



City of Port Orchard Council Meeting Agenda

March 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

Link: <https://us02web.zoom.us/j/84511473037>

Zoom Meeting ID: **84511473037**

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

Guiding Principles

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

1. CALL TO ORDER**A. Pledge of Allegiance****2. APPROVAL OF AGENDA****3. CITIZENS COMMENTS**

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

4. CONSENT AGENDA

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

A. Approval of Vouchers and Electronic Payments**B. Approval of Payroll and Direct Deposits****C. Adoption of a Resolution Approving the Purchase of a Valve Maintenance Trailer for the Equipment Rental & Revolving Fund 500 (Lang) Page 4****5. PRESENTATION****A. Fathoms O Fun 2023 Royalty Court Introduction****6. PUBLIC HEARING**

7. BUSINESS ITEMS

- A. Adoption of an Ordinance Amending Port Orchard Municipal Code Chapter 9.60, Pertaining to Camping on Public Property and Associated Procedures (Archer) **Page 15**
- B. Adoption of a Resolution Accepting Sanitary Sewer Project #6-5C, the North Sidney Station, Documenting Certified Constructions Costs, and Establishing the Maximum General Facility Fee Credits Granted Pursuant to Contract C063-21 (Lang) **Page 31**
- C. Adoption of a Resolution Accepting Transportation Improvement Program Project #2.5C, Documenting Certified Constructions Costs, and Establishing the Maximum Transportation Impact Fee Credits Pursuant to Contract C076-21, And accepting a Deed for right of Way (Lang) **Page 81**
- D. Adoption of a Resolution Adopting Hiring Personnel Policies Related to the City's Practices (Lund) **Page 162**
- E. Adoption of a Resolution Approving a Contract with KR Homes, LLC for the Sroufe Water Main Replacement Project (Lang) **Page 171**
- F. Adoption of a Resolution Authorizing the Payment of Reestablishment and Relocation Benefits for Venture Charters, Inc., for the Bay Street Pedestrian Pathway Project (Archer) **Page 188**
- G. New National Opioids Settlements (Teva, Allergan, CVS, Walgreens, and Walmart) Regarding In Re: National Prescription Opiate Litigation, Case No. 1:17-MD-2804, United States District Court (Archer) **Page 215**
- H. Approval to Accept a Special Event Application and Approval of Road Closure for a Special Event: The Unforgotten - Run to Tahoma (Wallace) **Page 303**

8. DISCUSSION ITEMS (No Action to be Taken)

- A. 2022 Annual Impact Fee Report (Bond) **Page 315**

9. REPORTS OF COUNCIL COMMITTEES

10. REPORT OF MAYOR

11. REPORT OF DEPARTMENT HEADS

12. CITIZEN COMMENTS

*(Please limit your comments to **3 minutes** for any items not up for Public Hearing. When recognized by the Mayor, please state your name for the official record. If you are attending remotely via telephone, enter *9 from your keypad to raise your hand.)*

- 13. EXECUTIVE SESSION:** Pursuant to RCW 42.30.110, the City Council may hold an executive session. The topic(s) and the session duration will be announced prior to the executive session.

14. CITY COUNCIL GOOD OF THE ORDER

15. ADJOURNMENT

COMMITTEE MEETINGS

	Date & Time	Location
Economic Development and Tourism	April 17, 2023; 9:30am	Remote Access
Utilities	March 28, 2023; 5:00pm	Remote Access
Finance	April 18, 2023; 5:00pm	Remote Access
Transportation	April 25, 2023; 4:30pm	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.

Festival of Chimes & Lights	April 17, 2023; 3:30pm	Remote Access
Land Use	March 29, 2023; 4:30pm	Remote Access
Lodging Tax Advisory	TBD, 2023	Remote Access
Sewer Advisory	TBD, 2023; 5:00pm	Remote Access
Council Retreat	April 14, 2023; 9AM	Council Chambers
Outside Agency Committees	Varies	Varies

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City of Port Orchard

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

Agenda Staff Report

Agenda Item No.:	<u>Consent Agenda 4C</u>	Meeting Date:	<u>March 28, 2023</u>
Subject:	<u>Adoption of a Resolution Approving the</u>	Prepared by:	<u>Tony Lang</u>
	<u>Purchase of a Valve Maintenance Trailer</u>		<u>Public Works Director</u>
	<u>for the Equipment Rental & Revolving</u>	Atty Routing No.:	<u>366922-0009 – PW</u>
	<u>Fund 500</u>	Atty Review Date:	<u>03/23/2023</u>

Summary: The City identified a need for a valve maintenance trailer to assist staff with preventative maintenance procedures while conducting the City’s water systems valve maintenance program. Currently, public works employees manually open and close valves as part of this process. This is a time-consuming and labor-intensive process. The trailer will increase productivity by quickly opening and closing valves while allowing better ergonomics and safety for staff as they conduct the water system’s valve maintenance. The equipment listed in the proposed resolution is a single-turner valve maintenance trailer.

The City has an interlocal agreement with National Purchasing Cooperative-BuyBoard (City Contract No. 028-23), which allows the City to utilize the contracts procured by BuyBoard for services and purchases, so long as the City confirms the contract complies with all applicable statutory procurement requirements for the purchase or service, per RCW 39.34.030. Consistent with City Contract No. 028-23 and the City’s Procurement Procedures Policies, adopted as Resolution No. 036-22, as amended, Public Works staff identified Wachs Utility Products as an approved vendor for the Valve Maintenance equipment, awarded via BuyBoard Contract No. 684-22 (BuyBoard Contract). Staff reviewed the procurement process utilized by BuyBoard for the BuyBoard Contract, confirmed the procurement requirements were met, and obtained all necessary documentation from BuyBoard and the vendor regarding procurement.

The City’s Procurement Policies require City Council approval for purchases costing \$35,000 or more.

On February 7, 2023, Public Works staff requested and received a quote from Wachs Utility Products of \$80,765.07 (plus applicable tax and freight), for a total purchase price of \$94,194.82.

The proposed Resolution is to provide the City Council’s approval of the equipment purchase in accordance with the procurement procedures established by the City Council.

Recommendation: Staff recommends approving a Resolution, providing City Council approval for the purchase of a Valve maintenance Trailer in accordance with the City’s procurement policies.

Relationship to Comprehensive Plan: Chapter 7 - Utilities

Motion for consideration: I move to approve a Resolution, approving the purchase of a Valve Maintenance Trailer.

Fiscal Impact: The Valve Maintenance Trailer is budgeted in the 2023-2024 Budget (GL Code: 500.10.594.34.60)

Alternatives: Do not approve and provide alternative guidance.

Attachment: Resolution
Wachs Quote
Interlocal Agreement Checklist
ER&R Replacement or Addition Purchase Request

RESOLUTION NO. ____-23

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING THE PURCHASE OF A VALVE MAINTENANCE TRAILER FOR THE EQUIPMENT RENTAL & REVOLVING FUND 500 AND DOCUMENTING PROCUREMENT PROCEDURES.

WHEREAS, the City identified a need for a valve maintenance trailer to assist staff with preventative maintenance procedures while conducting the City's water systems valve maintenance program; and

WHEREAS, the trailer will increase productivity by quickly opening and closing valves while allowing better ergonomics and safety for staff as they conduct the water system's valve maintenance; and

WHEREAS, the City has an interlocal agreement with National Purchasing Cooperative-BuyBoard (City Contract No. 028-23) which allows the City to utilize the contracts procured by BuyBoard for services and purchases, so long as the City confirms the contract complies with all applicable statutory procurement requirements for the purchase or service, per RCW 39.34.030; and

WHEREAS; consistent with City Contract No. 028-23 and the City's Procurement Procedures Policies, adopted as Resolution No. 036-22, as amended, the City's Public Works Department identified Wachs Utility Products as an approved vendor for the Valve Maintenance equipment, awarded via BuyBoard Contract No. 684-22 (BuyBoard Contract); and

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

WHEREAS, on February 7, 2023, Public Works staff requested and received a quote for the Valve Maintenance Trailer from Wachs Utility Products of \$80,765.07 (plus applicable tax and freight), for a total purchase price of \$94,194.82; and

WHEREAS, on March 1, 2023, the City's Public Works Department completed the Interlocal Agreement Purchase Checklist for the selected vendor and confirmed the quote was consistent with the BuyBoard Contract; and

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

WHEREAS, the Wachs Utility Products quote, attached as Exhibit A, is for the purchase of Equipment in an amount that exceeds the \$35,000 authorization limit; and

WHEREAS, the Port Orchard City Council, at the 2015 recommendation of the State Auditor's Office, wishes to document their selection/procurement process as described herein for this purchase by Resolution; now, therefore,

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

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

THAT: The City Council approves the purchase from Wachs Utility Products in the amount of \$94,194.82 (applicable tax included). The Mayor or his designee is authorized to take all actions necessary to effectuate the purchase, consistent with this authorization.

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

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage on this 28th day of March 2023.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk



Utility Products
The Valve Maintenance Experts™

600 Knightsbridge Parkway, Lincolnshire, Illinois 60069
(847) 537-8800 | Fax (847) 520-1147
turnvalves.com

Quotation

Page 1 of 1

TO: **Tony Lang**
Port Orchard
216 Prospect St
Port Orchard, WA 98366

Date: 2/7/2023
Quotation Number: KR191049
Payment Terms: Net 30 Days
Shipping Terms: FOB Origin
Valid Through: 4/8/2023
Estimated Delivery: See Below
Reference: BuyBoard #684-22

E.H. Wachs is pleased to offer the following quotation.

Item Number	Description	Qty	U/M	Unit Price (USD)	Disc%	Line Total (USD)
1	77-000-36 Standard LX (Gas) – VMT (RH): Single turner valve maintenance trailer; includes Wachs 750 Ft/lb (1020 Nm) Extended Reach Valve operator for those preventive maintenance activities, telescoping valve key and Wachs ruggedized TC-100 with GPS controller/datalogger. A 27 HP (20 kW) gasoline powered Kohler overhead cam air cooled engine provides ample power for all contained functions, including an auxiliary HTMA Class II circuit; 10 gallon (38 L) reservoir, fan cooled heat exchanger, continuous duty rated for 8 GPM (30.3 LPM) @ 2,000 PSI (140 bar). A positive displacement blower provides 500 CFM (14.2 cmm)-11" (280mm) Hg vacuum, with spoils containment provided by a 250 (950 L) gallon tank with power hydraulic dump (rear discharge) and latching rear door. Also driven from the common power train is a 2.5 GPM (9.5 LPM) @ 3000 PSI (210 bar) pressure washer system with 3 gallon (11.4 L) anti-freeze tank and 95 gallon (360 L) water tank. Includes 2-1/2" (63.5mm), 1-1/4" (31.75mm) & 7/8" (22mm) suction wands and one each short and long wash-down guns. The LX package bundles the service light bar with arrow board, 45' (14 M) auxiliary hydraulic hose reel for operation of hydraulic power tools & Bluetooth tethering module (installed in ERV-750) for wireless communication between the exerciser and Controller/Data Logger and 24" (61cm) X 18" (46cm) x 18" (46cm) aluminum job box. Other options available include: Under deck mounted Spare Tire Kit (77-411-00), 2-5/16" Ball Tongue (77-215-01), 45lb Breaker, Mount and 14" Moil Point (08-000-10, 08-405-00 & 08-410-02) or already GPS enabled controller/datalogger, however adding Trimble R2 GNSS receiver (79-412-02) provides capability of submeter to centimeter level positioning accuracy (highest accuracy in real-time with the use of correction sources).	1	EA	81,995.00	1.5%	80,765.07
2	SALES TAX Sales Tax 9.3%	1	EA	8,014.75		8,014.75
Subtotal						88,779.82
Motor Freight						5,415.00
Total (USD)						\$94,194.82

We will prepay and add shipping charges to your order , or we can ship collect via your choice of carrier service. If you have any questions please feel free to call Chris Damkoehler at 424-304-4937 or call me at 847-484-2773.

If you are tax exempt, please supply your identification number and certificate with your order. If your exempt number is not on file, tax will be added to your invoice.

Please reference this quote number when placing your order. Thank you.

Ken Redding
Technical Service Rep
847-484-2773
ken.redding@ehwachs.com

Sales of E.H. Wachs products and services are expressly limited to and made conditional on acceptance of its current Terms and Conditions of Sale , found at www.ehwachs.com ("Terms"). Any additional or different terms are hereby rejected . Commencement of work by E.H. Wachs or acceptance of delivery of products by you constitutes your acceptance of the Terms .

CITY OF PORT ORCHARD
PURCHASES THROUGH INTERLOCAL AGREEMENTS

City Contract No.: C028-23

Interlocal Agreement with the Host Agency (government agency or Purchasing Co-Op name): National Purchasing Cooperative-BuyBoard

Item Description: Single turner valve maintenance trailer

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

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

BuyBoard Contract No.: 684-22

If you have an Office of State Procurement (OSP) contract number you may skip the remainder of this test because the OSP contracts comply with remaining requirements and retain the documentation on hand for SAO to review in the OSP offices.

Is this a technology contract?

- ☐ If yes, do your own rules allow for technology contracts to be negotiated?
- ☐ If your own rules allow for negotiated IT contracts, you can skip this test.

Is this a services contract?

- ☐ If yes, do your own rules allow services to be negotiated?
- ☐ If your own rules allow for negotiated services, you can skip the remainder of the test.

Are you using this as only one of multiple quotes, for a small purchase?

- ☐ If yes, you can skip the remainder of the test. Your purchase will not mandate the sealed bid rules.

Checklist for Required Compliance

Is the Host agency a public agency ¹ ?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, what state laws apply to Host Agency: Maryland
Does the host agency have a requirement to run a newspaper ad in their local paper and did they comply	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Federal and State contract rules usually don't require a newspaper ad. For others, attach the ad or place into the file.
Did they list on the public agency's website?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, state when and the address, and proof of date, address shall be attached or placed into the file. If No, you cannot use the bid.
Did the bid & award comply with the Host agency's state procurement laws?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, obtain documentation to support answer from Host Agency. If No, you cannot use the bid.

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



ER&R

Replacement or Addition Purchase Request

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

Please attach the quote for vehicle / equipment.

Description of item:							
Procurement method:							
Department							
Water	Sewer	Storm	Street	Public Works	DCD	Police	Admin
Addition or Replacement							
X	Addition to Fleet - Please state business case for addition:						
	Replacement Vehicle / Equipment being replaced:						
Fleet Standardization							
	Requested Vehicle / Equipment follows fleet standardization						
	Requested Vehicle / Equipment DOES NOT follow Standardization. List items that are not fleet standard and reason for addition.						

	Requested Vehicle / Equipment does not have a standard
Cost	
	Fleet standard cost
	Additional cost for consideration and business case:
	TOTAL

STANDARDS FOR VEHICLES

Police Department Standard Vehicle

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

Public Works and Planning Standard Truck

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

Administration and Planning Standard Vehicle

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

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



Department Director

Date

Approved for purchase by:

Gretchen Isaksson 3/1/2023
ER&R Representative Date



Utility Products
The Valve Maintenance Experts™

600 Knightsbridge Parkway, Lincolnshire, Illinois 60069
(847) 537-8800 | Fax (847) 520-1147
turnvalves.com

Quotation

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If you are tax exempt, please supply your identification number and certificate with your order. If your exempt number is not on file, tax will be added to your invoice.

Please reference this quote number when placing your order. Thank you.

Ken Redding
Technical Service Rep
847-484-2773
ken.redding@ehwachs.com

Sales of E.H. Wachs products and services are expressly limited to and made conditional on acceptance of its current Terms and Conditions of Sale, found at www.ehwachs.com ("Terms"). Any additional or different terms are hereby rejected. Commencement of work by E.H. Wachs or acceptance of delivery of products by you constitutes your acceptance of the Terms.

VALVE MAINTENANCE TRAILER



The Standard LX, an E.H. Wachs exclusive valve maintenance trailer, comes with our industry-leading ERV-750 extended reach valve exerciser, our newest controller – the HC-100 wireless handheld computer / controller/ datalogger with GPS and Vitals software. Also equipped with the powerful 500CFM-11in HG vacuum with hydraulic slide, tilt & dump (rear discharge) with latching rear door spoils tank. Loaded with storage and accessories this trailer is ready for serious valve maintenance work.

FEATURES

- 270° of motion, 13ft total extended reach, 750 ft/lbs ERV-750 valve exerciser
- Ruggedized HC-100 controller/data logger with built in GPS
- Available in two types of engines:
Diesel: Tier 4F compliant Kubota 1.1 L, I-3 4-stroke, liquid cooled IDI. #77-000-38
Gas: 27HP Kohler overhead cam, air cooled, #77-000-36
- HTMA Class II circuit, 10 gal reservoir, fan cooled heat exchanger, 8gpm@2000psi
- Positive displacement blower provides 500 CFM-11in Hg vacuum
- 250 gal spoils tank utilizing exclusive hydraulic slide, tilt & dump (rear discharge) with latching rear door
- 2.5 GPM@3000 psi pressure washer system with 95 gallon water tank

INCLUDES

- 2 1/2in, 1 1/4in & 7/8in suction wands
- Short wash down gun
- Long hydro excavation gun
- 20ft suction hose
- 50ft retractable water hose reel

LX PACKAGE BUNDLE

- LED work light & arrow board bar
- 45in auxiliary hydraulic hose reel
- Bluetooth connectivity
- Job box

*Images shown with LX options

SPECIFICATIONS

- Gross Vehicle Weight: 7000 lb (3175 kg)
- Length: 15 ft, Height: 7 ft, Width: 7 1/2 ft



Designed for ease of use, the Standard LX rear-mounted spoils tank gets the job done



2.5GPM@3000 psi pressure washer with 95 gallon water tank makes clean-up easy



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

Agenda Staff Report

Agenda Item No.:	<u>Business Item 7A</u>	Meeting Date:	<u>March 28, 2023</u>
Subject:	<u>Adoption of an Ordinance Amending Port Orchard Municipal Code Chapter 9.60, Pertaining to Camping on Public Property and Associated Procedures</u>	Prepared by:	<u>Charlotte Archer City Attorney</u>
		Atty Routing No:	<u>366922-0009 – PW</u>
		Atty Review Date:	<u>N/A</u>

Summary: Pursuant to Port Orchard Municipal Code (POMC) 6.04.090, 9.60.130, 9.30.020, 10.12 and 12.24.030, the City regulates the use of public property that is open (parks, etc.) and closed (utility facilities, unopened right of way) to public. Staff was tasked to develop uniform procedures, in conjunction with existing applicable City and departmental procedures, to implement existing codified regulations to balance the public health and safety concerns of neighborhood residents as well as people experiencing homelessness. The procedures call for the removal unauthorized encampments and associated garbage and debris from public property and, where applicable, temporarily storing personal property in a manner that is consistent with local, state and federal laws.

The procedures were presented to the Council in September 2022, and implemented by staff in the winter of 2022/23. Based on issues identified during implementation, as well as recent case law on these topics, staff worked to update the procedures and briefed the Council on the proposed modifications to procedure at the City Council Work Study Session on March 21, 2023. By this ordinance the Council would acknowledge the procedures, as modified, to provide guidance to staff in this area.

In addition to modifications to the procedures, staff identified recommended modifications to the Port Orchard Municipal Code to redress changes in the law and to provide code enforcement with an additional tool to preserve public health and safety when encampments arise on public property (other than parks). This ordinance would amend *Chapter 9.60, Camping Prohibited* [on public property] to: (1) clarify that, before enforcement of the City’s bar on camping in public spaces may occur, the person in violation of the regulation must be offered shelter within the City of Port Orchard; and (2) clarify that the prohibition on camping applies to other forms of public property (beyond just parks) where the formation of an encampment creates a public health and safety hazard for the occupants of the encampment and the general public, such as utilities properties. Although existing regulations barring the maintenance of a nuisance dumping of trash/debris on public property apply in these areas, clarifying that the formation of an encampment is also prohibited will provide code enforcement with an additional tool in this area.

Relationship to Comprehensive Plan: Chapter 4 - Parks

Recommendation: Staff recommends Council adopt an Ordinance amending Chapter 9.60 in response to recent case law and to provide additional tools to staff, and acknowledging the procedures the City intends to utilize to implement existing regulations set out in the POMC.

Motion for Consideration: I move to adopt an Ordinance amending POMC Chapter 9.60 and acknowledging procedures to implement these amendments and existing regulations pertaining to unlawful conduct on public property.

Fiscal Impact: There will be a cost to the City for the necessary shelter to house persons enforced under these regulations; that cost is dependent upon the volume of enforcement actions. The Mayor has negotiated a contract with a local motel to provide these services and this contract is forthcoming.

Alternatives: Do not adopt the ordinance and provide alternative guidance.

Attachments: Ordinance
Tracked Changes showing amendments to POMC 9.60
Exhibit A to Ordinance – Procedures Pertaining to Unlawful Trespass/Camping on Public Property

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON,
PERTAINING TO UNLAWFUL CAMPING; AMENDING PORT
ORCHARD MUNICIPAL CODE CHAPTER 9.60, SECTION 9.60.010
AND SECTION 9.60.130; PROVIDING FOR SEVERABILITY AND
PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

WHEREAS, the City regulates the act of camping on public property to ensure that camping occurs in a method that avoids dangerous public health and safety conditions for the camper, natural environment, and adjacent residents; and

WHEREAS, the City is authorized through its police powers to regulate the use of public property and, as a steward of public property, the City must balance the public's use of these spaces for their intended purposes and the fragility of the natural resources and environmentally sensitive areas; and

WHEREAS, the City has experienced an increase in unlawful dumping on public property other than in designated parks, including critical areas and near utility facilities; and

WHEREAS, the City prohibits trespass on public property, and maintains prohibitions on overnight camping on public park property as well as illegal dumping or storage of items on all public property and a bar on public urination/defecation on all public property; and

WHEREAS, the City Council finds it is in the best interests of the City and its residents to amend the municipal code to clarify the City's existing regulations; now, therefore,

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

SECTION 1. Amendment. The Title of Chapter 9.60 is hereby amended to read as follows:

Chapter 9.60
PARK AND PUBLIC PROPERTY RULES

SECTION 2. Amendment. POMC 9.60.010 is hereby amended in part to read as follows:

9.60.010 Definitions

Whenever used in this chapter, the following terms shall be defined as follows:

“Motor vehicle” means a self-propelled device capable of being moved upon a street and in which persons or property may be transported, and shall include, but shall not be limited to, automobiles, trucks, motorcycles, motor scooters, recreational vehicles, utility vehicles, vans, and jeeps or similar type four-wheel-drive vehicles, but shall exclude motorized wheelchairs.

“Nonresidential public property” means any street, sidewalk, city park, public park, or any other open area where the city or other governmental agency has a property interest, to include easements. “Nonresidential public property” does not include houses, apartments, or other fixed residential living quarters owned or leased by the city.

“Park” is a park, playground, beach, activity center, recreation center, or any other area in the city owned by or under the management and control of the city and devoted to active or passive recreation for the general public. “Park” also includes all bodies of water located within parks, tidelands, and parking areas associated with parks.

SECTION 3. Amendment. POMC 9.60.130 is hereby amended to read as follows:

9.60.130 Camping prohibited.

(1) It is a violation of this chapter to camp in any park or on nonresidential public property, except in places set aside for such purposes and posted for such purposes by the director or designee, or by permit issued by the director or designee.

(2) A person is guilty of unlawful camping if he or she uses park property or nonresidential public property, as defined in this chapter, as a temporary or permanent place of dwelling, lodging, residence, or living accommodation.

(3) Indicia of camping include but are not limited to: tent or other temporary shelter, including use of RV, van, or trailer, bedding, storage of personal belongings, and use or storage of cooking equipment.

(4) Unlawful camping is a misdemeanor.

(5) A person is not guilty of unlawful camping if, at the time the person is on public property, there is no available overnight shelter. “Available overnight shelter” means a public or private shelter, with available overnight space, open to individuals experiencing homelessness, at no charge, located within the City of Port Orchard. If the person is unable to utilize an available overnight shelter due to voluntary actions such as intoxication, drug use, unruly or assaultive behavior, or violation of shelter rules, the overnight shelter space shall still be considered available for the purposes of this section.

SECTION 4. Authorization. The Mayor should implement procedures to enforce

existing regulations pertaining to unlawful trespass and dumping on public property that cause environmental damage and pose public health and safety concerns. The Council acknowledges the procedure manual attached hereto as Exhibit A and incorporated herein by this reference for this purpose, subject to modification by the Mayor where consistent with the Port Orchard Municipal Code and existing regulations.

SECTION 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

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

SECTION 7. Savings Clause. Those portions of the Port Orchard Municipal Code which are amended by this ordinance shall remain in force and effect as set out prior to this ordinance until the effective date of this ordinance. Such amendments shall not be construed as affecting any existing right acquired under the laws repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder.

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

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 28th day of March 2023.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

APPROVED AS TO FORM:

SPONSORED BY:

Charlotte A. Archer, City Attorney

Scott Diener, Councilmember

PUBLISHED:

EFFECTIVE DATE:

Tracked Version:

Chapter 9.60
PARK AND PUBLIC PROPERTY RULES

9.60.010 Definitions.

Whenever used in this chapter, the following terms shall be defined as follows:

“Air or gas weapon” means any air pistol or air rifle, designed to propel a BB, brass BB, pellet, paint ball or other projectile by the discharge of compressed air, carbon dioxide or other gas.

“Alcoholic beverages” or “liquor” includes the four varieties of liquor defined as alcohol, spirits, wine, and beer; all fermented, spirituous, vinous, or malt liquor; and all other intoxicating beverages; and every liquor, solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine, or beer. A liquor, semisolid, solid, or other substance that contains more than one percent alcohol by weight is conclusively deemed to be intoxicating.

“Boat” or “watercraft” means any floating vessel whether propelled or not.

“Camping” means erecting a tent or shelter or arranging bedding or both for the purpose of remaining overnight, or parking a trailer, camper, RV, van, or other vehicle for the purpose of remaining overnight. Indicia of camping include but are not limited to: tents or other temporary shelters, bedding, storage of personal belongings, and use or storage of cooking equipment.

“Director” means the public works director.

“Facility” or “facilities” means a park building, park structure, or park area operated by the city.

“Firearm” means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.

“Motor vehicle” means a self-propelled device capable of being moved upon a street and in which persons or property may be transported, and shall include, but shall not be limited to, automobiles, trucks, motorcycles, motor scooters, recreational vehicles, utility vehicles, vans, and jeeps or similar type four-wheel-drive vehicles, but shall exclude motorized wheelchairs.

“Nonresidential public property” means any street, sidewalk, city park, public park, or any other open area where the city or other governmental agency has a property interest, to include easements. “Nonresidential public property” does not include houses, apartments, or other fixed residential living quarters owned or leased by the city.

“Park” is a park, playground, beach, activity center, recreation center, or any other area in the city owned by or under the management and control of the city and devoted to active or passive recreation for the general public. “Park” also includes all bodies of water located within parks, tidelands, and parking areas associated with parks.

“Person” means all natural persons, firms, partnerships, corporations, clubs and all associations or combinations of persons whenever acting for themselves or by an agent, servant or employee.

“Projectile weapon” means a weapon that is designed for the purpose of launching projectiles without the use of compressed air or gunpowder. Projectile weapons include bows, crossbows, and slingshots. For the purposes of this chapter, projectile weapons do not include anything meeting the definition of “firearm.”

“Trail” means any path or track designed for use by pedestrians, bicycles, or equestrians; and which is not of sufficient width, nor graded or paved with concrete, asphalt, gravel, or similar substance, so designed as to permit its use by standard passenger automobiles, or other right-of-way specifically designated and posted for nonvehicular use.

9.60.130 Camping prohibited.

(1) It is a violation of this chapter to camp in any park or on nonresidential public property, except in places set aside for such purposes and posted for such purposes by the director or designee, or by permit issued by the director or designee.

(2) A person is guilty of unlawful camping if he or she uses park property or on nonresidential public property, as defined in this chapter, as a temporary or permanent place of dwelling, lodging, residence, or living accommodation.

(3) Indicia of camping include but are not limited to: tent or other temporary shelter, including use of RV, van, or trailer, bedding, storage of personal belongings, and use or storage of cooking equipment.

(4) Unlawful camping is a misdemeanor.

(5) A person is not guilty of unlawful camping if, at the time the person is on public property, there is no available overnight shelter. “Available overnight shelter” means a public or private shelter or accommodation, with available overnight space, open to individuals experiencing homelessness, at no charge to the person that is located within the City of Port Orchard. If the person is unable to utilize an available overnight shelter due to voluntary actions such as intoxication, drug use, unruly or assaultive behavior, or violation of shelter rules, the overnight shelter space shall still be considered available for the purposes of this section. (Ord. 035-21 § 9; Ord. 004-15 § 1).

City of Port Orchard

Procedures for Response to Unauthorized Trespassing/Camping on Public Property

See Ordinance No. _____-23, adopted March 28, 2023

Purpose: The City of Port Orchard has received complaints from residents of Port Orchard regarding the illegal dumping of junk, garbage or debris in conjunction with active and abandoned unauthorized encampments on public property including roadsides, open streets and greenbelts. Illegal dumping and unauthorized camping may impact the community by affecting public health, safety, land values, quality of life, and the environment. The City prohibits illegal dumping of junk, garbage and debris on public property as a threat to the public safety and health. Similarly, unauthorized camping on public property creates environmental hazards and quality-of-life issues for adjacent neighborhood residents, as well as for the encampment residents themselves.

The City desires to adopt uniform procedures, in conjunction with existing applicable City and departmental procedures, to implement existing codified regulations, which balance the public health and safety concerns of neighborhood residents as well as people experiencing homelessness. These were prepared by staff to establish uniform procedures for removing unauthorized encampments and associated junk, garbage or debris from City of Port Orchard property and, where applicable, temporarily storing personal property in a manner that is consistent with local, state and federal laws.

Applicable Authorities: These procedures are intended to implement the following regulations adopted by the Port Orchard City Council:

Port Orchard Municipal Code (POMC) 6.04.090 – Burning or dumping – Generally.

POMC 9.60.130 – Camping prohibited.

POMC 9.30.020 (18) – Nuisance, Obstructing pedestrian or vehicle access

POMC 9.30.020 (14) – Nuisance, Junk vehicles

POMC Chapter 10.12 – Parking, Standing and Stopping

POMC 12.24.030 (1) – Street use permit, nuisance

Definitions: These definitions, consistent with the above authorities, apply to these procedures:

"Abandoned or Unauthorized vehicle" means a vehicle that is subject to impoundment after being left unattended on public property, as set out in POMC 10.12.440.

"*Encampment*" means two or more tent(s), structure(s), or assembly of camping equipment or personal property located in an identifiable area within the City of Port Orchard which appears to a reasonable person as being used for camping. Active encampments do not include sites a reasonable person would conclude are no longer in use for camping because remaining materials are garbage, debris, or waste.

"*Emergency Housing*" means temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless, including but not limited to an emergency shelter, rental, hotel or motel, located within the City of Port Orchard.

City of Port Orchard

Procedures for Response to Unauthorized Trespassing/Camping on Public Property

See Ordinance No. _____-23, adopted March 28, 2023

"Hazard" means any discarded, useless, unwanted, or abandoned substances, including but not limited to chemicals, pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a present or potential hazard to human health, wildlife, or the environment.

"Immediate hazard" means the dumping of junk, garbage or debris that creates a risk of serious injury or death to others, including but not limited to items left on roadways, shoulders and other areas exposed to moving vehicles, and landslide-prone areas.

"Obstruction" means personal property, garbage, debris or other objects that are: in a City park or on a public sidewalk; interfere with the pedestrian or transportation purposes of public rights-of-way; or interfere with areas that are necessary for or essential to the intended use of a public property or facility.

"Junk" and *"garbage"* means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

"Personal property" means an item that: is reasonably recognizable as belonging to a person; has apparent utility in its present condition and circumstances; and is not hazardous. Examples of personal property include but are not limited to identification, personal papers and documents, tents, bicycles, radios and other electronic equipment, eyeglasses, prescription medications, photographs, jewelry, crutches, and wheelchairs. Personal property does not include building materials such as wood products, metal, pallets, or rigid plastic. The relevant staff member will determine whether an item is personal property, and in cases when the status of an item cannot reasonably be determined in the staff member's judgment based on the totality of the circumstances, the staff member will treat the item as personal property under these procedures.

"Public Health and Human Services Partners" means the Kitsap County HEART Program Coordinator, Kitsap Community Resources, Housing Kitsap, and similar agencies that operate within the City to provide health and human services for the unhoused residents.

"Recreational vehicle" means a vehicular-type unit primarily designed for recreational camping or travel use that has its own motive power or is mounted on or towed by another vehicle. The units include travel trailers, fifth-wheel trailers, folding camping trailers, truck campers, and motor homes.

"Street" means any highway, lane, road, street, right-of-way, boulevard, alley, and every way or place in the city that is publicly owned or maintained for public vehicular travel.

"Vehicle" means the same as such is defined in RCW 46.04.670.

Exclusions from Procedures: These procedures do not apply to the following situations:

1. These procedures do not apply to the illegal dumping of junk, garbage or debris or vehicles on private property owned by the reporting party, or property owned by an institutional or public agency other than the City.

City of Port Orchard

Procedures for Response to Unauthorized Trespassing/Camping on Public Property

See Ordinance No. _____-23, adopted March 28, 2023

If a reporting party notifies an employee that they have been the victim of illegal dumping on private property owned by the reporting party, the employee should:

- Advise the reporting party to contact 911 if they believe the situation creates an immediate danger to life, health, or the environment.
 - If the reporting party states the condition does not create an immediate danger, the employee should refer the reporting party to a list of resources available on the City's website and to the Kitsap Public Health District (the district maintains vouchers for the disposal of illegally dumped solid waste).
2. These procedures do not apply to illegal dumping of junk, garbage or debris or vehicles or illegal camping reported by a resident on private property that the reporting party does not own/lease, the employee should direct the reporting party to contact the City's *Code Enforcement Officer*. This matter is handled pursuant to Community Development Departmental procedures as an open enforcement case, on a resources-available basis. A site inspection, with the property owner's permission, may occur in conjunction with representatives of the *Police Department* and/or *Public Works Department*, as appropriate.
 3. This policy does not apply to the illegal dumping of junk, garbage or debris on public property that is not associated with an active encampment, which are collected and disposed of by *Public Works Department* in accordance with *Public Works Department* Departmental procedures.

Procedures:

1. **Abandoned Personal Property:** Consistent with the above referenced authorities, staff will utilize the following procedures (in conjunction with applicable City and departmental procedures) to respond to the dumping of personal property in the right of way or on City-owned property.
 - 1.1. Upon receipt of a report of illegal dumping of personal property on City-owned property or street, the reporting party should be directed to the *Public Works Department* for investigation of the report, in conjunction with the *Police Department*.¹
 - 1.1.1. If there are no signs of an active encampment but personal property is present, *Public Works Department* may dispose of all junk, garbage and waste.
 - 1.1.1.1. *Public Works Department* may separately collect personal property and store for seventy-two (72) hours. During the seventy-two (72) hours, *Public Works Department* will contact the *Police Department*. If an owner for the personal property can be located, the City will attempt to connect the owner to the personal property. If no owner can be located or the owner does not collect the items within seventy-two (72) hours

¹ Public Works and Police may establish a routine (quarterly) meeting to discuss potential encampment sites and any hazards posed by the potential encampment site to city employees. This conference should occur prior to the site inspection, if feasible.

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Procedures for Response to Unauthorized Trespassing/Camping on Public Property

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from the date the items were collected, *Public Works Department* may dispose of the personal property, in accordance with department policy.

1.1.2. If there are signs of an active encampment, *Public Works Department* should refer the report to the *Code Enforcement Officer*. See procedures for *Camping/Encampment*.

2. **Unlawfully Parked Vehicles/Recreational Vehicles**: Consistent with the above referenced authorities, Staff will utilize the following procedure (in conjunction with applicable City and departmental procedures) for responding to the unlawful dumping of vehicles, including Recreational Vehicles (RVs) or campers, in the right of way or on City-owned property:

2.1. **Opened Right of Way**. Upon receipt of a report of an abandoned or inoperable vehicle, including a Recreational Vehicle (RV) or camper, and associated dumping of junk, garbage or debris on an opened street, the report should be directed to the *parking enforcement officer* who will evaluate the situation for violations of the City's parking code. Parking Enforcement may issue citations in accordance with the POMC and Department procedures.

2.1.1. If the abandoned or inoperable vehicle is abandoned and there are no signs of habitation, after issuance of citations, the parking enforcement officer should: (1) contact *Public Works Department* for collection and disposal of all junk, garbage or debris surrounding the vehicle; and (2) contact the *Police Department* for impound of the vehicle, pursuant to *Police Department* procedures.

2.1.1.1. If it is unclear whether the vehicle is being used for habitation, the *parking enforcement officer* in conjunction with *Public Health and Human Services Partners* should supply information regarding available public services to the occupants of the vehicle and should contact the *Police Department* for follow-up.

2.1.2. If the abandoned or inoperable vehicle shows signs of habitation, the parking enforcement officer should supply information regarding available public services to the occupants of the vehicle in conjunction with issued citations. After the issuance of citations, the *parking enforcement officer* should contact the *Police Department* for impound of the vehicle, pursuant to *Police Department* procedures.

2.1.2.1. The *Police Department* should attempt to contact the owner(s) and/or occupants of the vehicle and provide information regarding available public services. If no contact occurs after multiple attempts, the *Police Department* may have the vehicle impounded, pursuant to *Police Department* procedures. Information identifying available public services or emergency housing shall be provided to the owner(s) and/or occupants and/or affixed to the vehicle at least twenty-four (24) hours prior to the scheduled impound.

2.1.2.2. Staff should contact *Public Works Department* for collection and disposal of all junk, garbage or debris surrounding the vehicle at the time of impound. If the volume of junk, garbage or debris exceeds the capacity of *Public Works Department*, staff should contact the City's on-call waste disposal contractor. If the contents include

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hazardous materials, staff should contact Kitsap Public Health and/or South Kitsap Fire and Rescue.

2.2. City-owned Property Other than Right of Way. Upon receipt of a report of an abandoned vehicle, including a Recreational Vehicle (RV) or camper, and associated dumping of junk, garbage or debris on City-owned property other than an opened street, the report should be directed to the *Code Enforcement Officer* who will evaluate the situation for violations of the City's municipal code.

2.2.1. If the vehicle is abandoned and there are no signs of habitation, after issuance of citations, the *Code Enforcement Officer* should: (1) contact *Public Works Department* for collection and disposal of all junk, garbage or debris surrounding the vehicle; and (2) contact the *Police Department* for impound of the vehicle, pursuant to *Police Department* procedures.

2.2.1.1. If it is unclear whether the vehicle is being used for habitation, the *Code Enforcement Officer* should supply information regarding available public services to the occupants of the vehicle and should contact the *Police Department* for follow-up.

2.2.1.2. The *Police Department* should attempt to contact the owner(s) and/or occupants of the vehicle and provide information regarding available public services. The *Police Department* may then have the vehicle impounded, pursuant to *Police Department* procedures.

2.2.1.3. Information identifying available public services shall be provided to the owner(s) and/or occupants and/or affixed to the vehicle at least twenty-four (24) hours prior to the scheduled impound, including referral to available shelter.

2.2.1.4. Staff should contact *Public Works Department* for collection and disposal of all junk, garbage or debris surrounding the vehicle at the time of impound. If the volume of junk, garbage or debris exceeds the capacity of *Public Works Department*, staff should contact the City's on-call waste disposal contractor. If the contents include hazardous materials, staff should contact Kitsap Public Health and/or South Kitsap Fire and Rescue.

3. **Unlawful Camping/Encampments:** Consistent with the above referenced authorities, Staff will utilize the following procedure (in conjunction with applicable City and departmental procedures) for responding to a report of unlawful camping on City-owned property.

Upon receipt of a report of unlawful camping and associated dumping of junk, garbage or debris on City-owned property, the report should be directed to the *Public Works Department*. In conjunction with the *Police Department*,² *Public Works Department* will conduct an initial evaluation of the report. See attached *Initial Site Evaluation Form*.

3.1. *Emergency Clean-up:* If a vacant active encampment presents an emergency and imminent hazard to public health and safety (as determined in consultation with the City Attorney), the

² Public Works and Police may establish a routine (quarterly) meeting to discuss potential encampment sites and any hazards posed by the potential encampment site to city employees. This conference should occur prior to the site inspection, if feasible.

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Public Works Department should post a Notice of Emergency Order to Vacate and remove items present. Junk, garbage, and waste may be disposed of in accordance with department policies. Personal property should be stored for no less than sixty (60) days, and staff should attempt to contact the personal property's owners during that time.

3.2. *Abandoned Encampment*: If the site is vacant and does not contain: (1) evidence of an active encampment; or (2) personal property, *Public Works Department* may immediately dispose of the dumped materials pursuant to department procedures. If the volume of junk, garbage or debris exceeds the capacity of *Public Works Department*, staff should contact the City's on-call waste disposal contractor. If the contents include hazardous materials, staff should contact Kitsap Public Health and/or South Kitsap Fire and Rescue.

3.2.1. If the site is vacant and there are no signs of an active encampment, but personal property is present, *Public Works Department* should refer to procedure for *Abandoned Personal Property*.

3.3. *Occupied Encampment*: An encampment is considered "occupied" if staff observes evidence of an active encampment, including people, recently used items, food, etc., or there is collateral evidence confirming the encampment is occupied (such as information from *Public Health and Human Services Partners*). An encampment may be considered "occupied" even if there are no people present at the time of staff's inspection of the encampment.

3.3.1. In conjunction with *Public Works Department*, *Police Department*, clean-up vendors (if any) and Public Health and Human Services Partners, the *Code Enforcement Officer* should schedule an encampment clean-up date. If, in the opinion of the *Public Works Director* or designee, the size and scope of the encampment exceed the capacity of the *Public Works Department*, the City's on-call clean-up vendor should be contacted.

3.3.1.1. Prior to the scheduled clean-up, the *Code Enforcement Officer* should facilitate an initial evaluation meeting with all participating departments and partners to determine if the occupants of the encampment are known, so as to better facilitate access to services and an expeditious clean-up.

3.3.1.2. The *Code Enforcement Officer* should reach out to *Public Health and Human Services Partners* to coordinate outreach to encampment occupants to provide available services, with the goal that outreach occur early in the process and with some frequency.

3.3.2. *Noticing*: The *Code Enforcement Officer* is tasked with preparing all notices required under this policy. Notices should be posted in publicly visible and noticeable location at the encampment and may also be affixed to all tents/structures present on the property. If needed, posting should be coordinated with the *Public Works Department* and *Police Department*. Notices should include information directing those present to available services.

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- 3.3.2.1. Once scheduled, the *Code Enforcement Officer* should prepare and post an initial notice of clean-up. The Notice shall provide at least fourteen (14) days advance notice of the clean-up.
- 3.3.2.2. The *Code Enforcement Officer* should prepare and post a second notice of clean-up. The second notice of scheduled clean-up shall be posted at least seven (7) days prior to the clean-up and should meet the criteria of the first notice.
- 3.3.2.3. The *Code Enforcement Officer* should prepare and post a twenty-four (24) hour notice immediately prior to the clean-up. During that posting, the *Code Enforcement Officer* should provide information regarding Emergency Housing to those present.
- 3.3.3. *Clean-up Event*. The *Code Enforcement Officer*, *Public Works Department*, and *Police Department*, in conjunction with Public Health And Human Services Partners and any on-call remediation vendors shall perform the camp/encampment clean-up on the date scheduled. The clean-up should include the following:
 - 3.3.3.1. If available, Public Health And Human Services Partners should be offered the opportunity to perform outreach to the occupants of the encampment immediately prior to the clean-up event (same day as clean-up).
 - 3.3.3.2. All remaining occupants should be notified by uniformed members of the *Police Department* of the need to vacate. Officers should offer Emergency Housing and transport to those present.
 - 3.3.3.3. Once the site is vacant of all occupants, junk, garbage and waste may be disposed of. Personal property should be collected by the *Public Works Department* and/or on-call vendors. and stored for no less than sixty (60) days, and staff should attempt to contact the personal property's owners during that time.
 - 3.3.3.4. Following the clean-up event, the *Police Department* and *Public Works Department* may utilize methods to limit the re-establishment of camping/the encampment, including fencing, trimming of vegetation, etc.

