

Meeting Location: Council Chambers, 3<sup>rd</sup> Floor 216 Prospect Street Port Orchard, WA 98366 Contact us: Phone (360) 876-4407 cityhall@portorchardwa.gov www.portorchardwa.gov

#### City of Port Orchard City Council Regular Meeting Agenda January 23, 2024 6:30 p.m.

Pursuant to the Open Public Meetings Act, Chapter 42.30 RCW, the City Council is conducting its public meeting in a hybrid format with options for in-person attendance in the Council Chambers at City Hall or remote viewing and participation via Zoom (link below). The meeting is streamed live on the City's YouTube channel, click here.

#### **Remote access**

Link: https://us02web.zoom.us/j/89256170891

**Zoom Meeting ID:** 892 5617 0891 **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 ON AGENDA ITEMS

(This is an opportunity for citizens to address the City Council on agenda items that are not associated with a Public Hearing on this agenda. Comments are limited to **3 minutes**. Please approach the podium or raise your Zoom hand if viewing remotely and wait to be recognized by the Mayor. Then, state your name for the official record. If you are attending remotely by Zoom via telephone, enter \*9 from your keypad to raise your hand.)

#### 4. CONSENT AGENDA

(Items listed are to be considered routine in nature and are grouped together in a single motion. A Councilmember may remove an item for separate consideration upon request. In the event of such request, the item is placed under Business Items.)

- A. Approval of Vouchers and Electronic Payments
- **B.** Approval of Payroll and Direct Deposits
- **C.** Adoption of a Resolution Repealing Resolution No. 016-22 and Accepting Council Committee Assignments and Establishing Council Standing Committees (Wallace) **Page 4**
- D. Adoption of a Resolution Amending Resolution No. 125-23 and Authorizing Additional Payment to Effectuate the Purchase of a Portion of Kitsap County Tax Parcel No. 342401-4-023-2002 (Magneson) for the Pottery Sidewalk Extension Project (Ryan) Page 8
- **E.** Approval of a Contract with Washington State Parks and Recreation Commission Subrecipient Grant Agreement for a Federal Financial Assistant Grant (Brown) **Page 28**

F. Approval of the January 9, 2024, City Council Meeting Minutes Page 98

#### 5. PRESENTATION

A. City's Inclusion Commission (Lund)

#### 6. PUBLIC HEARING

(Accepting public testimony from citizens limited to the specific item listed)

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

#### 8. BUSINESS ITEMS

- **A.** Adoption of an Ordinance Amending POMC Chapter 13.04 Related to Penalties for Delinquent Utility Service Charges (Crocker) **Page 103**
- **B.** Adoption of an Ordinance Repealing and Replacing POMC Chapter 5.97, Pertaining to Impound Services and the City's Rotational Towing List (Archer) **Page 113**
- C. Adoption of a Resolution Approving a Contract with PumpTech, LLC for the Tremont Place Lift Station Repairs (Ryan) Page 127
- **D.** Adoption of a Resolution Approving a Contract with SCJ Alliance for the Sidney Non-Motorized Road Improvements (Ryan) **Page 161**
- E. Adoption of a Resolution Approving the Purchase of Asset Management Software (Ryan) Page 216
- **F.** Approval of Amendment No. 13 to Contract No. 066-20 with Rice Fergus Miller, Inc. for the Community Events Center (Bond) **Page 224**

#### 9. DISCUSSION ITEMS (No Action to be Taken)

A. Council Choice of RMSA Required Course for 2024 (Lund) Page 275

#### 10. REPORTS OF COUNCIL COMMITTEES

#### 11. REPORT OF MAYOR

#### 12. REPORT OF DEPARTMENT HEADS

#### 13. CITIZEN COMMENTS ON ANY ITEM

(This is an opportunity for citizens to address the City Council on any items that are not associated with a Public Hearing on this agenda. Comments are limited to **3 minutes**. Please approach the podium or raise your Zoom hand if viewing remotely and wait to be recognized by the Mayor. Then, state your name for the official record. If you are attending remotely by Zoom via telephone, enter \*9 from your keypad to raise your hand.)

#### 14. CITY COUNCIL GOOD OF THE ORDER

#### **15. ADJOURNMENT**

#### CITY COUNCIL ADVISORY COMMITTEES

(Three council members serve on the committee with staff to make collaborative recommendations about work product. Staff then prepares the items for full Council consideration based on the Committee's discussion.)

STANDING COMMITTEE	Date & Time	Location
<b>Economic Development and Tourism</b>	February **, 2024, ; 9:30am – 3 <sup>rd</sup> Monday of the month	Remote Access
Utilities	TBD; 5:00pm – 2 <sup>nd</sup> Tuesday of the month	Remote Access
Finance	TBD; 5:00pm – 3 <sup>rd</sup> Tuesday of the month	Remote Access

Transportation	February 27, 2024; 5:00pm- 4 <sup>th</sup> Tuesday of the month	Remote Access	
Land Use	February 21,2024; 4:30pm – 3 <sup>rd</sup> Wednesday of the	Remote Access	
	month		
Lodging Tax Advisory	TBD 2024	Remote Access	
Sewer Advisory	TBD, 2024	Remote Access	
Outside Agency Committees	Varies	Varies	

ADA Requirements: In compliance with the Americans with Disabilities Act, if you need accommodations to participate in this meeting, please contact the City Clerk's office at (360) 876-4407. Notification at least 48 hours in advance of meeting will enable the City to make arrangements to assure accessibility to this meeting.

#### REMINDER: Please silence all electronic devices while City Council is in session.

To subscribe to our general news & public notices click the link: <a href="https://portorchardwa.gov/subscribe">https://portorchardwa.gov/subscribe</a>

Robert (Rob) Putaansuu	
Mayor	

Administrative Official

## Eric Worden Councilmember Position 4 Land Use Committee ilities/Sawer Advisory Committee

Land Use Committee Utilities/Sewer Advisory Committee KRCC-alt

Brandy Wallace, MMC, CPRO City Clerk

> Matt Brown Police Chief

#### Mark Trenary Councilmember Position 1

Finance Committee
Transportation Committee
KRCC
PSRC-alt

### Heidi Fenton Councilmember Position 5 Utilities/Sewer Advisory Committee

ities/Sewer Advisory Committ E/D & Tourism Committee Transportation Committee

Debbie Lund, CEBS SPHR SHRM-SCP Human Resources Director

Nicholas Bond, AICP

Community Development Director

#### Jay Rosapepe

Councilmember Position 2
Utilities/Sewer Advisory Committee
Land Use Committee
KEDA-alt

## Fred Chang Councilmember Position 6 (Mayor Pro-Tempore) E/D & Tourism Committee

Finance Committee

Noah Crocker, M.B.A.
Finance Director
Denis Ryan

**Public Works Director** 

#### Scott Diener

Councilmember Position 3 Land Use Committee Transportation Committee Kitsap Public Health District

#### John Morrissey Councilmember Position At-Large

Finance Committee E/D & Tourism Committee Lodging Tax, **Chair** Kitsap Economic Development Alliance

Tim Drury

Municipal Court Judge



#### City of Port Orchard

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

#### **Agenda Staff Report**

Agenda Item No.: Consent Agenda 4C Meeting Date: January 23, 2024

Subject: Adoption of a Resolution Repealing Prepared by: Brandy Wallace, MMC

Resolution No. 016-22 and Accepting Council Committee Assignments and Establishing Council Standing Committees Atty Review Date: N/A

**Summary**: On January 09, 2024, during the regular City Council meeting, Councilmembers provided recommendations on committees they would like to serve on. The following depicts the outcome of the meeting:

Committees Committee Members

Finance Chang, Trenary, and Morrissey
Land Use Diener, Rosapepe, and Worden
Economic Development/Tourism Chang, Morrissey, and Fenton
Utilities/SAC Rosapepe, Fenton, and Worden
Transportation Diener, Trenary, and Fenton

Lodging Tax Morrissey

#### Outside agencies are assigned as follows:

Kitsap Regional Coordinating Council (KRCC): Trenary
Kitsap Regional Coordinating Council (KRCC): Worden (alt)
Kitsap Economic Development Alliance (KEDA): Morrissey
Kitsap Economic Development Alliance (KEDA) Rosapepe (alt)
Puget Sound Regional Council (PSRC): Trenary (alt)
Kitsap Public Health Board: Diener (alt)

At the first meeting of each committee, the chairperson would be voted on as well as the date and time of the meetings.

**Recommendation**: Staff recommends adoption of a Resolution repealing Resolution No. 016-22 and adopting new Council committee assignments.

Relationship to Comprehensive plan: N/A

**Motion for consideration**: I move to adopt a Resolution repealing Resolution No. 016-22 and adopting new Council committee assignments as presented.

Fiscal Impact: None

Alternatives: N/A

Attachments: Resolution.

#### **RESOLUTION NO. \*\*-24**

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, REPEALING RESOLUTION NO. 016-22 COUNCIL COMMITTEE ASSIGNMENTS AND RESPONSIBILITIES AND ADOPTING NEW COUNCIL COMMITTEE ASSIGNMENTS.

**WHEREAS** the City of Port Orchard is governed by an elected Mayor and seven City Council members; and

**WHEREAS,** the City Council established certain select committees to serve and recommend policy to the full Council; and

WHEREAS, the Council every two years updates committee assignments by resolution; and

**WHEREAS**, the Council has designated new assignments and wishes to repeal Resolution No. 016-22, in its entirety; now, therefore,

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

**THAT:** Resolution No. 016-22, is hereby repealed in its entirety.

**THAT:** The following Council committees are hereby continued or established:

# CommitteesCommittee MembersFinanceChang, Trenary, and MorrisseyLand UseDiener, Rosapepe, and WordenEconomic Development/TourismChang, Morrissey, and FentonUtilities/SACRosapepe, Fenton, and WordenTransportationDiener, Trenary, and FentonLodging TaxMorrissey

**THAT:** Implementation of the new committee structure is effective January 23, 2024.

**THAT:** During the first meeting of each committee, the committee shall nominate the chair of the committee and determine a meeting schedule.

**THAT:** Outside agencies are assigned as follows:

#### Outside agencies are assigned as follows:

Kitsap Regional Coordinating Council (KRCC): Trenary Kitsap Regional Coordinating Council (KRCC): Worden (alt) Kitsap Economic Development Alliance (KEDA): Morrissey Kitsap Economic Development Alliance (KEDA) Rosapepe (alt) AND FURTHER THAT: At a regular Council meeting of each even-numbered year, the City Council shall establish the responsibilities of each committee and the committee membership.

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 23<sup>rd</sup> day of January 2024.

Robert Putaansuu, Mayor

ATTEST:

Puget Sound Regional Council (PSRC): Trenary (alt)



#### **City of Port Orchard**

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

#### **Agenda Staff Report**

Agenda Item No.
Subject:
Adoption of a Resolution Amending
Resolution No. 125-23 and Authorizing
Additional Payment to Effectuate the
Purchase of a Portion of Kitsap County Tax
Parcel No. 342401-4-023-2002 (Magneson)
For the Pottery Sidewalk Extension Project

Meeting Date:

Prepared by:
Denis Ryan
Public Works Director
Atty Routing No:
366922-0009
Atty Review Date:
N/A

**Summary:** The City has identified the need to acquire real property to support the construction of the Pottery Ave Sidewalk Extension and Road Project (the "Project"). The City engaged the consulting firm Commonstreet Consulting to serve as the City's Right of Way Agent for this Project and associated acquisitions. Based on the Project designs, the City identified the necessary acquisition of a strip of approximately 1,688 square feet of real property located at 1608 Pottery Ave, Kitsap County Tax Parcel No. 342401-4-023-2002 (the "Property") for the Project. On December 19, 2023, by Resolution No. 125-23, the Cit Council authorized the acquisition of the Property in the amount of \$50,000, which represented the fair market value for the portion the Property to be acquired, necessary landscaping improvements to restore the impacted Property, and the cost to cure a septic issue caused by the Project.

The City's Right of Way Agent has since identified approximately \$1,200 in additional costs associated with the acquisition which require Council approval, broken down as follows: \$354.90 for title insurance; \$187.30 for excise tax; and \$650.00 in recording fees. By this Resolution the Council would authorize the additional payments, which bring the total acquisition cost to \$51,192.20 (again, \$50,000 was previously authorized). In addition, staff estimates there may be additional costs associated with the transaction, including courier costs, and mailing.

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

**Recommendation:** That the City Council authorize the expenditure of up to an additional \$2,000 for the acquisition of a portion of Kitsap County Tax Parcel No. 342401-4-023-2002, for the Pottery Ave Sidewalk Extension and Road Project, for an updated Acquisition Payment not to exceed of \$52,000, and authorizes the Mayor or designee to execute all necessary documents to effectuate the purchase.

**Motion for Consideration:** I move to adopt a Resolution, Amending Resolution No. 125-23 and authorize the payment of additional funds to purchase a portion of Kitsap County Tax Parcel No. 342401-4-023-2002 for the Pottery Ave Sidewalk Extension and Road 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:** Do not approve and provide alternative guidance.

Attachments: Resolution and Exhibit A- Offer letter and Warranty Deed, Resolution No. 125-23

**Real Property Voucher** 

#### **RESOLUTION NO. \*\*-24**

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AMENDING RESOLUTION NO. 125-23 AND AUTHORIZING THE PURCHASE OF A PORTION OF KITSAP COUNTY TAX PARCEL NO. 342401-4-023-2002 FOR THE POTTERY AVE SIDEWALK EXTENSION AND ROAD PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE ALL NECESSARY DOCUMENTS TO EFFECTUATE TRANSACTION.

**WHEREAS,** the City has identified the need to acquire real property to support the construction of the Pottery Ave Sidewalk Extension and Road Project (the "Project"); and

WHEREAS, in accordance with the City's Acquisition Procedures, the City retained a Right of Way Acquisition Consultant, Commonstreet Consulting, (the "Consultant") to assist with the Project; and

WHEREAS, on March 3, 2023, the City through its Consultant issued an offer letter to the owners of real property located at 1608 Pottery Ave, Kitsap County Tax Parcel No. 342401-4-023-2002 (the "Property"), to purchase approximately 1,688 square feet of the Property needed for the Project and for associated landscaping to redress Project impacts on the Property; and

WHEREAS, it was determined, after the original administrative offer was made, that the Property's septic drain-field was located within the acquisition area and on November 15, 2023, the City issued a revised offer for the portion of the Property to reflect the costs associated with decommissioning the septic system and connecting the Property to the City's sewerage system; and

**WHEREAS,** the City's Consultant, negotiated the terms of purchase by the City of the Property; and

WHEREAS, the City Council previously authorized the purchase for a total price of \$50,000 via Resolution No. 125-23 on December 19, 2023, but the City's Consultant identified additional costs associated with the purchase that require Council approval;

WHEREAS, the Port Orchard City Council finds it is in the best interest of the City to authorize the acquisition of the Property for up to \$52,000, inclusive of fair market value for the portion the Property to be acquired, necessary landscaping improvements to restore the impacted Property, and the cost to cure the septic issue, as well as title insurance, excise tax, and recording costs; 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:** Resolution No. 125-23 is hereby amended as follows:

The City Council authorizes the acquisition of a portion of Kitsap County Tax Parcel No. 342401-4-023-2002, as described in Exhibit A, for the Pottery Ave Sidewalk Extension and Road Project, for a Total Acquisition Payment not to exceed \$50,000, plus payment of additional associated closing costs, including the Real Estate Excise Tax, Recording Fees, and Title Insurance in an amount not to exceed \$2,000, for a total acquisition cost not to exceed \$52,000, and authorizes the Mayor or designee to execute all necessary documents to effectuate the purchase.

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 23<sup>rd</sup> day of January 2024.

	Robert Putaansuu, Mayor	
ATTEST:		
Brandy Wallace, MMC, City Clerk		



November 15, 2023

Claimant
Royce D. Magneson
1608 Pottery Ave
Port Orchard WA 98366

Re: Revised Offer Letter and Receipt

Project Title: Pottery Ave Sidewalk Extension and Road Diet Project

Project No: PW 2023-002

Parcel No.: 4-023

Tax ID No.: 342401-4-023-2002

#### Dear Royce Magneson:

The City of Port Orchard (City) plans to improve Pottery Ave near your home at 1608 Pottery Ave. In order to construct, install, and maintain the sidewalk improvements as designed, we need to acquire property rights from you so that we can preserve the project's functionality. I have attached a drawing which shows the area we need to purchase.

In the offer letter dated March 3, 2023, the City offered to purchase property and improvements owned by you and identified as Parcel Number 4-023.

Due to the discovery of your septic drainfield located within the acquisition area after the Administrative Offer Summary (AOS) was completed and Just Compensation was set, it is necessary to withdraw the City's original offer and make a new offer.

The City has established an amount it believes is just compensation for the proposed acquisition of a fee area abutting Pottery Avenue. The Agency's <u>revised</u> offer is as follows:

Total Compensation:	\$50,000.00
Cost to Cure – Sewer Connection Costs	\$34,719.00
Improvements: Landscaping (Grass & Fencing)	\$ 3,887.00
1,688 Square Foot (m/l) fee title	\$11,394.00

This offer is being made on a willing buyer/willing seller basis and the sale of these property rights to the City is voluntary. If you decide to accept the offer, the Agency will pay all closing costs including the Real Estate Excise Tax on this transaction. If you decide to reject the offer, then the Agency will notify you in writing that this offer will be withdrawn.

The cost to cure captures all related expenses for disconnecting and decommissioning the septic tank, as well as all expenses for the sewer connection from the single-family home to the sewer cleanout line installed by the City at the seller's property line during the Project. Also included is payment for the removal of any necessary trees, foliage, and related stumps and roots.

We have attempted by this letter to provide a concise statement of the purpose, location, and an opinion of value of the proposed acquisition. We hope the information will assist you in reaching a decision.

Please feel free to contact me with any questions or concerns.

Sincerely,

Randy Johnson

Randy Johnson | Real Property Agent And Right of Way Consultant for City of Port Orchard Public Works 216 Prospect St | Port Orchard, WA 98366 (564) 205-0131 | Randy@csrow.com

RECEIPT OF THIS LETTER IS HEREBY ACKNOWLEDGED.

(Please sign below on copy provided. This is necessary to ensure that you received the original of this letter.)

I understand that this acknowledgement does not signify my acceptance or rejection of this offer.

ature

11/11/2/2

Signature

Date

After recording return document to:

City of Port Orchard 216 Port Orchard Port Orchard, Washington 98366

**Document Title: Warranty Deed** 

Reference Number of Related Document: N/A

Grantors: Royce D. and Desray Magneson, husband and wife

**Grantee: City of Port Orchard** 

Legal Description: PTN Portion NE SE, 34 24N 01E

Additional Legal Description is on Pages 3&4 of Document. Assessor's Tax Parcel Number: PTN 342401-4-023-2002

#### WARRANTY DEED

#### Pottery Ave Sidewalk Extension and Road Diet Project

The Grantors, Royce D. Magneson and Desray Magneson, husband and wife, who acquired title as Royce D. Magneson, as his separate estate, for and in consideration of the sum of TEN AND NO/100 (\$10.00) Dollars, and other valuable consideration, hereby conveys and warrants to the City of Port Orchard, a municipal corporation of the state of Washington, Grantee, the following described real property situated in Kitsap County, in the State of Washington:

For legal description and additional conditions See Exhibits A and B attached hereto and made a part hereof.

It is understood and agreed that delivery of this deed is hereby tendered and that the terms and obligations hereof shall not become binding upon the City of Port Orchard unless and until accepted and approved hereon in writing for the City of Port Orchard, by its authorized agent.

LPA-302 10/2014 Page 1 of (4) Pages

Parcel No. 342401-4-023-2002

1

Date: November 16,	2023	
Reyce D. Magneson		
Desray Magnison		
Desray Magneson		
	Accepted and A	pproved
	City of Port O	rchard
	By: Robert Putaa Mayor	ınsuu
	Date:	
STATE OF WASHINGTON	)	
County of Kitsap	: ss )	
On this 16th day of Nove Magneson and Desray Magne who executed the foregoing in the same as their free and volumentioned.	before me person to me known to be the astrument, and acknowledge	individuals described in and ed that they signed and sealed
GIVEN under my hand and of	fficial seal the day and year	last above written.
(SEALL) JOHNSON E. SON	Notary Patolic in and for the Washington, residing at 4	7/1/2025
LPA-302 10/2014 WASHININ	Page 2 of (4) Pages	Parcel No. 342401-4-023-2002

## EXHIBIT A R/W DESCRIPTION KITSAP COUNTY PARCEL 342401-4-023-2002

A PORTION OF RESULTANT PARCEL 1, DECLARATION OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITORS FILE NUMBER 20161206168, RECORDS OF KITSAP COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 24 NORTH, RANGE 01 EAST, W.M., KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION, A 3 1/2 INCH BRASS CAP IN MONUMENT CASING, FOUND IN PLACE, FROM WHICH THE EAST QUARTER CORNER OF SAID SECTION, A 3 1/2 INCH BRASS CAP IN MONUMENT CASING, FOUND IN PLACE, BEARS NORTH 00°48'52" EAST, 2647.53 FEET DISTANT.

THENCE NORTH 00°48'52" EAST ALONG THE EASTERLY LINE OF SAID SUBDIVISION A DISTANCE OF 1,486.45 FEET;

THENCE NORTH 88°18'02" WEST A DISTANCE OF 10.00 FEET TO THE INTERSECTION OF THE WESTERLY RIGHT OF WAY MARGIN OF POTTERY AVENUE WITH THE SOUTHERLY LINE OF SAID RESULTANT PARCEL 1 AND THE **POINT OF BEGINNING:** 

THENCE NORTH 88°18'02" WEST ALONG SAID SOUTHERLY LINE A DISTANCE OF 20.00 FEET:

THENCE NORTH 00°48'52" EAST ALONG A LINE 20.00 FEET WESTERLY OF AND PARALLEL WITH SAID WESTERLY MARGIN A DISTANCE OF 84.39 FEET; THENCE SOUTH 88°18'02" EAST A DISTANCE OF 20.00 FEET TO SAID WESTERLY MARGIN;

THENCE SOUTH 00°48'52" WEST ALONG SAID WESTERLY MARGIN A DISTANCE OF 84.39 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1,688 SQUARE FEET, MORE OR LESS.



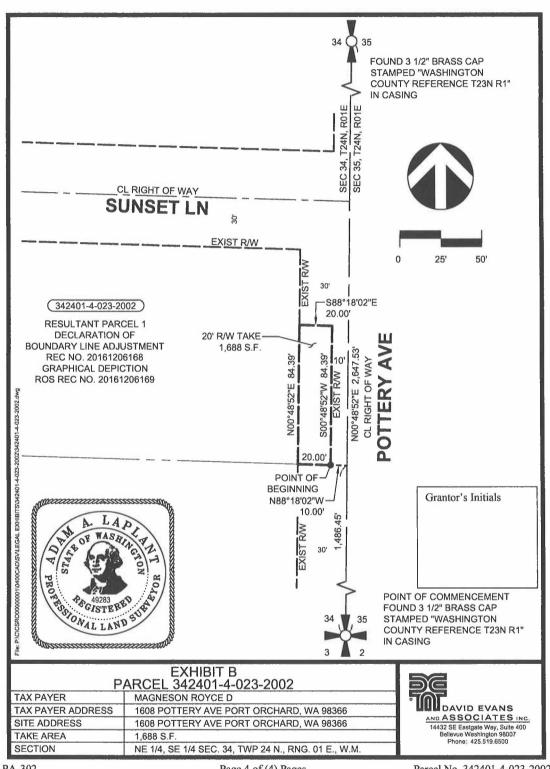
Page 3 of (4) Pages

Grantor's Initials



14432 SE Eastgate Way, Suite 400 Bellevue, WA 98007 425.519.6500

LPA-302 10/2014



LPA-302 10/2014

Page 4 of (4) Pages

Parcel No. 342401-4-023-2002

#### **REAL PROPERTY VOUCHER**

AGENCY NAME		I hereby certify und	der penalty of perjury that the items and a	mounts listed herein are	
C' CD (O)			inst the Agency, that the same or any part		
City of Port Orchard		has not been paid, a	and that I am authorized to sign for the cla	aimant.	
216 Prospect St					1
Port Orchard WA 98366		SIGNATURE (IN	INK) FOR EACH CLAIMANT		DATED
					1.1
					1/16/22
GRANTOR OR CLAIMANT (NAME, ADDRESS)	TIN/SSN:	1			1 / 3
(		x //	/ mostre	p-	
Royce D. and Desray Magneson	******	Royce D.	Magneson		
1608 Pottery Avenue, Port Orchard WA 98	3366	-/	/		
					1.1. T -
PROJECT NO. AND TITLE					11/11/23
PW 2023-002		101	laul Alan	bes	,
Pottery Ave Sidewalk Extension and Road		X Mes	Jay Magnes	m	
FEDERAL AID NO.	PARCEL NO.	Desray M	agn <b>es</b> on v		
N/A	34201-4-023-2002	1		£ A8401111	
In full, complete and final payment and settlement for the title or interes	st conveyed or released, as fully set for	τh in:	DATED	\$ AMOUNT	
LAND:				-	
1,688 Square Feet (m/l) Fee Tit	le		+	\$11,394.00	
IMPROVEMENTS:					
Landscaping (85 Linear Feet o	f 5' Fence; 1,688 Squar	e Feet Grass	+	\$3,887.00	
DAMAGES:					
Cost to Cure			+ 1		
Proximity			+		
Other SPECIAL BENEFITS	•		+		
JC (Just Compensation) Amount				\$15,281.00	
REMAINDER:					
Uneconomic Remnant			+		
Excess Acquisition			+		
DEDUCTIONS:					
Amount Previously Paid					·
Performance Bond Salvage Amount					
Pre Paid Rent					
Other					
ADMINISTRATIVE SETTLEMENT			+	\$34,719.00	
Septic Decommissioning			+	J. 1,717.00	
Sewer Connection Costs for On	te (1) Single Family Res	idence	+		
Removal of Trees, Foliage, Stu					
REAL ESTATE EXCISE TAX	To Be Paid By City o				
ACCUMULTION ACTOR TO	<b>L</b> .	Marrie 4:	+	TOTAL AMOUNT	IAID
ACQUISITION AGENT Bundy Johnson - Right of Way Agent	DATE 11/16/2	Voucher No.		TOTAL AMOUNT P	AID
1101		<b>⊈</b>		\$50,000.00	
AUTHORIZED AGENT FOR AGENCY	DATE				
Nick Bond, AICP					
We have agreed to the compensation listed ab					
Port Orchard will not, at any time in the futu	ire, be responsible for any				
nor for the construction of such improvement					
LPA-321 10/2014					

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#### **RESOLUTION NO. 125-23**

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE PURCHASE OF A PORTION OF KITSAP COUNTY TAX PARCEL NO. 342401-4-023-2002 FOR THE POTTERY AVE SIDEWALK EXTENSION AND ROAD PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE ALL NECESSARY DOCUMENTS TO EFFECTUATE TRANSACTION.

