISSION COORDINATOR. The City of Port Orchard hereby designates authority to the Human Resources Director to serve as the Inclusion Commission Coordinator or delegate the role to an employee interested in serving as the Coordinator.

SECTION 4. MEETINGS. The Inclusion Commission Coordinator will schedule regular meetings for the Commission. The meetings shall be for the purposes of making recommendations to the Mayor related to diversity, equity and inclusion; coordinating education and program efforts; and soliciting and receiving input and feedback related to diversity, equity, and inclusion from City employees.

SECTION 5. RESOURCES. The City Council authorizes the Mayor to propose a budget and expend authorized funds as appropriate for the approved activities of the Commission and necessary training and education of the Inclusion Commission members and City employees. Employees participating in the Inclusion Commission meetings and work hour events shall do so on City time with the support of their department and manager.

SECTION 6. GOALS. The Inclusion Commission will recommend to the Mayor initial and ongoing short and long-term goals related to diversity, equity, and inclusion efforts impacting City employees.

SECTION 7. REPORTS TO COUNCIL. The Inclusion Commission will report to the City Council at least annually on the activities of the Commission and progress towards the City's established goals related to diversity, equity, and inclusion.

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 28th day of February 2023.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk



City of Port Orchard

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

Agenda Staff Report

Agenda Item No.:	<u>Business Item 8E</u>	Meeting Date:	<u>February 28, 2023</u>
Subject:	<u>Adoption of a Resolution Approving a</u>	Prepared by:	<u>Tony Lang</u>
	<u>Contract with KPFF Consulting Engineers</u>		<u>Public Works Director</u>
	<u>for the Bay Street Pathway West</u>	Atty Routing No.:	<u>366922-0009</u>
	<u>Situational Study</u>	Atty Review Date:	<u>February 17, 2023</u>

Summary: On May 10, 2022, the Port Orchard City Council approved Contract C044-22 (WSDOT LA 10296) accepting a grant from Washington State Department of Transportation. The funding is part of the Transportation Improvement Program for the 2019-2022 Federal Funding Cycle and was awarded to the City for the Bay Street Pathway West – Situational Study. The City identified a need for professional architecture and engineering services with expertise in Civil Engineering, Structural Engineering, Coastal Engineering, Geotechnical Engineering, Landscape Architecture, and Environmental Permitting. On August 26, 2022, and September 2, 2022, the City of Port Orchard Public Works Department published a Request for Qualifications (RFQ) for Architectural and Engineering Services for the Bay Street Pathway West – Situational Study, and by the September 16, 2022, deadline, the Public Works Department received one (1) Statement of Qualifications (SOQ) from a qualified firm. After reviewing the SOQ received, and based upon overall qualifications of the submitting firm, the Public Works Department determined KPFF Consulting Engineers met the requirements and criteria as described in the RFQ and was a responsible and responsive consultant to provide the Architectural and Engineering services for the Project. Public Works Staff met with KPFF Consulting Engineers to discuss, clarify, and develop the project understanding and the associated contract terms. On January 11, 2023, the City received a defined scope of work, budget, and fees from KPFF Consulting Engineers in an amount not to exceed \$560,103.86.

Relationship to Comprehensive Plan: Chapter 8 – Transportation

Recommendation: Staff recommends adoption of Resolution No. 003-23, approving and authorizing the Mayor to execute Contract No. C010-23 with KPFF Consulting Engineers for the Bay Street Pathway West – Situational Study in an amount of \$560,103.86

Motion for Consideration: I move to adopt Resolution No. 003-23, approving and authorizing the Mayor to execute Contract No. C010-23 with KPFF Consulting Engineers for the Bay Street Pathway West – Situational Study in an amount of \$560,103.86 and documenting the Professional Services procurement procedures.

Fiscal Impact: WSDOT Federal Grant Funding is included in the 2023-2024 Budget as well as a local match. Expenses for this study are included in GL Account No. 304.05.595.10.60.

Attachments: Resolution No. 003-23
Contract No. C010-23
Exhibit A Proposal

RESOLUTION NO. 003-23

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. C010-23 WITH KPFF CONSULTING ENGINEERS FOR ARCHITECTURAL AND ENGINEERING SERVICES FOR THE BAY STREET PEDESTRIAN PATHWAY WEST – SITUATIONAL STUDY AND DOCUMENTING PROCUREMENT PROCEDURES.

WHEREAS, On May 10, 2022, the Port Orchard City Council approved Contract C044-22 (WSDOT- LA 10296) accepting a grant from Washington State Department of Transportation; and

WHEREAS the funding is part of the Transportation Improvement Program for the 2019-2022 Federal Funding Cycle and was awarded to the City for the Bay Street Pathway West – Situational Study (the “Project”); and

WHEREAS, the City has identified a need for professional architecture and engineering services with expertise in Civil Engineering, Structural Engineering, Coastal Engineering, Geotechnical Engineering, Landscape Architecture, and Environmental Permitting for the “Project”; and

WHEREAS, on August 26, 2022, and September 2, 2022, the City of Port Orchard Public Works Department advertised a Request for Qualifications (RFQ) for Architectural and Engineering Services for the Bay Street Pathway West – Situational Study, and by the September 16, 2022, deadline, the Public Works Department received one (1) Statement of Qualifications (SOQ) from a qualified firm.; and

WHEREAS, after reviewing the SOQ received, and based upon the overall qualifications of the submitting firm, the Public Works Department determined KPFF Consulting Engineers met the requirements and criteria as described in the RFQ and was a responsible and responsive consultant to provide the Architectural and Engineering services for the Project.; and

WHEREAS, on January 4, 2023, Public Works Staff met with KPFF Consulting Engineers to discuss, clarify, and develop the project understanding and the associated contract terms; and

WHEREAS, on January 11, 2023, the City received a defined scope of work, budget, and fees from KPFF Consulting Engineers; and

WHEREAS, the Port Orchard City Council believes KPFF Consulting Engineers to be a highly qualified consulting firm for this 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. C010-23 with KPFF Consulting Engineers for the Bay Street Pathway West – Situational Study in a form acceptable to the City Attorney.

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 28th day of February 2023.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement

Agreement Number:

Firm/Organization Legal Name (do not use dba's):		
Address	Federal Aid Number	
UBI Number	Federal TIN or SSN Number	
Execution Date	Completion Date	
1099 Form Required <input type="checkbox"/> Yes <input type="checkbox"/> No	Federal Participation <input type="checkbox"/> Yes <input type="checkbox"/> No	
Project Title		
Description of Work		
<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No DBE Participation <input type="checkbox"/> No MBE Participation <input type="checkbox"/> No WBE Participation <input type="checkbox"/> No SBE Participation	Total Amount Authorized: Management Reserve Fund: Maximum Amount Payable:

Index of Exhibits

Exhibit A	Scope of Work
Exhibit B	DBE Participation
Exhibit C	Preparation and Delivery of Electronic Engineering and Other Data
Exhibit D	Prime Consultant Cost Computations
Exhibit E	Sub-consultant Cost Computations
Exhibit F	Title VI Assurances
Exhibit G	Certification Documents
Exhibit H	Liability Insurance Increase
Exhibit I	Alleged Consultant Design Error Procedures
Exhibit J	Consultant Claim Procedures

Agreement Number:

THIS AGREEMENT, made and entered into as shown in the “Execution Date” box on page one (1) of this AGREEMENT, between the hereinafter called the “AGENCY,” and the “Firm / Organization Name” referenced on page one (1) of this AGREEMENT, hereinafter called the “CONSULTANT.”

WHEREAS, the AGENCY desires to accomplish the work referenced in “Description of Work” on page one (1) of this AGREEMENT and hereafter called the “SERVICES;” and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. General Description of Work

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

II. General Scope of Work

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit “A” attached hereto and by this reference made a part of this AGREEMENT. The General Scope of Work was developed utilizing performance based contracting methodologies.

III. General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days’ notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit “A.”

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

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Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26, shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY's "DBE Program Participation Plan" and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

In the absents of a mandatory DBE goal, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall develop a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The CONSULTANT, on a monthly basis, shall enter the amounts paid to all firms (including Prime) involved with this AGREEMENT into the wsdot.diversitycompliance.com program. Payment information shall identify any DBE Participation.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C – Preparation and Delivery of Electronic Engineering and other Data."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:

Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
Facsimile:

If to CONSULTANT:

Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
Facsimile:

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT titled "Completion Date."

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

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V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES, specified in Section II, "Scope of Work". The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov). The estimate in support of the Cost Plus Fixed Fee amount is attached hereto as Exhibits "D" and "E" and by this reference made part of this AGREEMENT.

- A. Actual Costs: Payment for all consulting services for this PROJECT shall be on the basis of the CONSULTANT'S actual cost plus a fixed fee. The actual cost shall include direct salary cost, indirect cost rate, and direct non-salary costs.
1. Direct (RAW) Labor Costs: The Direct (RAW) Labor Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the AGENCY.
 2. Indirect Cost Rate (ICR) Costs: ICR Costs are those costs, other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the ICR rates shown in attached Exhibits "D" and "E" of this AGREEMENT. Total ICR payment shall be based on Actual Costs. The AGENCY agrees to reimburse the CONSULTANT the actual ICR costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.
A summary of the CONSULTANT'S cost estimate and the ICR percentage is shown in Exhibits "D" and "E", attached hereto and by this reference made part of this AGREEMENT. The CONSULTANT (prime and all A&E sub-consultants) will submit to the AGENCY within six (6) months after the end of each firm's fiscal year, an ICR schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the ICR rate for billings received and paid during the fiscal year represented by the ICR schedule. It shall also be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's ICR cost to reflect the actual rate. The ICR schedule will be sent to Email: ConsultantRates@wsdot.wa.gov.
Failure to supply this information by either the prime CONSULTANT or any of their A&E sub-consultants shall cause the AGENCY to withhold payment of the billed ICR costs until such time as the required information is received and an overhead rate for billing purposes is approved.
The AGENCY's Project Manager and/or the Federal Government may perform an audit of the CONSULTANT'S books and records at any time during regular business hours to determine the actual ICR rate, if they so desire.
 3. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. (excluding Meals, which are reimbursed at the per diem rates identified in this section) These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with WSDOT's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and revisions thereto. Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

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4. Fixed Fee: The Fixed Fee, which represents the CONSULTANT'S profit, is shown in attached Exhibits "D" and "E" of this AGREEMENT. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event the CONSULTANT enters into a supplemental AGREEMENT for additional work, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the Monthly Progress Reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
 5. Management Reserve Fund (MRF): The AGENCY may desire to establish MRF to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the MRF is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the MRF shall be made in accordance with Section XIII, "Extra Work."
 6. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the MRF. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- B. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of Actual Costs plus the ICR and calculated fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, "General Requirements" of this AGREEMENT. The billings will be supported by an itemized listing for each item including Direct (RAW) Labor, Direct Non-Salary, and allowable ICR Costs to which will be added the prorated Fixed Fee. To provide a means of verifying the billed Direct (RAW) Labor costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, Direct (RAW) Labor rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent, if applicable, upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit; all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) working days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

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D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and/or at the request of the AGENCY's Project Manager.

VI. Sub-Contracting

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit "E" attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each sub-consultant cost estimate unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fixed fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V "Payment Provisions" herein and shall be memorialized in a final written acknowledgement between the parties.

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE's Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's

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Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

VIII. Nondiscrimination

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973 (23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973 (29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975 (42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987 (Public Law 100-259)
- American with Disabilities Act of 1990 (42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged and any appropriate fixed fee percentage at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to

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date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs and appropriate fixed fee percentage in accordance with the termination for other than default clauses listed previously.

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee. The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII "Extra Work."

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J". In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

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XII. Legal Relations

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold The State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and/or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable, in performance of the Work under this AGREEMENT or arising out of any use in connection with the AGREEMENT of methods, processes, designs, information or other items furnished or communicated to STATE and/or the AGENCY, their agents, officers and employees pursuant to the AGREEMENT; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE and/or AGENCY's, their agents', officers' and employees' failure to comply with specific written instructions regarding use provided to STATE and/or AGENCY, their agents, officers and employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONSULTANT terminate this AGREEMENT if it is found after due notice and examination by the AGENCY that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONSULTANT in the procurement of, or performance under, this AGREEMENT.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and /or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated between the Parties.

Agreement Number:

Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
Facsimile:

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY, including that which may arise in reference to section IX "Termination of Agreement" of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT amount or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

Agreement Number:

The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V “Payment Provisions” until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIII. Extra Work

- A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit any “request for equitable adjustment,” hereafter referred to as “CLAIM,” under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the section XI “Disputes” clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the Agency

Attached hereto as Exhibit “G-1(a and b)” are the Certifications of the CONSULTANT and the AGENCY, Exhibit “G-2” Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit “G-3” Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit “G-4” Certificate of Current Cost or Pricing Data. Exhibit “G-3” is required only in AGREEMENT’s over one hundred thousand dollars (\$100,000.00) and Exhibit “G-4” is required only in AGREEMENT’s over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III “General Requirements” prior to its performance of any SERVICES under this AGREEMENT.

Agreement Number:

XVII. Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

XVIII. Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, State security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, sub-consultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY's express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a nondisclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information.

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State's Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State's Confidential Information was received; who received, maintained and used the State's Confidential Information; and the final disposition of the State's Confidential Information. The CONSULTANT's records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Agreement Number:

Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State's Confidential Information, monetary damages, or penalties.

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT; or (b) as soon as such confidential or proprietary material is developed. "Proprietary and/or confidential information" is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and/or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as "Proprietary and/or confidential information" or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

XX. Records Maintenance

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain and maintain all "documents" pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all "documents" pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT's place of business during normal working hours. If any litigation, claim or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. "Documents" shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim or audit continues past the six (6) year retention period.

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENT 's, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbings, recordings, visual displays, photographs, minutes of meetings,

Agreement Number:

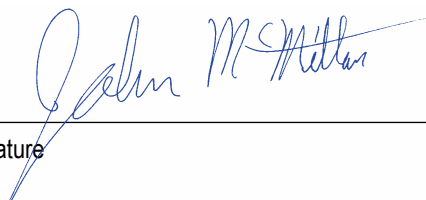
tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, "ESI" means any and all computer data or electronic recorded media of any kind, including "Native Files", that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops or any other electronic device that CONSULTANT uses in the performance of its Work or SERVICES hereunder, including any personal devices used by the CONSULTANT or any sub-consultant at home.

"Native files" are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified.

The CONSULTANT shall include this section XX "Records Maintenance" in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.



Signature

Date

Signature

Date

Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

Agreement Number:

Exhibit A
Scope of Work

Project No.

Agreement Number:

BAY STREET PATHWAY WEST, SITUATIONAL STUDY

SCOPE OF WORK

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Project Description

Introduction

The Bay Street Pathway West Project Situational Study goals include providing a feasibility assessment to connect the current westerly terminus of the Bay Street Pedestrian pathway at the Kitsap Transit Foot Ferry terminal at Sydney Avenue, with the easterly terminus of the Tremont Street Improvement Project. The proposed alignment of the Bay Street Pedestrian Pathway will run along the shoreline of Sinclair inlet where feasible. The Consultant will provide a focused, detailed analysis and alternatives of the proposed trail segment along the waterfront from Sydney Avenue to Port Orchard Boulevard, with a higher level examination of potential multi-use pathway cross-sections and alignments from Bay Street, along Port Orchard Boulevard, to Tremont Street. (Refer to Figure 1 for the proposed multi-use pathway trail alignment feasibility study area) The connection may include multi-use pathway or a complete street improvement with sidewalks and bike lanes.

The Consultant shall develop alternatives, support community outreach and engagement and assist the City in arriving at a preferred alternative. The alternatives developed by the CONSULTANT will incorporate current planned public and private development and projected future development within the project limits and the City's waterfront. (Refer to Figure 2)

Schedule

- NTP January 2023
- Alternatives presented to the public Q2 2023
- Preferred Alternative Selected by the City Q3 2023
- Concept design completed Q4 2023
- Design and Construction dependent on funding

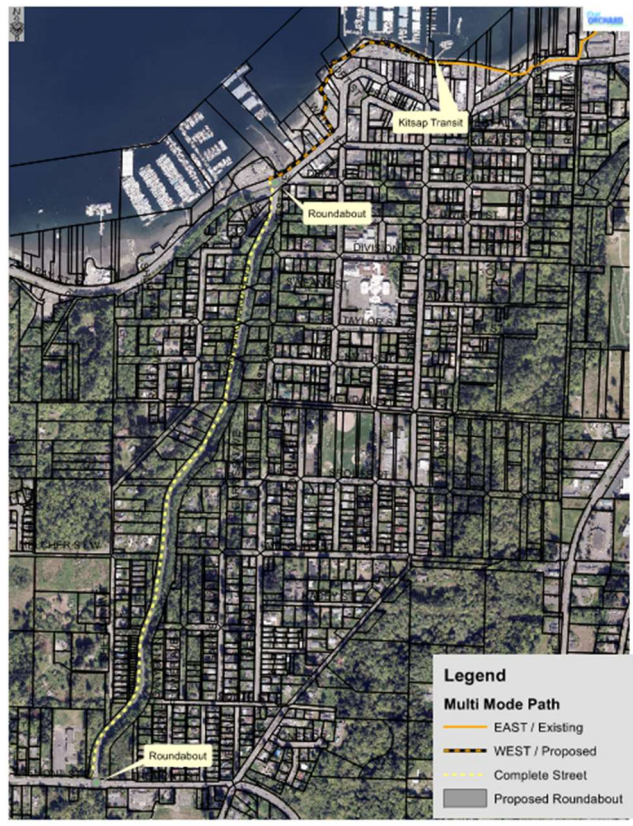


Figure 1 - Map of Proposed Multi-Use Pathway Trail Alternatives Analysis Alignment Feasibility Study Area

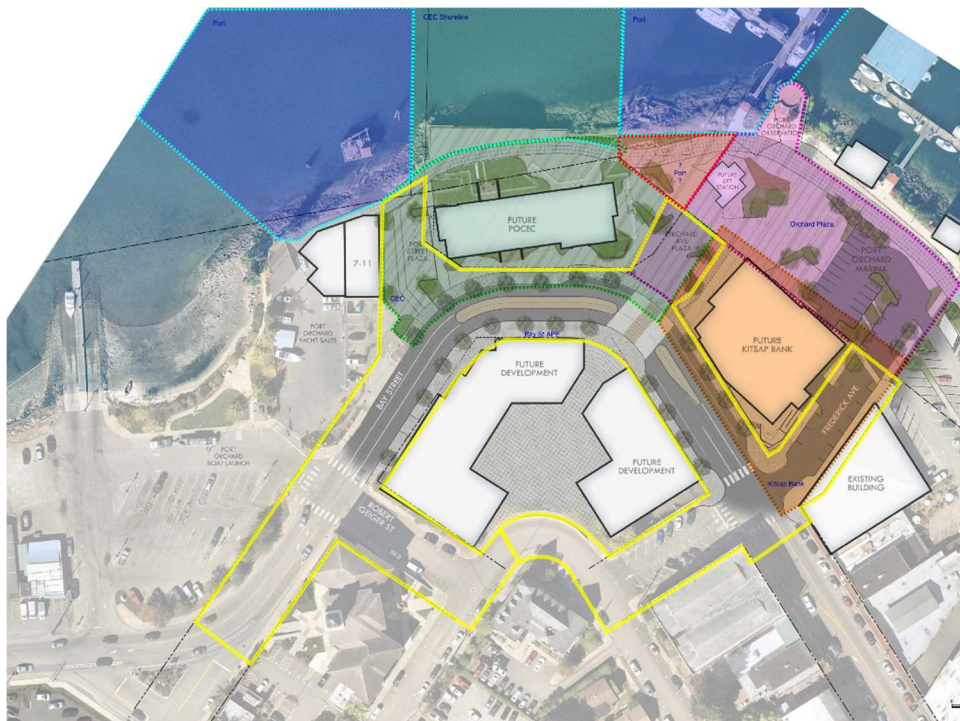


Figure 2 - Bay Street and Waterfront Planned and Future Development Projects

Key Stakeholders

City of Port Orchard, local residents, local businesses, Kitsap Transit, Port Orchard Fire Department, Local Bicycle Community, Port of Bremerton, and Local Tribes.

Assumptions

The following are general project assumptions for the Scope of Work; other assumptions are found within the project tasks.

1. Project limits are the existing Bay Street Trail near the Kitsap Transit Foot Ferry (northern limit) to Tremont Street (southern limit). The overall corridor is approximately 1.5 miles in length.
2. Scope of the project improvements will be refined through an engagement process with a project steering committee, stakeholders, and City staff.
3. Alternative routing/treatment concepts shall be developed in partnership with the City and stakeholders. Feedback on alternatives shall be collected through a public engagement process. City staff shall make the final decision on a preferred alternative, considering input from the public, project steering committee and stakeholders.
4. A concept design shall be developed by the CONSULTANT upon selection of the preferred alternative by the City.
5. The City shall acquire Rights-of-Entry required access to property along the corridor and provide them to the CONSULTANT.

Information Provided by the City

1. Record drawings for roadway, water, sewer, stormwater and lighting.
2. City CADD PS&E standards and survey standards for use by the CONSULTANT, unless authority for plan and survey standards are delegated to the CONSULTANT.
3. Relevant information for on-going and planned City and 3rd party redevelopment projects.
4. Utility agencies and contact person within the project limits.
5. Identification of known critical areas and issues within the project's limits.
6. Geotechnical Reports and bore log data of relevant past projects along and adjacent to the proposed project alignment.
7. Traffic counts and traffic collision data for the project area.

Task 1: Project Management

The CONSULTANT shall provide overall project administration and management for the duration of the project.

1.1 Contract Administration

The CONSULTANT shall develop and manage the project scope, schedule, and budget and execute contract administration activities as needed to complete the scope of work.

Monthly invoices for work completed to date shall be submitted to the City with cost tracking at the Task Level.

The CONSULTANT may re-allocate budget between tasks and sub-consultants at the approval of the City to meet project needs.

Deliverable(s):

1. Scope, schedule, and budget updates as warranted (electronic PDF).
2. Monthly progress report summary (electronic PDF).
3. Monthly invoices (electronic PDF).

1.2 Project Management Plan

The CONSULTANT shall develop and maintain a simplistic Project Management Plan (PMP). The PMP shall include:

- Project Team Org Chart and Contact List
- Work Breakdown Structure
- Change Management, Schedule Management and Risk Management Plans
- Quality Control and Quality Assurance Procedures

A Risk Registry and design issue log shall be maintained by the CONSULTANT.

An electronic file sharing site shall also be developed and maintained by the CONSULTANT for project use.

Deliverable(s):

1. PMP (living document) (electronic PDF or DOCX).
2. Risk Registry (living document) (electronic PDF or DOCX).
3. Design issue log (living document) electronic PDF or DOCX).
4. Electronic file sharing site.

1.3 Subconsultant Management

The CONSULTANT shall prepare SUBCONSULTANT contracts and manage SUBCONSULTANTS to ensure accurate and timely implementation of the work plan and the appropriate coordination of work activities, including the review of all

SUBCONSULTANTS' work on various project elements. In addition, the CONSULTANT shall conduct reviews of SUBCONSULTANTS' progress and invoices.

1.4 Coordination Meetings

The CONSULTANT shall schedule, attend, and host project meetings to support the project and facilitate communication.

Project Management Meetings

The CONSULTANT Project Manager (PM), Consultant Lead Engineer and the City PM shall have a monthly virtual meeting to discuss project issues, current status, and upcoming work for the duration of the project design phase, with an expected duration of 60 minutes. The CONSULTANT PM shall also attend five two-hour face-to-face meetings with various City staff to support the project, with virtual meetings assumed.

Design Milestone Meetings

CONSULTANT will schedule meetings with the City at project milestones noted below to coordinate the planning process. Meetings are assumed virtual and last ninety minutes each.

- Kickoff
- Early alternative layout
- Concept Review
- Preferred Alternative Presentation

The project kickoff meeting shall be attended by the CONSULTANT PM, the Lead Engineer, Urban Designer, Structural Lead, Consultant Project Coordinator and the Active Transportation Lead.

All other milestone meetings will be attended by the CONSULTANT PM and CONSULTANT LEAD ENGINEER only.

City Council/Executive Committee Briefings

The CONSULTANT PM will attend up to three (3) briefing sessions with City Engineering Staff or Council members.

Assumption(s):

1. Briefings will occur prior to the public outreach meetings.

Deliverable(s):

1. Meeting presentation material.
2. Meeting draft and final notes.

Third-Party Project Technical Coordination Meetings

The CONSULTANT will attend up to four (4) 90-minute meetings with third parties relevant to the project to coordinate technical issues on the project, such as utility coordination needs, Right-of-Way coordination, and permitting coordination. Third parties may include utility providers and transit service providers in the corridor.

Assumption(s):

1. Meetings shall be technical in nature and require two CONSULTANT staff member per meeting.
2. The CONSULTANT shall develop exhibits and supporting material for each meeting.
3. City staff shall be invited to all technical coordination meetings.

Deliverable(s):

1. Meeting agenda provided 2 business days ahead of scheduled meetings
2. Meeting presentation/coordination materials.
3. Meeting draft and final notes.

Coordination with WSDOT is addressed within Task 8 of this scope of work

Task 2: Data Collection

2.1 Data Collection

The CONSULTANT shall review existing data, document the major findings, determine what additional data is needed, and conduct a site visit to review existing conditions. In addition, the CONSULTANT shall complete the following activities:

- Collect and review utility GIS information.
- Coordinate with the City and private utilities to ensure utility information is shown correctly within the plan set.
- Collect existing record drawings within the project vicinity.
- Collect proposed redevelopment planning documents and the current development plan sets from active relevant proposed development projects

Assumption(s):

1. The existing conditions site visit shall occur after survey has been collected.
2. City will provide information in electronic PDF format, including traffic counts, transit information, and background records.
3. City will provide anticipated development plans for all developments within the project area.

Deliverable(s):

1. Tech memo summary of project existing condition site visit.
2. Tech memo summary of utility coordination data revisions or updates.
3. Tech memo summary on anticipated redevelopment within the project vicinity
4. Electronic publication of collected records.

2.2 Survey

The CONSULTANT shall provide full topographic survey for the waterfront portion of the project from Sydney Avenue at the east terminus of the project limits to the intersection of SR 166/Port Orchard Boulevard (with topo survey collected four hundred feet south of this intersection along Port Orchard Boulevard). Survey shall extend 100 feet beyond side street curb returns.

Within these areas:

1. The CONSULTANT shall utilize existing survey collected by WSDOT for proposed Fish Passage Culvert work near the intersection of Bay Street and Port Orchard Boulevard.
2. The CONSULTANT shall utilize existing survey collected by KPFF Consulting Engineers near the planned City Community Events Center redevelopment location.

The CONSULTANT shall utilize Photogrammetry or lidar methods From SR 166/Port Orchard Boulevard to Tremont St along Port Orchard Boulevard to meet the standard of care for the concept planning study.

The CONSULTANT shall collect right-of-way survey within the project vicinity. Monuments shall be located and used to establish rights-of-way for the project vicinity within 100 feet of alternative pathways.

The CONSULTANT shall collect surface visual utility survey, including drainage and sewer utility measure-downs of accessible catch basins, manholes, inlets, and other drainage structures within the project vicinity. Information on non-visual underground utilities shall be collected by the CONSULTANT using GIS information, record drawings, 3rd party utility locates or other means.

The CONSULTANT shall develop a Civil 3D basemap of the existing conditions per the City Standards and a Civil 3D existing condition Digital Terrain Model.

Topo survey beyond the ROW limits shall be collected to existing building faces or 30 feet beyond the ROW without entry into private property by the CONSULTANT using Photogrammetry or Lidar methods. Survey will be conducted to water edge and based on level of tide at time of survey.

Parcel limits shall be reviewed against parcel limits identified in the Community Event Center project produced by KPFF Consulting Engineers for a local redevelopment project.

Trees six (6") inches in diameter and larger will be surveyed. Trees will be labeled with trunk and dripline diameter and will be classified as coniferous or deciduous on the basemap survey.

Assumption(s)

- Ground-Based Lidar or aerial survey methods will be utilized by the CONSULTANT for survey collection on private property within the corridor.
- Civil 3D 2020 shall be the project's existing condition file format and mapping will conform to City standards provided by City. APWA standards will be used if the City does not have specific survey standards.
- City will provide title block and associates information for the construction control sheet at least three (3) weeks prior to deliverable due dates.
- Survey requiring confined space entry is beyond the scope of work. Manholes over 25 feet deep or full of debris/water may not be as-built since they may require confined space entry to access the manhole in order to accurately measure the depth (if needed).
- Survey basemaps will be provided in U.S. Survey Feet NAD 83(2011) horizontal and NAVD 88 vertical datums, unless otherwise directed.
- Through 811 service, the survey basemap will state the utility locate ticket number and list potential utility stakeholders in the vicinity.
- CONSULTANT will rely upon a private 3rd party utility locator to place tone (paint) marks within the survey limits for conductible utilities within ROW. CONSULTANT shall collect data of field marked conductible utility locates, as warranted, during survey data collection.
- Establishment of parcel limits will not be made beyond GIS limits. If a TCE or right-of-way need is established in the concept design phase, the CONSULTANT shall note the issue for future project action during the project design phase. Property line and easement locations shown on survey basemap will be based on public record information and work prepared by KPFF Consulting Engineers on other nearby projects
- Parcel limit history along the waterfront has conflicting historic records. Survey parcel limits used by the team shall include parcel limits developed by other projects approved by the City.

Deliverable(s):

1. Existing Conditions survey in Civil 3D 2020 format in 2D and 3D with right-of-way limits.
2. Existing Surface DTM in Civil 3D 2020 format.
3. Horizontal and Vertical Control Drawings.

Task 3: Public Involvement Support

3.1 Public Outreach Engagement Plan

The CONSULTANT shall lead the public engagement efforts for this project. The CONSULTANT shall work with City staff to develop and execute a Public Outreach Engagement Plan to meaningfully engage community members in the development of the preferred concept and overall project delivery. The Public Outreach Engagement Plan will identify a schedule for public involvement, key stakeholders, messaging, and intended outcomes.

As part of this task, the CONSULTANT will review documentation of the previous City proposed trail system work within the project vicinity to assess past concerns and relevant issues.

The CONSULTANT public engagement lead shall participate in weekly meetings with project staff during peak outreach periods.

Assumption(s):

1. City staff will participate in development of the Public Engagement Plan.
2. The Plan will cover four key outreach periods: project notification, understanding existing needs and concerns, input on the design concept, and feedback on the preferred alternative.
3. The CONSULTANT PM and outreach lead will participate in four public engagement check-ins with the City.

Deliverable(s):

1. Draft and Final Public Engagement Plan.
2. Meeting agendas and meeting summaries.

3.2 Project Advisory Committee

The City Transportation Committee will serve as the Advisory Committee for the project to support project delivery and guide engagement opportunities with stakeholders. The City Transportation Committee is comprised of three council members, the City Mayor, City Director(s) and the City Engineer.

The CONSULTANT shall coordinate with the Advisory Committee. The project advisory committee shall provide input to the project design and serve as a resource for the design team to vet concepts and approaches to project delivery.

Assumption(s):

1. The design team shall formally brief the Advisor Committee on the project status, relevant issues, and design decisions requiring approval and input by the Advisory Committee:
 - One meeting before the alternatives are formally identified
 - One meeting before major public engagement events
 - One meeting before formal selection of the preferred alternative
2. The City's project manager will coordinate with Port of Bremerton and Kitsap Transit. The City's project manager will invite representatives to the City Transportation Committee meeting as necessary for development of the alternatives.

Deliverable(s):

1. Advisory Committee Meeting Materials, Agendas and Notes.

3.3 Virtual Engagement

CONSULTANT will develop survey content to support a virtual public engagement process, which will include one online open house. An informal public engagement survey will also be developed by the CONSULTANT to seek feedback on relevant project topics with the public.

CONSULTANT will provide graphic and written materials to the City for posting on the City's project website throughout the course of the project and for open house content, council study sessions and meetings with businesses.

Assumption(s):

1. City will maintain and host the project website and one virtual open house.
2. The City will host the survey on their website using the link provided by the CONSULTANT.
3. CONSULTANT will design the survey content for the City to review.
4. Survey questions will require limited narrative comment analysis and will primarily be multiple choice or rating-based.

3.4 Project Advertising and Public Engagement

The CONSULTANT shall prepare a hard copy mailer for all property owners on the corridor after NTP to communicate a project is coming, notify the public of engagement opportunities, and provide opportunities to communicate desires and needs to the design team.

The CONSULTANT will participate in up to four listening sessions with residents along the corridor to understand key issues and concerns with the proposed alternative.

The CONSULTANT will prepare one fact sheet about the project that will serve as an attachment for email communications and will be posted on the City's website.

The CONSULTANT will provide language and graphics to City staff to distribute information on social media and via email listservs.

The CONSULTANT will develop paper fliers and post in area businesses and community facilities advertising the project public engagement survey, including QR codes and links to the survey location.

The CONSULTANT will write a press release to be shared with various media in Port Orchard advertising the survey. This press release would also include short releases for Facebook and Twitter.

Assumption(s):

1. City staff will lead social media outreach and distribute notice via its contact email distribution list and other established notification channels.
2. City staff will coordinate meetings with residents.
3. City staff will print and mail hard copy mailer and post cards.
4. Port Orchard communications staff will share the press release with appropriate media outlets.

Deliverable(s):

1. Public outreach graphics.
2. Content for the flier, postcard, press release, and signs.
3. Documentation of materials delivery and public comments in an Excel or Word Document

Task 4: Concept Planning

4.1 Basis of Design

The CONSULTANT shall prepare a basis of design documenting design decisions, standards, and guidelines used in the design work and key assumptions in coordination with the City.

Basis of design shall also include a summary of proposed known redevelopment by other projects within the project limits.

Deliverable(s):

1. Basis of Design (living document).

4.2 Alternative Development

The CONSULTANT shall develop up to three alternatives to deliver a multi-use pathway or complete street improvements to improve accessible connection options from the Kitsap Transit Foot Ferry Terminal at Sydney Avenue to the northern terminus of Port Orchard Blvd at the intersection of Bay Street and Port Orchard Boulevard. The design shall assume a compact roundabout will be constructed within this intersection at a future date.

The CONSULTANT shall develop up to three alternatives to deliver a multi-use pathway or complete street improvements to provide an accessible connection from the northern terminus of Port Orchard Blvd to the intersection of Tremont Street West and Port Orchard Blvd.

Concept work near downtown Port Orchard shall be advanced to a higher level of design than work along Port Orchard Blvd.