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INITIAL SITE INSPECTION REPORT

FOR UNLAWFUL CAMPING AND ASSOCIATED DUMPING

Date of Report:

Report Received By:

Report Received From:

Location of Reported Dumping/Unauthorized Encampment:

Site Inspection Conducted On:

Location of Site Inspection in relation to location of dumping/unauthorized encampment

Observed Conditions (check all that apply):

- ☐ Signs of habitation, including one or more tent, structure, or assembly of camping equipment.
 - ☐ If yes, is the tent/structure secured? Yes/No
- ☐ Personal Property
- ☐ Garbage, rubbish, or ashes,
- ☐ Industrial wastes, swill, sewage sludge,
- ☐ Demolition and construction wastes
- ☐ Abandoned vehicles or parts thereof (if yes, copy of report to Parking Enforcement)
- ☐ Human waste or hazardous materials/fluids

Are there people present? Yes/No

- If yes, how many people were observed: _____

**NOTICE TO VACATE
UNAUTHORIZED ENCAMPMENT**

All occupants are hereby ordered to vacate the unauthorized encampment at address/location:

_____ (the "Property").

Pursuant to Port Orchard Municipal Code (POMC) 9.30.060 and POMC 6.04.090, you are ordered to vacate the above publicly-owned land, as the POMC prohibits:

- ☐ Storage of personal property in a park, right of way or any publicly owned parking lot or publicly owned area
- ☐ Vehicle habitation for a period of more than 24 hours in a park, right of way or any publicly owned parking lot or publicly owned area
- ☐ POMC 6.04.090 Burning or dumping – Generally.
- ☐ POMC 9.60.130 Camping prohibited.
- ☐ POMC 9.30.020 (18) – Nuisance, Obstructing pedestrian or vehicle access
- ☐ POMC 9.30.020 (14) – Nuisance, Junk vehicles
- ☐ POMC 12.24.030 (1) – Street use permit, nuisance

You are hereby provided notice that any continued violation(s) may result in the issuance of civil infraction(s), and/or notice of criminal trespass, as well as the disposal of all junk, garbage and debris present at the Property, removal of all personal property at the Property, and impounding of your vehicle (if any).

You are ordered to comply as follows:

- ☐ You have ___ hours to vacate and remove all property, including your personal property and/or vehicle
- ☐ You must immediately vacate due to the following imminent safety concerns:

Shelter services are available by contacting: _____

I acknowledge and represent that I have read the foregoing.

Signed this ___ day of _____, 2022 at _____, Washington.

Signature: _____

Printed Name: _____

Date/time of posting: _____

Location of Notice posted: _____

Posting Official: _____



City of Port Orchard

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

Agenda Staff Report

Agenda Item No.:	<u>Business Item 7B</u>	Meeting Date:	<u>March 28, 2023</u>
Subject:	<u>Adoption of a Resolution Accepting</u>	Prepared by:	<u>Tony Lang</u>
	<u>Sanitary Sewer Project #6-5C, the North</u>		<u>Public Works Director</u>
	<u>Sidney Station, Documenting Certified</u>	Atty Routing No:	<u>366922-0009 – PW</u>
	<u>Constructions Costs, and Establishing the</u>	Atty Review Date:	<u>03/23/2023</u>
	<u>Maximum General Facility Fee Credits</u>		
	<u>Granted Pursuant to Contract C063-21</u>		

Summary: On June 9, 2021, the City and Sidney Road Apartments, LLC entered into a Sewer General Facility Fee (GFF) Credit agreement for sewer system improvements identified as Contract C063-21. This agreement required the construction of the North Sidney Lift Station and provided a framework to grant GFF credits to Sidney Road Apartments, LLC. Sidney Road Apartments, LLC has completed the construction of the North Sidney Lift Station identified as Sewer CIP Project #6-5C in the agreement. The developers project proposed to use 30% of this project and was therefore limited to a credit of 70% of \$2,500,000 or \$1,750,000. Contract C063-21, Section 10 stipulates that Sidney Road Apartments, LLC would receive credit equal to the lesser of the following: the Sewer Facility Fee Method (\$1,750,000), the certified project cost, or the total GFF owed by the developer (\$1,841,400).

On February 10, 2022, the City received certified construction cost documentation from Sidney Road Apartments, LLC, for CIP Project #6-5C showing total expenditures of \$3,079,122. The city engineer reviewed these certified construction costs and ultimately approved a lesser certified construction cost of \$3,076,122. the engineers cost estimate for the project less the percentage of the project used by the development project per Section 10 (a) (1) in the GFF Agreement (\$1,750,000) is less than the certified construction costs for CIP Project #6-5C. Based on the methodology contained in Section 10 of Contract C063-21, the maximum GFF credit is \$1,750,000.

The City wishes to document the maximum approved GFF credit amount granted to Sidney Road Apartments, LLC, LLC for the construction of CIP project 6-5C. A bill of sale has been provided to the city and the city wishes to formally accept the dedication of the lift station project associated with CIP Project 6-5C.

Relationship to Comprehensive Plan: Chapter 7 - Utilities

Recommendation: Staff recommends that the City Council adopt a Resolution accepting the dedication of a North Sidney Lift Station know as CIP Project 6-5C., documenting Certified Construction Costs, establishing the maximum General Facility Fee credits granted pursuant to contract C063-21, accepting a sewer easement as shown on Exhibit A, and accepting a right of way deed for the sewer lift station as shown on Exhibit B.

Motion for Consideration: I move to adopt a Resolution accepting the dedication of a North Sidney Lift Station know as CIP #Project 6-5C, and authorizing the Mayor to execute related documents. .

Fiscal Impact: In accordance with Contract C063-21, the City will provide credits for properties paying General Facility Fee credits within the agreed-upon area up until the max credit amount of \$1,750,000 is reached.

Alternatives: Do not approve and provide alternative direction (note that due to the contract in place pertaining to this issue, an executive session to discuss legal risk would be warranted prior to pursuing any alternatives to approval).

Attachments: Resolution
Bill of Sale
Exhibit A-Sewer Easement
Exhibit B-Right of Way Deed
Agreement C063-21 McCormick Communities, LLC-Transportation
Certified Construction Costs

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, PERTAINING TO SANITARY SEWER PROJECT #6-5C, THE NORTH SIDNEY LIFT STATION, AUTHORIZING ISSUANCE OF A FINAL NOTICE OF PROJECT COMPLETENESS, DOCUMENTING CERTIFIED CONSTRUCTION COSTS, AUTHORIZING THE ACCEPTANCE OF RELATED DOCUMENTS, AND ESTABLISHING THE MAXIMUM GENERAL FACILITY FEE CREDITS GRANTED PURUANT TO CONTRACT C063-21

WHEREAS, on June 9, 2021, the City and Sidney Road Apartments, LLC entered into a Sewer General Facility Fee (GFF) Credit agreement for sewer system improvements identified as City Contract C063-21; and

WHEREAS, Contract C063-21 required the construction of the North Sidney Lift Station and provided a framework to grant associated GFF credits to Sidney Road Apartments, LLC; and

WHEREAS, Sidney Road Apartments, LLC has completed the construction of the North Sidney Lift Station, identified as Sewer Capital Improvement Project #6-5C in the agreement; and

WHEREAS, the engineers estimate for CIP Project #6-5C, as found in the Comprehensive Plan and GFF Calculation, is \$2,500,000; and

WHEREAS, the developers project, the Haven Apartments, proposed to use 30% of this Station's capacity, and was therefore limited to a credit of 70% of \$2,500,000, or \$1,750,000; and

WHEREAS, Contract C063-21, Section 10 stipulates that Sidney Road Apartments, LLC would receive credit equal to the lesser of the following: the Sewer Facility Fee Method (\$1,750,000), the certified project cost, or the total GFF owed by the developer (\$1,841,400); and

WHEREAS, on February 10, 2022, the City received certified construction cost documentation from Sidney Road Apartments, LLC, for CIP Project #6-5C showing total expenditures of \$3,079,122; and

WHEREAS, the city engineer reviewed these certified construction costs and approved a lesser certified construction cost of \$3,076,122; and

WHEREAS, the engineers cost estimate for the project less the percentage of the project used by the development project per Section 10 (a) (1) in the GFF Agreement (\$1,750,000) is less than the certified construction costs for CIP Project #6-5C; and

WHEREAS, based on the methodology contained in Section 10 of Contract C063-21, staff have confirmed the maximum GFF credit is \$1,750,000; and

WHEREAS, staff have confirmed that Sidney Road Apartments, LLC have met all the requirements set out in Port Orchard Municipal Code 13.04.040(6) and City Contract C063-21 necessary to support a finding that the project is complete; and

WHEREAS, the City wishes to accept the project as complete, consistent with Port Orchard Municipal Code (POMC) 13.04.040(6) and the terms of Contract #C063-21, and to document the maximum approved GFF credit amount granted to Sidney Road Apartments, LLC, LLC for the construction of CIP Project # 6-5C; 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 North Sidney Lift Station know as CIP Project #6-5C as a public project, pursuant to POMC 13.04.040(6).

THAT: Pursuant to Contract C063-21, a maximum Sewer GFF credit amount for CIP Project 6-5C is hereby established in the amount of \$1,750,000. The Mayor or his designee is authorized to take all actions necessary to effectuate the terms of Contract C063-21 pertaining to this credit.

THAT: Consistent with the aforementioned, the Council accepts the following and authorizes the Mayor to execute all necessary documents to effectuate this acceptance:

1. A sewer easement, as shown on Exhibit A and incorporated herein by this reference;
2. Right of way deed for the sewer lift station, as shown on Exhibit B and incorporated herein by this reference;
3. Bill of Sale, attached as Exhibit C and incorporated herein by this reference; and
4. All other documents required by POMC 13.04.040 and CIP Project #6-5C.

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 March 2023.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

BILL OF SALE

THIS BILL OF SALE is made and executed this 24 day of March, 2023, by and between Haven on Sidney L.L.C., a Washington Limited Liability Corporation, hereinafter called the "Grantor" and the City of Port Orchard, a Municipal Corporation, hereinafter called the "Grantee."

WITNESSETH:

That the Grantor, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby conveys, sets over, assigns, transfers and delivers and warrants to the City of Port Orchard ownership in the following described personal property situated in Kitsap County, State of Washington, and installed by the Grantor to date, TO WIT:

The Sewer Lift Station, including all components and equipment contained within the dedication area as described in the enclosed ROW Dedication Deed and for which actual construction costs are provided in the enclosed Certified Costs Letter.

The Grantor hereby warrants that it is the lawful and sole owner of all the personal property above conveyed, that such items are free from all liens and encumbrances, that the Grantor has the full power to convey and transfer the same, and that the Grantor will defend the same against the claims and demands of any and all persons lawfully making claims thereto. The Grantor further warrants that the execution of this Bill of Sale is an authorized act of said Grantor.

Dated at SEATTLE, Washington, this 24 day of March, 2023

GRANTOR: (Haven on Sidney L.L.C.)

By: Investco L.L.C., its Manager

By: 

Print Name: Jordan Schenk, Vice President/Portfolio Manager

[Remainder of page intentionally left blank]

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

On this 24TH day of March, 2023, before me personally appeared Jordan Schenk, Vice President and Portfolio Manager of Investco L.L.C., manager of Haven on Sidney L.L.C., a Washington limited liability corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

Given under my hand and official seal this 24TH day of March, 2023 .



Brittany Long
Notary Public in and for the State of Washington,
residing in Seattle, WA
My commission expires 7/21/2024

Dated at Port Orchard, Washington, this day of , 20 .

CITY OF PORT ORCHARD

By: Tony Lang, Public Works Director

STATE OF WASHINGTON)
)ss
COUNTY OF KITSAP)

On this day and year above personally appeared before me, Mark R. Dorsey, who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the City of Port Orchard for the uses and purposes therein mentioned, and on oath states he is authorized to execute the said instrument.

Given under my hand and official seal this day of , 20 .

Notary Public in and for the State of Washington,
residing in
My commission expires

After recording return document to:
City of Port Orchard
Permit Center
216 Prospect Street
Port Orchard, WA 98366

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY RECORDER'S USE

Grantor(s): Haven on Sidney L.L.C.

Grantee(s): City of Port Orchard

Legal Description: Ptn of Lot _____

Assessor's Tax Parcel Number: 112301-2-053-2007

Reference Number of Related Documents: N/A

UTILITY EASEMENT

Haven Apartments (f.k.a Sidney Road Apartments) Project

The Grantor(s), Haven on Sidney L.L.C., for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant and convey unto the **City of Port Orchard**, a municipal corporation, and its successors and assigns (the Grantee), from the property legally described on Exhibit "A" – Entire Parcel (the "Property"), attached hereto and incorporated by this reference, a nonexclusive permanent utility easement, for the purposes described below, over, in, on, along, across, through, below and upon, the portion of the Property legally described on Exhibit "B", (the "Utility Easement") and depicted on Exhibit "C", which are attached hereto and incorporated by this reference.

The Grantee and its agents, designees and/or assigns, shall have the right at such times as deemed necessary by Grantee, to enter upon, over, under and across the Utility Easement to inspect, construct, reconstruct, grade and slope, operate, use, maintain, repair, replace and enlarge the utilities contained within the easement area for all public purposes, including but not limited to, grade and slope, street lights, utilities (including without limitation water, sewer, storm water, electric, gas, telecommunications, cable and fiber optics, either owned or operated by Grantee or those utilities which provide service to Grantee or its citizens and are operated by permission of Grantee through franchise or permit), together with the right of ingress and egress thereto without prior institution of any suit or proceedings and without incurring any legal obligation or liability therefore.

Parcel No. 112301-2-053-2007

Page 1 of (7) Pages

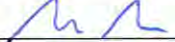
UTILITY EASEMENT

THIS EASEMENT is executed and delivered and said easement is granted upon the following conditions to wit:

1. Grantee, its agents and employees, assigns and successors shall, as soon as practicable, after installation of the utilities and all subsequent alterations and repairs thereto, restore all property to the Grantor to a neat and presentable condition.
2. Grantor shall not interfere in any manner with the easement rights granted to Grantee and the public in this Utility Easement. Without limitation, Grantor shall not (1) erect or maintain any buildings, structures, or improvements within the Utility Easement; (2) disturb the lateral or subjacent support of the utilities and other improvements and uses of the Utility Easement by Grantee, or undertake any form of construction or other activity that may disturb or damage the utilities, or other improvements or uses of the Utility Easement by Grantee; or (3) plant trees, shrubs, or other vegetation having deep root patterns that may cause damage to or interfere with the use of the utilities.
3. The rights granted herein shall not be construed to interfere with or restrict the Grantor, its heirs, executors, administrators, successors and assigns from the use of the Property outside of the Easement Area for the construction and maintenance of property improvements outside of the Easement Area.
4. This Utility Easement and the rights, obligations and covenants stated in this Utility Easement shall run with the land and shall be binding upon and shall inure to the benefit of the Grantor and Grantee. This Utility Easement shall be recorded with the Kitsap County Recorder's Office.
5. It is understood and agreed that delivery of this Utility Easement is hereby tendered and that the terms and obligations hereof shall not become binding upon City of Port Orchard unless and until approved hereon in writing by City of Port Orchard.

Dated: MARCH 8, 2023.

Grantor: Haven on Sidney L.L.C.

By 
Jordan Schenk, Vice President/Portfolio Manager of Investco L.L.C.;

Its Manager

Parcel No. 112301-2-053-2007

Page 2 of (7) Pages

UTILITY EASEMENT

**Accepted and Approved
City of Port Orchard**

By _____

Its _____

Date _____

Parcel No. _____

Page 3 of (7) Pages

UTILITY EASEMENT**CORPORATE ACKNOWLEDGMENT**

STATE OF WA }
 COUNTY OF Snohomish } ss.

I certify that I know or have satisfactory evidence that JORDAN SCHEM is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the VICE PRESIDENT of INVESTCO L.L.C., to be their free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 8 day of March, 2022.



Carl Cook
 Notary Public

Carl Cook
 Printed Name

Residing at Edmonds

My appointment expires 2-9-26

INDIVIDUAL ACKNOWLEDGMENT

STATE OF WA }
 COUNTY OF Snohomish } ss.

On this day personally appeared before me JORDAN SCHEM, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

DATED this 8 day of March, 2022.



Carl Cook
 Notary Public

Carl Cook
 Printed Name

Residing at Edmonds

My appointment expires 2-9-26

Parcel No. _____

Haven Apartments
Job No. 2155-001-020
November 18, 2022

EXHIBIT A

LEGAL DESCRIPTION FOR SITE

PARCEL I:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON;

EXCEPT THAT PORTION LYING NORTHERLY OR EASTERLY OF THE COUNTY ROAD TO PORT ORCHARD;

AND EXCEPT THAT PORTION LYING EASTERLY OF A LINE PARALLEL TO AND 10 FEET WEST OF THE CENTERLINE OF THE PRESENT COURSE OF BLACK JACK CREEK;

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON UNDER AUDITOR'S FILE NO. 1153269;

TOGETHER WITH THAT PORTION PER QUIT CLAIM DEED RECORDED UNDER AUDITOR'S FILE NO. 201107260315, DESCRIBED AS FOLLOWS: THAT PORTION OF LOT C OF SHORT PLAT NO. PO-74, RECORDED UNDER AUDITOR'S FILE NO. 9212310158 (S-1066) LYING SOUTH OF THE ROAD KNOWN AS SW HOVDE COUNTY ROAD;

PARCEL II:

THAT PORTION OF THE SOUTH 10 ACRES OF THE NORTH 15 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, LYING SOUTH OF COUNTY ROAD NO. 146;

EXCEPT THE SOUTH 190 FEET OF THE WEST 180 FEET;

AND EXCEPT SIDNEY ROAD S.W.;

AND EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY FOR SIDNEY ROAD BY DEED RECORDED MAY 22, 1992 UNDER AUDITOR FILE NO 9205220166;

PARCEL III:

THE SOUTH 190 FEET OF THE WEST 180 FEET OF THE NORTH 5 ACRES OF THE SOUTH 10 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF AS CONVEYED TO KITSAP COUNTY UNDER AUDITOR'S FILE NO. 9205220164 FOR SIDNEY ROAD S.W.;

PARCEL IV:

THAT PORTION OF THE SOUTH 5 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION;
THENCE EASTERLY ALONG THE SOUTHERLY LINE THEREOF, 142 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;
THENCE NORTHERLY PARALLEL TO THE WESTERLY LINE OF SAID SUBDIVISION, 158 FEET;
THENCE EASTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID SUBDIVISION, 8 FEET;
THENCE NORTH PARALLEL TO THE WESTERLY LINE OF SAID SUBDIVISION, 92 FEET;
THENCE WESTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID SUBDIVISION, 150 FEET TO THE WESTERLY LINE THEREOF;
THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE NORTHERLY LINE OF SAID 5 ACRE TRACT;
THENCE EASTERLY ALONG SAID NORTHERLY LINE TO THE EASTERLY LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER;
THENCE SOUTHERLY ALONG SAID EASTERLY LINE TO THE SOUTHERLY LINE THEREOF;
THENCE WESTERLY ALONG SAID SOUTHERLY LINE TO THE TRUE POINT OF BEGINNING;

EXCEPT SIDNEY ROAD;

PARCEL V:

THAT PORTION OF THE SOUTH 5 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION;
THENCE EASTERLY ALONG THE SOUTHERLY BOUNDARY LINE OF SAID SOUTH 5 ACRES, 142 FEET;
THENCE NORTHERLY AND PARALLEL TO THE WESTERLY BOUNDARY LINE OF SAID SUBDIVISION, 158 FEET;
THENCE EASTERLY AND PARALLEL TO THE SOUTH BOUNDARY LINE OF SAID SUBDIVISION, 8 FEET;

Haven Apartments
November 18, 2022
Page 3

THENCE NORTHERLY AND PARALLEL TO THE WEST BOUNDARY LINE OF SAID SUBDIVISION,
92 FEET;
THENCE WESTERLY AND PARALLEL TO THE SOUTHERLY BOUNDARY OF SAID SUBDIVISION,
150 FEET;
THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY LINE OF SAID SUBDIVISION, 250
FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY AS DISCLOSED BY AUDITOR'S FILE
NO. 9205080054;

SITUATE IN THE COUNTY OF KITSAP, STATE OF WASHINGTON.

Legal description is from Statutory Warranty Deed recorded under Auditor's File No.
202007200376.

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03/09/2023

Haven Apartments
Job No. 2155-001-020
March 9, 2022

EXHIBIT B

LEGAL DESCRIPTION FOR EASEMENT

That portion of the northwest quarter of the northwest quarter of Section 11, Township 23 North, Range 1 East, W.M., in Kitsap County, Washington, being a two foot wide strip lying between the following described line and a line two feet to the right of said line:

COMMENCING at the northwest corner of said Section 11;

THENCE along the west line of said northwest quarter, S 02°26'27" W, 698.10 feet;

THENCE S 87°33'33" E, 682.88 feet to the TRUE POINT OF BEGINNING;

THENCE S 89°10'11" E, 42.10 feet;

THENCE N 21°05'11" E, 70 feet, more or less to the southerly margin of S.W. Hovde Road;

THENCE along said southerly margin, northwesterly 73 feet, more or less, to a point which bears N 01°31'21" E from the TRUE POINT OF BEGINNING;

THENCE S 01°31'21" W, 98 feet, more or less, to the TRUE POINT OF BEGINNING;

EXCEPT any portion thereof lying within public right of way.

See attached Exhibit C.

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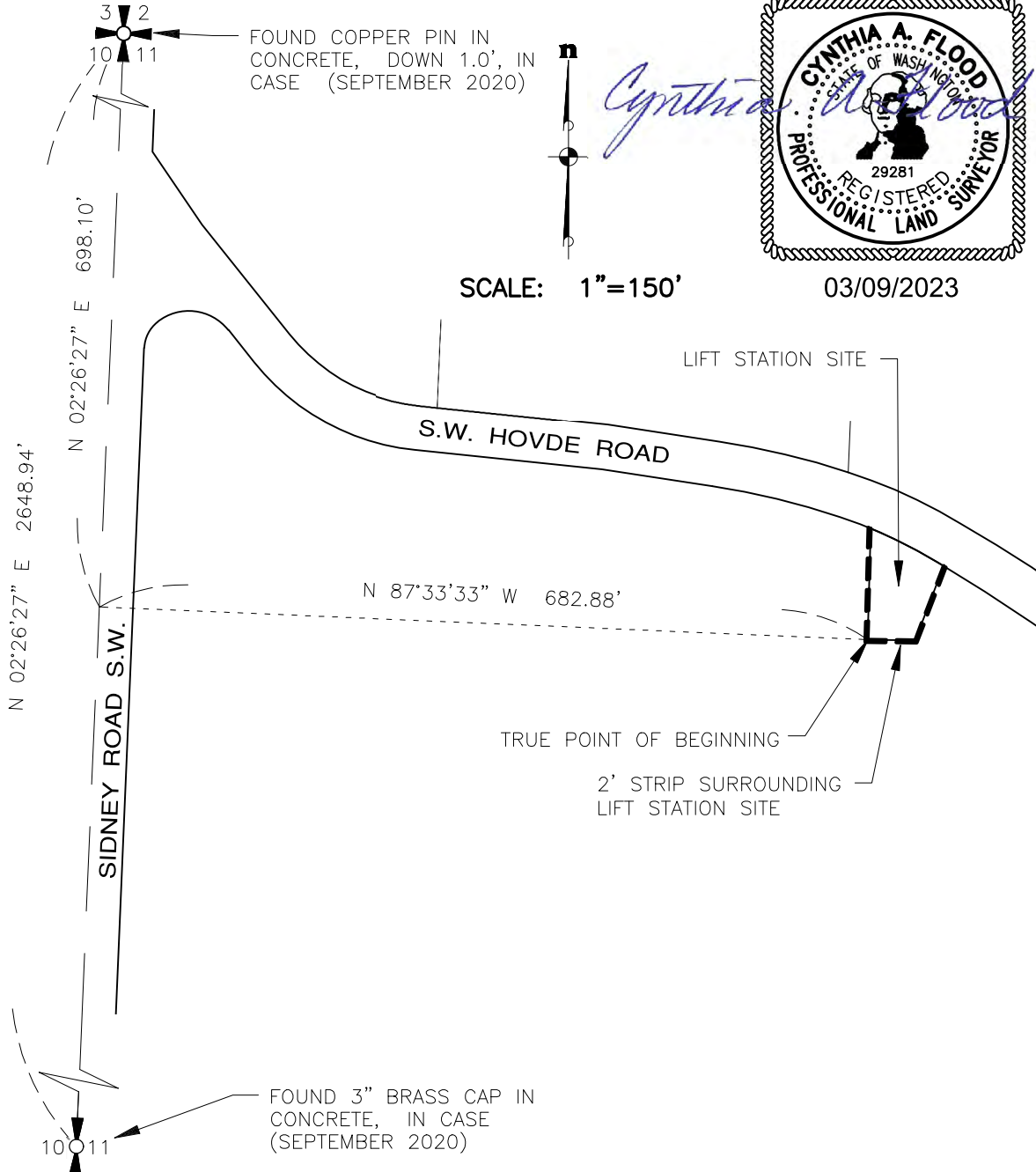


03/09/2023

EXHIBIT C

TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE NW 1/4 OF THE NW 1/4 OF SECTION 11,
T. 23 N., R. 1 E., W.M., KITSAP COUNTY, WASHINGTON



ESM	CONSULTING ENGINEERS LLC
33400 8th Ave S, Suite 205 Federal Way, WA 98003	FEDERAL WAY (253) 838-6113 LYNNWOOD (425) 297-9900
www.esmcivil.com	
Civil Engineering Public Works	Land Surveying Project Management
	Land Planning Landscape Architecture

JOB NO. 2155-001-020
DRAWING NAME : SR-03
DATE : 2023-03-09
DRAWN : CAF

WHEN RECORDED RETURN TO:

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

RIGHT OF WAY DEDICATION DEED

Grantor: Haven on Sidney L.L.C., a Washington Limited Liability Company

Grantee: City of Port Orchard, a Washington Municipal Corporation

Legal Description: SEE ATTACHED EXHIBIT "A"

Parcel Nos.: 112301-2-053-2007

Reference Number:

RIGHT OF WAY DEDICATION DEED

The GRANTOR, Haven on Sidney L.L.C., a Washington Limited Liability Company and owner of the real property described herein, for and in consideration of mutual and offsetting benefits, the sufficiency of which is hereby acknowledged, hereby grants, conveys, and dedicates to GRANTEE, CITY OF PORT ORCHARD, a municipal corporation of the State of Washington, the following described real property, including any after acquired title, as and for public right of way, to be used for all lawful right of way purposes including, but not limited to, public roads, streets, surface transportation and associated uses as well as the installation, operation and maintenance of utilities, over, under, and along the following described real property in the City of Port Orchard, County of Kitsap, State of Washington:

See EXHIBIT "A", which is attached hereto
and incorporated herein by this reference.

The right of way is legally described on EXHIBIT "B", attached hereto, and made part of this Deed by this reference. A drawing of the Right of Way is attached hereto as EXHIBIT "C" and made part of this Deed by this reference.

Further, Grantor agrees to indemnify and hold the Grantee harmless from liability for any and all claims under the Comprehensive Environmental Response, Compensation, and

Liability Act, 42 U.S.C. § 9601 et seq., and the Model Toxics Control Act, Chapter 70.105D RCW, which may arise from the property dedicated pursuant to this Deed.

It is understood and agreed that this deed shall become binding upon the Grantee upon accepted by its Mayor or his designee as indicated by signature below. The rights and obligation in this Dedication Deed shall inure to the benefit of and be binding on the Parties and be binding on their respective successors and assigns.

GRANTOR:

This instrument is executed on this 8 day of March, 2023.



Jordan Schenk, Vice President/Portfolio Manager of Investco L.L.C., as Manager of
Haven on Sidney L.L.C.

ACCEPTED:
CITY OF PORT ORCHARD

Robert Putaansuu, Mayor

Date: _____

Grantor's Acknowledgement on Next Page

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that JORDAN SCHENK is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he executed the instrument and acknowledged it as his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 8 day of MARCH, 2023.



[Signature]
Notary Public in and for the State of Washington
My Commission Expire: 2-9-26

Haven Apartments
Job No. 2155-001-020
November 18, 2022

EXHIBIT A

LEGAL DESCRIPTION FOR SITE

PARCEL I:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON;

EXCEPT THAT PORTION LYING NORTHERLY OR EASTERLY OF THE COUNTY ROAD TO PORT ORCHARD;

AND EXCEPT THAT PORTION LYING EASTERLY OF A LINE PARALLEL TO AND 10 FEET WEST OF THE CENTERLINE OF THE PRESENT COURSE OF BLACK JACK CREEK;

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON UNDER AUDITOR'S FILE NO. 1153269;

TOGETHER WITH THAT PORTION PER QUIT CLAIM DEED RECORDED UNDER AUDITOR'S FILE NO. 201107260315, DESCRIBED AS FOLLOWS: THAT PORTION OF LOT C OF SHORT PLAT NO. PO-74, RECORDED UNDER AUDITOR'S FILE NO. 9212310158 (S-1066) LYING SOUTH OF THE ROAD KNOWN AS SW HOVDE COUNTY ROAD;

PARCEL II:

THAT PORTION OF THE SOUTH 10 ACRES OF THE NORTH 15 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, LYING SOUTH OF COUNTY ROAD NO. 146;

EXCEPT THE SOUTH 190 FEET OF THE WEST 180 FEET;

AND EXCEPT SIDNEY ROAD S.W.;

AND EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY FOR SIDNEY ROAD BY DEED RECORDED MAY 22, 1992 UNDER AUDITOR FILE NO 9205220166;

PARCEL III:

THE SOUTH 190 FEET OF THE WEST 180 FEET OF THE NORTH 5 ACRES OF THE SOUTH 10 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF AS CONVEYED TO KITSAP COUNTY UNDER AUDITOR'S FILE NO. 9205220164 FOR SIDNEY ROAD S.W.;

PARCEL IV:

THAT PORTION OF THE SOUTH 5 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION;
THENCE EASTERLY ALONG THE SOUTHERLY LINE THEREOF, 142 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;
THENCE NORTHERLY PARALLEL TO THE WESTERLY LINE OF SAID SUBDIVISION, 158 FEET;
THENCE EASTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID SUBDIVISION, 8 FEET;
THENCE NORTH PARALLEL TO THE WESTERLY LINE OF SAID SUBDIVISION, 92 FEET;
THENCE WESTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID SUBDIVISION, 150 FEET TO THE WESTERLY LINE THEREOF;
THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE NORTHERLY LINE OF SAID 5 ACRE TRACT;
THENCE EASTERLY ALONG SAID NORTHERLY LINE TO THE EASTERLY LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER;
THENCE SOUTHERLY ALONG SAID EASTERLY LINE TO THE SOUTHERLY LINE THEREOF;
THENCE WESTERLY ALONG SAID SOUTHERLY LINE TO THE TRUE POINT OF BEGINNING;

EXCEPT SIDNEY ROAD;

PARCEL V:

THAT PORTION OF THE SOUTH 5 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION;
THENCE EASTERLY ALONG THE SOUTHERLY BOUNDARY LINE OF SAID SOUTH 5 ACRES, 142 FEET;
THENCE NORTHERLY AND PARALLEL TO THE WESTERLY BOUNDARY LINE OF SAID SUBDIVISION, 158 FEET;
THENCE EASTERLY AND PARALLEL TO THE SOUTH BOUNDARY LINE OF SAID SUBDIVISION, 8 FEET;

THENCE NORTHERLY AND PARALLEL TO THE WEST BOUNDARY LINE OF SAID SUBDIVISION,
92 FEET;
THENCE WESTERLY AND PARALLEL TO THE SOUTHERLY BOUNDARY OF SAID SUBDIVISION,
150 FEET;
THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY LINE OF SAID SUBDIVISION, 250
FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY AS DISCLOSED BY AUDITOR'S FILE
NO. 9205080054;

SITUATE IN THE COUNTY OF KITSAP, STATE OF WASHINGTON.

Legal description is from Statutory Warranty Deed recorded under Auditor's File No.
202007200376.

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03/09/2023

Haven Apartments
Job No. 2155-001-020
March 9, 2022

EXHIBIT B

LEGAL DESCRIPTION FOR LIFT STATION

That portion of the northwest quarter of the northwest quarter of Section 11, Township 23 North, Range 1 East, W.M., in Kitsap County, Washington, being more particularly described as follows:

COMMENCING at the northwest corner of said Section 11;

THENCE along the west line of said northwest quarter, S 02°26'27" W, 698.10 feet;

THENCE S 87°33'33" E, 682.88 feet to the TRUE POINT OF BEGINNING;

THENCE S 89°10'11" E, 42.10 feet;

THENCE N 21°05'11" E, 70 feet, more or less to the southerly margin of S.W. Hovde Road;

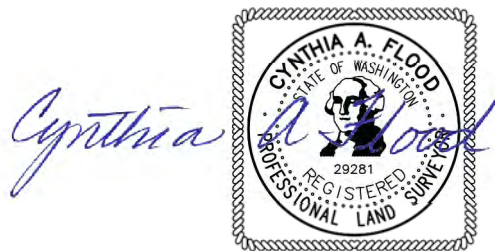
THENCE along said southerly margin, northwesterly 73 feet, more or less, to a point which bears N 01°31'21" E from the TRUE POINT OF BEGINNING;

THENCE S 01°31'21" W, 98 feet, more or less, to the TRUE POINT OF BEGINNING.

EXCEPT any portion thereof lying within public right of way.

See attached Exhibit C.

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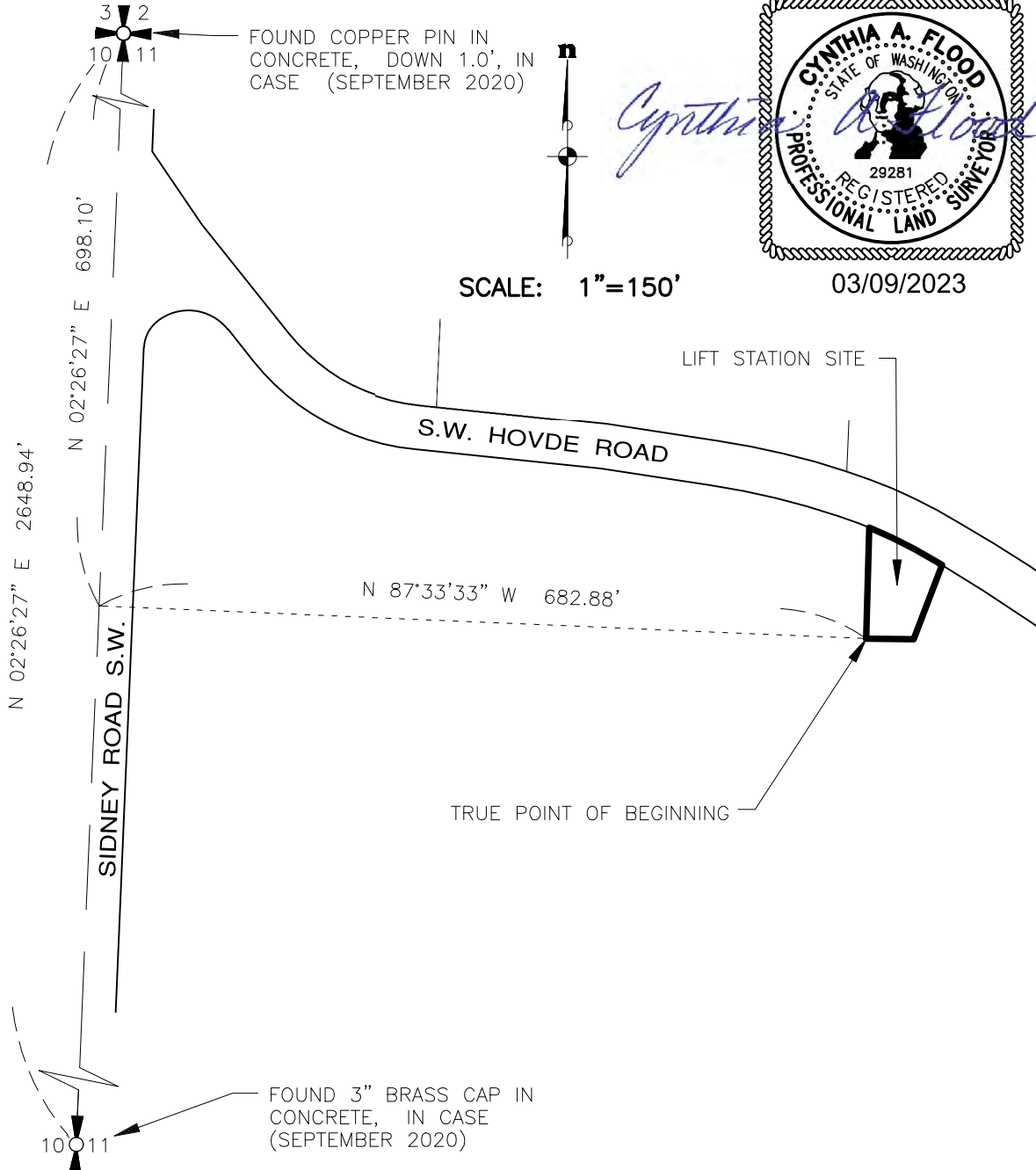


03/09/2023

EXHIBIT C

TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE NW 1/4 OF THE NW 1/4 OF SECTION 11,
T. 23 N., R. 1 E., W.M., KITSAP COUNTY, WASHINGTON



ESM	CONSULTING ENGINEERS LLC
33400 8th Ave S, Suite 205 Federal Way, WA 98003	  
www.esmcivil.com	FEDERAL WAY (253) 838-6113 LYNNWOOD (425) 297-9900
Civil Engineering Public Works	Land Surveying Project Management
	Land Planning Landscape Architecture

JOB NO. 2155-001-020
DRAWING NAME : SR-02
DATE : 2023-03-09
DRAWN : CAF

When Recorded Return to:
 McCullough Hill Leary, P.S.
 701 Fifth Avenue, Suite 6600
 Seattle, WA 98104
 Attn: Ian S. Morrison

PORT ORCHARD CITY OF 202106280457

Agreement Rec Fee: \$ 126.50
 06/28/2021 03:40 PM
 Paul Andrews, Kitsap Co Auditor

Page: 1 of 24

Document Title:		Sewer General Facility Fee (GFF) Credit Agreement
Grantor:		Sidney Road Apartments L.L.C., a Washington limited liability company
Grantee:		City of Port Orchard
Legal description (abbreviated):		Portion of NW quarter, Section 11, Township 23 North, Range 1 East, WM, Kitsap County, Washington. See <u>Exhibit A</u> for complete legal description
Assessor's Tax Parcel Numbers:		112301-2-053-2007
Reference number(s) of document(s) modified, assigned or released (if applicable):		N/A

**SEWER GENERAL FACILITY FEE (GFF) CREDIT AGREEMENT
BETWEEN CITY OF PORT ORCHARD AND SIDNEY ROAD APARTMENTS L.L.C.**

THIS SEWER GENERAL FACILITY FEE CREDIT AGREEMENT is made and entered into this June 9 day of May, 2021, by and between the City of Port Orchard, a non-charter, optional code Washington municipal corporation, hereinafter the "City," and Sidney Road Apartments L.L.C. a limited liability company organized under the laws of the State of Washington, hereinafter the "Developer" or "Sidney Road" (together the "Parties").

RECITALS

WHEREAS, the City of Port Orchard is a non-charter code city and operates a municipal sanitary sewer system under the authority of RCW 35A.11.020, 35A.21.150, and 35.67.020 and Article XI, § 11 of the Washington State Constitution; and

WHEREAS, as part of its sewer rates, the City of Port Orchard charges Capital Facility Charges ("CFC") for new development which connects to its sewer system; and

WHEREAS, the CFC is comprised of a Wastewater Treatment Facility Fee ("WWTFF") and a General Facility Fee ("GFF") as provided in Port Orchard Municipal Code ("POMC" or "Code") Ch. 13.04; and

WHEREAS, in accordance with POMC 13.04.040, when a property owner or developer constructs a portion of the public sewer system which is part of the City's basis for the CFC, then that property owner or developer may receive a credit for the GFF portion of the CFC commensurate with the increased capacity for the City's system that exceeds the needs of the owner or developer's project; and

WHEREAS, Developer proposes to develop the Sidney Road Property with a multi-family development consisting of approximately 216 units of housing, residential amenity facility, parking for 356 vehicles, landscaping, and associated site improvements (collectively, the "Development Project" or City Permit No. PW 20-064); and

WHEREAS, as part of the Development Project, Developer is proposing to construct at its expense, certain sanitary sewer system improvements as defined in the City's Comprehensive Plan as "6-5C, North Sidney Lift Station" defined herein as the "Sewer Improvement Project" and as shown on Exhibit C, and

WHEREAS, this Sewer Improvement Project is part of the City's capital project list which forms the basis for the CFC charges, and therefore, this Sewer Improvement Project is eligible for a Sewer GFF credit pursuant to POMC 13.04.040; and

WHEREAS, Developer has applied for the GFF credit in accordance with POMC 13.04.040, and the Sewer Improvement Project has been verified as eligible by the City's Public Works Director; and

WHEREAS, the City Council has reviewed this GFF Credit Agreement in accordance with POMC 13.04.040(6)(d) and authorized the Mayor to execute this Agreement;

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Sidney Road Apartments, L.L.C.
1364367.2 - 099998 -0098

Now, therefore, the Parties agree as follows:

AGREEMENT

Section 1. The Sidney Road Property. The Sidney Road Property comprises 4977 Sidney Road SW (Kitsap County Tax Parcel #112301-2-053-2007). The Sidney Road Property is described on **Exhibit A** which is attached hereto and incorporated herein by this reference as if set forth in full. A map of the Sidney Road Property is shown **Exhibit B** on which is attached hereto and incorporated herein by this reference as if set forth in full.

Section 2. Sewer Improvement Project. Developer shall construct the North Sidney Lift Station Project, which is designated as Project #6-5C within the 2020 Amendment to the 2016 General Sewer Plan as adopted by Ord. 008-21 and is also sometimes referred to as the “Ruby Creek Lift Station.” For purposes of this Agreement, the North Sidney Lift Station Project or Ruby Creek Lift Station is defined herein as the “Sewer Improvement Project” and as further defined in **Exhibit C**. The Sewer Improvement Project shall be constructed in conformance with **Exhibit D**. The Sewer Improvement Project shall serve the Sidney Road Property, amongst other properties within the North Basin area, and shall provide connectivity and capacity for the City. The City’s Public Works Director has verified that the Sewer Improvement Project is eligible for Sewer GFF credits in accordance with POMC 13.04.040 as provided in Section 9 of this Agreement. The credits authorized by this Agreement are only applicable to pending Building Permit Applications 21-044, 21-045, 21-046, 21-047, 21-048, 21-049, 21-050, 21-051, 21-052, 21-053, and 21-054 for the properties identified on **Exhibit B**.

Section 3. Definitions. As used in this Agreement, the following terms, phrases, and words shall have the meanings and be interpreted as set forth in this Section.

a) “Commence construction” as to the Sewer Improvement Project means that the City has issued all required permit(s) and the Developer has deployed construction equipment and personnel to the site of the Sewer Improvement Project.

b) “Council” or “City Council” means the duly elected legislative body governing the City of Port Orchard.

c) “Development Project” means the development of the Sidney Road Property with approximately 216 units of housing, residential amenity facility, parking for 356 vehicles, landscaping, and associated site improvements as shown in **Exhibit B** and approved by the City under Permit PW20-064.

d) “Director” means the City’s Public Works Director.

e) “Effective Date” means the effective date of the Resolution authorizing the execution of this Agreement.

f) “Maximum credit” means the maximum amount of GFF credit that is eligible for the Sewer Improvement Project which is the subject to this Agreement for which Sewer GFF credits for new sewer connections will be provided by the City to the Developer.

g) “Sewer GFF” means the City’s sewer general facility fee that is described in POMC 13.04.040.

h) “Sewer Improvement Project(s)” or “Project(s)” means the Sewer Improvement Project described above which will serve both the Sidney Road Property and the greater community, as specified in Section 9 and as provided for in all associated permits/approvals, whether now in place or to be issued in the future, and all incorporated exhibits.

Section 4. Exhibits. Exhibits to this Agreement are as follows:

- a) **Exhibit A** – Legal Description of the Sidney Road Property a
- b) **Exhibit B** – Map of the Sidney Road Property with the Development Project and with permits listed in Section 3 identified.
- c) **Exhibit C** – Map of Sewer Improvement Project, including project components.
- d) **Exhibit D** – Standards for development of Sewer Improvement Project.
- e) **Exhibit E** – GFF Credit calculation estimation for this Development Project and Sewer Improvement Project.