WHEREAS, the City has identified the need to acquire real property to support the construction of the Pottery Ave Sidewalk Extension and Road Project (the "Project"); and

WHEREAS, in accordance with the City's Acquisition Procedures, the City retained a Right of Way Acquisition Consultant, Commonstreet Consulting, (the "Consultant") to assist with the Project; and

WHEREAS, on March 3, 2023, the City through its Consultant issued an offer letter to the owners of real property located at 1608 Pottery Ave, Kitsap County Tax Parcel No. 342401-4-023-2002 (the "Property"), to purchase approximately 1,688 square feet of the Property needed for the Project; and

WHEREAS, it was determined, after the original administrative offer was made, that the Property's septic drain-field was located within the acquisition area and on November 15, 2023, the City issued a revised offer for the portion of the Property to reflect the costs associated with decommissioning the septic system and connecting the Property to the City's sewerage system; and

WHEREAS, the City's Consultant, has negotiated the terms of purchase by the City of the Property; and

WHEREAS, the Port Orchard City Council finds it is in the best interest of the City to authorize the acquisition of the Property for \$50,000, inclusive of fair market value for the portion the Property to be acquired, necessary landscaping improvements to restore the impacted Property, and the cost to cure the septic issue; 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 acquisition of a portion of Kitsap County Tax Parcel No. 342401-4-023-2002, as described in Exhibit A, for the Pottery Ave Sidewalk Extension and Road Project, for a Total Acquisition Payment not to exceed \$50,000, plus payment of additional associated closing costs, including the Real Estate Excise Tax, and

authorizes the Mayor or designee to execute all necessary documents to effectuate the purchase.

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 19<sup>th</sup> day of December 2023.

Rob Putaansun

Robert Putaansuu, Mayor

ATTEST:

DocuSigned by:

Brandy Wallace, MMC, City Clerk

#### Exhibit A



November 15, 2023

Claimant
Royce D. Magneson
1608 Pottery Ave
Port Orchard WA 98366

Re: Revised Offer Letter and Receipt

Project Title: Pottery Ave Sidewalk Extension and Road Diet Project

Project No: PW 2023-002

Parcel No.: 4-023

Tax ID No.: 342401-4-023-2002

#### Dear Royce Magneson:

The City of Port Orchard (City) plans to improve Pottery Ave near your home at 1608 Pottery Ave. In order to construct, install, and maintain the sidewalk improvements as designed, we need to acquire property rights from you so that we can preserve the project's functionality. I have attached a drawing which shows the area we need to purchase.

In the offer letter dated March 3, 2023, the City offered to purchase property and improvements owned by you and identified as Parcel Number 4-023.

Due to the discovery of your septic drainfield located within the acquisition area after the Administrative Offer Summary (AOS) was completed and Just Compensation was set, it is necessary to withdraw the City's original offer and make a new offer.

The City has established an amount it believes is just compensation for the proposed acquisition of a fee area abutting Pottery Avenue. The Agency's <u>revised</u> offer is as follows:

1,688 Square Foot (m/l) fee title	\$11,394.00
	\$ 3,887.00
Cost to Cure – Sewer Connection Costs	\$34,719.00
Total Compensation:	\$50,000.00

This offer is being made on a willing buyer/willing seller basis and the sale of these property rights to the City is voluntary. If you decide to accept the offer, the Agency will pay all closing costs including the Real Estate Excise Tax on this transaction. If you decide to reject the offer, then the Agency will notify you in writing that this offer will be withdrawn.

The cost to cure captures all related expenses for disconnecting and decommissioning the septic tank, as well as all expenses for the sewer connection from the single-family home to the sewer cleanout line installed by the City at the seller's property line during the Project. Also included is payment for the removal of any necessary trees, follage, and related stumps and roots.

We have attempted by this letter to provide a concise statement of the purpose, location, and an opinion of value of the proposed acquisition. We hope the information will assist you in reaching a decision.

Please feel free to contact me with any questions or concerns.

Sincerely,

Randy Johnson

Randy Johnson | Real Property Agent And Right of Way Consultant for City of Port Orchard Public Works 216 Prospect St | Port Orchard, WA 98366 (564) 205-0131 | Randy@csrow.com

RECEIPT OF THIS LETTER IS HEREBY ACKNOWLEDGED.

(Please sign below on copy provided. This is necessary to ensure that you received the original of this letter.)

I understand that this acknowledgement does not signify my acceptance or rejection of this offer.

PUBLIC WORKS 216 PROSPECT ST PORT ORCHARD, WA 98366

PHONE (360)876 4991 | FAX (360) 876 4980 EMAIL: PUBLICWORKS@CITYOFPORTORCHARD.US WWW CITYOT PORTORCHARD.US

After recording return document to:

City of Port Orchard 216 Port Orchard Port Orchard, Washington 98366

Document Title: Warranty Deed

Reference Number of Related Document: N/A .

Grantors: Royce D. and Desray Magneson, husband and wife

**Grantee: City of Port Orchard** 

Legal Description: PTN Portion NE SE, 34 24N 01E Additional Legal Description is on Pages 3&4 of Document. Assessor's Tax Parcel Number: PTN 342401-4-023-2002

#### WARRANTY DEED

#### Pottery Ave Sidewalk Extension and Road Diet Project

The Grantors, Royce D. Magneson and Desray Magneson, husband and wife, who acquired title as Royce D. Magneson, as his separate estate, for and in consideration of the sum of TEN AND NO/100 (\$10.00) Dollars, and other valuable consideration, hereby conveys and warrants to the City of Port Orchard, a municipal corporation of the state of Washington, Grantee, the following described real property situated in Kitsap County, in the State of Washington:

For legal description and additional conditions
See Exhibits A and B attached hereto and made a part hereof.

It is understood and agreed that delivery of this deed is hereby tendered and that the terms and obligations hereof shall not become binding upon the City of Port Orchard unless and until accepted and approved hereon in writing for the City of Port Orchard, by its authorized agent.

LPA-302 10/2014 Page 1 of (4) Pages

Parcel No. 342401-4-023-2002

Date:_/	Novami	ber 16, 20	23
lys	. Magneson	-	
Destay 1	Nay Manneson	agruson	

Accepted and Approved

City of Port Orchard

Robert Putaansuu Mayor

Date: 12/24/23

STATE OF WASHINGTON )

County of Kitsap ) ss

On this 16th day of November 2023 before me personally appeared Royce D. Magneson and Desray Magneson to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

ARY LIC ON CHILINGS ARY

LPA-302 10/2014 Notary Public in and for the State of Washington, residing at Ohmpio

My commission expires 9/1/2026

Page 2 of (4) Pages

Parcel No. 342401-4-023-2002

## EXHIBIT A R/W DESCRIPTION KITSAP COUNTY PARCEL 342401-4-023-2002

A PORTION OF RESULTANT PARCEL 1, DECLARATION OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITORS FILE NUMBER 20161206168, RECORDS OF KITSAP COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 24 NORTH, RANGE 01 EAST, W.M., KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION, A 3 1/2 INCH BRASS CAP IN MONUMENT CASING, FOUND IN PLACE, FROM WHICH THE EAST QUARTER CORNER OF SAID SECTION, A 3 1/2 INCH BRASS CAP IN MONUMENT CASING, FOUND IN PLACE, BEARS NORTH 00°48'52" EAST, 2647.53 FEET DISTANT;

THENCE NORTH 00°48'52" EAST ALONG THE EASTERLY LINE OF SAID SUBDIVISION A DISTANCE OF 1,486.45 FEET;

THENCE NORTH 88°18'02" WEST A DISTANCE OF 10.00 FEET TO THE INTERSECTION OF THE WESTERLY RIGHT OF WAY MARGIN OF POTTERY AVENUE WITH THE SOUTHERLY LINE OF SAID RESULTANT PARCEL 1 AND THE POINT OF BEGINNING;

THENCE NORTH 88°18'02" WEST ALONG SAID SOUTHERLY LINE A DISTANCE OF 20.00 FEET;

THENCE NORTH 00°48'52" EAST ALONG A LINE 20.00 FEET WESTERLY OF AND PARALLEL WITH SAID WESTERLY MARGIN A DISTANCE OF 84.39 FEET; THENCE SOUTH 88°18'02" EAST A DISTANCE OF 20.00 FEET TO SAID WESTERLY MARGIN;

THENCE SOUTH 00°48'52" WEST ALONG SAID WESTERLY MARGIN A DISTANCE OF 84.39 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1,688 SQUARE FEET, MORE OR LESS.



Page 3 of (4) Pages

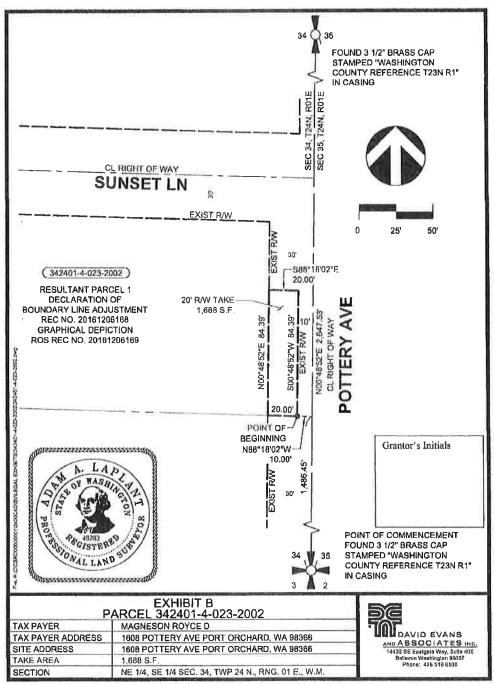
DAVID EVANS
AND ASSOCIATES INC.

14432 SE Easigate Way, Sulle 400
Bellovue, WA 98007
425 519 8500

Grantor's Initials

LPA-302

10/2014



LPA-302 10/2014 Page 4 of (4) Pages

Parcel No. 342401-4-023-2002

#### **REAL PROPERTY VOUCHER**

AGENCYNAME  City of Port Orchard  216 Prospect St Port Orchard WA 98366		I hereby certify under penalty of perjury that the items and antounts listed herein are proper charges against the Agency, that the same or any part thereof has not been paid, and that I am authorized to sign for the claimant			
		SIGNATURE (IN I	NK) FOR EACH CLAIMANT		DATED
			¥ W		14/16/23
GRANTOR OR CLAIMANT (NAME, ADDRESS)	TIN/SSN:	x lenes	/ molen		,,,,
Royce D. and Desray Magneson 1608 Pottery Avenue, Port Orchard WA 9	98366	Royce D.	Magneson		
PROJECT NO. AND TITLE					11/14/23
PW 2023-002	( D) . D. do.	1 L L JO X	1au Magne	rin .	
Pottery Ave Sidewalk Extension and Roz FEDERAL AID NO.	PARCEL NO.	Desray M	anneson V		1
N/A	34201-4-023-2002	s. 10	281160-11		4
In full, complete and finel payment and settlement for the title or inter			DATED	\$ AMOUNT	
LAND: 1,688 Square Feet (m/l) Fee Ti	tle		+	\$11,394.00	
IMPROVEMENTS:				44 APT 40	
Landscaping (85 Linear Feet	of 5' Fence; 1,688 Sq	uare Feet Grass	) +	\$3,887.00	
DAMAGES:  Cost to Cure			+		
Proximity			+		
Other			+		
SPECIAL BENEFITS					
JC (Just Compensation) Amount				\$15,281.00	
REMAINDER:					
Un economic Remnant			+		
Excess Acquisition					
DEDUCTIONS:					
Amount Previously Paid					
Performance Bond					
Salvage Amount Pre Paid Rent					
Other					
ADMINISTRATIVE SETTLEMENT			+	\$34,719.00	
Septic Decommissioning			+		
Sewer Connection Costs for O	ne (1) Single Family	Residence	+	1	
Removal of Trees, Foliage, St	imps Necessary for t	the Sewer Conne	ction +		
REAL ESTATE EXCISE TAX	To Be Paid By C	lity of Port Orcha	rd		
ACCUPATION ASSESSED FOR A SECOND ASSESSED FO	Inave .	Voucher No.	+	TOTAL AMOUNT	PAID
ACQUISITION AGENT Devoy Johnson - Right of Way Agent	DATE/I	6/7			
101		TICLES		\$50,000.00	,
AUTHORIZED AGENT FOR AGENCY	DATE				
Nick Bond, AICP		1			
We have gareed to the compensation listed	above as the full and t	final payment for	the loss of our fence and	landscaping. Th	e city of
Port Orchard will not, at any time in the fu	ture, be responsible fo	or any additional o	costs above and beyond	the amount listed	above,
nor for the construction of such improveme	ni (or repair).				

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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.: Consent Agenda 4E Meeting Date: January 23, 2024

Subject: Approval of a Contract with Washington Prepared by: Matt Brown

State Parks and Recreation Commission Chief of Police

Subrecipient Grant Agreement for a Atty Routing No.: N/A

Federal Financial Assistant Grant Atty Review Date: N/A

**Summary**: Historically, the City has been an active partner with the Washington State Parks and Recreation Commission as the police department provides marine safety on Sinclair Inlet and other area waterways. The Marine Patrol Unit launches emergency operations for search and rescue, provides community education, and delivers other enforcement services with a team of four marine officers and two vessels. In 2023, the unit responded to vessels/persons in distress, illegal moorage, navigational hazards, and derelict and sinking vessels.

The annual agreement captures the obligations of both the police department and the commission in the awarding of funds for recreational boating enforcement and education. The agreement also sets forth the deliverables under the Federal Financial Assistance Grant. The Port Orchard Police Department's Marine Patrol Unit has historically made all the yearly deliverables.

The 2024 grant funds of \$10,671.91 are anticipated to cover roughly 15% of the Marine Patrol Unit budget.

**Recommendation**: Staff recommends the Council authorize the Mayor to sign the Washington State Parks and Recreation Commission Subrecipient Agreement Federal Financial Assistance Grant.

Relationship to Comprehensive Plan: N/A

**Motion for consideration**: I move to authorize the Mayor to sign the Washington State Parks and Recreation Commission Subrecipient Agreement Federal Financial Assistance Grant.

**Fiscal Impact**: Additional revenue to fund the City's successful marine safety program.

**Alternatives:** Not authorize the agreement and provide additional guidance.

**Attachments**: Washington State Parks and Recreation Commission Subrecipient Agreement Federal Financial Assistance Grant.



## WASHINGTON STATE PARKS AND RECREATION COMMISSION SUBRECIPIENT GRANT AGREEMENT FEDERAL FINANCIAL ASSISTANCE GRANT

#### Agreement No. MLE 325-196

This Agreement is between the State of Washington, the Washington State Parks and Recreation Commission (WSPRC) acting by and through its Marine Law Enforcement Program ("MLE or "Recipient") and **Port Orchard Police Department** ("Subrecipient"), each a "Party" and, together, the "Parties".

#### **SECTION 1: AUTHORITY**

Per 2 Code of Federal Regulations 200 (2CFR200), WSPRC has determined this to be a "Subrecipient" relationship under 2 CFR 200.330. This subrecipient agreement is authorized by 2 CFR 200 and 50 CFR 80. MLE is authorized to provide grants for recreational boating enforcement and education activities and has sufficient grant funds available within its current biennial budget and has authorized expenditure on the Subrecipient's Project as defined below, and the Subrecipient agrees to comply with 2 CFR 200, MLE rules and other MLE adopted policies and procedures, and this Subrecipient Grant Agreement.

#### **SECTION 2: PURPOSE**

The purpose of this Agreement is to set forth the obligations of both Parties in the awarding of funds for recreational boating enforcement and education and to set forth the deliverables under the Federal Financial Assistance Grant, hereinafter called the "Project."

#### **SECTION 3:** COURTESY INFORMATION & REMINDER

Very important information is located throughout this document. The onus is on the Subrecipient to read the entire document which may include Attachments, Exhibits, or other information incorporated by reference. Experience has shown that the following information seems to have the most interest for the Subrecipient. As such, MLE is providing this <u>nonexclusive</u> list but cautions that other important information does not appear in the Courtesy List.

- **Term**: See *Section 5.1 Term*
- **Project Completion**: See Section 5.2 Project Completion
- **Subrecipient's Authorized Representative**: See Section 6.2 Subrecipient's Authorized Representative.
- **Project completion date**: See Section 7.1.1 Project Timeline
- **Reimbursement Total:** See *Section 8.3.c [not titled].*
- **Grant Funds:** See Section 9.2 Grant Funds.
- Accident Report: See Section 12.7 Accident Report
- Information required for Federal Subawards (2 CFR §200.331(A) (1)): See Exhibit B
- Subrecipient's Completed FFA Grant Application: See Attachment A.

#### **SECTION 4: DEFINITIONS**

- **4.1 Attachment:** A document provided by the Subrecipient (application, budget plan, etc.) that is also made part of this agreement and incorporated by reference. See also Exhibit.
- **4.2 MLE:** The federally funded Marine Law Enforcement Program administered by Washington State Parks and Recreation Commission (WSPRC). For purposes of this agreement MLE represents the State of Washington. If MLE ceases to exist or is no longer the state program designated to administer this federal program, then references to MLE will be understood to be the State of Washington.
- **4.3 Equipment.** Equipment means tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.
- **4.4 Exhibit:** A document provided by the MLE Program that is also a part of this agreement and incorporated by reference. See also Attachment.
- **4.5 RBS Officer:** Recreational Boating Safety Officer is a fully commissioned law enforcement officer in Washington State and has the authority to enforce the laws of the state of Washington and local ordinances. The RBS Officer must have attended the Washington state Basic Marine Law Enforcement Academy or an equivalent recognized by MLE.
- **4.6 Boating Safety Inspection:** A full inspection for all safety equipment, vessel registration when required and mandatory boater education compliance when required. The results of the inspection shall be documented through Washington states Statewide Electronic Collision and Ticket Online Records (SECTOR). This may be done at the time of the inspection or when SECTOR is available to the RBS Officer.
- **4.7 Law Enforcement Vessel:** A vessel used by a law enforcement agency and shall be equipped with proper markings showing it to be an official law enforcement vessel.
- **4.8 Recreational Vessel:** Defined in federal regulation 50 CFR 85.11 as a vessel owned and operated primarily for pleasure; or a vessel leased, rented, or chartered to another for recreational use.
- **4.9 Subrecipient:** A Non-Federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. In this agreement, the subrecipient is the successful applicant with whom Washington MLE awards a Federal Financial Assistance Grant (See 2 CFR 200.93).
- **4.10 Subrecipient Grant Agreement:** Also known as a subaward. Defined in federal regulation as "an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (See 2 CFR 200.92).

- **4.11 Small agency:** An agency which services a jurisdiction with a population below 30,000 people as determined by the latest U.S. Census.
- **4.12 Medium agency:** An agency which services a jurisdiction with a population of 30,000 or more and below 100,000 people as determined by the latest U.S. Census.
- **4.13** Large agency: An agency which services a jurisdiction of over 100,000 people as determined by the latest U.S. Census.
- **4.14 Boating Safety Program approval:** means that the county or local jurisdiction has entered into an agreement with state parks to develop and maintain a boating safety program meeting minimum requirements established by State Parks.

#### **SECTION 5:** EFFECTIVE DATE AND DURATION

- **5.1 Term.** This Agreement is effective on the date of the last signature and terminates on **September 30, 2024**, or the date of final payment issuance, whichever is later, unless terminated earlier in accordance with *Section 22 Termination*. See also, *Section 12.3 Useful Life*.
- **5.2 Project Completion.** The Project shall be completed, and final billing for the Project shall be submitted to MLE on or before **October 15, 2024.** Unless approved in writing, MLE shall not be obligated to disburse any payments after this date.
- **5.3 Closeout.** (See 2 CFR § 200.343) MLE will closeout this award under this Agreement when it determines that all applicable administrative actions and all required work of this Agreement have been completed by the Subrecipient.

#### **SECTION 6:** AUTHORIZED REPRESENTATIVES

**6.1** WSPRC MLE Program Authorized Representative is:

Bryan Alexander, Marine Law Enforcement Coordinator Washington State Parks - Boating Program 1111 Israel Road SW Tumwater, WA 98501-6512 Bryan.alexander@parks.wa.gov

#### Backup:

Rob Sendak, Boating Program Manager Washington State Parks - Boating Program 1111 Israel Road SW Tumwater, WA 98501-6512 Rob.Sendak@PARKS.WA.GOV

**6.2** Subrecipient's Authorized Representative is:

Chief Matt Brown

Port Orchard Police Department 546 Bay Street Port Orchard, WA 98366-5339 mbrown@cityofportorchard.us (360) 876-1700

**6.3** A Party may designate a new Authorized Representative by written notice to the other Party.

#### **SECTION 7:** RESPONSIBILITIES OF EACH PARTY

#### 7.1 Responsibilities of Subrecipient:

This project itself is the sole responsibility of Subrecipient. MLE undertakes no responsibilities to Subrecipient, or to any third party, other than as expressly set out in this document. Subrecipient shall be solely responsible for the design, development, implementation, achievement of deliverables and reporting of the project, as those phases are applicable to this project, and solely responsible for any claim or suit of any nature by any third party related in any way to the project.

**7.1.1 Project Timeline.** The Subrecipient is responsible for maintaining the project timeline for all dates and activities outlined as the Subrecipient's responsibility as identified in the Subrecipient's FFA Grant Application (Attachment "A").

The Subrecipient shall complete the approved project no later than **September 30, 2024,** as a term of the acceptance of this grant award. The project timeline cannot be extended under the scope of this agreement.

MLE staff shall monitor the activities conducted under the scope of this project on a quarterly basis. Work will be considered complete, only when the following conditions are met:

- The activities described in the Scope of Work and this grant document have been achieved.
- All request for reimbursements have been submitted.
- All reporting through the MLE Statement of Activity Reporting system (SOAR) and SECTOR have been completed
- Appropriate proof of completion has been provided to MLE

If the work is not satisfactorily completed, Subrecipient will be in breach and MLE may, at its discretion, rescind the grant and require repayment of any grant funds already disbursed.

- **7.1.2 Design Preparation.** The Subrecipient shall design a project that will have a reasonably likelihood of positively impacting the reduction of boating accidents, boating injuries, and boating fatalities. Such design shall include applicable items on the Checklist for Plans and Specifications as provided in the Subrecipient's MLE Grant Application (Attachment "A").
- **7.1.3 Purchase.** The Subrecipient shall make no purchases in excess of \$2,500.00 without prior written authorization by MLE. All purchases must be in the furtherance of recreational boating safety and must adhere to the guidelines set out in the in the Allowable Costs and Expenditures for

State Vessel Registration Fees and Federal Assistance Grants manual. (Attachment "B").

**7.1.4 Periodic Inspections.** Subrecipient hereby grants to the Recipient, or its authorized representative, a right, equal in time to six years from the date of the last signature on this document, to enter upon Subrecipient's property as deemed necessary by the Recipient for inspection documents and any equipment. These periodic inspections are intended to ensure continued compliant use of the awarded funds toward recreational boating safety enforcement and education. materials, products, and workmanship to the original approved plans and specifications. These inspections require a 30-day advance notification to the Subrecipient of such inspection or access.

#### 7.1.5 Commercial and Other Uses.

- a. For purposes of this *Section 7 Responsibilities of Each Party*, Commercial Use means any activity on or affecting the Project that was not described in the Subrecipient's proposal, or not approved in writing by MLE, where the Subrecipient:
  - 1. has financial profit as a goal,
  - 2. charges any fees or receives any benefit to provide services, supplies or goods, or
  - 3. allows third parties to charge any fees or receive any benefit to provide services, supplies or goods.
- b. Subrecipient must restrict use of the Project funds to only recreational boats boating safety enforcement and education.
- **7.1.6 Publications & Advertising.** The Subrecipient shall include the following statement if publishing any report, news release or publication regarding this project: "Partial funding was through the Washington State Parks and Recreation Commission Marine Law Enforcement Program, and in cooperation with U.S. Recreational Boating Safety Act."
- **7.1.7 Project Sign.** The Subrecipient may post in a conspicuous location on the vessel, a sign identifying WSPRC, any Federal Agencies and specific federal grant program's participation in the Project.

The Subrecipient shall include the following statement if publishing any report, news release or publication regarding this project: "Partial funding for this project was provided by the Washington State Parks Marine Law Enforcement Program. This program is funded by the U.S. C.G. through the Sport Fish Restoration and Boating Trust Fund, which is financed by your purchase of motorboat fuels and fishing equipment."

- **7.1.8 Public Access to Project.** During the term of this Agreement the Subrecipient shall allow open and unencumbered public access to the Project to all persons without regard to race, color, religious or political beliefs, sex, national origin, or place of primary residence.
- **7.1.9 Payments.** Subrecipient agrees to:
  - a. Make payment promptly as due to all contractors, subcontractors, vendors, or any other persons supplying labor or materials for the Project;

- b. All employers, including Subrecipient that employ subject workers shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for exemption. Subrecipient shall require and ensure that each of its subcontractors complies with these requirements (unless inapplicable as a matter of federal law); and
- c. Not permit any lien or claim to be filed or prosecuted against WSPRC, due to any construction or maintenance activities at the Project.
- **7.1.10** Alternative Dispute Resolution. The Parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- 7.1.11 Indemnification by Subrecipient's Contractors. For purposes of this Section 7.1.11 Indemnification by Subrecipient's Contractors the term "contractor" means actors downstream of the Subrecipient whether it be a contractor, a subcontractor, or downstream subrecipient of the Subrecipient. The Subrecipient shall take all reasonable steps to cause its contractor(s) to indemnify, defend, save and hold harmless the State of Washington and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subrecipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
  - 7.2 Responsibility of Marine Law Enforcement Program (MLE):
- **7.2.1** MLE shall pay Subrecipient as described in *Sections 8 Conditions to Disbursement* and *Section 9 Reimbursement and Payment Terms*.