The Alternative Development phase shall:

1. Evaluate opportunities to address stakeholder requests and concerns.
2. Identify design challenges and solutions.
3. Identify solutions to improve the quality of the walking and biking environment, including City identified goals for placemaking, urban design, and traffic calming opportunities.
4. Accommodate existing transit access at the Kitsap Foot Ferry Terminal at Sydney Avenue.
5. Coordinate design efforts with WSDOT vision for a future fish passage project on the East side of Port Orchard Boulevard, which may include significant structural work and estuary reconstruction.

6. Planning level layout for a future single lane roundabout at the intersection of Port Orchard BLVD and Bay Street.
7. Identify potential utility impacts.
8. Evaluate and report benefits and costs for each alternative with respect to the project goals.
9. Identify potential wall / structure locations and heights in the corridor with recommended wall types.
10. Focus on trail system termination / terminus
11. Evaluate safe crossing trail crossing SR 166 and Port Orchard Blvd integrated into the proposed roundabout layout, working in partnership with the City and WSDOT.

Assumption(s):

1. Three workshops shall be held with the design team and the City to review the alternative treatments and routing.
2. A planning-level cost estimate shall be developed for the recommended project elements.

Deliverable(s):

1. Alternative plan exhibits (Large Roll plots)
2. Planning-level cost estimates
3. Alternative Evaluation Memorandum

4.3 Concept Plan Development

The CONSULTANT shall prepare a concept design package for the project's preferred alternative. The concept design package shall be developed to a planning level of detail (10% design level of advancement) and include plans noted below.

Deliverable(s):

1. Draft and Final Concept Plans

4.3.1 General Plans

The CONSULTANT shall develop and update a cover sheet and drawings index. The CONSULTANT shall document general notes, abbreviations, and symbols.

The CONSULTANT shall develop survey control sheets for the project based on collected topographical survey, providing horizontal and vertical control for the project.

Deliverable(s):

1. Cover sheet.
2. General notes and legend sheet.

3. Survey control sheets.

4.3.2 Roadway/ROW Plans

The CONSULTANT shall produce roadway paving plans for the project and include any pertinent ROW information in the alignment sheets.

Assumption(s):

1. Plan sheets and profile sheets may be on separate plan sheets.
2. Pavement sections depths for inclusion into the project shall be provided to the CONSULTANT by the City.
3. Right of Way plans shall highlight required right-of-way and current ownership.

Deliverable(s):

1. Roadway Paving / ROW Plans
2. Profiles
3. Typical Sections
4. Round About Intersection Detail at Port Orchard BLVD and Bay Street
5. Key detail sheets

4.3.3 Channelization and Signage Plans

The CONSULTANT shall develop channelization and signage plans for the project.

Assumption(s):

1. City roadway signage within the corridor shall be replaced.
2. Other agency or private signage will be reused unless otherwise provided by their respective owner(s).

Deliverable(s):

1. Channelization and Signage Plans.

4.3.4 Structural Plans

The CONSULTANT shall develop structural engineering concept plans for proposed project elements.

Assumption(s):

1. Structures may include retaining walls, in water seawalls and piers

Deliverable(s):

1. Structural Design Concept Plans

4.3.5 Stormwater Evaluation

The CONSULTANT shall prepare a planning level Stormwater evaluation report for the project. The Stormwater evaluation report shall document the applicable regulations facing the project. Elevations critical to project delivery shall be documented. The evaluation shall focus on identification of required stormwater investments, estimated drainage system costs and next steps to obtain stormwater compliance.

The focus of the report shall be technical and the narrative is expected to be brief, utilizing tables, maps, schematic sketches/details, and bullets whenever possible. The draft stormwater evaluation report shall be turned in at the conclusion of the alternative evaluation process.

A high-level summary of stormwater implementation for alternatives considered by the project shall be provided and used as part of the alternative evaluation process.

Upon receiving City comments, the CONSULTANT shall formally reply to received comments via written response. A stormwater evaluation report shall be produced and submitted to the City upon completion of the project planning efforts.

Deliverable(s):

1. Draft and Final stormwater evaluation report.
2. Draft stormwater report comment responses.

4.3.6 Illumination Analysis and Design Memo

The CONSULTANT will evaluate existing illumination in the corridor and develop recommendations for trail illumination, including coordination with PSE and other franchise utilities. Lighting evaluation will be consistent with WSDOT and City of Port Orchard standards. The analysis will be completed using AGi 32 software. The CONSULTANT will develop a cost estimate of the recommendations. The CONSULTANT will submit an Existing Conditions memo summarizing the existing conditions lighting analysis, and a recommendations memo summarizing recommended illumination design and lighting levels along the trail corridor.

Assumption(s):

1. Consultant will work with the City and Stakeholders to develop proposed trail illumination standards, lighting fixtures and specifications.

Deliverable(s):

1. Existing lighting analysis memo with light level exhibits.
2. Memo addressing recommended illumination design and lighting levels along the trail corridor.

4.3.7 Landscape & Urban Design Memo

The CONSULTANT shall develop landscape and urban design memo, to support the preferred alternative concept, including:

- Planting palette and photo cut sheets for a variety of planting conditions including trees, shrubs, and groundcover options.
- Urban design elements within the project footprint, including placemaking elements, pedestrian amenities and biking facilities
- Urban design/placemaking elements such as: sidewalk paving patterns and finish treatments, site furnishings, decorative lighting elements, wayfinding signage, trail identity features, and public art opportunities.
- Illustrative plan graphics and sections, up to five (5) graphics, which will also be utilized to support public outreach.

Assumption(s):

1. Landscape and Urban Design Memo will include variations in response to location and land use (and will address downtown Port Orchard limits only)
2. Conceptual urban design shall identify unique areas along the shared-used path for pedestrian and bike amenities including hard and softscape. These areas may be used for resting, and/or trail mixing zones and will be identified in the conceptual design.
3. Arborist services and sign design are outside the project scope.

Deliverables:

1. Urban Design and Landscape Memo

4.3.8 Transportation Analysis

The CONSULTANT shall provide planning level transportation analysis services to inform the development of the Port Orchard BLVD trail alternatives and to support project advancement for a preferred alternative. The analysis will evaluate the existing intersection operations and use the City’s travel forecasts to evaluate future traffic operations at the Tremont Street SW/Port Orchard BLVD, High Street/Port Orchard BLVD, and Bay Street/Port Orchard BLVD intersections including a high-level roundabout evaluation at the Bay Street/Port Orchard BLVD intersection.

The transportation analysis shall review and analyze historical crash data for the last five (5) years at intersections and mid-block street segments within the study area. Using this data, the CONSULTANT will analyze the frequency, types, and rates and locations of crashes.

The CONSULTANT shall also produce a summary report that will evaluate each of the three developed corridor alternatives and describe the project’s likely traffic impacts of the preferred alternative for the Port Orchard BLVD as well as recommend next steps regarding WSDOT coordination.

Assumption(s):

1. City shall supply consultant with existing and future travel forecasts for the study intersections.

2. City shall provide collected traffic data within the project vicinity and collision history.

Deliverable(s):

1. Draft and Final Transportation Analysis memo

4.3.9 Engineer's Estimate

The CONSULTANT shall deliver an estimate for construction costs for alternatives. The estimate shall include a basis of estimate, documenting key assumptions and cost estimating methodology. A more detailed estimate shall be prepared for the preferred alternative.

Assumption(s):

1. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the project, the CONSULTANT shall have no control over cost or price of labor and materials, unknown or latent conditions of existing equipment or structures that might affect operation or maintenance costs, competitive bidding procedures and market conditions, time or quality of performance by operating personnel or third parties, and other economic and operational factors that might materially affect the ultimate project cost or schedule. The CONSULTANT, therefore, shall not warranty that the actual project costs, financial aspects, economic feasibility, or schedules shall not vary from CONSULTANT's opinions, analyses, projections, or estimates.
2. Budget-level cost estimates shall include appropriate contingency factors to account for project uncertainties that cannot be explicitly accounted for at the project's various engineering stages. Risks that have been identified shall be listed along with potential cost and schedule impacts.
3. The effort to prepare quantities for the estimate unit cost items and lump sums shall be provided under the respective design discipline task using the City's standard measurements.
4. All "soft costs" to be included within the cost estimate, such as City-procured items, and City self-preformed work will be provided to the CONSULTANT two weeks before the estimate due date.
5. Quantities shall be developed from engineered drawings to the maximum extent feasible.
6. Basis of estimate shall be limited to an executive summary of four pages maximum, with supporting appendix material as needed.
7. City shall provide direction on what edition of WSDOT Standard Specifications to use as the basis for the budget-level cost estimate bid items developed by the CONSULTANT

Deliverable(s):

1. Estimate in excel or PDF format with notes provided on basis of estimate.

4.3.10 Constructability Review

The CONSULTANT shall develop a constructability review report for the preferred alternative. The report shall address, at minimum, the following:

- Identification of major constructability challenges
- Potential in-water or near-water work restrictions or work windows
- Maintenance of traffic, work zone recommendations/considerations

Deliverable(s):

1. Constructability Review Report

4.3.11 Concept Design Summary Report

The CONSULTANT shall prepare a Concept Design Summary Report to signify the completion of the project's planning phase milestone.

The summary report shall include:

- Executive summary of the proposed project purpose and need
- Identified project needs
- Recommended project scope
- Next steps
- Public outreach summary
- Project construction cost estimate summary
- Right of Way need identification
- Project Risk Findings

The project concept design sheets shall be included as a project appendix

Other project submittals may be included as project appendix materials at the option of the City.

Deliverable(s):

1. Draft and Final Concept Design Summary Report

4.3.12 Quality Management

The CONSULTANT shall prepare the Quality Management Plan, and conduct thorough quality reviews and checks for each submittal. This task covers senior reviews of major work deliverables, including the concept design work. The project quality manager shall be responsible for ensuring that they are completed and documented. Such reviews shall be performed after deliverables are assembled and before their submittal to the City.

Quality control efforts and reviews shall encompass the work performed by the CONSULTANT and its SUBCONSULTANTS. Routine checking of calculations, plan sheets, and other work, done as peer review on the various discipline items, is included in the scope of the individual task.

Deliverable(s):

1. Quality Management Plan (electronic PDF).
2. Quality Management documentation (electronic PDF).
3. Submittal Comment Logs, with notes of action taken and responses.

Task 5: Environmental Services

5.1 Cultural Resources Services

The CONSULTANT will prepare a cultural resources literature review for the project, including the following components:

1. **Background research:** The CONSULTANT will conduct a search on Washington Department of Archaeology and Historic Preservation's (DAHP) WISAARD system to identify recorded historic built environment, historic register listed properties, archaeological sites, cemeteries, and previously completed cultural resources assessments in proximity to the project location. The CONSULTANT will review relevant correspondence between the project proponent, stakeholders, and DAHP. The CONSULTANT will review pertinent environmental, archaeological, ethnographic, and historical information appropriate to the project location from a variety of available resources. The CONSULTANT will create a Project in WISAARD and obtain a DAHP Project Tracking Number.
2. **Information Requests:** With the City's permission, the CONSULTANT will contact the cultural resources staff of tribes that may have an interest in or information regarding the project location via email to request any Tribal knowledge regarding archaeological or cultural resources within or near the project location that the Tribe would like to share. This is an information request only and does not take the place of any formal government-to-government consultation that may be required. The CONSULTANT will include the City project manager on these requests.
3. **Cultural resources literature review report:** The CONSULTANT will prepare a technical memo presenting the results of background research, methods, expectations, and management recommendations. The report will provide supporting documentation of findings, including historical maps and photographs, and will conform to DAHP reporting standards. This report will include recommendations for additional work that may need to be scoped. Report will be provided electronically in PDF format. This task includes one round of consolidated comments from the client prior to the submission of the final report to DAHP. The CONSULTANT will assist the client in submitting the cultural resources assessment and any associated documentation to DAHP, via their WISAARD system.

Assumption(s):

1. This scope does not include preparation of Section 106 or GEO 21-02 compliance documents, a field survey assessment, or preparation of an Inadvertent Discovery Plan or Archaeological Resources Monitoring Plan.
2. No meetings with clients or stakeholders will be required.
3. This scope does not include documentation of resources on DAHP archaeological sites or isolate forms, historic property inventory forms, or evaluating resources for potential significance under local, state, and/or national historic registers.

Deliverable(s):

1. Draft and final cultural resources literature review report

5.2 Environmental Strategy Support

The CONSULTANT shall provide environmental strategy support for the program, which will include providing to the Agency a two- to three-page memorandum containing summary-level desktop information related to existing environmental conditions in the 1.5-mile study area and federal, state, and local environmental permitting and approval information. Environmental conditions information will be limited to the existing land use, Comprehensive Plan and zoning designations, Shoreline Master Plan designations, parks/recreation areas, and mapped critical areas. Permitting and approval information will include potential federal, state, and local approvals and permits that could be needed related to land use, parks/recreation areas, and mapped critical areas, and their triggers. Approvals may include NEPA, Section 404/401, SEPA, Hydraulic Project Approvals, Section 4(f)/6(f), shoreline permits, and critical areas permits.

Assumption(s):

1. GIS analysis or report graphics are included in this scope.
2. Environmental review will be on a corridor level and will not evaluate alignment alternatives.
3. This analysis will use existing resources, including City maps, Comprehensive Plan, and municipal code. No fieldwork will be completed as part of this scope, nor will any new data be collected.
4. The technical memo shall be an internal planning document for the City and will not be submitted to any state or federal agency.
5. This scope does not include preparation of SEPA/NEPA documentation, preparation of permit applications, or consultation with agencies.
6. The Environmental Strategy support will require 18 months of invoicing and other project administration.

Deliverable(s):

1. Draft and Final Environmental Memorandum

Task 6: Geotech and Soil Evaluation Services

6.1 Geotechnical Services

The CONSULTANT shall evaluate the existing geotechnical and paving issues within the corridor and produce design criteria recommendations for use in planning level project development. Key tasks include:

The City shall identify any known soil / foundation challenges to the CONSULTANT.

Key tasks include:

- Conduct office study/search for available geotechnical data and review of available geotechnical data and identification of known issues.
- Perform a site reconnaissance, assuming 2 geotechnical engineers.
- Geotechnical Engineer will provide general commentary on the geotechnical components of the project based on the soil information we are able to obtain.
- Prepare a Draft and Final Soil and Geology Report.

Assumption(s):

1. The soils within the project corridor are not contaminated.
2. The site reconnaissance is limited to observation of existing topography and features; no excavation, subsurface exploration or lab testing will be conducted during the site reconnaissance.
3. Interpretation of geotechnical challenges and risk will not be supported by geotechnical calculations or rigorous evaluations during this phase of work.
4. Recommendations related to retaining structures will be limited to recommendations for wall and structure types based on existing information. Actual design of the structures will be performed in a future project phase.

Deliverable(s):

1. Draft and Final Soil and Geology Report.

6.2 Hazardous Materials Review

The CONSULTANT shall provide planning level environmental strategy support for the program with a moderate -level environmental hazardous materials risk-evaluation of the project vicinity to identify and evaluate the potential presence of subsurface contaminants that may be encountered during the various stages of project development and construction.

Results of the hazardous materials environmental assessment shall be presented in a technical memo. The memo shall include the following:

- Obtain and review readily accessible environmental records for the project corridor and adjacent properties. The search includes the project corridor and other properties within an eighth of a mile to a mile radius from the Project Area, based on type of regulatory database listing, WSDOT guidance, and ASTM standards.
- Obtain and review historical aerial photographs, topographic maps, and Sanborn Fire Insurance maps for the project vicinity, and city directories for the streets included in the project corridor itself.
- Review existing technical documents and reports available from Ecology and EPA, or as provided by the City or KPFF, concerning previous environmental investigations for the project site and/or adjacent properties.
- Conduct a visual reconnaissance of the project site to observe current land uses and activities pertaining to the potential for subsurface contaminants to adversely impact the project site. If there are properties being considered for right-of-way acquisition, these will be included as part of the visual reconnaissance. However, the reconnaissance will be limited to features readily observed from public access corridors and shall not include entering private properties or viewing conditions within buildings. The site reconnaissance will include noting the presence and approximate locations of environmental conditions or associated physical features identified during the environmental records review.
- Evaluate the resulting data with respect to potential impacts of subsurface contaminants on development, construction, and potential property acquisitions of the corridor project.
- Prepare a technical memorandum in accordance with the local agency and WSDOT requirements for a “mid-level” hazardous materials environmental assessment.

Assumption(s):

1. Hazardous materials environmental assessments are not considered to be a Phase I Environmental Site Assessment (ESA) that adheres to the American Society for Testing and Materials (ASTM) standards. If the hazardous materials environmental assessment reveals issues that could impact the project site, more detailed investigations, which may include Phase I ESAs or Phase II ESAs, may be recommended.
2. The hazardous materials technical memo will not include assessment of existing conditions for environmental resources such as: cultural and built environment historic resources, land use, natural resources and critical areas, sensitive receptors for air quality and noise, parks and recreation areas, visual resources, Tribal Boundaries, Tribal owned parcels along the corridor, and/or general demographic information.

3. The site reconnaissance conducted will be limited to features readily observed from public access corridors, and shall not include entering private properties or viewing conditions within buildings (i.e., “windshield survey”).
4. The hazardous materials technical assessment shall be an internal planning document for the City and will not be submitted to any state or federal agency.
5. One round of review of the hazardous materials environmental assessment will be required.

Deliverable(s):

1. Draft and Final Hazardous Materials Assessment Technical Memo

Task 7: Coastal Engineering Evaluation Services

7.1 Coastal Engineering Services

The CONSULTANT shall evaluate the existing coastal engineering issues within the project vicinity against potential project alternatives.

The CONSULTANT shall develop a written evaluation memo of the existing coastal site conditions, potential challenges facing the project related to coastal/marine influence, and written recommendations on design parameters relative to construction locations near the body of waters.

The CONSULTANT shall also include with the written memo identified risks and challenges facing up to three project alternatives and shall develop recommendations for potential in-water or near water structure types.

Assumption(s):

1. City shall notify the CONSULTANT of any known challenges within the project vicinity.

Deliverable(s)

1. Draft and Final Coastal Engineering Project Memo, including written coastal engineering recommendations on risks/challenges facing project delivery

Task 8: WSDOT Coordination

8.1 WSDOT Coordination

The CONSULTANT shall support the City's project delivery coordination with WSDOT and support the following activities:

- Coordination with WSDOT regarding a WSDOT delivered fish passage project near the intersection of Bay Street and Port Orchard Blvd. This will include review, comment, and coordination with WSDOT staff regarding WSDOT developed plans and vision for a WSDOT delivered fish passage project within the overall project study.
- Formal coordination with Olympic Region regarding preliminary approval of the Consultant designed and City delivered roundabout within the intersection of Bay Street and Port Orchard Blvd.
- Compatibility review between WSDOT and Port Orchard long term vision within the intersection of Bay Street and Port Orchard Blvd, and Bay Street itself.

The Consultant shall provide WSDOT coordination effort not addressed in other tasks including:

- Conversion and adoption of WSDOT produced plans, surveys and CADD files into civil 3D usable files for project use.
- Conversion and adoption of proposed WSDOT design build contractor's produced plans, surveys and CADD files into civil 3D usable.
- Briefing and communication of City goals and vision to WSDOT local programs and the WSDOT fish passage team leadership.

Assumption(s):

1. WSDOT's fish passage program will construct significant modifications to Bay Street before the Bay Street Trail is constructed.
2. The Consultant shall not coordinate directly with any WSDOT design build contractor without approval of WSDOT and City staff.
3. The team will meet virtually with WSDOT eight times over the course of the study.

Deliverable(s)

1. Meeting notes and materials for all WSDOT meetings.
2. Incorporation and adoption of WSDOT provided materials

Task 9: Grant Application Support – (Optional Service)

Reserved

Exhibit B
DBE Participation

Agreement Number:

KPFF Consulting Engineers

UDBE INCLUSION PLAN

Port Orchard Bay Street Trail Situational Study

1- Voluntary Participation Targets

This project, which has been awarded to CONSULTANT, has a mandatory UDBE goal of 16.0% documented within the City of Port Orchard’s Bay Street Pathway West, Situation Study Request for Proposal. This goal is based on a percentage of the total contract value of this project, inclusive of subsequent changes, of the assumed scope of work. This project has federal funding.

KPFF Inc. recognizes the importance of inclusion and equality in the engineering and construction industry. KPFF Inc. commits to reach out to small and diverse businesses to help Washington State and local agencies meet or exceed the Underutilized Disadvantaged Business Enterprises (UDBE) goals. KPFF Inc. acknowledges that it has the education and training programs to communicate to its employees the expected employee behaviors and performance relative to implementing the State and Federally Funded Contract Inclusion Plan.

2 - Diverse Business Subcontractors

CONSULTANT anticipates utilizing the following certified small and diverse firms as subcontractors/suppliers on this project:

Firm	Scope of Work	MBE	SBE	VBE	WBE
Blue Coast	Coastal Engineering				3.1%
Furtado & Associates	Survey Services	14.9%			
HWA Geosciences	Geotechnical Engineering	6.3%			
		x			
Sub Total		21.2%	0%	0%	3.1%
Total					24.3%

CONSULTANT will utilize the following efforts to meet or exceed the voluntary exclusion goals:

- Provide opportunities for the above listed firms to perform all services required by the project related to the scope of work and qualifications noted in the table above*
- Provide other consultants who qualify for small and diverse firms opportunities for work related to the project not currently identified within the project scope or request qualifications information.*

For the work anticipated to be contracted on the Port Orchard Bay St Pathway project.

3 - Strategies

In general, CONSULTANT will work to meet the goal by utilizing the following methods:

- *Provide opportunities for the above listed firms to perform all services required by the project related to the scope of work and qualifications noted in the table above*
- *If additional opportunities arise not currently identified within the project scope, we will reach out to qualified small and diverse firms for any additional services before reaching out to other firms.*

4 - Mentoring and Training

CONSULTANT will work to further mentoring, training, and capacity building programs by utilizing the following methods:

- *Provide sub consultants leadership roles within the project, including significant face to face relationship building opportunities with the City of Port Orchard, WSDOT, other stakeholders and KPFF team members*
- *Provide opportunities for the above listed firms to perform all services required by the project related to the scope of work and qualifications noted in the table above*

5 - Prompt Payment and Dispute Resolution

CONSULTANT will ensure prompt payment of all subcontractors and return retainage by using the following methods:

- *KPFF's utilizes the commercial accounting software BST-10, a fully integrated accounting platform. Once KPFF receives and processes payments from a client, BST will automatically initiate payment for all sub-consultants on the next Friday.*
- *KPFF's Chief Financial Officer is responsible for ensuring prompt payment on all contracts and ensuring our accounting and automatic payment process is performing as expected.*
- *KPFF's project manager is responsible for contacting sub consultants who report outstanding invoices if prompt payments have been made by KPFF but not received or reported as received by sub consultants.*

If payment is contested or other disputes arise, CONSULTANT will resolve disputes by utilizing the following methods:

- *All disputes between sub consultants and KPFF are addressed in face-to-face communications, with a goal of resolving issues fairly. We want to treat others as we would like to be treated. If this effort does not resolve a topic, non-binding mediation will be used. Our proposed dispute handling process with sub consultants is noted below.*

The Subconsultant shall make no claim against KPFF without first providing KPFF with a written notice of damages and providing KPFF thirty (30) days to cure before an action is commenced. KPFF shall make no claim against Subconsultant without first providing Subconsultant with a written certification from an independent professional, licensed and practicing in the field of Subconsultant and in the state where the Project is located, stating the basis for the alleged claim. This certificate shall be provided by KPFF not less than thirty (30) days prior to the presentation of any claim.

6 – MSVWBE Outreach

To date, CONSULTANT has utilized the following methods to perform outreach to the UDBE community and inform firms of the opportunity to work as subcontractors/subconsultants on the project:

- *KPFF contacted over four professional service firms directly via phone and email when developing a proposal to the City issued project RFP once an opportunity for collaboration was identified. Firms who meet the professional qualifications with the availability to meet the project needs in terms of staffing and who confirmed an interest to join a KPFF primed team joined our team.*
- *KPFF has long term relationships with many UDBE firms and continues to reach out to this community through several networking events, participation in ASCE, APWA and ACEC community events and uses these events as opportunities to build relationships within the UDBE community.*

In the future, CONSULTANT anticipates utilizing the following methods to perform outreach to UDBE subcontractors/subconsultants and inform them of upcoming opportunities on the project:

- *KPFF participates in various industry meet and greets and networking opportunities, including UDBE inclusion events to develop new teaming opportunities with potential new sub-consultants met at these events. We encourage UDBE firms that are new to us to reach out with potential opportunities and place value in fostering these new relationships.*
- *KPFF also regularly utilizes the local (City of Seattle, King County), State (Washington State Office of Minority and Women's Business Enterprises), and federal tools (dsbs.sba.gov) to identify qualified firms and contacts firms directly when a client needs additional services.*
- *KPFF has long term relationships with many UDBE firms and continues to reach out to this community through several networking events, participation in ASCE, APWA and ACEC community events and uses these events as opportunities to build relationships within the MSVWBE community.*

CONSULTANT anticipates utilizing the following methods to ensure that small businesses have enough time and information to provide it with bids or statements of qualifications:

- *KPFF participates in various industry meet and greets and networking opportunities, including UDBE inclusion events to develop new teaming opportunities with potential new sub-consultants and existing sub-consultants at these events. We encourage UDBE firms that are new to us to reach out with potential opportunities and place value in fostering these new relationships.*
- *KPFF regularly meets with new and existing qualified sub-consultants to identify opportunities for partnership and strengthen relationships.*

CONSULTANT anticipates utilizing the following methods to ensure small businesses understand the schedule and project processes and can learn ways to enhance their capabilities:

- *We share contract information, such as Request for Proposals, directly with our sub consultants when forming a teaming arrangement, and go over schedule requirements, expectations, and project roles.*

CONSULTANT anticipates utilizing the following methods to create subcontract packages that create opportunities and allow for the participation of small and diverse businesses:

- *Provide opportunities for the above listed firms to perform all services required by the project related to the scope of work and qualifications noted in the table above*
- *Provide opportunities for potential additional work outside the current scope of work to other qualified UDBE firms before reaching out to other UDBE firms.*

7 – Diversity Expert

CONSULTANT will utilize the following individuals as experts on diverse businesses and to help manage the processes listed in this plan:

CONSULTANT offers the following diversity expert resources:

A KPFF project coordinator with diverse business participation reporting experience and experience in Diversity Compliance Management Systems (DCMS) reporting. The project coordinator will have the support of other project coordinators also familiar in diversity business processes and practices. This project coordinator is Carinna Lee currently who has experience reporting participation on similar projects with similar sized agencies.

8 – Past Performance

CONSULTANT has completed the following projects that achieved diverse business participation in the past five years.

A few examples below.

The table below shows our inclusion performance on current public agency projects.

Table 1 — MSVWBE Inclusion Performance on Current WSDOT Contracts

Project Name	Owner	% of Utilization	Final Contract Amount	Total MWBE Dollars Spent
Mercer Avenue West	Seattle Department of Transportation	14% DBE	\$12,373,900	\$1,732,346
Greenlake AAC	Seattle Department of Transportation	19% WMBE	\$436,239	\$81,914
Montlake Hub Capital Improvements	Seattle Department of Transportation	47% WMBE	\$696,111	\$328,629
Rainier Transit Plus Multimodal Corridor	Seattle Department of Transportation	25% WMBE	\$197,189	\$50,914
Federal Way Transit Center	Sound Transit	20% S/DBE Achieved	\$1,780,000	\$356,000
NAVFAC NW Land/Water Interface	US Navy	39.2% DBE	\$4,356,273	\$1,707,659

Preparation and Delivery of Electronic Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

B. Roadway Design Files

C. Computer Aided Drafting Files

Agreement Number:

D. Specify the Agency's Right to Review Product with the Consultant

E. Specify the Electronic Deliverables to Be Provided to the Agency

F. Specify What Agency Furnished Services and Information Is to Be Provided

Agreement Number:

II. Any Other Electronic Files to Be Provided

III. Methods to Electronically Exchange Data

A. Agency Software Suite

B. Electronic Messaging System

C. File Transfers Format

Exhibit D
Prime Consultant Cost Computations

Agreement Number:

Fee Proposal
2200654 Port Orchard Bay St Trail

January-23

KPFF Consulting Engineers and Subconsultants

Description	KPFF	Blue Coast	ESA	Furudo	HWA	KPG Psomas	Stepherson	Total Cost
Task 1 Project Management	\$ 38,077.60	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 38,077.60
1.1 Contract Admin	\$ 10,751.31	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,751.31
1.2 Project Management Plan	\$ 9,963.73	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,963.73
1.3 Subconsultant Management	\$ 3,902.11	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,902.11
1.4 Coordination Meetings	\$ 13,560.45	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,560.45
Task 2 Data Collection	\$ 11,707.79	\$ -	\$ -	\$ 73,193.23	\$ -	\$ 4,212.51	\$ -	\$ 89,113.53
2.1 Data Collection	\$ 9,632.57	\$ -	\$ -	\$ 73,193.23	\$ -	\$ 4,212.51	\$ -	\$ 87,038.31
2.2 Survey	\$ 2,075.23	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,075.23
Task 3 Public Involvement Support	\$ 5,264.83	\$ -	\$ -	\$ -	\$ -	\$ 7,362.70	\$ 36,665.27	\$ 49,282.80
3.1 Public Outreach Engagement Plan	\$ 839.22	\$ -	\$ -	\$ -	\$ -	\$ 4,057.28	\$ 7,920.97	\$ 12,818.47
3.2 Project Steering Committee	\$ 2,098.05	\$ -	\$ -	\$ -	\$ -	\$ 3,295.42	\$ 13,225.95	\$ 18,549.42
3.3 Virtual Engagement	\$ 2,327.56	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,518.45	\$ 17,846.01
3.4 Project Advertising and Public Outreach	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Task 4 PS&E Design	\$ 201,142.72	\$ -	\$ -	\$ -	\$ -	\$ 67,226.59	\$ -	\$ 268,369.31
4.1 Base of Design	\$ 6,521.91	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,521.91
4.2 Alternative Development	\$ 98,503.10	\$ -	\$ -	\$ -	\$ -	\$ 31,351.66	\$ -	\$ 129,854.76
4.3 Concept Plan Development	\$ 96,117.71	\$ -	\$ -	\$ -	\$ -	\$ 35,874.93	\$ -	\$ 131,992.64
Task 5 Environmental Services	\$ -	\$ -	\$ 22,017.32	\$ -	\$ -	\$ -	\$ -	\$ 22,017.32
5.1 Cultural Resources Services	\$ -	\$ -	\$ 7,946.54	\$ -	\$ -	\$ -	\$ -	\$ 7,946.54
5.2 Environmental Strategy Support	\$ -	\$ -	\$ 14,070.78	\$ -	\$ -	\$ -	\$ -	\$ 14,070.78
Task 6 Geotechnical Evaluation Services	\$ -	\$ -	\$ -	\$ -	\$ 34,300.54	\$ -	\$ -	\$ 34,300.54
6.1 Geotechnical Services	\$ -	\$ -	\$ -	\$ -	\$ 20,083.39	\$ -	\$ -	\$ 20,083.39
6.2 Hazardous Materials Report	\$ -	\$ -	\$ -	\$ -	\$ 14,217.14	\$ -	\$ -	\$ 14,217.14
Task 7 Coastal Engineering Evaluation Services	\$ -	\$ 17,533.13	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 17,533.13
7.1 Coastal Engineering Services	\$ -	\$ 17,533.13	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 17,533.13
Task 8 WSDOT Coordination	\$ 15,834.88	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,834.88
8.1 WSDOT Coordination	\$ 15,834.88	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,834.88
Task 9 Grant Application Support (Optional Service)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
9.1 Reserved	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Labor Cost by Firm	\$ 272,027.82	\$ 17,533.13	\$ 22,017.32	\$ 73,193.23	\$ 34,300.54	\$ 89,433.49	\$ 40,015.85	\$ 548,521.36
Reimbursable Costs by Firm	\$ 312.50	\$ -	\$ -	\$ -	\$ 1,010.00	\$ 200.00	\$ -	\$ 1,522.50
Subtotal	\$ 272,340.32	\$ 17,533.13	\$ 22,017.32	\$ 83,253.23	\$ 35,310.54	\$ 89,633.49	\$ 40,015.85	\$ 550,103.86
Share of Work	48.6%	3.1%	3.9%	14.9%	6.3%	16.0%	7.1%	100.0%

Fee Proposal
2200564 Port Orchard Bay St Trail
 KPFF Consulting Engineers (Prime)
 January 23

144.97% Overhead Rate
 28.00% Profit

Task #	Name	Person	Position	Rate	Quantity	Unit	Unit Cost	Total Hours	Total Direct Salary Cost	Overhead and Profit
Task 1	Project Management	Principal - Quality Manager	PM	75.72	3	hrs	227.16	3	227.16	67.85
1.1	Project Kick-off				1	hrs	75.72	1	75.72	21.27
1.2	Project Kick-off				1	hrs	75.72	1	75.72	21.27
1.3	Subcontractor Management				1	hrs	75.72	1	75.72	21.27
1.4	Coordination Meetings				0	hrs	0	0	0	0
Task 2	Data Collection				0	hrs	0	0	0	0
2.1	Data Collection				0	hrs	0	0	0	0
2.2	Survey				0	hrs	0	0	0	0
Task 3	Public Involvement Support				0	hrs	0	0	0	0
3.1	Public Outreach Engineering Plan				0	hrs	0	0	0	0
3.2	Project Sharing Committee				0	hrs	0	0	0	0
3.3	Public Engagement				0	hrs	0	0	0	0
3.4	Project Advertising and Public Outreach				0	hrs	0	0	0	0
Task 4	PS&E Design				32	hrs	2843.84	32	2843.84	816.28
4.1	Phase of Design				4	hrs	313.54	4	313.54	89.00
4.2	Alternative Development				16	hrs	1370.24	16	1370.24	388.00
4.3	Concept Plan Development				12	hrs	1110.06	12	1110.06	313.28
Task 5	Environmental Services				0	hrs	0	0	0	0
5.1	Environmental Study Support				0	hrs	0	0	0	0
5.2	Environmental Study Support				0	hrs	0	0	0	0
Task 6	Geotechnical Evaluation Services				0	hrs	0	0	0	0
6.1	Geotechnical Evaluation Services				0	hrs	0	0	0	0
6.2	Hazardous Materials Report				0	hrs	0	0	0	0
Task 7	Consulting Engineering Services				0	hrs	0	0	0	0
7.1	Consulting Engineering Services				0	hrs	0	0	0	0
Task 8	WSDOT Coordination				0	hrs	0	0	0	0
8.1	WSDOT Coordination				0	hrs	0	0	0	0
Task 9	Grant Application Support				0	hrs	0	0	0	0
9.1	Grant Application Support				0	hrs	0	0	0	0
Total Hours per person					35	hrs	3085.80	35	3085.80	875.56
Project Salary										
Overhead Costs										
Profit										
Total Fee excluding reimbursables										
REIMBURSABLES										
Manage										
Total Cost										

Exhibit E

Sub-consultant Cost Computations

If no sub-consultant participation at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI “Sub-Contracting” of this AGREEMENT.