Section 5. Parties to Credit Agreement. The parties to this Agreement are:

- a) The “City” is the City of Port Orchard, whose office is located at 216 Prospect Street, Port Orchard, WA 98366.
- b) The “Developer”, “Sidney Road”, or “Sidney Road Apartments L.L.C.” is a private enterprise which owns the Sidney Road Property in fee, and whose principal office is located at 1302 Puyallup Street, Suite A, Sumner WA 98390.

Section 6. Sewer Improvement Project is a Private Undertaking. It is agreed among the parties that the Sewer Improvement Project is a private improvement for which Sewer GFF credits are allowed pursuant to POMC 13.04.040 and that the City has no interest in the improvements until such time as the Sewer Project is completed, dedicated, and accepted by the City as provided in Section 9 of this Agreement.

Section 7. Term of Agreement. This Agreement shall commence upon the effective date of the Resolution authorizing the Port Orchard Mayor to execute this Agreement and shall continue in force for a period of five (5) years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, except for such Sections which are expressly identified herein as surviving the expiration or termination.

Section 8. Project Schedule. Subject to the City’s issuance of all necessary permits and approvals, Developer will commence construction of the Sewer Improvement Project on the following schedule:

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Sidney Road Apartments, L.L.C.
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a) Developer shall submit all necessary permits and approvals to the City for construction of the Sewer Improvement Project by May 14, 2021. Developer shall submit permits for priority review including but not limited to use of City's third-party reviewer at Developer's cost.

b) The City shall undertake good faith efforts to promptly review and make final determinations on all necessary permits and approvals for construction of the Sewer Improvement Project ("Sewer Improvement Permits"), including but not limited to using the City's third-party reviewer to provide for prompt review. In the event that the City requires additional time beyond the 120-day window to review the Sewer Improvement Permits, or requests corrections of Developer, the timeline for Developer's obligation to construct the Sewer Improvement Project is tolled until the date that the City makes its final determination on the Sewer Improvement Permits.

c) Except as provided in Subsection 8.c.i, upon issuance of the Sewer Improvement Permits, the Developer shall commence construction of the Sewer Improvement Project within 120 days and proceed in a timely and workmanlike fashion, provided however, the Developer shall be solely responsible for the means and methods for construction sequencing and phasing.

i. The Parties agree the Sewer Improvement Project is anticipated to cost approximately \$2,500,000 ("Estimated Cost"). If Developer obtains a good faith estimate for construction of the Sewer Improvement Project that exceeds the Estimated Cost by 25 percent or more, Developer may elect, in its sole discretion, to pause construction of the Sewer Improvement Project for up to two (2) years from the date that Developer provides written notice to the City of such election to pause the Sewer Improvement Project ("Election Date") to secure alternative bids or allow for conditions to improve ("Cost Escalation Toll Notice" or "Notice"). Developer shall provide a copy of estimate for construction showing the escalation in costs with the Notice. In the event the Developer exercises its Notice, all other obligations and requirements of this Agreement shall automatically be tolled, and the Termination Date of this Agreement shall be extended accordingly by the number of days between the Election Date and date that Developer provides written notice to City of start the Sewer Improvement Project construction.

d) Developer understands that in accordance with POMC 13.04.040(6)(e) that the City will not issue any certificates of occupancy for the Development Project prior to substantial completion of the Sewer Improvement Project, even if such Sewer Improvement Project is tolled by the Developer under Section 8(c)(i) above. Furthermore, the Developer shall fully complete the Sewer Improvement Project in accordance with POMC 13.04.040(6)(g) and Section 9 below prior to the issuance of the Certificate of Occupancy for the last residential structure contained in the Development Project, or sixty (60) calendar days prior to the Termination of this Agreement, whichever date occurs first.

Section 9. Sewer Improvement Project Standards.

a) General. Developer will finance, design, and construct the Sewer Improvement Project to comply with City standards, including obtaining all necessary permits, not to be unreasonably withheld or conditioned by the City. The City will approve the plans before

construction begins; and the City may accept responsibility for the operation of the Sewer Improvement Project in accordance with POMC 13.04.040 provided construction is completed, the project has been accepted, any transfer property documents are completed, accepted, and recorded, and a two-year warranty and maintenance bond is in place, such acceptance not to be unreasonably conditioned, withheld or denied. In accordance with POMC 13.04.040(6)(g), the 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 improvement passes final inspection; 4. The Developer has put a two-year warranty and maintenance bond in place; 5. The City releases the performance bond (if applicable); 6. The Developer has completed all property dedications; 7. 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; and 8. The City Council accepts the project as public. The City will confirm completeness of the Sewer Improvement Project by issuing a Final Notice of Completeness to the Developer.

b) Sewer Improvement Project. The Sewer Improvement Project will include design, permitting, and construction, at Developer's sole expense of a new Sanitary Sewer Lift Station (#6-5C, North Sidney Lift Station Project) that complies with the standards and capacity as set forth on Exhibits C and D which are attached hereto and incorporated herein by this reference as if set forth in full. Any and all work within the right of way shall fully satisfy the requirements in POMC Chapter 12.04 and the City's right of way use permit process. In accordance with RCW 35.91.020, the Sewer Improvement Project shall be constructed according to plans and specification approved by the City.

c) Bond Required. The Sewer Improvement Project construction work shall be secured by a Performance Bond at 150% of the estimated construction costs. Construction of the Sewer Improvement Project shall be inspected by the City, approval not to be unreasonably withheld. In addition to the requirements in Section 9(a) above, the City's final approval of Sewer Improvement Project shall be conditioned upon receipt from Developer of three (3) copies of as-builts, a copy of the DWG files for the Sewer Improvement Project, and a two (2) year Maintenance Bond at 20% of the construction costs, which shall be effective upon the City's release of the Performance Bond. Upon acceptance of the Bill of Sale, the City shall release the Performance Bond and shall accept full responsibility for the Sewer Project, except for those maintenance obligations of Developer secured by the two-year Maintenance Bond. Upon City's acceptance of the Sewer Improvement Project, Developer shall not be responsible for any further costs, maintenance, or liability for the Sewer Improvement Project except as provided in the maintenance bond. This provision survives the Termination of this Agreement.

d) Latecomers Agreement. The Parties agree that the Sewer Improvement Project may provide public benefits to property within the City's service area and does not solely serve the Sidney Road Property. The Parties acknowledge that Developer may, in its sole discretion, seek approval for a latecomers agreement as provided in POMC Ch. 13.08 solely for any work that is not eligible for the GFF Credit hereunder. Work that is eligible for the GFF Credit shall not be subject to a latecomers agreement. The City shall review and make a final determination on any application for a latecomers agreement submitted by Developer as provided in Chapter 13.08 POMC. At the time of this Agreement, the Parties agree that the only eligible improvement that may be subject to a latecomers agreement is the Hovde Road gravity line connecting to the Sewer

Improvement Project. The Hovde Road gravity line is not included in the calculation for the City's CFC and thus is ineligible for GFF credits.

Section 10. Sewer Improvement Credits.

a) **Maximum Credit.** In accordance with POMC 13.04.040(6), there is a maximum amount of the Sewer GFF credit for the Sewer Improvement Project to be built by Developer. There are three methods for calculating the credit as defined in POMC 13.04.040(6). The lowest of these three calculations shall serve as the Maximum Credit Amount for improvements. The three calculation methods are set forth on **Exhibit E**, which is attached hereto and incorporated herein by this reference as if set forth in full. The three credit calculations are described as follows:

1. **Sewer Facility Fee Method.** The Sewer Improvement Project was identified in the GFF rate study adopted by the City as a \$2,500,000.00 project that is 100% funded by GFFs. The Sewer Improvement Project is being designed to be expandable and to contain three (3) pumps in the future, but only two (2) pumps shall be required by the Developer as a component of the Sewer Improvement Project. The percentage of the facility to be used by the proposed Development Project varies by lift station component and ranges from 17% to 35%. For the purposes of this Agreement, the City's engineers have determined that the Development Project as proposed will use 30% of the overall capacity in the Sewer Improvement Project, meaning that 70% of the added capacity will be for other customers. Therefore, under the Sewer Facility Fee method of (a) project cost of the project as defined in the Sewer General Facility Fee multiplied by (b) percentage of ERUs for excess capacity of the Sewer Improvement Project, the Developer would be credited \$1,750,000 (70% of \$2,500,000). The Parties agree with the accuracy and methodology of the Sewer Facility Fee method formula in Section 10(a)(1).
2. **Certified Project Cost Method.** The Certified Project Cost method is determined by (a) identifying the certified construction costs of the Sewer Improvement Project multiplied by (b) percentage of ERUs for excess capacity of the Sewer Improvement Project, which as defined above, was 70% of the added capacity. The value of the land dedicated by the Developer for the Sewer Improvement Project would be included as a separate line item in utilizing this method. The Certified Project Cost method cannot be determined until the Parties certify the Sewer Improvement Project costs as provided in Section 10(d) of this Agreement. The Parties agree with the accuracy and methodology of the Certified Project Cost method formula in Section 10(a)(2).
3. **Total Sewer Facility Fee owed by Developer Method.** The Total Sewer General Facility Fee Method is determined by (a) identifying the current GFF at the time of the Agreement (currently \$8,525) and multiplying by (b) number of ERUs for Developer needs of current Sewer Improvement Project. Based on the scope of the Development Project that is currently in development review, there are expected to be 12 new sewer connections serving 216 multifamily units and common areas. These connections are expected to use 30% of the Sewer Improvement Project

capacity. Therefore, under the Total Sewer Facility Fee Method, Developer would be required to pay a total of \$1,841,400.00. The Parties agree with the accuracy and methodology of the Certified Project Cost method formula in Section 10(a)(3).

The Code requires that the total GFF credit be the lowest of the three calculated methods as set forth above. Upon completion of the Certified Project Cost method as set forth in Section 10(d), the City shall confirm the potential GFF Credits for the Developer. The lowest of the three methodologies shall be the "Maximum Sewer GFF Credit" for the Developer, as authorized by Code. At this point, the Parties anticipate that the Sewer Facility Fee Method will likely be the Maximum Sewer GFF Credit available to Developer, however, that is subject to confirmation and change based on the above stated methodology. Once the Maximum Sewer GFF Credit has been achieved through credits to Developer, Developer will be required to pay any GFFs that exceed the Maximum Sewer GFF Credit and will be required to comply with Chapter 13.04 POMC for any further development of the Property.

b) Deferral of GFF for Development Project. It is expected that Developer would owe a total GFF payment of \$1,841,400 to the City for the Development but would receive Maximum Sewer GFF Credit of \$1,750,000 (or alternative amount as calculated by Section 10(a)). Thus, the remaining GFF balance which is anticipated to be due at the time of building permit issuance from the Developer to the City is \$91,400. The Parties acknowledge that this amount could change if the GFF fees are increased prior to permit issuance. Exhibit E contains the estimated credit calculations for the GFF credit under the Code as applied to this Development Project.

The City and Developer agree that these credits are consistent with RCW 82.02.060(4) and that they are consistent with POMC 13.04.040.

c) Payment of CFC; deferral. Unless the GFF rate changes or the Development Project scope changes between approval of this Agreement and issuance of building permits, the Developer will not be required to pay the full GFFs prior to building permit issuance. However, the Developer will be required to pay the full WWTF portion of the CFC at the time of building permit issuance as the WWTF portion of the CFC is not eligible for credit under the City's code.

The Developer shall pay the GFF charges as required as of the Effective Date of this Agreement, except as deferred herein. The amount of full GFF charge required may change if Developer changes the scope of the Development Project or if the timing of the building permits is such that the GFF is adjusted. The Parties anticipate that the Maximum Sewer GFF Credit for the Sewer Improvement Project as described in this Section and on Exhibit E will cover most of the deferred Sewer GFF charge amount. The City will defer any remaining Sewer GFF owed (over and above the \$91,400 due at permit issuance), if any, as calculated in Section 10(a) above, until just prior to issuance of the certificate of occupancy for the final residential structure in the Development Project.

d) Certification of Project Costs. Upon completion of the Sewer Improvement Project, Developer shall submit certified project costs to the City for review and acceptance by the City Engineer; provided however, City shall use its best efforts to review and reach a final determination within 30 calendar days of receipt, provided all information needed by the City to determine the correct certified costs is included in the submittal. Once these costs and the executed Bill of Sale

are reviewed and accepted by the City Engineer, not to be unreasonably withheld, conditioned, or delayed, the Maximum Sewer GFF Credit due to Developer will be established and will equal the Maximum Sewer Project Credit as so certified in accordance with this Section 10. Certificates of occupancy for the final residential structure in the Development Project will be withheld by the City until the construction costs are certified and accepted by the City and any remaining Sewer GFF fee balance has been paid; provided, however, the City shall use best available efforts to review and certify the credits applicable to the GFF balance within 30 days of receipt.

Section 11. Dedication of Public Lands. As a condition of the permit issued by the City for the Sewer Improvement Project, the Developer will be required to dedicate the land that it owns that is needed to construct and access the Sewer Improvement Project as defined in Exhibits C-D. This Agreement acknowledges that this dedication is part of the Sewer Improvement Project.

Section 12. 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 POMC for violations of this Agreement and the Code.

Section 13. 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 Property, at least 30 calendar days in advance of such action.

Section 14. 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, and be consistent with Chapter 13.04 POMC. However, nothing in this Agreement shall prevent the City Council from making any amendment to its sewer codes or rates, or its Comprehensive Plan, Zoning Code, Official Zoning Map, or development regulations, or to impacts fees that affect the Sidney Road Property in the same manner as other properties, after the Effective Date of this Agreement.

Section 15. General release. 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, including the obligation to construct the Sidney Road Projects.

Section 16. Notices. Notices, demands, correspondence to the City 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 24 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 17. Reimbursement for Agreement Expenses of the City. In accordance with POMC 13.04.040(6), the 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, attorneys' fees, and reasonable staff and consultant costs not otherwise included within application fees, provided however, the City shall provide written notice to Developer if the expenses to the City are anticipated to exceed Fifteen Thousand Dollars and No Cents (\$15,000.00) and the parties shall meet and confer regarding the City's anticipated costs as provided in Section 18a. Such payment shall be made in full prior the Mayor executing the Agreement on behalf of 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 18. Applicable Law, Resolution of Disputes, and Attorneys' Fees. It is the Parties' intent to work cooperatively and to resolve disputes in an efficient and cost-effective manner. All disputes arising out of or relating to this Agreement shall be resolved as follows:

a) **Settlement Meeting.** If any dispute arises between the parties relating to this Agreement, then the parties shall meet and seek to resolve the dispute, in good faith, within ten (10) working days after a Party's request for such a meeting. The City shall send the Mayor, Community Development Director and/or the Mayor's designee and any persons with information relating to the dispute, and Owner shall send an owner's representative and any consultant or other person with technical information or expertise related to the dispute.

b) **Court.** If the parties cannot resolve the matter in a settlement meeting, then 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, as applicable. 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 19. 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 20. 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 21. 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 Agreement by any Party in default hereof.

Section 22. Severability. This Agreement does not violate any federal or state statute, rule, regulation, or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation, or common law shall be considered null and void, with the remaining provisions in the Agreement remaining viable and in effect. However, if either Party in good faith determines that such provision or provisions which are rendered null and void 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 23. 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 24. 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:

**SIDNEY ROAD APARTMENTS, CITY:
L.L.C.:**

Attn: Brianne Kelsey
601 Union Street, Suite 3500
Seattle, WA 98101
BKelsey@tarragon.com

McCullough Hill Leary, P.S.
Attn: Ian Morrison
701 5th Avenue, Suite 6600
Seattle, WA 98104
imorrison@mhseattle.com

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.

Section 25. 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 26. Covenant of Good Faith and Cooperation. The Parties agree to take further actions and execute further documents, either jointly or within their respective power and authority, to implement the intent of this Agreement. Each Party covenants to use its best efforts and work cooperatively in order to secure the benefits and rights under this Agreement. The Parties shall not unreasonably withhold approvals or consents provided for in this Agreement. Each Party shall execute and deliver to the other all further documents as are reasonably necessary to carry out this Agreement, including the Improvement Projects and Development Project, as may be necessary to provide a Party with a full and complete enjoyment of its rights and privileges under this Agreement.

Section 27. Interpretation. This Agreement has been reviewed and revised by legal counsel for both Parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement.

Section 28. Counterparts. The Agreement may be signed in two or more counterpart copies with the same effect as if the signature of each counterpart copy were on a single instrument. Each counterpart shall be deemed as an original as to the Party whose signature it bears, and all such counterparts shall constitute one document.

Section 29. Entire Agreement. The written provisions and terms of this Agreement, together with the Exhibits attached hereto and the codes referenced herein, 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.

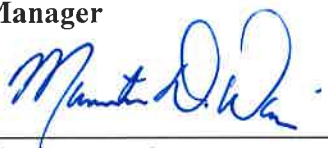
IN WITNESS WHEREOF, the parties have executed this Agreement on this 9 day of June, 2021.

SIDNEY ROAD APARTMENTS, L.L.C.

CITY OF PORT ORCHARD

By: Investco L.L.C.

Its: Manager


By: 

Martin D. Weiss
Its: President

By: 

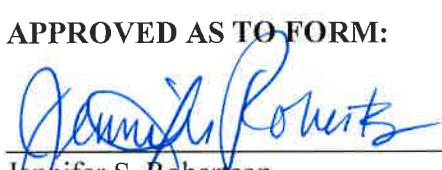
Rob Putaansuu
Its: Mayor

APPROVED AS TO FORM:



Ian Morrison
Attorney for Sidney Road

APPROVED AS TO FORM:



Jennifer S. Robertson
Attorney for Port Orchard

ATTEST:

A handwritten signature in black ink, appearing to read 'Brandy Rinearson', written over a horizontal line.

Brandy Rinearson
Port Orchard City Clerk

EXHIBIT A

SIDNEY ROAD APARTMENTS
LEGAL DESCRIPTION
TAX PARCEL NUMBER: 112301-2-053-2007

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON; EXCEPT THAT PORTION LYING NORTHERLY OR EASTERLY OF THE COUNTY ROAD TO PORT ORCHARD; AND EXCEPT THAT PORTION LYING EASTERLY OF A LINE PARALLEL TO AND 10 FEET WEST OF THE CENTERLINE OF THE PRESENT COURSE OF BLACKJACK CREEK; ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON UNDER AUDITOR'S FILE NO. 1153269; TOGETHER WITH THAT PORTION PER QUIT CLAIM DEED RECORDED UNDER AUDITOR'S FILE NO. 201107260315, DESCRIBED AS FOLLOWS: THAT PORTION OF LOT C OF SHORT PLAT NO. PO-74, RECORDED UNDER AUDITOR'S FILE NO. 9212310158 (S-1066) LYING SOUTH OF THE ROAD KNOWN AS SW HOVDE COUNTY ROAD. ALSO THAT PORTION OF THE SOUTH TEN (10) ACRES OF THE NORTH FIFTEEN (15) ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., LYING SOUTH OF COUNTY ROAD NO. 146; EXCEPT THE SOUTH 190 FEET OF THE WEST 180 FEET; EXCEPT SIDNEY ROAD N.W.; EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY FOR SIDNEY ROAD BY DEED RECORDED UNDER AUDITOR'S FILE NO. 9205220166. ALSO THE SOUTH 190 FEET OF THE WEST 180 FEET OF THE NORTH 5 ACRES OF THE SOUTH 10 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON; EXCEPT THE WEST 30 FEET THEREOF CONVEYED TO KITSAP COUNTY UNDER AUDITOR'S FILE NO. 9205220164 FOR SIDNEY ROAD S.W. ALSO THAT PORTION OF THE SOUTH 5 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE EASTERLY ALONG THE SOUTHERLY LINE THEREOF, 142 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE NORTHERLY PARALLEL TO THE WESTERLY LINE OF SAID SUBDIVISION, 158 FEET; THENCE EASTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID SUBDIVISION, 8 FEET; THENCE NORTH PARALLEL TO THE WESTERLY LINE

OF SAID SUBDIVISION, 92 FEET; THENCE WESTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID SUBDIVISION, 150 FEET TO THE WESTERLY LINE THEREOF; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE NORTHERLY LINE OF SAID 5 ACRE TRACT; THENCE EASTERLY ALONG SAID NORTHERLY LINE TO THE EASTERLY LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTHERLY ALONG SAID EASTERLY LINE TO THE SOUTHERLY LINE THEREOF; THENCE WESTERLY ALONG SAID SOUTHERLY LINE TO THE TRUE POINT OF BEGINNING; EXCEPT SIDNEY ROAD.

ALL LYING WITHIN THE NORTHWEST QUARTER OF SECTION 11,
TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON.

EXHIBIT B

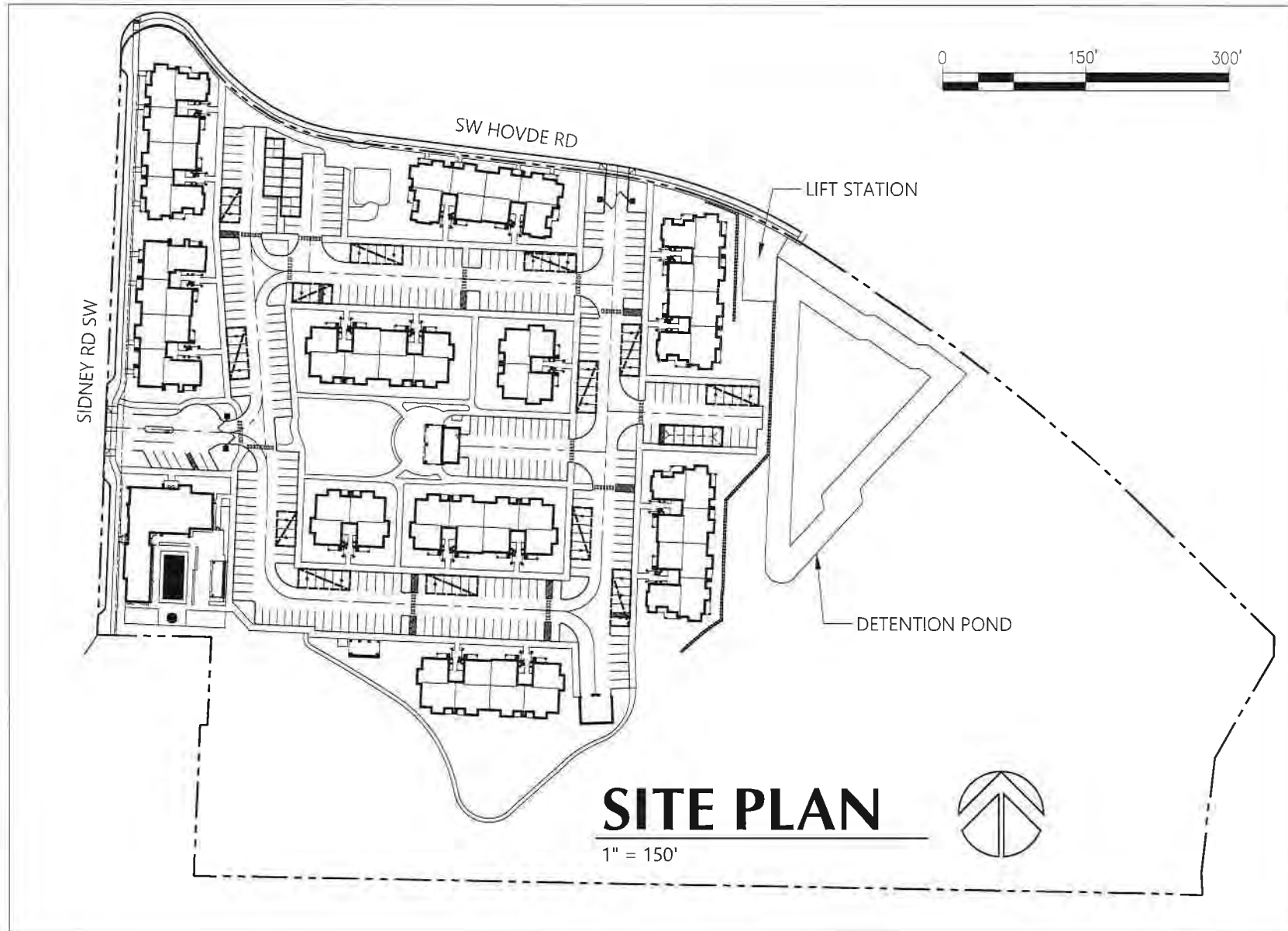
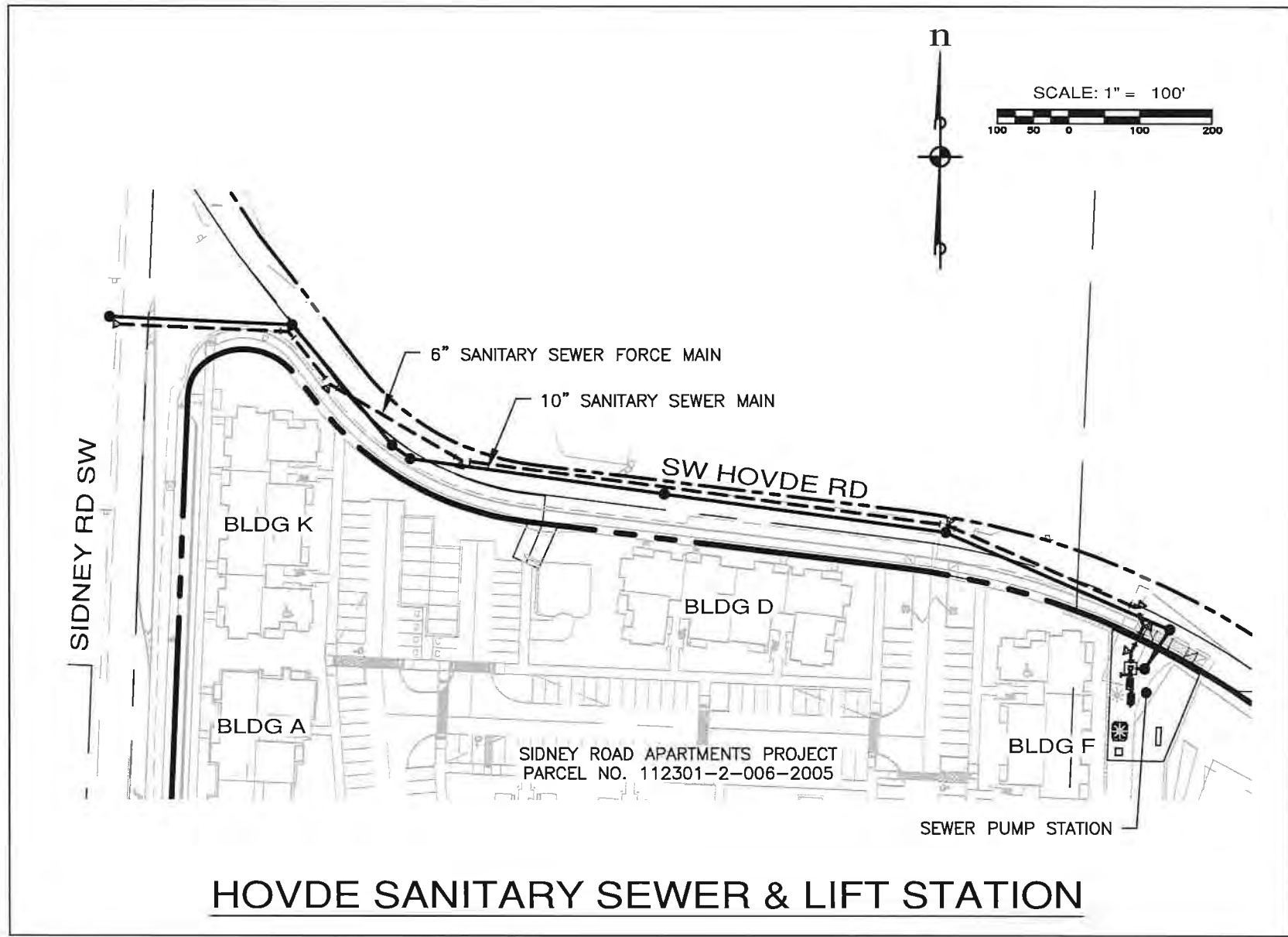


EXHIBIT C





Technical Memorandum

Date: April 1, 2021

Project: 20-2887

To: Mark Dorsey, P.E., Jacki Brown, Ian Smith, P.E.
City of Port Orchard

From: Peter Cunningham, P.E.

Reviewed By: Adam Schuyler, P.E.

Re: Basin 7 North Flow Projections

Introduction

There is significant interest in developing along the Sidney corridor in the City of Port Orchard (City). A developer is interested in building the North Sidney Lift Station (NSLS) to serve the area north of Ruby Creek. The proposed service area is shown in **Figure 1**. The purpose of this memorandum is to identify and document the required capacity and requirements to properly size the pumps, piping, and wet well through the basin build-out conditions.

Figure 1 (page 2 of 6 of the Technical Memorandum dated
April 1, 2021 by murraysmith)
is on file with the City of Port Orchard



Population and Flow Projections

Assumptions and Calculations

The City's Planning Department provided a range of projected future Equivalent Residential Units (ERU). These ranged from 319 and 1,136 ERUs, with the most probable scenario being approximately 423 ERUs. Unit flows and peaking factors from the 2016 General Sewer Plan (GSP), used to calculate sewer flows, are shown in **Table 1**.

Table 1
Flow Assumptions

Population/ERU	2.5
ERU/Multifamily unit	0.75
Flow/capita (gallons per capita/day)	78
Peak Day Infiltration and Inflow (II) (gallons per day)	1,100
Sanitary Sewer Peak Hour Factor ¹	1.41
II Peak Hour Factor ²	2.05

1. Applies to sanitary sewer flow only
2. Applies to II flow only

Flows calculated using the projected ERUs and unit flows from the GSP are shown in **Table 2**.

Table 2
Flow Projections

Scenario	ERU ¹	Population	Average Flow (gpm ²)	Area (acres)	Peak Day II (gpm)	Peak Day Flow (gpm)	Peak Hour Flow (gpm)
Low	319	798	43	75.5	58	101	179
High	1,136	2,839	154	75.5	58	211	335
Probable	423	1,058	57	75.5	58	115	199

1. Multifamily units are counted as 0.75 ERUs
2. gpm = Gallons per minute

Peak hour flows were also calculated using the Department of Ecology's peaking factor from the Criteria for Sewage Works Design (Orange Book). These are shown in **Table 3**.

Table 3
Peak Hour Flow using Peaking Factors

Scenario	ERU	Population	Average Flow (gpm)	Peaking Factor	Peak Hour Flow (peaking factor, gpm)
Low	319	798	43	3.9	167
High	1,136	2,839	154	3.5	532
Probable	423	1,058	57	3.8	217
Sidney Road Apartments	162	405	22	4.0	88

Recommended Design Flows

For most scenarios, the method of calculating the peak flow results in similar results. For the high development scenario, however, there is significantly more flow when calculated with a peaking factor. It is recommended that infrastructure that is more difficult and expensive to replace, such as the wet well and influent gravity pipes, be designed around a peak hour flow rate of 550 gpm.

Sizing Criteria and Recommendations

Pumps

The pump station should be a triplex configuration with two pumps installed initially and a third pump slot for future expansion. The two-pump configuration should be able to convey a minimum of 250 gpm with one pump out of service.

The pump selection and hydraulic analysis needs to include pumping through the existing 6-inch diameter Albertsons Lift Station (ALS) force main and the impacts to the ALS.

The pumps should be equipped with variable frequency drives (VFDs) to provide more consistent flow to the downstream Pottery Pump Station.

Gravity Piping

Gravity piping should be designed to accommodate the most conservative future flow estimate of 550 gpm. Assuming a slope of 0.4 ft/ft and PVC piping, a 10-inch pipe will be adequate. The design engineer should review the pipe alignment and sizing to ensure capacity, as well as scouring velocities during typical flows.

Force Main

Force main piping should be designed to maintain velocities between 2 and 8 feet per second (fps). Force main recommendations are shown in **Table 4**.

Table 4
Recommended Force Main Sizing

Pipe	Diameter (in)
Vertical discharge piping	4
Piping for single pump	4 or 6
Common piping	6

Wet Well

The wet well should be sized to accommodate three pumps for a future peak hour flow of 550 gpm. In addition to being large enough to physically fit three pumps, the number of starts per hour needs to be below that recommended by the pump manufacturer for the selected pump.

Basin 7 Project Phasing

North Sidney Lift Station and Associated Improvements

The NSLS will be constructed as part of the Sidney Road Apartments. It will connect to the existing 6-inch ALS force main. Impacts to the ALS and grinder pumps connected to the 6-inch ALS force main should be monitored after construction is complete and NSLS is in operation.

The NSLS needs to accommodate flows from throughout the basin and minimize future construction in the roadway. Therefore, the following additional improvements are required when the NSLS is constructed:

- 10-inch gravity sewer along the frontage up to the intersection of Hovde and Sidney Road SW.
- Install sewer laterals to the property line along the gravity sewer alignment to avoid cutting into roadway in the future.
- 10-inch dry force main, capped at both ends, along the entirety of the frontage of Parcels 112301-2-053-2007 and 112301-2-009-2002, and north to the termination of the new 10-inch gravity sewer. This improvement may be deferred to a later date if it is determined that the preferred location of this force main is to be in the western half of the Sidney Road SW right of way.

Albertsons Lift Station Improvements

Improvements to the ALS are currently being planned to increase the capacity and reliability and to serve the Stetson Heights development. Improvements to this lift station will need to be designed to avoid overwhelming the grinder pumps connected to the ALS force main.

South Sidney Lift Station and Associated Improvements

As development south of Ruby Creek occurs, a new South Sidney Lift Station (SSLS) will be constructed to serve Basin 7 south of Ruby Creek. A gravity sewer will be constructed in Sidney Road to divert flow from the ALS towards the SSLS. A new 10-inch force main will be constructed to serve the lift station and will discharge to the gravity sewer north of SR-16.

After construction of the SSLS and associated gravity sewer and force main, the only flow in the 6-inch force main will be from the ALS, grinder pumps, and the NSLS. As flows to the NSLS increase, the ALS and grinder pumps may experience a reduction of capacity due to an increase in dynamic head loss in the force main. If the decrease in capacity overwhelms the ability to keep up with peak flows, the ALS and grinder pumps will need to be connected to the gravity sewer upstream of the SSLS. Due to changes in hydraulics, this may require converting or replacing the ALS with a grinder pump station. These changes should be evaluated in more detail during design of the SSLS.

Sidney Road Apartments NSLS Capacity Share

The NSLS will be constructed as part of the Sidney Road Apartments project. As described above, it will be sized to serve the entire basin. The mechanical and electrical equipment will be sized for the probable development projections, and the wet well and gravity sewer will be sized for the high development scenario.

Sidney Road Apartments will use approximately 35 percent of the capacity of the mechanical and electrical equipment and 17 percent of the wet well and gravity sewer capacity. Although opinions of project cost have not been developed, the mechanical and electrical equipment will likely account for 70 percent of the total project cost, and the wet well and gravity sewer the remaining 30 percent. Using a weighted average, the Sidney Road Apartments will use approximately 30 percent of the NSLS capacity.

Exhibit E to GFF Credit Agreement
Sidney Road Apartments, L.L.C.

The maximum credit shall be the lesser of a., b., c. methods below:		
a.	Maximum Sewer General Facility Fee Method available for credit: (\$2,500,000 x 70%)	\$ 1, 750,000
b.	Certified Project Cost Method available for credit: (Certified Construction Cost (including dedicated land value & soft costs) x 70%	TBD
c.	Total Sewer General Facility Fee owned by Developer (estimated) (\$8,525 x 216)	\$ 1,841,400
Criteria for Sewer General Facility Fee Credit Calculation Per POMC 13.04.040		Sewer GFF Credit Evaluation Data & Inputs
1.	Verify the proposed project was included in the Sewer General Facility Fee Amt	Sewer Comprehensive Plan #6-5C (Ord. 008-21) & (See Exhibits C and D)
2.	Identify the project cost established for Sewer Improvement Project in the Sewer General Facility Fee	\$ 2,500,000
3.	Identify and agreed upon ERU's for the Facility and agreement*	423
a.	Number of ERU's agreed for Developer needs of the total facility*	127
b.	Percentage ERU's for Developer needs of the total facility*	30%
c.	Number of ERU's agreed for Excess Capacity of the total facility*	296
d.	Percentage ERU's for Excess Capacity of the total facility*	70%
4.	Identify the Certified Construction Cost (as defined in line b above)	TBD
5.	Identify current Sewer General Facility Fee at time of agreement	\$ 8,525
6.	Identify and agree est. Sewer General Facility Fee (per ERUs) to be paid by Developer for this agreement*	216 ERUs for the Development Project
*	Derived from Technical Memo	See Exhibit D



MARCH 10, 2023

City of Port Orchard
Nick Bond, Community Development Director
216 Prospect Street
Port Orchard, WA 98366

Dear Nick Bond:

This letter is intended to serve as certification that each cost represented in the enclosed Sewer Lift Station Certified Costs document is true and accurate.

Sincerely,

DocuSigned by:

Brianne Kelsey

94668654EECA428...

Brianne Kelsey

Senior Director of Development

Enclosure

TARRAGON

Haven Apartments Certified Costs: Sewer Lift Station

Prepared: 2/8/2023

SEWER LIFT STATION	ACTUAL COST	INCLUSIONS
Hard Costs		
Sewer Lift Station Equipment + Commissioning		Includes material design, supply, and fabrication by Romtec Utilities, Inc.
Structural, Mechanical, Electrical Design	\$80,843.00	
Supply/Fabrication + Install	\$440,762.00	
Spare Pump	\$29,753.00	
Back-Up Generator	\$68,150.00	
Back-Up Diesel Pump	\$114,505.00	
Design + Supply of Control Shelter	\$18,824.00	
Freight	\$16,929.00	
Subtotal	\$769,766.00	
Construction Surveying + As-Builts		For sewer lift station + Hovde sewer installations, by WE Coates.
Subtotal	\$9,783.40	
ROW Repair + Restoration		Hovde construction entry, asphalt demo, driveway prep, etc. by T Barger.
Subtotal	\$40,140.90	
Sewer Lift Station Installation		Includes crane rental, utility connections, excavation, installations, etc. by T Barger.
Mobilization/GPS Model	\$20,000.00	
Onsite Management (Six Weeks)	\$48,000.00	
Traffic Control	\$109,834.20	
Excavation + Installation	\$287,434.00	
Water Connections	\$8,585.00	
Electrical Connections	\$141,874.20	
Erosion Control	\$3,506.25	
Subtotal	\$619,233.65	
Fencing		Chain link w/razor wire + gates by Western Pacific Fence, LLC. Post core drills by Evergreen.
Subtotal	\$31,246.65	
Foundation (Concrete Pads)		Includes pump + generator pads, shelter footings/slab, etc. by Sunset Concrete.
Subtotal	\$7,823.00	
Paving (Asphalt)		Lift station paving by Puget Paving.
Subtotal	\$15,230.00	
Concrete Entry		Includes 14-lineal foot ramp curb, 6" lift station entry by Highmark Concrete.
Subtotal	\$3,789.95	
Vacuum Cleanout		By Pro-Vac for CCTV scan.
Subtotal	\$3,095.60	
SCADA Communication System		Includes design, labor, supervision, equipment, transportation, etc. for supply/install by Technical Systems Inc.
Subtotal	\$23,050.00	
Offsite Sewer in Hovde Road		Includes force main + gravity sewer line installations
Subtotal	\$627,848.88	
Hovde Road Repairs		
Subtotal	\$94,600.42	
Sales Tax		
Subtotal	\$188,274.19	
HARD COSTS SUBTOTAL	\$2,433,882.65	

TARRAGON

Haven Apartments
Certified Costs: Sewer Lift Station

Prepared: 2/8/2023

SEWER LIFT STATION	ACTUAL COST	INCLUSIONS
General Conditions	\$194,710.61	8% of hard costs.
Construction Management	\$170,371.79	7% of hard costs.
TOTAL HARD COSTS	\$2,798,965.04	
Soft Costs		
Design	\$21,800.00	ESM Civil Engineering of lift station property and Hovde Road sewer lines.
Permitting	\$41,175.72	Fees paid under PW20-064, PW21-811, CS21-010. Includes water meter + connection charges.
Bonding	\$10,076.27	Estimate for two-yr. Warranty + Maintenance Bond.
Legal	\$16,971.50	Actual McCullough Hill and Inslee Best legal fees for GFF Agreement.
Accounting	\$3,141.87	Based on lift station's percentage of total project hard costs.
Taxes	\$252.50	Based on lift station parcel's percentage of total Haven Apts site area.
Insurance	\$14,858.82	Based on lift station's percentage of total project hard costs.
Financing	\$1,375.50	Based on lift station parcel's percentage of total Haven Apts site area.
Interest	\$146,975.02	Land Loan + Construction Loan Interest on Lift Station costs only.
TOTAL SOFT COSTS	\$256,627.20	
Land Value		
Land Value	\$20,530.00	Per July 2021 appraisal by ABS Valuation.
TOTAL LAND VALUE	\$20,530.00	
TOTAL SEWER LIFT STATION COSTS	\$3,076,122.25	
Minimum Cost Threshold for Credits:	\$2,500,000.00	Per GFF Agreement
Variance of Actual Costs to Threshold:	\$576,122.25	Amount project exceeded threshold set out in GFF Agreement.
Maximum Credits Available:	\$1,750,000.00	Credits available per GFF Agreement.
Sewer Connection Charges Paid:	\$880,554.33	At building permit issuances.

This submittal has been reviewed by
The City of Port Orchard and is

✓

APPROVED

NOT APPROVED due to

3/20/2023

NameDate



Agenda Staff Report

Agenda Item No.:	Business Item 7C	Meeting Date:	March 28, 2023
Subject:	Adoption of a Resolution Accepting	Prepared by:	Tony Lang
	Transportation Improvement Program		Public Works Director
	Project #2.5C, Documenting Certified	Atty Routing No:	366922-0009 – PW
	Constructions Costs, and Establishing the	Atty Review Date:	03/23/2023
	Maximum Transportation Impact Fee		
	Credits Pursuant to Contract C076-21,		
	And accepting a Deed for right of Way		

Summary: On July 13, 2021, the City and Sidney Road Apartments LLC entered into a development agreement for impact fee credits identified as Contract C076-21. This agreement required the required the construction of various transportation improvements, the dedication of right of way property, and provided a framework to grant traffic impact fee credits to Sidney Road Apartments. Contract C076-21 also provided a framework for a parks impact fee credit in exchange for the dedication of property for parks use, but accepting park lands and establishing a park impact fee credit value will be done in a separate resolution to be reviewed and discussed at a later date. Sidney Road Apartments has recently completed the construction of a portion of the Sidney Road Widening project identified as TIP Project #2.05. Contract C076-21, Section 12 stipulates that Sidney Road Apartments LLC would receive credit equal to the lesser of the actual costs incurred by the developer as certified by the city or applicable transportation impact fees due for the project totaling \$469,800.

On February 10, 2021, the City received certified construction cost documentation from Sidney Road Apartments LLC, for TIP Project #2.05 showing total expenditures of \$580,084.80. The City engineer reviewed the certified construction costs as submitted and after review accepted certified construction costs of \$580,085. The total impact fees owed by Sidney Road Apartments LLC for the project (\$469,800) is less than the certified construction costs for TIP Project #2.05 (\$580,085)

The City wishes to document the maximum approved traffic impact fee amount granted to Sidney Road Apartments, LLC for the construction of TIP project 1.5C. A bill of sale has been provided to the city and the city wishes to formally accept the dedication of the frontage improvements associated with TIP Project #2.05. A deed has also been prepared for the right of way dedication associated with TIP project #2.05.

Relationship to Comprehensive Plan: Chapter 8 - Transportation

Recommendation: Staff recommends that the City Council adopt a Resolution accepting the dedication of a portion of the Sidney Road Widening Project, TIP Project 2.05, documenting Certified Construction

Costs, accepting a deed for the right of way dedication as attached hereto as Exhibit A, and approving maximum Transportation Impact Fee Credits.

Motion for Consideration: I move to adopt a Resolution accepting the dedication of a portion of the Sidney Road Widening Project, TIP Project 2.05, and authorizing the Mayor to execute related documents.

Fiscal Impact: In accordance with Contract C076-21, the City will provide credits for properties paying Transportation Impact Fees within the agreed-upon area up until the max credit amount of \$469,800 is reached.

Alternatives: Do not approve and provide alternative direction (note that due to the contract in place pertaining to this issue, an executive session to discuss legal risk would be warranted prior to pursuing any alternatives to approval).