#### **SECTION 8:** CONDITIONS TO DISBURSEMENT

- 8.1 Eligible project expenses include only those items from the list below that are in your approved project budget:
- **8.1.1** Grant funds may be used only for activities under WAC 352-65-040, the ten elements necessary to accomplish the Recreational Boating Safety (RBS) mission.
- **8.1.2** RBS salaries to include time, salaries, benefits and wages for officers or deputies who possess a Washington State Peace Officers Certification, are fully commissioned to enforce the laws of Washington state and who have completed an RBS course acceptable to State Parks (BMLE or equal).
- **8.1.3** Time, salaries, benefits and wages for officers or deputies who possess a Washington State Peace Officers Certification, are fully commissioned to enforce the laws of Washington state,

- and who have not completed a BMLE course is acceptable **ONLY** when working with an RBS trained officer **AND** when the agency has a written "two-officer policy for officers on marine patrol for the purpose of officer safety.
- **8.1.4** Providing instructors for the *Adventures in Boating* course that qualifies graduates for the required mandatory boater education card. Cost may include classroom supplies, light refreshments, other goods, and services necessary to promote and teach classes, and officer salaries, benefits, and wages. Officer salaries will only be reimbursed for those officers who have successfully completed State Parks *Adventures in Boating Instructor* Training Class and are listed on our files.
- **8.1.5** RBS training as outlined in the Allowable Costs and Expenditures for State Vessel Registration Fees and Federal Assistance Grants (Attachment "B")
- **8.1.6** RBS Equipment as outlined in the Allowable Costs and Expenditures for State Vessel Registration Fees and Federal Assistance Grants (Attachment "B"). Any equipment expenditures over two thousand two hundred and fifty dollars (\$2,250.00) must receive authorization from state parks prior to purchase.
- **8.1.7** Educational publications which promote RBS education that are already prepared or the creation, design, and printing of publications
- **8.1.8** Promotion of Adventures in Boating classes, including presentation materials, light refreshments, and room rental for classes.
- **8.1.9** Other items as deemed by MLE to be necessary to complete the project
- **8.1.10** Support of the Basic Marine Law Enforcement Academy by agencies who provided MLE recognized instructors
  - 8.2 Non-Allowable Costs and Expenditures.
- **8.2.1** Bullet proof vests are beneficial; however, equipment of this nature is not essential for meeting the established criteria in WAC 352-65-040 nor is it related to the performance of the RBS program mission and is considered a local agency responsibility to purchase.
- **8.2.2** Equipment used in recover operations (dive equipment, etc.) while being used in an RBS search or investigation mode are 100% eligible. Once this equipment is used for recovery operations it must be prorated between RBS missions and recovery missions.
- **8.2.3** Handheld or portable night vision, FLIR or thermal imaging devices are a 100% allowable expense while in RBS patrol, search, or investigation mode. Once this equipment is used for recovery operations it must be prorated. Permanently mounted and electrically wired FLIR and thermal imaging devices are 100% allowable expenses.
- **8.2.4** Homeland Security missions (weapons, etc.), or any other equipment determined as unrelated by the boating program is not an allowable expense.

- **8.2.5** Firefighting equipment is not an allowable expense.
- **8.2.6** Any equipment or vehicles not 100% dedicated to the RBS mission must be prorated, documenting the amount of time the equipment or vehicle was dedicated to the program.
- **8.2.7** Operating costs for law enforcement vessels boats (staff, fuel, fluids, repairs, maintenance) or operating costs for boats used to service floating restrooms (staff, fuel, fluids)
- **8.2.8** Documented staff or contract labor associated with routine custodial and non-routine maintenance and repairs, the cost of that person operating or maintaining the system.
- **8.2.9** Other items as deemed by MLE to be necessary to complete the project
- **8.3 Conditions Precedent to Any Reimbursement.** MLE shall not be obligated to disburse any of the grant funds to reimburse the Subrecipient for Project costs hereunder unless MLE has received from the Subrecipient:
  - a. Prior to Project plans, specifications, and cost estimate(s), statement of work, request for proposal or other documentation for the Project, documents must be in form and substance satisfactory to MLE.
  - b. Reimbursement Requests must be submitted on the approved MLE Grant Reimbursement form along with all supporting documentation. Reimbursements shall be prorated between the Parties based on the percentage of their respective cash or in-kind contributions as set forth in Section 7 Responsibilities of Each Party and Section 9 Reimbursement and Payment Terms.

Supporting documents must:

- Be numbered in the upper right corner and correspond to the "Document #" column on your Reimbursement Request Form
- Be dated. The date of the invoice must be within the period of performance of this award
- Have Subrecipient's business name clearly identified
- Clearly identify the cost and the amount paid & show zero-balance due

If a receipt, invoice, or statement includes expenses not related to the MLE project, those costs must be highlighted and noted as "ineligible costs".

- c. MLE will reimburse Subrecipient for eligible activities only after MLE has accepted the work as complete-expenditure as an allowable cost and all proper documents have been submitted with the reimbursement request. Reimbursement requests must be submitted on a quarter basis and during the quarter that the expenditure has taken place. Reimbursement from MLE shall not exceed fifty percent (50%) of the total project cost from eligible grant expenses. Total reimbursement under this grant agreement shall not exceed the award amount of \$10,671.91.
- d. MLE will reimburse Subrecipient up to an additional \$5,000.00 who supply a recognized BMLE instructor for 80 hours. For instructor services less than 80 hours, a sum of \$500.00 per day will be awarded. The additional award is available for use

- commencing on June 1, 2024.
- e. The Subrecipient may not exceed the approved budget which was proposed by the Subrecipient as part of the Subrecipient's Subrecipient Grant Application that was accepted by MLE. The Subrecipient's budget is attached to this agreement (Exhibit "B"). If the Subrecipient would like to change the allocations of funds to the original budget, a budget amendment request must be sent in writing via email to MLE in advance of the expense being incurred.
- f. If a boat, a vehicle, or equipment is used partially for other purposes, costs must be pro-rated for that portion of their use that is for Recreational Boating Safety Act purposes.
- **8.4** Conditions Precedent to Partial Progress Payment(s). MLE shall not be obligated to make partial progress reimbursement payment(s) hereunder until the appropriate supporting documentation and reimbursement form has been submitted no less than on a quarterly basis of the percentage of Project completion has been received, reviewed, and approved by MLE. In no event shall MLE disburse more than fifty percent (50%) of the amount indicated in Section 9.2 Grant Funds as progress payments.
- **8.5** Conditions Precedent to Final Payment. MLE shall not be obligated to make final payment hereunder until the following have been completed or supplied:
  - a. Supporting documentation in form and content determined by MLE, has been received reviewed and approved by MLE; and
  - b. Subrecipient provides summary of work achieved pursuant to the SOW as provided with the grant application to MLE with funding the Project; and
  - c. Inspection and approval of the Project by MLE Program staff.

# **SECTION 9: REIMBURSEMENT AND PAYMENT TERMS**

- 9.1 Federal Fund Approval. MLE has received a grant from the United States Department of Homeland Security, United States Coast Guard as described pursuant to 2 CFR 200.331 on Exhibit B. In accordance with 2 CFR 200.330, MLE's determination is that the other party to this contract is a subrecipient and is therefore a subrecipient of federal funds.
- **9.2 Grant Funds**. Upon approval by its governing body or bodies, MLE shall provide federal grant funds in the amount of **Ten Thousand Six Hundred Seventy-One and 91/100ths Dollars (\$10,671.91)** to the Subrecipient to fund the Project.
- **9.3 Match.** The Subrecipient shall contribute at least twenty-five percent (25%) of the total project cost as cost sharing or non-federal match as described in the approved project budget. Such cost sharing or match may be provided as cash costs or in-kind services provided such services are reasonable and necessary for grant purposes. Vessel Registration Fees cannot be used as match. These are non-reimbursable items. Allowability of any cost sharing or match shall be determined

in accordance with 50 CFR Part 85; and 2 CFR Part 200 as applicable and as adopted in regulation by 2 CFR 1402.100.

The Subrecipient shall maintain records that adequately document the valuation of non-federal match/in-kind services in accordance with 50 CFR Part 85; and 2 CFR Part 200 as applicable and as adopted in regulation by 2 CFR 1402.100. The Subrecipient shall submit a summary of the valuation to MLE. Further instruction on adequate valuation of match expenses can be provided by contacting the Marine Law Enforcement Coordinator or the Program Manager.

- **9.3.1** Matching Cash Funds. The Subrecipient shall contribute the total sum of **Two Thousand Six** Hundred Sixty-Seven and 98/100ths Dollars (\$2,667.98) in cash or in-kind match. It is understood that match cannot be from another federal source and are non-reimbursable costs. In addition, **Vessel Registration Fee funds cannot be used as match**; however, in-kind match as reported in the VRF Expenditure Report can.
- **9.3.2 Matching Non-cash Resources.** Non-cash resources, in-kind; match is allowable under the FFA grant. Any expenditure the subrecipient incurs in support of their recreational boating safety program can be used as non-cash match.
- 9.4 Allowable Costs. All costs charged by the Subrecipient must be eligible, necessary, and reasonable for performing the tasks outlined in the approved project work plan. The costs, including match, must be incurred during the period of performance of the project and submitted for reimbursement during the quarter which the costs are incurred. The costs also must be allowable and well documented, in conformance with specific federal requirements (50 CFR Part 85; and 2 CFR Part 200 as applicable and as adopted in regulation by 2 CFR 1402.100.
- **9.5 Payments.** After the Subrecipient awards the contract for the Project, and activities commence, MLE shall, upon receipt of the Subrecipient's request for reimbursement and appropriate documentation all in form and substance satisfactory to MLE, disburse funds to the Subrecipient in accordance with *Section 8 Conditions to Disbursement*.

Subrecipient may request reimbursements no less than on a quarterly basis and during the quarter for which the expenditures have been incurred for project expenses. Reimbursement shall take place after Subrecipient submits a properly completed Reimbursement Request Form (provided by MLE), along with required supporting documentation. Requests shall only be allowed when requested on the proper forms provided by MLE, reference this agreement number, and accompanied with appropriate supporting documentation.

Subrecipient shall be reimbursed for the actual project costs incurred, up to the total reimbursement amount defined above as long as grant funds remain available. Accounting procedures must provide for accurate and timely recording of receipt of funds by source, expenditures made from such funds, and of unexpended balances. Controls must be established which are adequate to ensure that expenditures are for allowable purposes and that documentation is readily available to verify that such charges are accurate. The burden of proof lies with the subrecipient to provide clear information as to the expense and form of payment.

**9.6 Cost Overruns.** Cost overruns are the responsibility of Subrecipient and must be borne by

Subrecipient.

- **9.7 Overpayment.** In the event that the aggregate amount of MLE's interim progress payments to the Subrecipient exceeds the allowable reimbursable costs of the Subrecipient for the Project, the Subrecipient agrees to refund to MLE the amount paid in excess of such allowable expenses within thirty (30) days of **September 30, 2024.**
- 9.8 Offset or Reduction. The Subrecipient agrees that payment(s) made by MLE under this Agreement shall be subject to offset or reduction for any amounts previously paid hereunder that are found by MLE not to constitute allowable costs under this Agreement based on the results of an audit examination. If such disallowed amount exceeds the payment(s), the Subrecipient shall pay MLE the amount of such excess within 30 days after written notice of disallowed costs is provided by MLE.
- **9.8.1 Entertainment Costs.** In accordance with 2 CFR 200, the cost of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, gratuities, and alcoholic beverages are not allowable expenses.
- **9.8.2 Prior Costs.** MLE will not reimburse Subrecipient for any costs incurred prior to the effective date of this agreement **October 1, 2023**.

## **SECTION 10:** REPRESENTATIONS AND WARRANTIES

Subrecipient represents and warrants to MLE that:

- **10.1** Subrecipient is a law enforcement agency, duly organized and validly existing. Subrecipient has the power and authority to enter into and perform this Agreement.
- The making and performance by Subrecipient of this Agreement (a) have been duly authorized by Subrecipient, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Subrecipient's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is party or by which Subrecipient may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by Subrecipient of this Agreement, other than those that have already been obtained.
- **10.3** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid, and binding obligation of Subrecipient enforceable in accordance with its terms.
- Subrecipient has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Subrecipient will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade, or profession; and

**10.5** Subrecipient shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement. The representations and warranties set forth in this *Section 10- Representation and Warranties* are in addition to, and not in lieu of, any other representations or warranties provided by Subrecipient.

## **SECTION 11:** GOVERNING LAW AND CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between MLE or any other agency or department of the State of Washington, or both, and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Superior Court for Thurston County, State of Washington; provided, however, if a Claim MUST be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Western District of Washington. In no event shall this *Section 11 – Governing Law and Consent to Jurisdiction* be construed as a waiver by the State of Washington of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. SUBRECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

# SECTION 12: EQUIPMENT: OWNERSHIP, MAINTENANCE, USEFUL LIFE & DISPOSAL

**Ownership Of Equipment.** Except as otherwise provided herein, Subrecipient shall retain ownership of equipment purchased pursuant to the terms of the grant. Subrecipient may not, during the term of the grant, transfer or convey its ownership interest in the equipment. Subrecipient shall not at any time during the term of the grant convert any facility equipment which was acquired pursuant to the grant to a use other than those for which the assistance was originally approved.

Equipment purchased with Recreational Boating Safety Act funds shall be used only for the purpose for which it was purchased and no other purpose, whether or not the Subrecipient continues to be supported by Recreational Boating Safety Act grant funds.

Observed/reported incidents of unauthorized use of MLE equipment shall be addressed by the following:

- 1) Any observed/reported incident of unauthorized use of MLE funded vessels will be followed-up by MLE communication with the Subrecipient. MLE may conduct site visits or contact area boaters for supplemental information as necessary.
- 2) In those instances where the MLE determines that an unauthorized use of a MLE funded vessel has occurred, the MLE will provide written notification to the operator of its determination with a warning that continued misuse or abuse of MLE-funded vessels and equipment may result in:
  - a) the removal of misused equipment from the facility; and/or
  - b) an assessment against the operator for reimbursement of the federal contribution against the current market value of the vessel.

- **12.2 Title.** Title to equipment purchased under this Agreement shall vest in the Subrecipient. If the Subrecipient determines that it cannot use the equipment for the stated grant purposes at any point prior to the end of the equipment's useful life, but after the end of this award period and any extensions thereof, the Subrecipient shall inform MLE in writing within 30 days of such determination. Such equipment shall be transferred by the Subrecipient to a third party approved by MLE for use for grant purposes in accordance with applicable provisions of state and federal law. Should the equipment not be transferred to another State Parks RBS approved law enforcement agency in accordance with this provision, the equipment shall either be returned to MLE for use for grant purposes, or it shall be disposed in accordance with 50 CFR Part 85; and 2 CFR Part 200.
- **12.3 Useful Life.** Beyond the acquisition grant period of performance and throughout the duration of the equipment's useful life, the equipment must continue to be used in the program or project for which it was acquired, as Recreational Boating Safety Act Program. When no longer needed for the original program or project, equipment may be used in other activities in the following order of priority:
  - a. Activities supported under a Federal award from the Federal awarding agency which funded the original program or project; then
  - b. Activities under Federal awards from other Federal awarding agencies; then
  - c. Any activities consistent with the administration of the Washington State Parks and Recreation Commission.
- **12.4 Special Survivorship Note**: Ownership is not absolute. Regardless of agreement's expiration, anything tangible, intangible, or intellectual property that was purchased or created from federal funds or funded with federal funds maintains federal and state MLE entanglements, requirements, or conditions (conditional ownership) unless/until released by the MLE or federal government in writing. While other conditions may apply, typically a release would occur upon the MLE, or federal government being completely satisfied that the item in question has reached the end of its useful life which is usually a dollar value. Determination of value is solely at the discretion of the MLE or federal government. Should professional appraisal services be needed to determine value, these costs shall be borne by the Subrecipient. Selection of an appraisal services firm is subject to the written approval of the MLE or federal government.
- **12.5 Use and Maintenance.** The Subrecipient shall operate and maintain the equipment, purchased, constructed, installed, renovated, operated, repaired, or maintained with MLE grant funds to function as intended for the full period of their useful life and in a manner that provides adequate service, promotes use, and protects public health. Such conditions include:
- **12.5.1** Subrecipient shall operate and maintain grant funded equipment in accordance with all applicable Federal, State, and local laws, orders, regulations and permits.
- **12.5.2** Operation shall include having trained personnel available to facilitate operation of the equipment and a schedule for maintenance.
- 12.5.3 Law Enforcement vessels shall be operated by trained personnel with a valid State of

Washington Boater Education Card or equivalent and be a graduate of State Parks Basic Marine Law Enforcement Academy or equivalent.

- **12.5.4** Law Enforcement vessels shall be equipped with all federally required safety equipment and provide and ensure appropriate personal flotation devices are worn at all times when on the vessel or dock.
- **12.5.5** All law enforcement vessels shall have a routine schedule for maintenance.
- **12.5.6** As a condition of receiving the grant funds, Subrecipient shall actively maintain the vessel for the **full design life** of the equipment provided from this grant.
- **12.5.7** Subrecipient shall be responsible for all operation, maintenance, and repair of all vessels and equipment provided from this grant.

## 12.6 Equipment Replacement.

When original or replacement equipment acquired under this award is no longer needed or the Subrecipient is no longer able to support the RBS mission and the disposition occurs during the grant period, disposition of the equipment shall be made as follows:

- The equipment may be transferred at no cost to another law enforcement agency with a State Parks approved marine law enforcement program (e.g., city or county law enforcement agency) if such equipment will remain in use and be dedicated to the MLE program. The conditions for such transfer shall be stipulated by the MLE and shall include the same requirements as those imposed in the original grant. Any cash or inkind match paid when the equipment was originally purchased will be forfeited in total.
- If the equipment cannot be transferred to another law enforcement agency with a state approved marine law enforcement program, it must be sold at the discretion of the MLE, and the Subrecipient shall pay MLE the proceeds of the sale or the fair market value of the equipment, whichever is the greatest.

#### 12.6.1 Equipment Breakdown

In the event an equipment breakdown occurs during the grant period, Subrecipient shall notify MLE within ten (10) working days of breakdown. The equipment must be repaired and fully operational within thirty (30) working days after the breakdown where the breakdown can be remedied with normal expected repairs for one thousand dollars (\$1000) or less. For repairs greater than one thousand dollars (\$1000) the equipment must be fully operational within sixty (60) days after the breakdown. A written report for all breakdowns must be submitted via email

to MLE within two (2) weeks of the breakdown describing the problem(s), repair(s), and the cost(s).

A failure to notify MLE of an equipment breakdown and plan for repairs may result in the withholding of grant funds.

#### 12.7 Accident Report

Subrecipients or Subrecipient's staff involved in an accident must remain at the scene and assist any other vessel or person involved, if possible, without endangering their safety, their own vessel, or the people aboard.

# **SECTION 13:** OWNERSHIP OF WORK PRODUCT

- **13.1** As used in this Section 13 Ownership of Work Product and elsewhere in this Agreement, the following terms have the meanings set forth below:
- **13.1.1 Project Ownership.** MLE acknowledges and agrees that the Project is the exclusive property of the Subrecipient. MLE is neither responsible nor liable in any manner for the construction, operation, or maintenance of the Project.
- 13.1.2 Special Survivorship Note: Ownership is not absolute. Regardless of agreement's expiration, anything tangible, intangible, or intellectual property that was purchased or created from federal funds or funded with federal funds maintains federal and state MLE entanglements, requirements, or conditions (conditional ownership), unless/until released by MLE or federal government in writing. While other conditions may apply, typically a release would occur upon the MLE, or federal government being completely satisfied that the item in question has reached the end of its useful life which is usually a dollar value. Determination of value is solely at the discretion of the MLE or federal government. Should professional appraisal services be needed to determine value, these costs shall be borne by the Subrecipient. Selection of an appraisal services firm is subject to the written approval of the MLE or federal government.

# **SECTION 14:** NO DUPLICATE PAYMENT

The Subrecipient shall not be compensated for, or receive any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Washington, including, but not limited to the Washington State Parks and Recreation Commission, or the United States of America or any other party.

## **SECTION 15:** CONTRIBUTION ON THIRD PARTY CLAIMS

15.1 If any third party makes any claim or brings any action, suit or proceeding alleging against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-

Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this *Section 15 – Contribution on Third Party Claims* and a meaningful opportunity for the Other Party to participate in the investigation, defense, and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this *Section 13 – Ownership of Work Product* with respect to the Third-Party Claim.

- 15.2 With respect to a Third Party Claim for which MLE is jointly liable with Subrecipient (or would be if joined in the Third Party Claim ), MLE shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Subrecipient in such proportion as is appropriate to reflect the relative fault of MLE on the one hand and of Subrecipient on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of MLE on the one hand and of Subrecipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. MLE's contribution amount in any instance is capped to the same extent it would have been capped under Washington law if the State had sole liability in the proceeding.
- 15.3 With respect to a Third Party Claim for which Subrecipient is jointly liable with MLE (or would be if joined in the Third Party Claim), Subrecipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by MLE in such proportion as is appropriate to reflect the relative fault of Subrecipient on the one hand and of MLE on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Subrecipient on the one hand and of MLE on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts.
  Subrecipient's contribution amount in any instance is capped to the same extent it would have been capped under Washington law if it had sole liability in the proceeding.

#### **SECTION 16:** SUBRECIPIENT DEFAULT

Subrecipient will be in default under this Agreement upon the occurrence of any of the following events:

- **16.1** Subrecipient fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement;
- **16.2** Any representation, warranty or statement made by Subrecipient in this Agreement or in any documents or reports relied upon by MLE to measure the delivery of services, the expenditure of funds or the performance by Subrecipient is untrue in any material respect when made;
- **16.3** Subrecipient (a) applies for or consents to the appointment of, or taking of possession by, a

receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or

16.4 A proceeding or case is commenced, without the application or consent of Subrecipient, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Subrecipient, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Subrecipient or of all or any substantial part of its assets, or (c) similar relief in respect to Subrecipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Subrecipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

## **SECTION 17: INDEMNIFICATION**

Subrecipient shall hold harmless, save harmless, indemnify, and defend at the Subrecipient's expense the State of Washington, Commission, it officers, employees, successors and assigns against any and all damages and/or losses arising out of Subrecipient's use of, or presence or activity in, the facilities, including those arising out of the use or operation of equipment or facilities or as a result of the conduct of Subrecipient's programs, or from the conduct of Subrecipient's employees or agents, or damages or vandalism to facilities by third-parties, contracted or participating in Subrecipient's programs, events or activities.

## **SECTION 18: LIABILITY INSURANCE**

- 18.1 LIABILITY INSURANCE—If required in the special terms and conditions subrecipient shall obtain and keep in force during the term of this Agreement, a combined single limit bodily injury and property damage insurance policy in the minimum amount of \$1,000,000 naming Washington State Parks Commission as an additional insured against any liability arising out of Subrecipient's or its agents, employees, or assigns. Subrecipient shall provide to Commission, a certificate evidencing such insurance coverage and shall provide 30 days written notice prior to any changes in the amount or cancellation of said policy.
  - Subrecipient shall buy and maintain property insurance covering all real property and
    fixtures, equipment, and tenant improvements and betterments. Such insurance shall
    be written on an all-risk's basis and, at a minimum, cover the perils insured under ISO
    special causes of loss Form CP 10 30, and cover the full replacement cost of the property
    insured. Such insurance may have commercially reasonable deductibles.

- Any coinsurance requirement in the policy shall be waived.
- State shall be included as an insured and a loss payee under the property insurance policy.
- 18.2 AUTOMOBILE INSURANCE-- Subrecipient shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. Subrecipient waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.
- 18.3 INDUSTRIAL INSURANCE COVERAGE-- Subrecipient shall provide or purchase industrial insurance coverage for themselves their employees as required by Labor and Industries prior to performing work under this Agreement. Commission will not be responsible for payment of industrial premiums or for any other claim or benefit for Subrecipient, or any subcontractor or employee of Subrecipient, which might arise under the industrial insurance laws during the performance of duties and services under this agreement. Subrecipient, its employees and agents performing under this contract, are not employees of Commission.
- 18.4 CERTIFICATE OF INSURANCE / NAMING WASHINGTON STATE AS ADDITIONAL INSURED: A current Certificate of Insurance must be submitted with the grant application form. The certificate must name Washington State Parks and Recreation Commission as an additional insured, and the Certificate Holder and contain a provision that the insurance will not be canceled for any reason except after thirty (30) days written notice. Facilities must be insured by carriers licensed in or eligible to do business in Washington, and must maintain applicable Commercial General Liability, Automobile Liability, and Worker's Compensation coverage. Government entities will need to include a letter from their Chief Financial Officer stating if they are self-insured or provide a certificate of insurance as stated below."

# **SECTION 19: REMEDIES**

19.1 In the event Subrecipient is in default under Section 16 – Subrecipient Default MLE may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 22 - Termination, (b) reducing or withholding payment for work or Work Product that Subrecipient has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Subrecipient to perform, at Subrecipient's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 20 – Recovery of Overpayments (which is in addition to the remedies provided in Section 9.7 - Overpayment), of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and MLE may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

19.2 In the event MLE terminates this Agreement under Section 22.1 – Termination for Convenience, Section 22.2 Termination for Inefficiency, Section 22.3 – Termination Because of Non-Appropriation or Project Ineligibility, or Section 22.4 – Termination for Default, Subrecipient's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by MLE, for work completed and accepted by MLE within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, less any claims MLE has against Subrecipient, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by MLE, for authorized expenses incurred, less previous amounts paid for the deliverable and any claims that MLE has against Subrecipient. In no event will MLE be liable to Subrecipient for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Subrecipient exceed the amount due to Subrecipient under this Section 19.2, Subrecipient shall promptly pay any excess to MLE.

## **SECTION 20:** RECOVERY OF OVERPAYMENTS

In addition to the remedies provided in *Section 9.7 - Overpayment*, if payments to Subrecipient under this Agreement, or any other agreement between MLE and Subrecipient, exceed the amount to which Subrecipient is entitled, MLE will not reimburse any further claims. In addition, MLE will require repayment of any over payments as reflected in Section 9.7 of this agreement. may, after notifying Subrecipient in writing, withhold from payments due Subrecipient under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

## **SECTION 21: LIABILITY**

THE SUBRECIPIENT SHALL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION, EXPIRATION, OR SUSPENSION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

# **SECTION 22: TERMINATION**

- **22.1 Termination for Convenience**. The Subrecipient may terminate this Agreement at any time upon thirty (30) days prior written notice to MLE; provided, however, that the Subrecipient shall, within thirty (30) days of such termination, reimburse MLE for all funds contributed by MLE to the Project; provided further that until the Subrecipient has fully reimbursed MLE for such funds, the Subrecipient shall comply with the terms hereof. Delinquent payments shall bear interest at the rate of 12 percent (12%) per annum, if such rate shall exceed the maximum rate allowed by law, then as such maximum rate, and shall be payable on demand. After ninety (90) days MLE may turn any delinquent debt over for collection.
- **22.2 Termination Because of Inefficiency.** Use of federal funds demands good stewardship. MLE in an ongoing basis will be monitoring the performance of the subrecipient through the subrecipient's reporting into the MLE Statement of Activity Reporting system. If in MLE's opinion,

these metrics demonstrate poor stewardship the Agreement will be terminated. If feasible, MLE may work with the Subrecipient and give the Subrecipient an opportunity to improve the metrics to what MLE believes is a healthy metric.