Agreement Number:

208.31% Overhead Rate
 27.00% Profit

Task	Name	Rate	Hours	Sub-Total	Total Task Cost	Total Task Cost (overhead, salary and profit)
Task 1	Project Management		0		0	
	1.1 Contract Admin		0		0	
	1.2 Project Management Plan		0		0	
	1.3 Subcontract Management		0		0	
Task 2	2.1 Data Collection		0		0	
	2.2 Survey		0		0	
Task 3	3.1 Public Involvement Support		0		0	
	3.2 Public Outreach Engagement Plan		0		0	
	3.3 Virtual Engagement		0		0	
	3.4 Project Advertising and Public Outreach		0		0	
Task 4	4.1 PS&E Design		0		0	
	4.2 Alternative Development		0		0	
Task 5	5.1 Environmental Services		0		0	
	5.2 Cultural Resources Services		0		0	
Task 6	6.1 Geotechnical Evaluation Services		4		1,740.00	3,480.00
	6.2 Hazardous Materials Report		2		384.54	769.08
Task 7	7.1 Coastal Engineering Evaluation Services		0		0	0
	7.1 Coastal Engineering Services		0		0	0
Task 8	8.1 WSDOT Coordination		0		0	0
	8.1 Grant Application Support		0		0	0
Task 9	9.1 Reserved		0		0	0
	9.1 Reserved		0		0	0
Total Hours per person					216	10,229.50
Direct Salary					3,720.00	7,440.00
Direct Costs					7,724.91	15,449.82
Profit					1,004.41	2,008.82
Total Fee excluding reimbursables					12,449.32	24,898.64
REIMBURSABLES						
Item				Quantity	Unit	Unit Cost
FIS Mitigation Reimbursement				320	Miles	0.63
GPS Unit Rental				1		\$60
Environmental Database Subscription				1		\$750.00
Total						\$1,010.00
Total Cost						\$35,311

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *(Title of Modal Operating Administration)*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. *[Include Modal Operating Administration specific program requirements.]*
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. *[Include Modal Operating Administration specific program requirements.]*
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *(Title of Modal Operating Administration)* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *(Title of Modal Operating Administration)*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *(Title of Modal Operating Administration)* may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the *(Title of Modal Operating Administration)* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") 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 CFR 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 CFR 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 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Exhibit G
Certification Documents

- Exhibit G-1(a) Certification of Consultant
- Exhibit G-1(b) Certification of _____
- Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions
- Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying
- Exhibit G-4 Certificate of Current Cost or Pricing Data

Agreement Number:

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of

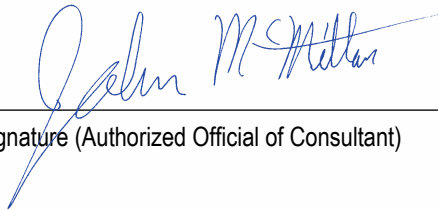
whose address is

and that neither the above firm nor I have:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

Date

Agreement Number:

Exhibit G-1(b) Certification of

I hereby certify that I am the:

Other

of the _____, and
or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- a) Employ or retain, or agree to employ to retain, any firm or person; or
- b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the _____ and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Signature

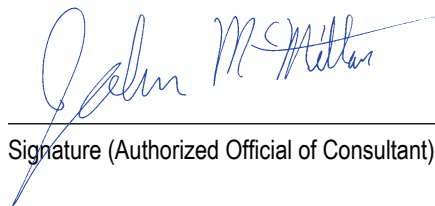
Date

Agreement Number:

Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

Date

Agreement Number:

Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative AGREEMENT, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00, and not more than \$100,000.00, for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

Date

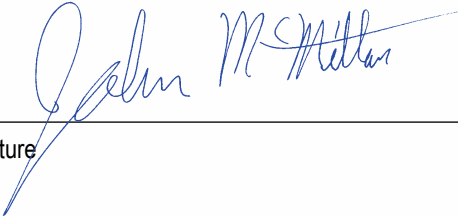
Agreement Number:

Exhibit G-4 Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____ * are accurate, complete, and current as of _____ ** .

This certification includes the cost or pricing data supporting any advance AGREEMENT's and forward pricing rate AGREEMENT's between the offer or and the Government that are part of the proposal.

Firm:



Signature

Title

Date of Execution***:

*Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)

**Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.

***Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

Agreement Number:

Exhibit H

Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XII, Legal Relations and Insurance of this Agreement is amended to \$

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$

Such insurance coverage shall be evidenced by one of the following methods:

- Certificate of Insurance.
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance limit required by the AGENCY as specified above exceed \$1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.

If FHWA approval is obtained, the AGENCY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.

Notes: Cost of added insurance requirements: \$

- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit.

Agreement Number:

Exhibit I

Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

Step 3 Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Agreement Number:

Step 5 Forward Documents to Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General's Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Agreement Number:

Exhibit J

Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Agreement Number:

Step 3 Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.

Agreement Number:



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 8F</u>	Meeting Date:	<u>February 28, 2023</u>
Subject:	<u>Adoption of a Resolution Accepting</u>	Prepared by:	<u>Tony Lang</u>
	<u>Transportation Improvement Program</u>		<u>Public Works Director</u>
	<u>Project #1.5C, Documenting Certified</u>	Atty Routing No.:	<u>N/A</u>
	<u>Construction Costs and Maximum</u>	Atty Review Date:	<u>N/A</u>
	<u>Transportation Impact Fee Credits</u>		
	<u>Granted Pursuant to Contract No. 035-21</u>		

Summary: On February 1, 2021, the City and McCormick Communities LLC entered into a development agreement for transportation identified as Contract C035-21 which required the construction of various transportation improvements and provided a framework to grant traffic impact fee credits to McCormick Communities. McCormick Communities has substantially completed the construction of the McCormick Village Drive Roundabout project, identified as TIP Project #1.5C “Old Clifton Road – Campus Parkway Intersection” in the development agreement (note that Campus Parkway has since been renamed as McCormick Village Drive), other than minor repairs covered by a bond. Contract C035-21, section 12 stipulates that McCormick Communities LLC would receive credit equal to the lesser of the actual costs incurred by the developer or the engineer’s estimate contained in the City’s Traffic Impact Fee Calculation plus an annual inflator per the CPI-U.

The City’s Traffic Impact Fee Calculation was adopted by Ordinance 007-21 on February 9th, 2021. The engineer’s estimate for project #1.5C as found in the rate study attached to Ordinance 007-21 was \$1,600,000. Since Ordinance 007-21 was adopted, the traffic impact fee was adjusted once on March 1, 2021, by the CPI-U with an increase of 1.7 percent and again on March 1, 2022, by 4.6 percent.

Pursuant to Contract C035-21, the engineer’s estimate for TIP Project #1.5C increased on March 1, 2021, by 1.7 percent and March 1, 2022, by 4.6 percent thus increasing the engineer’s estimate for the project from \$1,600,000 to \$1,702,051.20. On December 2, 2022, the City received certified construction cost documentation from McCormick Communities LLC for TIP Project #1.5C showing total expenditures of \$2,595,177. The engineer’s cost estimate adjusted per the CPI-U is less than the certified construction costs for TIP Project #1.5C. The City wishes to document the maximum approved traffic impact fee amount granted to McCormick Communities, LLC for the construction of TIP project #1.5C.

Relationship to Comprehensive Plan: Chapter 8 - Transportation

Recommendation: Staff recommends that the City Council adopt Resolution 002-23 accepting the Transportation Improvement Program Project #1.5C-Old Clifton Road - McCormick Village Drive (formerly known as Campus Pkwy) Intersection, documenting Certified Construction Costs, and establishing maximum Transportation Impact Fee Credits.

Motion for Consideration: I move to adopt Resolution 002-23 accepting the Transportation Improvement Program Project #1.5C-Old Clifton McCormick Village Drive (formerly known as Campus Pkwy) Intersection, documenting Certified Construction Costs, and establishing maximum Transportation Impact Fee Credits.

Fiscal Impact: In accordance with Contract C035-21, the City will provide a Transportation Impact Fee credit within the agreed-upon area until the maximum credit amount of \$1,702,051.20 is reached.

Alternatives: The City is contractually obligated to accept the Transportation Improvement Program Project #1.5C-Old Clifton Road - McCormick Village Drive (formerly known as Campus Pkwy) Intersection pursuant to validated and accepted Certified Construction Costs, thus establishing the maximum Impact Fee Credit.

Attachments: Resolution 002-23
Ordinance 007-21- Impact Fees
Agreement C035-21 McCormick Communities, LLC-Transportation
Certified Construction Costs Approval Memo

RESOLUTION NO. 002-23

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, ACCEPTING TRANSPORTATION IMPROVEMENT PROGRAM PROJECT #1.5C, DOCUMENTING CERTIFIED CONSTRUCTION COSTS AND MAXIMUM TRANSPORTATION IMPACT FEE CREDITS GRANTED PURSUANT TO CONTRACT C035-21.

WHEREAS; on February 1, 2021, the City and McCormick Communities LLC entered into a development agreement for transportation identified as Contract C035-21; and

WHEREAS; Contract C035-21 required the construction of various transportation improvements and provided a framework to grant traffic impact fee credits to McCormick Communities; and

WHEREAS; McCormick Communities has substantially completed the construction of the McCormick Village Drive Roundabout project, identified as TIP Project #1.5C “Old Clifton Road – Campus Parkway Intersection” in the development agreement (note that Campus Parkway has since been renamed as McCormick Village Drive), other than minor repairs covered by a bond; and

WHEREAS, Contract C035-21, section 12 stipulates that McCormick Communities LLC would receive credit equal to the lesser of the actual costs incurred by the developer or the engineers’ estimate contained in the City’s Traffic Impact Fee Calculation plus an annual inflator per the CPI-U; and

WHEREAS, the City’s Traffic Impact Fee Calculation was adopted by Ordinance 007-21 on February 9th, 2021; and

WHEREAS, the engineers’ estimate for project #1.5C as found in the rate study attached to Ordinance 007-21 was \$1,600,000; and

WHEREAS, since Ordinance 007-21 was adopted, the traffic impact fee was adjusted once on March 1, 2021, by the CPI-U with an increase of 1.7 percent and again on March 1, 2022, by 4.6 percent; and

WHEREAS, pursuant to Contract C035-21, the engineer’s estimate for TIP Project #1.5C increased on March 1, 2021, by 1.7 percent and March 1, 2022, by 4.6 percent thus increasing the engineer’s estimate for the project from \$1,600,000 to \$1,702,051.20; and

WHEREAS, on December 2, 2022, the City received certified construction cost documentation from McCormick Communities LLC for TIP Project #1.5C showing total expenditures of \$2,595,177; and

WHEREAS, the engineer’s cost estimate adjusted per the CPI-U is less than the certified construction costs for TIP Project #1.5C; and

WHEREAS, the City wishes to document the maximum approved traffic impact fee amount granted to McCormick Communities, LLC for the construction of TIP project #1.5C;

now, therefore,

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

THAT: The City hereby accepts the dedication of a roundabout known as TIP Project #1.5C the Old Clifton Road – Campus Parkway (McCormick Village Drive) Roundabout.

THAT: Pursuant to Contract C035-21, a maximum traffic impact fee credit amount for TIP Project #1.5C is hereby established in the amount of \$1,702,051.20.

THAT: The Mayor is hereby authorized to accept a bill of sale for the roundabout improvements associated with TIP #1.5C pending review and approval of the bill of sale by the City Engineer.

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 28th day of February 2023.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

ORDINANCE NO. 007-21

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, REGARDING TRANSPORTATION IMPACT FEES; AMENDING SECTION 20.182.060 OF THE PORT ORCHARD MUNICIPAL CODE TO ADOPT A NEW TRANSPORTATION IMPACT FEE SCHEDULE, CLARIFYING ADOPTION PROCEDURES AND INDEXING TRANSPORTATION IMPACT FEES TO CPI-U; ADDING A NEW SECTION 20.182.125 TO THE PORT ORCHARD MUNICIPAL CODE TO DESIGNATE THE CITY'S 6 YEAR/20 YEAR TRANSPORTATION IMPROVEMENT PLAN AS THE CAPITAL FACILITIES PLAN FOR TRANSPORTATION; PROVIDING FOR SEVERABILITY AND CORRECTIONS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the State of Washington Growth Management Act, Chapter 36.70A RCW and related sections ("GMA") requires the City to adopt a Comprehensive Plan that provides adequate public facilities to serve development; and

WHEREAS, counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing or system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees; and

WHEREAS, RCW 82.02.050 -.110 and WAC 365-196-850 authorize counties, cities, and towns planning under the Growth Management Act (GMA) to impose impact fees for public streets and roads, publicly owned parks, open space, and recreation facilities, and school facilities, and fire protection facilities; and

WHEREAS, the City of Port Orchard has adopted transportation, school, and park impact fees, as codified in subsection 20.182.060 of the Port Orchard Municipal Code (POMC) and Appendices A-C in Exhibit 1 of Ordinance 019-17; and

WHEREAS, the City Council finds that new development activity in the City of Port Orchard will create additional demand and need for public facilities; and

WHEREAS, the City of Port Orchard has previously adopted a transportation impact fee program pursuant to the authority provided in Chapter 82.02 RCW; and

WHEREAS, in 2015 the City's current transportation impact fee rate was established at \$2,552 per new PM peak hour trip, with a separate impact fee rate of \$560 per new PM peak hour trip applied to growth in the McCormick Woods PUD; and

WHEREAS, this year the City Council adopted the City's 6 Year/20 Year Transportation Improvement Plan (TIP) as part of the City's Comprehensive Plan (Ordinance 015-20); and

WHEREAS, the City Council desires to adopt an updated transportation impact fee schedule to ensure that all projects on the current TIP receive appropriate impact fee funding per RCW Section 82.02.050; and

WHEREAS, the City Council deems it in the best interests of the city of Port Orchard to formally designate the TIP as the "capital facilities plan" for the purpose of identifying the proposed transportation improvements reasonable and necessary to meet the future development needs of the service area consistent with the city's level of service policy, as required by RCW 82.02.050; and

WHEREAS, the City contracted with Transportation Solutions, Inc. to prepare an updated transportation impact fee rate study and recommended impact fee rate, which was provided to the City in December 2020 (Exhibit A); and

WHEREAS, the City has prepared an updated transportation impact fee schedule based on the findings and recommendations of the study prepared by Transportation Solutions, Inc., and

WHEREAS, on January 19, 2021, the City Council held a study session on the updated transportation impact fee schedule; and

WHEREAS, on February 9, 2021, at its regular meeting the City Council held a public hearing on this ordinance, considered the updated transportation impact fee schedule and the public testimony, and reviewed the ordinance proposed for its adoption; and

WHEREAS, the transportation, parks and school impact fees are currently adopted as appendices to Chapter 20.182 of the Port Orchard Municipal Code, and

WHEREAS, the City Council desires to directly adopt the transportation, parks, and school impact fees by ordinance, for ease of reference and use; and

WHEREAS, this ordinance is exempt from the requirements of the State Environmental Policy Act (SEPA), Chapter 43,21C RCW, and the City's environmental regulations, Chapter 20.160 POMC; now, therefore,

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

SECTION 1. The City Council adopts all of the “Whereas” sections of this ordinance as findings in support of this ordinance.

SECTION 2. Subsection 20.182.060 of the Port Orchard Municipal Code is hereby amended to read as follows:

20.182.060 Fee schedules and establishment of service area.

(1) Impact fee schedules setting forth the amount of the impact fees to be paid by developers ~~are listed in the appendices attached to the ordinance adopting this chapter,~~ shall be adopted by ordinance of the City Council and incorporated herein by this reference. The road or transportation impact fee schedule is in Appendix A, park impact fees are in Appendix B and school impact fees are in Appendix C. The impact fee schedules may be revised at any time the city council deems just and appropriate.

(2) For the purpose of road and park impact fees, the entire city shall be considered one service area.

(3) For the purpose of school impact fees, the entire boundary of the school district shall be considered one service area.

(4) Transportation impact fees adopted by the City shall automatically increase annually per CPI-U (All Urban Consumers Index) (1982-1984=100), not seasonally adjusted, for the Seattle-Tacoma-Bellevue area for that 12-month period from January 1st to December 31st Indexed as the Annual Average, as is specified by the Bureau of Labor Statistics, United States Department of Labor. Increases based on CPI-U shall take effect on March 1st of the following year.

SECTION 3. A new subsection 20.182.125 is hereby added to the Port Orchard Municipal Code to read as follows:

20.182.125 Designation of Capital Facilities Plan for Transportation.

The city designates the 6 Year/20 Year Transportation Improvement Plan (TIP) as the City’s comprehensive capital facilities plan for the purpose of identifying the proposed transportation improvements reasonable and necessary to meet the future development needs of the service area consistent with the city’s level of service policy, as required by RCW 82.02.050. The TIP identifies the specific subset of transportation improvements in the impact fee project list that forms the basis for the transportation impact fee program.

SECTION 4. Adoption of Transportation Impact Fee Schedule. The City hereby adopts a new transportation impact fee schedule which is included as a part of Exhibit A to this ordinance, in accordance with POMC 20.182.060. This transportation impact fee schedule

shall become effective on the effective date established in Section 9 below and shall replace and supersede any previously adopted transportation impact fee schedule.

SECTION 5. Park and School Impact Fees Unchanged. The park and school impact fee schedules that were previously adopted by the City Council shall remain in effect and are respectively shown on Exhibits B and C of this ordinance.

SECTION 6. Sections 4 and 5 of this Ordinance are deemed of special effect and shall not be codified.

SECTION 7. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, sentence, clause, or phrase of this ordinance.

SECTION 8. Corrections. Upon the approval of the city attorney, the city clerk, and/or code publisher is authorized to make any necessary technical corrections to this ordinance, including but not limited to the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

SECTION 9. Effective Date. This ordinance shall be in full force and effective February 23, 2021. A summary of this ordinance in the form of the ordinance title may be published in lieu of publishing the ordinance in its entirety.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this 9th day of February 2021.



Robert Putaansuu, Mayor

ATTEST:

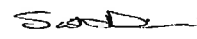

Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:



Charlotte A. Archer, City Attorney

Sponsored by:



Scott Diener, Councilmember



PUBLISHED: February 11, 2021
EFFECTIVE DATE: February 23, 2021

EXHIBIT A: TRANSPORTATION IMPACT FEE SCHEDULE WITH RATE STUDY (2021)

EXHIBIT B: PARKS IMPACT FEE SCHEDULE (EXISTING)

EXHIBIT C: SCHOOL IMPACT FEE SCHEDULE (EXISTING)

TRANSPORTATION IMPACT FEE RATE STUDY
2020 UPDATE
FINAL REPORT

December 2020

Prepared for:
City of Port Orchard

Prepared by:
Transportation Solutions, Inc.
16932 Woodinville-Redmond Rd NE
Suite A206
Woodinville, WA 98072

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1. Introduction

This document summarizes the development of an updated transportation impact fee rate for the City of Port Orchard. It describes the existing impact fee rate, the basis for the fee, the rate methodology, the impact fee project list, and the recommended fee rate.

Definition of Impact Fees

Impact fees are a comprehensive grouping of charges based on new development within a local municipality. These fees are assessed to pay for capital facility improvement projects necessitated by new development growth (including but not limited to parks, schools, and streets/roads).

Transportation impact fees are collected to fund improvements that add capacity to the transportation system, accommodating the travel demand created by new development. The Revised Code of Washington (RCW) Section 82.02.050 identifies the intent of impact fees as the following:

- To ensure that adequate facilities are available to serve new growth and development;
- To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and
- To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.

Statutory Basis for Impact Fees

Transportation impact fees are a financing mechanism authorized by the Growth Management Act (GMA) of Washington State (see RCW 36.70A.070 and 82.02.050). State law imposes strict limitations on impact fees. These limitations are intended to assure property owners that the fees collected are reasonably related to their actual impacts and will not be used for unrelated purposes.

If impact fees are imposed, the funds collected from developments can be expended only on transportation system improvements which are: (a) identified in the comprehensive plan as needed for growth, and (b) reasonably related to the impacts of the new development from which fees are collected.

Specifically, condition (a) requires that impact fees are not used on improvements needed to remedy existing deficiencies. Those needs must be entirely funded from public sector resources. Condition (b) is satisfied if the local government defines a reasonable service area, identifies the public facilities within the service area that require improvement during the designated planning period, and prepares a fee schedule taking into account the type and size of the development as well as the type of public facility being funded.

To achieve the goal of simplicity, impact fee calculations are applied on an average basis for the entire transportation system, rather than project-by-project. This is a key difference between impact fees and State Environmental Policy Act (SEPA) mitigation, whereby pro-rata shares of specific project improvements are collected.

Pre-calculated impact fees are easier to administer than traditional SEPA development mitigation, at the point of development review. However, more complex administrative procedures are necessary to track

the funds collected from each development. This is necessary to assure that the funds are expended only on eligible transportation system improvements and to assure that impact fee revenues are used within six years. Fees not expended within six years must be refunded with interest to the current owner of the property.

The methodology and results described below are consistent with the requirements of the GMA. The procedures and recommendations described herein can be formally enacted by an impact fee ordinance incorporating this memo by reference.

2. Impact Fee Analysis

Methodology

The conceptual basis for the transportation impact fee is that growth (i.e. new development) should pay a proportionate share of the cost to provide future transportation capacity. This proportionate share is calculated based on the estimated cost of growth-related transportation improvement projects identified in the Comprehensive Plan and on an estimate of growth's share of capacity utilization for each project. The impact fee analysis is limited to projects that provide capacity improvements needed for growth. Projects related to maintenance, such as pavement overlays and physical obsolescence, as well as improvements necessary to mitigate existing capacity deficiencies, are not eligible for impact fee funding. However, agencies have been encouraged by the Department of Commerce to consider multimodal transportation improvements and, to that end, shoulder widening, sidewalks, bike lanes and parallel trails are reasonable to include as both motorized and nonmotorized capacity enhancements.

Current Impact Fee Methodology

The Port Orchard transportation impact fee program was developed and adopted in 2015 as ordinance number 023-15 and later reorganized under ordinance number 019-17. The impact fee methodology is based on proportionate growth share of impact fee eligible project costs.

As of December 2020, the transportation impact fee rate is \$2,552 per new PM peak hour trip. A separate impact fee rate of \$560 per new PM peak hour trip is applied to growth in the McCormick Woods PUD. This rate represents the difference between the citywide rate and a GEM1 fee rate of \$1,992 per trip which was required per the McCormick Woods Development Agreement adopted in 2005.

Projects Eligible for Impact Fees

Not all planned transportation projects and programs are eligible for impact fees. Planned improvement project are divided below into the following categories in order to establish a list of qualifying projects that will form the basis for the Port Orchard impact fee rate:

- Project Improvements
- Planned Transportation Projects needed within 20 years
- Maintenance Projects

Project Improvements

Project improvements are transportation improvements necessary for a specific development that do not provide significant system benefits. These are typically low-volume local streets that serve driveways and parking areas. They may provide connections to other developments, but not for the purpose of

significant system capacity. Other project improvements include safety improvements and new access connections to existing arterials that serve only one development. Project improvements are typically required by other development regulations or as SEPA mitigation for specific development impacts not anticipated in the Comprehensive Plan. Project improvements are not eligible for impact fees. For the purpose of this rate analysis, roadway extensions that connected existing developments, but were not significant arterials, were considered project improvements that could be required under other City codes and regulations but would not be included in the impact fee calculation.

Planned Transportation Projects

The Port Orchard 2021-2040 Transportation Improvement Program (TIP) identifies transportation projects which are needed to serve traffic growth for the next twenty years. Projects with capacity benefits are eligible for impact fee funding. Capacity-related improvements may include adding turn lanes, lane widening or separating non-motorized modes, adding signals or roundabouts for intersection capacity, or other improvements. The methodology for roadway capacity calculation is described in the Transportation Element of the Comprehensive Plan. The proportional share of these projects reasonably related to growth are eligible for impact fees.

Maintenance Projects

Maintenance programs, general studies, and non-capital activities are generally not eligible for impact fees. A component of ongoing pavement preservation could be eligible for impact fees if it is demonstrated that growth increases the magnitude of pavement reconstruction requirements. For instance, if existing conditions require a two-inch asphalt overlay, but added traffic from growth requires a three-inch asphalt overlay to achieve the same pavement life, the cost of the additional inch of asphalt could be attributed to growth. If the overlay or reconstruction provides increased lane width, intersection improvements, or shoulder widening the cost of the expansion could be considered eligible.

Eligible Project Costs

Impact fee eligible projects and their estimated costs are identified in **Table 1**. These costs include various elements which are necessary for the construction of transportation improvements, including design, permitting, right-of-way, construction, and construction management. Ongoing or future maintenance is not an eligible impact fee cost. TIP projects which are not capacity-related, or which are considered maintenance projects/programs are not included in the TIF project list.

Impact Fee Calculation

The impact fee was calculated based on the increase in PM peak hour vehicle trips resulting from growth, the cost of improvements related to growth, and the City's transportation financing strategy, as defined in the 2016 Comprehensive Plan. The calculation methodology is described below.

Local Funding Responsibility

Roadway projects are generally eligible for state and federal grant funds. These funds are not predictable and vary in amount by grantor. Additionally, cost-sharing agreements with Washington State Department of Transportation (WSDOT) and Kitsap County are anticipated to reduce some of the City's project cost responsibility.

This analysis assumes the City will be responsible for 50 percent of total impact fee-eligible project costs over the 20-year planning horizon, with the other 50 percent anticipated to be funded by grant and intergovernmental revenue roadway projects.

Exceptions were applied to the following projects which are anticipated to be fully funded by the City of Port Orchard or by local development, with no grants or intergovernmental revenue:

- Bethel/Sedgwick Corridor Phase 1 Design (TIP #1.3)
- Old Clifton Rd Design – 60% (TIP #1.5A)
- Old Clifton Rd & Campus Parkway roundabout (TIP #1.5C)
- Old Clifton Rd & McCormick Woods Dr roundabout (TIP #2.08)
- Glenwood Connector Roadway (per development agreement)
- Feigley Rd improvements (per development agreement)

Proportionate Share of Project Cost

Growth’s proportionate share of each improvement project was calculated as the proportion of added capacity which will be used by new development trips, per the Port Orchard travel demand model.

The Port Orchard travel demand model was most recently updated and recalibrated in 2019. It incorporates trip generation data published in the *Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition* and calibrated to fit 2019 weekday PM peak hour traffic counts. The travel demand model trip distribution and traffic assignment procedures were calibrated based on regional and national guidance, including the Kitsap County travel demand model and Federal Highway Administration travel demand model calibration guidance, in addition to local engineering expertise and traffic counts.

To generate 2040 PM peak hour travel demand forecasts, the calibrated 2019 PM travel demand model was modified to include housing and employment growth forecasts identified in the Port Orchard Comprehensive Plan. A total of 7,352 new weekday PM peak hour trips are anticipated citywide between 2019 and 2040. These new trips were assigned to the transportation network, resulting in traffic growth forecasts for each intersection and roadway segment on the TIF project list.

The proportionate growth share of TIF project costs was calculated by dividing the 2019-2040 PM peak hour trip growth by the capacity contribution, in vehicles per hour, of each improvement project:

$$[Proportionate\ Share\ of\ Project\ Cost] = \frac{PM\ peak\ hr\ trip\ growth}{Added\ PM\ peak\ hr\ capacity}$$

The resulting proportionate share for each TIF project is identified in **Table 1**. Total project costs and growth share are summarized below:

Total TIF Project Cost	\$145,863,474
Anticipated Grant & Intergovernmental Revenue	\$78,597,474
Anticipated City & Developer (Non-Grant) Responsibility	\$67,266,000
Growth/Development Share of Project Cost	\$36,343,224

Table 1. Impact Fee-Eligible Transportation Improvement Projects

TIP ID ¹	Project Name	Cost Estimate (\$)	Local Share ² (\$)	Growth Share ³ (%)	Growth Share (\$)
DA	Glenwood Connector Roadway	2,000,000	2,000,000	100%	2,000,000
1.1	Tremont St Widening CN Phase	23,600,000	7,570,000	24%	1,851,656
1.3	Bethel/Sedgwick Corridor Ph. 1 Design	1,211,000	1,211,000	24%	293,489
1.4	Old Clifton Rd/Anderson Hill Rd Roundabout	2,420,000	968,000	81%	786,112
1.5A	Old Clifton Rd Design – 60%	562,000	562,000	100%	562,000
1.5C	Old Clifton Rd/Campus Pkwy Roundabout	1,600,000	1,600,000	100%	1,600,000
1.7	Vallair Ct Connector	2,498,000	1,249,000	8%	96,697
2.01	Sidney Ave (N) Widening	13,113,000	6,557,000	48%	3,144,444
2.02	Sedgwick Rd West Design/ROW	1,444,000	722,000	100%	722,000
2.03	Sedgwick Rd West Constr.	4,331,000	2,166,000	100%	2,165,500
2.04A	Bethel/Sedgwick Corridor Ph. 1 ROW/Constr.	14,360,000	7,180,000	24%	1,740,094
2.04B	Bethel/Sedgwick Corridor Ph. 2	17,498,000	5,249,000	28%	1,464,306
2.04C	Bethel/Sedgwick Corridor Ph. 3	6,111,000	1,833,000	5%	97,776
2.04D	Bethel/Sedgwick Corridor Ph. 4	9,179,000	4,590,000	45%	2,067,975
2.04E	Bethel/Sedgwick Corridor Ph. 5	11,059,000	5,530,000	100%	5,529,500
2.05	Sidney Rd (S) Widening	7,820,000	3,910,000	66%	2,593,367
2.06	Pottery Ave (N) Widening	1,998,000	999,000	28%	277,500
2.07	Old Clifton Rd Shoulder & Ped. Impr.	3,372,000	1,686,000	100%	1,686,000
2.08	Old Clifton Rd/McCormick Woods Dr Roundabout	1,600,000	1,600,000	100%	1,600,000
2.09	Melcher St Widening	749,000	375,000	7%	25,279
2.1	Fireweed Rd Widening	468,000	234,000	5%	11,700
2.12	Sherman Ave Widening	656,000	328,000	5%	16,400
2.13	Tremont St Widening Ph. 2 - PO Blvd	10,684,000	5,342,000	100%	5,342,000
2.14	Pottery Ave (S) Widening	5,245,000	2,623,000	16%	415,119
2.16	Blueberry Rd Widening	749,000	375,000	22%	80,518
2.17	Geiger Rd Widening	468,000	234,000	5%	11,700
2.18	Salmonberry Rd Widening	281,000	141,000	21%	28,803
2.19	Piperberry Way Extension	468,000	234,000	11%	25,665
2.21	Old Clifton Rd/Feigley Rd Roundabout	243,000	122,000	26%	31,150
DA	Feigley Rd Improvements	76,474	76,000	100%	76,474
Total		145,863,474	67,266,000	54%	36,343,224

¹Project ID number in Port Orchard 2021-2040 Transportation Improvement Program. DA = development agreement project

²Portion of project cost which is anticipated to be funded by City of Port Orchard and developer funds (i.e. not funded by grants or intergovernmental revenue)

³Portion of added capacity which is used by growth (i.e. new development). Developer-funded projects are assigned 100% growth share.

Impact Fee Rate

The citywide transportation impact fee rate was calculated by dividing the sum of the growth share of TIF project cost by the total citywide PM peak hour trip growth forecast, as shown:

$$\frac{\text{Development share of project costs}}{\text{Citywide PM trip growth}} = \frac{\$36,343,224}{7,352 \text{ new trips}} = \$4,943 / \text{PM peak hour trip}$$

Sample Transportation Impact Fees

Table 2 summarizes the fee rates which would be paid by several typical developments if the above calculated rate were adopted in an impact fee ordinance. A comprehensive transportation impact fee rate schedule is included in Appendix B.

Table 2. Transportation Impact Fee Comparison for Typical Land Uses

Land Use Type	ITE LUC ¹	Trip Rate	Per Unit	2015 TIF Rate (\$/unit)	2020 TIF Rate (\$/unit)
Single-Family Home	210	0.99	DU	2,552	4,894
Low-Rise Multifamily	220	0.56	DU	1,582	2,768
Senior Attached Housing	252	0.26	DU	638	1,285
General Office	710	1.15	1,000 ft ²	3,803	5,684
Shopping Center	820	2.51*	1,000 ft ²	6,406	12,110
Light Industrial	110	0.63	1,000 ft ²	2,476	3,114

¹Land Use Code and trip rates per Institute of Transportation Engineers *Trip Generation Manual 10th Edition*

*Includes 34% reduction for pass-by trips, per Institute of Transportation Engineers *Trip Generation Handbook*

3. Additional Issues for Consideration

Anticipated Annual Revenues from Impact Fees

The anticipated annual revenue from the proposed transportation impact fee, based on the travel demand growth forecast of 7,352 new trips by 2040, is shown below:

$$\frac{350 \text{ trips}}{\text{year}} * \frac{\$4,943}{\text{PM trip}} = \$1,730,050 / \text{year}$$

The transportation impact fee is anticipated to generate an average of \$1,730,050 per year. This represents a 20-year average and may be more or less in any given year.

Anticipated Grant Revenue

Transportation improvement projects are generally eligible for state and federal grant funds. These funds are not predictable and vary in amount by grantor. The financing plan in the Transportation Element identifies a 50 percent grant and intergovernmental funding goal for roadway projects. This assumption is applied in the impact fee rate calculation.

Anticipated Need for Other Public Funds

The anticipated impact fee revenue does not fully fund the non-grant share of TIF project costs. The anticipated need for other public funds is summarized below:

Total TIF Project Cost	\$145,863,474
Anticipated Grant & Intergovernmental Revenue	\$78,597,474
Growth/Development Share of Project Cost	\$36,343,224
Remaining Unfunded Commitment (2019-2040)	\$30,922,776

The City will need to identify other revenue sources to fund the remaining unfunded revenue commitment of \$30,922,776 associated with the TIF projects. This represents an annual funding commitment of \$1,546,139.