Attachments: Resolution
Bill of Sale
Ordinance 007-21- Impact Fees
Agreement C076-21 Sidney Road Apartments, LLC-Transportation
Certified Construction Costs
Exhibit A-Right of Way Dedication

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, ACCEPTING TRANSPORTATION IMPROVEMENT PROGRAM PROJECT #2.05, DOCUMENTING CERTIFIED CONSTRUCTION COSTS, ESTABLISHING THE MAXIMUM TRANSPORTATION IMPACT FEE CREDITS GRANTED PURUANT TO CONTRACT C076-21, AND ACCEPTING A DEED FOR RIGHT-OF-WAY ASSOCIATED WITH TIP PROJECT #2.05

WHEREAS; on July 13, 2021 the City and Sidney Road Apartments LLC entered into a development agreement for impact fee credits identified as Contract C076-21; and

WHEREAS; Contract C076-21 required the construction of various transportation improvements, the dedication of right of way property, and provided a framework, consistent with Port Orchard Municipal Code (POMC) 20.182.080, to grant traffic impact fee credits to Sidney Road Apartments; and

WHEREAS; Contract C076-21 also provided a framework, consistent with POMC 20.182.080, for a parks impact fee credit in exchange for the dedication of property for parks use, however, accepting park lands and establishing a park impact fee credit value will be done in a separate resolution to be reviewed and discussed at a later date; and

WHEREAS; Sidney Road Apartments has recently completed the construction of a portion of the Sidney Road Widening project identified as TIP Project #2.05; and

WHEREAS, Contract C076-21, Section 12 stipulates that Sidney Road Apartments LLC would receive credit equal to the lesser of the actual costs incurred by the developer as certified by the city or applicable transportation impact fees due for the project totaling \$469,800; and

WHEREAS, on February 10, 2021, the City received certified construction cost documentation from Sidney Road Apartments LLC, for TIP Project #2.05 showing total expenditures of \$580,084.80; and

WHEREAS, the City engineer reviewed the certified construction costs as submitted and after review accepted certified construction costs of \$580,085; and

WHEREAS, the total impact fees owed by Sidney Road Apartments LLC for the project (\$469,800) is less than the certified construction costs for TIP Project #2.05 (\$580,085); and

WHEREAS, the City wishes to document the maximum approved traffic impact fee amount granted to Sidney Road Apartments, LLC for the construction of TIP project 1.5C; and

WHEREAS, staff have confirmed that Sidney Road Apartments, LLC have met all the requirements set out in Port Orchard Municipal Code 20.182.080 and City Contract C076-21 necessary to support a finding that the project is complete; and

WHEREAS, all necessary documents have been provided to the city, and the City Council wishes to formally accept the dedication of the frontage improvements associated with TIP Project #2.05; 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 portion of the Sidney Road Widening Project, TIP Project 2.05.

THAT: Pursuant to Contract C076-21, a maximum traffic impact fee credit amount for TIP Project 2.05 is hereby established in the amount of \$469,800. The Mayor or his designee is authorized to take all actions necessary to effectuate the terms of Contract C076-21 pertaining to this credit.

THAT: Consistent with the aforementioned, the Council accepts the following and authorizes the Mayor to execute all necessary documents to effectuate this acceptance:

1. A deed for the right of way dedication as attached hereto as Exhibit A and incorporated herein by this reference.
2. Bill of Sale, attached as Exhibit C and incorporated herein by this reference; and
3. All other documents required by POMC 13.04.040 and CIP Project #6-5C.

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 March 2023.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

BILL OF SALE

THIS BILL OF SALE is made and executed this 24 day of March, 2023, by and between Haven on Sidney L.L.C., a Washington Limited Liability Corporation, hereinafter called the "Grantor" and the City of Port Orchard, a Municipal Corporation, hereinafter called the "Grantee."

WITNESSETH:

That the Grantor, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby conveys, sets over, assigns, transfers and delivers and warrants to the City of Port Orchard ownership in the following described personal property situated in Kitsap County, State of Washington, and installed by the Grantor to date, TO WIT:

Frontage improvements contained within the dedication area as described in the enclosed ROW Dedication Deed and for which actual construction costs are provided in the enclosed Certified Costs Letter. Improvements include City standard sidewalks, landscaping, parking, as well as underground utilities.

The Grantor hereby warrants that it is the lawful and sole owner of all the personal property above conveyed, that such items are free from all liens and encumbrances, that the Grantor has the full power to convey and transfer the same, and that the Grantor will defend the same against the claims and demands of any and all persons lawfully making claims thereto. The Grantor further warrants that the execution of this Bill of Sale is an authorized act of said Grantor.

Dated at SEATTLE, Washington, this 24 day of March, 2023

GRANTOR: (Haven on Sidney L.L.C.)

By: Investco L.L.C., its Manager

By 

Print Name: Jordan Schenk, Vice President/Portfolio Manager

[Remainder of page intentionally left blank]

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

On this 24TH day of March, 2023, before me personally appeared Jordan Schenk, Vice President/Portfolio, Manager of Investco L.L.C., manager of Haven on Sidney L.L.C., a limited liability corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

Given under my hand and official seal this 24TH day of March, 2023.



Brittany Long
Notary Public in and for the State of Washington,
residing in Seattle, WA
My commission expires 7/21/2024

Dated at Port Orchard, Washington, this _____ day of _____, 20____.

CITY OF PORT ORCHARD

By: _____
Tony Lang, Public Works Director

STATE OF WASHINGTON)
)ss
COUNTY OF KITSAP)

On this day and year above personally appeared before me, Mark R. Dorsey, who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the City of Port Orchard for the uses and purposes therein mentioned, and on oath states he is authorized to execute the said instrument.

Given under my hand and official seal this _____ day of _____, 20____.

Notary Public in and for the State of Washington,
residing in _____
My commission expires _____

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

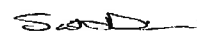
ATTEST:

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
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

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



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

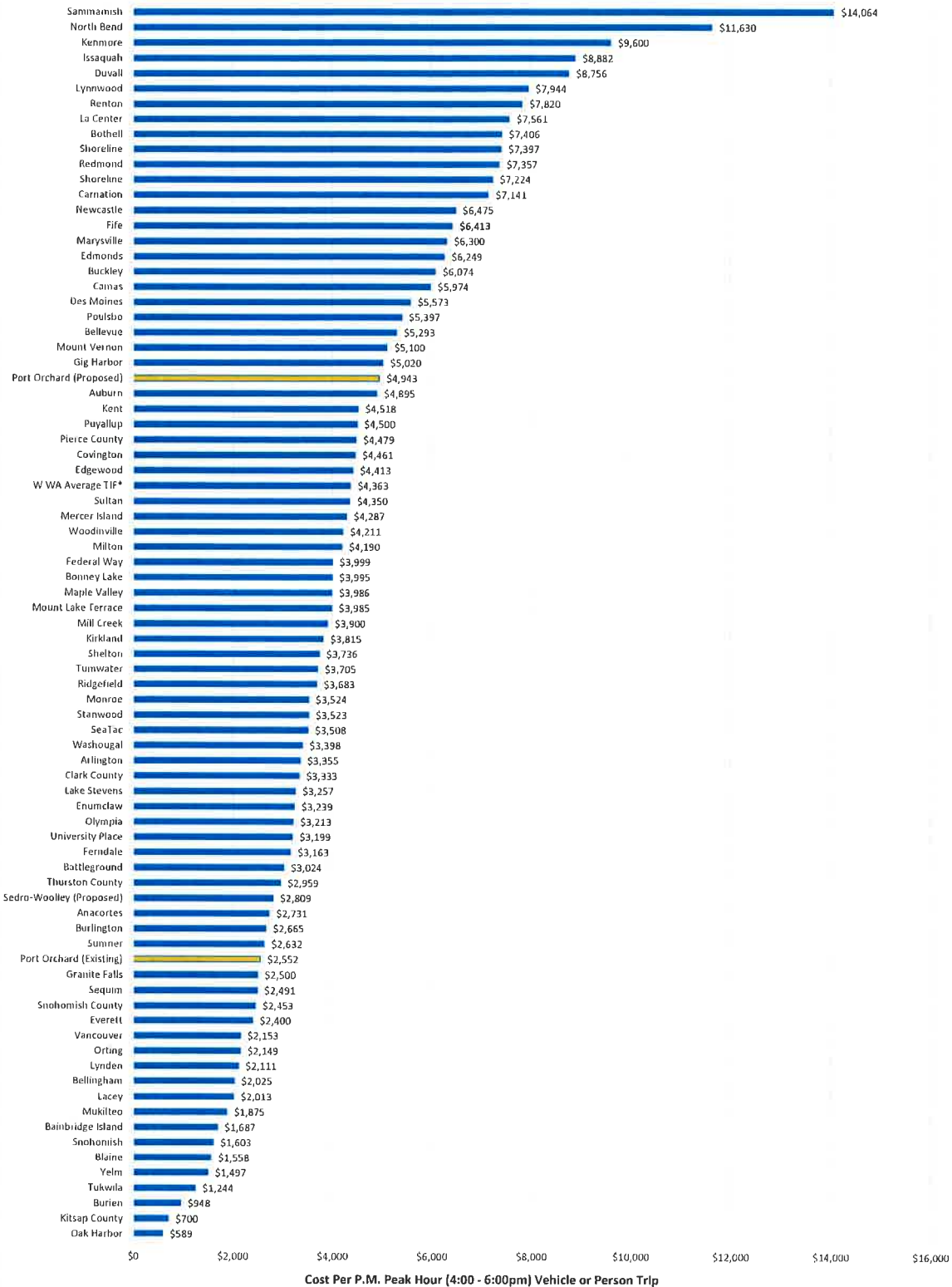
Comparison of 2019-2020 TIF Base Rates in 74 Cities and 5 Counties in Western Washington

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

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

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	<u>\$0.00</u>	<u>\$0.00</u>
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-Clerk's Office

216 Prospect Street

Port Orchard, WA 98366

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 Sidney Road Apartments
LLC and the City of Port Orchard

Auditor's File Number of Document (s) Referenced: _____

Grantor(s) person(s) that conveys, sells or grants interest in property: _____

N/A

Grantee(s) person that buys, receives or to whom conveyance of property is made: _____

N/A

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

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 11,

TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON;

Assessor's 14 digit Tax Parcel Number: 112301-2-053-2007

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF PORT ORCHARD AND SIDNEY ROAD
APARTMENTS L.L.C. FOR THE DEVELOPMENT AND FUNDING OF CERTAIN
TRANSPORTATION AND PARK IMPROVEMENTS**

THIS DEVELOPMENT AGREEMENT is made and entered into this 13th day of July, 2021, by and between the City of Port Orchard, a non-charter, optional code Washington municipal corporation, hereinafter the “City,” and Sidney Road Apartments L.L.C. a limited liability company organized under the laws of the State of Washington, hereinafter the “Developer” or “Sidney Road” (together the “Parties”).

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” or “Code”) 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 on June 7, 2021 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” or “Agreement”), relates primarily to the development of property owned by Developer at 4977 Sidney Road SW (Kitsap County Tax Parcel #112301-2-053-2007) (hereinafter, the “Sidney Road Property”); and

WHEREAS, the Developer proposes to develop the Sidney Road Property with a multi-

family development consisting of approximately 216 units of housing, residential amenity facility, parking for 356 vehicles, landscaping, and associated site improvements (collectively, the “Development Project” or City Permit No. PW 20-064); and

WHEREAS, the City is undertaking review of the Development Project pursuant to the POMC and has undertaken State Environmental Policy Act (“SEPA”) review for the Development Proposal with the issuance of a Determination of Non-significance issued on December 23, 2020 (“DNS”). The DNS for the Development Project was not timely appealed; and

WHEREAS, associated the Development Project, the Developer proposes to construct at its expense, transportation improvements defined as 2026-2039 Tier 2 Transportation Improvement Project #2.05 “Sidney Road Widening” on Sidney Road SW as defined herein as the “Transportation Improvement Project” and as shown in ROW Permit No. ROW21-028, which are eligible for a transportation impact fee credit pursuant to RCW 82.02.060(4) and POMC 20.182.080; and

WHEREAS, the Transportation Improvement Project is necessary and is required to serve the Development; and

WHEREAS, the Transportation Improvement Project also provides a benefit to the general public; and

WHEREAS, associated with the Development Project, the Developer owns property adjacent to the Sidney Road Property at 5071 Sidney Road SW (Kitsap County Tax Parcel # 112301-2-009-2002) (hereinafter, the “Planned Park Property”). Developer is exploring the option to dedicate the Planned Park Property to the City as a public park, which the Parties acknowledge would be eligible for park impact fee credit pursuant to RCW 82.02.060(4) and POMC 20.182.080; and

WHEREAS, this Agreement governs the development of the Transportation Improvement Project and the respective transportation impact credits that will result from the Developer undertaking this Transportation Improvement Project; and

WHEREAS, this Agreement also governs the possible conveyance of the Planned Park Property, and the park impact fee credit that could result from Developer’s conveyance of the Planned Park Property; and

WHEREAS, except with regard to this Transportation Improvement Project, Planned Park Property, and the respective applicable impact fee credits, this Agreement does not establish or modify the standards or conditions for the underlying development which is being undertaken in accordance with applicable code and regulations; and

WHEREAS, in consideration of the benefits conferred by this new Agreement, which reflect the current plans of both the City and the Developer and include a transportation impact fee credit calculation and method for determining any parks impact fee credits, the parties deem it in

their best interests to enter into this Agreement; and

WHEREAS, the City Council held a public hearing on July 13, 2021 regarding this Agreement; and

WHEREAS, after a public hearing, by Ordinance No. 034-21, the City Council authorized the Mayor to sign this Agreement with the Developer.

AGREEMENT

Section 1. The Sidney Road Property. The Sidney Road Property comprises 4977 Sidney Road SW (Kitsap County Tax Parcel #112301-2-053-2007). The Sidney Road Property is described on **Exhibit A** which is attached hereto and incorporated herein by this reference as if set forth in full. A map of the Sidney Road Property is shown **Exhibit B** on which is attached hereto and incorporated herein by this reference as if set forth in full.

Section 2. The Planned Park Property. The Planned Park Property comprises 5071 Sidney Road SW (Kitsap County Tax Parcel # 112301-2-009-2002). The Planned Park Property is described on **Exhibit A** which is attached hereto and incorporated herein by this reference as if set forth in full. A map of the Planned Park Property is shown on **Exhibit B** which is attached hereto and incorporated herein by this reference as if set forth in full.

Section 3. Transportation Improvement Project and Planned Park Property. Pursuant to this Agreement, Developer shall be responsible for the construction of the Transportation Improvement Project as defined herein and may, if the Parties agree, improve and transfer the Planned Park Property as defined herein.

a) **Transportation Improvement Project.** Developer shall construct a portion the Sidney Road SW Project 2026-2039 Tier 2 2.05 (defined herein as the Transportation Improvement Project) as shown in **Exhibit C**. The Transportation Improvement Project shall serve the Sidney Road Property, amongst other properties within the vicinity, and shall provide connectivity and capacity for the City. The Transportation Improvement Project shall be eligible for transportation impact fee credits as provided in Section 11 of this Agreement.

b) **Transportation Impact Fee Credit Applicability.** The Transportation Improvement Project will serve the Sidney Road Property and the impact fee credits authorized by this Agreement are only applicable to pending building permit applications 21-044, 21-045, 21-046, 21-047, 21-048, 21-049, 21-050, 21-051, 21-052, 21-053, and 21-054 for the properties identified on **Exhibit B**.

c) **Planned Park Property.** Developer may transfer the Planned Park Property to the City in exchange for a parks impact fee credit for the fair market value of the Planned Park Property plus the Developer's actual costs to make the Planned Park Property ready for transfer. The fair market value of the Planned Park Property shall be calculated as provided in Section 13. Making the Planned Park Property ready for transfer shall be defined as: (a) planting the Planned Park

Property with native vegetation in accordance with an approved planting plan; and (b) providing temporary irrigation to the new vegetation for two growing seasons, regardless of when the transfer takes place.

Section 4. Definitions. As used in this Agreement, the following terms, phrases, and words shall have the meanings and be interpreted as set forth in this Section.

a) “Adopting Ordinance” means the Ordinance which approves this Agreement, as required by RCW 36.70B.200 and Chapter 20.26 POMC.

b) “Commence construction” as to the Transportation Improvement Project means that the City has issued all required permit(s) and the Developer has deployed construction equipment and personnel to the site of the Transportation Improvement Project.

c) “Completion” as to the Transportation Improvement Project means compliance with the tasks described in Section 10.

d) “Council” or “City Council” means the duly elected legislative body governing the City of Port Orchard.

e) “Development Project” means the development of the Sidney Road Property with approximately 216 units of housing, residential amenity facility, parking for 356 vehicles, landscaping, and associated site improvements as shown in **Exhibit B** and approved by the City under Permit PW20-064 and associated with Building Permits No. 21-044, 21-045, 21-046, 21-047, 21-048, 21-049, 21-050, 21-051, 21-052, 21-053, and 21-054

f) “Director” means the City’s Public Works Director.

g) “Effective Date” means the effective date of the Adopting Ordinance.

h) “Maximum credit” means the maximum amount that is eligible for Transportation Improvement Project or the Planned Park Property transfer to this Agreement for which transportation impact fee credits or park impact fee credits (as applicable) will be provided by the City to the Developer.

i) “Transportation Improvement Project” or “Project” means the Transportation Improvement Project described above which serves both the Sidney Road Property and the greater community, as specified in Section 3, as provided for in all associated permits/approvals, whether now in place or to be issued in the future, and as described in all incorporated exhibits.

Section 5. Exhibits. Exhibits to this Agreement are as follows:

a) **Exhibit A** – Legal Description of the Sidney Road Property and Planned Park Property.

b) **Exhibit B** – Map of the Sidney Road Property and Planned Park Property with the Development Project and with permits listed in Section 3 identified.

c) **Exhibit C** – Transportation Improvement Project, including components.

Section 6. Parties to Development Agreement. The parties to this Agreement are:

a) The “City” is the City of Port Orchard, whose office is located at 216 Prospect Street, Port Orchard, WA 98366.

b) The “Developer” or “Sidney Road Apartments L.L.C.” is a private enterprise which owns the Sidney Road Property in fee, and whose principal office is located at 1302 Puyallup Street, Suite A, Sumner, WA 980390.

Section 7. Improvement Project is a Private Undertaking. It is agreed among the parties that the Transportation Improvement Project and Planned Park Property transfer, if conveyed pursuant to this Agreement, 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 the Transportation Improvement Project and/or transfer of the Planned Park Property is completed and dedicated to the City as provided in this Agreement.

Section 8. 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 five (5) years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect except for such sections which are specifically intended to survive expiration or termination.

Section 9. Project Schedule. Subject to the City’s issuance of all necessary permits and approvals, the Developer will commence construction of the Transportation Improvement Project and deliver the Park Property on the following schedule:

a) **Transportation Improvement Project.**

1. The Transportation Improvement Project requires two permits: (a) Land Disturbing Activity Permit (“LDAP”); and (b) Right of Way Permit (“ROW Permit”) (collectively, the “Transportation Improvement Permits”). Developer has submitted the Permit applications for the Project (LDAP No. PW 20-064 and ROW Permit No. 21-030). Developer’s construction of the Transportation Improvement Project is associated with the issuance of certain building permits associated with the Development Project, specifically City Permit Nos. 21-044, 21-045, 21-046, 21-047, 21-048, 21-049, 21-050, 21-051, 21-052, 21-053, and 21-054 (“Building Permits”). Developer has also submitted a ROW Permit application for associated work on SW Hovde Road (ROW Permit No. 21-030 and “Hovde Road ROW Permit”).

2. The City has already issued the approved LDAP and has issued its first round of corrections on ROW Permit No. 21-030. The City shall review and make final determinations on the Transportation Improvement Permits, the Building Permits, and the Hovde Road ROW Permit within forty-five (45) days of the effective date of this Agreement. Any days that the City is waiting for the Developer to submit corrections to the application shall be tolled. In the event that the City requires additional time beyond this window to review the Transportation Improvement Permits and Hovde Road ROW Permit, or requests additional corrections from Developer, the timeline for Developer's obligation to construct the Transportation Improvement Project is tolled until the date that the City makes its final determination on the Transportation Improvement Permits.

3. Upon issuance of the Transportation Improvement Permits, the Developer shall commence construction of the Transportation Improvement Project within 120 days and proceed in a timely and workmanlike fashion through completion, provided however, the Developer shall be solely responsible for the means and methods for construction sequencing and phasing.

4. Developer shall complete the Transportation Improvement Project no later than the date of the issuance of a Certificate of Occupancy for the last residential structure contained within the Development Project, or 60 calendar days prior to the Termination of this Agreement, whichever date occurs first.

b) Parks Property Transfer.

1. If Developer decides it desires to transfer the Planned Parks Property to the City pursuant to this Agreement (the "Parks Property Transfer"), then it shall confirm the City's interest in receiving the Planned Parks Property. If the City is interested, then the Parties will determine the Planned Parks Property value by using the fair market value of the Planned Parks Property as follows:

The Developer will hire a certified property appraiser, pay for the appraisal, and provide a copy of that appraisal report to the City. The date for valuation purposes, including but not limited to sales comparisons used for the valuation, shall be June 1, 2021. The City shall use its best efforts to review the appraisal report and provide a response to Developer on the valuation within 30 days of receipt. If both the City and the Developer agree that the appraisal is fair and reasonable, then the appraised value will be accepted as the Planned Parks Property value for park impact fee purposes; provided, however, Developer shall also be eligible for credits for the construction and development-related costs incurred by Developer pursuant to Section 11. If the City disagrees with the appraisal, then the City may hire its own appraiser to perform a second appraisal at the Developer's expense. The date for valuation purposes shall be the same as used in the Developer's appraisal. The City shall use its best efforts to obtain an appraisal report within 60 days of notice to the Developer of its disagreement with Developer's appraisal. If that second City-

initiated appraisal is within ten (10) percent of the value established by the first Developer-initiated appraiser, then the Parties will take the mid-point between the two appraisals and use that as the fair market value. If the appraisals are more than 10 percent apart, the Parties have the options of: (a) agreeing to a value, establishing another method to set the fair market value of the property, or (b) either party may decide not to move forward with the Parks Property Transfer. If one Party decides not to move forward with the Parks Property Transfer, the Party shall provide written notice of such decision and the Planned Parks Property would not be transferred and there would be no park impact fee credits given for the proposed transfer. If this occurs, then the Parks Performance Bond (as defined in Section 13) shall be released and the full park impact fees as required by Section 13 will be due from the Developer for any outstanding building permits related to the Development Project and the Park. For any building permits that have already issued prior to the Party's or Parties' decision to not move forward with the Parks Property Transfer as provided in Section 13, the impact fees will be due and payable immediately and must be paid no later than thirty (30) from the date of the written notice not to move forward. In such case, no certificates of occupancy will issue until full payment of outstanding impact fees is received.

2. Prior to transferring the Planned Parks Property to the City, the Developer will make the Planned Parks Property ready for transfer as follows: 1. The Developer shall provide a native planting plan to the City for approval. Such landscaping shall be Type B landscaping in accordance with POMC 20.128.060. 2. Once the City has approved the plan, the Developer will install the planting onto the Planned Parks Property per the approved plan. 3. The Developer will provide temporary irrigation to the new vegetation for two growing seasons to ensure that the plantings become well-established. Providing the irrigation for two growing seasons is an obligation that will extend beyond the transfer date of the Planned Parks Property if the two growing seasons have not elapsed at the time of such transfer.

Section 10. Transportation Improvement Project standards.

- a) General. Developer will design and construct the Transportation Improvement Project to comply with City standards, including obtaining all necessary permits, not to be unreasonably withheld or conditioned by the City. The City will approve the plans before construction begins; and the City will accept responsibility for the operation of the Transportation Improvement Project once it is completed, the Transportation Improvement Project has been accepted, 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 necessary property dedications; 6. The City has accepted the dedications, such approval not to be unreasonably withheld or conditioned; and 7. 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 Transportation Improvement Project by issuing a Final Notice of Completeness to the Developer.

- b) Transportation Improvement Project. The Transportation Improvement Project will include design, permitting, and construction, at Developer's sole expense of 2026-2039 Tier 2 TIP Project 2.05. The Transportation Improvement Project shall meet the City standards for public rights of ways and shall provide the amenities that are described in TIP Project 2.05 with such conditions as the City deems applicable and appropriate in LDAP/SDAP Permit No. PW20-064; provided, however, the City shall not add conditions to the Transportation Improvement Project that are inconsistent with **Exhibit C**.

The Transportation Improvement Project construction work shall be secured by a Performance Bond at 150% of the estimated construction costs. The Performance Bond shall be in place prior to Developer commencing work on the Transportation Project. Prior to City acceptance, the construction of the Transportation Improvement Project shall be inspected by the City, approval of which shall not be unreasonably withheld. In addition to the requirements in Section 10(a) above, the City's final approval of the Transportation Project shall be conditioned upon receipt from Developer a two (2) year Maintenance Bond at 20% of the construction costs, which shall be effective upon the City's release of the Performance Bond. Upon acceptance of the Bill of Sale, the City shall release the Performance Bond and shall accept full responsibility for the Transportation Improvement Project, except for those maintenance obligations of Developer secured by the two-year Maintenance Bond. Upon City's acceptance of the Transportation Improvement Project, Developer shall not be responsible for any further costs, maintenance or liability for the Transportation Improvement Project. This provision survives the Termination of this Agreement.

Section 11. Transportation Improvement Projects and Planned Parks Property costs and credits.

- a) Transportation Improvement Project. The maximum amount of the Transportation Impact Fee credit for the Transportation Improvement Project to be built by Developer under this Agreement shall be limited to the total Transportation Impact Fees due on the Project (currently calculated as \$469,800), or the actual costs incurred by the Developer, whichever is less ("Maximum Transportation Project Credit"). The credits provided under Section 12 below are limited to this Maximum Transportation Project Credit. Once the Maximum Transportation Project Credit has been achieved through credits applied to Developer for the Development Project, Developer would be required to comply with the impact fee provisions of the Code for any further development of the Sidney Road Property that requires payment of transportation impact fees, including payment of any transportation impact fees incurred over and above the Maximum Transportation Project Credit.

- b) Parks Property Transfer. The maximum amount of the Parks Impact Fee credits for the Parks Property Transfer shall be limited to the total Parks Impact Fees imposed (currently estimated to be \$126,144) or agreed value of the Planned Parks Property plus the actual construction and development-related costs incurred by the Developer to make the land ready for transfer, including but not limited to the cost of the designing and constructing the planting plan of native vegetation and the temporary irrigation for two growing seasons, whichever is less ("Maximum Park Impact Fee Credit"). Once the Maximum Park Impact Fee Credit has been achieved through credits to Developer for the Development Project, Developer would be required to comply with the impact fee provisions of the Code for any further development of the Sidney Road Property that requires payment of parks impact fees, including payment of any parks impact fees incurred over and above the Maximum Park Impact Fee Credit.

Section 12. Transportation Impact Fee Credits. The City hereby grants the Developer a credit against transportation impact fees for its costs to design and construct the Transportation Improvement Project. The credits will be calculated and applied as follows:

- a) The total estimated transportation impact fee required at the time of building permit issuance for the Development Project is currently \$469,800. Developer shall pay the transportation impact fees required at the time of building permit issuance, provided however, that if the Developer obtains permits and puts the Transportation Performance Bond in place no later than February 28, 2022, then the impact fees will be calculated based on the rates in effect on June 1, 2021 regardless if the rates have subsequently been adjusted. The estimated impact fees in this Agreement are an estimate only and the Developer understands that the amount of impact fees required may change if Developer changes the scope of the Development Project. If the permits are not issued and the Transportation Performance Bond put in place by February 28, 2022, then the impact fees will be adjusted in accordance with the City's adopted codes and ordinances in effect at the time of permit issuance.

Prior to the issuance of the first building permit for the Development Project, Developer shall provide a Performance Bond, in a form acceptable to the City, for 150% of the Engineer's Estimate for the Transportation Improvement Project, or the then applicable Transportation Impact Fees due on the project (currently \$469,800), whichever amount is greater ("Transportation Performance Bond"). The City will defer the final calculation, assessment, and collection of the transportation impact fees for the Development Project until the completion of the Transportation Improvement Project. The parties anticipate that the Maximum Transportation Fee Credit will cover all or most of the transportation impact fee required for the Development Project. The City shall issue any Certificate of Occupancy requested by the Developer in due course as required by the Code and this Agreement provided the Transportation Performance Bond remains in effect at time of a request for a Certificate of Occupancy. Upon completion of the construction of the Transportation Improvement Project, Developer shall submit certified Transportation Improvement Project costs to the City for review and

acceptance by the City Engineer as provided in the Code. Once these costs and executed Bill of Sale are reviewed and accepted by the City Engineer, not to be unreasonably withheld, conditioned, or delayed, the maximum credit due to Developer will be established and will equal the Maximum Transportation Project Credit as so certified in accordance with this subsection and Section 11. In the event that the Maximum Transportation Project Credit satisfies the transportation impact fees for the Development Project, the City shall release the Transportation Performance Bond. If any remaining transportation impact fees are required after crediting the Maximum Transportation Project Credit against the Development Project, the Developer shall pay those fees prior to the issuance of any outstanding Certificate(s) of Occupancy. The City shall use best available efforts to review and certify the transportation impact fees and issue any corresponding Certificates of Occupancy within 14 days of receipt. In the event Developer defaults on any requirement under this subsection, the City's remedies include pulling the Transportation Performance Bond and holding any outstanding Certificates of Occupancy until such time the Transportation Project is completed, and any outstanding impact fees are paid in full or credited.

- b) The City agrees that these credits are consistent with RCW 82.02.060(4) and that they are consistent with POMC 20.182.080.

Section 13. Park Impact Fee Credit. The Development Project is subject to the City's parks impact fee pursuant to POMC 20.182.080. The estimated park impact fee for the Development Project at the time of this Agreement is \$126,144. Developer shall pay the park impact fees required at the time of building permit issuance, provided however, that if the Developer obtains permits and puts the Parks Performance Bond (as defined herein) in place no later than October 1, 2021, then the impact fees will be calculated based on the rates in effect on June 1, 2021 regardless if the rates have subsequently been adjusted. The estimated park impact fees in this Agreement are an estimate only and the Developer understands that the amount of impact fees required may change if Developer changes the scope of the Development Project. If the permits are not issued and/or the Parks Performance Bond put in place by October 1, 2021, then the impact fees will be adjusted in accordance with the City's adopted codes and ordinances in effect at the time of permit issuance. Until such time as the Parks Performance Bond is in place, the Developer will pay park impact fees into an escrow account to be held until the Parks Performance Bond is in place. If the Parks Performance Bond is not in place within 180 days of the date of this Agreement, then Developer shall pay parks impact fees to the City prior to issuance of each subsequent building permit. During these 180 days, provided that the City receives notice of receipt of these funds into escrow, the City will treat these funds as having been tendered to the City for purposes of permit issuances. After the Parks Performance Bond is in place, the funds in the escrow account, including interest thereon, will be returned to Developer. If the Developer does not put the Parks Bond in place within 180 days, then these funds will be disbursed to the City with the interest thereon.

Developer owns the Planned Park Property adjacent to the Sidney Road Property. Developer may elect to satisfy all or a portion of the parks impact fee requirement for the Development Project

through conveyance of the Planned Park Property as described in this Agreement through a statutory warranty deed (free of all encumbrances and easements unacceptable to the City). The City acknowledges that the value of the conveyance of the Planned Park Property as calculated in Section 9(b) shall constitute satisfaction of the portion of the park impact fees for the Development Project up to the Maximum Park Fee Credit provided (land value plus the actual cost of the work to make the land ready for transfer) as described in this Agreement. The credits shall be calculated and applied as follows:

- a) Developer shall provide a letter of intent to dedicate the Planned Park Property and a Performance Bond for the then applicable Parks Impact Fees due on the project (currently \$126,144) ("Parks Performance Bond"), in a form acceptable to the City. The City shall issue any Certificate of Occupancy requested by the Developer provided the Parks Performance Bond remains in effect at time of the request for a Certificate of Occupancy. Prior to the completion of the Parks Property Transfer, the Developer shall provide confirmation of the Maximum Parks Fee Credit. The City shall review and certify the same pursuant to Section 9(b). In the event Developer defaults on any requirement under this subsection, the City's remedies include pulling the Parks Performance Bond and holding any outstanding Certificates of Occupancy until such time as any outstanding impact fees are paid in full or credited.

Section 14. [RESERVED]

Section 15. Dedication of Public Lands. The Developer shall dedicate the land that it owns that is needed to construct the Transportation Improvement Project as defined in **Exhibit C**; provided, however, Developer shall be able to include the fair market value of such dedications into the respective credit calculation as provided in this Agreement up to the maximum credit amount. Any dedications needed to construct the Transportation Improvement Project shall be completed prior to the City's acceptance of the Transportation Improvement Project and Parks Property Transfer. Provided, however, that such dedications needed to construct the Transportation Improvement Project shall occur prior to the issuance of the certificate of occupancy of the fourth building developed on the Project. Furthermore, the Certificate of Occupancy for the fourth (or subsequent) building(s) will not issue until the dedications needed to construct the Transportation Improvement Project are complete. At the time of this Agreement, three building permits are ready to issue for the first three buildings in the Project, i.e., the Club House, Building A and Building B. These three buildings (or whichever buildings are the first three completed) may be issued certificates of occupancy prior to dedications needed to construct the Transportation Improvement Project being completed.

Section 16. Water Capital Facility Charge. The Development Project is subject to the City's water capital facility charge ("Water CFC") fee pursuant to POMC 13.04.030. Developer shall pay the Water CFC fees for the Development Project at the rate set as of May 1, 2021 provided that Developer pays any Water CFC fees associated by the Development Project by August 31, 2021 ("Water CFC Payment"). If the Developer makes the Water CFC Payment prior to August 31, 2021, the City shall credit the Water CFC Payment on a per-permit basis for the Building

Permits associated with the Development Project once ready for issuance, which may occur subsequent to August 31, 2021.

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 POMC for violations of this Agreement and the Code.

Section 18. Termination. This Agreement shall terminate five (5) years after effective date. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the Parties that the Agreement has been terminated.

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 POMC Chapter 20.26 POMC.

Section 20. Effect upon Termination on Developer. Termination of this Agreement as to the Developer shall not affect any of the Developer's respective obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or other land use entitlements approved with respect to the Property, or obligations to pay assessments, liens, fees, or taxes. Furthermore, if the Agreement expires without the Improvement Project or Parks Property Transfer costs being fully recovered by impact fee credit or mitigation funds, the Developer will no longer be eligible to receive such credits.

Section 21. Effects upon Termination on City. Upon any termination of this Agreement as to the Sidney Road Property, or any portion thereof, the City will be under no obligation to provide any additional credits or reimbursement to Developer even if the Transportation Improvement Project or Parks Property Transfer 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 Property, at least 30 calendar days in advance of such action; provided; however, failure to strictly comply with the 30 calendar day notice provision shall not be considered a breach of this Agreement.

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 Sidney Road 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 Sidney Road 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 Sidney Road 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 Sidney Road Property in the same manner as other properties, after the Effective Date of this Agreement.

Section 25. General release. 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, including the obligation to construct the Transportation Improvement Project.

Section 26. Notices. Notices, demands, correspondence to the City 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, attorneys' fees, and reasonable staff and consultant costs not otherwise included within application fees; provided however, the City shall provide written notice to Developer if the expenses to the City are anticipated to exceed Twenty-Five Thousand Dollars and No Cents (\$25,000.00) and the parties shall meet and confer regarding the City's anticipated costs as provided in Section 28(a). 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. It is the Parties' intent to work cooperatively and to resolve disputes in an efficient and cost-effective manner. All disputes arising out of or relating to this Agreement shall be resolved as follows:

a) **Settlement Meeting.** If any dispute arises between the parties relating to this Agreement, then the parties shall meet and seek to resolve the dispute, in good faith, within ten (10) working days after a Party's request for such a meeting. The City shall send the Mayor, Community Development Director, Public Works Director, and/or the Mayor's designee and any persons with information relating to the dispute, and Owner shall send an owner's representative and any consultant or other person with technical information or expertise related to the dispute.

b) **Court.** If the parties cannot resolve the matter in a settlement meeting, then 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, as applicable. 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 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 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 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. This Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions in the Agreement remaining viable and in effect.

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:

SIDNEY ROAD APARTMENTS L.L.C.:

CITY:

Attn: Brianne Kelsey
601 Union Street, Suite 3500
Seattle, WA 98101
BKelsey@tarragon.com

Mayor
City of Port Orchard
216 Prospect Street
Port Orchard WA 98366
rputaansuu@cityofportorchard.us

McCullough Hill Leary, P.S.
Attn: Ian Morrison
701 5th Avenue, Suite 6600
Seattle, WA 98104
imorrison@mhseattle.com

Copies shall also be transmitted to the City Clerk and City Attorney at the above address.

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. Covenant of Good Faith and Cooperation. The Parties agree to take further actions and execute further documents, either jointly or within their respective power and authority, to implement the intent of this Agreement. Each Party covenants to use its best efforts and work cooperatively in order to secure the benefits and rights under this Agreement. The Parties shall not unreasonably withhold approvals or consents provided for in this Agreement. Each Party shall execute and deliver to the other all further documents as are reasonably necessary to carry out this Agreement, including the Improvement Projects and Development Project, as may be necessary to provide a Party with a full and complete enjoyment of its rights and privileges under this Agreement.

Section 41. Interpretation. This Agreement has been reviewed and revised by legal counsel for both Parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement.

Section 42. Counterparts. The Agreement may be signed in two or more counterpart copies with the same effect as if the signature of each counterpart copy were on a single instrument. Each counterparty shall be deemed as an original as to the Party whose signature it bears, and all such counterparts shall constitute one document.

Section 43. 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.

[SIGNATURE PAGE FOLLOWS]


IN WITNESS WHEREOF, the parties have executed this Agreement on this 13th day of July, 2021.


SIDNEY ROAD APARTMENTS L.L.C.

CITY OF PORT ORCHARD

By: INVESTCO L.L.C.

Its: Manager


By: 
Martin D. Waiss
Its: President

By: 
Rob Putaansuu
Its: Mayor

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Ian Morrison
Attorney for Sidney Road


Jennifer S. Robertson
Attorney for Port Orchard

ATTEST:


Brandy Rinearson
Port Orchard City Clerk

IN WITNESS WHEREOF, the parties have executed this Agreement on this 13th day of July, 2021.

SIDNEY ROAD APARTMENTS L.L.C.

CITY OF PORT ORCHARD

By: INVESTCO L.L.C.
Its: Manager

By: _____
Martin D. Waiss
Its: President

APPROVED AS TO FORM:

Iary Morrison
Attorney for Sidney Road

By: _____
Rob Putaansuu
Its: Mayor

APPROVED AS TO FORM:

Jennifer S. Robertson
Attorney for Port Orchard

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: July 21 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 SIDNEY ROAD APARTMENTS L.L.C.

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Martin D. Weiss 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 President of Investco L.L.C. as manager of Sidney Road Apartments L.L.C. to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

Dated: July 16 2021



Mary E Sennello

Mary E Sennello
(print or type name)

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

Seattle

My Commission expires: 11/6/2023

**EXHIBIT A
LEGAL DESCRIPTION**

SIDNEY ROAD APARTMENTS
TAX PARCEL NUMBER: 112301-2-053-2007

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON; EXCEPT THAT PORTION LYING NORTHERLY OR EASTERLY OF THE COUNTY ROAD TO PORT ORCHARD; AND EXCEPT THAT PORTION LYING EASTERLY OF A LINE PARALLEL TO AND 10 FEET WEST OF THE CENTERLINE OF THE PRESENT COURSE OF BLACKJACK CREEK; ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON UNDER AUDITOR'S FILE NO. 1153269; TOGETHER WITH THAT PORTION PER QUIT CLAIM DEED RECORDED UNDER AUDITOR'S FILE NO. 201107260315, DESCRIBED AS FOLLOWS: THAT PORTION OF LOT C OF SHORT PLAT NO. PO-74, RECORDED UNDER AUDITOR'S FILE NO. 9212310158 (S-1066) LYING SOUTH OF THE ROAD KNOWN AS SW HOVDE COUNTY ROAD. ALSO THAT PORTION OF THE SOUTH TEN (10) ACRES OF THE NORTH FIFTEEN (15) ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., LYING SOUTH OF COUNTY ROAD NO. 146; EXCEPT THE SOUTH 190 FEET OF THE WEST 180 FEET; EXCEPT SIDNEY ROAD N.W.; EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY FOR SIDNEY ROAD BY DEED RECORDED UNDER AUDITOR'S FILE NO. 9205220166. ALSO THE SOUTH 190 FEET OF THE WEST 180 FEET OF THE NORTH 5 ACRES OF THE SOUTH 10 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON; EXCEPT THE WEST 30 FEET THEREOF CONVEYED TO KITSAP COUNTY UNDER AUDITOR'S FILE NO. 9205220164 FOR SIDNEY ROAD S.W. ALSO THAT PORTION OF THE SOUTH 5 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE EASTERLY ALONG THE SOUTHERLY LINE THEREOF, 142 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE NORTHERLY PARALLEL TO THE WESTERLY LINE OF SAID SUBDIVISION, 158 FEET; THENCE EASTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID SUBDIVISION, 8 FEET; THENCE NORTH PARALLEL TO THE WESTERLY LINE

OF SAID SUBDIVISION, 92 FEET; THENCE WESTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID SUBDIVISION, 150 FEET TO THE WESTERLY LINE THEREOF; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE NORTHERLY LINE OF SAID 5 ACRE TRACT; THENCE EASTERLY ALONG SAID NORTHERLY LINE TO THE EASTERLY LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTHERLY ALONG SAID EASTERLY LINE TO THE SOUTHERLY LINE THEREOF; THENCE WESTERLY ALONG SAID SOUTHERLY LINE TO THE TRUE POINT OF BEGINNING; EXCEPT SIDNEY ROAD.

ALL LYING WITHIN THE NORTHWEST QUARTER OF SECTION 11,
TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON.

PLANNED PARK PROPERTY
TAX PARCEL NUMBER: 112301-2-009-2002

THAT PORTION OF THE SOUTH 5 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE EASTERLY ALONG THE SOUTHERLY BOUNDARY LINE OF SAID SOUTH 5 ACRES, 142 FEET; THENCE NORTHERLY AND PARALLEL TO THE WESTERLY BOUNDARY LINE OF SAID SUBDIVISION, 158 FEET; THENCE EASTERLY AND PARALLEL TO THE SOUTH BOUNDARY LINE OF SAID SUBDIVISION, 8 FEET; THENCE NORTHERLY AND PARALLEL TO THE WEST BOUNDARY LINE OF SAID SUBDIVISION, 92 FEET; THENCE WESTERLY AND PARALLEL TO THE SOUTHERLY BOUNDARY OF SAID SUBDIVISION, 150 FEET; THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY LINE OF SAID SUBDIVISION, 250 FEET TO THE POINT OF BEGINNING; EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY AS DISCLOSED BY AUDITOR'S FILE NO. 9205080054.