- **22.3 Termination Because of Non-Appropriation or Project Ineligibility.** MLE, as provided in *Section 33 Force Majeure*, may modify or terminate this Agreement and at any time upon 30 days prior written notice to the Subrecipient, may modify or terminate this Agreement if:
  - a. MLE fails to receive funding or allotments, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the allowable costs of the Project to be funded hereunder or should any state law, regulation or guideline be modified, changed, or interpreted in such a way that the Project, or any portion of the Project, is no longer eligible for facility grant funds.
  - b. In the event insufficient funds are appropriated for the payments under this Agreement and the Subrecipient has no other lawfully available funds, then the Subrecipient may terminate this Agreement at the end of its current federal fiscal year, with no further liability to MLE. The Subrecipient shall deliver written notice to MLE of such termination no later than 30 days from the determination by the Subrecipient of the event of non-appropriation. MLE shall pay for all authorized Project costs expended up to the date of written notice of termination.
- **22.4 Termination for Default.** MLE, at any time upon 30 days prior written notice of default to the Subrecipient, may modify or terminate this Agreement if:
  - a. The design and implementation, of the Project is not pursued with due diligence; or
  - b. The Project is not permissible under federal, state, or local law; or
  - c. The Subrecipient, does not abide by the nondiscrimination and affirmative action provisions of this Agreement; or
  - d. The Subrecipient, without the prior written approval of MLE uses the funds provided by MLE hereunder to pursue any project other than the Project described in the final project approved by MLE; or
  - e. During the term of this Agreement, the Subrecipient fails to perform any obligation or requirement of this Agreement.
  - f. The Subrecipient defaults under any other agreement between the Parties.

# 22.5 Rights and Remedies.

- a. The Subrecipient shall, within 30 days of its receipt of a notice of default, reimburse MLE for all funds contributed by MLE to the Project. Further, MLE shall have any and all rights and remedies available at law or in equity.
- b. In the event that Subrecipient has materially failed to comply with this Agreement and such non-compliance has resulted in the Federal Funding Agency terminating MLE's grant or cause or requires MLE to return funds to the Federal Funding Agency, Subrecipient will return to MLE an amount equal to the funds which MLE is not reimbursed for or is required to return to Federal Funding Agency.

# **SECTION 23: NONAPPROPRIATION**

MLE's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon MLE receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow MLE, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement.

## **SECTION 24: AMENDMENTS**

The terms of this Agreement may not be altered, modified, supplemented, or otherwise amended, except by written agreement of the Parties.

This agreement may be amended only by mutual agreement of the parties in writing. Formal written amendment of the contract is required for changing the terms and conditions specifically stated in the original agreement and any prior amendments, including but not limited to:

- Budget revisions
- Scope of work
- Change in due dates
- Extensions of the period of performance
- Any other revisions determined material by MLE

# **SECTION 25: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address or to such other addresses as either Party may indicate pursuant to this *Section 24 - Amendments*. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered.

#### **SECTION 26: SURVIVAL**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Section 11 – Governing Law and Consent to Jurisdiction, Section 13 – Ownership of Work Product, Section 20 – Recovery of Overpayments, Section 21 – Limitation of Liability, and Section 26 - Survival hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

#### **SECTION 27:** SEVERABILITY

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

# **SECTION 28: COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

## **SECTION 29:** COMPLIANCE WITH LAW

- **29.1** Compliance with Law Generally. Subrecipient shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to Subrecipient and the Agreement.
- **29.2 Penalty of Perjury.** By its execution of this Agreement, Subrecipient certifies under penalty of perjury under the laws of the state of Washington the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement.
- 29.3 Tax Compliance. Subrecipient has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state. Subrecipient shall, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section 29.3 Tax Compliance, "tax laws" includes: (i) All tax laws of this state; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Subrecipient, to Subrecipient's property, operations, receipts, or income, or to Subrecipient's performance of or compensation for any work performed by Subrecipient; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Subrecipient, or to goods, services, or property, whether tangible or intangible, provided by Subrecipient; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any failure to comply with the provisions of this *Section 29 – Compliance with Law* constitutes a material breach of this Agreement. Any failure to comply with Subrecipient's certifications shall constitute a material breach of this Agreement. Any failure to comply shall entitle MLE to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

- **29.3.1** Termination of this Agreement, in whole or in part, this is in addition to any remedies available under *Section 22 Termination*.
- **29.3.2** Offsetting against any amount owed to Subrecipient, and withholding of amounts otherwise due and owing to Subrecipient, in an amount equal to State's setoff right, without penalty; and
- 29.3.3 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. MLE may recover any and all damages suffered as the result of Subrecipient's breach of this Agreement, including but not limited to direct, indirect, incidental, and consequential damages, costs of cure, and costs incurred in securing replacement Services and applications.

The state of Washington may take any and all actions permitted by law relative to the collection of taxes due to the state of Washington or a political subdivision, including (i) garnishing the Subrecipient's compensation under this Agreement or (ii) exercising a right of setoff against Subrecipient's compensation under this Agreement for any amounts that may be due and unpaid to the state of Washington.

These remedies are cumulative to the extent the remedies are not inconsistent, and MLE may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

## **SECTION 30: INDEPENDENT CONTRACTORS**

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Subrecipient is not an officer, employee, or agent of the state of Washington.

#### **SECTION 31:** PERSONS NOT TO BENEFIT

No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Washington Legislative Assembly, elected official of the state of Washington, or official, agent, or employee of the state of Washington, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the state of Washington shall be admitted to any share or part of this Agreement or derive any financial benefit that may arise therefrom.

## **SECTION 32:** INTENDED BENEFICIARIES

MLE and Subrecipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

## **SECTION 33:** FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. MLE may terminate this Agreement upon written notice to Subrecipient after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

# **SECTION 34:** ASSIGNMENT AND SUCCESSORS IN INTEREST

Subrecipient may not assign or transfer its interest in this Agreement and any attempt by Subrecipient to assign or transfer its interest in this Agreement will be void and of no force or effect.— The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors. Any sub grant entered into under this Agreement shall contain terms and conditions substantially similar to this Agreement, including Federal provisions contained in Exhibit A

and the sub grant shall:

a. If the contract is not to a unit of Washington State government, the contract shall require the Subrecipient to indemnify, defend, save and hold harmless the state of Washington and its officers, employees, and agents ("indemnitee") from and against any and all claims, actions, liabilities, damages, losses or expenses arising from a tort, caused or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subrecipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("claims"). It is the specific intentions of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

# **SECTION 35:** SUBCONTRACTS & SUB-AWARDS

Subrecipient shall not, without MLE's prior written consent, enter into any subcontracts or follow-on sub-recipient sub-awards (work carried out by parties other than the Subrecipient) for any of the work required of Subrecipient under this Agreement. Subrecipient's consent to any contract, subcontract, sub-award will not relieve Subrecipient of any of its duties or obligations under this Agreement.

#### **SECTION 36:** TIME IS OF THE ESSENCE

Time is of the essence in Subrecipient's performance of its obligations under this Agreement.

#### **SECTION 37:** MERGER AND WAIVER

This Agreement and all Exhibits and Attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

Failure by MLE to insist upon the strict performance of any provision of this agreement shall not affect MLE's right to require strict performance of the same provision in the future or any other provision. Failure by MLE to exercise any right based upon a breach, or acceptance by MLE of performance during such breach, shall not constitute a waiver of any of its rights or remedies with respect to such breach.

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

# **SECTION 38:** RECORDS MAINTENANCE AND ACCESS

Subrecipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Subrecipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Subrecipient,

whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Subrecipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Subrecipient, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Subrecipient acknowledges and agrees that Washington State Parks and Recreation Commission and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Subrecipient shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

# **SECTION 39: HEADINGS**

The headings and captions to sections or subsections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

#### **SECTION 40:** INCORPORATION BY REFERENCES AND ORDER OF PRECEDENCE

The table below reflects the documents that are incorporated by reference (whether attached or not) and the order of precedence should there be a conflict between the parts of document or other documents incorporated by reference. The lower the number, the higher the precedence. Where two or more documents address a point or concept but are not in conflict, they should be read as supplemental, additive, and/or cumulative.

Precedence	Document
1 (highest)	United State of America Laws or Rules AND Washington State Laws and Rules
2	Amendments to any of the documents listed below shall control over the earlier version of that same document or earlier amendment to that same document.
3	EXHIBIT A - FEDERAL COMPLIANCE TERMS
4	EXHIBIT B - INFORMATION REQUIRED BY 2 CFR §200.211(b)
5	EXHIBIT C – 2 CFR 200, Appendix II - TERMS
6	ATTACHMENT A - SUBRECIPIENT'S MLE GRANT APPLICATION
7	ATTACHMENT B – ALLOWABLE COSTS & EXPENDITURES FOR STATE VESSEL REGISTRATION FEES AND FEDERAL ASSISTANCE GRANTS
8	ATTACHMENT C – VESSEL REGISTRATION FEE PROGRAM GUIDANCE FOR MARINE LAW ENFORCEMENT PROGRAMS

# **SECTION 41: SIGNATURES**

This Agreement, which includes incorporated documents, is executed by the persons signing below who warrant under penalty of perjury under the laws of the State of Washington that they have read and understood the document and find it to be legal, valid, and a binding obligation, enforceable according to its terms, and have the authority to execute the contract.

Port Orchard Police Department 546 Bay Street Port Orchard, WA 98366-5339	Washington State Parks and Recreation Commission 1111 Israel Road SW PO Box 42650 Olympia, WA 98504-2650
Sign:	Sign:
Name and Title: Rob Putaansuu, Mayor	тіtle: Contracts and Grants Manager
Email:	Email: Contracts@parks.wa.gov
Date:	Date:
Place:	Place: Tumwater, WA

# **EXHIBIT A: FEDERAL COMPLIANCE TERMS**

# I. Grant Subrecipient Compliance Requirements:

- A. Subrecipient is responsible to ensure compliance with the federal implementing regulations for (Clean Vessel Act 50 CFR Part 85 or Boating Infrastructure Grant Program 50 CFR Part 86).
- B. Subrecipient to comply with Assurances Construction Programs (Standard Form 424D)
- C. Pursuant to 2 CFR Part 170, MLE will enter grant information into the Federal Funding Accountability and Transparency Act (FFATA).

#### **II. Federal Terms and Conditions:**

Subrecipient is responsible to comply with the following Federal Terms and Conditions, as applicable:

- A. Uniform Administrative Requirements, 2 CFR Part 200, Subparts A through D or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B. including but not limited to the following:
  - 1. <u>Property Standards</u>. 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
  - 2. <u>Contract Provisions</u>. The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit. These are, to the extent applicable, obligations of Subrecipient, and Subrecipient shall also include these contract provisions in its contracts with non-Federal entities.
  - 3. <u>Audits</u>. Subrecipient shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law. If Subrecipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to MLE within 30 days of completion.
- B. Cost Principles 2 CFR Part 200, Subpart E
- C. Central Service Cost Allocation Plans Appendix V to Part 200
- D. Indirect Cost Proposals Appendix VII to Part 200
- E. Audit Requirements 2 CFR Part 200, Subpart F

- F. Federal Non-discrimination Statutes. Subrecipient is responsible to comply with all federal statutes relating to non-discrimination, including but not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; Title IX of the Education Amendments of 1972 (20 USC §§ 1681-1683; 1685-1686) which prohibits discrimination on the basis of gender; Section 504 of the Rehabilitation Act of 1973 (29 USC § 794) which prohibits discrimination on the basis of handicaps; Age Discrimination Act of 1975 (42 USC §§ 6101-6107) which prohibits discrimination on the basis of age; Drug Abuse Office and Treatment Act of 1972 (PL 92-255) which prohibits discrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616) regarding non-discrimination on basis of alcohol abuse or alcoholism; Sections 523 and 527 of the Public Health Services Act of 1912 as amended (42 USC §§ 290 dd-3 and 290 ee-3) regarding confidentiality of alcohol and drug abuse patient records; Title VIII of the Civil Rights Act of 1968 (42 USC §§ 3601 et seq.) regarding nondiscrimination in the sale, rental or financing of housing; any other nondiscrimination provisions of the specific statutes under which this agreement is being made; and the requirements of any other nondiscrimination statute(s) which apply to the federal financial assistance award received by MLE.
- G. Eligible Workers. Subrecipient shall ensure that all employees complete the I-9 Form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). Subrecipient shall comply with regulations regarding certification and retention of the completed forms.
- H. To the extent applicable to this award, Subrecipient is responsible to comply with
  - 1. National Environmental Policy Act; E.O. 11514 (which requires the Subrecipient to comply with environmental standards which may be prescribed pursuant to institution of environmental quality control measures under the National Environmental Policy Act of 1969 (42 USC Chapter 55, [Pub. L. 91-190]) and Executive Order 11514.
  - 2. E.O. 11990: Protection of Wetlands (which requires the Subrecipient to comply with environmental standards for the protection of wetlands)
  - 3. E.O. 11988: Floodplain Management; E.O. 11988 (which requires the Subrecipient to comply with environmental standards for the evaluation of flood hazards in floodplains)
  - 4. Coastal Zone Management Act (which requires Subrecipient to ensure that the work performed will not violate State management programs developed under the Coastal Zone Management Act of 1972) (16 USC Chapter 33, Sections 1451 et seq.).'
  - 5. Wild and Scenic Rivers Act (which requires the Subrecipient to protect components or potential components of the national wild and scenic rivers system). (16 USC Chapter 28, Sections 1271 et seq.)
  - 6. Historic Preservation Act, E.O. 11593 (which requires Subrecipient to assist the

awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470), E.O. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 USC Sec. 469a-1 et seq.).

- 7. Endangered Species Act (which requires the Subrecipient to comply with environmental standards for the protection of endangered species) 16 USC Chapter 35, Sections 1531ff [Pub. L. 93-205]).
- 8. Marine Mammal Protection Act (which Requires permits and reports for research projects that will involve the taking or importation of protected marine mammals or marine mammal products) (16 U.S.C. Chapter 31, Subchapter I, Sections 1361ff).
- I. Other Requirements (USFWS specific)
  - 1. Universal Identifier and Central Contractor Registration 2 CFR Part 25
  - 2. Reporting Sub-awards and Executive Compensation 2 CFR Part 170
  - 3. Award Term for Trafficking in Persons (applicable to private entity subrecipients) 2 CFR Part 175
  - 4. Government-wide Debarment and Suspension (Non-procurement) 2 CFR Part 1400
  - 5. Requirements for Drug-Free Workplace (Financial Assistance) 2 CFR Part 1401
  - 6. 43 CFR 18 New Restrictions on Lobbying: Submission of an application also represents the applicant's certification of the statements in 43 CFR Part 18, Appendix A, Certification Regarding Lobbying.
  - 7. 41 U.S.C. 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection:
    - a. This award, related sub-awards, and related contracts over the simplified acquisition threshold and all employees working on this award, related sub-awards and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 USC 4712b. Subrecipient, Subrecipient's contractor, or Subrecipient's sub-recipient(s) (however many levels), and their contractors award contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
    - c. The Subrecipient shall insert this clause, including this paragraph (c), in all sub awards and in contracts over the simplified acquisition threshold related to this award.

- 8. Prohibition on Members of Congress Making Contracts with Federal Government: No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit 41 USC § 6306.
- 9. Federal Leadership on Reducing Text Messaging while Driving: Subrecipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in Section 3(a) of the Order Executive Order 13513.

# **EXHIBIT B: INFORMATION REQUIRED BY 2 CFR §200.211(b)**

Federal	$\Delta ward$	Identification	١.
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(i)	Subrecipient name (which must match registered name in DUNS): Port Orchard Police Department
(ii)	Subrecipient's UEI number: #C12QPGL3JE64
(iii)	Federal Award Identification Number (FAIN): #3323FAS230153
(iv)	Federal Award Date: 10/1/2023
(v)	Sub-award Period of Performance Start and End Date: From 10/1/2023 to 9/30/2024
(vi)	Total Amount of Federal Funds Obligated by this Agreement: \$10,671.91
(vii)	Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$10,671.91
(ix) (ix)	Federal award project description: <u>Marine Law Enforcement Federal Financial Assistance Grant</u> Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
	<ul> <li>(a) Name of Federal awarding agency: <u>United States Coast Guard</u></li> <li>(b) Name of pass-through entity: <u>Washington State Parks and Recreation Commission</u></li> <li>(c) Contact information for awarding official of the pass-through entity: boatingprogram@parks.wa.gov</li> </ul>
(x)	CFDA Number and Name: Federal Boat Safety Act 92-75
(xi)	Is Award R&D? No
(xii)	Indirect cost rate for the Federal award: <u>NA</u> %
	the purposes of this Attachment, the term "pass-through entity" refers to Washington MLE t Program.

# **EXHIBIT C: 2 CFR 200, APPENDIX II - TERMS**

Provisions for Non-Federal Entity Contracts Under Federal Awards (current as of 20200717)

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- **(B)** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- **(C)** Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- **(E)** Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of

mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- **(F)** Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- **(G)** Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689) A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (J) See § 200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014

# ATTACHMENT "A": SUBRECIPIENT'S FFA GRANT APPLICATION



# Washington State Parks & Recreation Commission - Recreational Boating Program

# Federal Financial Assistance Grant Program Application

Application Year: 2024

Agency Name: Port Orchard Police Department

# PREVENTION PLAN PART 1 - ASSESSMENT, IDENTIFICATION, GOALS

# High Priority Boating Risks and Hazards

High Priority Boating Risks & Hazards	Data / Professional Judgement	Comments
Lack of required Safety	Commonly encountered at	Intercepting Uneducated Boater
Equipment	ramp inspections	"Before" they embark is a
		powerful tool.
Vessels Without All required life	Commonly encountered at	Intercepting Uneducated Boater
jackets	ramp inspections	"Before" they embark is a
		powerful tool.
Operators Without A Boater	Commonly encountered at	Intercepting Uneducated Boater
Education Card	ramp inspections	"Before" they embark is a
		powerful tool.
Vessels with expired	Moored at one of our seven	Education and enforcement
registration	marinas or on DNR land	addresses this problem, and
		leads to addressing other issues
		that are also likely.
Currently about 35 vessels that	Increased contacts, posting	Derelict vessels are a
are	notices on vessels, working with	navigational hazard when they
derelict/abandoned/violating	DNR to enforce laws and either	break free, environmental
moorage	gain compliance or seize vessels	hazard when they sink, any any
	for destruction.	inaction invites more and more
		of them.

# High Priority Audiences

Description of Audience	Why is this Audience a Priority?	Comments
Vessels owners that move a	The need for education	This is a regionwide problem,
vessel to DNR land and	regarding the hazard this poses,	with a "Squeeze the sponge"
abandoned them there.	and the cost that will be passed	effect that just moves the
	onto them for any legal action.	problem from jurisdiction to
		jurisdiction.
Retirement Age Couples	Least Physically Capable to	A positive outreach helps build
	Endure On-Water Emergency	the Boating Community.

Boaters that use the Port	Ensure that boaters are	This helps to reduce the
Orchard boat ramp.	properly educated and	number of emergencies on the
	equipped, before their voyage	water.
	begins.	
Hundreds of boaters that have	Ensure that boaters are	A positive outreach helps build
moored vessels in Port	properly educated and	the Boating Community.
Orchard's seven marinas.	equipped, before their voyage	
	begins.	
"Non-Registered" vessel owners	Identified ownsership through	This reduces the risk of
in marinas a moored on DNR	registration, promotes	abandoned or derelict vessels
Land.	responsibility for vessels, and	and protects the marine
	reduces derelict or abandoned	environment from neglected
	vessels that incur financial loss	vessels that could sink.
	to the tax payer, and endanger	
	the environment, and create	
	navigational hazards.	

# PREVENTION PLAN PART 1 - TASKS, TACTICS, MEDIA

# Patrol Plans / Emphasis Patrols / Enforcement Policies

Activity	Time Frame	Patrol Hour Goal	Inspection Goal	Comments	Туре
"Compli	All days and	32.00	Patrol	Our waters	Patrol
mentary	times -		Plan/Emphasis	are primarily	Plan/Empha
Vessel	depending		Patrol/Enforcem	for "Transit"	sis
Safety	on tides at		ent Policy	and majority	Patrol/Enfor
Inspectio	boat launch			of hours will	cement
ns" at the				be used	Policy
Boat				conducting	
Ramp				Ramp	
and				Inspections	
Marinas					
through					
Media					
Outreach					
/					
Advertise					
ment					
Public	Chris Craft	16.00	Patrol		Patrol
Outreach	Convention,		Plan/Emphasis		Plan/Empha
/Educatio	Performanc		Patrol/Enforcem		sis
n and	e Boats		ent Policy		Patrol/Enfor
Complim	Rendezvous				cement
entary	, National				Policy
Vessel	Night Out				
Safety					
Inspectio					
ns at					

Public					
Events					
Vessel Registrati on Complian ce	Patrol hours, Ramp Inspections, Random and Varied, via Foot Patrol at Marinas and from the water.	16.00	Patrol Plan/Emphasis Patrol/Enforcem ent Policy		Patrol Plan/Empha sis Patrol/Enfor cement Policy
Ramp Inspectio ns	May - August		Safety Inspection	We are a small department and we are down to only 3 RBS Officers, and two new officers that are waiting to go to the Basic Marine LE Academy. However, we will continue to strive for 50 inspections per year.	Safety Inspection
Patrols to identify vessel marking/ character istics/Hull ID numbers. Post vessels with notices to comply. If necessary , seize	This is a long-term problem with no quick solution. Bimonthly patrols targeting this problem.	15.00	Patrol Plan/Emphasis Patrol/Enforcem ent Policy		Patrol Plan/Empha sis Patrol/Enfor cement Policy

vessels			
for			
destructi			
on.			

# State Approved Boater Education Classes & Community Events

Activity	Date	Hours Planned	Attendance	Comments	Туре
Provide Boater Education and Awareness Material at Public Events to include protection against theft, hypothermia, boating safety, equipment requirements, and life jacket information.	7/4/2024	8.00		Fireworks from a barge in Port Orchard's Sinclair Inlet	Community Events
Boater Education and Awareness	7/1/2024	8.00		Fireworks in Bremerton	Community Events
	7/16/2024	4.00			Presentation to Groups
	6/9/2024	4.00			Presentation to Groups
		2.00		Contingent on Adventures in Boating Instructor Certification	Presentation to Schools
	7/26/2023	4.00			Presentation to Groups

# Vessel Dealer/Rental Site Visits

Dealers	Hours Spent	Comments	Туре
Targeted	Visiting		

## **Professional Prevention Partners**

Name of Partnering Orgs	Hours Planned Coordinating	Comments
-------------------------	----------------------------	----------

# Media Plan

Campaign	Owned Media	Earned Media	Events	Comments
	Posts	Posts		
Operation Dry	4.00	4.00		
Water				
National Safe	4.00	4.00		
Boating Week				
Spring Aboard	4.00	4.00		
Paddle Safety	4.00	4.00		
Week				
Other (please				
describe)				

# **INSTRUCTOR INFORMATION**

SAW ID	First Name	Last Name	Phone	Email	Development
					Complete?
	Robert	Luke		RLuke@portorchardwa.gov	N/A for this
					position

# PREVENTION GOALS SUMMARY

Total Patrol Hour Goal: 79.00

Total Inspections Goal: 50.00

Count of State Approved Boater Education Classes Planned: 0.00

Sum of Hours for State Approved Boater Education Classes: 0.00

Sum of State Approved Boater Education Classes Planned Attendance: 0.00

Count of Community Events: 2.00

Sum of Community Events Hours: 16.00

Count of Presentations to Schools: 1.00

Sum of Presentation to Schools Hours: 2.00

Count of Presentations to Groups: 3.00

Sum of Presentations to Groups Hours: 12.00

Count of Dealer Visits Planned: 0.00

Sum of Dealer Visits Hours: 0.00

Count of Rental Sites Planned: 0.00

Sum of Rental Site Visits Hours: 0.00

Owned Media Posts: 16.00

Earned Media Posts: 16.00

Count of Partnering Organizations: 0.00

Sum of Partnering Organization Hours: 0.00

Printed On: November 20, 2023

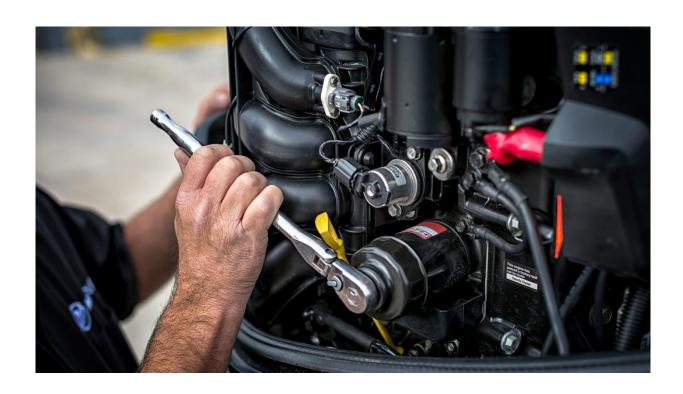
# ATTACHMENT B – ALLOWABLE COSTS & EXPENDITURES FOR STATE VESSEL **REGISTRATION FEES & FEDERAL ASSISTANCE GRANTS**





# Allowable Costs & Expenditures For State Vessel Registration Fees & Federal Assistance Grants

Updated June 2023









# Washington State Parks & Recreation Commission

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# **VESSEL REGISTRATION FEES & GRANT FUNDING**

Any item not listed below must be reviewed and found acceptable by the Washington State Parks Boating Program (Boating Program) before it is considered a valid Recreational Boating Safety (RBS) expenditure.

# **UNIT COST APPROVAL**

Items with a unit cost of \$5,000 or more must have the prior written approval of Washington State Parks and Recreation Commission Marine Law Enforcement (MLE) Coordinator.

## **COST PRORATION**

If a cost benefits both your RBS program and other work of your agency, the cost should be allocated to the RBS Program based on the proportional benefit to the program. The costs may be allocated using any reasonable documented method.

# **ADMINISTRATIVE COSTS**

Agencies that receive Vessel Registration Fees (VRF) are not allowed to charge flat administrative costs for the administration of the VRF funds as is often done with federal grants. However, agencies may charge the salaries and benefits costs of actual hours worked by staff associated with the administration of their dedicated VRF account.