4. Transportation Impact Fee Rate Comparison

The City of Bellingham Public Works Department has compiled a list of transportation impact fee rates for 79 public agencies in western Washington. The full comparison chart is included in Appendix B. Provided below are current transportation impact fee rates for several agencies which are located near Port Orchard. The updated impact fee rate of \$4,943 per PM trip would be just above the western Washington average rate, but far from the highest in western Washington.

Western WA Maximum Transportation Impact Fee:	\$14,064	(City of Sammamish)
City of Poulsbo Transportation Impact Fee:	\$5,397	
City of Gig Harbor Transportation Impact Fee:	\$5,020	
Proposed Port Orchard Transportation Impact Fee:	\$4,943	
Western WA Average Transportation Impact Fee:	\$4,363	
City of Bainbridge Island Transportation Impact Fee:	\$1,687	
Kitsap County Transportation Impact Fee:	\$700	
Western WA Minimum Transportation Impact Fee:	\$589	(City of Oak Harbor)

5. Credits and Adjustments***Impact Fee Credits***

An applicant may request a credit for impact fees in the amount of the total value of system improvements, including dedications of land, improvements, and/or construction provided by the applicant. Credits should be considered on a case-by-case basis and shall not exceed the impact fee payable.

Claims for credit should be made before the payment of the impact fee. Credits for the construction should be provided only if the land, improvements, and/or the facility constructed are listed as planned transportation projects in the Rate Analysis and Impact Fee Ordinance. Credits are not generally given for code-based frontage improvements or right-of-way dedications, or direct access improvements to and/or within the subject development (project improvements) unless the improvement is part of a project listed in the Rate Analysis and Impact Fee Ordinance.

Independent Fee Calculation

An applicant may submit an independent fee calculation for a proposed development activity. The documentation submitted should be prepared by a traffic engineer licensed in Washington State and should be limited to adjustments in the trip generation rates used in the fee calculation.

Construction Cost Index Adjustment

Transportation impact fees should be adjusted yearly to account for inflation. Annual adjustments will be based on the All-Urban Consumers Index (CPI-U) for the Seattle-Tacoma-Bellevue area for the previous 12-month period from December to December as specified by the Bureau of Labor Statistics, United States Department of Labor. The CPI adjustment would take effect on March 1.

6. Conclusions

The recommended transportation impact fee rate is \$4,943 per new PM peak hour trip.

Appendix A. Transportation Impact Fee Project List

**City of Port Orchard
Transportation Impact Fee Project List - 2020 Update**

ID	Project Name	Cost Estimate (\$)	Local Share (\$)	Growth Share (%)	Growth Share (\$)
DA	Glenwood Connector Roadway	2,000,000	2,000,000	100%	2,000,000
1.1	Tremont St Widening CN Phase	23,600,000	7,570,000	24%	1,851,656
1.3	Bethel/Sedgwick Corridor Ph. 1 Design	1,211,000	1,211,000	24%	293,489
1.4	Old Clifton Rd/Anderson Hill Rd Roundabout	2,420,000	968,000	81%	786,112
1.5A	Old Clifton Rd Design - 60%	562,000	562,000	100%	562,000
1.5C	Old Clifton Rd/Campus Pkwy Roundabout	1,600,000	1,600,000	100%	1,600,000
1.7	Vallair Ct Connector	2,498,000	1,249,000	8%	96,697
2.01	Sidney Ave (N) Widening	13,113,000	6,557,000	48%	3,144,444
2.02	Sedgwick Rd West Design/ROW	1,444,000	722,000	100%	722,000
2.03	Sedgwick Rd West Constr.	4,331,000	2,166,000	100%	2,165,500
2.04A	Bethel/Sedgwick Corridor Ph. 1 ROW/Constr.	14,360,000	7,180,000	24%	1,740,094
2.04B	Bethel/Sedgwick Corridor Ph. 2	17,498,000	5,249,000	28%	1,464,306
2.04C	Bethel/Sedgwick Corridor Ph. 3	6,111,000	1,833,000	5%	97,776
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2.05	Sidney Rd (S) Widening	7,820,000	3,910,000	66%	2,593,367
2.06	Pottery Ave (N) Widening	1,998,000	999,000	28%	277,500
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2.09	Melcher St Widening	749,000	375,000	7%	25,279
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2.13	Tremont St Widening Ph. 2 - PO Blvd	10,684,000	5,342,000	100%	5,342,000
2.14	Pottery Ave (S) Widening	5,245,000	2,623,000	16%	415,119
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2.17	Geiger Rd Widening	468,000	234,000	5%	11,700
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2.21	Old Clifton Rd/Feigley Rd Roundabout	243,000	122,000	26%	31,150
DA	Feigley Rd Improvements	76,474	76,000	100%	76,474
Total		145,863,474	67,266,000	54%	36,343,224

Total Project Cost	\$145,863,474
Local Share (Development + City) (%)	46%
Growth/Development Share (\$)	\$36,343,224
2019-2040 PM Peak Hour Trip Growth (vph)	7,352
2020 Transportation Impact Fee Rate (\$/trip)	\$4,943
Remaining Unfunded Commitment (\$)	\$30,922,776
Annual Funding Commitment (\$/yr)	\$1,546,139

Appendix B. Transportation Impact Fee Rate Schedule

City of Port Orchard Traffic Impact Fee Rate Schedule – Residential (2020 Update)

ITE Code ¹	ITE Land Use Category ¹	ITE Trip Rate ²	Rate per Unit ³	Impact Fee per Unit
210	Single-Family Detached Housing	0.99	DU	\$4,894
220	Low-Rise Multifamily Housing (1-2 floors)	0.56	DU	\$2,768
221	Mid-Rise Multifamily Housing (3-10 floors)	0.44	DU	\$2,175
230	Mid-Rise Residential w/ 1st Floor Commercial	0.36	DU	\$1,779
240	Mobile Home Park	0.46	DU	\$2,274
251	Senior Housing Detached	0.30	DU	\$1,483
252	Senior Housing Attached	0.26	DU	\$1,285
253	Congregate Care Facility	0.18	DU	\$890
254	Assisted Living	0.26	bed	\$1,285
260	Recreational Home	0.28	DU	\$1,384
270	Residential PUD	0.69	DU	\$3,411
-	Accessory Dwelling Unit (≤ 450 sf)	0.56	DU	\$2,768
-	Accessory Dwelling Unit (> 450 sf)	0.28	DU	\$1,384

¹ Institute of Transportation Engineers, Trip Generation Manual (10th Edition)

² Trip generation rate per development unit for PM peak hour of the adjacent street traffic (4-6 PM)

³ DU = Dwelling Unit



Transportation Solutions

INNOVATIVE | PRACTICAL | EQUITABLE

City of Port Orchard Traffic Impact Fee Rate Schedule – Non-Residential LUC 1-799 (2020 Update)

ITE Code ¹	ITE Land Use Category ¹	Base Trip Rate ²	% Primary Trips	Net Trip Rate	Rate per Unit ³	Impact Fee per Unit
PORT AND TERMINAL						
30	Intermodal Truck Terminal	1.87	*	1.870	ksf	\$9,243
90	Park and Ride with Bus Service	0.43	*	0.430	space	\$2,125
INDUSTRIAL						
110	General Light Industrial	0.63	*	0.630	KSF	\$3,114
130	Industrial Park	0.40	*	0.400	KSF	\$1,977
140	Manufacturing	0.67	*	0.670	KSF	\$3,312
150	Warehousing	0.19	*	0.190	KSF	\$939
151	Mini Warehouse	0.17	*	0.170	KSF	\$840
170	Utilities	2.27	*	2.270	KSF	\$11,221
180	Specialty Trade Contractor	1.97	*	1.970	KSF	\$9,738
LODGING						
310	Hotel	0.60	*	0.600	room	\$2,966
311	All Suites Hotel	0.36	*	0.360	room	\$1,779
312	Business Hotel	0.32	*	0.320	room	\$1,582
320	Motel	0.38	*	0.380	room	\$1,878
RECREATIONAL						
411	Public Park	0.11	*	0.110	acre	\$544
416	Campground/RV Park	0.27	*	0.270	site	\$1,335
430	Golf Course	0.28	*	0.280	acre	\$1,384
432	Golf Driving Range	1.25	*	1.250	tee	\$6,179
433	Batting Cages	2.22	*	2.220	cage	\$10,973
434	Rock Climbing Gym	1.64	*	1.640	KSF	\$8,107
435	Multi-Purpose Recreational Facility	3.58	*	3.580	KSF	\$17,696
437	Bowling Alley	1.16	*	1.160	KSF	\$5,734
444	Movie Theater	14.60	*	14.600	screen	\$72,168
445	Multiplex Movie Theater	13.73	*	13.730	screen	\$67,867
488	Soccer Complex	16.43	*	16.430	field	\$81,213
490	Tennis Courts	4.21	*	4.210	court	\$20,810
491	Racquet/Tennis Club	3.82	*	3.820	court	\$18,882
492	Health Fitness Club	3.45	*	3.450	KSF	\$17,053
493	Athletic Club	6.29	*	6.290	KSF	\$31,091
495	Recreational Community Center	2.31	*	2.310	KSF	\$11,418
INSTITUTIONAL						
520	Public Elementary School	1.37	*	1.370	KSF	\$6,772
522	Public Middle/Junior High School	1.19	*	1.190	KSF	\$5,882
530	Public High School	0.97	*	0.970	KSF	\$4,795
537	Charter Elementary School	0.14	*	0.140	student	\$692
538	School District Office	2.04	*	2.040	KSF	\$10,084
540	Junior / Community College	1.86	*	1.860	KSF	\$9,194
560	Church	0.49	*	0.490	KSF	\$2,422
565	Day Care Center	11.12	44%	4.893	KSF	\$24,185
566	Cemetery	0.46	*	0.460	acre	\$2,274
571	Prison	0.05	*	0.050	bed	\$247
575	Fire & Rescue Station	0.48	*	0.480	KSF	\$2,373
590	Library	8.16	*	8.160	KSF	\$40,335
MEDICAL						
610	Hospital	0.97	*	0.970	KSF	\$4,795
620	Nursing Home	0.59	*	0.590	KSF	\$2,916
630	Clinic	3.28	*	3.280	KSF	\$16,213
640	Animal Hospital / Veterinary Clinic	3.53	*	3.530	KSF	\$17,449
650	Freestanding Emergency Room	1.52	*	1.520	KSF	\$7,513
OFFICE						
710	General Office	1.15	*	1.150	KSF	\$5,684
712	Single-Tenant Office (<5,000 sf)	2.45	*	2.450	KSF	\$12,110
715	Single Tenant Office (>5,000 sf)	1.71	*	1.710	KSF	\$8,453
720	Medical/Dental Office	3.46	*	3.460	KSF	\$17,103
730	Government Office Building	1.71	*	1.710	KSF	\$8,453
732	US Post Office	11.21	*	11.210	KSF	\$55,411
733	Government Office Complex	2.82	*	2.820	KSF	\$13,939
750	Office Park	1.07	*	1.070	KSF	\$5,289
760	Research and Development Center	0.49	*	0.490	KSF	\$2,422
770	Business Park	0.42	*	0.420	KSF	\$2,076

¹ Institute of Transportation Engineers, Trip Generation Manual (10th Edition)

² Trip generation rate per development unit, for PM Peak Hour of the adjacent street traffic (4-6 pm).

³ DU = Dwelling Unit; KSF = 1,000 square feet; VSP = Vehicle servicing position

* Pass-by and diverted trip rate data not available. Primary trip rates may be applied based on local data, development context, and engineering judgment

City of Port Orchard Traffic Impact Fee Rate Schedule – Non-Residential LUC 800-999 (2020 Update)

ITE Code ¹	ITE Land Use Category ¹	Base Trip Rate ²	% Primary Trips ³	Net Trip Rate	Rate per Unit ⁴	Impact Fee per Unit
RETAIL						
810	Tractor Supply Store	1.40	66%	0.924	KSF	\$4,567
811	Construction Equipment Rental Store	0.99	74%	0.733	KSF	\$3,621
812	Building Materials and Lumber Store	2.06	74%	1.524	KSF	\$7,535
813	Free-Standing Discount Superstore (w/ Grocery)	4.33	71%	3.074	KSF	\$15,196
814	Variety Store	6.84	66%	4.514	KSF	\$22,315
815	Free Standing Discount Store (w/o Grocery)	4.83	83%	4.009	KSF	\$19,816
816	Hardware/Paint Store	2.68	74%	1.983	KSF	\$9,803
817	Nursery (Garden Center)	6.94	74%	5.136	KSF	\$25,385
818	Nursery (Wholesale)	5.18	74%	3.833	KSF	\$18,948
820	Shopping Center	3.81	66%	2.515	KSF	\$12,430
823	Factory Outlet Center	2.29	66%	1.511	KSF	\$7,471
840	Automobile Sales (New)	2.43	100%	2.430	KSF	\$12,011
841	Automobile Sales (Used)	3.75	100%	3.750	KSF	\$18,536
842	Recreational Vehicle Sales	0.77	100%	0.770	KSF	\$3,806
843	Automobile Parts Sales	4.91	44%	2.160	KSF	\$10,679
848	Tire Store	3.98	72%	2.866	KSF	\$14,165
849	Tire Superstore	2.11	72%	1.519	KSF	\$7,509
850	Supermarket	9.24	64%	5.914	KSF	\$29,231
851	Convenience Market	49.11	49%	24.064	KSF	\$118,948
853	Convenience Market w/Gas Pumps	49.23	17%	8.369	VFP	\$41,368
854	Discount Supermarket	8.38	51%	4.274	KSF	\$21,125
857	Discount Club	4.18	63%	2.633	KSF	\$13,017
861	Sporting Goods Superstore	2.02	66%	1.333	KSF	\$6,590
862	Home Improvement Superstore	2.33	58%	1.351	KSF	\$6,680
863	Electronics Superstore	4.26	60%	2.556	KSF	\$12,634
866	Pet Supply Superstore	3.55	66%	2.343	KSF	\$11,581
867	Office Supply Superstore	2.77	66%	1.828	KSF	\$9,037
875	Department Store	1.95	66%	1.287	KSF	\$6,362
876	Apparel Store	4.12	66%	2.719	KSF	\$13,441
879	Arts and Crafts Store	6.21	66%	4.099	KSF	\$20,259
880	Pharmacy/Drug Store w/o Drive-Thru	8.51	47%	4.000	KSF	\$19,771
881	Pharmacy/Drug Store w/ Drive-Thru	10.29	38%	3.910	KSF	\$19,328
882	Marijuana Dispensary	21.83	100%	21.830	KSF	\$107,906
890	Furniture Store	0.52	47%	0.244	KSF	\$1,208
899	Liquor Store	16.37	64%	10.477	KSF	\$51,787
SERVICES						
911	Walk-in Bank	12.13	65%	7.885	KSF	\$38,973
912	Drive-in Bank	20.45	65%	13.293	KSF	\$65,705
918	Hair Salon	1.45	65%	0.943	KSF	\$4,659
920	Copy, Print, and Express Ship Store	7.42	66%	4.897	KSF	\$24,207
925	Drinking Place	11.36	100%	11.360	KSF	\$56,152
930	Fast Casual Restaurant	14.13	57%	8.054	KSF	\$39,811
931	Quality Restaurant	7.80	56%	4.368	KSF	\$21,591
932	High Turnover (Sit-Down) Restaurant	9.77	57%	5.569	KSF	\$27,527
933	Fast Food w/o Drive-Thru	28.34	57%	16.154	KSF	\$79,848
934	Fast Food w/ Drive-Thru	32.67	50%	16.335	KSF	\$80,744
935	Fast Food Restaurant w/ Drive-Thru w/o Indoor Seating	42.65	50%	21.325	KSF	\$105,409
936	Coffee/Donut Shop w/o Drive-Thru	36.31	57%	20.697	KSF	\$102,304
937	Coffee/Donut Shop w/ Drive-Thru	43.38	50%	21.690	KSF	\$107,214
938	Coffee/Donut Shop w/ Drive-Thru w/o Indoor Seating (Espresso Stand)	83.33	11%	9.166	KSF	\$45,309
939	Bread/Donut/Bagel Shop w/o Drive-Thru	28.00	57%	15.960	KSF	\$78,890
940	Bread/Donut/Bagel Shop w/ Drive-Thru	19.02	50%	9.510	KSF	\$47,008
941	Quick Lubrication Vehicle Stop	4.85	72%	3.492	VSP	\$17,261
942	Automobile Care Center	3.11	72%	2.239	KSF	\$11,068
943	Automobile Parts and Service Center	2.26	72%	1.627	KSF	\$8,043
944	Gasoline/Service Station	14.03	58%	8.137	VFP	\$40,223
945	Gas Station w/Convenience Market	13.99	12%	1.679	VFP	\$8,298
947	Self-Serve Car Wash	5.54	58%	3.213	stall	\$15,883
948	Automated Car Wash	77.50	58%	44.950	stall	\$222,188
950	Truck Stop	22.73	58%	13.183	KSF	\$65,166
960	Super Convenience Market/ Gas Station	22.96	35%	8.036	VFP	\$39,722
970	Winery	7.31	100%	7.310	KSF	\$36,133

¹ Institute of Transportation Engineers, Trip Generation Manual (10th Edition)

² Trip generation rate per development unit, for PM Peak Hour of the adjacent street traffic (4-6 pm).

³ Average primary trip rates, per Trip Generation Handbook (3rd Edition), 2017. Additional primary rates based on similar land use and engineering judgment.

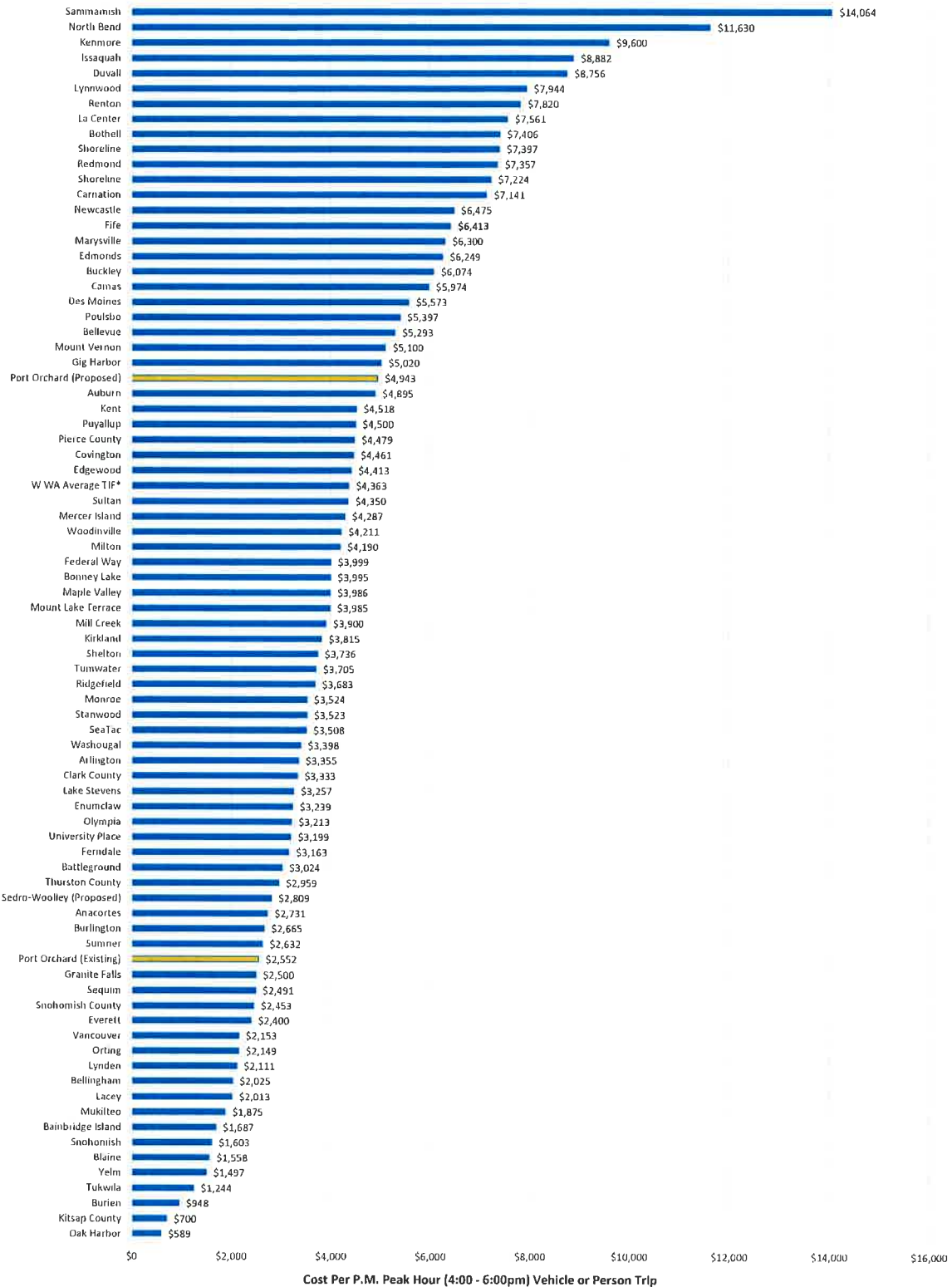
Pass-by rates should be used with caution and refined using local data whenever possible. ⁴ DU = Dwelling Unit; KSF = 1,000 square feet; VSP = Vehicle servicing position

Appendix C. Comparison of 2019-2020 TIF Rates in Western Washington

**Comparison of 2019-2020 TIF Base Rates in 74 Cities and 5 Counties in Western Washington
With Bellingham and Whatcom County Cities Highlighted for Emphasis**

[Based on information available. Average includes both Cities and Counties. See TIF rate table on next page for additional details.]

**Data compiled Nov. 2019 by Chris Comeau, AICP-CTP, Transportation Planner, Bellingham Public Works ccomeau@cob.org or (360) 778-7946
*Western WA State Average TIF**



PORT ORCHARD CITY PARKS PLAN



Appendix E: Impact Fee Calculations

E.1 Introduction

This study of impact fees for parks and recreational facilities for the City of Port Orchard presents the methodology, summarizes the data, and explains the calculation of the fees. The methodology is designed to comply with the requirements of Washington law. This introduction describes the basis for parks and recreational impact fees, including:

- Definition and Rationale of Impact Fees
- Statutory Basis For Impact Fees
- Methodology for Calculating Impact Fees
- Need for Additional Parks and Recreational Facilities
- Determining the Benefit of Parks and Recreational Facilities to Development
- Methodology and Relationship to Port Orchard City Parks Plan
- Level of Service and Calculations

E 1.1 Definition and Rationale of Impact Fees

Impact fees are charges paid by new development to reimburse local governments for the capital cost of public facilities that are needed to serve new development and the people who occupy the new development. New development is synonymous with "growth."

Local governments charge impact fees on either of two bases. First, as a matter of policy and legislative discretion, they may want new development to pay the full cost of its share of new public facilities because that portion of the facilities would not be needed except to serve the new development. In this case, the new development is required to pay for virtually all the cost of its share of new public facilities.

On the other hand, local governments may use other sources of revenue to pay for the new public facilities that are required to serve new development. If, RCW 82.02.050 (2) prohibits impact fees that charge 100% of the cost, but does not specify how much less than 100%, leaving that determination to local governments. However, such revenues are not sufficient to cover the entire costs of new facilities necessitated by new development; the new development may be required to pay an impact fee in an amount equal to the difference between the total cost and the other sources of revenue.

There are many kinds of "public facilities" that are needed by new development, including parks and recreational facilities, fire protection facilities, schools, roads, water and sewer plants, libraries, and other government facilities. This study covers parks and recreational facilities for the City of Port Orchard, Washington. Impact fees for parks and recreational facilities are charged to all residential development within the City of Port Orchard.

E1.2 Statutory Basis for Impact Fees

RCW 82.02.050 - 82.02.090 authorizes local governments in Washington to charge impact fees. The impact fees that are described in this study are not mitigation payments authorized by the State Environmental Policy Act (SEPA). There are several important differences between impact fees and SEPA mitigations. Two aspects of impact fees that are particularly noteworthy are: 1) the ability to charge for the cost of public facilities that are "system improvements" (i.e., that provide service to the community at large) as opposed to "project improvements" (which are "on-site" and provide service for a particular development), and 2) the ability to charge small-scale development their proportionate share, whereas SEPA exempts small developments. Four types of public facilities can be the subject of impact fees: 1) public streets and roads; 2) publicly owned parks, open space and recreational facilities; 3) school facilities; and 4) fire protection facilities (in jurisdictions that are not part of a fire district). RCW82.02.050 (2) and (4) and RCW82.02.090 (7)

Impact fees must be limited to system improvements that are reasonably related to, and which will benefit new development. RCW 82.02.050(3) (a) and (c). Local governments must establish reasonable service areas (one area, or more than one, as determined to be reasonable by the local government), and local governments must develop impact fee rate categories for various land uses. RCW 82.02.060(6) Impact fees cannot exceed the development's proportionate share of system improvements that are reasonably related to the new development. The impact fee amount shall be based on a formula (or other method of calculating the fee) that determines the proportionate share. RCW82.02.050(3)(b) and RCW82.02.060(1)

Impact fees can be charged for new public facilities (RCW 82.02.060(1)(a)) and for the unused capacity of existing public facilities (RCW 82.02.060(7)) subject to the

proportionate share limitation described above. Additionally, the local government must separate the impact fees from other monies, expend the money on CFP projects within 6 years, and prepare annual reports of collections and expenditures. RCW82.02.070(1)-(3)

E 2 Methodology for Calculating Impact Fees

Prior to calculating impact fee rates, several issues must be addressed in order to determine the need for, and validity of such fees: responsibility for public facilities, the need for additional park and recreational facilities, the need for revenue for additional parks and recreational facilities, and the benefit of new parks and recreational facilities to new development.

In general, local governments that are authorized to charge impact fees are responsible for specific public facilities for which they may charge such fees. The City of Port Orchard is legally and financially responsible for the parks and recreational facilities it owns and operates within its jurisdiction. In no case may a local government charge impact fees for private facilities, but it may charge impact fees for some public facilities that it does not administer if such facilities are "owned or operated by government entities" (RCW 82.82.090(7)).

E 2.1 Need for Additional Park and Recreational Facilities

The need for additional parks and recreational facilities is determined by using standards for levels of service for park and recreational facilities to calculate the quantity of facilities that are required. For the purpose of quantifying the need for parks and recreational facilities, this study uses the City's value of investment in parks and recreational facilities per capita. As greater growth occurs, more investment is required, therefore more parks and recreational facilities are needed to maintain standards.

E 2.2 Determining the Benefit to Development

The Washington State law regarding Impact Fees imposes three provisions of the benefit provided to development by impact fees: 1) proportionate share, 2) reasonably related to need, and 3) reasonably related to expenditure (RCW 80.20.050(3)). First, the "proportionate share" requirement means that impact fees can be charged only for the portion of the cost of public facilities that is "reasonably related" to new development.

Second, fulfilling the requirement that impact fees be "reasonably related" to the development's need for public facilities, including personal use and use by others in the family (direct benefit), use by persons or organizations who provide goods or services to the fee-paying property (indirect benefit), and geographical proximity (presumed benefit). Impact fees for park and recreational facilities, however, are only charged to

residential development in the City because the majority of benefits are to the occupants and owners of dwelling units. As a matter of policy, the City of Port Orchard elects not to charge parks and recreational impact fees to non-residential properties because there is insufficient data to document the proportionate share of parks reasonably needed by non-residential development.

Lastly, the requirement that expenditures be "reasonably related" to the development that paid the impact fee includes that fee revenue must be earmarked for specific uses related to public facilities ensures that expenditures are on identifiable projects, the benefit of which can be demonstrated and that impact fee revenue must be expended within 6 years, thus requiring a timeliness to the benefit to the fee-payer.

E 2.3 Methodology and Relationship to the Port Orchard City Parks Plan

Impact fees for parks and recreational facilities in the City of Port Orchard are based on the value per capita of the City's existing investment in parks and recreational facilities for the population of the City. New development will be provided the same investment per capita, to be funded by a combination of general and capital improvement fund revenue and impact fees. The amount of the impact fee is determined by charging each new development for the average number of persons per dwelling unit multiplied times the amount of the investment per capita that is to be paid by growth.

E3. Level of Service Standard Calculations

The level of service, as defines as the capital investment per person, is calculated by multiplying the capacity of parks and recreational facilities times the average costs of those items. Within this calculation, there are two variables that benefit from further definition explanation: The value of parks and recreational inventory, and the Service population.

E 3.1 Value of Parks and Recreational Inventory

The value of the existing inventory of parks and recreational facilities is calculated by determining the value of each park as well as each recreational facility. The sum of all of the values equal the current value of the City's parks and recreational system

E 3.2 Service Population

The service population is the number of persons served by the inventory of parks and recreational facilities. Port Orchard's service population consists of the City's current 2011 population of 11,144 as provided by the Washington State of Financial Management. The forecast population for 2030 of is the projected population

estimated for Comprehensive Planning efforts and adopted by all Kitsap County jurisdictions, through the County Wide Planning Policies. This figure is provided to estimate future population growth within the existing City boundaries and is utilized in calculating the annual portion of that growth rate for the Impact Fee calculations.

E 3.3 Calculation of Park and Recreational Capital Investment per Person

The City of Port Orchard's capital value per person is the standard the City uses to ensure that each resident receives an equitable amount of parks and recreational facilities. The City provides this value by investment in parks and recreational facilities that are most appropriate for each site and which respond to changing needs and priorities as the City grows and the demographics and needs of the population changes.

Attachment E1 (at the end of this Appendix) lists the types of land and recreational facilities that make up the City of Port Orchard's existing park system. Each component is listed in the first column, along with the capital value of each type of park land or recreational facility in the final column. The capital value for all City owned parks & recreational facilities in the inventory comes to a total of \$7,228,929. This total value is divided by the service population of 11,144 for the City determines the current capital value per person of \$649. (Please reference Attachment E2: Figure E1)

E 4 PARKS AND RECREATIONAL FACILITY NEEDS

This section calculates the value of parks and recreational facilities that are needed to serve growth, reduced by the typical proportion of project values that are grant or otherwise funded. Impact fees are related to the needs of growth through calculating the total value of parks and recreational facilities that are needed for growth. The calculation is accomplished by multiplying the capital investment per person times the number of new persons that are forecast for the City's growth. (Please reference Attachment E2: Figure E2)

E 4.1 Calculation of Total Value Needed For Growth

The calculations for the total value of Parks and Recreation Facilities needed to accommodate the forecasted growth is a tabulation of the level of service standard for capital investment per person from Figure E1 times the total amount of population growth forecast for the six year Impact Fee planning period. The resulting calculation shows the total value of parks and recreational facilities that are needed to serve the growth that is forecast for Port Orchard (Please reference Attachment E2: Figure E2). The result of Figure E2 illustrates that Port Orchard needs parks and recreational facilities valued at \$1,928,434 in order to serve the growth of 2,973 additional people (forecast at an annual growth rate of 495 per year) who are expected to be added to the City's population during the six year Impact Fee planning period.

E 4.2 Total Investment to be Paid by Growth

The investment to be paid by growth is calculated by subtracting the amount of any revenues the City invests in infrastructure for growth from the total investment in parks and recreational facilities needed to serve growth. The previous calculation showed the total amount that is needed to invest in additional parks and recreation facilities in order to serve future growth. The proportionate share of that investment to be paid by growth is dependent upon the historic share of improvements provided by the City of Port Orchard through grants or other revenue streams. The proportionate share for development to pay for new facilities includes the City of Port Orchard historical use of local sources, such as real estate excise tax, grant funding, and other revenues to pay for part of the cost of parks and recreational facility capital costs. Revenues that are used for repair, maintenance or operating costs are not used to reduce impact fees because they are not used, earmarked or prorated for the system improvements that are the basis of the impact fees. The City's investment has averaged 50% of the cost of capital improvement projects for parks and recreational facilities (Please reference Attachment E2: Figure E3). The result of Figure E3 illustrates that Port Orchard expects to use \$964,217 in grants and other revenues to serve the total needs of additional parks and recreational facilities to maintain the City's standards for future growth, with the remaining \$964,217 to be paid by growth as a proportionate share.

E5 IMPACT FEE PER UNIT OF DEVELOPMENT

In this section the investment in additional parks and recreational facilities to be paid by growth is used to calculate the park and recreational facilities growth cost per person which is then used to calculate the impact fee per dwelling unit.

E 5.1 Growth Cost Per Person

The growth cost per person is calculated by dividing the investment in parks and recreational facilities that is to be paid by growth by the amount of population growth during the six year Impact Fee planning period (Please reference Attachment E2: Figure E4). The result of Figure E4 illustrates the calculation of the cost per person of parks and recreational facilities that needs to be paid by growth is \$324 per person. The amount to be paid by each new dwelling unit depends on the number of persons per dwelling unit.

E 5.2 Impact Fee per Dwelling Unit

The impact fee per dwelling unit is calculated by multiplying the growth cost per person by the number of persons per dwelling unit. The number of persons per dwelling unit is the factor used to convert the growth cost of parks and recreational facilities per

person into impact fees per dwelling unit. The number of persons per dwelling unit data is based on the adopted 2008 Port Orchard Comprehensive Plan, Chapter 3. Housing; which sets an population household size of 2.5 persons per single family unit and a calculation of 1.8 persons per Multi-family housing unit within the City of Port Orchard (Please reference Attachment E2: Figure E5 and E6 respectively).

The resulting calculations of Figure E5 shows the calculation of the parks and recreational facilities impact fee of \$811 per single family dwelling unit. The resulting calculations of Figure E6 show the calculation of the parks and recreational facilities impact fee of \$584 per multi-family dwelling unit. Impact Fee amounts, upon adoption by City Council, are to be implemented and collected subject to the provisions of Port Orchard Municipal Code Section 16.70.

E6. Summary

This study of impact fees for parks and recreational facilities for the City of Port Orchard summarizes the methodology, presents the data, and explains the calculation of the fees that result in the recommended amounts. Similar sized Cities within Kitsap County have chosen to utilize much higher impact fee amounts, for example the City of Poulsbo recently raised their Park Impact Fee from \$500 to \$1,195 per unit. The proposed Park Impact Fees for the City of Port Orchard of \$811 per single family dwelling unit and \$584 per multi-family dwelling unit, although consistent with the City of Port Orchard level of service, still are well below the Washington State average of \$2,849 per single family dwelling unit and \$2,147 per multi-family dwelling unit respectively. (Sourced from the National Impact Fee Survey 2009, prepared by Clancy Mullen, Duncan Associates, Austin, TX on December 20, 2009) The methodology utilized for arriving at the City of Port Orchard impact fee amounts has been a statewide standard incorporated for numerous Washington State cities and is designed to comply with the requirements of Washington law.