EXHIBIT B

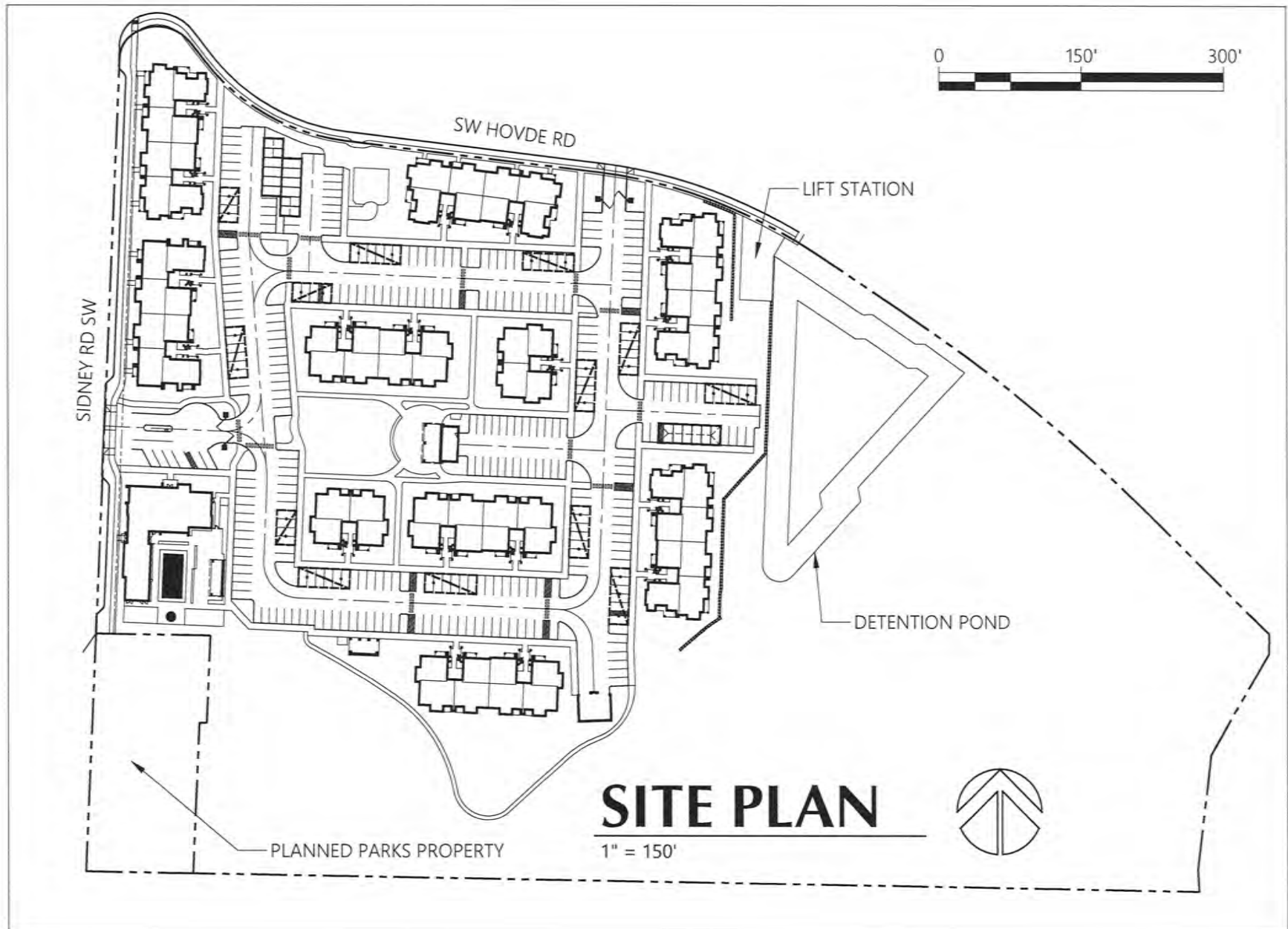


EXHIBIT C

Improvement Plan removed for County recording purposes; Plan is on file with the City of Port Orchard under Permit No. LU21-DEV AGREEMENT-01



MARCH 10, 2023

City of Port Orchard
Nick Bond, Community Development Director
216 Prospect Street
Port Orchard, WA 98366

Dear Nick Bond:

This letter is intended to serve as certification that each cost represented in the enclosed Frontage Improvements Certified Costs document is true and accurate.

Sincerely,

DocuSigned by:

94668654EECA428...

Brianne Kelsey
Senior Director of Development

Enclosure

TARRAGON

Haven Apartments

Certified Costs: Sidney Rd. Frontage Improvements

Prepared: 2/8/2023

FRONTAGE IMPROVEMENTS	ACTUAL COST	INCLUSIONS
Hard Costs		
Frontage Demo + Prep		Includes asphalt demo, curb/gutter/asphalt prep by T Barger.
Mobilization, Admin., GPS Model	\$5,000.00	
TESC Maintenance	\$2,500.00	
Traffic Control	\$15,000.00	
Rough Grade	\$1,901.92	
Sawcut 4" asphalt	\$7,800.00	
Demo 4" asphalt	\$8,725.00	
Asphalt subgrade prep w/4" CSBC	\$11,661.02	
Curb + Gutter subgrade prep w/2" rock	\$4,438.00	
Pole base, secondary vault, bollard	\$3,000.00	
Subtotal	\$60,025.94	
Sidney Road Storm System		
Connection to Existing Frontage Storm	\$1,000.00	
18" CPEP w/Imported Backfill Frontage Storm	\$16,607.00	
15" CPEP w/Imported Backfill Frontage Storm	\$22,890.00	
12" CPEP w/Imported Backfill Frontage Storm	\$16,304.00	
48" Type 2 CBMH Frontage Storm	\$19,600.00	
Type 1 CB w/Curb Inlet Frontage Storm	\$3,900.00	
Jack + Raise	\$7,200.00	
Subtotal	\$87,501.00	
Sidney Road Survey	\$6,748.19	
Sidney Road Frontage Improvements		
Curb + Gutter Installation	\$34,414.76	
Paving	\$150,570.38	
Landscaping + Irrigation	\$20,635.00	
Striping	\$8,131.00	Includes bike lanes, crosswalk, turn lane, etc. by Stripe Rite.
Subtotal	\$213,751.14	
HARD COSTS SUBTOTAL	\$368,026.27	
General Conditions	\$29,442.10	8% of hard costs.
Construction Management Fee	\$25,761.84	7% of hard costs.
TOTAL HARD COSTS	\$423,230.21	
Soft Costs		
Design	\$29,200.00	ESM Civil Engineering.

TARRAGON

Haven Apartments
Certified Costs: Sidney Rd. Frontage Improvements

Prepared: 2/8/2023

FRONTAGE IMPROVEMENTS	ACTUAL COST	INCLUSIONS
Permitting	\$2,403.50	Includes ROW permit costs, irrigation meter/connection charges, etc.
Bonding	\$18,155.63	Existing Performance + Estimate for Two-Yr. Warranty + Maintenance
Legal	\$21,078.93	Actual McCullough Hill and Inslee Best legal fees for Development Agreement.
Accounting	\$475.08	Based on frontage improvement's percentage of total Haven Apts project costs.
Taxes	\$693.87	Based on frontage improvement's percentage of total Haven Apts site area.
Insurance	\$2,246.79	Based on frontage improvement's percentage of total Haven Apts project costs.
Financing	\$4,111.76	Based on frontage improvement's percentage of total Haven Apts site area.
Interest	\$22,224.02	Land Loan + Construction Loan Interest on frontage improvement costs only.
TOTAL SOFT COSTS	\$100,589.59	
Land Value		Per July 2021 appraisal by ABS Valuation.
TOTAL LAND VALUE	\$56,265.00	
TOTAL FRONTAGE IMPROVEMENT COSTS	\$580,084.80	
Minimum Cost Threshold for Credits:	\$469,800.00	Per recorded Development Agreement.
Variance of Actual Costs to Threshold:	\$110,284.80	Amount project exceeded threshold set out in Development Agreement.
Credits Available:	\$469,800.00	Per recorded Development Agreement.

This submittal has been reviewed by
The City of Port Orchard and is

☒

APPROVED

☐

NOT APPROVED due to



3/20/2023

Name

Date

WHEN RECORDED RETURN TO:

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

RIGHT OF WAY DEDICATION DEED

Grantor: Haven on Sidney L.L.C., a Washington Limited Liability Company

Grantee: City of Port Orchard, a Washington Municipal Corporation

Legal Description: SEE ATTACHED EXHIBIT "A"

Parcel Nos.: 112301-2-053-2007

Reference Number:

RIGHT OF WAY DEDICATION DEED

The GRANTOR, Haven on Sidney L.L.C., a Washington Limited Liability Company and owner of the real property described herein, for and in consideration of mutual and offsetting benefits, the sufficiency of which is hereby acknowledged, hereby grants, conveys, and dedicates to GRANTEE, CITY OF PORT ORCHARD, a municipal corporation of the State of Washington, the following described real property, including any after acquired title, as and for public right of way, to be used for all lawful right of way purposes including, but not limited to, public roads, streets, surface transportation and associated uses as well as the installation, operation and maintenance of utilities, over, under, and along the following described real property in the City of Port Orchard, County of Kitsap, State of Washington:

See EXHIBIT "A", which is attached hereto and incorporated herein by this reference.

The right of way is legally described on EXHIBIT "B", attached hereto, and made part of this Deed by this reference. A drawing of the Right of Way is attached hereto as EXHIBIT "C" and made part of this Deed by this reference.

Further, Grantor agrees to indemnify and hold the Grantee harmless from liability for any and all claims under the Comprehensive Environmental Response, Compensation, and

Liability Act, 42 U.S.C. § 9601 et seq., and the Model Toxics Control Act, Chapter 70.105D RCW, which may arise from the property dedicated pursuant to this Deed.

It is understood and agreed that this deed shall become binding upon the Grantee upon accepted by its Mayor or his designee as indicated by signature below. The rights and obligation in this Dedication Deed shall inure to the benefit of and be binding on the Parties and be binding on their respective successors and assigns.

GRANTOR:

This instrument is executed on this 28 day of November, 2022.



Jordan Schenk, Vice President/Portfolio Manager of Investco L.L.C., as Manager of Haven on Sidney L.L.C.

ACCEPTED:
CITY OF PORT ORCHARD

Robert Putaansuu, Mayor

Date: _____

Grantor's Acknowledgement on Next Page

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Jordan Schenk is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he executed the instrument and acknowledged it as his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 28 day of November, 2022



Brittany Long
Notary Public in and for the State of Washington
My Commission Expire: 7/21/2024

Haven Apartments
Job No. 2155-001-020
November 18, 2022

EXHIBIT A

LEGAL DESCRIPTION FOR SITE

PARCEL I:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON;

EXCEPT THAT PORTION LYING NORTHERLY OR EASTERLY OF THE COUNTY ROAD TO PORT ORCHARD;

AND EXCEPT THAT PORTION LYING EASTERLY OF A LINE PARALLEL TO AND 10 FEET WEST OF THE CENTERLINE OF THE PRESENT COURSE OF BLACK JACK CREEK;

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON UNDER AUDITOR'S FILE NO. 1153269;

TOGETHER WITH THAT PORTION PER QUIT CLAIM DEED RECORDED UNDER AUDITOR'S FILE NO. 201107260315, DESCRIBED AS FOLLOWS: THAT PORTION OF LOT C OF SHORT PLAT NO. PO-74, RECORDED UNDER AUDITOR'S FILE NO. 9212310158 (S-1066) LYING SOUTH OF THE ROAD KNOWN AS SW HOVDE COUNTY ROAD;

PARCEL II:

THAT PORTION OF THE SOUTH 10 ACRES OF THE NORTH 15 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, LYING SOUTH OF COUNTY ROAD NO. 146;

EXCEPT THE SOUTH 190 FEET OF THE WEST 180 FEET;

AND EXCEPT SIDNEY ROAD S.W.;

AND EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY FOR SIDNEY ROAD BY DEED RECORDED MAY 22, 1992 UNDER AUDITOR FILE NO 9205220166;

PARCEL III:

THE SOUTH 190 FEET OF THE WEST 180 FEET OF THE NORTH 5 ACRES OF THE SOUTH 10 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF AS CONVEYED TO KITSAP COUNTY UNDER AUDITOR'S FILE NO. 9205220164 FOR SIDNEY ROAD S.W.;

PARCEL IV:

THAT PORTION OF THE SOUTH 5 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION;
THENCE EASTERLY ALONG THE SOUTHERLY LINE THEREOF, 142 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;
THENCE NORTHERLY PARALLEL TO THE WESTERLY LINE OF SAID SUBDIVISION, 158 FEET;
THENCE EASTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID SUBDIVISION, 8 FEET;
THENCE NORTH PARALLEL TO THE WESTERLY LINE OF SAID SUBDIVISION, 92 FEET;
THENCE WESTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID SUBDIVISION, 150 FEET TO THE WESTERLY LINE THEREOF;
THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE NORTHERLY LINE OF SAID 5 ACRE TRACT;
THENCE EASTERLY ALONG SAID NORTHERLY LINE TO THE EASTERLY LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER;
THENCE SOUTHERLY ALONG SAID EASTERLY LINE TO THE SOUTHERLY LINE THEREOF;
THENCE WESTERLY ALONG SAID SOUTHERLY LINE TO THE TRUE POINT OF BEGINNING;

EXCEPT SIDNEY ROAD;

PARCEL V:

THAT PORTION OF THE SOUTH 5 ACRES OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SUBDIVISION;
THENCE EASTERLY ALONG THE SOUTHERLY BOUNDARY LINE OF SAID SOUTH 5 ACRES, 142 FEET;
THENCE NORTHERLY AND PARALLEL TO THE WESTERLY BOUNDARY LINE OF SAID SUBDIVISION, 158 FEET;
THENCE EASTERLY AND PARALLEL TO THE SOUTH BOUNDARY LINE OF SAID SUBDIVISION, 8 FEET;

Haven Apartments
November 18, 2022
Page 3

THENCE NORTHERLY AND PARALLEL TO THE WEST BOUNDARY LINE OF SAID SUBDIVISION,
92 FEET;
THENCE WESTERLY AND PARALLEL TO THE SOUTHERLY BOUNDARY OF SAID SUBDIVISION,
150 FEET;
THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY LINE OF SAID SUBDIVISION, 250
FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION CONVEYED TO KITSAP COUNTY AS DISCLOSED BY AUDITOR'S FILE
NO. 9205080054;

SITUATE IN THE COUNTY OF KITSAP, STATE OF WASHINGTON.

Legal description is from Statutory Warranty Deed recorded under Auditor's File No.
202007200376.

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Haven Apartments
Job No. 2155-001-020
November 21, 2022

EXHIBIT B

LEGAL DESCRIPTION FOR RIGHT OF WAY DEDICATION

That portion of the northwest quarter of the northwest quarter of Section 11, Township 23 North, Range 1 East, W.M., in Kitsap County, Washington, lying easterly of Sidney Road S.W., southerly of S.W. Hovde Road and westerly of SR 16 which lies westerly and northerly of the following described line:

COMMENCING at the northwest corner of said Section 11;

THENCE along the west line of said northwest quarter, S 02°26'27" W, 1073.26 feet;

THENCE S 87°33'33" E, 30.00 feet to the easterly margin of Sidney Road S.W. AND the TRUE POINT OF BEGINNING;

THENCE continuing S 87°33'33" E, 18.00 feet to the east line of the west 48 feet of said northwest quarter;

THENCE along said east line, N 02°26'27" E, 630.33 feet to a point of curvature;

THENCE easterly 60.08 feet along the arc of a non-tangent curve to the right, having a radius of 42.50 feet, the radius point of which bears S 28°35'58" E, through a central angle of 80°59'53" to a point of tangency;

THENCE S 37°36'05" E, 23.30 feet to a point of curvature;

THENCE southeasterly 148.46 feet along the arc of a tangent curve to the left, having a radius of 222.50 feet, through a central angle of 38°13'48" to a point of tangency;

THENCE S 75°49'53" E, 36.80 feet to a point of curvature;

THENCE easterly 2.70 feet along the arc of a tangent curve to the left, having a radius of 18.00 feet, through a central angle of 08°35'54" to a point of tangency;

THENCE S 84°25'47" E, 5.90 feet to a point of curvature;

THENCE easterly 1.91 feet along the arc of a tangent curve to the left, having a radius of 18.00 feet, through a central angle of 06°04'46" to a point of tangency;

Haven Apartments
November 18, 2022
Page 2

THENCE N 89°29'27" E, 17.37 feet to a point of curvature;

THENCE easterly 6.55 feet along the arc of a tangent curve to the right, having a radius of 50.00 feet, through a central angle of 07°30'03" to a point of tangency;

THENCE S 83°00'30" E, 224.35 feet to a point of curvature;

THENCE easterly 225.30 feet along the arc of a tangent curve to the right, having a radius of 527.50 feet, through a central angle of 24°28'17";

THENCE N 31°27'47" E, 2.5 feet, more or less, to the southerly margin of S.W. Hovde Road AND the terminus of this line.

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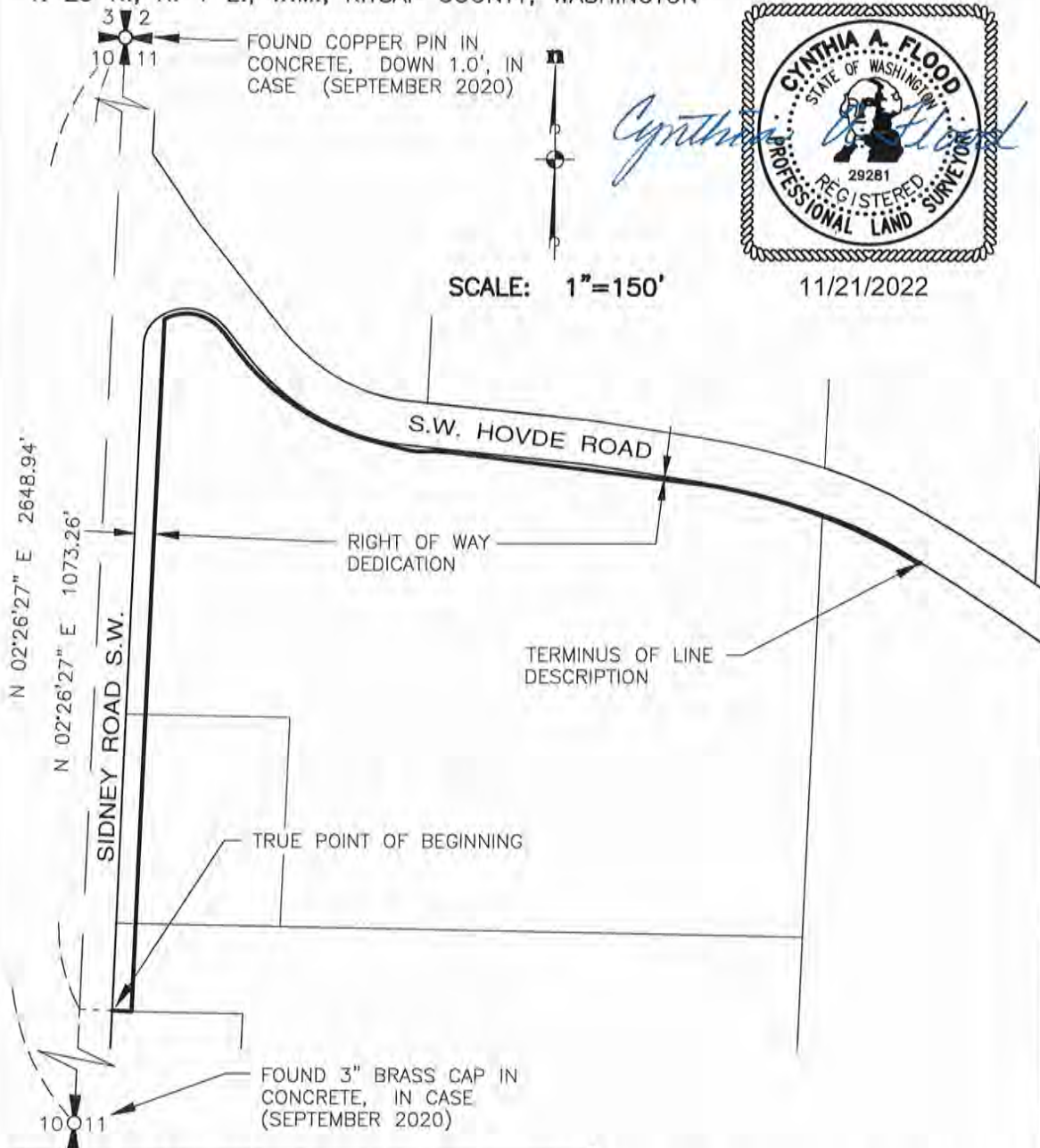


11/21/2022

EXHIBIT C

TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE NW 1/4 OF THE NW 1/4 OF SECTION 11,
T. 23 N., R. 1 E., W.M., KITSAP COUNTY, WASHINGTON



ESM	CONSULTING ENGINEERS LLC	
	33400 8th Ave S, Suite 205 Federal Way, WA 98003	
www.esmcivil.com		FEDERAL WAY (253) 838-6113 LYNNWOOD (425) 297-9900
Civil Engineering Public Works	Land Surveying Project Management	Land Planning Landscape Architecture

JOB NO. 2155-001-020
DRAWING NAME : SR-01
DATE : 2022-11-21
DRAWN : CAF



Agenda Staff Report

Agenda Item No.:	<u>Business Item 7D</u>	Meeting Date:	<u>March 28, 2023</u>
Subject:	<u>Approval of a Resolution Adopting Hiring</u>	Prepared by:	<u>Debbie Lund</u>
	<u>Personnel Policies Related to the City's</u>		<u>HR Director</u>
	<u>Practices</u>	Atty Routing No.:	<u>366922-0008</u>
		Atty Review Date:	<u>03/13/2023</u>

Summary: Human Resources continues to review existing City personnel policies and, when appropriate, makes recommendations for revisions and adoption of new policies. In the past couple years, several City employees have changed positions for various reasons. The policies for your consideration tonight are to document the City’s practices related to movement of employees in cases of promotion, demotion, transfers, reclassifications, and temporary assignments. In addition, the proposed policies document the City’s current practice related to implementation of pay range adjustments.

The proposed policies document current practices related to promotions, reclassifications, pay range adjustments, and temporary assignments. Policies related to demotions and transfers have not been needed in the past four years but are proposed to document the City’s intentions before those situations arise.

These proposed policies were shared with City staff and the union representatives on Friday, March 10, 2023.

Recommendation: In support of the Council’s guiding principal to “raise the bar” staff recommends the City Council adopt the attached resolution adopting personnel policies related to promotions, demotions, transfers, reclassifications, pay range adjustments and temporary assignments.

Relationship to Comprehensive Plan: N/A

Motion for consideration: “I move to adopt a Resolution, amending personnel policies related to promotions, demotions, employee transfers, position reclassifications, pay range adjustments and temporary assignments as presented.”

Fiscal Impact: Any pay range adjustments or position changes that have budget impacts which would need to be approved by the council separately.

Alternatives: Do not approve the Resolution and provide alternative guidance.

Attachments: Resolution and Exhibit A

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON,
ADOPTING PERSONNEL POLICIES RELATED TO PROMOTIONS,
DEMOTIONS, TRANSFERS, RECLASSIFICATIONS, PAY RANGE
ADJUSTMENTS AND TEMPORARY ASSIGNMENTS**

WHEREAS, the Human Resources Department continues to review and, where appropriate, recommend modifications and additions to personnel policies; and

WHEREAS, Chapter 3 of the City's Personnel Policy manual addresses the hiring practices of the City; and

WHEREAS, as the number of employees at the City continues to grow, more and more employees will have opportunities to change positions within the City; and

WHEREAS, the City has a well-established practice of conducting and implementing salary studies for non-represented employees; and

WHEREAS, based on this, the City desires to create policies related to employee promotions, demotions, transfers between positions, reclassification of positions, and appointment to temporary or acting positions; 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: Personnel policies related to promotions, demotions, transfers, reclassifications, pay range adjustments and temporary assignments are hereby adopted in substantially the same form as attached hereto as Exhibit A. The Mayor is directed to incorporate these new policies into the City's existing Personnel Policy Manual and take all necessary steps to implement these policies.

THAT: In accordance with Resolution 034-10, the Mayor has the authority to amend the personnel policies and procedures, including those adopted by this Resolution, as needed with notification to the City Council.

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 March 2023.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

Exhibit "A"

NEW POLICY to address salary upon promotion

3.11 PROMOTIONS

A promotion is an appointment to a position which has a higher maximum salary rate than the employee's present position. When an employee is promoted, the Mayor or designee has the discretion to determine the entry point of the new range based on the qualifications of the employee. Generally, the City strives for a minimal 5% increase between the employee's present pay rate and the assigned salary step within the new position's salary range. When, at the time of the promotion, the employee is within one (1) month of an anticipated step date in their present position, the employee's pay is assumed to be at the higher step before the promotional pay rate is established. The next step increase date, if any, will be reset based upon the employee's promotion date.

NEW POLICY to address salary upon demotion

3.12 DEMOTIONS

A demotion is a voluntary or involuntary appointment to a position which has a lower maximum salary rate than the employee's present position. When a demotion occurs, the department manager will recommend to the Mayor a salary for the demoted employee within the salary range of the lower classification which is less than or equal to the employee's present salary. The next step increase date, if any, will be reset based upon the employee's demotion date.

NEW POLICY to address salary upon transfer from one position to another with the same pay range

3.13 TRANSFERS

A transfer is a voluntary or involuntary appointment to a position which has a salary range identical to that of the employee's present position. When a transfer occurs the employee retains their current placement within the salary range. There is no change or adjustment to the timing of the employee's next scheduled step increase date, if any.

NEW POLICY to address salary upon Reclassification of a Position

3.14 RECLASSIFICATIONS

A reclassification may occur when the duties and responsibilities of an existing classification are changed based on an analysis of the employee's written job description compared to actual job requirements. Department Directors must, in consultation with Human Resources, request the reclassification in writing to the Mayor or designee. The Mayor or designee will determine whether the present classification is correct or whether a reclassification is necessary.

- A. When a reclassification occurs, an employee occupying the position may be retained in the position, provided that the Mayor, or designee, determines that the reclassification results from an official recognition of a change in duties and responsibilities which has already occurred and which has historically been performed by the employee in that position.
- B. If the reclassification results in a higher maximum salary, this constitutes a promotion and the rules governing promotion with regard to salary apply. If the reclassification results in a lower maximum salary, this constitutes a demotion and the rules governing demotion with regard to salary apply.
- C. Nothing in this policy is to be interpreted as restricting a supervisor from assigning an employee of one classification to perform some of the duties of a higher or lower classification for a limited period of time.

NEW POLICY to address handling of pay range adjustments

3.15 PAY RANGE ADJUSTMENTS

The City strives to provide competitive salaries in the marketplace for purposes of recruitment and retention. From time to time the City will conduct a comprehensive salary study to review the established salary range of positions. Department Directors may request a review of individual position salaries when the Director has reason to believe that the current salary range is out of market. Such requests must be submitted to the Mayor, or designee, with a written justification for the request. At the direction of the Mayor, Human Resources will conduct or arrange for the salary review.

- A. If a salary adjustment is warranted and the adjustment results in a higher pay range, the employee's salary will be adjusted to the same step on the newly established pay range.
- B. If a salary adjustment is warranted and the adjustment results in a lower salary range, the employee's salary will be frozen in place until the pay range catches up to the employee's pay. Until that time, the employee is not eligible for step or cost of living increases. Once the pay range exceeds the employee's frozen pay rate, the employee will be placed on the top step of the approved pay range as soon as the pay range becomes applicable to the position.
- C. Nothing in this policy is to be interpreted as restricting a supervisor from assigning an employee of one classification to perform some of the duties of a higher or lower classification for a limited period of time.

NEW POLICY to address salary upon transfer from one position to another with the same pay range

3.16 TEMPORARY OR “ACTING” ASSIGNMENTS

When the need arises to fill a position due to an approved leave of absence, disciplinary actions or when a vacancy exists, a current regular status employee may be appointed to an “acting” position with a higher pay range. Such appointments are for a limited time to fill a temporary vacancy. Employees will not attain regular status in the higher position from the acting appointment and will be returned to their previous position. No introductory period is required for an acting appointment.

An employee assigned an “acting” appointment status will be compensated in the higher pay range in a manner similar to that of promotion. However, any pending or scheduled step increases will not be considered when placed within the new pay range. The employee will remain eligible for a step increase, if any, based upon their placement date into their present position (before assignment to an “acting” position).

If the employee is later promoted into the higher paid position, the timing of the employee’s next step increase, if any, will be determined based off the date of their assignment into the same “acting” position. The employee will serve an introductory period based off the date of appointment to the regular (non-acting) position.

Nothing in this policy is to be interpreted as restricting a supervisor from assigning an employee of one classification to perform some of the duties of a higher or lower classification for a limited period of time without placing them in an official “acting” capacity.



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 7E

Subject: Adoption of a Resolution Approving a Contract
With KR Homes, LLC for the Sroufe Water Main
Replacement Project

Meeting Date: March 28, 2023

Prepared by: Tony Lang
Public Works Director

Atty Routing No: 366922-0009 – PW

Atty Review Date: 03/23/2023

Summary: The City identified the need to replace the water main on Sroufe St. between Sidney Ave. and Tacoma Ave., referred to as the Sroufe Water Main Replacement Project. The City budgeted for this water main replacement project in the 2023-2024 Biennial Budget. By this Resolution, the City Council would authorize the Mayor to execute a contract with KR Homes, LLC for the Sroufe Water main Replacement Project (the “Project”).

Pursuant to the City’s Procurement Policies and Procedures, Resolution No. 036-22, Section 5 Bid Procedures, the City’s Public Works Department prepared an Invitation to Bid for this Project and solicited bids in the Kitsap Sun and Daily Journal of Commerce on December 16, and December 23, 2022. On December 16, 2022, staff also uploaded the bid documents to the Washington Builder’s Exchange and the City’s Webpage. On January 18, 2023, by the 11:00 am bid deadline, the City Clerk received eleven (11) sealed bids. After confirming that there were no objections made and that there were no challenges to the Public Opening process, the eleven (11) sealed bids were opened and read aloud by the City Clerk. Bids that were received prior to the January 18, 2023, 11:00 am deadline and read aloud at the bid opening were as follows:

<i>Name of Contractor</i>	<i>Bid Total</i>
HCon, Inc.	\$390,480.09
Diversified Holdings NW	\$415,222.59
New X, Inc.	\$400,220.50
Marwood General Construction	\$407,883.84
Reed Trucking & Excavating, Inc.	\$358,222.41
Ceccanti, Inc.	\$589,736.78
Pape & Sons Construction, Inc.	\$336,475.23
NW Cascade, Inc	\$460,824.00
Tucci & Sons, Inc	\$437,321.43
KR Homes, LLC	\$317,542.68
Irish Brothers, LLC	\$498,514.58

The City Clerk prepared a Bid Tabulation form and the Public Works Department prepared the Bid Evaluation form (including applicable taxes, labor, equipment, material, and fees). It was determined that

the lowest qualified, responsible, and responsive bid was provided by KR Homes, LLC. On January 25, 2023, the City’s Public Works Department Staff completed the MRSC Mandatory Bidder Responsibility Checklist and confirmed that KR Homes, LLC’s bid of \$317,542.68 was the lowest qualified, responsible, and responsive bid. The Public Works Department also reviewed all materials and confirmed that the bidding requirements for this public work have been followed.

Recommendation: Staff recommends that the City Council adopt Resolution No. 004-23, thereby approving Contract No. C125-22 with KR Homes, LLC for the Sroufe Water Main Replacement Project contract in the amount of \$317,542.68 (applicable taxes included).

Relationship to Comprehensive Plan: Chapter 7 Utilities

Motion for Consideration: I move to adopt Resolution No. 004-23, thereby approving Contract No. C125-22 with KR Homes, LLC for the Sroufe Water Main Replacement Project in the amount of \$317,542.68.

Fiscal Impact: Sroufe Water Main Replacement is budgeted in the 2023-2024 Biennial Budget. (413.05.594.34.60)

Alternatives: Do not approve

Attachments: Resolution No. 004-23
Contract No. C125-22

RESOLUTION NO. 004-23

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING
CONTRACT NO. C125-22 WITH KR HOMES, LLC FOR THE SROUFE WATER MAIN
REPLACEMENT PROJECT AND DOCUMENTING PROCUREMENT PROCEDURES**

WHEREAS, the City identified the need to replace the water main on Sroufe St. between Sidney Ave. and Tacoma Ave., referred to as the Sroufe Water Main Replacement Project (the “Project”); and

WHEREAS, the City budgeted for this water main replacement project in the 2023-2024 Biennial budget; and

WHEREAS, pursuant to the City’s Procurement Policies and Procedures, Resolution No. 036-22, Section 5 Bid Procedures, the City’s Public Works Department prepared an Invitation to Bid for this Project and advertised in the Kitsap Sun and Daily Journal of Commerce on December 16, 2022, and December 23, 2022; and

WHEREAS, on December 16, 2022, staff also uploaded the bid documents to the Washington Builder’s Exchange and the City’s Webpage for the Project; and

WHEREAS, on January 18, 2023, by the 11:00 am bid deadline, the City Clerk received eleven (11) sealed bids; and

WHEREAS, after confirming that there were no objections made and that there were no challenges to the Public Opening process, the eleven (11) Sealed Bids were opened and read aloud by the City Clerk; and

WHEREAS, the City Clerk prepared a Bid Tabulation form and the Public Works Department prepared a Bid Evaluation resulting in an initial determination that the lowest qualified, responsible, and responsive Bid was provided by KR Homes, LLC; and

WHEREAS, on January 25, 2023, the City’s Public Works Department completed the MRSC Bidder Responsibility Checklist for KR Homes, LLC and confirmed that KR Homes, LLC submitted the lowest qualified, responsible, and responsive Bid, and further confirmed that all applicable bidding procedures were followed for this Project; and

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

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

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

THAT: The City Council approves and authorizes the Mayor to execute Contract No. C125-22 with KR Homes, LLC for the Sroufe Water Main Replacement Project.

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

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage on this 28th day of March 2023.

Robert Putaansuu, Mayor

ATTEST:

City Clerk, Brandy Wallace, MMC

CONTRACT
CITY OF PORT ORCHARD
SROUFE WATER MAIN REPLACEMENT
CONTRACT NO. C125-22

THIS CONTRACT ("Contract") is made and entered into this 14th day of March 2023, 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 KR Homes, LLC 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, **SROUFE WATER MAIN REPLACEMENT**. The Contractor further agrees to perform all such work for the Contract Price stated in the Contractor's Bid Proposal dated January 16, 2023, 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 2023 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 January 16, 2023, together with the Instructions to Bidders.

Exhibit B – The Project Manual for the **SROUFE WATER MAIN REPLACEMENT**.

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.

B. Time of Completion.

Time is of the essence of this Contract. It is agreed that the work covered by this Contract shall start within 14 calendar days after Notice to Proceed is issued and that all construction shall be complete within **65 working days** after the Notice to Proceed Date.

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, 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 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

Three hundred thousand five hundred forty Dollars (\$ 317,542.⁶⁸) with
Markel Insurance as Surety, to ensure ^{two} 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.

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 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

By: _____
Robert Putaansuu, Mayor

CONTRACTOR

By: KR Homes, Kurt Reddig
Title: President
Address: 152 Ewelon Rd S
Toledo, WA 98591

ATTEST:

Brandy Wallace, MMC, City Clerk

APPROVED AS TO FORM:

Charlotte Archer, City Attorney

NOTICES TO BE SENT TO:

CONTRACTOR:

NAME Kurt Reddig
ADDRESS 152 Ewelon Rd S Toledo WA
TELEPHONE 360 903 7700
Email KURT @ KR.HOMES.ORG

CITY:

K. Chris Hammer, P.E., City Engineer
216 PROSPECT STREET, PORT ORCHARD, WA 98366
(360) 876-4991
publicworks@portorchardwa.gov

With a copy to the City Clerk at the same address



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

Agenda Staff Report

Agenda Item No.:	Business Item 7F	Meeting Date:	March 28, 2023
Subject:	Adoption of a Resolution Authorizing the	Prepared by:	Charlotte Archer
	Payment of Reestablishment and		City Attorney
	Relocation Benefits for Venture Charters,	Atty Routing No:	366922-0009 – PW
	Inc., for the Bay Street Pedestrian Pathway	Atty Review Date:	N/A
	Project		

Summary: The City’s Right of Way Acquisition and Relocation Consultant, Tierra Right of Way Services, Ltd., in conjunction with the City, identified Kitsap County Tax Parcel Nos. 4027-032-001-0102 and 4027-023-018-0003 (the “Property”) as a necessary acquisition for the Bay Street Pedestrian Pathway Project. Those parcels served as both a primary residence as well as the headquarters of Venture Charters, Inc. (the “Business”), a business owned and operated by Randy Jones and Franklin Joseph Rusk. The viability of the business was verified by Tierra Right of Way via income tax statements. The City purchased the Property in 2022, and the Business has now relocated. Pursuant to WAC 468-100-306, the business is entitled to re-establishment benefits for costs actual, reasonable, and necessary to establish the business in a new location, including repairs or improvements to the replacement real property, reinstalling business equipment, and associated work, up to a statutory cap of \$50,000. Under 468-100-301(4), the Business is entitled to relocation benefits for the costs to move the personal property of the business through either a commercial move or a self-move. The City Council previously authorized eligible business moving costs of \$7,743.84 (\$1,100 for packing materials and equipment; \$5,193.84 for labor; \$575 for truck rental; and \$875 for junk removal). Per WAC 468-100-301(7)(c) Venture Charters is now requesting reimbursement for additional moving costs to reconnect the hot tub (\$250 for installation, and \$800 for plumbing), refrigerator and microwave (installation related work \$1,400) moved from the acquired site and now being installed at the replacement site (\$2,450, plus tax) for a total additional moving claim of \$2,670.50.

Tierra has determined the business re-establishment and moving expenses as a component of the Business’ relocation benefits in accordance with Resolution No. 028-16 (Right-of-Way Acquisition Procedures) and the City’s Relocation Assistance Program. On October 10, 2022, the Community Development Director executed the Agent Move Estimate Recommendations, subject to Council approval.

Please note: all expenditures associated with the Bay Street Pedestrian Pathway Project have been identified within the Project Funding Estimate (PFE) and are Grant eligible. ***Additionally, additional moving expense claims are possible.***

Relationship to Comprehensive Plan: Chapter 8 - Transportation

Recommendation: Staff recommends Council approve payment of up to \$50,000 for business re-establishment and \$2,670.50 for additional moving expenses for the relocation of Venture Charters, LLC, as part of the Bay Street Pedestrian Pathway Project.

Motion for Consideration: I move to authorize the payment of \$52,670.50 for eligible relocation and reestablishment benefits for Venture Charters, LLC, as part of the Bay Street Pedestrian Pathway Project.

Fiscal Impact: Grant and Local Match funding for this acquisition expenditure is allocated within the Project Funding Estimate (PFE) for the Project and the 2021-2022 Biennial Budget.

Alternatives: None

Attachments: Resolution
Tierra Memo and supporting documents

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE PAYMENT OF MOVING EXPENSES FOR VENTURE CHARTERS, INC., AS ELIGIBLE RELOCATION BENEFITS FOR THE BAY STREET PEDESTRIAN PATHWAY PROJECT, AND AUTHORIZING THE MAYOR TO EXECUTE ALL NECESSARY DOCUMENTS TO EFFECTUATE PAYMENT

WHEREAS, the City previously acquired real property at 1777 Bay Street, Kitsap County Tax Parcel Nos. 4027-032-001-0102 and 4027-023-018-0003 (the "Property") to support the construction of the Bay Street Pedestrian Pathway Project (the "Project"); and

WHEREAS, prior to the City's acquisition, the Property served as the corporate headquarters for the business Venture Charters, Inc. (the "Business"); and

WHEREAS, in accordance with the City's Acquisition Procedures and Relocation Assistance Program, the City's Right of Way Acquisition and Relocation Consultant, Tierra Right of Way Services, Ltd., identified the eligible associated moving expenses resulting from the relocation of the Business; and

WHEREAS, the consultant has identified the requisite relocation assistance benefits owing to the Business, and staff has reviewed and approved those determinations, in conjunction with the Washington State Department of Transportation, Local Programs, serving as Contract Administrator for the Project; and

WHEREAS, the Port Orchard City Council finds it is in the best interest of the City to authorize the relocation payment consistent with the City's Relocation Assistance Program; now, therefore,

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

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

THAT: The City Council authorizes the payment of Relocation Benefits for moving expenses in the amount of \$7,743.84, as set out in Voucher No. 1 incorporated herein by this reference, and authorizes the Mayor or his designee to execute all necessary documents to effectuate payment.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage on this 28th day of March 2023.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk



To: Nick M. Bond, AICP, Development Director

From: Leslie Findlay, ROW Operations Manager
Marge Bailey, Project Manager
Paula Ferreira-Smith, Relocation Agent

Date: March 20, 2023

Project Title: City of Port Orchard Pedestrian Enhancement Project (Mosquito Fleet Trail)
Parcel No.: 4027-032-001-0102 & 4027-023-018-0003
Displacee: Venture Charters, Inc., Business Relocation
Federal Aid No: STPE-STPUS-0166(008)
Displacee No.: 05
Subject: Replacement Site Reestablishment and Moving Expense Recommendation

Background Information

As part of the Bay Street Pedestrian Project. The City of Port Orchard purchased the above properties in full. This acquisition triggered a business displacement and residential relocation. Venture Charters, Inc. is a day tour fishing business offering special event cruises and funeral charter boat services. They also offer vacation rental with waterfront access. It is owned and operated by Randy Jones and Franklin Joseph Rusk.

To qualify for business relocation, the displaced business owner is required to meet the definition of a displaced business by providing a completed copy of the most recent two years income tax. The displaced business has provided a completed copy of the most recent two years income tax that confirm they claim the business income, therefore they qualify as a displaced business and are eligible for business reestablishment and moving expenses.

The displaced business, Venture Charters, Inc. moved to a replacement site at 1116 Shorewood Drive, Bremerton, WA. The replacement site contains an area for an Accessory Dwelling Unit (ADU). The ADU will be in the lower level of the owner's single-family dwelling. The displacee searched extensively for a home with an ADU but was unable to find one suited for their business. Utilizing their reestablishment is it reasonable for the displacee to modify this home to reestablish Venture Charters vacation rental property. After months of searching, both by the agent and the owner, the displacee was only able to obtain bids from two companies for the asphalt requirements and one for the required modifications. The displacee requested bids and was only able to obtain one estimate for repairs and the modifications required by code to make the downstairs an ADU dwelling.

Bid Number 1: Received August 4, 2022, from Hedera LLC, estimated cost of repairs and modifications required by code for an ADU, the bid provided by the local contractor in the estimated amount of \$60,780.65. The bid was not detailed enough.

Bid number 2: Received September 29, 2022, from Hedera LLC, was another estimate from the same contractor for the cost of repairs in the amount of \$41,550.60.

Bid Number 3: Received January 25, 2023, from Agate Asphalt, in the amount of \$19,575.19 for the parking lot and driveway repairs only.

Bid Number 4 & 5: Received February 6, 2023, from Hedera LLC, in the amount of \$61,332.39, expired 2/4/23. I let the displacee and the contractor know that the bid expired and obtained an updated bid that expires on 3/17/2023. The bid is attached and has been detailed with the citations that apply to those items that are considered eligible.

Bid Number 5 Analysis and Recommendation:

The displaced business is eligible to receive eligible reestablishment up to the \$50,000 statutory maximum and unlimited moving expenses, based on actual, reasonable, and necessary.

Per WAC 468-100-306(1)(a) – *Repairs or improvements to the replacement real property as required by federal, state, or local law, code, or ordinance and Bremerton Municipal Code, 20.46.010 Accessory Dwelling Unit, the following items are recommended for reimbursement.*

- Lower-level interior door opening
- Elimination lower stairway and close stairway for fire egress
- Lower-level interior sheet rock adaptation to 5/8 fire blocking
- Electrical – Box panel separation sub panel
- Electrical supply to lower level
- Parking Equipment rental for parking code update
- Transportation and traffic control
- Building and electrical permits
- Parking & Pavement
- Removal and disposal of all material waste for code updates

Per WAC 468-100-306(1)(d) – *Redecoration or replacement of soiled or worn surfaces at the replacement site.*

- Labor for painting
- Interior paint and repairs, paint, and drywall
- Flooring repairs

Per WAC 468-100-301(7)(c) - *Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by federal, state or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property (expenses for providing utilities from the right of way to the building or improvement are excluded).*

- Electrical repair code change requirements for refrigerator, stove and microwave moved from displacement site.
- Hot tub to lower-level unit installation of provided used hot tub
- Plumbing water intake drainage for hot tub, electrical 220 supply for hot tub

For the business to be eligible to receive business reimbursement payments, it would be necessary for the displacee to submit invoices, proof of payments, receipts, and pass inspections performed by the Relocation Agent. Once received, the supporting documentation will be verified prior to submitting for payment request to the Agency.

Attached to this estimated bid request are the following documents:

- Bid Analysis
- Photos of replacement site (before modifications)
- Bids Received
- City of Bremerton ADU Guidebook with link to the Bremerton Municipal Code

The undersigned has reviewed and approved the above business reestablishment in the amount of \$50,000 and moving expense in the amount of \$2,670.50 recommendation for Venture Charter based on the attached bid analysis.