Agencies that receive federal assistance grants from the Boating Program are allowed to charge indirect (administrative) costs for those funds. If the agency has a federally negotiated indirect cost rate, they are permitted to charge that against the total salaries + benefits charged to the federal assistance grants. They must first provide a copy of their current rate agreement to Parks. If not, then they may charge a *de minimums* flat rate of 10% or elect not to charge indirect at all (2 CFR 200.414(f)).

## **ALLOWABLE EXPENDITURES**

Grant funds may be used only for activities under WAC 352-65-040, the ten elements necessary to accomplish the Recreational Boating Safety (RBS) mission. If it is unclear if an expense meets these criteria, contact State Parks at (360) 902-8835 or <a href="mailto:Bryan.Alexander@parks.wa.gov">Bryan.Alexander@parks.wa.gov</a> to discuss the item before proceeding.

Allowable expenses include but are not limited to:

#### • RBS SALARIES

 Time, salaries, benefits and wages for officers or deputies who possess a Washington State Peace Officers Certification, are fully commissioned to enforce the laws of Washington State and who have completed an RBS course acceptable to State Parks (BMLE or equal).

Time, salaries, benefits and wages for officers or deputies who possess a Washington State Peace Officers Certification, are fully commissioned to enforce the laws of Washington State, and who have not completed a BMLE course is acceptable ONLY when working with an RBS trained officer AND when the agency has a written 'two-officer' policy for officers on marine patrol for the purpose of officer safety.

### RBS EDUCATION AND INSTRUCTION

Providing instructors for the *Adventures in Boating* course that qualifies graduates for the required mandatory boater education card. Costs may include classroom supplies, light refreshments, other goods and services necessary to promote and teach classes, and officer salaries, benefits and wages. Officer salaries will only be reimbursed for those officers who have successfully completed a State Parks *Adventures in Boating* Instructor Training class and are listed on our files.

Life jackets (USCG approved only) for the state *Adventures in Boating* course and other RBS presentations, such as: throw rings or cushions for loaners and the cost to print only the agency's name or RBS safety messages.

### RBS TRAINING

Grant or VRF funds can be used to pay for full-time and reserve officers who are fully commissioned to enforce the laws of the State of Washington to attend training provided by the Boating Program or courses approved by the Boating Program.

Note: Approval from State Parks is mandatory if an officer or deputy is applying for a non-Washington RBS course. Examples of approved courses include:

- MLE Instructor Meeting
- Basic Marine Law Enforcement/Boat Crew Member or equivalent (BMLE)
- Boat Operator Search and Rescue (BOSAR)
- Boating Under the Influence Basic (BUI-Basic)
- Boating Under the Influence-Advanced (BUI-Adv)
- Personal Watercraft for Law Enforcement (PWCLE)
- Enhanced Vessel Operator Course (EVOC)
- Fall Marine Law Enforcement Conference
- Boating Accident Investigation-Level 1
- Officer Water Survival
- Boater Education Instructor Training (BEIT)
- Designated Education Officer Training (DEOT)
- Adventures in Boating Instructor Training

- RBS Related Local In-Service Training
- Other USCG training courses with prior approval
- Other NASBLA training courses with prior approval

Per Diem travel expenses at **state per diem rate** in effect for the destination RBS training, conferences, and meetings. Cost is prorated for percentage of travel /per diem for RBS purposes /missions only.

### **RBS EQUIPMENT**

Allowable expenses may include the purchase, maintenance and operation of patrol boats and patrol boat equipment to perform the RBS mission as defined in WAC 352-65-040 only. **Any purchase exceeding \$5,000 must receive prior approval from the Boating Program.** All decisions by the Boating Program for equipment purchases are final.

### **PATROL VESSELS**

- Motors and hardware
- Props
- Trailers and maintenance of trailers (repair, tires, winch, cables, power take-off)
- Patrol vessel and engine drive system repairs
- Repair and replacement of equipment on boat (includes de-watering pumps which can also be used as fire-fighting equipment)
- Tow vehicles (dedicated for 100% RBS use, or prorated for the percentage of time used for RBS activities)
- Hitch assemblies and installation cost for tow vehicles that are dedicated for 100% RBS use, or prorated for the percentage of time used for RBS activities
- Anti-freeze fluid
- Batteries and fluid; maintenance and replacement
- Costs related to the maintenance and repair of the vessel
- Costs related to marking and identifying patrol vessels as government owned, which includes painting, decals and cost of removal and application
- Vessel electrical system repairs and replacement
  - Electronic devices: parts and labor for maintenance, repairs to maintain, or replacement when devices fail, or are no longer serviceable, or when upgrades are required to meet customary and current standards for law enforcement work
  - Devices dedicated to the program such as agency & VHF radios
  - Radar units
  - o Sirens

- Blue lighting equipment
- Hailers
- Global positioning system (GPS) units
- Personal breath testers (PBT)
- Cell phones used 100% RBS only, or prorated for a percentage of time used on boat
- Battery chargers and computers dedicated to program use
- Includes brackets and fittings for installation and use
- Fluids for hydraulic system
- Fuel, fuel additives and filters; associated disposal fees
- Gear oil for lower units
- Glass replacement and costs to install, associated disposal fees
- Grease and lubricants
- Oil and oil filters; associated disposal fees
- Parts and labor for regular scheduled maintenance and scheduled replacement
- Parts for replacement on the vessel when failure occurs or when damaged and labor, which includes engine, lower unit and cooling system repairs and replacement
- Vessel canvas tops and side covers; includes repairs and replacement of canvas/vinyl/plastic material and framing structures
- Vessel hull and structural repairs/replacement of railings, pilot house, decks, cleats, ladders, swim platforms, Sampson posts, fittings, towing equipment, davits, anchors, chain, and associated hardware and fittings

### **ASSOCIATED EQUIPMENT FOR PATROL VESSELS**

- Cost of emergency response and rescue equipment repair, replacement and maintenance, including: stretchers, first aid/first responder kits and materials, fire suppression equipment and supplies.
- Cost of fees related to cell phone charges, annual registration charges, renewal fees, and insurance are prorated for percentage of time used performing RBS missions.
- Cost of haul-outs and associated costs with cleaning and maintenance of hull, fixtures and drive systems, and associated disposal fees.
- Costs related to moorage, including cost of water/electricity associated with maintenance and moorage.
- Cost of required safety equipment on the vessel when replacement, repair, or regular maintenance is needed to meet state/federal regulations and maintain USCG standards. For example:
  - Life jackets, replacement parts (clips, hooks, CO2 cartridges and re-arm kits) and stenciling/screening of agency name or law enforcement

- Exposures suits
- Fire extinguishers/extinguishing systems
- Visual distress signals
- Navigation lights
- Sounding devices
- Ventilation systems
- Backfire flame arrestor
- Cost of replacement, repair, or regular maintenance of equipment used during operation and moorage. For example:
  - Fenders
  - Lines for towing and mooring
  - Chafing gear
  - Boat hooks
  - Towing equipment
  - Bilge pumps
  - Batteries
  - Navigation charts
  - Piloting equipment
  - Helm fixtures and seats
  - Logbooks
  - o Depth sounders & radar, does not include FLIR systems
  - Portable fuel tanks and hoses

#### PATROL VESSEL TRAILERS

- Costs related to maintenance and repair of patrol vessel trailer(s)
- Cost of tires and wheels, including: installation, repair, and balancing; associated disposal fees
- Electrical system maintenance, repair and replacement
- Hitch and ball repair or replacement
- Hydraulic or electric brake system maintenance, repair and replacement
- Oil, grease and lubricants, and associated disposal fees
- Winch maintenance, repair and replacement

#### **BOAT EQUIPMENT**

- Anchors
- Line for towing and mooring

- Chain or shackles and attachment hardware
- Carabineers
- Boat hooks
- Fire extinguishers (only USCG approved)
- Fenders
- Depth finders
- Radar units, does not include FLIR systems
- Radios and computers, dedicated for 100% RBS use or prorated for the percentage of time used for RBS activities
- · Lines for tie up
- Light bars blue lights only (no red, white or yellow lights)
- Search lights dedicated for 100% RBS use or prorated for the percentage of time used for RBS activities
- FLIR System (mounted on and wired to the vessel)
- Sirens
- Cost of installation and servicing of electronic components
- Canvas and siding for weather protection
- Haul out for cleaning/painting/servicing patrol vessels
- First-aid kits dedicated for 100% RBS use or prorated for the percentage of time used for RBS activities
- Rescue throw bags for use on boats only

### **NAVIGATION AIDS & BUOYS**

- Navigation signs & markers (to meet RCW 79A.60.500 and WAC 352)
- Decals for buoys
- Chain
- Cable and connectors
- Weights
- Equipment to maintain buoys and signs to remain effective

#### **EDUCATION**

- Publications to promote RBS education that are already prepared or the creation, design and printing of publications
- Education equipment related to required boating safety equipment for recreational boats

 Promotion of Adventures in Boating classes (including presentation materials, light refreshments and room rental for classes)

### **NON-ALLOWABLE COSTS AND EXPENDITURES**

- Bullet proof vests are beneficial, however equipment of this nature is not essential for meeting the established criteria in WAC 352-65-040 nor is it related to the performance of an RBS program mission and is considered a local agency responsibility to purchase.
- Equipment used in recovery operations (dive equipment, etc.) while being used in an RBS search or investigation mode are 100% eligible. Once this equipment is used for recovery operations it must be prorated between RBS missions and recovery missions.
- Handheld or portable night vision, FLIR or thermal imaging devices are a 100%
  allowable expense while in RBS patrol, search or investigation mode. Once this
  equipment is used for recovery operations it must be prorated. Permanently mounted
  and electrically wired FLIR and thermal Imaging devices are 100% allowable expenses.
- Homeland security missions (weapons, etc.), or any other equipment determined as unrelated by the Boating Program is not an allowable expense.
- Firefighting equipment is not an allowable expense.

# EXHIBIT C – VESSEL REGISTRATION FEE PROGRAM GUIDANCE FOR MARINE LAW ENFORCEMENT PROGRAMS





# Vessel Registration Fee Program Guidance for Marine Law Enforcement Programs

**Updated September 2023** 













### Introduction

The purpose of the Vessel Registration Fee (VRF) program is to focus local jurisdiction marine programs on injury prevention activities around recreational boating safety. These activities include enforcing RCW 79A.60: Regulation of Recreational Vessels and providing emergency response to boating accidents. Each marine patrol unit should strive to serve and protect the lives and property of Washington's recreational boaters. All VRF Funds are awarded based on the potential success and ability of the local agency to provide such service to the boating community. Recreational Boating Safety (RBS) programs are evaluated using the criteria published in this document, as well as its ability to meet the requirements and assurances of WAC 352-65: Boating Safety Program Approval.

This guidance document is intended to help local marine law enforcement programs understand the minimum qualifications and requirements to receive vessel registration fees. The document has been laid out to explain this as simply as possible. The beginning section provides a brief list of the qualifications and requirements, and the remainder of the document explains each component in more depth.

The Washington State Parks Boating Program (State Parks) has established different operational goals for agencies dependent on the population within their jurisdiction (based on 2019 census data).

- Small Agencies Under 30,000 population
- Medium Agencies Population between 30,000 and 100,00
- Large Agencies Populations exceed 100,000.

# State Parks Boating Program Contacts

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**MLE Program Specialist** 

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**Mailing Address** 

Washington State Parks Boating Program

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**Physical Address** 

11834 Tilley Road South Olympia, WA 98512

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Website: GoBoatingWA.com

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# Overview of Agency Eligibility Requirements and Qualifications

Only counties or local public agencies having jurisdiction over waters used for recreational boating and possessing the authority to enforce the Revised Code of Washington and the Washington Administrative Code are eligible to apply to receive vessel registration fees. Participating agencies must:

#### **Administrative & Financial Requirements**

- 1. Sign an annual agreement with State Parks.
- 2. Designate a "Marine Lead": A single point of contact that oversees the day-to-day program operations, commits to attend the annual marine law enforcement conference, and responds to surveys sent by State Parks.
- 3. Designate a "Marine Supervisor": A single point of contact that has administrative authority over the marine program for the agency.
- 4. Report recreational boating safety activities and certain financial data to State Parks.
- 5. Place all vessel registration fees into a dedicated account, agree to spend them only on eligible expenses and agree to accountability requirements.
- 6. Provide digital links to all local ordinances regulating recreational boating.

#### **Operational Requirements**

- 7. Employ Officers / Deputies commissioned to enforce Washington state law.
- 8. Send all marine Officers / Deputies through the Washington State Parks Basic Marine Law Enforcement Academy.
- 9. Maintain annual training qualification currency for each participating Officer / Deputy.
- 10. Provide the appropriate vessels and equipment to carry out the operational requirements.
- 11. Report all boating accidents that occur within the jurisdiction (that meet minimum criteria) pursuant to RCW 79A.60.200, RCW 79A.60.220 and WAC 352-70.
- 12. Respond and provide assistance to boaters for on-water emergencies, complaints, and accidents.
- 13. Commit to a minimum number of hours patrolling the waters used by recreational boaters during peak boating season.
- 14. Actively enforce Washington's boating safety laws and regulations.
- 15. Conduct vessel safety inspections for recreational boaters.
- 16. Provide a boating safety education and outreach program and designate at least one Officer / Deputy to receive the Adventures in Boating Instructor training and to manage the program.
- 17. Place and maintain aids to navigation as legislated buy local ordinances.

### **Summary of Required Documents and Due Dates**

Document Name	Form Number	Date Due
Request for Boating Program Approval	A-299 / Web form	15 Oct each year
Federal Financial Assistance Grant	A-300/Web form	15 Oct each year
Application (If applying)		
B.O.A.T Currency Report	Web form	15 Oct each year
Summary of Activity Report (SOAR)	Web form	Quarterly *
Boating Accident Report (BAR)	A-440	10 days following
		accident
Boating Accident Investigation Report	A-425 (Rev 08/2009)	10 days following
(BAIR)		accident / fatality
		meeting report criteria
Washington State Vessel Inspection	P&R A-274	Quarterly*
VRF Expenditure Report	Web form	1 Nov each year
Financial System Report	Agency generated	1 Nov each year
VRF Fund Balance Report	Agency generated	1 Nov each year
Boating Safety Surveys	N/A	Varies

<sup>\*</sup> Document is due quarterly and must be submitted by the 15th of the month following the last month of the quarter (1st Qtr-04/15, 2nd Qtr-07/15, 3rd Qtr-10/15, 4th Qtr. 01/16).

### Administrative & Financial Requirements

### Annual Agreement – The A-299 Application Form

Each agency is required sign an agreement with State Parks by submitting a complete A-299 application form. The A-299 contains several informational fields that must be filled out completely to be considered and aids in the continued approval of the agency's program. These forms are due each year by October 15. Agencies must provide information on their current staff, training, an inventory of vessels, and the anticipated patrol schedule. The form also defines the specific requirements your agency is committing to in exchange for vessel registration fees. This form, and instructions on how to fill it out, is located at <a href="http://mle.parks.wa.gov/">http://mle.parks.wa.gov/</a>.

### Designated Marine Lead / Conference Attendance / Surveys

Each agency has a unique and different operational environment that offer a variety of solutions to ensure Marine Law Enforcement (MLE) unit operations, enforcement, fiscal and administrative functions are conducted according to best practices. Some agencies may have a Lieutenant serving the MLE Unit Supervisor and crew member conducting vessel operations and patrols. Other agencies may have a Sergeant as a supervisor and different crew member conducting vessel operations.

Recognizing this, State Parks requires each agency to designate a "Marine Lead", which is the person responsible for the day-to-day operations of its marine program and acts as the point-of-contact with State Parks on all issues and matters related to that agency's MLE unit. While the Sheriff or Chief of Police is ultimately responsible for ensuring their agency is meeting all the program requirements, the Marine Lead is the person implementing their guidance and communicating that to other Marine Unit members, State Parks, and the public.

The Marine Lead is responsible to:

- Ensure all required reports are completed and submitted to State Parks within due date guidelines.
- Submit personnel names to attend training courses and conferences.
- Attend the annual fall conference.
- Ensure that B.O.A.T. Currency training is conducted and reported to State Parks.
- Utilize Marine SECTOR within their agency.
- Communicate with State Parks on all matters and issues which may arise around recreational boating safety and marine law enforcement.
- Respond to surveys from State Parks.

State Parks also requires the agency to designate a "Marine Supervisor", which is the person with administrative supervision of the agency's MLE program.

### **Reporting Recreational Boating Activities and Financial Data**

#### **SOAR – Summary of Activity Reports**

A Summary of Activities Report (SOAR) form must be submitted at least quarterly to State Parks. However, agencies are invited to report activities daily, weekly, or monthly. This form, and instructions on how to fill it out, is located at <a href="http://mle.parks.wa.gov/">http://mle.parks.wa.gov/</a>.

### **Vessel Registration Fee Expenditure Report**

This annual report form must be submitted by October 15 each year to State Parks. The form fulfills the requirements of **WAC 352-65-040(9)** which requires each participating agency to submit an annual account of program expenditures showing the amount of vessel registration fees received, spent, and remaining in their dedicated account. They must also show the amount of "local spending" on recreational boating safety activities. "Local spending" is the amount agencies spend on the RBS mission and cannot come from other grant sources. Local spending is required because <u>RCW 88.02.650</u> specifies that "[VRF] Funds may not supplant local funds used for boating safety programs". This form, and instructions on how to fill it out, is located at <a href="http://mle.parks.wa.gov/">http://mle.parks.wa.gov/</a>.

### **Supporting Financial Documents**

Every Vessel Registration Fee (VRF) Expenditure Report must be accompanied with the following reports:

- <u>Financial System Report</u>: A report from the agency financial system (not Excel) showing a
  dedicated account for the deposit of state VRF funds received from the Office of State Treasurer
  (Enclosure 4).
- <u>VRF Fund Balance Report</u>: A report showing the fund balance of the dedicated account (Enclosure 5). The VRF fund balance on this system-generated report should match the bottom line on the VRF report ("Total Remaining Balance of State VRF funds for Fiscal Year").

### **Dedicated Account / Limitations on the Use of Funds / Accountability**

Participating agencies must deposit VRF funds allocated by the state treasurer, under RCW 88.02.650, into an account dedicated solely for boating safety purposes, which include all activities or expenditures identified in this section. See the document "Allowable Costs & Expenditures for State Vessel Registration Fees & Federal Assistance Grants" for a thorough explanation of eligible expenses located at <a href="http://mle.parks.wa.gov/">http://mle.parks.wa.gov/</a>.

Vessel Registration Fees are intended to increase the education and enforcement efforts of local agencies and stimulate greater local participation in boating safety. They cannot be used to fund any activities except those that are part of the recreational boating safety mission.

Agencies may charge actual, direct administrative costs to the VRF account - such as staff hours it takes to fill out forms, or to maintain the dedicated account - but may not charge administrative fees based on an estimated percentage.

Participating agencies must maintain accurate annual records of activities and expenditures of their boating safety programs. Those records must be provided to State Parks consistent with their agreement, or upon request. The agency must also permit State Parks to audit the use of funds in accordance with generally accepted audit practices and standards.

#### Links to local ordinances

When the local jurisdiction adopts ordinances governing recreational boating, the ordinances must be at least as restrictive, but may be more restrictive than Washington state boating laws and regulations. Participating agencies must submit a web link to all such ordinances to State Parks using the designated field in the A-299 Form.

## **Operational Requirements**

### Officer / Deputy Qualifications / Training / Training Currency

Participating agencies must provide Officers / Deputies with law enforcement certificates from the Criminal Justice Training Commission which authorizes them to enforce all boating laws and regulations. All Officers / Deputies must maintain a current Washington State Peace Officers Certification.

Participating agencies are responsible for acquiring the required training for all RBS Officers / Deputies. Washington State Parks provides two or more Basic Marine Law Enforcement Academies each year to help agencies fulfill this requirement. These courses are provided at no charge. They are taught in the spring - usually one in Western Washington and one in Eastern Washington. Officers / Deputies may attend other basic boating safety training, if approved by State Parks. Those approved courses are the Federal Law Enforcement Training Center's (FLETC), Marine Law Enforcement Training Program (MLETP), or National Association of Boating Law Administrator's (NASBLA) Boat Crewman course (BCM).

Such training must be acquired within one year of initiating a new boating safety program and within one year for each newly assigned boating safety Officer / Deputy.

Washington State Parks' Marine Law Enforcement Training Academy is accredited through the NASBLA's Boat Operation and Training (BOAT) Program. As a term of accreditation, State Parks must ensure that all active marine Officers / Deputies maintain proficiency in basic RBS skills. This is important because these skills are perishable but critical to operate in a marine environment. All agencies must submit a BOAT Currency Requirements Report Form for all active personnel listed in the A-299. These reports are

submitted at least annually with the A-299 but may be updated throughout the year. This form, and instructions on how to fill it out, is located at <a href="http://mle.parks.wa.gov/">http://mle.parks.wa.gov/</a>.

Agencies which have not completed all currency training tasks required may submit a statement of explanation and attach it to the A-299 form. State Parks recognizes that many different circumstances could prevent training from being completed (wildfires, maintenance issues, staffing shortfalls, etc.). Each circumstance will be evaluated on its own merits.

Agencies are required to list any additional training courses their personnel have completed on the A-299 web form. This helps State Parks in maintaining an up-to-date database of marine law enforcement capabilities across the state and helps identify training subjects and courses that are needed, but not offered within the state.

### **Vessels and Equipment**

Agencies must supply the necessary boating safety patrol equipment, including vessels capable of serving the minimum requirements outlined in this guidance. Patrol vessels must be properly marked and properly equipped as provided in chapter 88.02 RCW and chapter 352-60 WAC. Agencies are also required to provide State Parks with an inventory of all vessels along with details for how they are equipped each year by filling out the A-299 form. Information required on that form includes:

- **Vessels**: State Parks requires the following data on each vessel:
  - Vessel name
  - Manufacturer
  - Radio equipped (Y/N): Radio equipped means the vessel has an agency radio installed or "hardwired". Non-radio equipped boats are vessels that do not have radios installed. Portable radios may be carried on these boats, but they would be considered non-radio equipped. Examples include personal watercraft, drift boats, Jon boats, kayaks, and inflatable rafts (motorized or non-motorized).
  - SECTOR equipped (Y/N): SECTOR equipped boats are the patrol vessels in your agency that are SECTOR equipped with a computer or tablet plus printer and scanner (installed or "hardwired" to include portable cased units). Non-SECTOR equipped boats are vessels that do not have a computer, tablet, printer installed or if these are not carried aboard as a cased kit.
  - Model
  - Length
  - Propulsion type
  - Horsepower
  - Year
  - Funds used to purchase the vessel (local, state, or federal)
  - o Percent of time employed for the RBS mission.

**NOTE:** Vessels purchased with state or federal dollars must be sold at the end of their useful life, consistent with the local agency's policies and procedures. Once a vessel is sold it should be removed from the Patrol Vessel list as quickly as possible. If the agency is selling a vessel that was purchased with federal grant dollars provided by State Parks, you must notify State Parks 60 days in advance of the sale date.

- **Vehicles** (trucks, cars, SUVs, ATVs): The number of other patrol vehicles assigned to the marine services unit **and the percentage they are used for RBS activities**.
  - Vehicle type
  - Manufacturer
  - SECTOR/Radio equipped
  - Model
  - Year
  - o Funds used for purchase.
  - o Percent of time employed for the RBS mission.
- Aircraft: The number of aircraft in your agency and the percentage they are used for RBS activities.
  - Aircraft type
  - Manufacturer
  - SECTOR/Radio equipped
  - Model
  - o Year
  - Funds used for purchase.
  - o Percent of time employed for the RBS mission.
- Equipment valued at \$5000.00 (i.e., engines, electronics, etc.): Agencies are required to update their inventory of durable items defined as having a cost or value of \$5000.00 or more. Only items listed under "allowable expenses" are permitted (see "Allowable Expense Guidance" document for full details).
  - o Type of equipment
  - Manufacturer
  - Model
  - o Year
  - Funds used for purchase (local, state, federal)

### **Boating Accident Reporting**

Participating agencies are required to submit accident reports to State Parksin compliance with RCW 79A.60.200, RCW 79A.60.220 and W AC 352-70.

For any boating accident resulting in a death or injury requiring hospitalization, each participating agency must:

- Notify State Parks within 48 hours of becoming aware it.
- Fill out and submit a complete Boating Accident Investigation Report (BAIR form number A-425) within ten days of the occurrence.
- Include the results of any other investigation conducted by the agency.
- Submit any coroner's reports concerning the death of any person resulting from the boating accident, within one week of completion.

Participating agencies must also submit a Boating Accident Report (BAR – form number A-440) within **10** days of the occurrence to State Parks for any boating accident:

- Resulting in a death, OR
- An injury requiring hospitalization, OR
- Damage to any vessel or property of two thousand dollars or more, OR
- A vessel is a complete loss, OR
- A person disappears from the vessel under circumstances that indicate death.

#### **Boater Assistance**

The local municipality will have the ability to respond or coordinate response to boating emergencies which occur within their jurisdiction. Furthermore, agencies must document each occurrence and report it to State Parks through the Summary of Activity Report (SOAR) at least quarterly using the following definitions:

- Search and Rescue/Recovery Search and rescue (SAR) is defined as a water-borne response
   (including aircraft) involving a person or vessel in peril. Agencies should only report SAR cases
   on the Summary of Activity Report (SOAR) that were assigned a case number by their agency or
   a USCG MISLE Case ID Number and an Urgent Marine Information Broadcast (UMIB) initiated by
   the USCG. Agencies should not report assists (defined below) as SAR cases.
- Assist An "Assist" is defined as aid where there is no immediate danger to the vessel or its occupants. This includes vessels involved in boating accidents, disabled, aground, out of fuel, or otherwise unable to reach a safe mooring under their own power. Assistance may include providing a tow, jump start, re-floating, re-righting, fuel, repair, repair parts, assisting persons in the water, etc. This does NOT include the salvage of a vessel once abandoned or commercial vessels. Report the number of vessels assisted and the number of persons assisted on the SOAR report.

### **Boat Patrol (Boat Log Hours)**

Boat patrol (Boat Log Hours) are those hours that the patrol vessel was actually on the water patrolling. Participating agencies must submit a patrol schedule (with the A-299) that demonstrates they are patrolling waters within their jurisdiction during peak recreational hours. They must also patrol a

minimum number of hours per year. See the note below.

### Minimum Patrol Hour Goals Based on Agency Size

- Small agencies 133 hours
- Medium agencies 255 hours
- Large agencies 436 hours

**NOTE**: State Parks recognizes that Washington State experiences a diverse boating season. Various areas of the state have increased boating activities due to recreation fishing, hunting and pleasure crafting. Because of its diverse landscapes and seasons, State Parks acknowledges that the traditional peak boating season remains during the time between Memorial Day and Labor Day but is not exclusive to that time frame. State Parks has collected data for patrol hours performed by all participating over a period of years and has established the average boat log hours for agencies based on jurisdiction population size according to the U.S. Census. Patrol hours can be a combination of Boat Log and Rampside hours.