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CITY OF PORT ORCHARD COMPREHENSIVE PARKS PLAN

South Kitsap School District 2015 Capital Facilities Plan

VII. DISTRICT FINANCE PLAN

The principal funding mechanism for school facility construction and modernization has traditionally been voter approved bonds. More recently, school districts have been turning to capital levies to support modernizations and elementary school new construction projects. Other funding sources can include state funding assistance and development impact (mitigation) fees.

General Obligation Bonds

Bonds are typically used to fund construction of new schools and other major capital improvement projects. A 60% voter approval is required for passage. Bonds are then retired over time through the collection of property taxes.

The South Kitsap School District had an assessed valuation of \$6,123,112,269 as of August 31, 2014. The limit for all outstanding bonds for SKSD is 5% of assessed value or \$306,155,613. The District had \$5,645,481 of debt as of August 31, 2014, and therefore has a current bonding capacity of \$300,510,132.

State Funding Assistance

The source of State Funding Assistance, formerly State Match Funds, is the Common School Construction Fund. Bonds are sold on behalf of the fund then retired with revenues accruing predominantly from the sale of renewable resources (i.e., timber) from state school lands set aside by the Enabling Act of 1889. If these sources are insufficient to meet the needs of the program, the Legislature can appropriate additional funding, or the State Board of Education can ration project funding on a priority basis.

School districts may qualify for state funding assistance for specific capital projects based on an eligibility system. Eligible projects are prioritized using seven different criteria. Funds are then disbursed to districts on a percentage basis that is based on a formula that compares each district's assessed valuation per pupil relative to the entire state assessed valuation per pupil. This percentage is known as the Funding Assistance Percentage, formerly State Match Ratio.

The base to which this percentage is applied is the cost of construction as determined by the "Construction Cost Allocation" multiplied by the "Eligible Area". The Construction Cost Allocation (CCA) is used by OSPI to help define or limit its level of financial support for school construction. It is a budget driven value that is not intended to fully reflect the actual cost of school construction in Washington State. The Eligible Area portrays either the square footage of new space required to address unhoused students for an enrollment project, or the building square footage approved for upgrade or replacement for a modernization project.

State funding assistance is available to assist districts with construction costs for enrollment and modernization related school construction projects but cannot be used for site acquisition, the purchase of portables or for normal building maintenance. Because the availability of state assistance funds may not always keep pace with the enrollment growth or modernization needs of all of Washington's school districts, assistance funds from the state may not be received by a school district until two or three years after a school project has begun. In such cases, a district may be required to "front fund" meaning it must be prepared to finance the entire project with local funds. The State's share of the project funding is then provided to the district later in the form of a reimbursement. In some cases projects may not receive any state assistance at all. State funding assistance is not guaranteed.

South Kitsap School District 2015 Capital Facilities Plan

New Development Mitigation/Impact Fees

The authority for local jurisdictions to condition new development on the mitigation of school impacts is provided for under the State Subdivision Act, Chapter 58.17 RCW, the State Environmental Policy Act, Chapter 43.21C RCW, and the Growth Management Act, Chapter 36.70A RCW. These state statutes seek to ensure that adequate public facilities are available to meet the demands of new growth by authorizing permitting jurisdictions to condition development approval on the implementation of mitigation measures that enable local jurisdictions to meet the infrastructure demands of new development.

- **Subdivision Act Mitigation** RCW 58.17.110 requires the permitting jurisdiction to find that proposed plats adequately provide for schools and school grounds. The proposed development must provide land sufficient to ensure that such facilities are provided for potential new students.
- **SEPA Mitigation**. SEPA provides that local jurisdictions may condition the approval of a new development to the mitigation of specific adverse environmental impacts which are identified in SEPA environmental documents. *See* RCW 43.21C.060. Under SEPA, the "built environment" includes public schools. *See* WAC 197-11-444(2) (d) (iii).
- **GMA Mitigation**. Development impact fees have been adopted by Kitsap County and the City of Port Orchard as a means of supplementing traditional funding sources for the construction of public facilities needed to accommodate new development. The City of Bremerton does not impose an impact fee on new development. The District participates in the permit review processes of jurisdictions within its boundaries to ensure that its interests are considered when new developments are proposed that will generate additional students.

Six-Year Finance Plans

The Six-Year Capital Finance Plan (Table 12) portrays how South Kitsap School District intends to fund improvements to school facilities for the years 2015 through 2020.

South Kitsap School District 2015 Capital Facilities Plan

**Table 12
Capital Finance Plan (2015-2020)**

Sources:		
CFP Balance/Impact Funds (Aug 2014)	\$ 1,000,164	
Impact Fee Collections 2015-2020 (est.)	\$ 1,438,680	
Transfer from General Funds	\$ 0	
State Matching Funds (est.)	\$ 0	
Sale of General Obligation Bonds	\$ 0	
Improvements to Existing Facilities	<u>\$ 4,750,000</u>	\$7,188,844
Uses:		
CFP Balance/Impact Funds (Aug 2020 est.)	\$ 378,769	
Improvements to Existing Facilities	\$ 4,750,000	
Construction for Enrollment Growth	\$ 0	
Site Acquisition	\$ 1,760,075	
Construction of Support Facilities	\$ 0	
Interim Classroom Space	\$ 300,000	
Program Changes	<u>\$ 0</u>	<u>\$ 7,188,844</u>
Balance:		\$ 0

South Kitsap School District 2015 Capital Facilities Plan

VIII. UNFUNDED NEED CALCULATION

The calculation of the South Kitsap School District unfunded need in support of jurisdictional school impact fee collection is provided on the spreadsheets that follow. This calculation recognizes projected costs anticipated over the life of the six-year plan including acquisition costs for interim housing and debt service payments on a 56 acre school site that was purchased in 2005.

The “Unfunded Need Total” on the last line of the SKSD Impact Fee Calculation document portrays the cost of addressing new home construction related enrollment growth identified within the six-year capital construction plan. This value is greater than the actual school impact fees specified and collected under respective Kitsap County and City of Port Orchard impact fee ordinances.

South Kitsap School District 2015 Capital Facilities Plan

<u>Description</u>	<u>Grade Span</u>	<u>Value</u>	<u>Units</u>	<u>Comments</u>
Student Generation Factor-SFH	Elementary	0.32	Students/Residence	2007 Kendrick Demographic Study
Student Generation Factor-SFH	Jr. High	0.10	Students/Residence	2007 Kendrick Demographic Study
Student Generation Factor-SFH	Sr. High	0.10	Students/Residence	2007 Kendrick Demographic Study
Student Generation Factor-MFH	Elementary	0.18	Students/Residence	2007 Kendrick Demographic Study
Student Generation Factor-MFH	Jr. High	0.09	Students/Residence	2007 Kendrick Demographic Study
Student Generation Factor-MFH	Sr. High	0.09	Students/Residence	2007 Kendrick Demographic Study
Facility Acreage	Elementary	14.00	Acres	District Average
Facility Acreage	Jr. High	22.00	Acres	District Average
Facility Acreage	Sr. High	42.00	Acres	Plan for New High School
Cost per Acre	All	\$115,000	Cost/Acre	Market Estimate
Facility Size - New Construction	Elementary	550	Students/School	District Standard
Facility Size - New Construction	Jr. High	900	Students/School	District Standard
Facility Size - New Construction	Sr. High	1800	Students/School	Plan for New High School
Facility Size - Temporary Construction	Elementary	24	Student/Classroom	District LOS
Facility Size - Temporary Construction	Jr. High	26	Student/Classroom	District LOS
Facility Size - Temporary Construction	Sr. High	26	Student/Classroom	District LOS
Permanent Sq. Footage (Total)	Elementary	507894	Square Feet	State Study & Survey
Permanent Sq. Footage (Total)	Jr. High	286193	Square Feet	State Study & Survey
Permanent Sq. Footage (Total)	Sr. High	345474	Square Feet	State Study & Survey
Portable Sq. Footage (Total)	Elementary	45900	Square Feet	Portables Inventory
Portable Sq. Footage (Total)	Jr. High	18900	Square Feet	Portables Inventory
Portable Sq. Footage (Total)	Sr. High	10800	Square Feet	Portables Inventory
Facility Cost - New Construction	Elementary		Cost/School	
Facility Cost - New Construction	Jr. High		Cost/School	
Facility Cost - New Construction	Sr. High		Cost/School	
Facility Cost - Temporary Construction	Elementary	\$300,000	Cost/Portable	Standard Dbl Portable including Site Costs
Facility Cost - Temporary Construction	Jr. High	\$300,000	Cost/Portable	Standard Dbl Portable including Site Costs
Facility Cost - Temporary Construction	Sr. High	\$300,000	Cost/Portable	Standard Dbl Portable including Site Costs
Boeckh Index / Area Cost Allowance	All	\$206.70	Cost/sq. ft.	OSPI - 2015
SPI Footage	Elementary	90.0	Sq. Ft./Student	OSPI - 2015
SPI Footage	Jr. High	121.3	Sq. Ft./Student	OSPI - 2015
SPI Footage	Sr. High	130.0	Sq. Ft./Student	OSPI - 2015
State Match Ratio	All	59.98%	Percent	OSPI - 2015
Average Assessed Value - SFH	All	\$201,260	Cost/Unit	Kitsap County Assessor SFH 2015
Average Assessed Value - MFH	All	\$100,630	Cost/Unit	Kitsap County Assessor SFH 2015 @ 50%
Capital Bond Interest Rate	All	0.00%	Percent	
Years Amortized	All	10	Years	
Property Tax Levy Rate - Capital Construction	All	\$0.00	Cost/\$1000 A.V.	

South Kitsap School District 2015 Capital Facilities Plan

School Site Acquisition Cost:

((Acres X Cost per Acre)/Facility Capacity) X Student Generation Factor

CALCULATIONS

	Facility Acreage	Cost per Acre	Facility Capacity	SGF SFH	SGF MFH	Cost per SFH	Cost per MFH
Elementary	14	\$115,000.00	550	0.32	0.18	\$936.73	\$526.91
Jr. High	22		900	0.10	0.09	\$0.00	\$0.00
Sr. High	42	\$115,000.00	1800	0.10	0.09	\$268.33	\$241.50
						\$1,205.06	\$768.41

School Construction Cost:

((Facility Cost/Facility Capacity) X Student Generation Factor) X Permanent/Total Sq. Ft.)

	% Perm/ Total Sq. Ft.	Facility Cost	Facility Size	SGF SFH	SGF MFH	Cost per SFH	Cost per MFH
Elementary	92%		550	0.32	0.18	\$0.00	\$0.00
Jr. High	94%		900	0.10	0.09	\$0.00	\$0.00
Sr. High	97%		1800	0.10	0.09	\$0.00	\$0.00
						\$0.00	\$0.00

Temporary Facility Cost:

((Facility Cost/Facility Capacity) X Student Generation Factor) X (Temporary/Sq. Ft.)

	% Temp/ Total Sq. Ft.	Facility Cost	Facility Size	SGF SFH	SGF MFH	Cost per SFH	Cost per MFH
Elementary	8%	\$300,000.00	48	0.32	0.18	\$165.77	\$93.24
Jr. High	6%		52	0.10	0.09	\$0.00	\$0.00
Sr. High	3%		52	0.10	0.09	\$0.00	\$0.00
						\$165.77	\$93.24

State Match Credit

Area Cost Allowance X SPI Sq. Ft X State Match X Student Generation Factor

	Boeckh Index	SPI Footage	State Match %	SGF SFH	SGF MFH	Cost per SFH	Cost per MFH
Elementary	\$206.70	90.00		0.32	0.18	\$0.00	\$0.00
Jr. High	\$206.70	121.30		0.10	0.09	\$0.00	\$0.00
Sr. High	\$206.70	130.00		0.10	0.09	\$0.00	\$0.00
						\$0.00	\$0.00

Tax Payment Credit

	SFH	MFH
Average Assessed Value		
Capital Bond Interest Rate	0.00%	0.00%
Net Present Value of Average Dwelling		
Years Amortized	10	10
Property Tax Levy Rate	\$0.00	\$0.00
Present Value of Revenue Stream	\$0.00	\$0.00

NEED SUMMARY

	SINGLE FAMILY	MULTI FAMILY
School Site Acquisition Cost	\$1,205.06	\$768.41
Permanent Facility Cost	\$0.00	\$0.00
Temporary Facility Cost	\$165.77	\$93.24
State Match Credit	\$0.00	\$0.00
Tax Payment Credit	\$0.00	\$0.00
UNFUNDED NEED TOTAL	\$1,370.83	\$861.65

Name and Mailing Address

City of Port Orchard

216 Prospect Street

Port Orchard, WA 98366

CITY OF PORT ORCHARD
Agreement Rec Fee: \$ 132.50
02/19/2021 02:48 PM
Paul Andrews, Kitsap Co Auditor

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Page: 1 of 30

The Recorder is required to use only the information you provide on this cover sheet to index the document.

Type or print legibly.

Document Title(s): Development Agreement between the City of Port Orchard and McCormick for Development and Funding of Certain Transportation Improvements

Auditor's File Number of Document (s) Referenced: _____

Grantor(s) person(s) that conveys, sells or grants interest in property: _____
McCormick Communities, LLC

Grantee(s) person that buys, receives or to whom conveyance of property is made: _____
City of Port Orchard

Abbreviated Legal Description:

- Quarter, Quarter, Section, Township, Range (and Government lot # if applicable); **OR**
- Plat/Condo Name, lot or unit number, building or block number; **OR**
- Short Plat, Large Lot number, lot number **and** auditor file number

A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 23 NORTH, RANGE 1 EAST

See additional descriptions on Page 1 through 5

Assessor's 14 digit Tax Parcel Number: 052301-4-023-2008

See additional parcel No's on Pages 1 through 5

04/25/14

Parcels and legals

McCormick North

052301-4-023-2008

RESULTANT PARCEL A OF BOUNDARY LINE ADJUSTMENT SURVEY RECORDED UNDER AUDITOR'S FILE NO. 201912050259, IN VOLUME 90 OF SURVEYS, PAGES 59-63, INCLUSIVE, RECORDS OF KITSAP COUNTY, WASHINGTON, BEING A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP

052301-4-027-2004

RESULTANT PARCEL E OF BOUNDARY LINE ADJUSTMENT SURVEY RECORDED UNDER AUDITOR'S FILE NO. 201912050259, IN VOLUME 90 OF SURVEYS, PAGES 59-63, INCLUSIVE, RECORDS OF KITSAP COUNTY, WASHINGTON, BEING A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF

052301-4-024-2007

RESULTANT PARCEL B OF BOUNDARY LINE ADJUSTMENT SURVEY RECORDED UNDER AUDITOR'S FILE NO. 201912050259, IN VOLUME 90 OF SURVEYS, PAGES 59-63, INCLUSIVE, RECORDS OF KITSAP COUNTY, WASHINGTON, BEING A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP

052301-4-025-2006

RESULTANT PARCEL C OF BOUNDARY LINE ADJUSTMENT SURVEY RECORDED UNDER AUDITOR'S FILE NO. 201912050259, IN VOLUME 90 OF SURVEYS, PAGES 59-63, INCLUSIVE, RECORDS OF KITSAP COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF

052301-4-026-2005

RESULTANT PARCEL D OF BOUNDARY LINE ADJUSTMENT SURVEY RECORDED UNDER AUDITOR'S FILE NO. 201912050259, IN VOLUME 90 OF SURVEYS, PAGES 59-63, INCLUSIVE, RECORDS OF KITSAP COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF

052301-4-013-2000

THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON; EXCEPT ROADS, AND SUBJECT TO RESERVATIONS, RESTRICTIONS AND

042301-3-011-2005

RESULTANT PARCEL A OF BOUNDARY LINE ADJUSTMENT SURVEY RECORDED UNDER AUDITOR'S FILE NO. 201610250060, IN VOLUME 83 OF SURVEYS, PAGES 76 - 78, INCLUSIVE, RECORDS OF KITSAP COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP

McCormick West

082301-2-002-2004

PARCEL 1 OF LAND SEGREGATION REQUEST RECORDED UNDER AUDITOR'S FILE NO. 3208728, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE NORTH 1005 FEET OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON; EXCEPT THE EAST 1340 FEET THEREOF; ALSO EXCEPT THAT PORTION LYING NORTHWESTERLY AND NORTHERLY OF THE SOUTHERLY RIGHT-OF-WAY MARGIN OF OLD CLIFTON ROAD;

082301-2-003-2003

PARCEL 2 OF LAND SEGREGATION REQUEST RECORDED UNDER AUDITOR'S FILE NO. 3208728, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE NORTH 1005 FEET OF WEST 894 FEET OF THE EAST 1340 FEET OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON;

082301-1-013-2003

RESULTANT PARCEL B PER BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 3220649, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE NORTH 1189 FEET OF THE WEST 1058.22 FEET OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON; EXCEPT THAT PORTION LYING NORTHERLY OF THE SOUTHERLY RIGHT OF WAY MARGIN OF OLD CLIFTON ROAD; ALSO EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 8; THENCE SOUTH 1*27'44 WEST ALONG THE WEST LINE OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER A DISTANCE OF 839.00 FEET; THENCE NORTH 30*44'56 EAST 462.00 FEET TO THE EAST LINE OF THE WEST 226.00 FEET OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTH 87*00'18 EAST 205.07 FEET TO THE EAST LINE OF THE WEST 431.00 FEET OF SAID NORTHWEST

082301-2-004-2101

TAXABLE PORTION FROM 082301-2-004-2002 (PER DOR REG. NO. 10442 001)CONTAINING 10.00 ACRES*****

082301-1-010-2006

PARCEL 5 OF LAND SEGREGATION REQUEST RECORDED UNDER AUDITOR'S FILE NO. 3208728, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE NORTH 1189 FEET OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M. IN KITSAP COUNTY, WASHINGTON; EXCEPT THE WEST 1058.22 FEET THEREOF; ALSO EXCEPT THAT PORTION LYING EASTERLY OF THE WESTERLY LINE OF THE PLAT OF AMENDED PLAT OF MCCORMICK WOODS , AS RECORDED IN VOLUME 25 OF PLATS, PAGES 54 THROUGH 61, RECORDS OF KITSAP COUNTY, WASHINGTON; ALSO EXCEPT

082301-1-014-2002

RESULTANT PARCEL C PER BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 3220649, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: SECTION 8, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON; EXCEPT THE NORTH 1189 FEET OF THE NORTHEAST QUARTER OF SAID SECTION 8; ALSO EXCEPT THAT PORTION OF THE WEST 60 FEET THEREOF CONVEYED BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 9512290366; ALSO EXCEPT THAT PORTION LYING EASTERLY OF THE WESTERLY LINE OF THE PLAT OF AMENDED PLAT OF MCCORMICK WOODS , AS RECORDED IN VOLUME 25 OF PLATS, PAGES 54 THROUGH 61, RECORDS OF KITSAP COUNTY,

172301-2-002-2003

TRACT 1 OF 20-ACRE LAND SEGREGATION DOCUMENT RECORDED UNDER AUDITOR'S FILE NO. 200010310145, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE NORTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON.

172301-2-004-2001

TRACT 3 OF 20-ACRE LAND SEGREGATION DOCUMENT RECORDED UNDER AUDITOR'S FILE NO. 200010310145, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE NORTH 1050.00 FEET OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON; EXCEPT THAT PORTION THEREOF LYING WITHIN MCCORMICK WOODS DIVISION 5, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 26 OF PLATS, PAGES 60 THROUGH 65, RECORDS OF KITSAP COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF SAID SECTION 17 LYING NORTHWESTERLY OF SAID MCCORMICK WOODS DIVISION

172301-2-003-2002

TRACT 2 OF 20-ACRE LAND SEGREGATION DOCUMENT RECORDED UNDER AUDITOR'S FILE NO. 200010310145, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON

172301-2-006-2009

TRACT 5 OF 20-ACRE LAND SEGREGATION DOCUMENT RECORDED UNDER AUDITOR'S FILE NO. 200010310145, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON.

172301-2-005-2000

TRACT 4 OF 20-ACRE LAND SEGREGATION DOCUMENT RECORDED UNDER AUDITOR'S FILE NO. 200010310145, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON; EXCEPT THE NORTH 1050.00 FEET THEREOF, AND EXCEPT THAT PORTION LYING WITHIN MCCORMICK WOODS DIVISION 5, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 26 OF PLATS, PAGES 60 THROUGH 65, RECORDS OF KITSAP COUNTY, WASHINGTON AND MCCORMICK WOODS

172301-2-007-2008

TRACT 6 OF 20-ACRE LAND SEGREGATION DOCUMENT RECORDED UNDER AUDITOR'S FILE NO. 200010310145, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON

172301-3-004-2009

TRACT 7 OF 20-ACRE LAND SEGREGATION DOCUMENT RECORDED UNDER AUDITOR'S FILE NO. 200010310145, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON, LYING NORTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 17: THENCE S 01°17'27" W ALONG THE EAST LINE THEREOF A DISTANCE OF 260.04 FEET TO THE SOUTH LINE OF MCCORMICK WOODS DIVISION 9, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 28 OF PLATS, PAGES 117 THROUGH 126, RECORDS OF KITSAP COUNTY, WASHINGTON, AND THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED LINE; THENCE N 87°53'44" W ALONG THE SOUTHERLY LINES OF SAID MCCORMICK WOODS DIVISION 9 AND MCCORMICK WOODS DIVISION 6, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 26 OF PLATS, PAGES 100 THROUGH 107, RECORDS OF KITSAP COUNTY, WASHINGTON A DISTANCE OF 3299.65 FEET TO THE SOUTHWEST CORNER OF SAID MCCORMICK WOODS DIVISION 6; THENCE S 00°00'00" W A DISTANCE OF 415.00 FEET; THENCE N 87°53'44" W TO AN INTERSECTION WITH THE WEST LINE OF

McCormick Woods

042301-3-010-2006

RESULTANT PARCEL A OF CITY OF PORT ORCHARD BOUNDARY LINE ADJUSTMENT NO. L-1078, BEING A SURVEY RECORDED UNDER AUDITOR'S FILE NO. 201512020024, IN VOLUME 81 OF SURVEYS, PAGES 199 - 201, INCLUSIVE, RECORDS OF KITSAP COUNTY, WASHINGTON, BEING A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 23 NORTH, RANGE 1 EAST, AND A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE NORTHWEST

6031-000-131-0002

TRACT C (FUTURE DEVELOPMENT) MCCORMICK WOODS SECOND AMENDMENT ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 26 OF PLATS, PAGES 189 THROUGH 196, INCLUSIVE; BEING AN AMENDMENT OF VOLUME 25 OF PLATS, PAGES 34 THROUGH 41, INCLUSIVE AND VOLUME 25 OF PLATS, PAGES 54 THROUGH 61, INCLUSIVE; ALL RECORDS OF 5552-000-045-0008

TRACT U (FUTURE DEVELOPMENT), ELDON TRAILS DIVISION 1, ACCORDING TO THE PLAT RECORDED IN VOLUME 34 OF PLATS, PAGE(S) 130-138, INCLUSIVE, RECORDS OF KITSAP COUNTY, WASHINGTON; SITUATE IN KITSAP COUNTY, WASHINGTON.

092301-1-005-2002

PARCEL 7 OF 20 ACRE LAND SEGREGATION RECORDED UNDER AUDITOR'S FILE NO. 200612270418, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THAT PORTION OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, ALL IN SECTION 9, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 23 NORTH, RANGE 1 EAST, SAID POINT ALSO BEING AN ANGLE POINT IN THE BOUNDARY OF THE PLAT OF MCCORMICK WOODS DIVISION 10, ACCORDING TO PLAT RECORDED IN VOLUME 29 OF

092301-4-004-2007

PARCEL 6 OF 20 ACRE LAND SEGREGATION RECORDED UNDER AUDITOR'S FILE NO. 200612270418, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THAT PORTION OF THE WEST HALF OF THE SOUTHEAST QUARTER, AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, AND THE EAST HALF OF THE SOUTHWEST QUARTER, ALL IN SECTION 9, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 23 NORTH, RANGE 1 EAST, SAID POINT ALSO BEING AN ANGLE POINT IN THE BOUNDARY OF THE PLAT OF MCCORMICK WOODS DIVISION 10, ACCORDING TO PLAT RECORDED IN VOLUME 29 OF PLATS, PAGES 120 THROUGH 131, INCLUSIVE, RECORDS OF KITSAP COUNTY, WASHINGTON, SAID ANGLE POINT BEING ON TRACT "C" OF SAID PLAT; THENCE N 28°49'59" E, ALONG THE SOUTHEAST LINE OF TRACTS "C", "M" AND "E" OF SAID PLAT, A DISTANCE OF 1,778.57 FEET TO AN ANGLE POINT IN TRACT "E" ON THE BOUNDARY OF SAID PLAT; THENCE N 57°51'24" W, ALONG THE NORTHEAST LINE OF TRACTS "E" AND "R" AND THE BOUNDARY OF SAID PLAT, A DISTANCE OF 342.19 FEET TO AN ANGLE POINT IN SAID BOUNDARY AND A POINT ON THE ARC OF A CURVE, THE CENTER OF WHICH BEARS S 48°12'46" E; THENCE NORTHEASTERLY, ALONG THE ARC OF A CURVE TO THE RIGHT, ALONG THE SOUTHEAST LINE OF TRACT "A" AND THE BOUNDARY OF SAID PLAT, SAID CURVE HAVING A RADIUS OF 430.00 FEET, THROUGH A CENTRAL ANGLE OF 07°10'40" A DISTANCE OF 53.87 FEET; THENCE N 48°57'54" E, CONTINUING ALONG SAID SOUTHEAST LINE, A DISTANCE OF 127.51 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG THE ARC OF A CURVE TO THE LEFT, CONTINUING ALONG SAID SOUTHEAST LINE, SAID CURVE HAVING A RADIUS OF 370.00 FEET, THROUGH A CENTRAL ANGLE OF 04°46'06" A DISTANCE OF 30.79 FEET TO AN ANGLE POINT OF SAID TRACT AND BOUNDARY; THENCE N 55°21'34" W, ALONG THE NORTHEAST LINE OF SAID TRACT, A DISTANCE OF 275.56 FEET TO AN ANGLE POINT IN SAID TRACT AND BOUNDARY; THENCE N 52°27'56" W, DEPARTING SAID BOUNDARY, A DISTANCE OF 161.08 FEET TO AN ANGLE POINT IN THE MCCORMICK WOODS GOLF COURSE BOUNDARY AND THE TRUE POINT OF BEGINNING. THENCE, ALONG THE BOUNDARY OF SAID GOLF COURSE, THE FOLLOWING COURSES AND DISTANCES: N 87°11'40" W A DISTANCE OF 162.52 FEET; N 50°48'10" W A DISTANCE OF 287.49 FEET; N 14°47'19" E A DISTANCE OF 545.96 FEET; N 18°30'16" E A DISTANCE OF 922.17 FEET; N 75°12'04" E A DISTANCE OF 66.76 FEET; N 09°11'12" E A DISTANCE OF 99.99 FEET; N 51°34'13" W A DISTANCE OF 171.18 FEET; N 13°43'49" E A DISTANCE OF 177.17 FEET TO A POINT ON THE ARC OF A CURVE THE OF WHICH BEARS S 09°47'43" E; THENCE EASTERLY, DEPARTING FROM SAID GOLF COURSE BOUNDARY ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 400.00 FEET, THROUGH A CENTRAL ANGLE OF

092301-1-009-2008

RESULTANT LOT B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 200811100041, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: LOT B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER RECORDING NO. 200711060175, RECORDS OF KITSAP COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF TRACT E, PLAT OF MCCORMICK WOODS DIVISION 10, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 29 OF PLATS, PAGES 120-131 INCLUSIVE, DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST EASTERLY CORNER OF SAID TRACT, SAID CORNER ALSO BEING AN ANGLE POINT IN SAID LOT B; THENCE SOUTH 28°49'59" WEST, ALONG THE SOUTHEASTERLY LINE OF SAID TRACT, A DISTANCE OF 225.55 FEET TO A POINT ON AN ARC OF A CURVE, THE CENTER OF WHICH BEARS NORTH 3°21'25" EAST; THENCE WESTERLY, ALONG THE SOUTHWESTERLY LINE OF SAID TRACT AND ALONG AN ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 370.00 FEET, THROUGH A CENTRAL ANGLE OF 8°58'20" A DISTANCE OF 57.94 FEET; THENCE NORTH 11°43'39" WEST, DEPARTING FROM SAID LINE, A DISTANCE OF 65.52 FEET; THENCE NORTH 35°26'50" EAST A DISTANCE OF 102.47 FEET; THENCE NORTH 20°30'09" EAST A DISTANCE OF 101.55 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT; THENCE SOUTH 57°51'24" EAST, ALONG SAID LINE, A DISTANCE OF 99.72 FEET TO THE POINT OF BEGINNING; EXCEPT THAT PORTION OF SAID LOT B DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST EASTERLY CORNER OF SAID TRACT E; THENCE NORTH 57°51'24" WEST, ALONG THE NORTHEASTERLY LINE OF SAID TRACT, A DISTANCE OF 99.72 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 57°51'24" WEST, CONTINUING ALONG SAID LINE, A DISTANCE OF 181.46 FEET TO THE MOST NORTHERLY CORNER OF SAID TRACT AND A POINT ON AN ARC OF A CURVE, THE CENTER OF WHICH BEARS SOUTH 46°37'48" EAST; THENCE NORTHEASTERLY, DEPARTING FROM SAID LINE AND ALONG AN ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 370.00 FEET, THROUGH A CENTRAL ANGLE OF 5°35'42" A DISTANCE OF 36.13 FEET;

092301-4-005-2006

PARCEL 10 OF 20 ACRE LAND SEGREGATION RECORDED UNDER AUDITOR'S FILE NO. 200612270418, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON.

092301-4-003-2008

PARCEL 5 OF 20 ACRE LAND SEGREGATION RECORDED UNDER AUDITOR'S FILE NO. 200612270418, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON LYING NORTHERLY OF THE NORTH RIGHT-OF-WAY LINE OF MCCORMICK WOODS DRIVE SW AS DEEDED TO KITSAP COUNTY BY DEED RECORDED UNDER KITSAP COUNTY RECORDING NUMBER 200610090200.>>>EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY FOR DETENTION POND
092301-4-002-2009

PARCEL 4 OF 20 ACRE LAND SEGREGATION RECORDED UNDER AUDITOR'S FILE NO. 200612270418, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 9 AND THE NORTH 200 FEET OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON LYING SOUTHERLY OF THE SOUTH RIGHT-OF-WAY LINE OF MCCORMICK WOODS DRIVE SW AS DEEDED TO KITSAP COUNTY BY DEED RECORDED UNDER KITSAP COUNTY RECORDING NUMBER 200610090200. EXCEPT THAT PORTION LYING WITHIN THE PLAT OF MCCORMICK WOODS DIVISION 10, ACCORDING TO THE
162301-1-021-2003

PARCEL 3 OF 20 ACRE LAND SEGREGATION RECORDED UNDER AUDITOR'S FILE NO. 200612270418, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON LYING SOUTHEASTERLY OF THE PLAT OF MCCORMICK WOODS DIVISION 10, ACCORDING TO THE PLAT RECORDED IN VOLUME 29 OF
162301-1-020-2004

PARCEL 2 OF 20 ACRE LAND SEGREGATION RECORDED UNDER AUDITOR'S FILE NO. 200612270418, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON.
162301-1-019-2007

PARCEL 1 OF 20 ACRE LAND SEGREGATION RECORDED UNDER AUDITOR'S FILE NO. 200612270418, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON.

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF PORT ORCHARD AND McCORMICK FOR THE
DEVELOPMENT AND FUNDING OF
CERTAIN TRANSPORTATION IMPROVEMENTS**

THIS DEVELOPMENT AGREEMENT is made and entered into this 9 day February, 2021, by and between the City of Port Orchard, a non-charter, optional code Washington municipal corporation, hereinafter the "City," and McCormick Communities, LLC, a limited liability company organized under the laws of the State of Washington, together with McCormick Development Corporation, a Washington Corporation, hereinafter collectively the "Developer" or "McCormick" (together the "Parties").

In addition, McCormick Land Company, a Washington corporation, hereafter "MLC," is a Party for purposes of Sections 7, 15, and such other sections as specifically refer to MLC.