Nick M. Bond, AICP
Development Director
City of Port Orchard

Date



Hedera LLC dba Murphy's Heating and Cooling
1313 Corbet Dr Nw
Bremerton, WA 98312
3609574605
murphhvac@msn.com

ADDRESS

[A]

Estimate 1782

DATE 02/17/2023

EXPIRATION DATE 03/17/2023

ACTIVITY	AMOUNT
Door to kitchen	800.00T
Door and Frame Removal lower-level hardware to be provided by business owner Randy Jones	
Lower-level interior door opening code requirements WAC 468-100-306(1) (a)	250.00T
Elimination lower stairway	2,800.00T
Close up stairway for fire egress code WAC 468-100-306(1) (a)	
Lower-level interior sheet rock adaption to 5/8 fire blocking for business code updates. WAC 468-100-306(1) (a)	7,500.00T
Eliminate the existing HVAC system. Create separate HVAC system installation of new HVAC provided by business owner Randy Jones.	4,000.00T
Counter	400.00T
Interior counter installation	
LABOR-	600.00T
plumbing repair code requirements	
Electrical-	5,000.00T
Box Panel separation sub panel WAC 468-100-306(1) (a)	
Electrical	2,000.00T
Electrical supply to lower level WAC 468-100-306(1) (a)	
Electrical repair code change requirements for refrigerator stove and microwave. WAC 468-100-301(7) (c)	1,400.00T
Sink	800.00T
plumbing, supplies and drains for sink connection.	
Labor for painting WAC 468-100-306(1) (d)	600.00T
Interior paint and repairs	500.00T
paint, for drywall WAC 468-100-306(1) (d)	
Flooring repairs WAC 468-100-306(1) (d)	1,500.00T
Parking	2,500.00T
Equipment rental for parking code update per city of Bremerton business requirements. WAC 468-100-306(1) (a)	
Transportation and	900.00T
Traffic control for delivery of materials and equipment WAC 468-100-306(1) (a)	

ACTIVITY		AMOUNT
Hot Tub to lower-level unit installation of provided used hot tub	WAC 468-100-301(7) (c)	250.00T
Plumbing water intake drainage for hot tub Electrical 220 supply for hot tub	WAC 468-100-301(7) (c)	800.00T
REMOVAL AND DISPOSAL OF- all material waste for construction code updates	WAC 468-100-306(1) (a)	600.00T
Building and electrical permits for lower unit code updates	WAC 468-100-306(1) (a)	2,500.00T
Parking Bremerton municipal code 20.48 Relocation of retaining wall right of entrance and addition of 2 feet of left side to expand driveway entrance for emergency vehicle access. - Install +/- 16 LF of channel drain approximately 2' feet out from garage and 2 tenths lower than garage slab - Tie into downspout with 4" line at garage corner - Remove +/- 150 Sq Ft ,10' X 15", of asphalt in driveway - Load spoils and dispose at recycle - Raise water meter box at top of driveway - Grade and shape existing gravel to desired slope - Install top course as needed up to 5 tons	WAC 468-100-306(1) (a)	7,668.25T
PAVE for Venture Charters parking only. parking left side of garage, entrance to property, and center of driveway +/- 3,100 Sq Ft - Install and process 2" of HMA class 1/2" commercial grade up to 40 tons - Hand tamp and finish edges - Shore up gravel shoulders - Hat tar seams as needed	WAC 468-100-306(1) (a)	12,000.00T
Contractor Administrative fee	WAC 468-100-306(1) (a)	300.00T
Driving and transportation fuel costs for 2 trucks	WAC 468-100-306(1) (a)	600.00T
BIDS ARE ONLY VALID FOR 30 DAYS DUE TO LABOR AND MATERIAL SHORTAGS. IF ACCEPTED INVOICE TO BE SUBMITTED UPON COMPLETION OF REPAIRS AND CITY APPROVAL. ALL LATE PAYMENTS ARE SUBJECT TO 7.5% FEE.		0.00T
Reestablishment:	\$47,218.25 x 9%tax (\$4,249.64) = \$51,467.89	
Moving:	\$2,450.00 x 9%tax (\$220.50)=\$2,670.50	
	SUBTOTAL	56,268.25
	TAX	5,064.14
	TOTAL	\$61,332.39

Accepted By

Accepted Date



Hedera LLC dba Murphy's Heating and Cooling
 1313 Corbet Dr Nw
 Bremerton, WA 98312 US
 3609574605
 murphhvac@msn.com

Estimate

ADDRESS

[A]
 [REDACTED]
 [REDACTED]

ESTIMATE #	DATE	
1727	08/04/2022	

DATE	ACTIVITY	QTY	RATE	AMOUNT
	SALES:REMODELING CONSTRUCTION:SINK KITCHEN SINK	1	650.00	650.00T
	SALES:REMODELING CONSTRUCTION:EXHAUST FAN VENT AND DUCTING FOR EXHAUST FOR KITCHEN vent hood and ducting	1	1,250.00	1,250.00T
	SALES:REMODELING CONSTRUCTION:CABINETS CABINETS FOR kitchen sink and storage	1	2,500.00	2,500.00T
	MISC shelving for upper kitchen storage	1	0.00	0.00T
	light lighting fixtures for remodel	1	1,000.00	1,000.00T
	plumbing installs all plumbing fixtures install for kitchen drains and supply lines	1	2,800.00	2,800.00T
	Electrical Electrical for new kitchen	1	6,400.00	6,400.00
	SALES:REMODELING CONSTRUCTION:Windows Remove and replace windows with low e double glazed argon colonel style vinyl window for egress code	1	4,000.00	4,000.00T
	SALES:REMODELING CONSTRUCTION:FRAIMNG	1	2,000.00	2,000.00T

DATE	ACTIVITY	QTY	RATE	AMOUNT
	FRAMING remove utility wall and rebuild for new kitchen access			
	appliances appliances for new construction stove refrigerator single drawer dishwasher	1	4,000.00	4,000.00T
	SALES:REMODELING CONSTRUCTION:DRYWALL DRYWALL SQUARE FEET	440	6.50	2,860.00T
	SALES:REMODELING CONSTRUCTION:PAINTING PAINTING LINEAR FEET	440	6.52	2,868.80T
	SALES:REMODELING CONSTRUCTION:FLOORING FLOORING	200	5.25	1,050.00T
	Vinyl flooring install Instalation of vinyl plank flooring per sq foot.	200	12.00	2,400.00T
	Rentals all equipment rentals with fuel charge	1	1,000.00	1,000.00T
	SALES:REMODELING CONSTRUCTION:LABOR LABOR HOURS	144	65.00	9,360.00
	SALES:REMODELING CONSTRUCTION:MATERIAL MATERIALS FOR REMODELING railing for beach access 60 steps 7 landings 90 ft	90	125.00	11,250.00T
	SALES:REMODELING CONSTRUCTION:DEMOLITION DEMOLITION, REMOVAL AND DISPOSAL OF	1	500.00	500.00T
	Building permits Building permits for new construction project.	1	1,200.00	1,200.00

SUBTOTAL 57,088.80

TAX 3,691.85

TOTAL **\$60,780.65**

Accepted By

Accepted Date



Hedera LLC dba Murphy's Heating and Cooling

1313 Corbet Dr Nw
Bremerton, WA 98312
(360) 957-4605
murphhvac@msn.com

E timate

ADDRESS

[A]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ESTIMATE
DATE

1751
09/29/2022

ACTIVITY	AMOUNT
LABOR Door and Frame Removal lower-level	800.00T
Lower level interior door opening code requirements	250.00T
LABOR- window and frame removal lower level	300.00T
Lower-level interior window code requirements opening fire egress and exit safety	2,500.00T
patchwork window frame lower-level code requirements for fire egress	500.00T
LABOR- interior counter instillation	350.00T
LABOR- plumbing repair code requirements	600.00T
LABOR- electrical repair code change requirements repairs. for refrigerator, stove microwave	2,400.00T
MATERIALS- plumbing, wiring, sink connection	800.00T
LABOR- labor interior paint	500.00T
MATERIALS- paint and repairs, drywall	600.00T
LABOR-flooring	1,000.00T
MATERIALS flooring repair	2,000.00T
driveway parking access modification for ADA code requirements	8,000.00T
Equipment rental for ADA code updates to driveway	2,000.00T
LABOR- For ADA code updates to driveway	3,500.00T
LABOR- gravel distribution for ADA parking	800.00T

MATERIALS-	2,500.00T
gravel for ADA driveway	
TRANSPORTATION-	900.00T
delivery of materials for ADA driveway	
LABOR-	600.00T
outdoor fire pit area	
hardware, Fastners, wire, wire nuts, nuts, bolts, staples, connectors, flue, standoffs, cable, pigtails, stackers, acorn, and conduit	4,000.00T
LABOR-	250.00T
hot tub instillation	
LABOR-	800.00T
electrical repair for code requirements for hot tub instillation	
REMOVAL AND DISPOSAL OF-	600.00T
all material waste for ADA code updates	
processing fee	300.00T
Building and electrical permits for code compliance project.	1,200.00T
<hr/>	
SUBTOTAL	38,050.00
TAX	3,500.60
<hr/>	
TOTAL	\$41,550.60

Accepted By

Accepted Date



16330 State Hwy 305 NE, Ste 200
 Poulsbo, WA. 98370
 (360) 930-8703 Agate Asphalt
 (360) 930-0017 New Line Services
 (360) 824-7161 Fax

Estimate # 10946

Date 1/25/2023

Customer Phone [A]

Estimator TVT

Contractor # AGATEAE85305

Customer Information	Job Site Address
[A] [REDACTED] [REDACTED]	[A] [REDACTED] [REDACTED]

We propose the following:	Qty	Rate	Amount
PREP AND PAVE DRIVEWAY +/- 4,303 SQ FT - Grade area for drainage - Place crushed rock as needed up to (45) tons - Finish grade crushed rock for drainage. - Roll/Compact. - Apply soil sterilant - Place 2" HMA (Hot Mix Asphalt) compacted depth up to (58) Tons - Roll/compact HMA - Hand tamp and shore edges - Apply hot tar to seams - Clean job site at final completion *TRAFFIC CONTROL INCLUDED		17,926.00	17,926.00T
Asphalt pricing based on current WSDOT Oil Index effective 1/3/23 at \$545.00 per liquid ton. At time of paving project, an additional \$1.50 per ton will be added to base bid for every \$25.00 increase in liquid ton price to cover additional asphalt cost.		0.00	0.00

Thank you for the opportunity to earn your business!

***** POTENTIAL OIL PRICE INCREASE BASED OFF WORLD OIL PRICING VOLATILITY HAS LIMITED OUR ABILITY TO MAINTAIN A GUARANTEED PRICE FOR MORE THAN 20 DAYS*****

Subtotal \$17,926.00

Sales Tax (9.2%) \$1,649.19

Total \$19,575.19

**Payment is due upon completion of the job. Final invoice is based on actual measurements.

**Per RCW 60.04 nonpayment for the work done may result in a lien against the property for work and material supplied

**Agate Asphalt cannot guarantee drainage under 2%

**Agate Asphalt will warranty our asphalt work for 2 years unless the prep work involved was done by others. No warranty on grade and gravel.

SEE ATTACHED ADDITIONAL TERMS FOR MORE INFORMATION

Signature _____

Date _____

ACTIVITY	AMOUNT
Hot Tub to lower-level unit installation of provided used hot tub	250.00T
Plumbing water intake drainage for hot tub Electrical 220 supply for hot tub	800.00T
REMOVAL AND DISPOSAL OF- all material waste for construction code updates	600.00T
Building and electrical permits for lower unit code updates	2,500.00T
Parking Bremerton municipal code 20.48 Relocation of retaining wall right of entrance and addition of 2 feet of left side to expand driveway entrance for emergency vehicle access. - Install +/- 16 LF of channel drain approximately 2' feet out from garage and 2 tenths lower than garage slab - Tie into downspout with 4" line at garage corner - Remove +/- 150 Sq Ft ,10' X 15", of asphalt in driveway - Load spoils and dispose at recycle - Raise water meter box at top of driveway - Grade and shape existing gravel to desired slope - Install top course as needed up to 5 tons	7,668.25T
PAVE for Venture Charters parking only. parking left side of garage, entrance to property, and center of driveway +/- 3,100 Sq Ft - Install and process 2" of HMA class 1/2" commercial grade up to 40 tons - Hand tamp and finish edges - Shore up gravel shoulders - Hat tar seams as needed	12,000.00T
Contractor Administrative fee	300.00T
Driving and transportation fuel costs for 2 trucks	600.00T
BIDS ARE ONLY VALID FOR 15 DAYS DUE TO LABOR AND MATERIAL SHORTAGS. IF ACCEPTED INVOICE TO BE SUBMITTED UPON COMPLETION OF REPAIRS AND CITY APPROVAL. ALL LATE PAYMENTS ARE SUBJECT TO 7.5% FEE.	0.00T

SUBTOTAL 56,268.25

TAX 5,064.14

TOTAL \$61,332.39

Accepted By

Accepted Date

**Hedera LLC dba Murphy's Heating and Cooling**

1313 Corbet Dr Nw
Bremerton, WA 98312
3609574605
murphhvac@msn.com

ADDRESS

[A] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

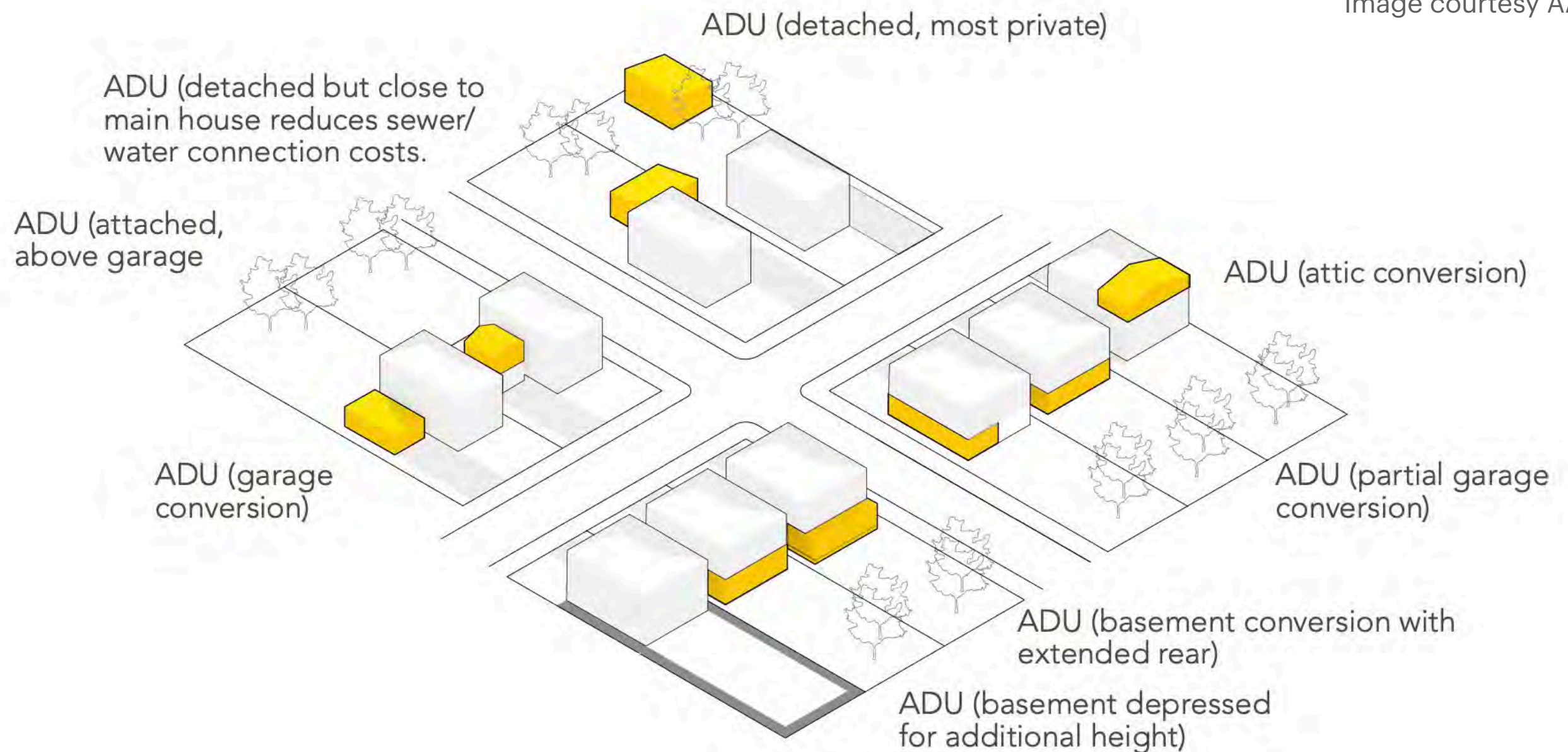
Estimate 1782**DATE** 02/04/2023**EXPIRATION DATE** 02/04/2023

ACTIVITY	AMOUNT
Door to kitchen	800.00T
Door and Frame Removal lower-level hardware to be provided by business owner Randy Jones	
Lower-level interior door opening code requirements	250.00T
Elimination lower stairway	2,800.00T
Close up stairway for fire egress code	
Lower-level interior sheet rock adaption to 5/8 fire blocking for business code updates.	7,500.00T
Eliminate the existing HVAC system. Create separate HVAC system installation of new HVAC provided by business owner Randy Jones.	4,000.00T
Counter	400.00T
Interior counter installation	
LABOR-	600.00T
plumbing repair code requirements	
Electrical-	5,000.00T
Box Panel separation sub panel	
Electrical	2,000.00T
Electrical supply to lower level	
Electrical repair code change requirements for refrigerator stove and microwave.	1,400.00T
Sink	800.00T
plumbing, supplies and drains for sink connection.	
Labor for painting	600.00T
Interior paint and repairs	500.00T
paint, for drywall	
Flooring repairs	1,500.00T
Parking	2,500.00T
Equipment rental for parking code update per city of Bremerton business requirements.	
Transportation and	900.00T
Traffic control for delivery of materials and equipment	

Accessory Dwelling Units

GUIDE TO ESTABLISHING AN ADU IN BREMERTON





WHAT ARE ADUs?

An Accessory Dwelling Unit (ADU), also known by other terms such as a laneway house, granny flat, or mother in law unit, is a separate housing unit on the same lot as a typical single family house. It can be either attached or detached from the main house. It could be rented out to a tenant, or it could be provided for free to the homeowner's friends or family.

ADUs are self contained dwellings. That means an ADU should provide space for cooking, sleeping, and using the bathroom.

Most people can imagine the benefit of having an ADU on their property, whether for housing their loved ones who can no longer live independently, or gaining additional income from rent. But you may not know that in December of 2020, the City of Bremerton made it easier than ever to establish an ADU! This guide will help you to determine whether an ADU is feasible for your property, and inform you of the City's requirements for ADUs.

WHERE CAN AN ADU BE BUILT?

Do you own a single family home? Congratulations! It is likely the zoning code allows you to establish an ADU. Attached or detached ADUs are allowed anywhere a new or existing single family home exists.

However, other development standards, such as setbacks and development coverage restrictions, among others, may not allow all properties to establish an ADU. The next few pages will explain those development standards in more depth.

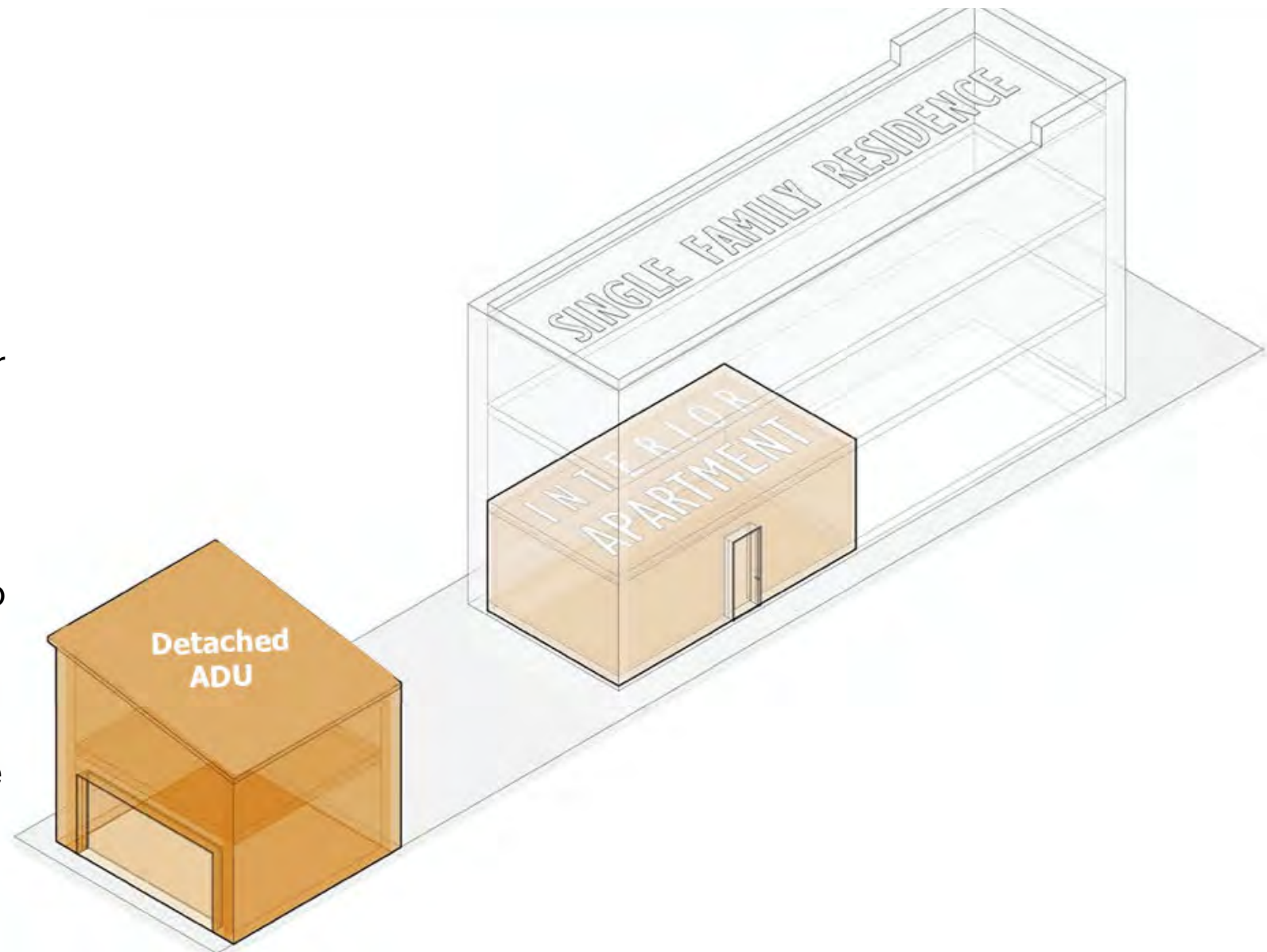


HOW MANY ADUs CAN A PROPERTY HAVE?

Each property can have a one (1) single family home and two (2) ADUs, for a maximum total of three (3) dwelling units. These ADUs can be either detached or attached to the single family home.

It is important to note that Building and Fire codes require residential buildings with 3 units or more to install fire sprinklers. In most cases, therefore, two ADUs that are attached to a single family home may not be desirable. Alternative options could be two ADUs attached to each other in a garage or other detached building, two separate detached ADUs, or the example pictured- one attached and one detached ADU.

The development standards for 2nd ADUs are the same, with one exception- an additional parking space must be provided for a 2nd ADU. Look for more information about parking on page 7.



DEVELOPMENT STANDARDS: SIZE

ADUs can be up to 1000 square feet, or 60% of the size of the main house. What does that mean? Here's how to calculate the maximum size of an ADU on your property:

First, find the square footage of your house. Don't know? Kitsap County probably does. Navigate to this [link](#) and enter your address or parcel number in the search bar. Then click on 'Building and Improvements'. The page that pops up will display some basic details of the buildings that are on your property, including your house's square footage.

If your house is smaller than 1667 square feet...

...your ADUs could be up to 1000 square feet. Your new ADUs could potentially be larger than your main house. In that scenario, one of the new ADUs would be regulated as a single family residence, and your existing single family residence would become the ADU.

If your house is larger than 1667 square feet...

...use this formula:
(Square footage of House) X 0.6 = Maximum size of ADU

For example, if your house is 2000 square feet, multiply: $(2,000 \times .60) = 1,200$. Thus, you could build two 1,200 square foot ADUs.

If you're thinking of converting existing space in your house to an ADU, and it's size doesn't quite fit these standards, you may still be able to establish an ADU. Speak with a Planner to determine your options.

DEVELOPMENT STANDARDS: DESIGN

The City requires that the design of ADUs preserve the appearance of the main house as a single-family-dwelling, and that the ADU should blend into the existing house or the neighborhood. That means no duplex or triplex-like designs, and nothing that sticks out like a sore thumb. Try to design an ADU so that the materials used complement the design of the main house. They don't have to match completely, so if you have any questions contact a Planner.

The pictures to the right show examples of how an ADU shouldn't look. Both of these structures contain two dwellings- however, they do not maintain the appearance of the house as a single family dwelling. When designing an ADU, the appearance of a duplex or triplex should be avoided.



DEVELOPMENT STANDARDS: PARKING

THE FIRST ADU IS NOT REQUIRED TO PROVIDE PARKING. That means you can establish a single ADU on a lot even without finding another parking space for the ADU. That doesn't mean you can entirely forget about parking, though.

- ▶ All zones require parking for a single family residence (in the R-10 zone, it is 2 parking spaces for a house). While the first ADU does not require a parking space in any zone, the required parking for the house must still be provided. If a house has no parking now, they must create the required parking before establishing an ADU. All parking areas and driveways in the City must be paved with a bound material, like concrete.
- ▶ The ADU cannot remove any required parking. For instance, if you convert a garage to an ADU, and the garage contained the only parking spaces for your main dwelling, you must replace those parking spaces elsewhere on the property.
- ▶ A 2nd ADU must provide an additional parking space, for a total of 3 required spaces.



DEVELOPMENT STANDARDS: SETBACKS AND LOT COVERAGE

All structures on a property are subject to zone-specific development standards. These standards can be different in each zone, so it is important to determine what zone your parcel is in. If you don't know, please reach out to a Planner. You can also view the zoning maps [here](#). The development standards that will affect ADUs most are explained below:

► **SETBACKS:** A setback is the minimum distance that a structure can be constructed from the property line. Setbacks are different for each property line. If you are constructing a new ADU, it must not enter the setbacks. If you are converting an existing structure into an ADU, like a garage or storage shed, and that building already exists within the setbacks, you may not have to move the structure. Note that your property line is what determines setbacks, not a fence or the street. Some property lines are not where you'd expect! To get an estimate of the location of your property line, head to [Kitsap County's Parcel Viewer](#) and enter your address.

For Example:

In the R-10 zone, where most single family homes are located, the minimum front and rear yard setbacks are 15 feet, and the side yard setbacks are 5 feet. Some setbacks might be larger or smaller due to special circumstances, so ask a planner for help if you're unsure.

► **LOT COVERAGE:** Lot coverage is the percentage of a lot that is covered with an impervious surface. That includes any part of your lot that has pavement, a roof, or a structure on it. Add up all of that square footage and divide it by the total square footage of the lot, and you have your lot coverage. Different zones have different maximum lot coverage requirements, so be sure to determine your zone.

For Example:

Maximum
Impervious
Surface
Allowance in the
R-10 Zone is
60%.



OTHER STANDARDS

- ▶ All ADUs must be on City water and sewer, or an approved septic system.
- ▶ All ADUs must comply with the Building and Fire Code. You should hire a qualified design professional in order to ensure your new ADU complies with the structural and life safety requirements of all new residential buildings. If you have questions about the Building or Fire Codes, see the last page for contact information.
- ▶ The maximum height of all ADUs is 35 feet. If you have an existing structure that is taller than 35 feet, and you wish to convert it to an ADU, you may not have to shorten it- you should contact a Planner.
- ▶ All property owners must abide by City code concerning health and sanitation and the International Property Maintenance Code. That means that nuisance vegetation must be removed, proper garbage and refuse containment is required, and the property must be maintained so the buildings do not qualify as an unfit dwelling, building, or structure.
- ▶ If you are planning to rent the unit, you must comply with the Statewide Residential Landlord/Tenant Act. You can view the text of the act at: [Revised Code of Washington \(RCW\) Chapter 59.18](#).
- ▶ The City has created a tool for Landlords and Tenants to determine their rights and responsibilities. You can view that tool here: <https://www.bremertonwa.gov/1197/Renting-in-Bremerton>

GETTING A PERMIT

You'll need a building permit to establish an ADU on your property. The City processes all residential permits via our [online portal](#). At that link, you will find directions for creating an account for the online portal.

For all permit submittals, you will need a [site plan](#) and a [building permit application](#). Please see the [building permit submittal checklist](#) for all documents that may be required.

If you have any questions about the process of submitting a permit, please ask via email at dcdpermits@ci.bremerton.wa.us.



QUESTIONS?

A NEW PROJECT CAN BE COMPLICATED. WE'RE HERE TO HELP.

We know a lot goes into the decision to establish an ADU. If you have any questions about the information provided in this guide, or anything else development related in Bremerton, you can use the following contacts. We'll help the best we can.

▶ **CITY OF BREMERTON DEPARTMENT OF COMMUNITY DEVELOPMENT:**

▶ (360) 473-5275, or email at DCDPERMITS@CI.BREMERTON.WA.US

▶ **VIEW THE BREMERTON MUNICIPAL CODE (BMC):**

▶ [BMC 20.46.010](#)



City of Port Orchard

216 Prospect Street, Port Orchard, WA 98366

(360) 876-4407 • FAX (360) 895-9029

Agenda Staff Report

Agenda Item No.:	<u>Business Item 7G</u>	Meeting Date:	<u>March 28, 2023</u>
Subject:	<u>New National Opioids Settlements (Teva,</u> <u>Allergen, CVS, Walgreens, and Walmart)</u> <u>Regarding In Re: National Prescription</u> <u>Opiate Litigation, Case No. 1:17-MD-2804,</u> <u>United States District Court</u>	Prepared by:	<u>Charlotte Archer</u> <u>City Attorney</u>
		Atty Routing No:	<u>366922-0005 – Clerk</u>
		Atty Review Date:	<u>N/A</u>

Summary: In 2016 and 2017, a consortium of public agencies across the United States filed legal actions against the manufacturers and distributors of prescription opioids. These plaintiffs alleged that the manufacturers of prescription opioids grossly misrepresented the risks of long-term use of those drugs for persons with chronic pain, and distributors failed to properly monitor suspicious orders of those prescription drugs--all of which contributed to the current opioid epidemic. All litigation was consolidated by order of the Court into a class action; all cities in Washington with a population of over 10,000 were participating members of the class action.

During the life of the litigation, the action has splintered. For example, Purdue Pharmaceuticals (one of the defendants) entered bankruptcy, and the claims against that defendant are proceeding through the bankruptcy court. A Plaintiffs' Executive Committee, acting on behalf of the Plaintiffs' class, reached resolution as to claims asserted against manufacturer Johnson & Johnson, and distributors AmerisourceBergen, Cardinal Health and McKesson as well as their subsidiaries, affiliates, officers, and directors.

In July 2021, J&J and Distributors McKesson, Cardinal Health, and AmerisourceBergen entered into National Opioids Settlements with the class of claimants, including state and local governments. In November 2022, Washington State negotiated settlement with three distributors, Amerisource, Bergen, Cardinal Health, and the City executed an agreement to participate in that settlement.

Between November and December of 2022, five additional Defendant families have entered into National Opioids Settlements ("2022 National Settlement(s)"). More information regarding this proposed settlement and its terms are available here: <https://nationalopioidsettlement.com/wp-content/uploads/2023/02/2022-National-Opioids-Settlements-FAQs-02-02-2023.pdf>

To participate in this settlement, the City must opt in by executing a participation form by April 18, 2023. This will not impact the City's ability to participate in the litigation and future settlements as it relates to other manufacturers or distributors.

Relationship to Comprehensive Plan: N/A

Recommendation: Receive briefing on litigation posture and take action to authorize execution of documents authorizing settlement.

Motion for Consideration: Motion to authorize the Mayor to Execute the Participation Forms and Allocation Agreement for settlement of claims with Teva, Allergan, CVS. Walgreens and Walmart in the National Prescription Opioid Litigation, and to ratify all actions taken prior to this motion consistent with this authorization.

Fiscal Impact: Unknown (at this time)

Alternative: N/A

Attachment: Participation Agreement and Allocation Form

New National Opioids Settlements: Teva, Allergan, CVS, Walgreens, and Walmart
Opioids Implementation Administrator
opioidsparticipation@rubris.com

Port Orchard city, WA
Reference Number: CL-393430

TO LOCAL POLITICAL SUBDIVISIONS AND SPECIAL DISTRICTS:

YOU MUST TAKE ACTION IN ORDER TO PARTICIPATE IN FIVE NEW OPIOID SETTLEMENTS

Deadline: April 18, 2023

Five new proposed national opioid settlements ("*Settlements*") have been reached with Teva, Allergan, CVS, Walgreens, and Walmart ("*Settling Defendants*"). These new Settlements are in addition to the prior settlement with the opioid distributors, and you will need to sign new settlement documents to join.

The Washington Attorney General's Office strongly encourages you to join these new Settlements. As with the opioid distributor settlement, half of the Washington share of the settlement proceeds will be directed to Washington local governments for you to make decisions on how to remediate the opioid crisis in your communities.

The Settlements are contingent on a very high percentage of Washington cities and counties joining the Settlements. If you do not join, the Settlements may not be finalized. Even if enough cities and counties join so that the Settlements are finalized, your refusal to join would still substantially lessen the amount Washington receives. The deadline for joining the Settlements by signing the required documents is Tuesday, April 18, 2023.

How to join the settlements

In the electronic envelope attached to this email, you will find the documents that your local government needs to execute. Please sign these documents and return them to the Implementation Manager:

- *Participation Forms* for the (1) Teva, (2) Allergan, (3) CVS, (4) Walgreens, and (5) Walmart settlements, which include a release of any claims. To join the Settlements, you need to sign and submit each of these Participation Forms.
- *Allocation Agreement II*. This is an agreement between the State and Washington local governments to split the settlement proceeds for these five Settlements, with 50% going to the State and 50% going to the local governments. The local government share then will be split based on the One Washington Memorandum of Understanding, which is attached to the Allocation Agreement II.

You can return the executed *Participation Forms* and *Allocation Agreement II* to the Implementation Administrator in one of the following ways:

- (1) *Electronic Signature via DocuSign*: Executing the *Participation Forms* and *Allocation Agreement II* electronically through DocuSign will return the signed forms to the Implementation Administrator and associate your forms with your subdivision's records. Electronic signature is the most efficient method for returning the documents and is strongly encouraged.
- (2) *Manual Signature returned via DocuSign*: DocuSign allows forms to be downloaded, signed manually, then uploaded to DocuSign and returned automatically to the Implementation Administrator. Please be sure to complete all fields.
- (3) *Manual Signature returned via electronic mail*: If your subdivision is unable to use DocuSign, the signed *Participation Forms* and *Allocation Agreement II* may be returned via electronic mail to opioidsparticipation@rubris.com. Please include the name, state, and reference ID of your subdivision in the body of the email and use the subject line Settlement Participation Forms - [Subdivision Name, Subdivision State] - [Reference ID].

Detailed instructions on how to sign and return the *Participation Forms*, including changing the authorized signer, can be found at <https://nationalopioidsettlement.com>. You may also contact opioidsparticipation@rubris.com.

The *Participation Form* for each settlement must be executed, without alteration, and submitted on or before **April 18, 2023**, in order for your subdivision to be considered for initial participation calculations and payment eligibility.

How to learn more about these settlements

This AGO press release has information on the five new Settlements and estimates of Washington's settlement share if the settlements are finalized, all eligible Washington local governments join, and all conditions are met:

<https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuits-against-three-national-pharmacy-chains-their-role>.

Additionally, the AGO is coordinating with WSAC and AWC to host informational meetings about the settlements in February 2023, and more information on those meetings will follow.

You also may wish to consult with your own legal counsel.

If you have questions about this communication or the settlements, please contact Jeff Rupert, the Division Chief for the AGO's Complex Litigation Division, at 206-389-2116 or Jeffrey.Rupert@atg.wa.gov. The AGO will be monitoring the sign-on progress and encouraging all eligible local governments in Washington to join.

Information and documents regarding the *New National Opioid Settlements* can be found on the national settlement website at <https://nationalopioidsettlement.com/>.

What are the next steps after the April 18, 2023 deadline?

Based upon subdivision participation forms received on or before April 18th, the subdivision participation rate will be used to determine whether participation for each deal is sufficient for the settlement to move forward and whether a state earns its maximum potential payment under the settlement. If the settlement moves forward, your release will become effective. If a settlement does not move forward, that release will not become effective.

Any subdivision that does not participate cannot directly share in the settlement funds, even if the subdivision's state is settling and other participating subdivisions are sharing in settlement funds. Any subdivision that does not participate may also reduce the amount of money for programs to remediate the opioid crisis in its state. Please note, a subdivision will not necessarily directly receive settlement funds by participating; decisions on how settlement funds will be allocated within a state are subject to intrastate agreements or state statutes.

If the Settlements are finalized, the payment terms and payment schedule for the settlement proceeds is specified in each Settlement.

The sign-on period for subdivisions ends on April 18, 2023.

Thank you,

National Opioids Settlements Implementation Administrator

The Implementation Administrator is retained to provide the settlement notice required by the respective settlement agreements referenced above and to manage the collection of settlement participation forms for each settlement.

**WASHINGTON STATE ALLOCATION AGREEMENT GOVERNING THE
ALLOCATION OF FUNDS PAID BY CERTAIN SETTLING OPIOID
MANUFACTURERS AND PHARMACIES**

JANUARY 27, 2023

This Washington State Allocation Agreement Governing the Allocation of Funds Paid by Certain Settling Opioid Manufacturers and Pharmacies (the “Allocation Agreement II”) governs the distribution of funds obtained from (1) Walmart, (2) Teva, (3) Allergan, (4) CVS, and (5) Walgreens (the “Settling Entities”) in connection with the resolution of any and all claims by the State of Washington and the counties, cities, and towns in Washington State (“Local Governments”) against the Settling Entities via the following settlements:

- Walmart Settlement Agreement dated November 12, 2022 and any subsequent amendments (“Walmart Settlement”).
- Teva Public Global Settlement Agreement dated November 22, 2022 and any subsequent amendments (“Teva Settlement”).
- Allergan Public Global Settlement Agreement dated November 22, 2022 and any subsequent amendments (“Allergan Settlement”).
- CVS Settlement Agreement dated December 9, 2022 and any subsequent amendments (“CVS Settlement”).
- Walgreens Settlement Agreement dated December 9, 2022 and any subsequent amendments (“Walgreens Settlement”).

Collectively, the Walmart Settlement, the Teva Settlement, the Allergan Settlement, the CVS Settlement, and the Walgreens Settlement shall be referred to as “the Settlements”. Each of the Settlements can be accessed at <https://nationalopioidsettlement.com/>. The terms and definitions of each of the respective Settlement are incorporated into this Allocation Agreement II, and any undefined terms in this Allocation Agreement II are as defined in the Settlements.

1. This Allocation Agreement II is intended to be a State-Subdivision Agreement as defined in the Settlements. This Allocation Agreement II shall be interpreted to be consistent with the requirements of a State-Subdivision Agreement in the Settlements.
2. This Allocation Agreement II shall become effective only if all of the following occur:
 - A. The State of Washington joins one of the Settlements and becomes a Settling State as provided for in the respective Settlement.
 - B. One of the Settlements becomes final and effective and a Consent Judgment is filed and approved as provided for in the respective Settlement.

- C. The number of Local Governments that execute and return this Allocation Agreement II satisfies the participation requirements for a State-Subdivision Agreement as specified in one of the Settlements, Washington is a Settling State for that Settlement, and a Consent Judgment has been filed and approved for that Settlement.
3. Requirements to become a Participating Local Government. To become a Participating Local Government that can participate in this Allocation Agreement II with respect to any one of the Settlements, a Local Government must do all of the following:
- A. The Local Government must execute and return this Allocation Agreement II.
 - B. The Local Government must release its claims against the Settling Entities identified in the respective Settlement and agree to be bound by the terms of the Settlement by timely executing and returning the Participation Form for that Settlement. The forms are attached hereto as Exhibits 1-5.
 - C. Litigating Subdivisions, also referred to as Litigating Local Governments, must dismiss the Settling Entities identified in the respective Settlement with prejudice from their lawsuits.
 - D. Each of the Local Governments that is eligible to participate in this Allocation Agreement II has previously executed and signed the One Washington Memorandum of Understanding Between Washington Municipalities (“MOU”) agreed to by the Participating Local Governments in Washington State, which is attached hereto as Exhibit 6. By executing this Allocation Agreement II, the local government agrees and affirms that the MOU applies to and shall govern the Local Government Share as modified by this Allocation Agreement II for each of the Settlements in which the Local Government participates.
- A Local Government that meets all of the conditions in this paragraph for any of the Settlements shall be deemed a “Participating Local Government” for that Settlement. A Local Government can be a “Participating Local Government” for less than all of the Settlements. If a Local Government is a Participating Local Government for less than all of the Settlements, the Local Government can only receive a portion of the Washington Abatement Amount for the specific Settlement(s) for which it is a Participating Local Government.
4. This Allocation Agreement II applies to the following, all of which collectively shall be referred to as the “Washington Abatement Amount”:
- A. For the Walmart Settlement, the State of Washington’s allocation of the (1) Global Settlement Remediation Amount and (2) Additional Remediation Amount.

- B. For the Teva Settlement, the State of Washington's allocation of the (1) Net Abatement Amount and (2) Additional Restitution Amount.
- C. For the Allergan Settlement, the State of Washington's allocation of the (1) Global Settlement Abatement Amount and (2) Additional Restitution Amount.
- D. For the CVS Settlement, the State of Washington's allocation of the (1) Maximum Remediation Payment and (2) Additional Remediation Amount.
- E. For the Walgreens Settlement, the State of Washington's allocation of the (1) Adjusted State Remediation Payment and (2) Additional Remediation Amount.

As specified in each of the Settlements, the Washington Abatement Amount will vary dependent on the percentage of Participating Local Governments and whether there are any Later Litigating Subdivisions.

- 5. The Teva Settlement provides the option for Settling States to obtain Settlement Product or the discretion to convert any portion of the Settlement Product allocated to the Settling State into a cash value equaling twenty percent (20%) of the WAC value of the Settling State's allocated Settlement Product in specified years. It shall be solely the decision of the State regarding whether to convert any portion of the Settlement Product allocated to Washington into a cash value or to obtain the Settlement Product. If the State elects to obtain Settlement Product, the State in its sole discretion shall make all decisions related to the Settlement Product, including but not limited to where, how, and to whom it shall be distributed. For purposes of calculating the division of the Washington Abatement Amount in Paragraph 10 of this Allocation Agreement II, the Settlement Product allocated to Washington shall be considered "State Share" and shall have the cash value assigned to it in the Teva Public Global Settlement Agreement dated November 22, 2022.
- 6. This Allocation Agreement II does not apply to the State Cost Fund, State AG Fees and Costs, or any attorneys' fees, fees, costs, or expenses referred to in the Settlement or that are paid directly or indirectly via the Settlements to the State of Washington ("State's Fees and Costs").

7. This Allocation Agreement II and the MOU are a State Back-Stop Agreement. The Settling Entities are paying a portion of the Local Governments' attorneys' fees and costs as provided for in the Settlements. The total contingent fees an attorney receives from the Contingency Fee Fund in the Settlements, the MOU, and this Allocation Agreement II combined cannot exceed 15% of the portion of the LG Share paid to the Litigating Local Government that retained that firm to litigate against the Settling Entities (i.e., if City X filed suit with outside counsel on a contingency fee contract and City X receives \$1,000,000 from the Walmart Settlement, then the maximum that the firm can receive is \$150,000 for fees as to the Walmart Settlement; if City X did not retain the same firm for potential litigation against CVS and City X receives \$1,000,000 from the CVS Settlement, then the firm receives no fees from the CVS Settlement.)
8. No portion of the State's Fees and Costs and/or the State Share as defined in Paragraphs 6 and 10 of this Allocation Agreement II shall be used to fund the Government Fee Fund ("GFF") referred to in Paragraph 12 of this Allocation Agreement II and Section D of the MOU, or in any other way to fund any Participating Local Government's attorneys' fees, costs, or common benefit tax.
9. The Washington Abatement Amount shall and must be used by the State and Participating Local Governments for future Opioid Remediation as defined in the Settlements, except as allowed by the Settlements.
10. The State and the Participating Local Governments agree to divide the Washington Abatement Amount as follows:
 - A. Fifty percent (50%) to the State of Washington ("State Share").
 - B. Fifty percent (50%) to the Participating Local Governments ("LG Share").
11. The LG Share shall be distributed to Participating Local Governments pursuant to the MOU attached hereto as Exhibit 6 as amended and modified in this Allocation Agreement II.
12. For purposes of this Allocation Agreement II only, the MOU is modified as follows and any contrary provisions in the MOU are struck:
 - A. Exhibit A of the MOU is replaced by Exhibit E of each of the respective Settlements.
 - B. The definition of "Litigating Local Governments" in Section A.4 of the MOU shall mean Litigating Subdivisions as defined in each the respective Settlements.
 - C. The definition of "National Settlement Agreement" in Section A.6 of the MOU shall mean the Settlements.
 - D. The definition of "Settlement" in Section A.14 of the MOU shall mean

the Settlements.