Patrol hours is considered a critical metric. It is used by State Parks to determine if an agency is complying with the minimum requirements. Failing to achieve the minimum number of hours of patrol (based on size) could be a factor in determining ineligibility for vessel registration fees.

#### Example patrol schedule

Boat Patrol Schedule							
	Mon	Tue	Wed	Thur	Fri	Sat	Sun
Patrol							
Hours							
# of							
Officers /							
Deputies							
# of							
Vessels							
Patrol Seaso	on Beginning	Date		Patrol Seaso	on Ending Dat	te	

### **Enforcement**

Participating agencies must enforce safety equipment, vessel operation, noise level, navigation, harbor improvements (as authorized and placed through local ordinances), and registration laws as specified in Title 88 RCW, and as specified in local codes or ordinances. Agencies must also document and report the numbers of warnings and citations they issue for each type of boating violation in the Summary of Activity Report – **except those issued through SECTOR**.

State Parks recommends zero tolerance policy in the enforcement of mandatory boater education card carriage, life jacket wear/carriage, boating under the influence and rules of the road violations. Officers / Deputies should strongly consider issuing citations for violations of these laws in all circumstances.

The SECTOR system should be used to issue boating citations and warnings. State Parks will no longer accept mailed-in paper inspection forms, although State Parks will continue to provide paper inspection forms to agencies for internal use.

### **Boating Safety Inspections**

Participating agencies must complete written boating safety inspections during enforcement and informational contacts when considered safe and appropriate to document boater compliance with state boating laws. State Parks will provide boating safety inspection forms. Copies of the completed inspections must be submitted to State Parks for statistical purposes. Inspections conducted in SECTOR do not have to be reported to State Parks.

NOTE: We will not accept paper inspection forms after January 1, 2019. All inspections must be submitted using SECTOR.

State Parks has calculated suggested minimum goals for the number of boating safety inspections an agency performs in a boating season based on size.

### **Suggested Written Inspections – Minimum Goals**

- Small, 92
- Medium, 283
- Large, 372

### **Boating Safety Education / Designated Education Officer / Deputy**

Participating agencies must have a boating safety education and information program. At a minimum, they must designate an Officer / Deputy, trained by State Parks, to coordinate the activities of boating safety education instructors, act as liaison to boating education organizations and to coordinate:

- Boating safety presentations, which may include presentations to primary and secondary school children, boating organizations, or youth groups.
- Boating safety instruction meaning a public course of instruction using the Adventures in Boating materials from State Parks, or other state or nationally recognized curriculum approved by State Parks.
- Distribution of boating safety information, including materials provided by State Parks, to boating and outdoor recreation organizations, the boating public, public agencies, and local media.

#### **NOTES**

- Any Officers / Deputies designated as Certified Boating Education Instructors must be listed as
  Instructors qualified for the Adventures in Boating course by the State Parks Education and
  Outreach coordinator.
- State Parks considers education and outreach activities a key component of preventing boating injuries and fatalities. Classroom instruction, school presentations and participation in community events, Dealer and Rental site visits, and effective use of media are crucial to preventing boating accidents and fatalities. Agencies are not required to engage in all education and outreach activities described below but should pursue a mix of tactics appropriate for their area of operation.

### **Education and Outreach Tactics and Suggested Goals**

- Education Classes: Classroom instruction of the Adventures in Boating course sanctioned by Washington State Parks that qualifies passing students to obtain a Mandatory Boater Education Card.
  - Small = 15 students, 1 Class
  - Medium = 20 students, 1 Class
  - Large = 50 students, 1 Class
- **Boating Safety Presentations to Groups:** Presentations to various groups such as yacht clubs, kayak clubs, anglers, and any groups that use boats on the water.
  - Small = 10 hours
  - Medium = 15 hours
  - Large = 25 hours
- Boating Safety Presentations to Schools: Presentations to local public and or private schools K-12, and colleges / universities.
  - Small = 10 hours
  - Medium = 15 hours
  - Large = 25 hours
- Vessel Rental Site Visits: Visits to local vessel rental sites intended to ensure employees and renters are following guidance on the Motor Vessel Rental Safety Checklist. These can also be site visits to businesses that rent out kayaks, canoes, stand-up paddleboards, or other small non-motorized craft. The intent of visits in this case is to emphasize basic safety behaviors such as encouraging renters to always wear a life jacket and encouraging boating in low hazard areas.
  - Small = 2
  - Medium = 4

- Large = 6
- Participation in Community Events: Events like county fairs, parades, and night outs that reach large numbers of community members. A qualified event requires face-to-face interaction with community members. Participation in regattas, races, or opening days where there is little or no face-to-face interaction between Officers / Deputies and community members does not count as a "Community Event". Also, maintaining a screen line or security area at an on-water event does not count for reporting event hours on the SOAR.
  - Small = 40 hours
  - Medium = 150 hours
  - Large = 275 hours
- Vessel Dealer Site Visits: Visits to vessel dealerships and brokers to ensure they are following
  dealer registration laws, educate them on any safety issues with type of vessels they sell, and
  checks that required safety equipment is on board during test rides and sea trials. Dealers
  should also be encouraged to remind their customers of the mandatory boater education
  requirement.
  - Small = 5
  - Medium = 10
  - Large = 15
- Professional Prevention Partners (Safe Kids, Power Squadron, USCG Auxiliary, etc.): Engaging
  partners can multiply the effectiveness of a marine law enforcement program's by increasing
  their area of influence and leveraging the resources of partners. Partnering activities include
  meetings, conference calls, event participation, and actual on-water time. Agencies should
  report the hours that Prevention Partners spend conducting RBS activities.
  - Small = 1
  - Medium = 3
  - Large = 5

**Media Contacts**: (This section only applies to Federal Financial Assistant Grant recipients). The intent is for agencies to distribute recreational boating safety content through their own social media channels, the social media channels of their partners, or the news media.

- **Owned Media:** This is the number of hours spent on this activity and the number of posts or articles distributed through communication channels that are owned and managed by the agency like the agency website, social media channels (Facebook, Twitter), newsletters, etc.
  - Small = 4
  - Medium = 8
  - Large = 16
- **Earned Media:** This is the number of hours spent on this activity and the number of articles broadcast through media channels that are not managed by the agency. Examples include

stories in the newspaper, radio, and television. Agencies should also count the number of recreational boating safety posts on the social media channels of partner organizations when the agency can show that the posts are the result of interaction with that partner.

- Small = 4
- Medium = 8
- Large = 16

**Campaigns:** See SOAR for reporting requirements. Goals for all agencies, regardless of size, is participation in these campaigns. The State Parks Recreational Boating Safety communications staff will distribute content to all agencies for each of the campaigns making participation quick and simple. These campaigns can have a powerful impact if all agencies participate.

- Operation Dry Water campaign is a national campaign focused on the deterrence of boating under the influence. Participation in this campaign is mandatory for all agencies that receive a federal assistance grant. It is a combination of emphasis patrols and media the weekend before the Fourth of July.
- Spring Aboard Campaign was a national campaign but is now a state campaign designed to encourage all boaters to take a recreational boating safety class. It occurs in late March.
- National Safe Boating Week is a nationally observed week focused on encouraging all boaters to wear their lifejackets and other best practices for optimal safety. In addition to media posts, agencies are encouraged to participate in "Wear IT" events. This campaign is sponsored by the National Safe Boating Council.
- Safe Paddling Week is a campaign sponsored by the Washington State Parks Recreational Boating Safety Program. The purpose of the week is to elevate awareness around basic paddling safety behaviors such as always wearing a PFD, obtaining training, etc.

### **Waterway Marking**

Participating agencies should report the total number of Aids to Navigation (ATONs) that they are responsible for within their jurisdiction on the SOAR. Do not count ATON's emplaced / maintained by the USCG, Corps of Engineers or other Federal agencies. The county or local jurisdiction will use only those waterway markers which conform to the uniform state waterway marking system as identified, found in chapter 352-66 WAC.

# Accountability

### **Audits**

All agencies will be audited on a periodic rotating basis. When your agency is slated for an audit, the State Parks Marine Law Enforcement Coordinator will contact your agency to schedule a time. You will

be sent a list of documents and questions that you will need to prepare before the audit. Audits are a review of the performance and accomplishments to measure and evaluate compliance with the terms of the agreement with State Parks.

### Compliance

If it is determined that a participating agency is not in compliance with the minimum requirements of the agreement, the State Parks Marine Law Enforcement Coordinator will notify the agency through a Non-Compliance Warning Letter and cite the wording of the agreement. The letter will request the agency responds with a plan to remedy the deficiency per WAC 352-64-060 (3): Revocation of approval "Those counties or local jurisdictions unable to demonstrate compliance with minimum approval requirements will have forty-five days to submit a plan satisfactory to state parks to remedy the deficiencies. If, after forty-five days, a county or local jurisdiction is unable to demonstrate its ability to meet minimum requirements, state parks may revoke the program approval after the county or local jurisdiction has had an opportunity for a hearing under chapter 34.05 RCW, the Administrative Procedure Act."



# City of Port Orchard Council Meeting Minutes Regular Meeting of January 9, 2024

### 1. CALL TO ORDER AND ROLL CALL

Mayor Putaansuu called the meeting to order at 6:30 p.m.

Roll call was taken by the City Clerk as follows:

Mayor Pro-Tem Trenary	Present
Councilmember Chang	Present
Councilmember Diener	Present
Councilmember Fenton	Present
Councilmember Morrissey	Present
Councilmember Rosapepe	Present
Councilmember Worden	Present
Mayor Putaansuu	Present

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

The meeting streamed live on YouTube.

#### A. PLEDGE OF ALLEGIANCE (Time Stamp 00:31)

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

#### 2. APPROVAL OF AGENDA (Time Stamp: 01:07)

**MOTION:** By Councilmember Rosapepe, seconded by Councilmember Diener, to move Consent Agenda Item 4D, 'Adoption of a Resolution Approving the Purchase of Furniture for the 1st Floor from Opensquare for the City Hall Renovation' to Business Items.

The motion carried.

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

The motion carried.

### 3. CITIZENS COMMENTS (Time Stamp 02:39)

There were no citizen comments.

### 4. CONSENT AGENDA (Time Stamp: 03:16)

- **A.** Approval of Voucher Nos. 87072 through 87129 and 87137 through 87168 including bank drafts in the amount of \$497,887.86 and EFT's in the amount of \$1,029,010.22 totaling \$1,526,898.08.
- **B.** Approval of Payroll Check Nos. 87065 through 87071 and 87130 through 87136 including bank drafts and EFT's in the amount of \$490,279.25 and Direct Deposits in the amount of \$466,622.81 totaling \$957,202.06.
- C. Authorizing an Agreement with CDW-G to Renew Microsoft Product Licenses (Contract No. 006-24 and Purchase Order No. 002-24)

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

The motion carried.

#### 5. PRESENTATION

There were no presentations.

#### 6. PUBLIC HEARING

There were no public hearings.

#### 7. BUSINESS ITEM

### A. Appointing the Mayor Pro-Tempore for 2024 (Time Stamp 03:49)

**MOTION:** By Councilmember Rosapepe, seconded by Councilmember Diener, to elect Councilmember Chang as the Mayor Pro-Tempore for 2024.

The motion carried.

Councilmember Trenary recused himself at 6:35 p.m. due to his work at Excel Business Systems, Inc.

B. Adoption of a Resolution Approving a Contract with Excel Business Systems, Inc. for Admin/Finance, Court, Police and DCD Copy Machine Maintenance (Time Stamp 05:05)

**MOTION**: By Councilmember Worden, seconded by Councilmember Rosapepe, to adopt a resolution and authorize the Mayor to execute a maintenance agreement with Excel Business Systems, Inc. for the four copiers, as presented.

Councilmember Rosapepe pointed out a scrivener's error on the resolution as 'court' was spelled incorrectly.

The motion carried.

(Resolution No. 001-24 and Contract Nos. 007-24, 009-27, 010-24 and 011-24)

Councilmember Trenary returned to the meeting at 6:39 p.m.

C. Approval of a Cybersecurity Grant Contract with the State of Washington – Emergency Management Division – Preparedness Grant Section (Time Stamp 10:10)

**MOTION**: By Councilmember Diener, seconded by Councilmember Chang, to enter into an agreement with the State of Washington Emergency Management Division - Preparedness Grants Section, for a grant in the amount of \$36,450.00.

The motion carried. (Contract No. 008-24)

D. Approval of the December 12, 2023, City Council Meeting Minutes (Time Stamp 14:53)

**MOTION**: By Councilmember Chang, seconded by Councilmember Trenary, to approve the December 12<sup>th</sup> regular Council meeting minutes.

The motion carried. Councilmember Worden abstained.

E. Approval of the December 19, 2023, City Council Meeting Minutes (Time Stamp 17:10)

**MOTION**: By Councilmember Diener, seconded by Councilmember Rosapepe, to approve the December 19, 2023, Council meeting minutes as presented.

Councilmember Diener said he read the minutes and watched the recorded meeting and feels comfortable voting.

The motion carried. Councilmember Worden abstained.

F. Adoption of a Resolution Approving the Purchase of Furniture for the 1<sup>st</sup> Floor from Opensquare for the City Hall Renovation (Time Stamp 18:18)

**MOTION**: By Councilmember Rosapepe, seconded by Councilmember Trenary, to approve a Resolution authorizing the purchase of furniture for the City Hall Renovations Project from vendor Opensquare.

The motion carried.

(Resolution No. 002-24 and Purchase Order No. 003-24)

8. DISCUSSION ITEMS (No Action to be Taken)

### A. Council Retreat Dates (Time Stamp: 31:44)

After a brief discussion, Council and the Mayor agreed to hold the Council Retreat on Friday, April 12, 2024, at City Hall.

### B. Council Committee Assignments (Time Stamp: 44:06 and 1:30:05)

After discussion and voting, the members of the 2024-2025 Council Committees are:

- **Economic Development and Tourism**: Councilmembers Chang, Morrissey, and Fenton.
- Lodging Tax Advisory: Councilmember Morrissey.
- Utilities and Sewer Advisory Committee: Councilmembers Rosapepe, Fenton, and Worden.
- **Transportation:** Councilmembers Diener, Trenary, and Fenton.
- **Finance**: Councilmembers Chang, Trenary, and Morrissey.
- Land Use: Councilmembers Diener, Rosapepe, and Worden.
- **Kitsap Regional Coordinating Council (KRCC)**: Councilmember Trenary.
- Kitsap Regional Coordinating Council (KRCC) Alt: Councilmember Worden.
- Kitsap Economic Development Alliance (KEDA): Councilmember Morrissey.
- Kitsap Economic Development Alliance (KEDA) Alt: Councilmember Rosapepe.
- Puget Sound Regional Council (PSRC) Alt: Councilmember Trenary.
- **Kitsap Public Health Board**: Councilmember Diener.

#### 9. REPORTS OF COUNCIL COMMITTEES

No reports from Council Committees were heard.

### 10. REPORT OF THE MAYOR (Time Stamp: 1:34:55)

The Mayor reported on the following:

- Coffee with the Councilmembers and public outreach, marketing, and use of social media.
- City's YouTube channel statistics.
- Association of Washington Cities (AWC) Action Days conference is sold out.
- Upcoming legislative dinner on January 15<sup>th</sup>.
- Read a portion of minutes from 95, 75, and 50 years ago.

### 11. REPORT OF DEPARTMENT HEADS (Time Stamp 1:25:40 and 1:53:12)

Public Works Director Ryan reported on incoming inclement weather and the Pottery Non-Motorized Improvement project.

Finance Director Crocker explained the voucher approval process for the new Councilmembers and an ordinance is coming before Council on January 23<sup>rd</sup> regarding updating the utility payment arrangement policies.

City Attorney Archer gave an update on the Johnson v. City of Grants Pass case.

City Clerk Wallace reported on a new softwoffice is currently working on.	vare program for agenda management that the Clerk's
12. CITIZEN COMMENTS (Time Stamp 2:01:4	44)
There were no citizen comments.	
13. EXECUTIVE SESSION	
No executive session was held.	
14. CITY COUNCIL GOOD OF THE ORDER (Til	me Stamp: 2:01:59)
Councilmember Rosapepe asked about onlin AWC).	e training courses with Association of Washington Cities
HR Manager Lund said she will bring this for	ward at the next Council meeting on January 23 <sup>rd</sup> .
15. ADJOURNMENT (Time Stamp: 2:03:35)	
<b>MOTION</b> : By Councilmember Rosapepe, semeeting.	econded by Councilmember Morrissey, to adjourn the
The meeting adjourned at 8:35 p.m. No other	er action was taken. Audio/Visual was successful.
Brandy Wallace, MMC, City Clerk	Robert Putaansuu, Mayor



### City of Port Orchard

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

### **Agenda Staff Report**

Agenda Item No.: Business Item 8A Meeting Date: January 23, 2024

Subject: Adoption of an Ordinance Amending POMC Prepared by: Noah Crocker

Chapter 13.04 Related to Penalties for Finance Director

Delinquent Utility Service Charges Atty Routing No.: 366922-0007
Atty Review Date: 01/18/2024

**Summary**: During 2023, the Utility Clerks' raised concerns regarding staff's inability to assist customers with extremely large penalty balances that are potentially disproportionate to the fees owed. Staff have worked to review utility accounts, current penalty rates and fees, and are proposing modifications to the Port Orchard Municipal code to better assist our customers, which includes adjusting the current penalty fee structure. The proposed changes will allow the Finance Director additional waiver authority to work with customers with potentially disproportionate penalty balances and will change the late fee penalty from 10% on unpaid balances to a flat \$5 per utility service penalty to reduce the likelihood that disproportionate penalty balances accrue moving forward.

**Recommendation**: The Finance Department recommend approval of the Ordinance as presented.

Relationship to Comprehensive Plan: N/A

**Motion for consideration**: "I move to adopt an ordinance amending Port Orchard Municipal Code Sections 13.04.050, 13.04.056, 13.06.120, and 13.06.121, related to penalty for delinquent utility service charges."

**Fiscal Impact**: Penalty revenue is not included in the budget.

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

**Attachment**: Ordinance clean and redline.

#### ORDINANCE NO. \*\*-24

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, RELATING TO PENALTIES FOR DELINQUENT UTILITY SERVICE CHARGES; AMENDING PORT ORCHARD MUNICIPAL CODE SECTIONS 13.04.050 AND 13.04.056; PROVIDING FOR SEVERABILITY AND CORRECTIONS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City is a non-charter code city operating under Title 35A RCW, among other laws; and

WHEREAS, the City owns and operates water and sewer utility systems, which provide water and sewer service to persons and property located within the City's water and sewer service areas; and

**WHEREAS,** the City owns and operates storm drainage utility systems, which provide storm drainage service to persons and property located within the City's; and

WHEREAS, the City has full authority to regulate the use of its utility systems, and pursuant to that authority the City has established penalties for delinquent utility service charges in Chapter 13.04 and 13.06 of the Port Orchard Municipal Code; and

WHEREAS, the City Council has determined that it is in the best interests of the City, and will serve the public health, safety, and general welfare, to amend the delinquent utility service charge penalties and to allow for certain waivers of penalties, as provided in this Ordinance; now, therefore,

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

**SECTION 1.** The above recitals are adopted as findings for this Ordinance.

**SECTION 2.** Section 13.04.050 of the Port Orchard Municipal Code is hereby amended to read as follows:

#### 13.04.050 Billing.

- (1) The water and/or sewer charges shall be billed by the city finance director bimonthly, on the last day of the bimonthly period, to the property owner. The charges and rates shall be due to the finance director, who is authorized and empowered to collect and receipt for such payments, on the first day of the month following the receipt of services.
- (2) Charges remaining unpaid 25 days after the due date shall be considered delinquent and shall be subject to an additional charge of \$5 dollar per utility service as a penalty.

- (3) When a water and/or sewer bill shall become delinquent and a city employee must go to the premises during normal working hours for the purpose of hanging a written notice on the door, there shall be a charge added to the account set forth in POMC 13.04.025.
- (4) If the delinquent water and/or sewer charges remain unpaid over a period of 30 days after the due and payable date, service will be discontinued by turn-off. Service will not resume thereafter until the delinquent charges and penalties, together with a turn-off fee, have been paid in full. The turn-off fee shall be set forth in POMC13.04.025.
  - (a) It is unlawful for the owner or occupant of the premises to turn on/off the water, cause damage, or cause it to be turned on after it has been shut off or locked by the city. The above charges under this subsection (4) will apply if the city has to return to re-shut off an account that is supposed to be turned off at the meter for nonpayment. Violations will result in a fee as determined by the city which is set forth in POMC 13.04.025.
  - (b) In the event of a declared state of emergency, due to a natural disaster, weather or public health emergency, the city finance director is authorized to suspend disconnection of water and/or sewer services and to waive turn-off fees for the duration of the declared emergency. All other fees and charges shall continue to accrue.
- (5) Where both water and sewer delinquent charges are involved, the customer shall not be billed double penalties.
- (6) In the event of a declared local state of emergency, due to a natural disaster, weather or public health emergency, the city finance director is authorized to suspend disconnection.

**SECTION 3.** Section 13.04.056 of the Port Orchard Municipal Code is hereby amended to read as follows:

#### 13.04.056 Waiver authority.

The finance director, or their designee, at their discretion, shall have the authority to adjust or waive utility late fees, penalties, and/or disconnection charges: (1) during a local, state or federally declared emergency; (2) in the case of errors or other similar extenuating circumstances, as long as the utility account has not received a waiver or adjustment in the previous 12 months; or (3) for late fees or penalties, when the total late fee or penalty amount has grown to at least fifty-one percent (51%) of the total delinquent utility service charge amount, as long as the utility account has not received a waiver or adjustment in the previous 12 months.

The finance director, or their designee, at their discretion, shall have the authority to make alternative utility payment arrangements: (1) during a local, state or federally declared emergency; (2) in the case of errors or other similar extenuating circumstances, as long as the utility account has not received an alternative utility payment arrangement in the previous 12

months; or (3) when the total late fee or penalty amount has grown to at least fifty-one percent (51%) of the total delinquent utility service charge amount, as long as the utility account has not received an alternative utility payment arrangement in the previous 12 months.

**SECTION 4.** Section 13.06.120 of the Port Orchard Municipal Code is hereby amended to read as follows:

13.06.120 Billing - Payment - Penalty - Lien.

- (1) The storm drainage service charges shall be billed bimonthly to the current property owner by the finance director on the last day of the bimonthly billing period. It shall be the responsibility of the property owner to notify the city upon change of ownership.
- (2) The charges shall be due to the finance director, who is authorized and empowered to collect and receipt for such payments, on the first day of the month following the receipt of services.
- (3) Charges remaining unpaid 25 days after the due date shall be considered delinquent and shall be subject to an additional charge of five dollars as a penalty.
- (4) The city of Port Orchard may disconnect water service for any customer whose bill for storm drainage services is more than 30 days delinquent, in which case the shutoff and reconnect fees set forth in POMC 13.04.050 apply. Termination of water service shall not limit other remedies available to the city.
- (5) Pursuant to RCW 35A.60.010, 35.21.290 and 35.67.200, the finance director is directed to prepare and file a lien against any property where storm drainage charges remain unpaid for four months. The recording fee to be applied to the account will be based on the current charges as established by the county auditor when the lien is filed. Such liens shall be effective and shall be enforced and foreclosed in the same manner as provided for sewerage liens of cities and towns by RCW 35.67.200 et seq., except that the service charge lien shall be effective for a total not to exceed one year's delinquent service charges without the necessity of any writing or recording the lien with the county auditor, as provided for in RCW 35.67.215.

**SECTION 5.** Section 13.06.121 of the Port Orchard Municipal Code is hereby amended to read as follows:

#### 13.06.121 Waiver authority.

The finance director, or their designee, at their discretion, shall have the authority to adjust or waive utility late fees, penalties, and/or disconnection charges: (1) during a local, state or federally declared emergency; (2) in the case of errors or other similar extenuating circumstances, as long as the utility account has not received a waiver or adjustment in the previous 12 months; or (3) for late fees or penalties, when the total late fee or penalty amount has grown to at least fifty-one percent (51%) of the total delinquent utility

service charge amount, as long as the utility account has not received a waiver or adjustment in the previous 12 months.

The finance director, or their designee, at their discretion, shall have the authority to make alternative utility payment arrangements: (1) during a local, state or federally declared emergency; (2) in the case of errors or other similar extenuating circumstances, as long as the utility account has not received an alternative utility payment arrangement in the previous 12 months; or (3) when the total late fee or penalty amount has grown to at least fifty-one percent (51%) of the total delinquent utility service charge amount, as long as the utility account has not received an alternative utility payment arrangement in the previous 12 months.

**SECTION 4. 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 5.** 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 6. Effective Date.** This ordinance shall be posted and published as required by law and shall be effective and in full force five (5) days following publication. A summary of this ordinance 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 Clerk in authentication of such passage this 23<sup>rd</sup> day of January 2024

	Robert Putaansuu, Mayor
ATTEST:	
Brandy Wallace, MMC, City Clerk	
APPROVED AS TO FORM:	SPONSOR:
Charlotte A. Archer, City Attorney	Mark Trenary, Councilmember
PUBLISHED DATE:	
EFFECTIVE DATE:	

### **ORDINANCE NO. XXX-24**

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, RELATING TO PENALTIES FOR DELINQUENT UTILITY SERVICE CHARGES; AMENDING PORT ORCHARD MUNICIPAL CODE SECTIONS 13.04.050 AND 13.04.056; PROVIDING FOR SEVERABILITY AND CORRECTIONS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City is a non-charter code city operating under Title 35A RCW, among other laws: and

WHEREAS, the City owns and operates water and sewer utility systems, which provide water and sewer service to persons and property located within the City's water and sewer service areas; and

**WHEREAS,** the City owns and operates storm drainage utility systems, which provide storm drainage service to persons and property located within the City's; and

WHEREAS, the City has full authority to regulate the use of its utility systems, and pursuant to that authority the City has established penalties for delinquent utility service charges in Chapter 13.04 and 13.06 of the Port Orchard Municipal Code; and

WHEREAS, the City Council has determined that it is in the best interests of the City, and will serve the public health, safety, and general welfare, to amend the delinquent utility service charge penalties and to allow for certain waivers of penalties, as provided in this Ordinance; now, therefore,

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

**SECTION 1.** The above recitals are adopted as findings for this Ordinance.

**SECTION 2.** Section 13.04.050 of the Port Orchard Municipal Code is hereby amended to read as follows:

#### 13.04.050 Billing.

- (1) The water and/or sewer charges shall be billed by the city finance director bimonthly, on the last day of the bimonthly period, to the property owner. The charges and rates shall be due to the finance director, who is authorized and empowered to collect and receipt for such payments, on the first day of the month following the receipt of services.
- (2) Charges remaining unpaid 25 days after the due date shall be considered delinquent and shall be subject to an additional charge of five dollars per utility service 10 percent of

# the unpaid balance as a penalty.

- (3) When a water and/or sewer bill shall become delinquent and a city employee must go to the premises during normal working hours for the purpose of hanging a written notice on the door, there shall be a charge added to the account set forth in POMC 13.04.025.
- (4) If the delinquent water and/or sewer charges remain unpaid over a period of 30 days after the due and payable date, service will be discontinued by turn-off. Service will not resume thereafter until the delinquent charges and penalties, together with a turn-off fee, have been paid in full. The turn-off fee shall be set forth in POMC13.04.025.
  - (a) It is unlawful for the owner or occupant of the premises to turn on/off the water, cause damage, or cause it to be turned on after it has been shut off or locked by the city. The above charges under this subsection (4) will apply if the city has to return to re-shut off an account that is supposed to be turned off at the meter for nonpayment. Violations will result in a fee as determined by the city which is set forth in POMC 13.04.025.
  - (b) In the event of a declared state of emergency, due to a natural disaster, weather or public health emergency, the city finance director is authorized to suspend disconnection of water and/or sewer services and to waive turn-off fees for the duration of the declared emergency. All other fees and charges shall continue to accrue.
- (5) Where both water and sewer delinquent charges are involved, the customer shall not be billed double penalties.
- (6) In the event of a declared local state of emergency, due to a natural disaster, weather or public health emergency, the city finance director is authorized to suspend disconnection.