The Parties hereby agree as follows:

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, Port Orchard adopted Chapter 20.26 of the Port Orchard Municipal Code ("POMC") which establishes the standards and procedures for Development Agreements in Port Orchard; and

WHEREAS, Chapter 20.26 POMC is consistent with State law; and

WHEREAS, the Developer has applied for a Development Agreement under Chapter 20.26 POMC and such Agreement has been processed consistently with the POMC and State law; and

WHEREAS, this Development Agreement by and between the City of Port Orchard and the Developer (hereinafter the "Development Agreement"), relates primarily to the development of property owned by Developer within and near McCormick Woods in the vicinity of Old Clifton Road and Campus Parkway and that is more particularly described on Exhibits A-1, A-2,

Development Agreement for Funding Transportation Improvements

Page 1 of 19

FG:54082696.4

B-1, and B-2 (hereinafter the “McCormick Property”); and

WHEREAS, in 2005 the City’s predecessor in interest entered into a Development Agreement with Developer’s predecessor in interest for the development of certain transportation improvements; and

WHEREAS, since that time, the City annexed the property and in accordance with RCW 36.70B.190 assumed jurisdiction and agreed to be bound by the 2005 Transportation Development Agreement; and

WHEREAS, as part of that 2005 Agreement, the predecessor to the Developer (GEM 1, LLC) constructed some projects and payments for those projects are still on-going and will continue until GEM 1, LLC’s successor is fully reimbursed; and

WHEREAS, since annexing this property, the City’s transportation plans have been updated; and

WHEREAS, the City is in the process of adopting updated transportation impact fees; and

WHEREAS, during this process, an in-depth look at the projects needed to meet the projected development by Developer and others in the City was performed; and

WHEREAS, the updated transportation impact fees are based, in part, on the 2005 Development Agreement with the Developer’s predecessor as well as on the updated project list; and

WHEREAS, the Developer did not acquire from GEM 1, LLC (“GEM 1”), and GEM 1 still retains, the right to reimbursement that accrued under the 2005 Transportation Agreement when GEM 1 constructed the Glenwood Connector Roadway and minor improvements to Feigley Road, the only projects identified in that 2005 agreement that have been constructed; and

WHEREAS, the City has been paying such reimbursement to GEM 1 and its successor since 2008, and nothing in this Agreement changes or is intended to change the City’s obligation to continue paying such reimbursement to GEM 1; and

WHEREAS, GEM 1 assigned its right to reimbursement to the McCormick Land Company in 2016, after which time, the City paid reimbursement to the McCormick Land Company (“MLC”); and

WHEREAS, MLC continues to own property in Port Orchard; and

WHEREAS, MLC has signed this Agreement to confirm that this Agreement will fully replace and supersede the 2005 Transportation Development Agreement (“2005 Transportation DA”); and

WHEREAS, the Developer now seeks to update the 2005 Transportation DA in conjunction with obtaining a permit to build the Campus Parkway Roundabout; and

WHEREAS, the purpose of this Agreement is to carry forward and better define the concurrency evaluation that was part of the 2005 Transportation DA, to carry forward the impact fee reimbursement for MLC, and to establish an impact fee credit system for Developer to recover its costs of building the McCormick Projects described below; and

WHEREAS, apart from concurrency and impact fee credits/reimbursement, this Agreement does not address development standards, vesting, or any other regulation that impacts how the McCormick Property will be developed; and

WHEREAS, the Parties agree that the 2005 Transportation DA, as set forth in the traffic study attached to that 2005 Transportation DA, anticipated the generation of 4,935 PM peak hour trips. Based on the development activity since 2005, some of these "trips" have been absorbed. The parties believe it is advantageous to set forth the remaining capacity that may be utilized in future development phases and have confirmed the concurrency numbers as of the date of this Agreement; and

WHEREAS, in consideration of the benefits conferred by this new Development Agreement, which reflect the current plans of both the City and the Developer and include confirmation of concurrency, a new project list, and a set impact fee credit calculation, the parties deem it in their best interests and the best interests of the community to repeal and replace the 2005 Transportation DA with this updated agreement; and

WHEREAS, there are two projects identified on both Exhibit A to the 2005 Transportation DA and also on the City's new TIP. As described in the new TIP, these projects are ID #1.5C, "Old Clifton Rd – Campus Pkwy Intersection and ID #2.08 Old Clifton Rd & McCormick Woods Dr. Intersection Impr". These two projects are collectively referred to herein as "the McCormick Projects"; and

WHEREAS, the McCormick Projects are eligible for credits under RCW 82.02.060(4); and

WHEREAS, the following events have occurred in the processing of the Developer's application:

- a) The Developer applied for this Development Agreement on December 4, 2020; and
- b) The Development Agreement is related to and has been consolidated under POMC 20.22.020(2) with the following project permits:

Land Disturbing Activity Permit PW20-031
Stormwater Drainage Permit PW20-032

- c) The Developer is ready and willing to commence construction on the project known as Old Clifton Rd - Campus Parkway Intersection (a roundabout project) and has applied for a

Land Disturbing Activity permit and Stormwater Drainage Permit to perform this project;

d) The Old Clifton Rd – Campus Parkway Intersection is included in the City’s transportation plan upon which the updated impact fees are based and therefore the Developer may be reimbursed from the impact fees for that project;

e) The City Council held a public hearing on February 9, 2021 regarding this Development Agreement;

f) After a public hearing, by Ordinance No. 006-21, the City Council authorized the Mayor to sign this Development Agreement with the Developer;

AGREEMENT

Section 1. The McCormick Projects. The two transportation projects described above as “the McCormick Projects” will serve the McCormick Property as well as provide connectivity and capacity for the City. The Campus Parkway Roundabout LDAP Permit #PW20-0031 and SDP Permit PW20-032 as well as the future development of the McCormick Woods Drive Roundabout, which will be permitted at a later date, are both subject to impact fee credit in accordance with this Agreement.

Section 2. The McCormick Property. The McCormick Property comprises McCormick North, McCormick West, and McCormick Woods, which are legally described by parcel number in Exhibit A-1 and depicted on A-2, attached hereto and incorporated herein by this reference. The McCormick Projects will serve the McCormick Property and the credits authorized by this Development Agreement are only applicable to lots for which building permits are applied for after the date of this Agreement within the boundaries of the McCormick Property as defined on Exhibit A-1 and as shown on the Map attached hereto as Exhibit A-2.

Section 3. Definitions. As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

a) “2005 Transportation Development Agreement” or “2005 Transportation DA” means the 2005 Development Agreement for Transportation which was executed between Kitsap County and Gem 1, LLC and dated April 25, 2005 and which was assumed by the City of Port Orchard upon annexation on May 27, 2009.

b) “Adopting Ordinance” means the Ordinance which approves this Development Agreement, as required by RCW 36.70B.200 and Chapter 20.26 POMC.’

c) “Commence construction” as to the McCormick Projects means that the required permit(s) have issued and there are “boots on the ground” at the construction site.

d) “Completion” as to the McCormick Projects means passing final inspection associated with the LDAP/SDP permits and providing the required 2-year warranty and

maintenance bond for the improvement(s).

“CPI-U” means the percentage rate change for the All Urban Consumers Index (CPI-U) (1982-1984=100), not seasonally adjusted, for the Seattle-Tacoma-Bellevue area for that 12 month period from January 1st to December 31st Indexed as the Annual Average, as is specified by the Bureau of Labor Statistics, United States Department of Labor. Increases based on CPI-U shall take effect on March 1st of the following year.

e) “Council” or “City Council” means the duly elected legislative body governing the City of Port Orchard.

f) “Director” means the City’s Community Development Director.

g) “Effective Date” means the effective date of the Adopting Ordinance.

h) “Maximum credit” or “maximum reimbursement” means the maximum amount that is eligible for projects subject to this Agreement, or for past projects done by GEM 1/MLC, for which reimbursement or impact fee credits will be provided by the City to the Developer or MLC.

i) “McCormick Project(s)” or “Project(s)” means the two transportation projects described above which serve both the McCormick Property and the greater community, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

Section 4. Exhibits. Exhibits to this Agreement are as follows:

a) **Exhibit A-1** – Parcel numbers of the McCormick Property that are subject to impact fee credit.

b) **Exhibit A-2** – Map depicting the boundaries of the McCormick Property that are subject to the impact fee credit in this Agreement.

c) **Exhibit B-1** – Parcel numbers of the McCormick Property with vested concurrency.

d) **Exhibit B-2** Map depicting the boundaries of the McCormick Property with vested concurrency .

e) **Exhibit C** – Map showing the original boundaries for the 2005 Transportation DA which remains the reimbursement area for MLC

Section 5. Parties to Development Agreement. The parties to this Agreement are:

- a) The "City" is the City of Port Orchard, 216 Prospect Street, Port Orchard, WA 98366.
- b) The "Developer" or "Property Owner" or "McCormick" is a private enterprise which owns the McCormick Property in fee, and whose principal office is located at 12332 NE 115th Place, Kirkland, WA.
- c) GEM 1, LLC is the prior owner of the property that was subject to the 2005 Transportation DA, and MLC is the successor to GEM 1 for purposes of reimbursement. MLC is located at 1869 McGilvra Blvd E, Seattle, WA 98112 and is still receiving reimbursement from the City for transportation projects done under the 2005 Transportation DA. These payments will continue in accordance with Section 15 of this Agreement.

Section 6. Projects are a Private Undertaking. It is agreed among the parties that the Projects are private improvements for which credits are required pursuant to RCW 82.02.060(4) and that the City has no interest in the improvements until such time as each Project is completed and dedicated to the City.

Section 7. Term of Agreement. This Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement and shall continue in force for a period of twenty (20) years unless extended or terminated as provided herein, provided that reimbursement to MLC pursuant to Section 15 shall survive expiration until full reimbursement is received by MLC. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect.

Section 8. Repeal and Replacement of 2005 Transportation DA. In consideration of the benefits to the Developer provided by the timely construction of the McCormick Projects, the confirmation of concurrency, the agreement on a credit calculation for transportation impact fees which will be charged to the McCormick Property, and the continuation of reimbursement from impact fees to MLC, the Developer, MLC, and the City agree to rescind, and by execution of this Agreement do rescind, the 2005 Transportation Agreement, and replace it with this Development Agreement.

Section 9. Concurrency. The Parties agree that City streets affected by development of the McCormick Property have the capacity to serve the McCormick Property in compliance with the City's concurrency requirements so long as such development does not result in the generation of more than 3,806 PM peak hour trips, which is the number of remaining trips identified in Section 9 of the 2005 Transportation DA reserved for the McCormick Property identified on Exhibits B-1 and B-2. This remaining concurrency provided in the 2005 Transportation DA is being carried forward for the duration of this Agreement as set forth below. These trips are available as of December 15, 2020.

Area	Available PM Peak Trips	Lots/Units for Residential ¹	Map Designation on Ex. C
McCormick North			North
• Village local center	659	(See Note 1)	North

(residential + commercial)			
• Single Family Residential	312	315	North
Total McCormick North	971		
McCormick West			West
• Multifamily	415	419	West
• Single Family Residential	1,530	1,545	West
Total McCormick West	1,945		
McCormick Woods	697	640	Wd
McCormick Woods Retail	63	N/A	Wd
McCormick Woods Conference (Golf Facilities)	122	N/A	GC
McCormick Woods legacy lots	8	8	Not depicted
Total McCormick Woods	890		
Grand Total	3,806		

¹ There are 659 PM Peak Trips available within the Village local center. Residential PM Peak Trips will be calculated per unit and commercial PM Peak trips will be calculated by use type and square footage.

The defined areas for the assigned concurrency numbers above are listed by parcel number on Exhibit B-1 and shown (except for the eight legacy lots, which are vacant lots in prior subdivisions) on Exhibit B-2, which Exhibits are attached hereto and incorporated herein by this reference as if set forth in full. Residential development shall be limited by either the PM peak hour trips or the number of units, whichever is more restrictive. Commercial development shall be limited only by the PM peak hour trips. To the extent that McCormick in the future proposes residential or commercial development within the McCormick Property that will generate more than the number of PM peak hour trips shown in the above table, the City will make a new concurrency determination regarding the capacity of its street system at that time.

Section 10. Project Schedule. The Developer will commence construction of the two McCormick Projects on the following schedule

- a) Work on the roundabout at the intersection of Old Clifton Road and Campus Parkway (Project ID #1.5C on the City's TIP) (Permits #PW20-031 and PW20-032) shall commence no later than June 30, 2021, and Developer will complete construction in a timely and workmanlike manner. Such work shall be completed no later than September 30, 2022.
- b) Developer will submit a complete set of plans for a roundabout at the intersection of Old Clifton Road and McCormick Woods Drive (Project ID #2.08) no later than June 1, 2023

and will commence construction of said roundabout no later than June 1, 2024, provided that the City has before then acquired the additional land, not owned by Developer, that is needed for this roundabout; and Developer will complete construction in a timely and workmanlike manner. Such work shall be completed no later than September 30, 2025 so long as the City has acquired the land necessary for the roundabout before June 1, 2024. If the City has not acquired the land necessary for the roundabout before June 1, 2024, but does so more than 24 months before expiration of this Agreement, Developer shall construct the roundabout with 24 months of such acquisition.

Section 11. Project standards. Developer will finance, design, and construct these McCormick Projects to comply with City standards, including obtaining all necessary permits. The City will approve the plans before construction begins; and the City will accept responsibility for the operation of the Projects once construction is completed and a two-year warranty and maintenance bond is in place. A Project will be deemed completed when all of the following occurs: 1. The City deems it substantially complete; 2. All punch list items are finished; 3. The City releases the performance bond; 4. The Developer has put a 2-year warranty and maintenance bond in place; 5. The Developer has completed all property dedications; and 6. The Developer has provided the City with a Bill of Sale for the improvements containing the certified construction costs (stamped by licensed engineer) to the City for determination of the maximum credits available under this Agreement. The City will confirm completeness of the Project by issuing a Final Notice of Completeness to the Developer.

Section 12. Project costs. The maximum amount of the credit (or reimbursement) for project costs performed under this Agreement shall be limited to no greater than the engineer's estimate contained in the City's transportation impact fee calculation, plus an annual inflator per the CPI-U, or, the actual costs incurred by the Developer, whichever is less. The credits provided under Section 14 below are limited to this maximum credit/reimbursement amount and once the project cost maximum(s) have been achieved through credits or direct reimbursement to Developer, the credits will no longer be available and full impact fees will be due for further development.

Section 13. Applicable Impact Fees. The repeal and replacement of the 2005 Transportation DA results in all property owners both within and without the McCormick Property being subject to the City's established city-wide impact fees as these now exist or may be modified in the future by the City Council. This Agreement further confirms that impact fees, permit fees, capital facilities charges, and other similar fees which are adopted by the City as of the Effective Date of this Agreement may be increased by the City from time to time, and made applicable to permits and approvals for the McCormick Property, as long as such fees and charges apply to similar applications and projects elsewhere in the City. All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in chapter 20.182 of the Port Orchard Municipal Code, except as modified by this Agreement. Nothing in this Agreement restricts or prohibits the City from raising its fees, including transportation impact fees, and the Developer agrees to pay the impact fees at the rates that are in effect at the time when payment is due minus any credits applicable according to this Agreement.

Section 14. Impact Fee Credits. The City hereby grants the Developer a credit against transportation impact fees for its costs to finance, design, and construct the McCormick Projects.

The credit is available to parcels located in the areas identified and shown on Exhibits A-1 and A-2. The credits will be calculated and applied as follows:

- a) Each parcel or lot that is developed within the McCormick Property credit area (Exhibits A-1 and A-2) will pay the City's adopted impact fees until Developer provides documentation to the City that Developer has expended a minimum of \$50,000 towards the design or construction of one of the McCormick Projects. At the time of this Agreement, the parties believe that Developer has already met this threshold, therefore, once Developer provides the documentation, the City will begin applying the credit described in this Agreement.
- b) Once McCormick provides documentation to the City of such \$50,000 expenditure, the City will grant a credit in the amount of \$1,000 per new home (or per peak pm trip for commercial/multifamily development) against its standard transportation impact fee for each application to develop a lot or parcel within the McCormick Property credit area (Exhibits A-1 and A-2) until such time as the credits granted by the City equal the amount of credit due to Developer under Section 12 above. This credit amount shall be adjusted as follows:
 - i. The \$1,000 credit shall be adjusted annually per the CPI-U, such adjustment to occur on March 1st of each year;
 - ii. If the amount outstanding for reimbursement of project costs is less than the credit, then the lesser amount shall be provided as a credit;
 - iii. If the City reimburses the Developer directly with SEPA mitigation funds received from another developer, then that amount shall be deducted dollar for dollar from the amount of project costs outstanding and the credits available will be reduced accordingly.
- c) Upon completion of each Project, Developer shall submit certified project costs to the City for review and acceptance by the City Engineer. Once these costs and executed Bill of Sale are reviewed and accepted by the City Engineer, the maximum credit due to Developer will be established and will equal the amount of the project costs as so certified in accordance with this subsection and Section 12. The City will grant the credits described in Subsection b) above against the transportation impacts fees that would otherwise be due for development of lots and parcels within the McCormick Property credit area as identified and shown on Exhibits A-1 and A-2. Such credits shall be provided until such time as the Developer receives full credit and/or reimbursement for its project costs or this Agreement terminates, whichever occurs first.

The City agrees that these credits are consistent with RCW 82.02.060(4); that they are appropriate in light of the unusual circumstances described in the Recitals above; that they are consistent with the intent of POMC 20.182.080; and that the City Council has legislatively approved this Agreement and exempted these credits for development of the McCormick Projects from the specific provisions of POMC 20.182.080.

Section 15. McCormick Land Company Reimbursement. This Agreement reaffirms the City's obligation to reimburse MLC for construction of the Glenwood Connector Roadway and minor improvements to Feigley Road. The maximum reimbursement amounts outstanding for these projects as of August 1, 2020 is \$1,542,239.64. Regardless of any fee credits provided for in this Agreement, the City's reimbursement for such project shall continue at the rate of \$720.80 for each unit of housing constructed or for each PM Peak trip, or fraction thereof, for which an impact fee is assessed in the MLC reimbursement area as depicted on Exhibit C until such time as MLC is fully reimbursed or this Agreement expires, whichever occurs first. This reimbursement amount shall be increased annually by CPI-U (Seattle/Tacoma/Bellevue) for the most recent twelve-month period (January 1st to December 31st) prior to the date of the adjustment. Such adjustment shall take effect on March 1st of each year, commencing on March 1, 2021. Disbursements shall be made annually in January of each year based on the collections from January 1st to December 31st in the prior year, however in 2021, such payment shall only be from collections from August 1 to December 31, 2020 as payment from collections through July 31, 2020 has already occurred. MLC agrees to the repeal of the 2005 Transportation DA and accepts the continued reimbursement under this new Agreement and agrees to be bound by this new Agreement as shown by its signature to this Agreement. This Section 15 shall survive expiration of this Agreement and shall remain in effect until such time as MLC has been fully reimbursed under the terms of this Agreement for construction of the Glenwood Connector Roadway and minor improvements to Feigley Road.

Section 16. Dedication of Public Lands. The Developer shall dedicate the land that it owns that is needed to construct the McCormick Projects prior to final completion of each Project. Neither Project shall be deemed completed until such dedications have occurred. In addition, consistent with Section 9 of the 2005 Transportation DA, to the extent that projects on the City's TIP including Old Clifton Widening and the Feigley Road Roundabout require additional dedications of right-of-way from within the McCormick Property, McCormick will dedicate that portion of the additional right-of-way. Such dedications shall occur within a mutually agreeable timeframe prior to the bid solicitation for the project requiring additional right-of-way.

Section 17. Default.

a) Subject to extensions of time by mutual consent in writing, failure or delay by either Party to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach shall give the other Party not less than thirty (30) days' notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

b) After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other Party to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Port Orchard Municipal Code for violations of this Development

Agreement and the Code.

Section 18. Termination. This Agreement shall terminate upon the expiration of the term identified in Section 7, which expiration date is February 8, 2041. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. In addition, this Agreement shall automatically terminate and be of no further force and effect as to any single-family residence, any other residential dwelling unit or any non-residential building and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy and impact fees have been paid.

Section 19. Extension and Modification. Any request for extension or modification, if allowed under the City's code, shall be subject to the provisions contained in Chapter 20.26 POMC.

Section 20. Effect upon Termination on Developer and MLC. Termination of this Agreement as to the Developer or as to MLC shall not affect any of the Developer's or MLC's respective obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the McCormick Property or the MLC property, or any other conditions specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes. Furthermore, if the Agreement expires without the project costs being fully recovered by impact fee credit or mitigation funds, the Developer will no longer be eligible to receive such credits. Provided, however, that Section 15 of this Agreement will survive termination if MLC has not yet been fully reimbursed and this Agreement will only expire as to MLC after both termination and full reimbursement have occurred.

Section 21. Effects upon Termination on City. Upon any termination of this Agreement as to the McCormick Property, or any portion thereof, or as to MLC property, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to the then existing planning and zoning laws). The City will be under no obligation to provide any additional credits or reimbursement to Developer even if the project costs have not been fully recovered at the time of expiration or termination.

Section 22. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all rights, title, and interests therein to any person, firm or corporation at any time during the term of this Agreement with a sale of the underlying property. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the McCormick Property, at least 30 days in advance of such action. A transfer by Developer will not impact the rights of MLC under this Agreement. This requirement for notice, however, does not apply to the sale by Developer of individual residential lots approved by the City for development of houses.

Section 23. Binding on Successors; Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the Parties. The Developer and every purchaser, assignee or transferee of an interest in the McCormick Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a Party thereto, but only with respect to the McCormick Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the McCormick Property sold, assigned or transferred to it.

Section 24. Amendment to Agreement; Effect of Agreement on Future Actions. No waiver, alteration, or modification to any of the provisions of this Agreement shall be binding unless in writing, signed by the duly authorized representatives of the Parties, be consistent with Chapter 20.26 POMC, and, where considered substantive as determined by the Director, follow the same procedures set forth in Chapter 20.26 POMC. However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations, or to impacts fees that affect the McCormick Property in the same manner as other properties, after the Effective Date of this Agreement.

Section 25. Releases.

a) General. Developer may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

b) Previously collected impact fees. Developer expressly waives and forever releases City from any and all claims it may have with regards to the amount or usage of any transportation impact fees which the City collected from property that was subject to the 2005 Transportation DA prior to the effective date of this Agreement. Developer further agrees that City can utilize these previously collected funds on any project it deems appropriate and is not limited to the projects outlined in the 2005 Transportation DA. These projects include, but are not limited, to the Old Clifton Road/Anderson Hill Road Roundabout (Project 2.07), the Old Clifton Road non-motorized shoulder and pedestrian improvements (Project 1.5A), Old Clifton Widening Design (Project 1.5A), and Bethel Avenue (Project 1.3).

c) Obligations to Kitsap County Extinguished. This Agreement being a complete replacement to the 2005 Transportation DA, neither Party has any obligations to Kitsap County.

Section 26. Notices. Notices, demands, correspondence to the City, MLC, and/or Developer (as applicable) shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in "Written Notice" Section 38 below. Notice to the City shall be to the attention of both the City Clerk and the City Attorney. Notices to successors-in-interest of the Developer shall be required to be given by the City only for those successors-in-interest who have given the City written notice of their address for such notice. The parties

hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 27. Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and consultant costs not otherwise included within application fees. This Agreement shall not take effect until the fees provided for in this section, as well as any processing fees owed to the City for the transportation project known as the Campus Parkway Roundabout are paid to the City. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.

Section 28. Applicable Law, Resolution of Disputes, and Attorneys' Fees. If any dispute arises between the City and Developer under any of the provisions of this Agreement, jurisdiction of any resulting litigation shall be filed in Kitsap County Superior Court, Kitsap County, Washington or the U.S. District Court for Western 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.

Section 29. No Third-Party Beneficiaries. Except as otherwise provided herein, this Agreement shall not create any rights enforceable by any party who is not a Party to this Agreement.

Section 30. City's right to breach. The parties agree that the City may, without incurring any liability, engage in action that would otherwise be a breach if the City makes a determination on the record that the action is necessary to avoid a serious threat to public health and safety, or if the action is required by federal or state law.

Section 31. Developer's Compliance. The City's duties under the agreement are expressly conditioned upon the Developer's or Property Owner's substantial compliance with each and every term, condition, provision and/or covenant in this Agreement, including all applicable federal, state, and local laws and regulations and the Developer's/Property Owner's obligations as identified in any approval or project permit for the property identified in this Agreement.

Section 32. Limitation on City's Liability for Breach. Any breach of this Agreement by the City shall give right only to damages under state contract law and shall not give rise to any liability under Chapter 64.40 RCW, the Fifth and Fourteenth Amendments to the U.S. Constitution, or similar state constitutional provisions.

Section 33. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a Party to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer. In such event, Developer shall hold the City harmless from

and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation. The Developer shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 34. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any Party in default hereof.

Section 35. Recording. This Agreement shall be recorded against the property with the real property records of the Kitsap County Auditor. During the term of the Agreement, it is binding upon the owners of the property and any successors in interest to such property.

Section 36. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either Party in good faith determines that such provision or provisions are material to its entering into this Agreement, that Party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

Section 37. Non-Waiver of Breach. The failure of a Party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred 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 and remain in full force and effect.

Section 38. Written Notice. All written communications regarding enforcement or alleged breach of this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of both emailing and mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

McCORMICK:

Eric Campbell
12332 NE 115th Place
Kirkland, WA 98033
eric@mospgroupllc.com

Nick Tosti
805 Kirkland Avenue, Suite 200
Kirkland, WA 98033
nicktosti@gmail.com

CITY:

Mayor
City of Port Orchard
216 Prospect Street
Port Orchard WA 98366
rputaansuu@cityofportorchard.us

Copies shall also be transmitted to the City Clerk and City Attorney at the above address.

**GEM 1, LLC / McCORMICK
LAND COMPANY**

Doug Skrobut
1869 McGilvra Blvd E
Seattle, WA 98112
ds Krobut@gmail.com

Section 39. Time is of the essence. All time limits set forth herein are of the essence. The Parties agree to perform all obligations under this Agreement with due diligence.

Section 40. Entire Agreement. The written provisions and terms of this Agreement, together with the Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the parties, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and exhibits thereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 1st day of February, 2021.

MCCORMICK COMMUNITIES, LLC

By: [Signature]
Its: MEMBER

**GEM 1, LLC/McCORMICK LAND
COMPANY**

By: [Signature]
Its: president

APPROVED AS TO FORM:

[Signature]

Patrick Schneider
Attorney for McCormick

CITY OF PORT ORCHARD

By: [Signature]
Its: Mayor



APPROVED AS TO FORM:

[Signature]

Jennifer S. Robertson
Attorney for Port Orchard

APPROVED AS TO FORM:



Duana Kolouskova
Attorney for GEM 1, LLC/MLC

ATTEST:



Brandy Rinearson
Port Orchard City Clerk

NOTARY BLOCK FOR PORT ORCHARD

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Mr. Rob Putaansuu is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument 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: ¹⁰ February 2021



Jenine Floyd
Jenine Floyd
(print or type name)

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

Mason County

My Commission expires: 11-15-22

NOTARY BLOCK FOR McCORMICK COMMUNITIES

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Mr. Eric Campbell 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 Member of McCormick Communities, LLC to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

Dated: Feb 1st 2021

Andrew D Marshall

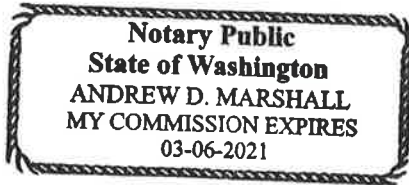
Andrew D Marshall

(print or type name)

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

Kirkland

My Commission expires: 03/06/21

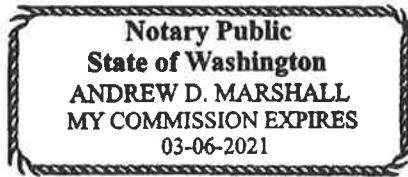


NOTARY BLOCK FOR GEM 1 / McCORMICK LAND COMPANY

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Mr. Doug Skorbut 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 member of GEM 1, LLC/McCormick Land Company to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

Dated: Feb 1st 2021



Andrew D Marshall

Andrew D Marshall

(print or type name)

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

Kirkland

My Commission expires: 03/06/21

Exhibit A-1

McCormick Property

List of Parcels Subject to Impact Fee Credit

McCormick North

052301-4-023-2008
052301-4-027-2004
052301-4-024-2007
052301-4-025-2006
052301-4-026-2005
052301-4-013-2000
042301-3-011-2005

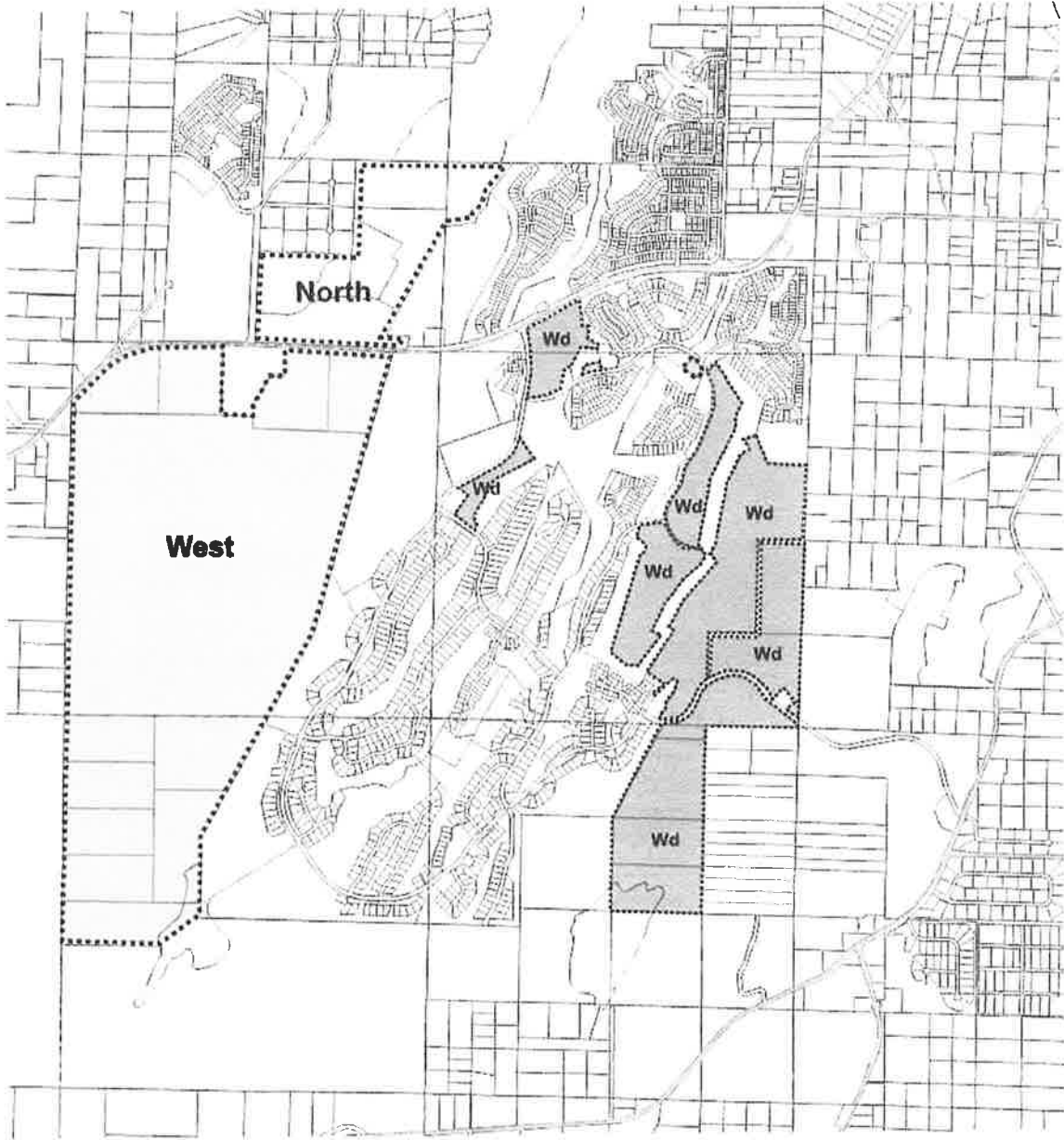
McCormick West

082301-2-002-2004
082301-2-003-2003
082301-1-013-2003
082301-2-004-2101
082301-1-010-2006
082301-1-014-2002
172301-2-002-2003
172301-2-004-2001
172301-2-003-2002
172301-2-006-2009
172301-2-005-2000
172301-2-007-2008
172301-3-004-2009

McCormick Woods

042301-3-010-2006
6031-000-131-0002
5552-000-045-0008
092301-1-005-2002
092301-4-004-2007
092301-1-009-2008
092301-4-005-2006
092301-4-003-2008
092301-4-002-2009
162301-1-021-2003
162301-1-020-2004
162301-1-019-2007

Exhibit A-2
McCormick Property
Maps of Parcels/Areas Subject to Impact Fee Credit



Legend

McCormick North



McCormick West



McCormick Woods



Exhibit B-1

List of Parcels with Vested Concurrency

McCormick North

052301-4-023-2008
052301-4-027-2004
052301-4-024-2007
052301-4-025-2006
052301-4-026-2005
052301-4-013-2000
042301-3-011-2005

McCormick West

082301-2-002-2004
082301-2-003-2003
082301-1-013-2003
082301-2-004-2101
082301-1-010-2006
082301-1-014-2002
172301-2-002-2003
172301-2-004-2001
172301-2-003-2002
172301-2-006-2009
172301-2-005-2000
172301-2-007-2008
172301-3-004-2009

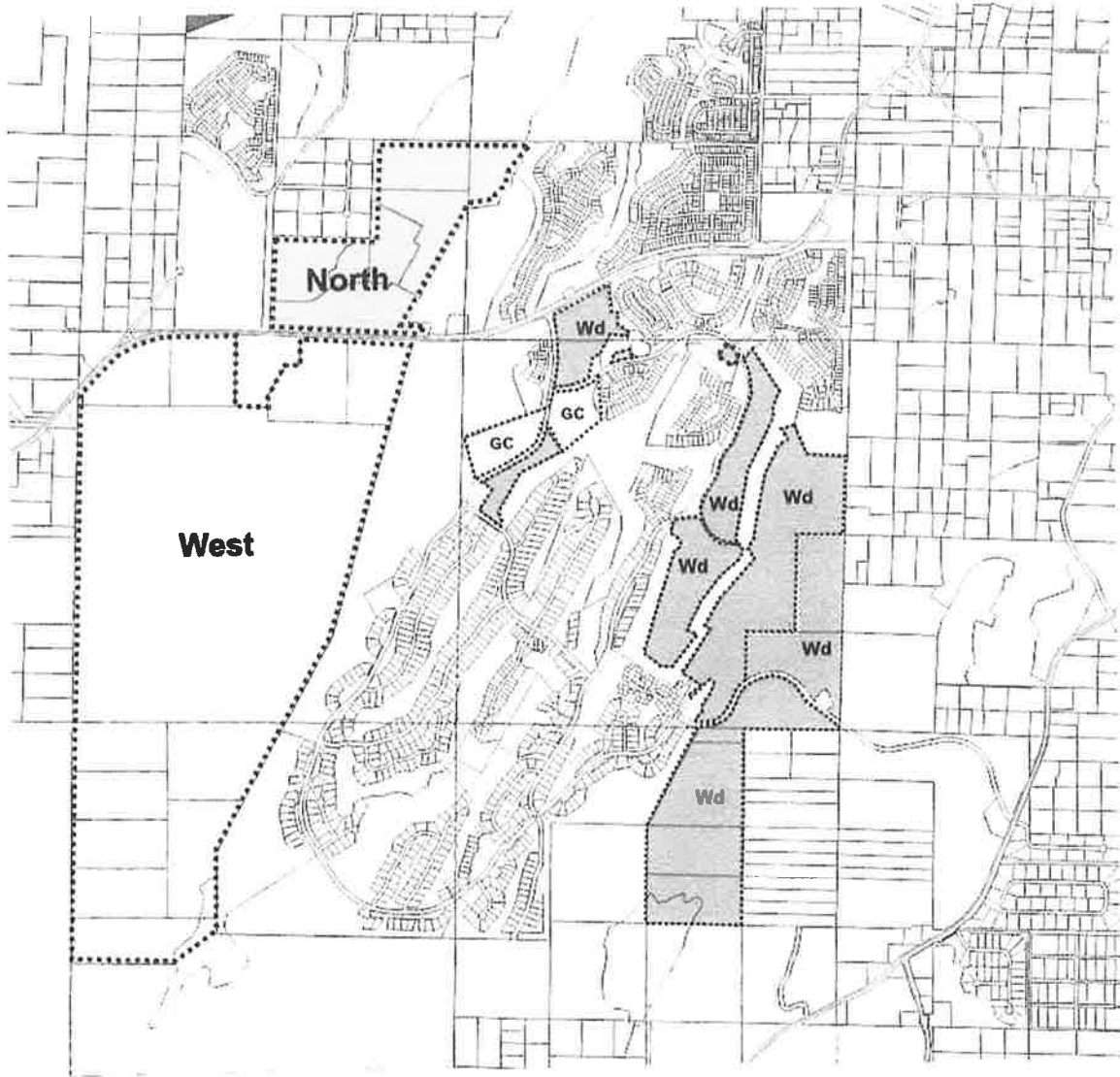
McCormick Woods

042301-3-010-2006
6031-000-131-0002
5552-000-045-0008
092301-1-005-2002
092301-4-004-2007
092301-1-009-2008
092301-4-005-2006
092301-4-003-2008
092301-4-002-2009
162301-1-021-2003
162301-1-020-2004
162301-1-019-2007