- E. The MOU is amended to add new Section C.4.g.vii, which provides as follows:

“If a Participating Local Government receiving a direct payment (a) uses Opioid Funds other than as provided for in the respective Settlements, (b) does not comply with conditions for receiving direct payments under the MOU, or (c) does not promptly submit necessary reporting and compliance information to its Regional Opioid Abatement Counsel (“Regional OAC”) as defined at Section C.4.h of the MOU, then the Regional OAC may suspend direct payments to the Participating Local Government after notice, an opportunity to cure, and sufficient due process. If direct payments to Participating Local Government are suspended, the payments shall be treated as if the Participating Local Government is foregoing their allocation of Opioid Funds pursuant to Section C.4.d and C.4.j.iii of the MOU. In the event of a suspension, the Regional OAC shall give prompt notice to the suspended Participating Local Government and the Settlement Fund Administrator specifying the reasons for the suspension, the process for reinstatement, the factors that will be considered for reinstatement, and the due process that will be provided. A suspended Participating Local Government may apply to the Regional OAC to be reinstated for direct payments no earlier than five years after the date of suspension.”

- F. The amounts payable to each law firm representing a Litigating Local Government from the GFF shall be consistent with the process set forth in the *Order Appointing the Fee Panel to Allocate and Disburse Attorney’s Fees Provided for in State Back-Stop Agreements*, Case No. 1:17-md- 02804-DAP Doc #: 4543 (June 17, 2022). JoJo Tann (the “GFF Administrator”), who is authorized by the MDL Fee Panel (David R. Cohen, Randi S. Ellis and Hon. David R. Herndon (ret.)) to calculate the amounts due to eligible counsel from each State Back-Stop fund (i.e., the GFF) (*see id.* at p. 4), will oversee and confirm the amounts payable to each law firm representing a Litigating Local Government from the GFF. Upon written agreement between the law firms representing the Litigating Local Governments on the one hand and the Washington Attorney General’s Office on the other, in consultation with the Washington State Association of Counties and the Association of Washington Cities, the GFF Administrator may be replaced by another person, firm, or entity.
- G. The GFF set forth in the MOU shall be funded by the LG Share of the Washington Abatement Amount only. To the extent the common benefit tax is not already payable by the Settling Entities as contemplated by Section D.8 of the MOU, the GFF shall be used to pay Litigating Local Government contingency fee agreements and any common benefit tax referred to in Section D of the MOU, which shall

be paid on a pro rata basis to eligible law firms as determined by the GFF Administrator.

- H. To fund the GFF, fifteen percent (15%) of the LG Share shall be deposited in the GFF from each LG Share settlement payment until the Litigating Subdivisions' contingency fee agreements and common benefit tax (if any) referred to in Section D of the MOU are satisfied. Under no circumstances will any Primary Subdivision or Litigating Local Government be required to contribute to the GFF more than 15% of the portion of the LG Share allocated to such Primary Subdivision or Litigating Local Government. In addition, under no circumstances will any portion of the LG Share allocated to a Litigating Local Government be used to pay the contingency fees or litigation expenses of counsel for some other Litigating Local Government.

- I. The maximum amount of any Litigating Local Government contingency fee agreement (from the Contingency Fee Fund of the respective Settlements) payable to a law firm permitted for compensation shall be fifteen percent (15%) of the portion of the LG Share paid to the Litigating Local Government that retained that firm (i.e., if City X filed suit with outside counsel on a contingency fee contract and City X receives \$1,000,000 from the Walmart Settlement, then the maximum that the firm can receive is \$150,000 for fees.) The firms also shall be paid documented expenses due under their contingency fee agreements that have been paid by the law firm attributable to that Litigating Local Government. Consistent with Agreement on Attorneys' Fees, Costs, and Expenses, which is Exhibit R of the Settlements, amounts due to Participating Litigating Subdivisions' attorneys under this Allocation Agreement II shall not impact (i) costs paid by the subdivisions to their attorneys pursuant to a State Back-Stop agreement, (ii) fees paid to subdivision attorneys from the Common Benefit Fund for common benefit work performed by the attorneys pursuant to Exhibit R of the Settlements, or (iii) costs paid to subdivision attorneys from the MDL Expense Fund for expenses incurred by the attorneys pursuant to the Settlements.

- J. Under no circumstances may counsel receive more for its work on behalf of a Litigating Local Government than it would under its contingency agreement with that Litigating Local Government. To the extent a law firm was retained by a Litigating Local Government on a contingency fee agreement that provides for compensation at a rate that is less than fifteen percent (15%) of that Litigating Local Government's recovery, the maximum amount payable to that law firm referred to in Section D.3 of the MOU shall be the percentage set forth in that contingency fee agreement.

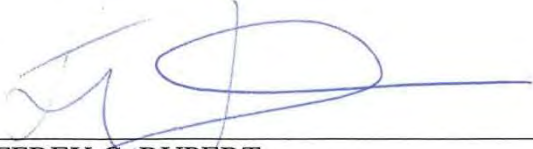
- K. For the avoidance of doubt, both payments from the GFF and the payment to the Participating Litigating Local Governments' attorneys from the Contingency Fee Fund in the respective Settlements shall be included when calculating whether the aforementioned fifteen percent

(15%) maximum percentage (or less if the provisions of Paragraph 10.J of this Allocation Agreement II apply) of any Litigating Local Government contingency fee agreement referred to above has been met.

- L. To the extent there are any excess funds in the GFF, the GFF Administrator and the Settlement Administrator shall facilitate the return of those funds to the Participating Local Governments as provided for in Section D.6 of the MOU.
13. In connection with the execution and administration of this Allocation Agreement II, the State and the Participating Local Governments agree to abide by the Public Records Act, RCW 42.56 *et seq.*
 14. All Participating Local Governments, Regional OACs, and the State shall maintain all non-transitory records related to this Allocation Agreement II as well as the receipt and expenditure of the funds from the Settlements for no less than five (5) years.
 15. If any party to this Allocation Agreement II believes that a Participating Local Government, Regional OAC, the State, an entity, or individual involved in the receipt, distribution, or administration of the funds from the Settlements has violated any applicable ethics codes or rules, a complaint shall be lodged with the appropriate forum for handling such matters, with a copy of the complaint promptly sent to the Washington Attorney General, Complex Litigation Division, Division Chief, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104.
 16. To the extent (i) a region utilizes a pre-existing regional body to establish its Opioid Abatement Council pursuant to the Section 4.h of the MOU, and (ii) that pre-existing regional body is subject to the requirements of the Community Behavioral Health Services Act, RCW 71.24 *et seq.*, the State and the Participating Local Governments agree that the Opioid Funds paid by the Settling Entities are subject to the requirements of the MOU and this Allocation Agreement II.
 17. Upon request by any of the Settling Entities, the Participating Local Governments must comply with the Tax Cooperation and Reporting provisions of the respective Settlement.
 18. Venue for any legal action related to this Allocation Agreement II (separate and apart from the MOU or the Settlements) shall be in King County, Washington.
 19. Each party represents that all procedures necessary to authorize such party's execution of this Allocation Agreement II have been performed and that such person signing for such party has been authorized to execute this Allocation Agreement II.

FOR THE STATE OF WASHINGTON:

ROBERT W. FERGUSON
Attorney General

A handwritten signature in blue ink, appearing to read 'J. Rupert', is written over a horizontal line.

JEFFREY G. RUPERT

Division Chief

Date:

1-27-23

FOR THE PARTICIPATING LOCAL GOVERNMENT:

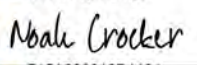
Port Orchard city, WA
Reference Number: CL-393430

Signature:

Name:

Title:

Date:

DocuSigned by:

715A926012B4424...

Noah Crocker

Finance Director

2/21/2023

EXHIBIT 1
Subdivision Settlement Participation Form
(Exhibit K of the Walmart Settlement)

EXHIBIT K**Subdivision Participation Form**

Will your subdivision or special district be signing the settlement participation form for the Walmart Settlement at this time?

☐ Yes ☐ No

Governmental Entity:	State:
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("Governmental Entity"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated November 14, 2022 ("Walmart Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Walmart Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walmart Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Walmart Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event within 14 days of the Effective Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopiodsettlement.com/>.
3. The Governmental Entity agrees to the terms of the Walmart Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Walmart Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Walmart Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walmart Settlement.
7. The Governmental Entity has the right to enforce the Walmart Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walmart Settlement, including but not limited to all provisions of Section X (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walmart Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walmart Settlement shall be a complete bar to any Released Claim.
9. In connection with the releases provided for in the Walmart Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walmart Settlement.

10. Nothing herein is intended to modify in any way the terms of the Walmart Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Walmart Settlement in any respect, the Walmart Settlement controls.



I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



EXHIBIT 2
Subdivision Settlement Participation
Form (Exhibit K of the Teva Settlement)

Exhibit K**Subdivision and Special District Settlement Participation Form**

Governmental Entity:	State:
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("*Governmental Entity*"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Agreement dated November 22, 2022 ("*Teva Settlement*"), and acting through the undersigned authorized official, hereby elects to participate in the Teva Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Teva Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Teva Settlement as provided therein.
2. Following the execution of this Settlement Participation Form, the Governmental Entity shall comply with Section III.B of the Teva Settlement regarding Cessation of Litigation Activities.
3. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, file a request to dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
4. The Governmental Entity agrees to the terms of the Teva Settlement pertaining to Subdivisions as defined therein.
5. By agreeing to the terms of the Teva Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
6. The Governmental Entity agrees to use any monies it receives through the Teva Settlement solely for the purposes provided therein.
7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Teva Settlement.



8. The Governmental Entity has the right to enforce the Teva Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision or Participating Special District, hereby becomes a Releasor for all purposes in the Teva Settlement, including but not limited to all provisions of Section V (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Teva Settlement are intended by Released Entities and the Governmental Entity to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Teva Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision or Participating Special District as set forth in the Teva Settlement.
11. In connection with the releases provided for in the Teva Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Teva Settlement.

12. Nothing herein is intended to modify in any way the terms of the Teva Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Teva Settlement in any respect, the Teva Settlement controls.



I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



EXHIBIT 3
Subdivision Settlement Participation
Form (Exhibit K of the Allergan
Settlement)

EXHIBIT K
Subdivision and Special District Settlement Participation Form

Will your subdivision or special district be signing the settlement participation forms for the Allergan and Teva Settlements at this time?

☐ Yes ☐ No

Governmental Entity:	State:
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Agreement dated November 22, 2022 (“*Allergan Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Allergan Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Allergan Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Allergan Settlement as provided therein.
2. Following the execution of this Settlement Participation Form, the Governmental Entity shall comply with Section III.B of the Allergan Settlement regarding Cessation of Litigation Activities.
3. The Governmental Entity shall, within fourteen (14) days of the Reference Date and prior to the filing of the Consent Judgment, file a request to dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the MDL Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
4. The Governmental Entity agrees to the terms of the Allergan Settlement pertaining to Subdivisions and Special Districts as defined therein.
5. By agreeing to the terms of the Allergan Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
6. The Governmental Entity agrees to use any monies it receives through the Allergan Settlement solely for the purposes provided therein.



7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Allergan Settlement.
8. The Governmental Entity has the right to enforce the Allergan Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision or Participating Special District, hereby becomes a Releasor for all purposes in the Allergan Settlement, including, but not limited to, all provisions of **Section V (Release)**, and along with all departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Allergan Settlement are intended to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Allergan Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision or Participating Special District as set forth in the Allergan Settlement.
11. In connection with the releases provided for in the Allergan Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Allergan Settlement.

12. Nothing herein is intended to modify in any way the terms of the Allergan Settlement, to which the Governmental Entity hereby agrees. To the extent this Settlement Participation Form is interpreted differently from the Allergan Settlement in any respect, the Allergan Settlement controls.



I have all necessary power and authorization to execute this Settlement Participation Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



EXHIBIT 4
Subdivision Settlement Participation
Form (Exhibit K of the CVS Settlement)

EXHIBIT K**Subdivision Participation and Release Form**

Will your subdivision or special district be signing the settlement participation form for the CVS Settlement at this time?

☐ Yes ☐ No

Governmental Entity:	State:
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("*Governmental Entity*"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 ("*CVS Settlement*"), and acting through the undersigned authorized official, hereby elects to participate in the CVS Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the CVS Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the CVS Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
3. The Governmental Entity agrees to the terms of the CVS Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the CVS Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the CVS Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the CVS Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the CVS Settlement.
7. The Governmental Entity has the right to enforce the CVS Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the CVS Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the CVS Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The CVS Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the CVS Settlement.
10. In connection with the releases provided for in the CVS Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the CVS Settlement.



11. Nothing herein is intended to modify in any way the terms of the CVS Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the CVS Settlement in any respect, the CVS Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



EXHIBIT 5
Subdivision Settlement Participation
Form (Exhibit K of the Walgreens
Settlement)

EXHIBIT K**Subdivision Participation and Release Form**

Will your subdivision or special district be signing the settlement participation form for the Walgreens Settlement at this time?

☐ Yes ☐ No

Governmental Entity:	State:
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 (“*Walgreens Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Walgreens Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walgreens Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the Walgreens Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
3. The Governmental Entity agrees to the terms of the Walgreens Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the Walgreens Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Walgreens Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walgreens Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the Walgreens Settlement.
7. The Governmental Entity has the right to enforce the Walgreens Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walgreens Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walgreens Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walgreens Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Walgreens Settlement.
10. In connection with the releases provided for in the Walgreens Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walgreens Settlement.



11. Nothing herein is intended to modify in any way the terms of the Walgreens Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Walgreens Settlement in any respect, the Walgreens Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



EXHIBIT 6
One Washington Memorandum of Understanding Between Washington
Municipalities

ONE WASHINGTON MEMORANDUM OF UNDERSTANDING BETWEEN WASHINGTON MUNICIPALITIES

Whereas, the people of the State of Washington and its communities have been harmed by entities within the Pharmaceutical Supply Chain who manufacture, distribute, and dispense prescription opioids;

Whereas, certain Local Governments, through their elected representatives and counsel, are engaged in litigation seeking to hold these entities within the Pharmaceutical Supply Chain of prescription opioids accountable for the damage they have caused to the Local Governments;

Whereas, Local Governments and elected officials share a common desire to abate and alleviate the impacts of harms caused by these entities within the Pharmaceutical Supply Chain throughout the State of Washington, and strive to ensure that principals of equity and equitable service delivery are factors considered in the allocation and use of Opioid Funds; and

Whereas, certain Local Governments engaged in litigation and the other cities and counties in Washington desire to agree on a form of allocation for Opioid Funds they receive from entities within the Pharmaceutical Supply Chain.

Now therefore, the Local Governments enter into this Memorandum of Understanding (“MOU”) relating to the allocation and use of the proceeds of Settlements described.

A. Definitions

As used in this MOU:

1. “Allocation Regions” are the same geographic areas as the existing nine (9) Washington State Accountable Community of Health (ACH) Regions and have the purpose described in Section C below.
2. “Approved Purpose(s)” shall mean the strategies specified and set forth in the Opioid Abatement Strategies attached as Exhibit A.
3. “Effective Date” shall mean the date on which a court of competent jurisdiction enters the first Settlement by order or consent decree. The Parties anticipate that more than one Settlement will be administered according to the terms of this MOU, but that the first entered Settlement will trigger allocation of Opioid Funds in accordance with Section B herein, and the formation of the Opioid Abatement Councils in Section C.
4. “Litigating Local Government(s)” shall mean Local Governments that filed suit against any Pharmaceutical Supply Chain Participant pertaining to the Opioid epidemic prior to September 1, 2020.

5. “Local Government(s)” shall mean all counties, cities, and towns within the geographic boundaries of the State of Washington.

6. “National Settlement Agreements” means the national opioid settlement agreements dated July 21, 2021 involving Johnson & Johnson, and distributors AmerisourceBergen, Cardinal Health and McKesson as well as their subsidiaries, affiliates, officers, and directors named in the National Settlement Agreements, including all amendments thereto.

7. “Opioid Funds” shall mean monetary amounts obtained through a Settlement as defined in this MOU.

8. “Opioid Abatement Council” shall have the meaning described in Section C below.

9. “Participating Local Government(s)” shall mean all counties, cities, and towns within the geographic boundaries of the State that have chosen to sign on to this MOU. The Participating Local Governments may be referred to separately in this MOU as “Participating Counties” and “Participating Cities and Towns” (or “Participating Cities or Towns,” as appropriate) or “Parties.”

10. “Pharmaceutical Supply Chain” shall mean the process and channels through which controlled substances are manufactured, marketed, promoted, distributed, and/or dispensed, including prescription opioids.

11. “Pharmaceutical Supply Chain Participant” shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, and/or dispensing of a prescription opioid, including any entity that has assisted in any of the above.

12. “Qualified Settlement Fund Account,” or “QSF Account,” shall mean an account set up as a qualified settlement fund, 468b fund, as authorized by Treasury Regulations 1.468B-1(c) (26 CFR §1.468B-1).

13. “Regional Agreements” shall mean the understanding reached by the Participating Local Counties and Cities within an Allocation Region governing the allocation, management, distribution of Opioid Funds within that Allocation Region.

14. “Settlement” shall mean the future negotiated resolution of legal or equitable claims against a Pharmaceutical Supply Chain Participant when that resolution has been jointly entered into by the Participating Local Governments. “Settlement” expressly does not include a plan of reorganization confirmed under Title 11 of the United States Code, irrespective of the extent to which Participating Local Governments vote in favor of or otherwise support such plan of reorganization.

15. “Trustee” shall mean an independent trustee who shall be responsible for the ministerial task of releasing Opioid Funds from a QSF account to Participating Local Governments as authorized herein and accounting for all payments into or out of the trust.

16. The “Washington State Accountable Communities of Health” or “ACH” shall mean the nine (9) regions described in Section C below.

B. Allocation of Settlement Proceeds for Approved Purposes

1. All Opioid Funds shall be held in a QSF and distributed by the Trustee, for the benefit of the Participating Local Governments, only in a manner consistent with this MOU. Distribution of Opioid Funds will be subject to the mechanisms for auditing and reporting set forth below to provide public accountability and transparency.

2. All Opioid Funds, regardless of allocation, shall be utilized pursuant to Approved Purposes as defined herein and set forth in Exhibit A. Compliance with this requirement shall be verified through reporting, as set out in this MOU.

3. The division of Opioid Funds shall first be allocated to Participating Counties based on the methodology utilized for the Negotiation Class in *In Re: National Prescription Opiate Litigation*, United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP. The allocation model uses three equally weighted factors: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. The allocation percentages that result from application of this methodology are set forth in the “County Total” line item in Exhibit B. In the event any county does not participate in this MOU, that county’s percentage share shall be reallocated proportionally amongst the Participating Counties by applying this same methodology to only the Participating Counties.

4. Allocation and distribution of Opioid Funds within each Participating County will be based on regional agreements as described in Section C.

C. Regional Agreements

1. For the purpose of this MOU, the regional structure for decision-making related to opioid fund allocation will be based upon the nine (9) pre-defined Washington State Accountable Community of Health Regions (Allocation Regions). Reference to these pre-defined regions is solely for the purpose of

drawing geographic boundaries to facilitate regional agreements for use of Opioid Funds. The Allocation Regions are as follows:

- King County (Single County Region)
- Pierce County (Single County Region)
- Olympic Community of Health Region (Clallam, Jefferson, and Kitsap Counties)
- Cascade Pacific Action Alliance Region (Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Thurston, and Wahkiakum Counties)
- North Sound Region (Island, San Juan, Skagit, Snohomish, and Whatcom Counties)
- SouthWest Region (Clark, Klickitat, and Skamania Counties)
- Greater Columbia Region (Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla, Whitman, and Yakima Counties)
- Spokane Region (Adams, Ferry, Lincoln, Pend Oreille, Spokane, and Stevens Counties)
- North Central Region (Chelan, Douglas, Grant, and Okanogan Counties)

2. Opioid Funds will be allocated, distributed and managed within each Allocation Region, as determined by its Regional Agreement as set forth below. If an Allocation Region does not have a Regional Agreement enumerated in this MOU, and does not subsequently adopt a Regional Agreement per Section C.5, the default mechanism for allocation, distribution and management of Opioid Funds described in Section C.4.a will apply. Each Allocation Region must have an OAC whose composition and responsibilities shall be defined by Regional Agreement or as set forth in Section C.4.

3. King County's Regional Agreement is reflected in Exhibit C to this MOU.

4. All other Allocation Regions that have not specified a Regional Agreement for allocating, distributing and managing Opioid Funds, will apply the following default methodology:

- a. Opioid Funds shall be allocated within each Allocation Region by taking the allocation for a Participating County from Exhibit B and apportioning those funds between that Participating County and its Participating Cities and Towns. Exhibit B also sets forth the allocation to the Participating Counties and the Participating Cities or Towns within the Counties based on a default allocation formula. As set forth above in Section B.3, to determine the allocation to a county, this formula utilizes: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. To determine the allocation within a county, the formula utilizes historical federal data showing how the specific Counties and the Cities and Towns within the Counties have

made opioids epidemic-related expenditures in the past. This is the same methodology used in the National Settlement Agreements for county and intra-county allocations. A Participating County, and the Cities and Towns within it may enter into a separate intra-county allocation agreement to modify how the Opioid Funds are allocated amongst themselves, provided the modification is in writing and agreed to by all Participating Local Governments in the County. Such an agreement shall not modify any of the other terms or requirements of this MOU.

b. 10% of the Opioid Funds received by the Region will be reserved, on an annual basis, for administrative costs related to the OAC. The OAC will provide an annual accounting for actual costs and any reserved funds that exceed actual costs will be reallocated to Participating Local Governments within the Region.

c. Cities and towns with a population of less than 10,000 shall be excluded from the allocation, with the exception of cities and towns that are Litigating Participating Local Governments. The portion of the Opioid Funds that would have been allocated to a city or town with a population of less than 10,000 that is not a Litigating Participating Local Government shall be redistributed to Participating Counties in the manner directed in C.4.a above.

d. Each Participating County, City, or Town may elect to have its share re-allocated to the OAC in which it is located. The OAC will then utilize this share for the benefit of Participating Local Governments within that Allocation Region, consistent with the Approved Purposes set forth in Exhibit A. A Participating Local Government's election to forego its allocation of Opioid Funds shall apply to all future allocations unless the Participating Local Government notifies its respective OAC otherwise. If a Participating Local Government elects to forego its allocation of the Opioid Funds, the Participating Local Government shall be excused from the reporting requirements set forth in this Agreement.

e. Participating Local Governments that receive a direct payment maintain full discretion over the use and distribution of their allocation of Opioid Funds, provided the Opioid Funds are used solely for Approved Purposes. Reasonable administrative costs for a Participating Local Government to administer its allocation of Opioid Funds shall not exceed actual costs or 10% of the Participating Local Government's allocation of Opioid Funds, whichever is less.

f. A Local Government that chooses not to become a Participating Local Government will not receive a direct allocation of Opioid Funds. The portion of the Opioid Funds that would have been allocated to a Local Government that is not a Participating Local Government shall be

redistributed to Participating Counties in the manner directed in C.4.a above.

g. As a condition of receiving a direct payment, each Participating Local Government that receives a direct payment agrees to undertake the following actions:

- i. Developing a methodology for obtaining proposals for use of Opioid Funds.
- ii. Ensuring there is opportunity for community-based input on priorities for Opioid Fund programs and services.
- iii. Receiving and reviewing proposals for use of Opioid Funds for Approved Purposes.
- iv. Approving or denying proposals for use of Opioid Funds for Approved Purposes.
- v. Receiving funds from the Trustee for approved proposals and distributing the Opioid Funds to the recipient.
- vi. Reporting to the OAC and making publicly available all decisions on Opioid Fund allocation applications, distributions and expenditures.

h. Prior to any distribution of Opioid Funds within the Allocation Region, The Participating Local Governments must establish an Opioid Abatement Council (OAC) to oversee Opioid Fund allocation, distribution, expenditures and dispute resolution. The OAC may be a preexisting regional body or may be a new body created for purposes of executing the obligations of this MOU.

i. The OAC for each Allocation Region shall be composed of representation from both Participating Counties and Participating Towns or Cities within the Region. The method of selecting members, and the terms for which they will serve will be determined by the Allocation Region's Participating Local Governments. All persons who serve on the OAC must have work or educational experience pertaining to one or more Approved Uses.

j. The Regional OAC will be responsible for the following actions:

- i. Overseeing distribution of Opioid Funds from Participating Local Governments to programs and services within the Allocation Region for Approved Purposes.

- ii. Annual review of expenditure reports from Participating Local Jurisdictions within the Allocation Region for compliance with Approved Purposes and the terms of this MOU and any Settlement.
- iii. In the case where Participating Local Governments chose to forego their allocation of Opioid Funds:
 - (i) Approving or denying proposals by Participating Local Governments or community groups to the OAC for use of Opioid Funds within the Allocation Region.
 - (ii) Directing the Trustee to distribute Opioid Funds for use by Participating Local Governments or community groups whose proposals are approved by the OAC.
 - (iii) Administrating and maintaining records of all OAC decisions and distributions of Opioid Funds.
- iv. Reporting and making publicly available all decisions on Opioid Fund allocation applications, distributions and expenditures by the OAC or directly by Participating Local Governments.
- v. Developing and maintaining a centralized public dashboard or other repository for the publication of expenditure data from any Participating Local Government that receives Opioid Funds, and for expenditures by the OAC in that Allocation Region, which it shall update at least annually.
- vi. If necessary, requiring and collecting additional outcome-related data from Participating Local Governments to evaluate the use of Opioid Funds, and all Participating Local Governments shall comply with such requirements.
- vii. Hearing complaints by Participating Local Governments within the Allocation Region regarding alleged failure to (1) use Opioid Funds for Approved Purposes or (2) comply with reporting requirements.

5. Participating Local Governments may agree and elect to share, pool, or collaborate with their respective allocation of Opioid Funds in any manner they choose by adopting a Regional Agreement, so long as such sharing, pooling, or collaboration is used for Approved Purposes and complies with the terms of this MOU and any Settlement.

6. Nothing in this MOU should alter or change any Participating Local Government's rights to pursue its own claim. Rather, the intent of this MOU is to join all parties who wish to be Participating Local Governments to agree upon an allocation formula for any Opioid Funds from any future binding Settlement with one or more Pharmaceutical Supply Chain Participants for all Local Governments in the State of Washington.

7. If any Participating Local Government disputes the amount it receives from its allocation of Opioid Funds, the Participating Local Government shall alert its respective OAC within sixty (60) days of discovering the information underlying the dispute. Failure to alert its OAC within this time frame shall not constitute a waiver of the Participating Local Government's right to seek recoupment of any deficiency in its allocation of Opioid Funds.

8. If any OAC concludes that a Participating Local Government's expenditure of its allocation of Opioid Funds did not comply with the Approved Purposes listed in Exhibit A, or the terms of this MOU, or that the Participating Local Government otherwise misused its allocation of Opioid Funds, the OAC may take remedial action against the alleged offending Participating Local Government. Such remedial action is left to the discretion of the OAC and may include withholding future Opioid Funds owed to the offending Participating Local Government or requiring the offending Participating Local Government to reimburse improperly expended Opioid Funds back to the OAC to be re-allocated to the remaining Participating Local Governments within that Region.

9. All Participating Local Governments and OAC shall maintain all records related to the receipt and expenditure of Opioid Funds for no less than five (5) years and shall make such records available for review by any other Participating Local Government or OAC, or the public. Records requested by the public shall be produced in accordance with Washington's Public Records Act RCW 42.56.001 *et seq.* Records requested by another Participating Local Government or an OAC shall be produced within twenty-one (21) days of the date the record request was received. This requirement does not supplant any Participating Local Government or OAC's obligations under Washington's Public Records Act RCW 42.56.001 *et seq.*

D. Payment of Counsel and Litigation Expenses

1. The Litigating Local Governments have incurred attorneys' fees and litigation expenses relating to their prosecution of claims against the Pharmaceutical Supply Chain Participants, and this prosecution has inured to the benefit of all Participating Local Governments. Accordingly, a Washington

Government Fee Fund (“GFF”) shall be established that ensures that all Parties that receive Opioid Funds contribute to the payment of fees and expenses incurred to prosecute the claims against the Pharmaceutical Supply Chain Participants, regardless of whether they are litigating or non-litigating entities.

2. The amount of the GFF shall be based as follows: the funds to be deposited in the GFF shall be equal to 15% of the total cash value of the Opioid Funds.

3. The maximum percentage of any contingency fee agreement permitted for compensation shall be 15% of the portion of the Opioid Funds allocated to the Litigating Local Government that is a party to the contingency fee agreement, plus expenses attributable to that Litigating Local Government. Under no circumstances may counsel collect more for its work on behalf of a Litigating Local Government than it would under its contingency agreement with that Litigating Local Government.

4. Payments from the GFF shall be overseen by a committee (the “Opioid Fee and Expense Committee”) consisting of one representative of the following law firms: (a) Keller Rohrback L.L.P.; (b) Hagens Berman Sobol Shapiro LLP; (c) Goldfarb & Huck Roth Riojas, PLLC; and (d) Napoli Shkolnik PLLC. The role of the Opioid Fee and Expense Committee shall be limited to ensuring that the GFF is administered in accordance with this Section.

5. In the event that settling Pharmaceutical Supply Chain Participants do not pay the fees and expenses of the Participating Local Governments directly at the time settlement is achieved, payments to counsel for Participating Local Governments shall be made from the GFF over not more than three years, with 50% paid within 12 months of the date of Settlement and 25% paid in each subsequent year, or at the time the total Settlement amount is paid to the Trustee by the Defendants, whichever is sooner.

6. Any funds remaining in the GFF in excess of: (i) the amounts needed to cover Litigating Local Governments’ private counsel’s representation agreements, and (ii) the amounts needed to cover the common benefit tax discussed in Section C.8 below (if not paid directly by the Defendants in connection with future settlement(s), shall revert to the Participating Local Governments *pro rata* according to the percentages set forth in Exhibits B, to be used for Approved Purposes as set forth herein and in Exhibit A.

7. In the event that funds in the GFF are not sufficient to pay all fees and expenses owed under this Section, payments to counsel for all Litigating Local Governments shall be reduced on a *pro rata* basis. The Litigating Local Governments will not be responsible for any of these reduced amounts.

8. The Parties anticipate that any Opioid Funds they receive will be subject to a common benefit “tax” imposed by the court in *In Re: National Prescription Opiate Litigation*, United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP (“Common Benefit Tax”). If this occurs, the Participating Local Governments shall first seek to have the settling defendants pay the Common Benefit Tax. If the settling defendants do not agree to pay the Common Benefit Tax, then the Common Benefit Tax shall be paid from the Opioid Funds and by both litigating and non-litigating Local Governments. This payment shall occur prior to allocation and distribution of funds to the Participating Local Governments. In the event that GFF is not fully exhausted to pay the Litigating Local Governments’ private counsel’s representation agreements, excess funds in the GFF shall be applied to pay the Common Benefit Tax (if any).

E. General Terms

1. If any Participating Local Government believes another Participating Local Government, not including the Regional Abatement Advisory Councils, violated the terms of this MOU, the alleging Participating Local Government may seek to enforce the terms of this MOU in the court in which any applicable Settlement(s) was entered, provided the alleging Participating Local Government first provides the alleged offending Participating Local Government notice of the alleged violation(s) and a reasonable opportunity to cure the alleged violation(s). In such an enforcement action, any alleging Participating Local Government or alleged offending Participating Local Government may be represented by their respective public entity in accordance with Washington law.

2. Nothing in this MOU shall be interpreted to waive the right of any Participating Local Government to seek judicial relief for conduct occurring outside the scope of this MOU that violates any Washington law. In such an action, the alleged offending Participating Local Government, including the Regional Abatement Advisory Councils, may be represented by their respective public entities in accordance with Washington law. In the event of a conflict, any Participating Local Government, including the Regional Abatement Advisory Councils and its Members, may seek outside representation to defend itself against such an action.

3. Venue for any legal action related to this MOU shall be in the court in which the Participating Local Government is located or in accordance with the court rules on venue in that jurisdiction. This provision is not intended to expand the court rules on venue.

4. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Participating Local Governments approve the use of electronic signatures for execution of this MOU. All use of electronic signatures

shall be governed by the Uniform Electronic Transactions Act. The Parties agree not to deny the legal effect or enforceability of the MOU solely because it is in electronic form or because an electronic record was used in its formation. The Participating Local Government agree not to object to the admissibility of the MOU in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

5. Each Participating Local Government represents that all procedures necessary to authorize such Participating Local Government's execution of this MOU have been performed and that the person signing for such Party has been authorized to execute the MOU.

[Remainder of Page Intentionally Left Blank – Signature Pages Follow]

This One Washington Memorandum of Understanding Between Washington Municipalities is signed this _____day of _____, 2022 by:

Name & Title _____

On behalf of _____

4894-0031-1574, v. 2

EXHIBIT A

O P I O I D A B A T E M E N T S T R A T E G I E S

PART ONE: TREATMENT

A. TREAT OPIOID USE DISORDER (OUD)

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including all forms of Medication-Assisted Treatment (MAT) approved by the U.S. Food and Drug Administration.
2. Support and reimburse services that include the full American Society of Addiction Medicine (ASAM) continuum of care for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to:
 - a. Medication-Assisted Treatment (MAT);
 - b. Abstinence-based treatment;
 - c. Treatment, recovery, or other services provided by states, subdivisions, community health centers; non-for-profit providers; or for-profit providers;
 - d. Treatment by providers that focus on OUD treatment as well as treatment by providers that offer OUD treatment along with treatment for other SUD/MH conditions, co-usage, and/or co-addiction; or
 - e. Evidence-informed residential services programs, as noted below.
3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.
4. Improve oversight of Opioid Treatment Programs (OTPs) to assure evidence-based, evidence-informed, or promising practices such as adequate methadone dosing.
5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction and for persons who have experienced an opioid overdose.
6. Support treatment of mental health trauma resulting from the traumatic experiences of the opioid user (e.g., violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (e.g., surviving family members after an overdose

or overdose fatality), and training of health care personnel to identify and address such trauma.

7. Support detoxification (detox) and withdrawal management services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including medical detox, referral to treatment, or connections to other services or supports.
8. Support training on MAT for health care providers, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
10. Provide fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (DATA 2000) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.
12. Support the dissemination of web-based training curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service-Opioids web-based training curriculum and motivational interviewing.
13. Support the development and dissemination of new curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service for Medication-Assisted Treatment.

B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY

Support people in treatment for and recovery from OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Provide the full continuum of care of recovery services for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including supportive housing, residential treatment, medical detox services, peer support services and counseling, community navigators, case management, and connections to community-based services.
2. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.

3. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including supportive housing, recovery housing, housing assistance programs, or training for housing providers.
4. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
5. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
6. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
7. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
8. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to manage the opioid user in the family.
9. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to current and recovering opioid users, including reducing stigma.
10. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.

**C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED
(CONNECTIONS TO CARE)**

Provide connections to care for people who have – or are at risk of developing – OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Support Screening, Brief Intervention and Referral to Treatment (SBIRT) programs to reduce the transition from use to disorders.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.

4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Support training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.
6. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or persons who have experienced an opioid overdose, into community treatment or recovery services through a bridge clinic or similar approach.
7. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or persons that have experienced an opioid overdose.
8. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
9. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to persons who have experienced an opioid overdose.
10. Provide funding for peer navigators, recovery coaches, care coordinators, or care managers that offer assistance to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to persons who have experienced on opioid overdose.
11. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
12. Develop and support best practices on addressing OUD in the workplace.
13. Support assistance programs for health care providers with OUD.
14. Engage non-profits and the faith community as a system to support outreach for treatment.
15. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
16. Create or support intake and call centers to facilitate education and access to treatment, prevention, and recovery services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.

17. Develop or support a National Treatment Availability Clearinghouse – a multistate/nationally accessible database whereby health care providers can list locations for currently available in-patient and out-patient OUD treatment services that are accessible on a real-time basis by persons who seek treatment.

D. ADDRESS THE NEEDS OF CRIMINAL-JUSTICE-INVOLVED PERSONS

Address the needs of persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are involved – or are at risk of becoming involved – in the criminal justice system through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support pre-arrest or post-arrest diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including established strategies such as:
 - a. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (PAARI);
 - b. Active outreach strategies such as the Drug Abuse Response Team (DART) model;
 - c. “Naloxone Plus” strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;
 - d. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (LEAD) model;
 - e. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative;
 - f. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise and to reduce perceived barriers associated with law enforcement 911 responses; or
 - g. County prosecution diversion programs, including diversion officer salary, only for counties with a population of 50,000 or less. Any diversion services in matters involving opioids must include drug testing, monitoring, or treatment.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to evidence-informed treatment, including MAT, and related services.
3. Support treatment and recovery courts for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, but only if these courts provide referrals to evidence-informed treatment, including MAT.

4. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are incarcerated in jail or prison.
5. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are leaving jail or prison have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.
6. Support critical time interventions (CTI), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.
7. Provide training on best practices for addressing the needs of criminal-justice-involved persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, case management, or other services offered in connection with any of the strategies described in this section.

E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and the needs of their families, including babies with neonatal abstinence syndrome, through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support evidence-based, evidence-informed, or promising treatment, including MAT, recovery services and supports, and prevention services for pregnant women – or women who could become pregnant – who have OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.
2. Provide training for obstetricians or other healthcare personnel that work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
3. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with Neonatal Abstinence Syndrome get referred to appropriate services and receive a plan of safe care.
4. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.

5. Offer enhanced family supports and home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to parent skills training.
6. Support for Children's Services – Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION

F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
2. Academic counter-detailing to educate prescribers on appropriate opioid prescribing.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Support enhancements or improvements to Prescription Drug Monitoring Programs (PDMPs), including but not limited to improvements that:
 - a. Increase the number of prescribers using PDMPs;
 - b. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs or by improving the interface that prescribers use to access PDMP data, or both; or
 - c. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD.
6. Development and implementation of a national PDMP – Fund development of a multistate/national PDMP that permits information sharing while providing appropriate safeguards on sharing of private health information, including but not limited to:
 - a. Integration of PDMP data with electronic health records, overdose episodes, and decision support tools for health care providers relating to OUD.

- b. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database.
- 7. Increase electronic prescribing to prevent diversion or forgery.
- 8. Educate Dispensers on appropriate opioid dispensing.

G. PREVENT MISUSE OF OPIOIDS

Support efforts to discourage or prevent misuse of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

- 1. Corrective advertising or affirmative public education campaigns based on evidence.
- 2. Public education relating to drug disposal.
- 3. Drug take-back disposal or destruction programs.
- 4. Fund community anti-drug coalitions that engage in drug prevention efforts.
- 5. Support community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction – including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA).
- 6. Engage non-profits and faith-based communities as systems to support prevention.
- 7. Support evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
- 8. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
- 9. Support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
- 10. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
- 11. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses or other school staff, to address mental health needs in young people that (when not properly addressed) increase the risk of opioid or other drug misuse.

H. PREVENT OVERDOSE DEATHS AND OTHER HARMS

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Increase availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, opioid users, families and friends of opioid users, schools, community navigators and outreach workers, drug offenders upon release from jail/prison, or other members of the general public.
2. Provision by public health entities of free naloxone to anyone in the community, including but not limited to provision of intra-nasal naloxone in settings where other options are not available or allowed.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, and other members of the general public.
4. Enable school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.
5. Expand, improve, or develop data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.
7. Public education relating to immunity and Good Samaritan laws.
8. Educate first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Expand access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
10. Support mobile units that offer or provide referrals to treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
11. Provide training in treatment and recovery strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
12. Support screening for fentanyl in routine clinical toxicology testing.

PART THREE: OTHER STRATEGIES

I. FIRST RESPONDERS

In addition to items C8, D1 through D7, H1, H3, and H8, support the following:

1. Current and future law enforcement expenditures relating to the opioid epidemic.
2. Educate law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.

J. LEADERSHIP, PLANNING AND COORDINATION

Support efforts to provide leadership, planning, and coordination to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Community regional planning to identify goals for reducing harms related to the opioid epidemic, to identify areas and populations with the greatest needs for treatment intervention services, or to support other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
2. A government dashboard to track key opioid-related indicators and supports as identified through collaborative community processes.
3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
4. Provide resources to staff government oversight and management of opioid abatement programs.

K. TRAINING

In addition to the training referred to in various items above, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Invest in infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or implement other

strategies to abate the opioid epidemic described in this opioid abatement strategy list (e.g., health care, primary care, pharmacies, PDMPs, etc.).

L. RESEARCH

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, and evaluation of programs and strategies described in this opioid abatement strategy list.
2. Research non-opioid treatment of chronic pain.
3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.
4. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
5. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (e.g. Hawaii HOPE and Dakota 24/7).
6. Research on expanded modalities such as prescription methadone that can expand access to MAT.