**SECTION 3.** Section 13.04.056 of the Port Orchard Municipal Code is hereby amended to read as follows:

# 13.04.056 Waiver authority.

The finance director, or their designee, at their discretion, shall have the authority to adjust or waive utility late fees, penalties, and/or disconnection charges: (1) during a local, state or federally declared emergency; or, (2) in the case of errors or other similar extenuating circumstances, as long as the utility account has not received a waiver or adjustment in the previous 12 months; or (3) for late fees or penalties, when the total late fee or penalty amount has grown to at least fifty-one percent (51%) of the total delinquent utility service charge amount, as long as the utility account has not received a waiver or adjustment in the previous 12 months.

The finance director, or their designee, at their discretion, shall have the authority to make alternative utility payment arrangements: (1) during a local, state or federally declared emergency; or, (2) in the case of errors or other similar extenuating circumstances, as long as the

utility account has not received an alternative utility payment arrangement in the previous 12 months; or (3) when the total late fee or penalty amount has grown to at least fifty-one percent (51%) of the total delinquent utility service charge amount, as long as the utility account has not received an alternative utility payment arrangement in the previous 12 months.

**SECTION 4.** Section 13.06.120 of the Port Orchard Municipal Code is hereby amended to read as follows:

13.06.120 Billing – Payment – Penalty – Lien.

- (1) The storm drainage service charges shall be billed bimonthly to the current property owner by the finance director on the last day of the bimonthly billing period. It shall be the responsibility of the property owner to notify the city upon change of ownership.
- (2) The charges shall be due to the finance director, who is authorized and empowered to collect and receipt for such payments, on the first day of the month following the receipt of services.
- (3) Charges remaining unpaid 25 days after the due date shall be considered delinquent and shall be subject to an additional charge of five dollars as a penalty.
- (4) The city of Port Orchard may disconnect water service for any customer whose bill for storm drainage services is more than 30 days delinquent, in which case the shutoff and reconnect fees set forth in POMC 13.04.050 apply. Termination of water service shall not limit other remedies available to the city.
- (5) Pursuant to RCW 35A.60.010, 35.21.290 and 35.67.200, the finance director is directed to prepare and file a lien against any property where storm drainage charges remain unpaid for four months. The recording fee to be applied to the account will be based on the current charges as established by the county auditor when the lien is filed. Such liens shall be effective and shall be enforced and foreclosed in the same manner as provided for sewerage liens of cities and towns by RCW 35.67.200 et seq., except that the service charge lien shall be effective for a total not to exceed one year's delinquent service charges without the necessity of any writing or recording the lien with the county auditor, as provided for in RCW 35.67.215.

**SECTION 5.** Section 13.06.121 of the Port Orchard Municipal Code is hereby amended to read as follows:

#### 13.06.121 Waiver authority.

The finance director, or their designee, at their discretion, shall have the authority to adjust or waive utility late fees, penalties, and/or disconnection charges: (1) during a local, state or federally declared emergency; (2) in the case of errors or other similar extenuating circumstances, as long as the utility account has not received a waiver or adjustment in the previous 12 months; or (3) for late fees or penalties, when the total late fee

or penalty amount has grown to at least fifty-one percent (51%) of the total delinquent utility service charge amount, as long as the utility account has not received a waiver or adjustment in the previous 12 months.

The finance director, or their designee, at their discretion, shall have the authority to make alternative utility payment arrangements: (1) during a local, state or federally declared emergency; (2) in the case of errors or other similar extenuating circumstances, as long as the utility account has not received an alternative utility payment arrangement in the previous 12 months; or (3) when the total late fee or penalty amount has grown to at least fifty-one percent (51%) of the total delinquent utility service charge amount, as long as the utility account has not received an alternative utility payment arrangement in the previous 12 months.

**SECTION 4. 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 5.** 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 6. Effective Date.** This ordinance shall be posted and published as required by law and shall be effective and in full force five (5) days following publication. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety.

<b>PASSED</b> by the City Council of the City of Port Orchard, <b>APPROVED</b> by the Mayor ar attested by the Clerk in authentication of such passage this day of , 202 .		
,		
	Robert Putaansuu, Mayor	
ATTEST:		
Brandy Wallace, MMC, City Clerk		
APPROVED AS TO FORM:	Sponsored by:	

Charlotte A. Archer, City Attorney	, Councilmember



# **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 8B

Subject: Adoption of an Ordinance Repealing

and Replacing Chapter 5.97, Pertaining

to Impound Services and the City's

**Rotational Towing List** 

Meeting Date: January 23, 2024

Prepared by: Charlotte Archer, City Atty

Matt Brown, Police Chief

Atty Routing No.: 366922-0012

Atty Review Date: N/A

**Summary**: The City utilizes an established rotational tow list of eligible towing companies to perform towing and impound when needed by the City and its Police Department. In 2002, the City Council by Ordinance No. 1828 formally established the Port Orchard Police Rotational Tow List and adopted rules and regulations for eligibility and participation, codified at Chapter 5.97 of the Port Orchard Municipal Code (POMC). Existing regulations call for an annual application by eligible towing companies, along with the payment of an annual application fee/administrative fee by each applicant.

The Police Department, in conjunction with the Finance Department, recently audited Chapter 5.97 POMC and evaluated its terms for functionality, and recommended modifications to streamline the process and lessen the burden of implementation on the Police and Finance Departments. Additionally, consistent with the practices of the Washington State Patrol and other agencies, staff recommends the procurement of towing services through a competitive process and the implementation of a services agreement with the selected towing companies to memorialize the scope of work and the City's performance expectations for selected towing companies. Due to the extensive scope of the proposed amendments, staff recommends the repeal and replacement of Chapter 5.97 POMC, with savings provisions to ensure there is no gap in towing services as the transition authorized by these amendments is implemented by staff.

**Recommendation**: Staff recommends adoption of an Ordinance repealing and replacing Chapter 5.97 of the Port Orchard Municipal Code pertaining to the City's rotational towing list.

Relationship to Comprehensive Plan: N/A

**Motion for consideration**: "I move to adopt an Ordinance repealing and replacing Chapter 5.97 of the Port Orchard Municipal Code, pertaining to the City's rotational towing list."

**Fiscal Impact**: This action would eliminate the existing administrative fee, but as this has not been collected in previous years, no fiscal impact would occur.

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

**Attachment**: Ordinance, Exhibit A – New Chapter 5.97 (Clean), and Courtesy Copy of redline of Chapter 5.97 showing amendments proposed

# **ORDINANCE NO. \*\*-24**

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, PERTAINING TO ON-CALL TOW COMPANIES; REPEALING AND REPLACING CHAPTER 5.97 OF THE PORT ORCHARD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND PUBLICATION; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City maintains regulations for its use of an established rotational tow list of eligible towing companies to perform towing and impound when needed by the City and its Police Department; and

WHEREAS, in 2002 by Ordinance No. 1828, the City Council established the Port Orchard Police Rotational Tow List and adopted rules and regulations for eligibility and participation, codified at Chapter 5.97 of the Port Orchard Municipal Code (POMC); and

WHEREAS, the Police Department recently audited Chapter 5.97 POMC and evaluated its terms for functionality and determined that amendments were necessary to reflect the current needs of the City, its residents, and the existing marketplace; and

**WHEREAS**, the City desires to utilize its established procurement rules for the selection of official tow service providers, in lieu of a rolling application process that presents management difficulties for staff to implement; and

**WHEREAS**, the City desires to require the execution of service agreements, subject to City Council approval, as are utilized for similar contractors for City services, to memorialize the requirements for official tow service providers currently only found in the POMC; and

**WHEREAS**, the City Council finds that it is in the best interests of the residents of Port Orchard to take action to repeal and replace Chapter 5.97 POMC pertaining to official tow service providers; now, therefore,

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

**SECTION 1.** Repealer. Chapter 5.97 of the Port Orchard Municipal Code is hereby repealed.

**SECTION 2.** Adoption. New Chapter 5.97 of the Port Orchard Municipal Code is hereby adopted as is set forth on Exhibit A hereto.

**SECTION 3.** Authorization. The Mayor or his designee is authorized to execute short-term, stop-gap agreements with qualified service providers who are currently providing these services to the City to ensure no break in service for the duration of the procurement period under new Chapter 5.97 POMC adopted hereunder, provided that the agreements are in a form acceptable to the City Attorney.

**SECTION 4.** Ratification. All actions taken prior to the effective date of this Ordinance and consistent with this Ordinance, including the return of administrative fees paid for any applications pending at the time of the effective date of this Ordinance, are hereby ratified.

**SECTION 6.** Severability. Should any portion of this ordinance be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

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

**SECTION 7.** 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 23<sup>rd</sup> day of January 2024.

	Robert Putaansuu, Mayor	
ATTEST:	SPONSOR:	
Brandy Wallace, MMC, City Clerk	Scott Diener, Councilmember	
APPROVED AS TO FORM:		
Charlotte A. Archer, City Attorney		
PUBLISHED: EFFECTIVE DATE:		

#### Chapter 5.97

#### **TOW COMPANIES**

Sections:	
5.97.010	Rules and regulations.
5.97.020	Findings and purpose.
5.97.030	Definitions.
5.97.040	Selection process.
5.97.050	Official tow services provider agreement – minimum standards.
5.97.060	Solicitation.
5.97.070	No vested right.
5.97.080	Compliance.

#### 5.97.010 Rules and regulations.

The rules and regulations governing tow companies in the city of Port Orchard providing official tow services for the City are established as set forth in this chapter.

# 5.97.020 Findings and purpose.

- (1) This chapter is enacted as an exercise of the police power of the city of Port Orchard to protect and preserve the public health, safety and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.
- (2) The city needs the services of one or more privately owned tow companies to provide the public and the city's police department with prompt, safe, reliable, and responsive vehicle towing and storage services.
- (3) The city's needs are best met by establishing a rotational program that allows the city or its service provider(s) to dispatch one or more of the tow contractors on a rotational basis among tow service providers under tow service agreements with the city.
- (4) The city has enjoyed success in awarding service agreements by using competitive procedures, delivering high-quality, responsive, and dependable services to the community. It is in the city's best interests to award one or more official tow services agreements through a competitive process.

#### **5.97.030 Definitions**

For purposes of this chapter, the following words and phrases have the meanings ascribed to them unless the context otherwise requires:

"Impoundment" means the removal of a vehicle to a storage facility either by an officer or authorized agent of the city of Port Orchard police department or by a towing contractor in response to a request from an officer or authorized agent of the city of Port Orchard police department.

"Official tow services provider" means a towing company having a contractual relationship with the city of Port Orchard to provide towing services to the city. Any corporate entity owning or controlling one or more tow companies shall be considered a single company for the purposes of rotation.

"Person" means an individual, company, firm, association, trust, estate, partnership, corporation, limited liability company, or an entity, however organized.

"Police chief" means the chief of police for the city of Port Orchard, or the designee of the chief of police.

"Tow truck" is a motor vehicle which has been altered or designed and equipped for and exclusively used in the business of towing vehicles by means of a crane, tow bar, tow line, or dolly, or is otherwise exclusively used to render assistance to other vehicles.

"Towed" means a vehicle hauled, pulled, or transported by a tow truck.

"Towing service" means roadside assistance, towing, storing, lien-selling or related operation for a damaged, inoperative, abandoned, stolen, recovered, or illegally parked vehicle.

"Vehicle" shall have the definition set forth in RCW 46.04.670, and, in addition, shall include any junk vehicle as defined in RCW 46.55.010(4) as they currently exist or may thereafter be amended.

# 5.97.040 Selection process

Official tow service providers for the City of Port Orchard shall be selected using an open, competitive process, consistent with state law and the City's Procurement Policies, as may be amended.

The police department is authorized to establish and maintain a list of licensees who are qualified for police impounds. Each official tow service provider selected, upon execution of a written agreement with the city, shall be placed on the rotational list in an initial order to be determined by the police chief or designee. Official tow service providers shall be called, in turn, in response to a city request.

#### 5.97.050 Official tow services provider agreement - Minimum standards.

Each official tow services provider selected by the city shall enter into a written agreement with the city in a form acceptable to the city attorney. The agreement shall include, at a minimum, the following provisions:

- (1) All official tow services providers to be placed on the city of Port Orchard rotational towing list shall comply with Chapters 204-91A and 308-61 WAC, Chapters 46.52, 46.55, 46.79, 46.80, 46.12, 46.16, and 46.37 RCW, and these rules and regulations.
- (2) On-call tow companies shall have available to the city of Port Orchard at all times at least one Class "A" tow truck and one Class "B" tow truck with a response time of 25 minutes or less. The tow company shall also retain a sufficient number of tow truck operators to handle all service requests of the Port Orchard police department 24 hours per day, seven days per week.
- (3) Tow trucks used in response shall comply with the minimum equipment standards for tow trucks as set forth in WAC 204-91A-170 or as may be subsequently amended. The tow trucks shall not be considered for use in response until inspected by the appropriate state of Washington agency and awarded the state decal showing approval.
- (4) In addition to minimum standards set forth in WAC 204-91A-170, the following are required:
  - (a) Tow truck interior and exterior will be reasonably clean, and
  - (b) Tow truck drivers will clean accident/incident scenes of all glass and debris unless otherwise directed by a law enforcement officer, and
  - (c) All equipment used in conjunction with a tow truck must be commensurate with the manufacturer's basic boom rating, and
  - (d) All tow trucks shall display the firm's name, name of city in which trucks operate, and telephone number. Such information shall be painted on or permanently affixed to the vehicle, and
- (5) Each towing company must arrange for its offices and impound lot to be manned and open for an eight-hour period each day during normal business hours. This may be any eight hours between 7:00 a.m. and 7:00 p.m., except weekends and holidays.
- (6) Response Time.

- (a) On request from the Port Orchard police department, the tow company shall immediately dispatch the number of requested tow trucks.
- (b) If a tow truck cannot be immediately dispatched, the tow company shall immediately notify the Port Orchard police department.
- (c) In the event the tow truck does not respond within a reasonable time, 25 minutes unless conditions dictate otherwise, or cannot respond, the Port Orchard police department may select another tow company on the city rotational towing list, or if not available, a tow company of its choosing.
- (d) The responding tow truck(s) shall remove only those vehicles designated by the Port Orchard police department and only when advised to do so. Abandoned vehicle tows that do not interfere with the use of the roadway will be towed at a time agreeable to both the tow company and the city, but shall not exceed 72 hours.
- (e) Vehicles determined to be hulk/junk vehicles in accordance with state statutes will be deemed so by the city at the time of initial tow.

# (7) Storage Areas.

- (a) Secure areas and storage areas must be fenced as per WAC 308-61-026(2) and WAC 308-61-158(5), protected from accessibility by unauthorized individuals, and located so that vehicles therein will not be damaged by vandals.
- (b) The city of Port Orchard shall not be liable for any theft, vandalism, or damage occurring to any stored vehicle or its contents. (Ord. 1828 § 1 (1), 2002).
- (8) Towing and storage fees and charges.
  - (a) Towing fees shall not exceed the allowable rate established by WAC 204-91A-140. Allowable towing and storage fees shall be adjusted annually as set forth in WAC 204-91A-140(2) and as adjusted on October 15th of each year by the Washington State Patrol.
  - (b) Any policy the tow operator may have for charging less than the rates listed above for services performed as a result of a private call shall be applied equally to Port Orchard police originated calls.
  - (c) There will be no extra charges billed for an investigating officer inspecting a towed or impounded vehicle after hours.
  - (d) On towed or impounded vehicles there will be no storage charges billed for the first 12 hours that the vehicle is held. After the first 12 hours the regular storage rates will apply.
- (9) Preparation of Bills. Every tow operator, his agent or employee, after towing a vehicle shall prepare a bill in duplicate, the original of which shall be given to the registered owner of such vehicle or their authorized representative, and a copy retained by the operator at their place of business for a period of at least one year and shall be exhibited to the Port Orchard police department upon demand. The bill shall contain the following:
  - (a) The name, address, and telephone number of the tow truck company;
  - (b) The name and address of the person calling for and engaging the tow truck;
  - (c) License number and description of the vehicle towed, such as year, make, model and color;
  - (d) The company number of the tow truck used;
  - (e) Itemized and total amount charged for towing and storage, and time and place from which towing commenced and terminated.

# 5.97.060 Solicitation.

Tow truck operators shall not solicit tows at scene of an accident/incident without first determining whether towing assistance has already been requested. If the request has been made, there shall be no solicitation provided, however, any operator may render assistance without charge at the scene of an accident/incident to clear a public street or highway.

### 5.97.070 No vested right.

Nothing in this chapter shall proscribe the city from contracting with one or more tow operators for tow services requested by the police and/or providing such towing services with city personnel and equipment. It is the intent of this chapter to establish certain requirements for tow business licensees and those licensees authorized to do police impounds, but not to vest any specific rights to perform impounds or other city-requested towing services.

#### **5.97.080** Compliance.

- (1) Any tow company responding to calls from the city of Port Orchard shall be required to abide by all RCW, WAC, and these amended rules and regulations. Any violations shall be grounds for revocation or suspension of the company's placement on the Port Orchard rotational towing list.
- (2) No tow company shall perform vehicle towing at the request of the city unless the person is an official tow services provider.
- (3) If a tow company fails to respond or fails to respond within the response time requirements of this chapter requested by the Port Orchard police department or the city during any 30-day period, the police chief may request a report or other information from the towing company justifying those periods of unavailability. If a satisfactory justification is not supplied, the police chief may revoke or suspend the tow operator's placement on the Port Orchard rotational towing list.
- (4) No tow truck provider shall refuse to respond to any emergency call for tow truck service upon any grounds of possible inability to pay on the part of the person or persons needing tow truck service. For the purpose of this section, the term emergency call is defined as one involving or potentially involving injury to a person or persons. Any violation of this section shall be grounds for revocation or suspension of the company's placement on the Port Orchard rotational towing list. Nothing in this section shall be construed to make the City of Port Orchard liable for costs of the tow truck service.

# Chapter 5.97

#### **TOW COMPANIES**

# 5.97.010 Rules and regulations.

The rules and regulations governing tow companies onin the city of Port Orchard rotational towing list providing official tow services for the City are established as set forth in this chapter.

### 5.97.020 Findings and Purpose.

- (1) This chapter is enacted as an exercise of the police power of the city of Port Orchard to protect and preserve the public health, safety and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.
- (2) The city needs the services of one or more privately owned tow companies to provide the public and the city's police department with prompt, safe, reliable, and responsive vehicle towing and storage services.
- (3) The city's needs are best met by establishing a rotational program that allows the city or its service provider(s) to dispatch one or more of the tow contractors on a rotational basis among tow service providers under tow service agreements with the city.
- (4) The city has enjoyed success in awarding service agreements by using competitive procedures, delivering high-quality, responsive, and dependable services to the community. It is in the city's best interests to award one or more official police tow services agreements through a competitive process.

#### **5.97.030 Definitions**

For purposes of this chapter, the following words and phrases have the meanings ascribed to them unless the context otherwise requires:

"Impoundment" means the removal of a vehicle to a storage facility either by an officer or authorized agent of the city of Port Orchard police department or by a towing contractor in response to a request from an officer or authorized agent of the city of Port Orchard police department.

"Official tow services provider" means a towing company having a contractual relationship with the city of Port Orchard to provide towing services to the city. Any corporate entity owning or controlling one or more tow companies shall be considered a single company for the purposes of rotation. 920

"Person" means an individual, company, firm, association, trust, estate, partnership, corporation, limited liability company, or an entity, however organized.

"Police chief" means the chief of police for the city of Port Orchard, or the designee of the chief of police.

"Tow truck" is a motor vehicle which has been altered or designed and equipped for and exclusively used in the business of towing vehicles by means of a crane, tow bar, tow line, or dolly, or is otherwise exclusively used to render assistance to other vehicles.

"Towed" means a vehicle hauled, pulled, or transported by a tow truck.

"Towing service" means roadside assistance, towing, storing, lien-selling or related operation for a damaged, inoperative, abandoned, stolen, recovered, or illegally parked vehicle.

"Vehicle" shall have the definition set forth in RCW 46.04.670, and, in addition, shall include any junk vehicle as defined in RCW 46.55.010(4) as they currently exist or may thereafter be amended.

### 5.97.040 Selection Process

Official tow service providers for the City of Port Orchard shall be selected using an open, competitive process, consistent with state law and the City's Procurement Policies, as may be amended.

The police department is authorized to establish and maintain a list of licensees who are qualified for police impounds. Each official tow service provider selected, upon execution of a written agreement with the city, shall be placed on the rotational list in an initial order to be determined by the police chief or designee. Official tow service providers shall be called, in turn, in response to a city request, subject to the discretion of the dispatching agency.

# 5.97.050 Official tow services provider agreement - Minimum standards.

Each official tow services provider selected by the city shall enter into a written agreement with the city in a form acceptable to the city attorney. The agreement shall include, at a minimum, the following provisions:

- (1) All applicants for consideration official tow services providers to be placed on the city of Port Orchard rotational towing list shall comply with Chapters 204-91A and 308-61 WAC, Chapters 46.52, 46.55, 46.79, 46.80, 46.12, 46.16, and 46.37 RCW, and these rules and regulations.
- (2) On-call tow companies shall have available to the city of Port Orchard at all times at least one Class "A" tow truck and one Class "B" tow truck with a response time of 25 minutes or less. The tow company shall also retain a sufficient number of tow truck operators to handle all service requests of the Port Orchard police department 24 hours per day, seven days per week.
- (3) Tow trucks used in response shall comply with the minimum equipment standards for tow trucks as set forth in WAC 204-91A-170 or as may be subsequently amended. The tow trucks shall not be considered for use in response until inspected by the appropriate state of Washington agency and awarded the state decal showing approval.
- (4) In addition to minimum standards set forth in WAC 204-91A-170, the following are required:
  - (a) Tow truck interior and exterior will be reasonably clean, and
  - (b) Tow truck drivers will clean accident/incident scenes of all glass and debris unless otherwise directed by a law enforcement officer, and
  - (c) All equipment used in conjunction with a tow truck must be commensurate with the manufacturer's basic boom rating, and
  - (d) All tow trucks shall display the firm's name, name of city in which trucks operate, and telephone number. Such information shall be painted on or permanently affixed to the vehicle, and
  - (e) When a tow truck is added to the business, or the re-inspection of a tow truck is necessary, the Port Orchard police department shall be contacted to ascertain where and when the inspection will be given.

(5) Each towing company must arrange for its offices and impound lot to be manned and open for an eight-hour period each day during normal business hours. This may be any eight hours between 7:00 a.m. and 7:00 p.m., except weekends and holidays.

# (6) Response Time.

- (a) On request from the Port Orchard police department, the tow company shall immediately dispatch the number of requested tow trucks.
- (b) If a tow truck cannot be immediately dispatched, the tow company shall immediately notify the Port Orchard police department.
- (c) In the event the tow truck does not respond within a reasonable time, 25 minutes unless conditions dictate otherwise, or cannot respond, the Port Orchard police department may select another tow company on the city rotational towing list, or if not available, a tow company of its choosing.
- (d) The responding tow truck(s) shall remove only those vehicles designated by the Port Orchard police department and only when advised to do so. Abandoned vehicle tows that do not interfere with the use of the roadway will be towed at a time agreeable to both the tow company and the city, but shall not exceed 72 hours.
- (e) Vehicles determined to be hulk/junk vehicles in accordance with state statutes will be deemed so by the city at the time of initial tow.

# (7) Storage Areas.

- (a) Secure areas and storage areas must be fenced as per WAC 308-61-026(2) and WAC 308-61-158(5), protected from accessibility by unauthorized individuals, and located so that vehicles therein will not be damaged by vandals.
- (b) The city of Port Orchard shall not be liable for any theft, vandalism, or damage occurring to any stored vehicle or its contents.

#### 5.97.030 Rotation.

Any corporate entity owning or controlling one or more tow companies shall be considered a single company for the purposes of rotation.

# 5.97.040 Administrative fee.

- (1) An administrative fee of \$300.00 will be charged on an annual basis to all tow companies on the Port Orchard rotational towing list.
- (2) This fee will cover the costs of maintaining the rotational towing list and conducting inspections of the tow companies.
- (3) Corporate entities owning or controlling one or more tow companies shall be considered a single company for the purpose of administrative fees.
- 5.97.050 (8) Towing and storage fees and charges.
  - (1a) Towing fees shall not exceed the allowable rate established by WAC 204-91A-140. Allowable towing and storage fees shall be adjusted annually as set forth in WAC 204-91A-140(2) and as adjusted on October 15th of each year by the Washington State Patrol.