Legacy Lots

5190-000-018-0009
6031-000-032-0002
6031-000-025-0001
6031-000-063-0004
5161-000-021-0009
5145-000-023-0008
5139-000-013-0008
6031-000-074-0001

**Exhibit B-2
Map of Parcels/Areas with Vested Concurrency**

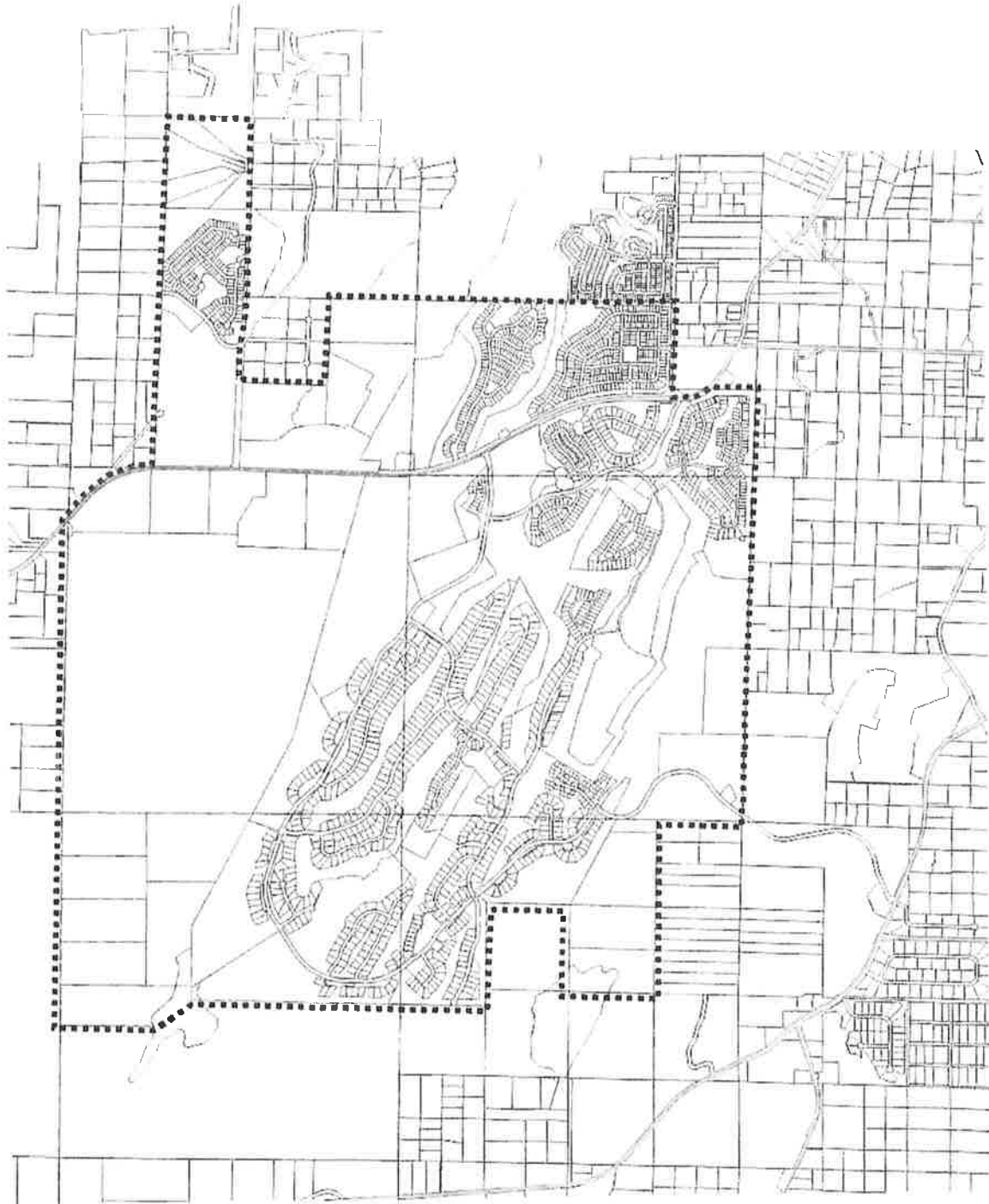


Legend

McCormick North	———	North
McCormick West	———	West
McCormick Woods	———	Wd
Golf Facilities	———	GC

See Exhibit B1 for legacy lots vested to concurrency with this agreement

Exhibit C
Boundary of 2005 Traffic Agreement






CITY OF PORT ORCHARD

Public Works Director

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

MEMORANDUM

TO: Noah Crocker, Finance Director

FROM: K. Chris Hammer, P.E. - City Engineer 

DATE: December 13, 2022

RE: 2021 Campus Parkway/McCormick West Roundabout TIF Credit Submittal #3

On February 19, 2021, a Development Agreement (City of Port Orchard Contract No. C035-21) between McCormick Communities, LLC and the City of Port Orchard was recorded and became effective. Pursuant to Section 14 (b) of the Agreement, McCormick Communities, LLC was required to provide documentation of expenditures of at least \$50,000 on "McCormick Projects" (a term defined in the Agreement) to trigger Transportation Impact Fee Credits described in Section 14 of the Agreement.

On March 23, 2021, McCormick Communities, LLC submitted, and the City reviewed and approved Transaction Summary #1 with associated invoices in the amount of \$100,124 for the Campus Parkway/McCormick West Roundabout Project and commenced with Transportation Impact Fee Credits as required by the Agreement.

On July 29, 2021, McCormick Communities, LLC submitted, and the City reviewed and approved Transaction Summary #2 with associated invoices in the amount of \$468,037.

On June 9, 2022, McCormick Communities, LLC submitted, and the City reviewed and approved Transaction Summary #3 with associated invoices in the amount of \$1,465,743.

On December 2, 2022, McCormick Communities, LLC submitted, and the City reviewed and approved Transaction Summary #4 with associated invoices in the amount of \$561,272 for an updated Transportation Impact Fee Credit amount of \$2,595,176 for the Campus Parkway/McCormick West Roundabout Project (see attached.)

The TIF credit amount for this project is \$1,600,000. This amount was increased 1.7% in 2021 and 4.6% in 2022. The project was substantially completed in 2022.. The project qualifies for a TIF credit of \$1,702,051.20.

Enc: Transactions Summary (5/1/2022 thru 11/30/2022)



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 8G
Subject: Approval of a Letter of Intent with Kitsap
Public Facilities District to Fund Future
Construction Costs for the Community
Events Center

Meeting Date: February 28, 2023
Prepared by: Nicholas Bond, AICP
DCD Director
Atty Routing No.: N/A
Atty Review Date: N/A

Summary: In 2019, the City was awarded funding from the Kitsap Public Facilities District (KPF) as memorialized in the Contract C082-19, an interlocal agreement between the City and KPF, to fund a Community Event Center (CEC) building in Port Orchard. Since that time, significant inflation and construction costs have increased the expected cost to construct the CEC. In addition, sales tax revenues from which KPF funding is provided has increased significantly. As such, the City has requested that KPF funding be increased by \$6,546,000 above the previously awarded amount to fund the construction of the CEC.

The Mayor and KPF’s Executive Director have negotiated a Letter of Intent concerning an increase in project funding as well as to outline how bonds will be obtained to fund the project. The purpose of the Letter of Intent is to outline the general terms of a future amendment to Contract C082-19 which will be brought forward for City Council approval and KPF Board approval at a future date.

Recommendation: Staff recommends that the City Council authorize the Mayor to execute a Letter of Intent between the City and the Kitsap Public Facilities District as presented.

Relationship to Comprehensive Plan: The CEC project is identified as a capital project in the city’s Comprehensive Plan.

Motion for consideration: “I move to authorize the Mayor to execute a Letter of Intent between the City of Port Orchard and the Kitsap Public Facilities District as presented.”

Fiscal Impact: The Letter of Intent is likely to result in a future contract amendment increasing the amount of funding received from the KPF for the CEC project in an amount of \$6,546,000.

Alternatives: Do not authorize the Mayor to execute the Letter of Intent. Modify the proposed Letter of Intent (note that the KPF would need to agree to any modifications).

Attachments: Letter of Intent

LETTER OF INTENT

February 16, 2023

Re: Letter of Intent to Fund Future Construction Costs for
Port Orchard Community and Events Center

The City of Port Orchard (“City”) has seen significant inflation in the construction cost estimates for the Port Orchard Community Events Center (“POCEC”) and is requesting additional funding from the Kitsap Public Facilities District (“KPFDD”), specifically for increased construction costs for the POCEC. The City is requesting funding for 66% of the total project cost, which is currently estimated at \$28,100,000. This represents an increase in requested funding of approximately \$6,546,000, above the KPFDD’s existing funding commitment set out in the ILA.

The KPFDD continues to be fully supportive of the POCEC. The KPFDD is further aware that construction costs have increased in the last several years and may continue to increase in the coming years. Meanwhile, the KPFDD is supporting other regional center projects whose costs are still undetermined but also rising, and the KPFDD has not fully determined its financial capacity to support its current projects.

This letter of intent (this “LOI”) sets forth the terms and conditions under which the KPFDD would be willing to commit to additional funding for the construction of the POCEC in addition to the commitment set out in the ILA.

1. **Project:** The Project consists of a special events center as defined by RCW 35.57.020(1)(a). The Project is identified in Attachment A to the Third Amendment to the Regional Center Interlocal Agreement (“ILA”) between the City and the KPFDD, dated April 18, 2022.
2. **Pending Commitments to the City:** The City has committed to performing certain Tasks in the ILA (Attachment B to the ILA) and the KPFDD has agreed to provide funding of \$12,000,000 for certain Tasks, per the conditions of the ILA. In its most recent Amendment, the ILA allocates \$9,210,000 for construction in Tasks 7 and 8 of Attachment B.
3. **Funding Amount:** Based on the understanding that the actual construction costs are unknown and are estimated without actual construction drawings, details, and bids, the parties agree to revisit the amount of construction funds from the KPFDD when the City has more detailed and accurate information, with the understanding the KPFDD will support an increase in funding for construction not to exceed an additional \$6,546,000, at which time the parties will negotiate a further ILA Amendment for Tasks 7 and 8.
4. **Conditions:**
 - 1) The Amended ILA will continue to be (a) subject to the availability of funds (ILA Section 6.3), (b) will require the successful negotiation of an ILA Amendment with Operation Standards (ILA, Section 6.5), and require the KPFDD review of the entire funding plan for the construction phase (ILA, Schedule B, Task 7).

- 2) The KPFDD will ask Kitsap County to issue and carry the bond for construction funds in an amount of up to \$15,756,000 for Tasks 7 and 8.
- 3) In the event that Kitsap County cannot or will not carry the bond on behalf of the KPFDD, and the KPFDD elects to obtain the bond on its own, the total amount of construction funding provided to the City of Port Orchard will be contingent upon the projected amount of annual tax rebate revenue, interest rate obtained by the KPFDD, and the positive projected annual remaining funds available. This amount may be less than \$15,756,000.

5. **Counterparts: Electronic Execution and Delivery:** This LOI may be executed in counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. Signatures may be affixed manually or via DocuSign or similar electronic means. No party may raise (a) the use of a signature via DocuSign or similar electronic means or (b) the fact that the LOI or any signature or agreement was transmitted or communicated through the use of facsimile machine, e-mail, PDF, DocuSign, or similar electronic format, as a defense to the formation of a contract, and each party forever waives any such defense, except to the extent such defense related to lack of authenticity.

This LOI is merely an outline of possible terms to amend the existing ILA in the future and is non-binding.

DATED the date first above written.

KITSAP PUBLIC FACILITIES DISTRICT

By: _____
Name: Patrick Hatchel, Board Chair

Attest

By: _____
Name: John Morrissey, Board Vice-Chair

Approved As to Form:

By: _____
Name: Brian Lawler, District Legal Counsel

CITY OF PORT ORCHARD

By: _____
Name: Robert Putaansuu, Mayor

Approved As to Form:

By: _____
Name: Charlotte 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.: Business Item 8H
Subject: Approval of Amendment No. 9 to Contract
No. 066-20 with Rice Fergus Miller, Inc. for
the Design Development and Construction
Drawings of the Port Orchard Community
Events Center-LEED Feasibility

Meeting Date: February 28, 2023
Prepared by: Nicholas Bond, AICP
DCD Director
Atty Routing No.: N/A
Atty Review Date: N/A

Summary: The City, in partnership with the Kitsap Public Facilities District (KPFDD), is in the design process for a Community Event Center. The City and KPFDD executed an Agreement to identify this 8-phase Project (C082-19), and to memorialize KPFDD’s committed funding. Following a qualifications-based selection process consistent with Chapter 39.80 RCW and the City’s Procurement Policies, on July 29, 2020, the City executed a Professional Services Contract Agreement with the selected firm, Rice Fergus Miller, Inc., for the Project (“Underlying Agreement”). The City and Consultant executed Amendment Nos. 1 through 8 to the Underlying Agreement during 2021 and mid-2022. The proposed contract amendment before the City Council would add a task to the CEC design contract concerning modifying the current plans to achieve a Leadership in Energy and Environmental Design (LEED) Silver building standard. Previously, amendment #8 evaluated the feasibility of meeting LEED certification for the new CEC. LEED certification is a requirement of state funding that the City will be seeking for the construction of the CEC.

Previous Contract Amendments to C066-20 are as follows:

Amendment #1: Frontage Improvement/CEC Plaza Concept Planning - \$210,943.00

Amendment #2: Materials Testing - \$2,672.00

Amendment #3: Frontage and Access Improvements, Additional Cost - \$109,153.28

Amendment #4: Borings and materials testing - \$12,200.00

Amendment #5: Contract Term Extension - \$0.00

Amendment #6: Tasks 4-5 completion under original City and KPFDD Agreement - \$1,389,500 total (covered by KPFDD Contract C082-19 Amendment #3)

Amendment #7: Seawall design, shoreline restoration, and permitting - \$631,200

Amendment #8: LEED Certification Feasibility Assessment - \$16,500

Relationship to Comprehensive Plan: This contract will provide plans and permits for a project identified in the City’s Comprehensive Plan, Parks Plan, and Downtown Subarea Plan.

Recommendation: Staff recommends authorizing the Mayor to execute Amendment No. 9 to Contract No. C066-20 with Rice Fergus Miller, Inc. for the South Kitsap Community Event Center Project in an amount of \$229,800.

Motion for consideration: I move to authorize the Mayor to execute Amendment No. 9 to Contract No. C066-20 with Rice Fergus Miller, Inc. for the South Kitsap Community Event Center Project in an amount of \$229,800.

Fiscal Impact: This will be an additional unexpected General Fund expense.

Alternatives: Revise the Scope of Work.

Attachments: Contract C066-20, Amendment #9 to C066-20, Scope and Fee.

Amendment No. 98 to Contract No. C066-20

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

THIS AMENDMENT to Contract No. C066-20 (“Amendment”) is made effective as of the _____ day of ~~December~~February, 202~~32~~, by and between the City of Port Orchard (“City”), a municipal corporation, organized under the laws of the State of Washington, and Rice Fergus Miller, Inc., a corporation organized under the laws of the State of Washington, located and doing business at 275 5th St., Bremerton, WA 98337 (“Consultant”).

WHEREAS, on July 29, 2020, the City executed a Professional Services Agreement with Consultant for the South Kitsap Community Event Center Project (the “Project”) (“Underlying Agreement”); and

WHEREAS, on July 27, 2021, the City and Consultant executed Amendment No. 1 to the Underlying Agreement, increasing the contract amount and adding additional scope of work (work within the scope of the initial Request for Qualifications); and

WHEREAS, on September 17, 2021, the City and Consultant executed Amendment No. 2 to the Underlying Agreement, adding additional scope of work (work within the scope of the initial Request for Qualifications); and

WHEREAS, on October 12, 2021, the City and Consultant executed Amendment No. 3 to the Underlying Agreement, increasing the contract amount and adding additional scope of work (work within the scope of the initial Request for Qualifications); and

WHEREAS, on January 25, 2022, the City and Consultant executed Amendment No. 4 to the Underlying Agreement, increasing the contract amount and adding additional scope of work due to unforeseen on-site conditions; and

WHEREAS, on March 21, 2022, the City and Consultant executed Amendment No. 5 to the Underlying Agreement, extending the contract term to accommodate the scope of work; and

WHEREAS, on April 12, 2022, the City and Consultant executed Amendment No. 6 to the Underlying Agreement, updating the scope and fee for tasks 4 and 5 of C082-19; and

WHEREAS, on September 13, 2022, the City and the Consultant executed Amendment No. 7 to the Underlying Agreement, adding additional design work related to shoreline improvements and permitting; and

WHEREAS, on December 13, 2022, the City and the Consultant executed Amendment No. 8 to the Underlying Agreement, adding additional design work LEED Certification feasibility; and

WHEREAS, the City received funding from the Kitsap Public Facilities District (“KPPFD”) via an Agreement between the City and the PFD (C082-19) for this 8-phase Project, which will result in a Community Event Center; and

WHEREAS, the Consultant was selected as the most qualified firm to perform all phases of the Project, and to date the Consultant and City and have completed phases 1-3 as set out in C082-19; and

WHEREAS, the City has learned that a condition of funding building and library construction from state funds is LEED certification; and

WHEREAS, the City wishes to ~~evaluate the feasibility of meeting the LEED requirements~~modify the architectural plans for the CEC to meet a LEED silver certification and has prepared amendment No. 98 to Contract No. C066-20 for this purpose; and

WHEREAS, the Parties wish to memorialize their agreement to so amend the Underlying Agreement; NOW, THEREFORE,

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

1. The Underlying Agreement, including previous Amendments Nos. 1-~~87~~, is amended as follows (amendment shown in legislative marks):
 - a. The Scope of Work is amended to add the tasks as set out on Attachment 1 hereto (Amendment #98 Request).
 - b. The total contract cost is increased by \$~~16,500~~229,800 plus reimbursable expenses and applicable taxes as set out on Attachment 1 hereto (Amendment #89 Request).
 - c. The contract term remains with a termination date of December 31, 2024, unless extended or earlier terminated in accordance with the terms of the Underlying Agreement.
2. In all other respects, the Underlying Agreement between the parties shall remain in full force and effect, amended as set forth herein, but only as set forth herein.

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

CITY OF PORT ORCHARD,
WASHINGTON

CONSULTANT

Robert Putaansuu, Mayor

Signature

Printed Name and Title

ATTEST/AUTHENTICATED:

Brandy Wallace, MMC, City Clerk

APPROVED AS TO FORM:

Charlotte A. Archer, City Attorney

January 22, 2023

Nick Bond
Development Director
City of Port Orchard
216 Prospect St
Port Orchard, WA 98366

Re: South Kitsap Community Events Center
Amendment 09 Request
LEED Design Development & Construction Documents
RFM Project: 2020002.00

Dear Nick,

Rice Fergus Miller (RFM) is pleased to present the following Letter of Proposal to amend our contract for the above referenced project.

I. Project Description

The City of Port Orchard is seeking funds for this project that now require LEED Silver Certification. Based on the LEED feasibility work completed under Amendment 08, this amendment is to revise our design to meet LEED v4 Silver Certification.

II. Scope of Services

The attached LEED v4 for BD+C New Construction Checklist dated January 23, 2023, identifies the “Maybe” items that will be evaluated for addition to the design. The following are included in this scope:

- Revise the previously completed Design Development package to include the additional LEED v4 design items and update the cost estimate.
- LEED v4 design Construction Documents and additional documentation required for Design Submittals to USGBC.
- A LEED Specialty Consultant has been added to the team to guide the design team, compile the LEED documentation, and lead the submittal process with USGBC to be completed during the Construction Documents Phase.

The following disciplines are included in this scope of work to provide the deliverables listed above:

- LEED Specialty Consultant
- Civil Engineer
- Landscape Architect
- Structural Engineer

South Kitsap Community Events Center
LEED Feasibility Structures
January 21, 2023

- MEP Engineer
- Acoustical Consultant
- Cost Estimator
- Signage/Environmental Graphic Designer

III. Exclusions and Additional Services

We are not currently under contract for Bid and Construction Administration phases. There are LEED related tasks specific to the Construction Phase, including Construction Submittals required from the General Contractor, that will be necessary to secure LEED Silver certification. The design team's LEED scope for that phase will be part of a future contract amendment.

IV. Owner Responsibilities

It is our understanding that City of Port Orchard will provide full information, including a program, setting forth its design objectives, constraints, and criteria; and, the services of other consultants not included here when such services are deemed to be necessary.

V. Schedule

We have a critical deadline of July 1, 2023 to complete building permit submittals prior to the WA State code cycle change. In order to meet this, we need approval to proceed with this work, preferably as early as March 1, 2023.

VI. Compensation

For the Scope of Services outlined above for Rice Fergus Miller and its consultants, compensation shall be a Fixed Fee of Two Hundred Twenty Nine Thousand Eight Hundred Dollars (\$229,800.00); plus, reimbursable expenses and any applicable taxes.

VII. Terms of Agreement

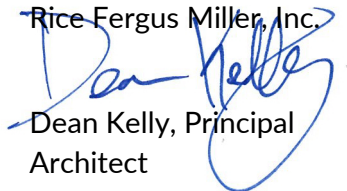
Please provide an amendment to our South Kitsap Community Events Center contract upon accepting this proposal.

VIII. Summary

Thank you for the opportunity to propose on your project. We look forward to discussing our proposal further and working with you. Please contact me if you have any questions.

Sincerely,

Rice Fergus Miller, Inc.



Dean Kelly, Principal
Architect

Attachment: LEED Checklist



LEED v4 for BD+C: New Construction Project Checklist



Project Name	Port Orchard Community Events Center	
Project Manager	George Oakley /Michelle Rosenberger	
Date	1/23/2023	

*v4.1 substitution

Silver = 50pts

Max Pts

33	19	17	41	Total	110
----	----	----	----	--------------	------------

Certified 40 to 49 points Silver 50 to 59 points Gold 60 to 79 points Platinum 80 to 110

Y	2Y	3Y	N	Credit	Phase	Status	Lead	
			1	IP1 Integrative Process	D	NA		1
5 2 1 8				Location and Transportation				Possible Points: 16
				LT 1 LEED ND Location	D	NA		16
1				LT 2 Sensitive Land Protection	D	Attempting	ArchE	1
				Requirement	<i>Development footprint on previously developed land OR is not farmland, floodplain, habitat, waterbodies (100ft) or wetlands (50 ft.), minor improvements allowed in H2O buffers</i>			
				Notes	Previously developed site.			
				Next Steps	Document	28-Dec	ArchE	
			2	LT 3 High Priority Site	D	NA		2
				Requirement	<i>Historic district infill (1 p) or Priority designation (1 p) or Brownfield with soil or groundwater contamination and remediation (2 p)</i>			
				Notes	None of the above applies to this site.			
				Next Steps				
2			3	LT 4 Surrounding Density and Diverse Uses*	D	Attempting	ArchE	5
				Requirement	<i>(v4.1) Locate where surrounding density within a 0.25 mi offset is 7 du/acre, 0.5 FAR or 22,000 sf/buildable acre (2 p); 12 DU/acre, 0.8 FAR or 35,000 sf/buildable acre (3 p) AND/OR main entrance is 0.5 mi walk to diverse uses - 4 to 7 (1 p) 8+ (2 p). AND/OR Walkscore (1-5p)</i>			
				Notes	Walk Score 66 - Somewhat walkable (v4.1 Walk Score of 60 to 69 = 2 pts)			
				Next Steps	Documentation	28-Dec	ArchE	
2			3	LT 5 Access to Quality Transportation*	D	Attempting	ArchE	5
				Requirement	<i>(v4.1) Path1. Access to Public Transit Service - Meet minimum weekday and weekend trips on bus, streetcar within 0.25 mi. OR rapid bus, rail, or commuter ferry within 0.5 mi. Must have paired routes but only one direction counts. See tables.</i>			
				Notes	Five bus routes and foot ferry within 0.25 mile. Weekday trips (for bus and ferry) = 111 (> 100), weekend trips = 78 (> 70). If greater than 100 weekday and 70 weekend = 2 points.			
				Next Steps	Documentation	3-Jan	ArchE	
	1			LT 6 Bicycle Facilities	D	Attempting	ArchE	1
				Requirement	<i>Locate 200 yds. from bike network that connects to at least one of the following within 3 mi.; 10+ diverse uses; school/employment center if >50% residential; rapid bus, rail or ferry. Provide bike storage - short term for 2.5% of peak visitors AND long term for 5% of nonresidential occupants &/or 30% res occupants. Provide shower for first 100 nonresidential FTEs +1 for each 150 additional.</i>			
				Notes	Include showers, short and covered long term bike racks to comply.			
				Next Steps	Check if proximate to a bike network with services.	29-Dec	ArchE	
		1		LT 7 Reduced Parking Footprint*	D	Attempting	ArchE	1
				Requirement	<i>(v4.1) Do not provide off-street parking OR do not exceed code parking and achieve 30% reduction from ITE base ratios OR provide dedicated parking for carshare vehicles - 1 spot for every 100 occupants OR sell parking separately from all property sales or leases.</i>			
				Notes	Confirm approach to this credit and possible shared parking with other sites.			
				Next Steps	Review parking requirements with Architect and City.	19-Jan	ArchE	

1				LT 8	Green Vehicles*	D	Attempting	ArchE	1	
				Requirement	(v4.1) <i>Install electric vehicle supply equipment for 5% (or minimum 2 spots, whichever is greater) of all parking OR make 10% of all parking EV ready.</i>					
				Notes	One dual head charger is possible but maybe unlikely with only six total spaces.					
				Next Steps	Determine interest with Owner.		29-Dec	ArchE		
3	2	2	3	Sustainable Sites					Possible Points:	10
Y				SSp 1	Const. Activity Pollution Prevention	C	Prereq	ArchE	Req.	
				Requirement	<i>Implement TESC plan which conforms to the more stringent of 2012 US EPA Construction General Permit or local equivalent. Provide Plan, narratives on stringency and compliance, and GC declaration OR photos OR implementation narrative.</i>					
				Notes	Civil has provided ESC DD plan.					
				Next Steps	Confirm acceptability of plan.		29-Dec	ArchE		
1				SS 1	Site Assessment	D	Attempting	ArchE	1	
				Requirement	<i>Complete and document a site survey or assessment that includes: topography, hydrology, climate, vegetation, soils, human use and human health effects.</i>					
				Notes	Site assessment report has been provided.					
				Next Steps	Confirm acceptability of plan.		29-Dec	ArchE		
		2		SS 2	Site Dev.- Protect or Restore Habitat*	D	Attempting	ArchE	2	
				Requirement	<i>(v4.1) Protect 40% of any greenfield areas from all activity AND restore 15%/25% of previously disturbed site with native or adapted veg AND restore soils that will serve as final habitat AND plant a min of 6 plant species, including 2 from tree, shrub and groundcover categories. Designate at least 30SF for pollinator garden. (1-2 p).</i>					
				Notes	May be possible given previous development of site (bank building and associated parking).					
				Next Steps	Determine LEED boundary. Confirm areas.		29-Dec	ArchE		
1				SS 3	Open Space*	D	Attempting	ArchE	1	
				Requirement	<i>(v4.1) Provide 30% or more of total site area - must be 25% vegetated (no turf), physically accessible, and encourage social or physical activity, gardening, habitat or visual interest. Green roof area if accessible can be included for both pedestrian hardscape and vegetation.</i>					
				Notes	Possible, assess site.					
				Next Steps	Confirm LEED boundary		29-Dec	ArchE		
			3	SS 4	Rainwater Management*	D	NA		3	
				Requirement	<i>(v4.1) Retain (i.e. infiltrate, evapotranspire or collect and reuse) on site the runoff from the site for the 80th percentile (1 p), 85th percentile (2 p) or 90th percentile (3 p) of regional rainfall events using LID and green infrastructure OR zero lot line projects with a minimum density of 1.5 FAR - retain on site the runoff from the developed site at the 70th-80th percentile of regional rainfall events using LID/GI (1-3 p).</i>					
				Notes	Liquefaction zone. Soils inadequate for infiltration. Exempt from Flow Control. (Per Civil and Structural).					
				Next Steps						
2				SS 5	Heat Island Reduction	D	Attempting	ArchE	2	
				Requirement	<i>Option 1: Non roof and Roof surfaces meet criteria using weighted average calculation (2 p) OR Option 2: A minimum of 75% of parking under cover.</i>					
				Notes	Generate weighted calculations.					
				Next Steps	Confirm LEED boundary		29-Dec	ArchE		
1				SS 6	Light Pollution Reduction	D	Attempting	ArchE	1	
				Requirement	<i>Using BUG rating or calculation method - meet Uplight rating for the project's lighting zone AND backlight and glare ratings based on distance from boundary and mounting location.</i>					
				Notes	Determine MLO Lighting Zone					
				Next Steps	Send guidance to electrical engineer.		28-Dec	ArchE		

3				7				Water Efficiency				Possible Points: 11	
Y				WEp 1	Outdoor Water Use Reduction	D	Prereq	KPG Psomas				Req.	
				Requirement	No irrigation after 2 yr. establishment or reduce irrigation by 30% for calculated baseline for peak watering month. Reduction must be due to species selection and irrigation system efficiency using EPAs WaterSense Budget Tool.								
				Notes	WaterSense budget calcs								
				Next Steps	WaterSense budget calcs			3-Jan	KPG Psomas				
Y				WEp 2	Indoor Water Use Reduction	D	Prereq	ArchE				Req.	
				Requirement	Reduce water consumption by 20% from baseline by installing fixtures (WaterSense labeled if eligible), and appliance and process equipment to required efficiency and process standards.								
				Notes	Toilets 1.28 gpf, RR faucets 0.5 gpm, Kitchen faucets 1.5 gpm - This meets minimum requirements. Energy Star appliances. Pre-rinse spray <= 1.3 gpm								
				Next Steps	Water use calculator			3-Jan	ArchE				
Y				WEp 3	Building-Level Water Metering	D	Prereq	ArchE				Req.	
				Requirement	Install permanent water meters that measure the total potable water use for the building and associated grounds.								
				Notes	Track water use for 5 years and submit to LEED								
				Next Steps	Draft letter to be provided to owner			28-Dec	ArchE				
1			1	WE 1	Outdoor Water Use Reduction	D	Attempting	KPG Psomas				2	
				Requirement	Option 1: No irrigation beyond two-year establishment period. (2 p) OR Option 2: Reduce irrigation by at least 50% from the calculated baseline for the site's peak watering month. (1 p)								
				Notes	WaterSense budget calcs								
				Next Steps	WaterSense budget calcs			3-Jan	KPG Psomas				
2			4	WE 2	Indoor Water Use Reduction	D	Attempting	ArchE				6	
				Requirement	Achieve further water use reductions with high efficiency fixtures and fittings, and alternative water sources - 1 p for every 5% savings after mandatory 20% required.								
				Notes	25% to 30% seems readily attainable.								
				Next Steps	Confirm FTE - Water use calculator			3-Jan	ArchE				
			2	WE 3	Cooling Tower Water Use	D	NA					2	
	1			WE 4	Water Metering	D	Attempting	ArchE				1	
				Requirement	Install permanent water meters that serve at least 80% of use for two or more of the following subsystems - irrigation, indoor plumbing fixtures and fittings, domestic hot water, boiler, reclaimed water or other process water.								
				Notes	Irrigation submeter yes, confirm other.								
				Next Steps	Confirm desire to pursue			3-Jan	ArchE				

8				8				13				Energy and Atmosphere		Possible Points: 33	
Y				EAp 1	Fundamental Commissioning and Verify.	C	Prereq	ArchE				Req.			
				Requirement	Owner to hire Commissioning Authority prior to the end of DD. Systems include HVAC&R, domestic hot water pumps and controls, electrical service and distribution, lighting and controls, renewable energy. Exterior enclosure to be included in OPR/BOD. Documentation includes facility operations and maintenance plan.										
				Notes	Solicit CxA during DD										
				Next Steps	Provide CxA contact list			28-Dec	ArchE						
Y				EAp 2	Minimum Energy Performance	D	Prereq	ArchE				Req.			
				Requirement	Option 1 whole building energy simulation to demonstrate 5% reduction over ASHRAE 90.1 - 2010 via energy model. OR Option 2 Prescriptive Compliance by meeting ASHRAE 50% Advanced Energy Design Guide. OR Option 3 Prescriptive compliance using Advanced Buildings Core Performance Guide.										
				Notes	Energy model required										
				Next Steps	Review MEP DD plans, build energy model			9-Jan	ArchE						