EXHIBIT B

County	Local Government	% Allocation
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Adams County

Adams County	0.1638732475%
Hatton	
Lind	
Othello	
Ritzville	
Washtucna	
County Total:	0.1638732475%

Asotin County

Asotin County	0.4694498386%
Asotin	
Clarkston	
County Total:	0.4694498386%

Benton County

Benton County	1.4848831892%
Benton City	
Kennewick	0.5415650564%
Prosser	
Richland	0.4756779517%
West Richland	0.0459360490%
County Total:	2.5480622463%

Chelan County

Chelan County	0.7434914485%
Cashmere	
Chelan	
Entiat	
Leavenworth	
Wenatchee	0.2968333494%
County Total:	1.0403247979%

Clallam County

Clallam County	1.3076983401%
Forks	
Port Angeles	0.4598370527%
Sequim	
County Total:	1.7675353928%

EXHIBIT B

County	Local Government	% Allocation
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Clark County

Clark County	4.5149775326%
Battle Ground	0.1384729857%
Camas	0.2691592724%
La Center	
Ridgefield	
Vancouver	1.7306605325%
Washougal	0.1279328220%
Woodland***	
Yacolt	
County Total: 6.7812031452%	

Columbia County

Columbia County	0.0561699537%
Dayton	
Starbuck	
County Total: 0.0561699537%	

Cowlitz County

Cowlitz County	1.7226945990%
Castle Rock	
Kalama	
Kelso	0.1331145270%
Longview	0.6162736905%
Woodland***	
County Total: 2.4720828165%	

Douglas County

Douglas County	0.3932175175%
Bridgeport	
Coulee Dam***	
East Wenatchee	0.0799810865%
Mansfield	
Rock Island	
Waterville	
County Total: 0.4731986040%	

Ferry County

Ferry County	0.1153487994%
Republic	
County Total: 0.1153487994%	

EXHIBIT B

County	Local Government	% Allocation
<u>Franklin County</u>		
	Franklin County	0.3361237144%
	Connell	
	Kahlotus	
	Mesa	
	Pasco	0.4278056066%
	County Total:	0.7639293210%
<u>Garfield County</u>		
	Garfield County	0.0321982209%
	Pomeroy	
	County Total:	0.0321982209%
<u>Grant County</u>		
	Grant County	0.9932572167%
	Coulee City	
	Coulee Dam***	
	Electric City	
	Ephrata	
	George	
	Grand Coulee	
	Hartline	
	Krupp	
	Mattawa	
	Moses Lake	0.2078293909%
	Quincy	
	Royal City	
	Soap Lake	
	Warden	
	Wilson Creek	
	County Total:	1.2010866076%

EXHIBIT B

County	Local Government	% Allocation
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Grays Harbor County

Grays Harbor County	0.9992429138%
Aberdeen	0.2491525333%
Cosmopolis	
Elma	
Hoquiam	
McCleary	
Montesano	
Oakville	
Ocean Shores	
Westport	
County Total:	1.2483954471%

Island County

Island County	0.6820422610%
Coupeville	
Langley	
Oak Harbor	0.2511550431%
County Total:	0.9331973041%

Jefferson County

Jefferson County	0.4417137380%
Port Townsend	
County Total:	0.4417137380%

EXHIBIT B

County	Local Government	% Allocation
<u>King County</u>		
	King County	13.9743722662%
	Algona	
	Auburn***	0.2622774917%
	Beaux Arts Village	
	Bellevue	1.1300592573%
	Black Diamond	
	Bothell***	0.1821602716%
	Burien	0.0270962921%
	Carnation	
	Clyde Hill	
	Covington	0.0118134406%
	Des Moines	0.1179764526%
	Duvall	
	Enumclaw***	0.0537768326%
	Federal Way	0.3061452240%
	Hunts Point	
	Issaquah	0.1876240107%
	Kenmore	0.0204441024%
	Kent	0.5377397676%
	Kirkland	0.5453525246%
	Lake Forest Park	0.0525439124%
	Maple Valley	0.0093761587%
	Medina	
	Mercer Island	0.1751797481%
	Milton***	
	Newcastle	0.0033117880%
	Normandy Park	
	North Bend	
	Pacific***	
	Redmond	0.4839486007%
	Renton	0.7652626920%
	Sammamish	0.0224369090%
	SeaTac	0.1481551278%
	Seattle	6.6032403816%
	Shoreline	0.0435834501%
	Skykomish	
	Snoqualmie	0.0649164481%
	Tukwila	0.3032205739%
	Woodinville	0.0185516364%
	Yarrow Point	
County Total:		26.0505653608%

EXHIBIT B

County	Local Government	% Allocation
Kitsap County		
	Kitsap County	2.6294133668%
	Bainbridge Island	0.1364686014%
	Bremerton	0.6193374389%
	Port Orchard	0.1009497162%
	Poulsbo	0.0773748246%
	County Total:	3.5635439479%
Kittitas County		
	Kittitas County	0.3855704683%
	Cle Elum	
	Ellensburg	0.0955824915%
	Kittitas	
	Roslyn	
	South Cle Elum	
	County Total:	0.4811529598%
Klickitat County		
	Klickitat County	0.2211673457%
	Bingen	
	Goldendale	
	White Salmon	
	County Total:	0.2211673457%
Lewis County		
	Lewis County	1.0777377479%
	Centralia	0.1909990353%
	Chehalis	
	Morton	
	Mossyrock	
	Napavine	
	Pe Ell	
	Toledo	
	Vader	
	Winlock	
	County Total:	1.2687367832%

EXHIBIT B

County	Local Government	% Allocation
<u>Lincoln County</u>		
	Lincoln County	0.1712669645%
	Almira	
	Creston	
	Davenport	
	Harrington	
	Odessa	
	Reardan	
	Sprague	
	Wilbur	
	County Total:	0.1712669645%
<u>Mason County</u>		
	Mason County	0.8089918012%
	Shelton	0.1239179888%
	County Total:	0.9329097900%
<u>Okanogan County</u>		
	Okanogan County	0.6145043345%
	Brewster	
	Conconully	
	Coulee Dam***	
	Elmer City	
	Nespelem	
	Okanogan	
	Omak	
	Oroville	
	Pateros	
	Riverside	
	Tonasket	
	Twisp	
	Winthrop	
	County Total:	0.6145043345%
<u>Pacific County</u>		
	Pacific County	0.4895416466%
	Ilwaco	
	Long Beach	
	Raymond	
	South Bend	
	County Total:	0.4895416466%

*** - Local Government appears in multiple counties

EXHIBIT B

County	Local Government	% Allocation
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Pend Oreille County

Pend Oreille County	0.2566374940%
Cusick	
Ione	
Metaline	
Metaline Falls	
Newport	

County Total: 0.2566374940%**Pierce County**

Pierce County	7.2310164020%
Auburn***	0.0628522112%
Bonney Lake	0.1190773864%
Buckley	
Carbonado	
DuPont	
Eatonville	
Edgewood	0.0048016791%
Enumclaw***	0.0000000000%
Fife	0.1955185481%
Fircrest	
Gig Harbor	0.0859963345%
Lakewood	0.5253640894%
Milton***	
Orting	
Pacific***	
Puyallup	0.3845704814%
Roy	
Ruston	
South Prairie	
Steilacoom	
Sumner	0.1083157569%
Tacoma	3.2816374617%
University Place	0.0353733363%
Wilkeson	

County Total: 12.0345236870%**San Juan County**

San Juan County	0.2101495171%
Friday Harbor	

County Total: 0.2101495171%

EXHIBIT B

County	Local Government	% Allocation
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Skagit County

Skagit County	1.0526023961%
Anacortes	0.1774962906%
Burlington	0.1146861661%
Concrete	
Hamilton	
La Conner	
Lyman	
Mount Vernon	0.2801063665%
Sedro-Woolley	0.0661146351%
County Total:	1.6910058544%

Skamania County

Skamania County	0.1631931925%
North Bonneville	
Stevenson	
County Total:	0.1631931925%

Snohomish County

Snohomish County	6.9054415622%
Arlington	0.2620524080%
Bothell***	0.2654558588%
Brier	
Darrington	
Edmonds	0.3058936009%
Everett	1.9258363241%
Gold Bar	
Granite Falls	
Index	
Lake Stevens	0.1385202891%
Lynnwood	0.7704629214%
Marysville	0.3945067827%
Mill Creek	0.1227939546%
Monroe	0.1771621898%
Mountlake Terrace	0.2108935805%
Mukilteo	0.2561790702%
Snohomish	0.0861097964%
Stanwood	
Sultan	
Woodway	
County Total:	11.8213083387%

EXHIBIT B

County	Local Government	% Allocation
<u>Spokane County</u>		
	Spokane County	5.5623859292%
	Airway Heights	
	Cheney	0.1238454349%
	Deer Park	
	Fairfield	
	Latah	
	Liberty Lake	0.0389636519%
	Medical Lake	
	Millwood	
	Rockford	
	Spangle	
	Spokane	3.0872078287%
	Spokane Valley	0.0684217500%
	Waverly	
	County Total:	8.8808245947%
<u>Stevens County</u>		
	Stevens County	0.7479240179%
	Chewelah	
	Colville	
	Kettle Falls	
	Marcus	
	Northport	
	Springdale	
	County Total:	0.7479240179%
<u>Thurston County</u>		
	Thurston County	2.3258492094%
	Bucoda	
	Lacey	0.2348627221%
	Olympia	0.6039423385%
	Rainier	
	Tenino	
	Tumwater	0.2065982350%
	Yelm	
	County Total:	3.3712525050%
<u>Wahkiakum County</u>		
	Wahkiakum County	0.0596582197%
	Cathlamet	
	County Total:	0.0596582197%

EXHIBIT B

County	Local Government	% Allocation
Walla Walla County		
	Walla Walla County	0.5543870294%
	College Place	
	Prescott	
	Waitsburg	
	Walla Walla	0.3140768654%
	County Total:	0.8684638948%
Whatcom County		
	Whatcom County	1.3452637306%
	Bellingham	0.8978614577%
	Blaine	
	Everson	
	Ferndale	0.0646101891%
	Lynden	0.0827115612%
	Nooksack	
	Sumas	
	County Total:	2.3904469386%
Whitman County		
	Whitman County	0.2626805837%
	Albion	
	Colfax	
	Colton	
	Endicott	
	Farmington	
	Garfield	
	LaCrosse	
	Lamont	
	Malden	
	Oakesdale	
	Palouse	
	Pullman	0.2214837491%
	Rosalia	
	St. John	
	Tekoa	
	Uniontown	
	County Total:	0.4841643328%

EXHIBIT B

County	Local Government	% Allocation
<u>Yakima County</u>		
	Yakima County	1.9388392959%
	Grandview	0.0530606109%
	Granger	
	Harrah	
	Mabton	
	Moxee	
	Naches	
	Selah	
	Sunnyside	0.1213478384%
	Tieton	
	Toppenish	
	Union Gap	
	Wapato	
	Yakima	0.6060410539%
	Zillah	
	County Total:	2.7192887991%

Exhibit C

KING COUNTY REGIONAL AGREEMENT

King County intends to explore coordination with its cities and towns to facilitate a Regional Agreement for Opioid Fund allocation. Should some cities and towns choose not to participate in a Regional Agreement, this shall not preclude coordinated allocation for programs and services between the County and those cities and towns who elect to pursue a Regional Agreement. As contemplated in C.5 of the MOU, any Regional Agreement shall comply with the terms of the MOU and any Settlement. If no Regional Agreement is achieved, the default methodology for allocation in C.4 of the MOU shall apply.

EXHIBIT K
Subdivision and Special District Settlement Participation Form

Will your subdivision or special district be signing the settlement participation forms for the Allergan and Teva Settlements at this time?

[X] Yes [] No

Governmental Entity: Port Orchard city	State: WA
Authorized Signatory: Noah Crocker	
Address 1: 216 Prospect Street	
Address 2:	
City, State, Zip: Port Orchard	washington 98366
Phone: 360 876-7023	
Email: ncrocker@portorchardwa.gov	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Agreement dated November 22, 2022 (“*Allergan Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Allergan Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Allergan Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Allergan Settlement as provided therein.
2. Following the execution of this Settlement Participation Form, the Governmental Entity shall comply with Section III.B of the Allergan Settlement regarding Cessation of Litigation Activities.
3. The Governmental Entity shall, within fourteen (14) days of the Reference Date and prior to the filing of the Consent Judgment, file a request to dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the MDL Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
4. The Governmental Entity agrees to the terms of the Allergan Settlement pertaining to Subdivisions and Special Districts as defined therein.
5. By agreeing to the terms of the Allergan Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
6. The Governmental Entity agrees to use any monies it receives through the Allergan Settlement solely for the purposes provided therein.



7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Allergan Settlement.
8. The Governmental Entity has the right to enforce the Allergan Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision or Participating Special District, hereby becomes a Releasor for all purposes in the Allergan Settlement, including, but not limited to, all provisions of **Section V (Release)**, and along with all departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Allergan Settlement are intended to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Allergan Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision or Participating Special District as set forth in the Allergan Settlement.
11. In connection with the releases provided for in the Allergan Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Allergan Settlement.

12. Nothing herein is intended to modify in any way the terms of the Allergan Settlement, to which the Governmental Entity hereby agrees. To the extent this Settlement Participation Form is interpreted differently from the Allergan Settlement in any respect, the Allergan Settlement controls.



I have all necessary power and authorization to execute this Settlement Participation Form on behalf of the Governmental Entity.

Signature:

DocuSigned by:
Noah Crocker
715A926012B4424...

Name:

Noah Crocker

Title:

Finance Director

Date:

2/21/2023



Exhibit K
Subdivision and Special District Settlement Participation Form

Governmental Entity: Port Orchard city	State: WA
Authorized Signatory: Noah Crocker	
Address 1: 216 Prospect Street	
Address 2:	
City, State, Zip: Port Orchard	Washington 98366
Phone: 360 876-7023	
Email: ncrocker@portorchardwa.gov	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Agreement dated November 22, 2022 (“*Teva Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Teva Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Teva Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Teva Settlement as provided therein.
2. Following the execution of this Settlement Participation Form, the Governmental Entity shall comply with Section III.B of the Teva Settlement regarding Cessation of Litigation Activities.
3. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, file a request to dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
4. The Governmental Entity agrees to the terms of the Teva Settlement pertaining to Subdivisions as defined therein.
5. By agreeing to the terms of the Teva Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
6. The Governmental Entity agrees to use any monies it receives through the Teva Settlement solely for the purposes provided therein.
7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Teva Settlement.



8. The Governmental Entity has the right to enforce the Teva Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision or Participating Special District, hereby becomes a Releasor for all purposes in the Teva Settlement, including but not limited to all provisions of Section V (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Teva Settlement are intended by Released Entities and the Governmental Entity to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Teva Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision or Participating Special District as set forth in the Teva Settlement.
11. In connection with the releases provided for in the Teva Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Teva Settlement.

12. Nothing herein is intended to modify in any way the terms of the Teva Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Teva Settlement in any respect, the Teva Settlement controls.



I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature:

DocuSigned by:
Noah Crocker
715A926012B4424...

Name:

Noah Crocker

Title:

Finance Director

Date:

2/21/2023



EXHIBIT K**Subdivision Participation and Release Form**

Will your subdivision or special district be signing the settlement participation form for the CVS Settlement at this time?

☒ Yes ☐ No

Governmental Entity: Port Orchard city	State: WA
Authorized Signatory: Noah Crocker	
Address 1: 216 Prospect Street	
Address 2:	
City, State, Zip: Port Orchard	washington 98366
Phone: 360-876-7023	
Email: ncrocker@portorchardwa.gov	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 (“*CVS Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the CVS Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the CVS Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the CVS Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
3. The Governmental Entity agrees to the terms of the CVS Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the CVS Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the CVS Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the CVS Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the CVS Settlement.
7. The Governmental Entity has the right to enforce the CVS Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the CVS Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the CVS Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The CVS Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the CVS Settlement.
10. In connection with the releases provided for in the CVS Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the CVS Settlement.



11. Nothing herein is intended to modify in any way the terms of the CVS Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the CVS Settlement in any respect, the CVS Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature:

DocuSigned by:
Noah Crocker
715A926012B4424...

Name:

Noah Crocker

Title:

Finance Director

Date:

2/21/2023



EXHIBIT K**Subdivision Participation and Release Form**

Will your subdivision or special district be signing the settlement participation form for the Walgreens Settlement at this time?

☒ Yes ☐ No

Governmental Entity: Port Orchard city	State: WA
Authorized Signatory: Noah Crocker	
Address 1: 216 Prospect Street	
Address 2:	
City, State, Zip: Port Orchard	washington 98366
Phone: 360-876-7023	
Email: ncrocker@portorchard	

The governmental entity identified above ("*Governmental Entity*"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 ("*Walgreens Settlement*"), and acting through the undersigned authorized official, hereby elects to participate in the Walgreens Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walgreens Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the Walgreens Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
3. The Governmental Entity agrees to the terms of the Walgreens Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the Walgreens Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Walgreens Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walgreens Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the Walgreens Settlement.
7. The Governmental Entity has the right to enforce the Walgreens Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walgreens Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walgreens Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walgreens Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Walgreens Settlement.
10. In connection with the releases provided for in the Walgreens Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walgreens Settlement.



11. Nothing herein is intended to modify in any way the terms of the Walgreens Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Walgreens Settlement in any respect, the Walgreens Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature:

DocuSigned by:
Noah Crocker
715A920012B4424...

Name:

Noah Crocker

Title:

Finance Director

Date:

2/21/2023



EXHIBIT K**Subdivision Participation Form**

Will your subdivision or special district be signing the settlement participation form for the Walmart Settlement at this time?

☒ Yes ☐ No

Governmental Entity: Port Orchard city	State: WA
Authorized Official: Noah Crocker	
Address 1: 216 Prospect Street	
Address 2:	
City, State, Zip: Port Orchard	washington 98366
Phone: 360-876-7023	
Email: ncrocker@portorchardwa.gov	

The governmental entity identified above ("Governmental Entity"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated November 14, 2022 ("Walmart Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Walmart Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walmart Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Walmart Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event within 14 days of the Effective Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com/>.
3. The Governmental Entity agrees to the terms of the Walmart Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Walmart Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Walmart Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walmart Settlement.
7. The Governmental Entity has the right to enforce the Walmart Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walmart Settlement, including but not limited to all provisions of Section X (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walmart Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walmart Settlement shall be a complete bar to any Released Claim.
9. In connection with the releases provided for in the Walmart Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walmart Settlement.

10. Nothing herein is intended to modify in any way the terms of the Walmart Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Walmart Settlement in any respect, the Walmart Settlement controls.



I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature:

DocuSigned by:
Noah Crocker
715A928012B4424...

Name:

Noah Crocker

Title:

Finance Director

Date:

2/21/2023





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 7H	Meeting Date:	March 28, 2023
Subject:	Approval to Accept a Special Event	Prepared by:	Brandy Wallace, MMC
	Application and Approval of Road Closure		City Clerk
	for a Special Event: The Unforgotten – Run	Atty Routing No:	N/A
	to Tahoma	Atty Review Date:	N/A

Summary: City staff received a Special Event application for The Unforgotten: Run to Tahoma event on February 2, 2023. Since this application is requesting road closures, the application received was less than the required 120 days and requires Council approval to accept and process the application.

The expedited process for applications were removed and since there are no provisions to allow “grandfathered” event holders an exemption of time requirements, the applicant is asking Council to modify the permit requirement by waiving the time restriction of submitting an application 120 days before the date of the special event to take place, as outlined in POMC 5.94.030 (4).

The application states the following:

EVENT: The Unforgotten: Run to Tahoma
TYPE: Celebration of Life; Formal Procession
DATE: Saturday, May 27, 2023
TIME: Open to public at 9:00 a.m. until 11:00 a.m.
LOCATION: Kitsap County Administration Building on Division Street
CLOSURE(S): Division Street, between Cline Avenue and Sidney Avenue; a rolling closure starting on Sidney, between Division Street and Tremont Street; and Tremont Street, between Sidney Avenue and SR16

In addition, pursuant to Port Orchard Municipal Code 5.94.050 (4), staff shall bring forward the special event application to the City council for approval when the event requires a street or highway closure. This event is requesting road closures.

The required notice, pursuant to POMC 5.96.050(3), allowing citizens to provide written comments regarding how allowing the special event will impact their property, business, or quality of life has been published and to-date, the City has received no concerns regarding this event taking place.

Staff and outside agencies are reviewing the application and are working towards ensuring safety measures are in place.

Relationship to Comprehensive Plan: N/A

Recommendation: Staff supports the application, upon the event meets the required necessary public safety and traffic control provisions.

Motion for consideration: I move to approve The Unforgotten: Run to Tahoma application, an event being held on May 27, 2023, be accepted and processed by staff waiving POMC 5.94.030(4) requirement and to approve the road closure upon all safety and traffic controls are in place.

Fiscal Impact: None.

Alternatives: Deny the road closure and not modify the time submittal requirement.

Attachments: Application, including maps and traffic flow map



SPECIAL EVENT PERMIT APPLICATION

(PORT ORCHARD MUNICIPAL CODE 5.94 AND 5.96)

STANDARD PROCESSING FEE: \$50.00



Event Overview

Name of event: The Unforgotten: Run to Tahoma
Location of event: Kitsap County Administration Building, Division Street, Port Orchard
Type of Event: <input type="checkbox"/> Festival <input type="checkbox"/> Walk/Run <input type="checkbox"/> Parade <input type="checkbox"/> Vendor Fair <input type="checkbox"/> Concert <input type="checkbox"/> Block Party <input type="checkbox"/> Other: <u>Vet Ceremony</u>
Event or Organization Website: https://www.kitsapgov.com/hs/Pages/VAB-Run-to-Tahoma.aspx
Description of event: Each year the Kitsap County Board of Commissioners, Kitsap County Coroner's Office, Kitsap County Veterans Advisory Board, and Combat Veterans International host The Unforgotten, Run to Tahoma. This is a ceremony held on the Saturday of the Memorial Day weekend at the county administration building and honors deceased veterans whose remains have not been claimed by family or friends for burial. After a celebration of life ceremony, veteran remains are

Event Details

Set Up Starts:				Take Down Complete:		
Start Day:	Start Date:	Start Time:	End Day:	End Date:	End Time:	
Saturday	05/27/2023	0800	Saturday	05/27/2023	1130	
Event Dates/Times: Indicate Dates/Times OPEN to attendees -1100				Expected Daily Attendance:		
				Participants	Spectators	volunteers/staff
Day:	Date:	Start Time:	End Time:	250	300	25
Saturday	05/27/2023	0900	1100			
Day:	Date:	Start Time:	End Time:			
Day:	Date:	Start Time:	End Time:			
Additional details: (attach additional pages as needed for additional days or details)						
A brief ceremony will be held to honor the deceased veterans at the Kitsap County Administration building on Division Street. Immediately following the ceremony the remains will be escorted to the Tahoma National Cemetery.						

Admission Fees:

Does your event require a paid fee for participants and/or spectators?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does your event require minimum or suggested donation for participants and/or spectators?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Admission/participation fee/ suggest donations amount(s): No admission or participation fees are required or requested.		

Organization Information*

Name of Organization: Kitsap County Veterans Advisory Board					
Do you have an active City Business License?			<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	What is your UBI number? N/A
Point of Contact Name: Richard Becker					
Street Address: 6955 Cadmar Ln NW			Mailing Address: (if different from street address)		
City: Seabeck	State: WA	Zip: 98380	City:	State:	Zip:
Phone: 360-337-4811	Alternate Phone: 360-633-0201		Email: rbecker@kitsap.gov		

**Please note the organization information provided may be shared for inquiries made on event details*

Insurance

The sponsoring organization must provide an insurance certificate, with endorsements, at least 30 days prior to the event with the City of Port Orchard shown as Additional Named Insured with minimum coverage to be as follows:

\$1,000,000 Liability; \$1,000,000 Bodily Injury

Special Event Insurance for events held at city-owned facilities can be purchased at eventinsure.hubinternational.com/.

Parking Impacts

Have parking impacts been coordinated with neighbors (residential/business)? ☐ Yes ☐ No ☒ Not Applicable

If yes, how will parking be provided for participants and visitors (including handicapped parking)? You may submit a map to show the available parking for this event in place of providing a written description below.

Sufficient parking will be available at designated Kitsap County parking areas.

Use of City Streets and/or State Highway

STATE HIGHWAY:

Will this event require closure of a State Highway (most common is Bay Street/SR166)?

☐ Yes ☒ No

If yes, which highway:

☐ Bay Street/SR 166

☐ Sedgwick Road

☐ Mile Hill Drive

For State Highway Closures, the sponsoring organization must submit the application to the city at least 120 calendar days before the event date. Upon city approval of the event, the sponsoring organization shall seek permission from the Washington State Department of Transportation (WSDOT) by completing an online application. Once permission is granted from WSDOT, a copy of the Letter of Acknowledgment or an Agreement will need to be provided to the city 45 days prior to the event. WSDOT's online application is located at: <https://www.wsdot.wa.gov/contact/events/special-events>

CITY PROPERTY/STREETS (Right-of-way): Port Orchard Municipal Code 5.94.020(7) states "Right-of-way (ROW)" means any road, public parking lot, city street, highway, boulevard or place in the city open as a matter of right to public travel and shall include arterials, neighborhood streets, alleys, bicycle paths and pedestrian ways; including streets or portions thereof which are designated as portions of the state highway system."

Will this event require closure of any of the below public property/ right-of-way?

☒ Yes ☐ No

If yes, indicate what type of public property is requested to be closed and the location (select all that apply):

City Park(s):

☐ Van Zee Park

☐ McCormick
Village Park

☐ Etta Turner
Park

☐ Rockwell Park

☐ Paul Powers
Park

☐ Central Park

☐ Givens Park

Parking Lot(s):

☐

Lot 1: between Orchard and Frederick streets on the north side of Bay Street

☐

Lot 2: between Frederick Street and Sidney Avenue, north of Bay St.

☐

Lot 3: five rows of parking west of Harrison Ave and east of and parallel to the library

☐

Lot 4: all parking east of Lot 3 and Harrison Ave and west of the Marina Park

☐

Lot 5: all parking on City Hall property in front of the Police department

☐

Lot 6: abutting the landscaped area at the SW corner of the Bay St and Dekalb St intersection

☐

Lot 7: all parking spaced located on the library property which is limited to library staff only

☐

Lot 8: employee parking lot east of City Hall adjacent to Prospect Alley which is between Kitsap Street and Prospect Street.

Sidewalk(s):

Street(s): We request the closure of Division Street for the safety of attendees between the
hours of 0930 and 1100.

If requesting street or highway closure, fill out the "Details of Closure" section below and provide a traffic control plan of the area impacted.

Traffic Control Plan:

A traffic control plan is required for all street and highway closures and **must be submitted with this application.**
See example Site Plan. The following is required to be on the plan(s):

- ☐ **Detour route(s)** ☐ **Pedestrian and Bicycle routes** ☒ **Volunteers:** how many, where, how long, etc.
- ☐ **Signs/Barriers:** How many, what kind of signs, where will they be located, who is putting them up, who will be taking them down, etc.
- ☐ **Certified flaggers:** how many will there be, where will they be stationed, what time will they be there, what time will they be gone, etc.

Should your event require traffic control and certified flaggers to manage the road closures, provide the following information:

Name of the Traffic Control company: N/A		
Point of Contact Name:		
Phone:	Alternate Phone:	Email:

Details of Closure(s):

Street Name:	Between (cross street):	And (cross street):	Start Date:	Start Time:	End Date:	End Time:
Division	Sydney	Cline	05/27/2023	0930	05/27/2023	1100
Sydney	Division	Tremont	05/27/2023	1100	05/27/2023	1115
Tremont	Sydney	SR16	05/27/2023	1115	05/27/2023	1130
Additional details: (attach additional pages as needed for more streets and/or more details about use.) Elite Riders will serve as intersection road guards .						

Alcohol Sales/Services

The sale, service and consumption of alcoholic beverages are subject to Washington State Liquor & Cannabis Board (WSLCB) regulations, licensing, and permit requirements. WSLCB Special Occasion and other Licenses and related fees for alcohol sales/service at events are not included in the City's Special Event Permit. Visit the WSLCB website, <https://lcb.wa.gov/> for additional information and to apply for the appropriate license / Permit.

Will alcohol be sold or consumed at your event? ☐ Yes* ☒ No

**If yes, you must contact the Washington State Liquor and Cannabis Board for a special liquor license.*

Food Sales/Service

You will need to reach out to the Kitsap Public Health District as they may require a temporary food establishment permit. Visit their website at https://kitsappublichealth.org/FoodSafety/food_vendors.php or call (360) 728-2235 for information.

Will your event have any food service and/or sales? ☐ Yes ☒ No If yes, how many: _____

Will your event have professional catering? ☐ Yes ☒ No If yes, how many: _____

Will your event have food truck(s)? ☐ Yes ☒ No If yes, how many: _____

Washington State Fire Code section 105.6.30 Mobile food preparation vehicles is defined as:

An operational permit is required for mobile food preparation vehicles equipped with appliances that produce smoke or grease-laden vapors or utilize LP-gas systems or CNG systems. Contact Community Development.

- [Food Truck Safety Handout](#)
- [Mobile Food Preparation Vehicle Permit Application](#)

Garbage and Recycling

Collection Stations: How many bins are you providing as collection containers at your event?

Recycle 1 Garbage 1

Will you manage your own recycling and garbage collection or will it be managed by a vendor?

Self-Haul ☒ Yes ☐ No List vendor/company, if applicable: N/A

Detail your plan for waste management within the event area and surrounding neighborhood:

Waste management will be accomplished by using receptacles available at the Kitsap County Administration Building as in previous years.

Restrooms

Prove the number of restrooms that will be available to the public for your event: Sufficient restrooms

Below is an example of the estimated amounts needed per the amount of users recommended in the *FEMA Special Events Contingency Planning: Job Aids Manual*. available in the K.C. Admin Bldg.

No. of users (50% male and 50% female)	Minimum number of portable toilets
Up to 240	3
250 to 499	4
500 to 900	6
1,000 to 1,999	12
2,000 to 2,999	25
3,000 to 3,999	38
4,000 to 4,999	50

Master Multi-Vendor Event License

Will your event have vendors? ☐ Yes ☒ No

If so, how many anticipated exhibitors/vendors will be at your event? N/A

If so, will they be selling merchandise and/ or food? ☐ Yes ☒ No - If you indicated Yes, please see the **Food** section on Page 4 of this application.

POMC 5.96, if your event has two or more vendors engaged in public property vending, you are required to have a Master Multi-Vendor Event License (MMVEL). The MMVEL fee is \$15.00 per day or \$200 per month. POMC 5.96.020(3)(a) states the sponsor of the master event shall provide a list of participating vendors, their business names, their addresses and their State Tax Revenue Identification Numbers to the city clerk within three working days after the first day of the operation.

- No public vending is allowed within twenty-five (25) feet of any municipal building, monument, or fountain, OR within ten (10) feet of intersection sidewalks.
- Vending devices must be removed from vending sites daily between the hours of 10:00 p.m. and 6:00 a.m.
- Vending devices and vending sites must always be clean and orderly. The vendor must furnish a suitable refuse container and is responsible for the daily disposal of refuse deposited therein. Refuse containers must be removed each day along with vending devices.
- Vendors may engage in public property vending only in the location specified in the public property license. The location shall be deemed the vending site.
- Utility service connections are not permitted, except electrical when provided with written permission from the adjacent property owner. Electrical lines are not allowed overhead or lying in the pedestrian portion of the sidewalk.
- No mechanical audio or noisemaking devices are allowed, and no hawking is allowed.
- A vinyl or canvas umbrella may be added to the vending device, but its open diameter may not exceed eight and one-half feet. Any part of the umbrella must have a minimum of seven feet of vertical clearance to the area on which the vending device stands.
- Individual vendor advertising signs may be placed only upon the vending device. Temporary master event advertising signs may be placed as approved by the city engineer; and
- No conduct shall be permitted which violates any other section of the Port Orchard Municipal Code.

Tents

Does your event include a tent or membrane structure? ☐ Yes ☒ No ☐ Not Applicable

If yes, what is the tent size: N/A Does the tent have sides? ☐ Yes ☐ No ☐ Not applicable

May be required to obtain a permit per POMC 20.200.016. Please contact Community Development (360) 874-5533.

Event Signage

Are you planning to put up temporary signs? ☐ Yes ☒ No

POMC 20.132.290 "Temporary sign" (which may include special event sign) means any sign that is used temporarily and is not permanently mounted, painted or otherwise affixed, excluding portable signs as defined by this chapter, including any poster, banner, placard, stake sign or sign not placed in the ground with concrete or other means to provide permanent support, stability and rot prevention. Temporary signs may only be made of nondurable materials including, but not limited to, paper, corrugated board, flexible, bendable or foldable plastics, foamcore board, vinyl canvas or vinyl mesh products of less than 20-ounce fabric, vinyl canvas and vinyl mesh products without polymeric plasticizers and signs painted or drawn with water soluble paints or chalks. Signs made of any other materials shall be considered permanent and are subject to the permanent sign regulations of this chapter. Please contact the Community Development Department at (360) 874-5533 if you have questions or if you need to apply for a sign permit.

Amplified Sound

Does your event have any amplified sound? ☒ Yes ☐ No

Indicate dates/time of any amplified sound below:			
Day: Saturday	Date: 05/27/2023	Start Time: 0930	End Time: 1100
Day:	Date:	Start Time:	End Time:
Day:	Date:	Start Time:	End Time:
Describe what sound will be amplified, and at what hours (e.g., 7:00am announcements, 8:00am background music, etc.): Assuming good weather, patriotic music will be played as an interlude to the ceremony at 0930, voice presentations during the ceremony at 1000, and patriotic music following the ceremony at 1045 to 1100. If inclement weather, ceremonies will be held in the Commissioners Chambers.			
Describe what equipment will be used for amplified sound, and at what locations (show in maps): Two mid-sized speakers will be placed on 6 foot tall stands.			
Describe schematics and direction of amplified sound (show in maps, attach supporting documents as needed) Speakers will be directed from the administration building toward the county court house.			

Noise levels generated shall not be in excess of allowable levels, consistent with POMC 9.24.050. For more information please contact the Port Orchard Police Department (360) 876-1700.

THE RUN TO TANTONA: SATURDAY MAY 27, 2023 0900-1100



Living Art Koi

← ROUTE TO PARKING IS AUSTIN
ON DWIGHT ST
PARKING

Dwight St

Cline Ave

Kitsap County Auditor



ROAD CLOSURE TO AUSTIN
DIVISION ST
BARBARCIDE

MC PARKING

MC PARKING

Kitsap County
District Court



Kitsap County
Superior Court Clerk



Kitsap County Sheriff's
Office - Main Office



Division St

Greaseel
RESCUE
Kitsap County
Auto License

SPINKER
SPINKER
SPINKER

Austin Ave

PARKING

Kitsap County
Personnel Department



Kitsap County
Public Works



PARKING

DIVISION ST
CLOSURE TO AUSTIN
BARBARCIDE

Silver

BUS ROUTE

ADDITIONAL PARKING IF
AVAILABLE AT THIS
LOCATION

CONTACT:
RICHARD BECKER
360-337-4811

ChargePoint
Charging Station

Google
Kitsap Regional

Site Map

A site map is **required** to be submitted which includes the following:

Vendors:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not applicable
Beer Garden:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not applicable
Signage:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not applicable
Tents:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not applicable
Public entrances and exits:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not applicable
Road closures and detours:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not applicable
Traffic patterns:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not applicable
Fire Lanes:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not applicable
Garbage/Recycling:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not applicable
Barricades:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not applicable
First Aid:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not applicable
Parking:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not applicable
Restrooms:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not applicable

If event is a run/walk, list start and stop locations and water/rest stations:

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not applicable
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Release

I certify that the event for which this permit is to be used will not be in violation of any City of Port Orchard ordinance.

By applying for this special event permit, the organization or entity obtaining such permit agrees to defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from all claims, injuries, damages, losses, or suits, including attorney fees and costs, arising out of or in conjunction with the activities or operations performed by the applicant or on the applicant's behalf resulting from the issuance of this permit, except for injuries and damages caused by the sole negligence of the City.

The information on this form is considered a public record and is subject to public disclosure laws in Chapter 42.56 RCW.

I, as the President or Chair of my organization, agree to the terms and conditions listed above.

Richard Becker

Digitally signed by Richard Becker
Date: 2023.02.01 11:47:08 -08'00'

Richard Becker

01/01/2023

Signature of President/Chair of Organization

Print Name

Date

FOR CITY CLERK'S OFFICE USE ONLY

Date Special Event Fee Paid (\$50): _____

Receipt No.: _____

Insurance Certificate(s) Received: 2/2/2023

Does event require a Master Multi-Vendor License: ☐ Yes ☒ No

If Yes: ☐ \$15/day fee ☐ \$200/monthly fee

Number of days: _____

Total Amount: N/A

Date paid: _____

Receipt No.: _____

Department/Agency Routing:

☐ Police ☐ Public Works ☐ Finance ☐ Community Development ☐ Kitsap Transit ☐ Clerk's Office ☐ Health District

Public Notice Dates: _____

Council Action Date: _____





City of Port Orchard

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

Agenda Staff Report

Agenda Item No.: Discussion Item 8A
Subject: Discussion of the 2022 Annual Impact Fee
Report

Meeting Date: March 28, 2023
Prepared by: Nicholas Bond, AICP
DCD Director
Atty Routing No.: NA
Atty Review Date: NA

Summary: The City is required to prepare an annual report on the collection and expenditure of impact fees. The 2022 report is attached this this staff report.

Relationship to Comprehensive Plan: N/A

Recommendation: Review and Discuss the 2022 Annual Report

Motion for consideration: N/A

Fiscal Impact: N/A

Alternatives: N/A

Attachments: The 2022 Annual Impact Fee Report Memorandum



Memorandum

To: The City Council
From: Nicholas Bond AICP, DCD Director
Date: March 28, 2023
Re: 2022 Impact Fee Annual Report (Per POMC 16.70.130 E)

Port Orchard Municipal Code Section 20.182.130 (5) requires the DCD Director and the South Kitsap School District to provide an annual report on the collection of park, transportation, and school impact fees. This memo is written to satisfy the reporting requirement for the City's park and transportation impact fees. The School District's report is to be provided separately pursuant to the Interlocal Agreement (C035-22) between the District and the City concerning the collection of school impact fees.

Park Impact Fee:

Background: Park impact fees are assessed against all residential development and the fee amount is based on housing type. Impact fees are intended to be spent within a 10-year period of being collected for appropriate projects.

10-Year Tracking: The city tracks the total amount of park impact fee revenue collected each year and when those revenues were spent on park eligible projects. As of the end of 2021, the City has expended all revenues collected from 2012-2018. See the below table for current revenue received eligible for projects by fiscal year. Pursuant to RCW 82.02.070 (3) impact fees must be spent within 10 years of collection. The table below demonstrates \$12,762 must be spent by 2029, \$173,546 by 2030, \$248,995 by 2031 and \$373,215 by 2032

Tracking	2019	2020	2021	2022
Revenues	79,059	173,546	248,995	373,215
Applied Expenses	(66,297)			
Balance Available to Spend By Year Collected	12,762	173,546	248,995	373,215

2022 Financial Overview: On January 1, 2022, there was a parks impact fee balance of \$472,322. Revenue received during the year included park impact fees of \$362,607 and interest of \$10,608 for a total revenue received of \$373,215. Park impact fees were used to pay towards the McCormick Village Park Splash Pad Retrofit Project in 2022 in the amount of \$37,019 leaving an ending balance of **\$808,518.**

The follow table represents the revenue and expense activity:

Park Impact Fees			
	2020	2021	2022
Beginning Balance	123,325	255,009	472,322
Revenue	173,546	248,995	373,215
Expenditure	(41,862)	(31,682)	(37,019)
Ending Balance	255,009	472,322	808,518

Transportation Impact Fee:

Background: Prior to 2021, the City had two separate areas for the collection of impact fees due to the 2005 development agreement for transportation between the Kitsap County (assumed by Port Orchard) and McCormick Communities. In 2015, the City adopted transportation impact fees (effective January 1, 2026) for all areas of the City other than the areas of McCormick woods governed by the 2005 agreement. In 2021, the City approved Ordinance 007-21 and a new Development Agreement for Transportation between the City and McCormick Communities (C035-21). These two actions consolidated the City into a single transportation impact fee assessment area and provided for the combination of McCormick specific transportation impact fees and the non-McCormick specific impact funds. However, pursuant to the 2005 and 2021 development agreements for transportation, the McCormick specific impact fees that had been collected are not subject to RCW 82.02.070 requiring that the funds be spent within 10 years. As such, these funds are and will continue to be tracked and accounted for separately in annual reports until the funds have been spent in full.

Since Ordinance 007-21 took effect, transportation impact fees are assessed against all new development in the city and are based on the peak PM trip generation of a project. Impact Fees, other than those collected pursuant to the 2005 McCormick development agreement for transportation, are intended to be spent within a 10-year period of being collected for appropriate projects.

10-Year Tracking (non-McCormick Woods Transportation Impact Fees): The city tracks the total amount of transportation impact fee revenue collected each year and when those revenues were spent on eligible projects. As of the end of 2022, the City has expended all revenues collected from 2016-2019. See the below table for current revenue received eligible for projects by fiscal year. Pursuant to RCW 82.02.070 (3) impact fees must be spent within 10 years of collection. The table below demonstrates \$420,858 must be spent by 2030, \$1,205,887 by 2031, and \$1,845,686 by 2032.

10-Year Tracking	2020	2021	2022
Revenues	498,544	1,205,887	1,845,686
Applied Expenses	(77,686)	-	-
Balance Available to Spend By Year Collected	420,858	1,205,887	1,845,686

2022 Financial Overview (non-McCormick Transportation Impact Fees): On January 1, 2022 there was a balance of \$1,731,882. Revenue received during the year included impact fees of \$1,800,222 and interest of \$45,464 for a total of \$1,845,686 in transportation impact fee revenue. Transportation impact fees were used as follows:

- 1) TIP 1.7 Bethel-Lincoln Corridor project (TIF 2.04E): \$96,088
- 2) TIP 1.15 Pottery Ave Non- Motorized: \$9,048

The total expenses paid for 2022 was \$105,138. Transportation impact fees ended the year with a balance of **\$3,472,431**.

The follow table represents the revenue and expense activity:

	Transportation Impact		
	2020	2021	2022
Beginning Balance	702,981	944,142	1,731,882
Revenue	498,544	1,205,887	1,845,686
Expenditure	(257,383)	(418,147)	(105,138)
Ending Balance	944,142	1,731,882	3,472,431

2022 Financial Overview (McCormick Transportation Impact Fees): In the following table, McCormick Woods impact fees are accounted for separately from the citywide transportation impact fees. Pursuant to a 2021 Development Agreement for Transportation (035-21), these funds may be spent on any eligible impact fee project. On January 1, 2022 there was a balance of \$788,898 for McCormick Woods Transportation Fees. The City no longer collects McCormick specific transportation impact fees. Revenue received during the year included interest of \$11,232. In 2022 McCormick Woods impact fees in the amount of \$103,640 were used to reimburse McCormick Land Co. (as assigned) for previously constructed improvements pursuant to the 2005 Development Agreement for Transportation between McCormick Communities LLC and the City. Additionally, \$4,847 was used to pay right of way services for TIP 1.5A Old Clifton Road. The total expenses paid for 2022 was \$108,487. The result of these activities is an ending balance of **\$691,644**

The follow table represents the revenue and expense activity:

	McCormick Woods		
	2020	2021	2022
Beginning Balance	610,659	785,820	788,898
Revenue	222,471	31,190	11,232
Expenditure	(47,310)	(28,111)	(108,487)
Ending Balance	785,820	788,898	691,644

Restated Transportation Impact Fees:

In 2021 the McCormick Woods Transportation Impact Fees were merged with the City transportation fee through a new agreement (C035-21). The following table restates the combined transportation impact fee balances for 2021 and 2022.

	Transportation Impact	
	2021*	2022*
Beginning Balance	1,729,962	2,520,781
Revenue	1,237,077	1,856,918
Expenditure	(446,258)	(213,625)
Ending Balance	2,520,781	4,164,074
*2021,2022 Re-stated to reflect New McCormick Agreement		

Transportation Impact Fee Detail History

2021 Project Description	TIF 2021	2021 TIF Growth Share	City Expenses Paid			Developer Credits issued FY 2022	Growth Share Remaining	Certified Project Cost
			2008-2015	2016-2021	2022			
Glenwood Connector Roadway	DA	\$ 2,000,000	\$ 391,612	\$ 291,228	\$ 103,640		\$ 1,337,343	\$ 2,123,823
Tremont St Widening CN Phase	1.1	\$ 1,851,656		\$ 47,000			\$ 1,804,656	
Bethel/Sedgwick Corridor Ph. 1 Design	1.3	\$ 293,489					\$ 293,489	
Old Clifton Rd/Anderson Hill Rd Roundabout	1.4	\$ 786,112		\$ 147,685			\$ 638,427	
Old Clifton Rd Design - 60%	1.5A	\$ 562,000			\$ 4,847		\$ 557,153	
Old Clifton Rd/Campus Pkwy Roundabout (C035-21)	DA-1.5C	\$ 1,600,000				\$ 144,849	\$ 1,455,151	\$ 568,161
Vallair Ct Connector	1.7	\$ 96,697					\$ 96,697	
Sidney Ave (N) Widening	2.01	\$ 3,144,444					\$ 3,144,444	
Sedgwick Rd West Design/ROW	2.02	\$ 722,000					\$ 722,000	
Sedgwick Rd West Construction	2.03	\$ 2,165,500					\$ 2,165,500	
Bethel/Sedgwick Corridor Ph. 1 ROW/Construction	2.04A	\$ 1,740,094					\$ 1,740,094	
Bethel/Sedgwick Corridor Ph. 2	2.04B	\$ 1,464,306					\$ 1,464,306	
Bethel/Sedgwick Corridor Ph. 3	2.04C	\$ 97,776					\$ 97,776	
Bethel/Sedgwick Corridor Ph. 4	2.04D	\$ 2,067,975					\$ 2,067,975	
Bethel/Sedgwick Corridor Ph. 5	2.04E	\$ 5,529,500		\$ 602,384	\$ 96,089		\$ 4,831,027	
Sidney Rd (S) Widening	2.05	\$ 2,123,567					\$ 2,123,567	
Sidney Rd (S) Widening (C076-21)	DA-2.05	\$ 469,800				\$ 469,800	\$ -	\$ 580,085
Pottery Ave (N) Widening	2.06	\$ 277,500					\$ 277,500	
Old Clifton Rd Shoulder & Ped Improvements	2.07	1,686,000		\$ 86,630			\$ 1,599,370	
Old Clifton Rd/McCormick Woods Dr Roundabout (C035-21)	DA-2.08	1,600,000					\$ 1,600,000	
Melcher St Widening	2.09	25,279					\$ 25,279	
Fireweed Rd Widening	2.1	11,700					\$ 11,700	
Sherman Ave Widening	2.12	16,400					\$ 16,400	
Tremont St Widening Ph. 2- PO Blvd	2.13	5,342,000					\$ 5,342,000	
Pottery Ave (S) Widening	2.14	415,119			\$ 9,049		\$ 406,070	
Blueberry Rd Widening	2.16	80,518					\$ 80,518	
Geiger Rd Widening	2.17	11,700					\$ 11,700	
Salmonberry Rd Widening	2.18	28,803					\$ 28,803	
Piperberry Way Extension	2.19	25,665					\$ 25,665	
Old Clifton Rd/Feigley Rd Roundabout	2.21	31,150					\$ 31,150	
DA Feigley Rd Improvements*	DA	76,474	76,474				\$ -	\$ 76,474
Totals		\$ 36,343,224	\$ 468,086	\$ 1,174,927	\$ 213,625	\$ 614,649	\$ 33,995,760	