Y				EAp 3	Building-Level Energy Metering	D	Prereq	ArchE	Req.
				Requirement	<i>Install base building energy meters or submeters that can be aggregated to provide base building-level data representing total building energy consumption. Commit to sharing data with USGBC at one month intervals for 5 years after typical occupancy begins.</i>				
				Notes	Track energy use for 5 years and submit to LEED				
				Next Steps	Draft letter to be provided to owner				ArchE
Y				EAp 4	Fundamental Refrigerant Management	D	Prereq		Req.
				Requirement	<i>Do not use CFC's in HVAC & R equipment.</i>				
				Notes	Project will comply				
				Next Steps	MEP plans to be provided				28-Dec
3	2	1		EA 1	Enhanced Commissioning	C	Attempting	Owner	6
				Requirement	<i>Option 1, Path 1: Use a 3rd party CxA who in addition to Fundamental Commissioning will review submittals; develop a systems manual; verify training of personnel; perform post occupancy review at 8-10 months, develop an ongoing commissioning plan. (3 p) OR Option 1, Path 2: Monitoring-Based approach that combines achieving Option 1 with an M&V approach. (4pts) AND/OR Option 2: Complete an envelope commissioning process per NIBS Guidelines. (2 p)</i>				
				Notes	Enhanced scope assumed. Envelope commissioning to be explored.				
				Next Steps	Solicit CxA				3-Jan Owner
5	4	9		EA 2	Optimize Energy Performance	D			18
				Requirement	<i>Points for levels of energy use reduction beyond required.</i>				
				Notes	Whole building energy simulation required				
				Next Steps	Review MEP DD plans, build energy model				9-Jan ArchE
		1		EA 3	Advanced Energy Metering	D	Attempting	ArchE	1
				Requirement	<i>Install advance energy metering which meets required characteristics for all whole building sources and any end use of 10% or more of total annual consumption.</i>				
				Notes					
				Next Steps	Determine feasibility with MEP				9-Jan ArchE
		2		EA 4	Demand Response	C	NA		2
		3		EA 5	Renewable Energy Production*	D	Attempting	ArchE	3
				Requirement	<i>(v4.1) Use on-site renewable energy systems or procure renewable energy from offsite sources for all or a portion of the building's annual building energy use. Points achieved for implementing one or more strategies using table. Tier 1: On-site renewable energy generation; Tier 2: New off-site renewable energy; Tier 3: Off-site renewable energy.</i>				
				Notes	v4.1				
				Next Steps	Revisit if points are needed				9-Jan ArchE
		1		EA 6	Enhanced Refrigerant Management	D	NA		1
		2		EA 7	Green Power and Carbon Offsets	C	Attempting	ArchE	2
				Requirement	<i>Purchase 50% (1 p) or 100% (2 p) of energy costs for a minimum of 5 years from Green-e certified renewable sources in the US.</i>				
				Notes	Revisit if points needed - In v4.1 it is married to Renewable Energy Production above				
				Next Steps	Revisit				9-Jan ArchE

4	2	2	5	Materials and Resources				Possible Points:	13
Y				MRp 1	Storage and Collection of Recyclables	D	PreReq	Owner	Req.
				Requirement	Provide easily accessible area for collection and storage of recyclables - minimum of paper, cardboard, glass, plastics and metals. Provide safe collection area for two of the following - batteries , mercury-containing lamps or electronic waste .				
				Notes	Info. from owner at a later date.				
				Next Steps	Identify and provide storage location		28-Dec	Owner	
Y				MRp 2	C&D Waste Management Planning	C	Prereq		Req.
				Requirement	Implement construction waste and demolition diversion plan that identifies at least five (5) materials and whether waste will be source separated or commingled.				
				Notes	Project will need to source separate or pursue waste prevention. ArchE can provide a sample plan if needed.				
				Next Steps	Provide plan				
	2	2	1	MR 1	Building Life-Cycle Impact Reduction*	C	Attempting	ArchE	5
				Requirement	(v4.1) Demonstrate reduced environmental effects during initial project decision-making by reusing existing building resources or demonstrating a reduction in materials use through life-cycle assessment. Achieve one of the following options: Option 1. Building and Material Reuse - Maintain existing structural elements 15-75% by area (1-5 p.) OR Option 2. Whole Building Life-Cycle Assessment - Path 1: Conduct a life-cycle assessment (LCA) of the project's structure and enclosure (1 p). Path 2: Conduct LCA that demonstrates a min. of 5% reduction, compared with a baseline building in at least 3 of 6 impact categories, one must be global warming potential (2 p). Path 3: Min.10% reduction (3 p). Path 4: Meet requirements of Path 3 and incorporate reuse and/or salvage materials into the project's structure and enclosure. Demonstrate reductions of at least 20% reduction for global warming potential and 10% reduction in 2 additional impact categories listed (4 p). No impact category may increase more than 5% compared with the baseline building.				
				Notes	Whole Building LCA				
				Next Steps	Explore further with Architect		9-Jan	ArchE	
1			1	MR 2	BPDO - Environmental Product Decl.	C	Attempting	ArchE	2
				Requirement	Option 1: Use at least 20 different permanently installed products sourced from at least 5 different manufacturers that have Environmental Product Declarations (1 p). AND/OR Option 2: Use third party certified products that demonstrate impact reduction in min 3 of 6 environmental impacts - GWP, ODP, acidification, eutrophication, ground-level ozone, and non renewable energy use - for 50%, by cost, of the total value of permanently installed products in the project (1 p). Local materials count double. No more than 30% from structure/enclosure products.				
				Notes	Provide guidance for best achievable				
				Next Steps	Coordinate with architect		9-Jan	ArchE	
			2	MR 3	BPDO - Sourcing of Raw Materials	C	Attempting	ArchE	2
				Requirement	Option 1: Use 20 different permanently installed products from at least 5 different manufacturers that have publicly released sustainable reporting from their raw material suppliers. (1 p) OR Option 2 : Use building materials for 25% by cost that combined meet one of 5 criteria - "Take back" programs, bio-based material, FSC, reused, or recycled. Double for local (100 mile radius) and no more than 30% structure (1 p)				
				Notes	Building material costs are a prime consideration				
				Next Steps	Confirm desire to pursue		9-Jan	ArchE	
1			1	MR 4	BPDO - Material Ingredients	C	Attempting	ArchE	2
				Requirement	Option 1: Use 20 different permanently installed products from at least 5 different manufacturers that publish the chemical inventory to 0.1% of their products through direct disclosure or third party certification - health product declaration, Cradle to Cradle certification, or other approved program. (1 p) AND/OR Option 2: Use permanently installed materials with optimized ingredients for 25% by cost of building materials - GreenScreen, Cradle to Cradle, REACH, or other (1 p). AND/OR Option 3: Use permanently installed materials with 25% by cost able to provide supply chain documentation for worker safety and health. (1 p)				
				Notes	Provide guidance for best achievable				
				Next Steps	Coordinate with architect		9-Jan	ArchE	

2				MR 5	C&D Waste Management	C	Attempting	GC	2	
				Requirement	Option 1: Divert 50% C&D waste and 3 waste streams (1 p) OR 75% and 4 waste streams (2 p) OR Generate 2.5 lbs. of waste per sf of floor area or less. (2 p) Exemplary point for both options.					
				Notes	Verify source separation is possible					
				Next Steps	Waste management plan			28-Dec	GC	
5	5	4	2	Indoor Environmental Quality					Possible Points:	16
Y				EQp 1	Minimum Indoor Air Quality Performance	D	Prereq	Sider+Byers	Req.	
				Requirement	Meet ventilation requirements of ASHRAE 62.1-2010, including air flow monitoring stations.					
				Notes	Make client aware of air flow requirement - greater than 1,000 cfm					
				Next Steps	Mechanical plans with air distribution			28-Dec	Sider+Byers	
Y				EQp 2	Environmental Tobacco Smoke Control	D	Prereq	Owner	Req.	
				Requirement	No Smoking in building or within 25 feet of openings, or on site. Signage to be posted within 10' of all building entrances.					
				Notes	Written policy required. Signage must be permanent and contain specified language.					
				Next Steps	Identify signage locations			28-Dec	Owner	
1			1	EQ 1	Enhanced Indoor Air Quality Strategies	D	Attempting	RFM Arch	2	
				Requirement	Option 1: Implement entryway systems (10' inside in direction of travel), MERV 13 filtration and separately exhaust chemical spaces. (1 p) OR Option 2: Exterior contamination prevention (evaluate ambient air quality at intakes), increased ventilation, monitor CO2 , additional contaminant control or monitoring if applicable. (1 p)					
				Notes	Option 2 - Monitor CO2 within ALL densely occupied spaces (Defined as 25 occupants per 1,000 sf).					
				Next Steps	Identify qualifying spaces			9-Jan	RFM Arch	
2	1			EQ 2	Low-Emitting Materials*	C	Attempting	RFM Arch	3	
				Requirement	(v4.1) Achieve threshold of compliance for the following products: Interior paints & coatings at 75% emissions/100% VOC content per SCAQMD 2007; Interior adhesives & sealants at 75% emissions/100% VOC content per SCAQMD 2017; Flooring at 90% emissions; Composite Wood at 75% ULEF or no added urea; Wall panels at 75% emissions; Ceilings at 90% of emissions; Insulation at 75% of emissions; furniture at 75% by cost. 2 categories = 1 p, 3 categories = 2 p, 4 categories = 3 p, 5 categories 3 p + exemp.					
				Notes	Paints, ceilings, insulation and flooring are all very feasible. Basis of Design products must have emissions. Specifications are important. ArchE will provide Div. 1 spec section.					
				Next Steps	Product specifications			28-Dec	RFM Arch	
1				EQ 3	Construction IAQ Management Plan	C	Attempting	GC	1	
				Requirement	Implement IAQ Management Plan, including keeping HVAC equipment and vent openings sealed, protecting absorptive materials from moisture, and implementing practices that protect air quality.					
				Notes	Standard practice. ArchE can provide a sample plan if needed.					
				Next Steps	Provide management plan			9-Jan	GC	
	2			EQ 4	Indoor Air Quality Assessment*	C	Attempting	Owner	2	
				Requirement	(v4.1) Option 1: Full flush-out before occupancy of 14,000 cf OSA/gsf while maintaining 60° - 80 ° temp and 60% max humidity OR Partial flush of 3,500 cf OSA/gsf and then proceeding during occupancy at lower rate (1 p) OR Option 2 , Path 1: Air testing of particulate matter and inorganic gases to meet target limits. (1 p) AND/OR Path 2: Air testing of VOCs (1 p).					
				Notes	Particulate and VOC testing					
				Next Steps	Confirm Owner's interest in pursuing			9-Jan	Owner	
		1		EQ 5	Thermal Comfort	D	Attempting	ArchE	1	
				Requirement	Design HVAC and envelope to meet ASHRAE 55-2010 (or ISO 7730:2005 or CEN15251:2007) AND provide individual thermal controls to 50% of individual occupant spaces and ALL shared multi-occupant spaces. Controls to address air temp, radiant temp, air speed or humidity.					
				Notes	Can be difficult depending on zoning and programming.					
				Next Steps	Confirm desire to pursue			12-Jan	ArchE	

1		1	EQ 6	Interior Lighting	D	Attempting	Blanca	2
			Requirement	<i>Option 1: For 90% of individual occupant spaces and all multi-occupant spaces, provide controls with at least 3 levels of lighting. (1 p) AND/OR Option 2: Implement 4 of 8 lighting strategies - a) No uplighting that can hit occupants; b) CRI of 80+; c) Rated life of 24,000 hrs. or L70 for LED for 75% of connected load; d) Limit direct only overhead lighting to 25% or less of lighting load; e) Meet given thresholds for surface reflectance for 90% of occ. floor area; f) Meet reflectance thresholds for furniture; g) Meet wall surface illuminance reqs for 75% of occ. floor area, along with e) and f); or h) Meet ceiling illuminance reqs for 75% of occ. floor area, along with e) and f). (1 p)</i>				
			Notes	Option 1 is typically feasible with dimming switches but may require task lamps for workstation style spaces.				
			Next Steps	Lighting plan		28-Dec	Blanca	
		3	EQ 7	Daylight	D	Attempting	ArchE	3
			Requirement	<i>Provide glare control. AND Option 1: Use simulation to demonstrate 50%/75%/90% spatial daylight autonomy AND annual sunlight exposure <10% (2-3 p). OR Option 2: Simulation to demonstrate illuminance between 300 and 3000 lux for 75%/90% regularly occupied area (1-2 p); Or Option 3: Measurement to demonstrate illuminance between 300 and 3000 lux for 75%/90% regularly occupied area.(2-3 p)</i>				
			Notes	Can be difficult to achieve. DL Simulation required with no guarantee of success.				
			Next Steps	Assess floor plan and sun control		9-Jan	ArchE	
1			EQ 8	Quality Views	D	Attempting	ArchE	1
			Requirement	<i>Direct line of site to outdoors for 75% of regularly occupied area AND meet 2 of 4 view quality factors - multiple lines of sight 90% apart; flora/fauna/sky/movement; unobstructed views within 3 times head height; view factor of 3 or greater per cited study.</i>				
			Notes	Review floor plan for feasibility				
			Next Steps	Asses floor plan and site		9-Jan	ArchE	
1			EQ 9	Acoustic Performance*	D	Attempting	ArchE	1
			Requirement	<i>(v4.1) For all occupied spaces, meet two of the following criteria: HVAC background noise; sound transmission; or reverberation time. Acoustic engineer likely needed.</i>				
			Notes	Acoustic engineer available for this project				
			Next Steps	Will send info to architect for review by AE		9-Jan	ArchE	

4	2			Innovation		Possible Points:	6		
1				In 1.1	Low mercury lamps	D	Attempting	Sider+Byers	1
				Requirement	<i>Provide LED lamps</i>				
				Notes	100% LEDs will comply.				
				Next Steps	Generate light fixture schedule		9-Jan	Sider+Byers	
1				In 1.2	All-Gender Restrooms (Pilot)	D	Attempting	RFM Arch	1
				Requirement	<i>Provide single or multi-stall restroom facilities to be used by every occupant. The quantity of stalls planned for and provided shall not be less than the total quantity of stalls in restrooms of a traditional layout.</i>				
				Notes	Must meet LEED Indoor Water Use Reduction Prerequisite requirements.				
				Next Steps	Verify restroom plans		9-Jan	RFM Arch	
1	1			In 1.3	Exemplary Performance in Acoustic Perform.*	D	Attempting	ArchE	1
				Requirement	<i>(v4.1) For all occupied spaces, meet all three of the following criteria: HVAC background noise; sound transmission; or reverberation time.</i>				
				Notes	Acoustic engineer available for this project				
				Next Steps	Will send info to architect for review by AE		9-Jan	ArchE	
1	1			In 1.4	Green Building Education	D	Attempting	ArchE	1
				Requirement	<i>Provide actively instructional public education about green building strategies and solutions used in the project including two out of the three following elements: a comprehensive educational signage program, development of a manual, guideline, or case study to inform future building design, and creation of an educational outreach program or guided tour.</i>				
				Notes	Include supporting documentation for two chosen elements				
				Next Steps	Verify owner's interest in pursuing		18-Jan	ArchE	
1				In 1.5	PBT Source Reduction	D	Attempting	ArchE	1
				Requirement	<i>Lead, Cadmium and Copper reduction in materials.</i>				
				Notes	May be attainable.				
				Next Steps	Provide information to GC		9-Jan	ArchE	
1				In 2	LEED Accredited Professional	D	Attempting	ArchE	1

1	1		2	Regional Priority	threshold	Possible Points:	4
			1	RP1	Demand Response	1	1
	1			RP2	Renewable Energy Production	2	1
1				RP3	BPDO - EPDs	1	1
			1	RP4	BPDO - Sourcing	1	1

CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 29th day of July 2020, by and between the City of Port Orchard, a municipal corporation, organized under the laws of the State of Washington, whose address is:

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

Contact: Mayor Robert Putaansuu Phone: 360.876.4407 Fax: 360.895.9029

and Rice Fergus Miller, Inc., a corporation, organized under the laws of the State of Washington, doing business at:

275 Fifth Street, Suite 100
Bremerton, WA 98337

(hereinafter the “CONSULTANT”)

Contact: Steven M. Rice Phone: 360-377-3778 Fax: _____

for professional services in connection with the following Project:

The Port Orchard Downtown Community Event Center Project

TERMS AND CONDITIONS

1. Services by Consultant.

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

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

2. Schedule of Work.

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

City of Port Orchard and Rice Fergus Miller

Public Works Project No. N/A

Professional Service Agreement Contract No. 066-20

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

3. **Terms.** This Agreement shall commence on **July 29, 2020** (“Commencement Date”) and shall terminate **March 31, 2022** unless extended or terminated in writing as provided herein. **The City reserves the right to offer two (2) one-year extensions prior to contract expiration to retain the selected company’s services.**

4. **Compensation.**

LUMP SUM. Compensation for these services shall be a Lump Sum of \$400,000.00.

5. **Payment.**

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

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

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

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

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

6. **Discrimination and Compliance with Laws**

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

B. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City’s general right of inspection to secure the satisfactory

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

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

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

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

8. Suspension and Termination of Agreement

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

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

C. Rights Upon Termination.

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

City of Port Orchard and Rice Fergus Miller

Public Works Project No. N/A

Professional Service Agreement Contract No. 066-20

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

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

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

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

10. Ownership of Work Product.

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

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

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

City of Port Orchard and Rice Fergus Miller

Public Works Project No. N/A

Professional Service Agreement Contract No. 066-20

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

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

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

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

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

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

B. Minimum Amounts of Insurance

City of Port Orchard and Rice Fergus Miller

Public Works Project No. N/A _____ 066-20

Professional Service Agreement Contract No. _____

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Consultant shall maintain the following insurance limits:

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

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability (as to Sections C.2 and C.4), and Commercial General Liability insurance:

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

D. Acceptability of Insurers

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

E. Verification of Coverage

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

City of Port Orchard and Rice Fergus Miller

Public Works Project No. N/A

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F. **Personal Liability:**

Owner further agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal or employee of Rice Fergus Miller shall have personal liability under this Indemnification provision, under any provision of the Agreement, or for any matter in connection with the services provided in connection with the Project.

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

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

Robert Putaansuu
Mayor
216 Prospect Street
Port Orchard, WA 98366

Phone: 360.876.4407
Fax: 360.895.9029

CONSULTANT
Steve Rice, Principal
Rice Fergus Miller, Inc.
275 5th Street, Suite 100 Bremerton, WA 98337

Phone: 360-377-8773
Fax: _____

16. Resolution of Disputes and Governing Law.

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

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

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

17. General Provisions.

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

City of Port Orchard and Rice Fergus Miller

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

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

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

18. Title VI

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

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

1. **Compliance with Regulations:** The Consultant will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The Consultant, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix A, attached hereto and incorporated herein by this reference, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant's

City of Port Orchard and Rice Fergus Miller

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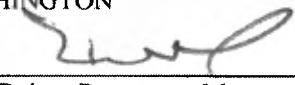
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obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.

4. **Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the City or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the Non-discrimination provisions of this Agreement, the City will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding payments to the Consultant under the Agreement until the contractor complies; and/or
 2. cancelling, terminating, or suspending the Agreement, in whole or in part.
6. **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the City to enter into any litigation to protect the interests of the City. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

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

CITY OF PORT ORCHARD,
WASHINGTON

By: 
Robert Putaansuu, Mayor

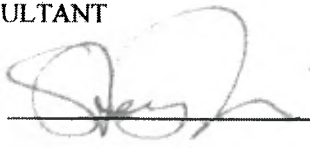
ATTEST/AUTHENTICATE:

By: 
Brandy Riehearson, MMC
City Clerk

APPROVED AS TO FORM:

By: 
Charlotte A. Archer, City Attorney

CONSULTANT

By: 
Name: Steven M. Rice

Title: Principal

City of Port Orchard and Rice Fergus Miller

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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).

City of Port Orchard and Rice Fergus Miller

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**SOUTH KITSAP COMMUNITY EVENT CENTER
DRAFT SCOPE OF WORK PREPARED BY RFM
PRESENTED TO CITY OF PORT ORCHARD JULY 1, 2020**

This document is in response to TASK 1 and TASK 2 of the “PFD ILA Third Draft (with NB and SEC edits) 10.30.19 (2).

**ILA TASK 1 + ILA TASK 2
RFM PHASE 1A + RFM PHASE 1B = “PHASE 1” SCOPE OF WORK PER RFQ**

- *Provides road map for logical sequence of scope pieces -- site selection, programming for space needs, and concept building design*
- *Identifies logical midpoint of combined consultant-supplied design services in response to City’s desire to proceed sequentially.*
- *Provides the ability to explore and potentially augment space needs with beneficial uses not currently identified in ILA.*
- *Tailors public outreach and acknowledges need for outreach to master plan stakeholders*
- *Adds activities and deliverables desired by the City now:*
 - *Test multiple site options (up to three) with conceptual design for suitability and quality of outcomes at each site*
 - *Produce one schematic design (not three) based on agreed upon space program at selected site*
 - *Provide Preliminary CEC Monetary Operational Feasibility Report*
 - *Coordinate project attributes to City of Port Orchard’s consultant performing Downtown Subarea Plan*
- *This draft scope does not (yet) address required deliverables for the purposes of this discussion but assumes they are pursuant to how activities are split between RFM Phase 1A and Phase 1B*

RFM PHASE 1A:
CONCEPTUAL DESIGN

**DEFINE THE PROJECT IN BASIC TERMS & REACH PRELIMINARY DESIGN PACKAGE
(APPROX. 15% OVERALL; APPROX 30% SCHEMATIC DESIGN)**

Draft Management Plan

- Assist City to produce Draft Management Plan.
- Determine design team level of responsibility for project management; fit for City
- Discuss preliminary project budget creation and responsibility for maintenance.
- Discuss project timeline and milestone deliverables
- Determine frequency of meetings and get them scheduled ahead on calendars

Establish Goals and Objectives

- City of Port Orchard (COPO)
- Kitsap Regional Library (KRL)
- Kitsap Public Facilities District (KPFD)
- Other Key Stakeholders (Kitsap Bank, Port Of Bremerton, Sound West Group, Kitsap Transit, etc.)

Public Outreach & Communication

- Initiate public outreach for site attributes and for space needs
- Restart continuous communication platforms
- Get public outreach meetings scheduled ahead on calendars

Space Programming/Needs Assessment

- Conduct space & site programming
 - With Kitsap Regional Library for library
 - With Columbia Hospitality for event center
 - With other identified key stakeholders (Kitsap Bank, City Of Port Orchard, etc.)
 - With public and user groups via outreach
 - For other uses the design team may promote
- Prepare Draft Space Programming Report

Site Analysis & Selection

- Identify approximately three sites for consideration
- Conduct factfinding: utilities, preliminary geotechnical, preliminary environmental, zoning, shorelines, etc.
- Prepare comparison matrix: ownership, opportunities and restrictions, attributes for CEC program, developable envelope, ability to catalyze other development, ability to boost property values and merchant business, parking, access and transportation, etc.

- Develop preliminary design scheme (building and site concept) in order to test each site; describe and contrast outcomes (performance vs. goals and objectives, layout, function, other benefits); determine preferred alternative.

RFM PHASE 1B:
SCHEMATIC DESIGN

FURTHER DEFINE THE PROJECT, PROVIDE PRELIMINARY OPERATIONAL FEASIBILITY & REACH SCHEMATIC DESIGN PACKAGE (APPROX. 25% OVERALL; xx% SCHEMATIC DESIGN)

Market Analysis, Financial Viability, and Risk Assessment

- Conduct event center analysis with market information and preliminary operational feasibility report
- Produce City Of Port Orchard portion of the feasibility study report.

Public Outreach & Communication

- Continue public outreach for preferred alternative
- Maintain continuous communication platforms

Space Programming/Needs Assessment

- Review Kitsap Public Facilities District feasibility study report findings; finalize space programming as needed.
- Verify/confirm space needs and shared use scenarios with building users and key stakeholders.
- Provide Preliminary CEC Monetary Operational Feasibility Report

Site Analysis

- Prepare technical report to inform architectural and site design.
 - Final geotechnical, final utilities capacity, preliminary storm drainage report
 - Level 2 environmental, if needed
 - Biological Evaluation
 - Topographic Survey
 - Archeological and Cultural Resources Report including inadvertent discovery plan
- Provide shorelines mitigation and preliminary engineering report.

Property Ownership/Master Plan

- Assist City to work with public and private entities to determine ownership of the CEC property and proposed building.
- Update proposed Master Plan (?)
- Coordinate project attributes to City Of Port Orchard's consultant performing Downtown Subarea Plan.

Schematic Design

- Based on updated program information and feedback from the public and City Council, further develop preferred alternative preliminary design scheme (building and site) to approximate __% schematic level

- Provide schematic level cost estimate and present to the City Council.

Task 2 City Council Action. City to review preferred alternative with public entities and decide whether to accept additional \$600,000 (estimated) for Task 3.

Notes:

Design Team fees support inherent management responsibilities, including meetings.

**SOUTH KITSAP COMMUNITY EVENT CENTER
FEES PER KPFD-CPO INTERLOCAL AGREEMENT**

JULY 10, 2020

ILA TASK	RFQ TASK	RFM PHASE	CONSULTANTS	PROPOSED FEE	DURATION	TASKS	DELIVERABLES
CONCEPTUAL DESIGN							
1	1.1 1.2.1 1.2.2	1A	ARCH TRANSPORTATION STRUCTURAL CIVIL SURVEY SHORELINE GEOTECH ENVIRONMENTAL BIOLOGIST HOSPITALITY	\$200,000	PER ILA/RFQ 9-12 MONTHS PROPOSED 7 MONTHS	PROJECT PLANNING ESTABLISH GOALS AND OBJECTIVES COORDINATE EXISTING MASTER PLANNING EFFORTS REVIEW HISTORICAL PUBLIC INPUT PUBLIC OUTREACH SPACE PROGRAMMING NEEDS ASSESSMENT CONCEPT PLANNING HIGH LEVEL SITE ASSESSMENT	PROFESSIONAL SERVICE CONTRACT DRAFT MANAGEMENT PLAN PUBLIC OUTREACH REPORT SPACE PROGRAMMING REPORT (3) SITE ASSESSMENT ALTERNATIVES WITH DESIGN CONCEPT FOR EACH HIGH LEVEL TRAFFIC, GEOTECH, STRUCTURAL, SURVEY, SHORELINE, GEOTECH, ENVIRONMENTAL AND BIOLOGIST NARRATIVES FOR EACH SITE ALTERNATIVE
1.4	1.2.3	CITY COUNCIL & KPFD SITE SELECTION: MARKET ANALYSIS, FINANCIAL VIABILITY & RISK ASSESSMENT					
SCHEMATIC DESIGN							
2	1.2.4 1.2.5 1.2.6 1.2.7 1.2.8	1B	ARCH LANDSCAPE STREETScape TRANSPORTATION STRUCTURAL CIVIL SURVEY SHORELINE GEOTECH HOSPITALITY MECHANICAL ELECTRICAL ENVIRONMENTAL BIOLOGIST ARCHAEOLOGICAL CULTURAL COST ESTIMATING	\$200,000	PER ILA/RFQ 6-9 MONTHS PROPOSED 9 MONTHS	REVIEW KPFD'S FEASIBILITY REPORT PUBLIC OUTREACH SPACE PROGRAMMING NEEDS ASSESSMENT INVESTIGATION OF SELECTED SITE PROPERTY OWNERSHIP/MASTER PLAN SCHEMATIC DESIGN DETERMINE SCOPE FOR ILA TASK 3	INVESTIGATIVE REPORTS FOR SELECTED SITE: ENVIRONMENTAL ASSESSMENT PRELIM STORMWATER DRAINAGE REPORT PRELIM GEOTECH REPORT BIOLOGICAL EVALUATION TOPOGRAPHICAL SURVEY & CRITICAL AREAS SHORELINE CODE ANALYSIS ARCHAEOLOGICAL & CULTURAL RESOURCES REPORT (INCLUDING INADVERTENT DISCOVERY PLAN) UTILITIES CAPACITY EVALUATION (WATER/SEWER) TRAFFIC REPORT PRELIMINARY SCHEMATIC DESIGN CONCEPT PLANS COST ESTIMATE SPACE PROGRAMMING & PUBLIC OUTREACH REPORT SCHEMATIC DESIGN AND SITE PLAN DRAFT SCOPE FOR ILA TASK 3
2	1.2.9	CITY COUNCIL ACTION: FEASIBILITY STUDY TO START ILA TASK 3					



ARCHITECTURE INTERIORS PLANNING VIZLAB

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

2020 Hourly Billing Rates

Date of Proposal:

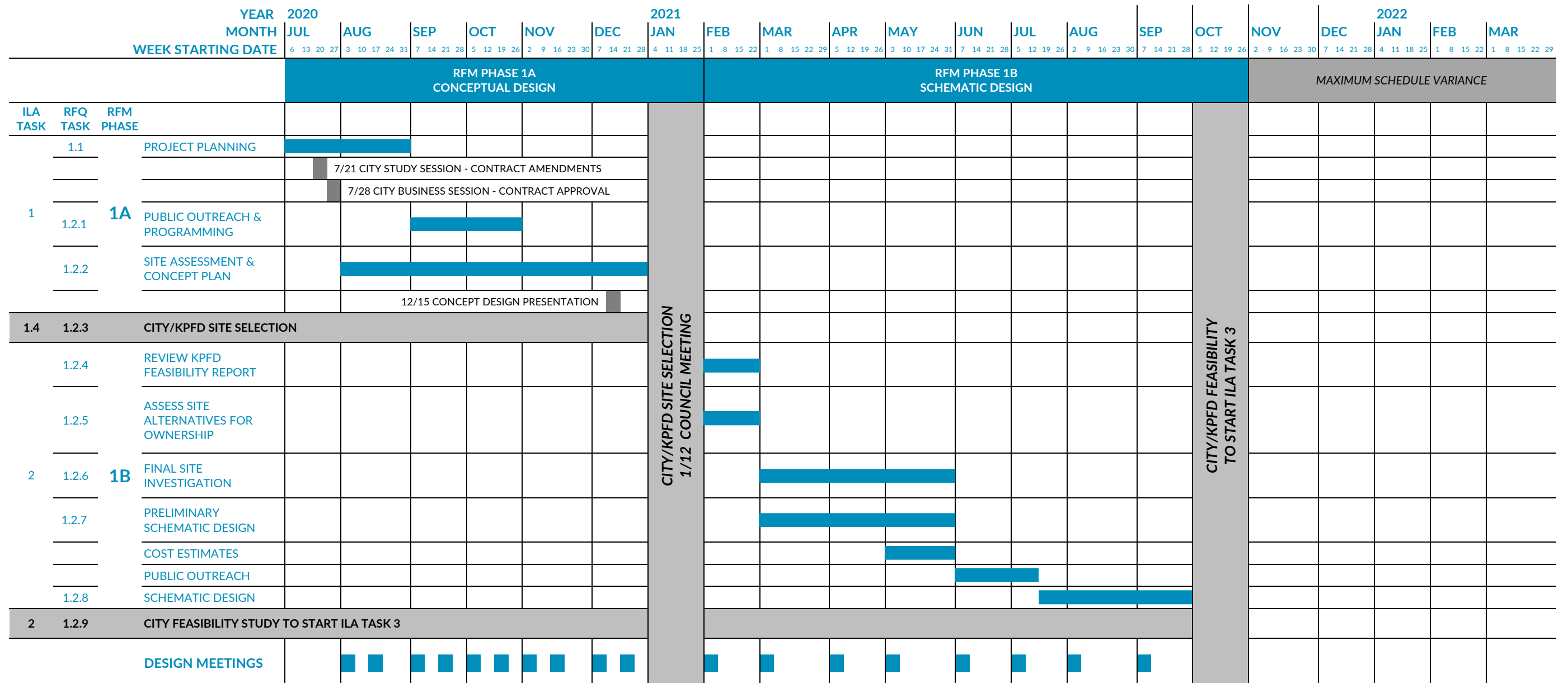
Project:

Project No.:

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

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

**SOUTH KITSAP COMMUNITY EVENTS CENTER
PHASE 1 PROPOSED SCHEDULE**





City of Port Orchard

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

Agenda Staff Report

Agenda Item No.: Discussion Item 9A
Subject: Council Choice of RMSA Required Course
for 2023

Meeting Date: February 28, 2023
Prepared by: Debbie Lund
HR Director
Atty Routing No.: 366922-0008
Atty Review Date: February 22, 2023

Summary: The City maintains liability coverage through the Association of Washington Cities Risk Management Service Agency (RMSA). As part of the coverage, RMSA has standards for the members. One of the standards is that all employees with direct reports, elected officials, and all department heads complete at least one AWC RMSA approved training course per year on an employment practices topic.

This year, RMSA provided more detail on which class offerings qualify for the standard. This results in a shortened list of options. The list is attached.

Annually, council is asked to choose one course for all councilmembers to take. Once chosen, Human Resources will assign the class utilizing the online classroom provided by RMSA. The course is pre-recorded, and must be completed by each councilmember by year end.

For the council’s information, the managers group chose to complete the Workplace Bullying course for 2023. History of previously chosen classes is provided on the attached list.

Recommendation: N/A

Relationship to Comprehensive Plan: N/A

Motion for consideration: N/A. This decision can be made by consensus.

Fiscal Impact: If there is an employment claim against an elected official (or staff supervisor) and that person has not taken the required annual one hour class, a \$1,000 deductible will be applied.

Alternatives: Do not select a topic for 2023 and provide alternative guidance.

Attachments: List of class choices for 2023.

RMSA Catalog of Possible Courses
to Satisfy Supervisor and Council Employment Standards
Training Requirement

1/3/2023

Anti Harassment in the Workplace

(Assigned to all new employees)

Harassment in the workplace is a serious issue that requires a thorough understanding to promote awareness and ultimately prevention. Improper behavior in the workplace may have significant consequences for those involved, for yourself as an employee, and your employer. Recognizing the various types of harassment will help you to identify potential warning signs and take the necessary steps to report harassment. *1 hour, Liked by 1064 users.*

Discipline and Termination

(Completed in 2019 by Council & Managers)

In every organization, employees are let go for various reasons. The decision to discipline or even terminate an employee is not one that should be taken lightly, and there is a right and wrong way to approach the situation. In this course, learners will explore ways to appropriately address issues before termination is necessary, be able to terminate employees confidently if discipline fails, and for employees to understand the need for a disciplinary process and the rules and expectations that inform them. *1 hour, liked by 50 users*

Sexual Harassment for Managers

(Some took in 2013)

Sexual harassment in the workplace can happen to anyone, male or female, regardless of sexual orientation. Recognizing what sexual harassment is a leader, both the subtle cues as well as the overt advances, will help you to identify potential warning signs and take the necessary steps to prevent sexual harassment. There are a number of preventive measures that can be employed

as well as recommendations of what to do if you or one of your employees have been or are the victim of sexual harassment. *2 hours, liked by 159 users*

Sexual Harassment in the Workplace

Improper behavior in the workplace may have significant consequences both for yourself and your employer. If you are a victim of sexual harassment, this may create a hostile work environment which takes a toll on your career, your personal life, and your health. Recognizing what sexual harassment is, both the subtle cues as well as the overt advances, will help you to identify potential warning signs and take the necessary steps to report sexual harassment. *1 hour, liked by 3192 users*

Workplace Bullying

(To be completed in 2023 by Managers)

When we think of bullying, we immediately associate it with the school yard, certainly not something we face as an adult. Unfortunately, bullying in the workplace occurs more often than you think. In fact, there are various forms of bullying, from overt forms to those which are quite passive. Workplace bullying may have significant consequences for those involved, for yourself as an employee as well as your employer. A thorough understanding of workplace bullying will help promote awareness and ultimately prevention. *1 hour, liked by 541 users*