- (2b) Any policy the tow operator may have for charging less than the rates listed above for services performed as a result of a private call shall be applied equally to Port Orchard police originated calls.
- (3c) There will be no extra charges billed for an investigating officer inspecting a towed or impounded vehicle after hours.
- (4d) On towed or impounded vehicles there will be no storage charges billed for the first 12 hours that the vehicle is held. After the first 12 hours the regular storage rates will apply.
- (59) Preparation of Bills. Every tow operator, his agent or employee, after towing a vehicle shall prepare a bill in duplicate, the original of which shall be given to the registered owner of such vehicle or their authorized representative, and a copy retained by the operator at their place of business for a period of at least one year and shall be exhibited to the Port Orchard police department upon demand. The bill shall contain the following:
  - (a) The name, address, and telephone number of the tow truck company;
  - (b) The name and address of the person calling for and engaging the tow truck;
  - (c) License number and description of the vehicle towed, such as year, make, model and color;
  - (d) The company number of the tow truck used;
  - (e) Itemized and total amount charged for towing and storage, and time and place from which towing commenced and terminated.

# **5.97.060**—**Inspections.**

- (1) Inspections shall encompass all minimum requirements set forth in WAC 204-91A-040 and these amended rules and regulations.
- (2) The Port Orchard police department shall perform vehicle identification number (VIN) inspections for vehicles towed from within the city limits at no charge.
- (3) An inspection fee of \$50.00 plus a mileage charge will be assessed for all vehicle identification number (VIN) inspections requested for vehicles not towed from within the city limits of Port Orchard.
- (4) The Port Orchard police department shall verify at least annually that the tow company has received a successful inspection by the Washington State Patrol. (Ord. 1828 § 1 (5), 2002).

# **5.97.070 Tow truck driver minimum qualifications.** Minimum basic qualifications:

- (1) Driver must be 18 years of age;
- (2) Possess a valid driver's license and adhere to RCW Title 46;
- (3) Must be able to read, write, and speak the English language;
- (4) Must have no convictions or guilty plea to any misdemeanor or felony theft charge within three years.

#### 5.97.080 Solicitation.

Tow truck operators shall not solicit tows at scene of an accident/incident without first determining whether towing assistance has already been requested. If the request has been made, there shall be no

solicitation provided, however, any operator may render assistance without charge at the scene of an accident/incident to clear a public street or highway.

# 5.97.090 Procedure for application to tow.

- (1) Any tow company desiring to tow within the city limits of Port Orchard for the Port Orchard police department or the city shall submit a formal letter of application to the police department. The application shall be:
  - (a) Accompanied by an inspection certification from the Washington State Patrol; and
  - (b) Signed by the applicant or an agent, and shall include the following information:
    - (i) The name and address of the person, firm, partnership, association, or corporation under whose name the business is to be conducted;
    - (ii) The names and addresses of all persons having an interest in the business, or if the owner is a corporation, the names and addresses of the officers of the corporation;
    - (iii) The names and addresses of all employees who serve as tow truck drivers;
    - (iv) Proof of minimum insurance required by subsection (3) of this section;
    - (v) The vehicle license and vehicle identification numbers of all tow trucks of which the applicant is the registered owner;
    - (vi) Any other information the department may require; and
    - (vii) A certificate of approval from the Washington State Patrol certifying that:
      - (A) The applicant has an established place of business and that mail is received at the address shown on the application;
      - (B) The address of any storage locations where vehicles may be stored is correctly stated on the application;
      - (C) The place of business has an office area that is accessible to the public without entering the storage area; and
      - (D) The place of business has adequate and secure storage facilities, as defined in this chapter and the rules of the department, where vehicles and their contents can be properly stored and protected.
- (2) Each application shall be considered within 30 days. Inspections shall be made and, upon the passing of the inspections and meeting all requirements, the police chief shall order the applicant to be placed at the bottom of the rotation towing list.
- (3) Before the department may issue a letter of approval for placement on the Port Orchard rotational towing list, the applicant shall provide a certificate of insurance with the city shown as an additional named insured and certificate holder with the following of minimum insurance requirements of:
  - (a) One hundred thousand dollars for liability for bodily injury or property damage per occurrence; and

- (b) Fifty thousand dollars of legal liability per occurrence, to protect against vehicle damage, including but not limited to fire and theft, from the time a vehicle comes into the custody of an operator until it is redeemed or sold.
- (c) Cancellation of or failure to maintain the insurance required by subsections (3)(a) and (3)(b) of this section automatically cancels the operator's registration.
- (4) An applicant must show adequate proof of all licenses required by federal, state and local laws, statutes and regulations.
- (5) Any company making application for placement on the rotational towing list must verify in writing that other companies currently on the rotational towing list have been notified of the application.

# **5.97.070 No vested right.**

Nothing in this chapter shall proscribe the city from contracting with one or more tow operators for tow services requested by the police and/or providing such towing services with city personnel and equipment. It is the intent of this chapter to establish certain requirements for tow business licensees and those licensees authorized to do police impounds, but not to vest any specific rights to perform impounds or other city-requested towing services.

# 5.97.<u>100</u>080 Compliance.

- (1) Any tow company responding to calls from the <u>city of Port Orchard police department</u> shall be required to abide by all RCW, WAC, and these amended rules and regulations. Any violations shall be grounds for revocation or suspension of the company's <u>letter of approval for placement</u> on the Port Orchard rotational towing list.
- (2(2) No tow company shall perform vehicle towing at the request of the city unless the person is an official tow services provider.
- (3) If a tow company fails to respond or fails to respond within the response time requirements of this chapter to more than 10 percent of the tows requested by the Port Orchard police department or the city during any 30-day period, the police chief may request a report or other information from the towing company justifying those periods of unavailability. If a satisfactory justification is not supplied, the police chief may revoke or suspend the tow operator's letter of approval for placement on the Port Orchard rotational towing list.
- (34) No tow truck operatorprovider shall refuse to respond to any emergency call for tow truck service upon any grounds of possible inability to pay on the part of the person or persons needing tow truck service. For the purpose of this section, the term emergency call is defined as one involving or potentially involving injury to a person or persons. Any violation of this section shall be grounds for revocation or suspension of the company's letter of approval placement on the Port Orchard rotational towing list. Nothing in this section shall be construed to make the City of Port Orchard liable for costs of the tow truck service.

# 5.97.110 Suspension, revocation, or denial.

(1) Any determination by the city of Port Orchard police department to suspend, revoke or deny a letter of approval for placement on the Port Orchard rotational towing list shall be in writing and shall notify the company of the opportunity for a hearing if a written request for a hearing is received within 10 days from the date such notice is mailed.

(2) All hearings shall be conducted by an administrative hearings officer who shall be the judge, or judge pro tem, of the Port Orchard Municipal Court. The decision of the administrative hearings officer shall be a final decision at administrative level.

# 5.97.120 Programs Right to establish and develop.

The city retains the right to establish and develop programs to remove junk and/or abandoned vehicles from within the city. Towing for such programs may be obtained by the city through a call for proposal process and not be subject to the provisions of this chapter.



# **City of Port Orchard**

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

for the Tremont Place Lift Station

# Agenda Staff Report

Agenda Item No.: Business Item 8C Meeting Date: January 23, 2024

Subject: Adoption of a Resolution Approving Prepared by: Denis Ryan

> a Contract with PumpTech, LLC **Public Works Director**

> > 366922-0009

Atty Routing No: Atty Review Date: 01/17/2024 Repairs

Summary: The Port Orchard Public Works Department has determined that immediate repairs are required for the Tremont Place Lift Station to continue to provide necessary services to the residents of Port Orchard. By this Resolution, the City Council would authorize the Mayor to execute a contract with PumpTech, LLC for the Tremont Place Lift Station Repairs Project. To select PumpTech, LLC for this service, Staff utilized the Small Works procurement process as set out in state law and in the City's Procurement Policies adopted by Resolution No. 073-23, as amended. On January 2, 2024, pursuant to RCW 39.04.155, the City's Public Works Department established a list of qualified contractors from the MRSC 2024 Small Works Roster for the Main Category – Septic System and Sub-Category – Septic Tank Cleaning/Pumping.

The City's Public Works Department received two (2) timely bids, and staff determined that PumpTech, LLC submitted the apparent lowest qualified bid for the Project. Upon further review, final bid amounts are as follows:

Name of Contractor	Bid Total
PumpTech, LLC	62,027.75
Gary Harper Construction, Inc	66,424.89

On January 16, 2024, the City's Public Works Department completed the MRSC Mandatory Bidder Responsibility Checklist and after reviewing the proposal and verifying the contractor's information, Public Works Staff determined that PumpTech, LLC's bid of \$62,027.75 (applicable tax included) was the lowest qualified, responsive and responsible bid. The Public Works Department has confirmed that the bidding procedures for Public Works have been followed.

Recommendation: Staff recommends that the City Council adopt a Resolution, authorizing the Mayor to execute a Contract with PumpTech, LLC for the Tremont Place Lift Station Repair Project in the amount of \$62,027.75

Relationship to Comprehensive Plan: Chapter 8.- Utilities

Motion for Consideration: I move to adopt a Resolution, authorizing the Mayor to execute a Contract with PumpTech, LLC for the Tremont Place Lift Station Repair Project.

Fiscal Impact: There is funding in the 2023-2024 budget for sewer repairs (GL 431.05.535.30.40),

however a budget amendment may be required.

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

**Attachments:** Resolution

Contract

#### **RESOLUTION NO. \*\*-24**

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING A SMALL WORKS CONTRACT WITH PUMPTECH, LLC FOR THE TREMONT PLACE LIFT STATION REPAIR PROJECT AND DOCUMENTING THE SMALL PUBLIC WORKS ROSTER PROCUREMENT PROCEDURES.

WHEREAS, the Port Orchard Public Works Department has determined that immediate repairs are required for the Tremont Place Lift Station to continue to provide necessary services to the residents of Port Orchard; and

WHEREAS, as performed annually since 2013, the Municipal Research and Services Center of Washington (MRSC) solicited on behalf of participating local government agencies within Washington State (including the City of Port Orchard) for the 2024 MRSC Small Public Works Roster; and

WHEREAS, on January 2, 2024, pursuant to RCW 39.04.155 and the City's Procurement Policies, the City's Public Works Department identified qualified vendors for this multiple craft Project by establishing a roster of qualified companies from the 2024 MRSC Small Works Roster for the Main Category – Sanitary Sewer Construction, Repair, and Maintenance, and Sub-Category – Sewer Lift Station Construction and Maintenance; and

WHEREAS, on January 2, 2024, and pursuant to the City's Procurement Procedures, the City's Public Works Department issued an email Invitation to Bid (ITB) for the Project to the contractors on the selected roster; and

WHEREAS, the City's Public Works Department received two (2) bids, and staff determined that PumpTech, LLC submitted the apparent lowest qualified bid for the Project; and

WHEREAS, on January 16, 2024, the City's Public Works Department completed the MRSC Mandatory Bidder Responsibility Checklist; and

WHEREAS, after reviewing the proposal and verifying the contractor's information, Public Works Staff determined Pumptech, LLC's bid met the requirements and criteria as described in the ITB and was the lowest, qualified, responsive and responsible bidder for the project; and

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

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

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

**THAT:** The City Council authorizes the Mayor to execute a contract with PumpTech, LLC for the Tremont Place Lift Station Repairs Project in a form acceptable to the City Attorney.

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

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the Clerk in authentication of such passage this 23rd day of January 2024.

Robert Putaansuu, Mayor	
	Robert Putaansuu, Mayor

# CITY OF PORT ORCHARD SMALL WORKS <u>OVER \$35K</u> CONSTRUCTION CONTRACT NO. \_\_\_\_ PUBLIC WORKS PROJECT NO. PW2024-002

THIS Agreement is made effective as of the 23rd day of January, 2024, by and between

CITY OF PORT ORCHARD, WASHINGTON, ("CITY"), a Washington municipal corporation located

at:

216 Prospect Street

Port Orchard, Washington 98366

Contact: Mayor Robert Putaansuu Phone: 360.876.4407 Fax: 360.895.9029

and

PumpTech, LLC ("CONTRACTOR"), a Washington Limited liability company located at:

12020 SE 32<sup>nd</sup> Street, Suite 2 Bellevue, WA 98005

Contact: Jim Joyce Phone: 425-644-8501 Email: jjoyce@pumptechnw.com

for the following Project:

Tremont Place Lift Station Repairs ("PROJECT")

In consideration of the mutual benefits to both parties, both Parties agree to the following:

#### AGREEMENT:

- **1. Contract Documents**. The Contractor shall complete the Work described in the Contract Documents for the Project. The following documents are collectively referred to as the "Contract Documents":
  - a. This Agreement signed by the City and the Contractor;
  - b. Division 1 of WSDOT Standard Specifications for Road, Bridge and Municipal Construction, 2022 edition, together with APWA Supplement (1-99), subject to specific provisions contained within the Public Works Terms and Conditions;
  - c. The attached Special Provisions, Plans and Specifications;
  - d. 2018 International Building Code (IBC) and 2018 Energy Code Compliance;
  - e. Written change orders or orders for minor changes in the Work issued after execution of this Agreement;
  - f. Public Works Terms and Conditions;
  - g. Insurance and Bonding Requirements;
  - h. The Invitation to Bid, and bid proposal submitted by the Contractor, except when inconsistent with Contract Documents a-g;
  - i. 2019 Public Works Engineering Standards;
  - j. Appendix A: Non-Discrimination Statutes and Authorities.

k. The bid proposal submitted by the contractor, except when inconsistent with Contract documents a-j

All of the above listed Contract Documents are each made exhibits to this Agreement and are incorporated into the Agreement as if set forth in full. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. These Contract Documents complement each other in describing a complete work. Any requirement in one document binds as if stated in all. The Contractor shall provide any work or materials clearly implied in the Contract even if the Contract does not mention it specifically.

- Date of Commencement and Substantial Completion Date. The date of commencement shall be January 23, 2024. The Contractor shall substantially complete the Work not later than June 30, 2024, subject to adjustment by change order.
- 3. The Contractor shall do all work and furnish all tools, materials, and equipment in accordance with the above described Construction Contract Documents. The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing of the work provided for in these Construction Contract Documents, except those items mentioned therein to be furnished by the City. Contractor represents that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices in effect at the time such services are performed.

Subject to additions and deductions by change order, the construction maximum payment is the base bid amount of \$62,027.75 (applicable sales tax included) (hereinafter "Contract Sum"). The construction Contract Sum shall include all items and services necessary for the proper execution and completion of the work. The City hereby promises and agrees with the Contractor to employ and does employ the Contractor to provide the materials and to do and cause to be done the work described in the Construction Contract Documents and to complete and finish the same according to the plans and specifications and the terms and conditions herein contained; and hereby contracts to pay for the same at the time and in the manner and upon the conditions provided for in this Contract.

- 5. The Contractor agrees to comply with all state and federal laws relating to the employment of labor and wage rates to be paid. The Contractor agrees to furnish insurance of the types and in the amounts set forth in the Construction Contract Documents. The Contractor warrants that it is licensed and authorized to do business under the laws of the State of Washington and has not been suspended or debarred in the past three (3) years.
- **6.** The Contractor agrees to repair and replace all property of the City and all property of others damaged by Contractor, Contractor's employees, sub-contractors.
- 7. The Contractor does hereby agree to the full performance of all the covenants herein upon the part of the Contractor. Such agreement shall be binding upon Contractor's heirs, executors, administrators, successors, and assigns.
- **8.** It is further provided that no liability shall attach to the City of Port Orchard by reason of entering into this Construction Contract, except as expressly provided herein.
- **9. Title VI.** The City of Port Orchard, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted

programs of the Department of Transportation issued pursuant to such Act, must affirmatively insure that its contracts comply with these regulations.

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 Agreement, the Contractor, for itself, its assignees, and successors in interest agrees as follows:

- a) **Compliance with Regulations:** The Contractor will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- b) **Nondiscrimination:** The Contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix A, attached hereto and incorporated herein by this reference, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.
- c) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, incomelevel, or LEP.
- d) 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.
- e) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the Nondiscrimination provisions of this Agreement, the City will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - 1. withholding payments to the Contractor under the Agreement until the contractor complies; and/or
  - 2. cancelling, terminating, or suspending the Agreement, in whole or in part.
- f) Incorporation of Provisions: The Contractor will include the provisions of paragraphs 9.a through 9.f 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.

- 10. 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.
- 11. 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.
- **12. 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.

#### 13. 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 this contract to be duly executed on the

date first written above.

# **CERTIFICATE AS TO CORPORATE PRINCIPAL**

l,	(Co	rporate Officer (Not Contract Signer)) certify that
I am the		(Corporate Title) of the corporation named as
the Contract	or in the Agreement attached hereto; that _	, (Contract
	signed said Agreement on behalf of the Contr	
•	itle) of said corporation; that said Agreem oy authority of its governing body, and is wit	ent was duly signed for and in behalf of said hin the scope of its corporate powers.
	Corporate Seal	
	Corp. officer signature (not contract signe	r)
	Printed	<del></del>
	Title	
State of		
County of	) ss 	
deposes ar		officer (not contract signer)) being duly sworn, (Corporate Title) of
	(Name of Corporation	
	Subscribed and sworn to before me this	day of, 20
	Nota	ry Public (Signature)
		ry Public (Print)
	My co	ommission expires

# CITY OF PORT ORCHARD PUBLIC WORK PROJECT TERMS AND CONDITIONS

The following terms and conditions shall be used in conjunction with the Standard Specifications for Road, Bridge and Municipal Construction, 2022 edition, together with the APWA Supplement (Section 1-99), as issued by the Washington State Department of Transportation and American Public Works Association, Washington State Chapter, hereinafter referred to as the "standard specifications". The standard specifications, except as they may be modified or superseded by these provisions, shall govern all phases of work under this Contract, and they are by reference made an integral part of these specifications and Contract as if herein fully set forth.

When the provisions of the standard specification conflict with the terms and conditions as contained herein, the terms and conditions shall prevail.

- 1. BID PRICE: The bid price(s) shall include all necessary permits, fees and items of labor, material, equipment, tools, overhead and compensation, supplies, taxes, utilities, and other incidentals necessary to complete the work in a fully functional and operational state. All prices including bid prices are in US funds.
- 2. DEFINITIONS: The term "City" means Port Orchard, Washington, "successful bidder" means the apparent lowest and best responsible bidder to whom an award is made, and "Contractor" means the successful bidder who has satisfied the requirements for the award and who receives a contract executed by the City. "Bidder" means the person, firm or corporation that has made an offer in response to the invitation to bid. "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.
- 3. LICENSING AND REGISTRATION: The Contractor must have a Washington State certificate of registration per chapter 18.27 RCW; a current state unified business identifier number; and if applicable, industrial insurance coverage for the bidder's employees working in Washington, an Employment Security Department number, and a state excise tax registration number. In addition, the bidder must not be disqualified from bidding on any public works contracts under RCW 39.06.010 or 39.12.065(3).
- 4. PUBLIC WORK REQUIREMENTS: This project constitutes a public work under state law. Bidders are warned to take into consideration statutory legal requirements, particularly, the payment of prevailing wages and fringe benefits, payment and performance bonds and sales tax implications in making their bids. It is the sole responsibility of the bidder to insure that the appropriate labor classification(s) are identified and that the applicable wage and benefit rates are taken into consideration when preparing their bid according to these specifications. The Contractor shall complete and file State of Washington, Department of Labor & Industries, Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid forms and shall familiarize itself with their requirements. The Contractor shall also be responsible for and pay all costs pertaining to the processing of these forms.
- 5. PREVAILING WAGES: The Contractor shall pay prevailing wages as required and shall comply with Chapters 39.12 and 49.28 RCW. Prior to beginning work under this Contract, the Contractor shall submit -- on behalf of itself and each and every Sub-Contractor a "Statement of Intent to Pay Prevailing Wages," which must be approved by the Department of Labor and Industries (See link

below.) Following the final acceptance of the project, the Contractor must submit -- on behalf of itself and every Sub-Contractor -- an "Affidavit of Wages Paid" for final payment. Final payments shall be made in accordance with the requirements of Chapter 39.12 RCW.

Refer to <a href="http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp">http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp</a> for Washington State Prevailing Wage rates.

- 6. INSURANCE REQUIREMENT: The successful bidder will furnish insurance as stipulated in the Attachment entitled "Insurance Requirements."
- 7. RECEIPT OF ADDENDA: All official clarifications or interpretations of the bid documents will be by written addenda only.
- 8. PROJECT COMPLIANCE: In compliance with the request for quotation, Bidder hereby proposes to perform all work for this project in strict accordance with the Contract Documents, at the Contract Sum, and within the time set forth herein with the understanding that time is of the essence in the performance of this Contract.
- TAXES: Proposals shall include all applicable taxes except sales tax, which is a separate bid item. It shall be the Bidder's responsibility to furnish Federal Excise Tax Exemption Certificate, when applicable.
- 10. ERROR IN EXTENSION: Unit price, when used, shall govern in case of extension error. If a discrepancy between the numerical unit price and the written (words) unit price is found, the written (words) unit price shall control.
- 11. PERMITS AND FEES: The Contractor shall furnish all permits, inspection fees, and fees required in the performance of this Contract, including those charged under RCW 39.12.070 by the Department of Labor and Industries for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid, etc. The Department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The Contractor is responsible for all fees resulting from these statutes.
- 12. CONTRACT: The Contract Documents ("Contract"), when properly signed, will be the only form that will be recognized by the City as an award. The executed Contract supersedes all previous communications and negotiations, except as referenced herein, and constitutes the entire agreement between the City and Contractor (parties), except as provided herein. The Contractor shall not make any changes, alterations, or variations in the terms of the Contract without the written consent of the City. No terms stated by the Bidder in its proposal shall be binding on the City unless accepted in writing by the City. The successful bidder may not assign the Contract resulting from this invitation to bid without the City's prior written consent. No waiver by the City of a breach of any provision of the terms and conditions outlined in the invitation to bid shall constitute a waiver of any other breach of such provision or of any other provisions.
- 13. 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 13 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.

14. 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).
- 15. 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.
- 16. 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.
- 17. COMPLIANCE WITH LAWS AND REGULATIONS: The Contractor warrants full compliance with all applicable local, state, or federal laws and regulations and agrees to indemnify and defend the City against any loss, cost, liability, or damage, including reasonable attorney's fees, by reason of successful bidder's violation of this paragraph.
- 18. 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.
- 19. TERMINATION: This Contract may be terminated in whole or in part, without penalty, under the following conditions: 1) by mutual written agreement; 2) by the City for breach by the Contractor of any

of the obligations or requirements set forth in the Contract Documents which would, at the option of the City, require the Contractor to assume liability for any and all damages, including the excess of reprocuring similar products or services; 3) for convenience of the City; or 4) by the City for non-appropriation of funds.

- a) 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.
- b) *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.
- c) 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.
- 20. COMPLIANCE WITH TERMS: The City may at any time insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice, or course of dealing to the contrary.
- 21. PAYMENT: Contractor shall maintain time and expense records and provide them to the City along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice. All invoices shall be paid by the City within 45 days of receipt of a proper invoice. If the services rendered to not meet the requirements of the Contract, Contractor will correct or modify the work to comply with the Contract. City may withhold payment for such work until the work meets the requirements of the Contract.
- 22. RETAINAGE: Unless the City waives the retainage requirement in accordance with RCW 39.04.155(2)(f), the City shall, pursuant to the requirements of RCW 60.28.011, retain five percent (5%) of the monies earned under this Contract, which shall be maintained by the City according to the Contractor's requested method.
- 23. DISPUTE RESOLUTION: In the event there is a dispute between the parties, the parties agree to resolve that dispute in the following manner: (a) The parties shall attempt in good faith to resolve any dispute promptly through negotiation. Either party may give the other party written notice that a dispute exists (a "Notice of Dispute"). The Notice of Dispute shall include a statement of such party's position. Within ten (10) days of the delivery of the Notice of Dispute, the parties shall meet at a mutually acceptable time

and place and attempt to resolve the dispute; (b) If the parties are unable to resolve the dispute, they may elect to submit the dispute to mediation. The cost of the mediation shall be borne equally by the parties. The mediator shall be selected by the mutual agreement of the parties; (c) If the mediation does not result in a settlement of the dispute, the dispute shall be settled by binding arbitration by the Judicial Arbitration and Mediation Services ("JAMS") in accordance with the then operative construction rules of JAMS. The parties may select an arbitrator by mutual agreement, or if unable to agree, the arbitrator will be selected pursuant to the rules of JAMS. The parties shall be bound by the decision of such arbitrator. The arbitration shall be conducted in Kitsap County, Washington; provided, if JAMS is unable to conduct the arbitration in Kitsap County, then the arbitration shall be held in such location as the parties may agree after consulting with JAMS.

# CITY OF PORT ORCHARD INSURANCE REQUIREMENTS

<u>Insurance Term.</u> The Contractor shall procure and maintain for the duration of the Contract with the City, insurance as described herein, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the physical completion date, unless otherwise indicated herein. Such insurance shall be against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees and subcontractors and shall meet the requirements herein.

<u>No Limitation</u>. The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

<u>Minimum Scope of Insurance</u>. The Contractor shall obtain insurance of the types described below:

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

- responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.
- *Employer's Liability* insurance limit of \$1,000,000 each accident, Employer's Liability Disease each employee \$1,000,000 and Employer's Liability Disease Policy limit \$1,000.000.

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

- Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000.000 per accident.
- Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
- Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.
- Workers' Compensation insurance as required by the State of Washington.
- Employer's Liability insurance with Washington Stop Gap Employers' Liability minimum limits of \$1,000,000 each accident, \$1,000,000 disease each employee, \$1,000,000 disease policy limit.

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

<u>Public Entity Full Availability of Contractor Limits</u>. If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Contractor.

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

- 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.
- If any coverage is written on a "claims made" basis, then a minimum of three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period shall be provided to the City.

<u>Contractor's Insurance for Other Losses.</u> 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.

<u>Waiver of Subrogation</u>. The Contractor waives all rights against the City, any of its Subcontractors, Subsubcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to this Insurance Requirements Section of the Contract or other property insurance applicable to the work. The Contractor's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City. The City will not waive its right to subrogation against the Contractor. The Contractor's insurance shall be endorsed acknowledging that the City will not waive its right to subrogation.

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

<u>Verification of Coverage</u>. The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms, and endorsements related to this project.

<u>Subcontractors</u>. 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. The Contractor shall ensure that the Public Entity is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

<u>Notice of Cancellation</u>. The Contractor's insurance shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been provided to the City. The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

<u>Failure to Maintain Insurance</u>. The insurance required by this Section will not be canceled, materially changed or altered without forty-five (45) days prior written notice submitted to the City. Failure on the part of the Contractor to maintain insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Contract, or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

#### **CITY OF PORT ORCHARD**

### DECLARATION OF OPTION FOR PERFORMANCE AND PAYMENT

#### **BOND OR ADDITIONAL RETAINAGE**

#### (APPLICABLE TO CONTRACTS OF \$150,000 OR LESS -RCW 39.08.010)

**NOTE 1**: This form <u>must</u> be submitted at the time the Contractor executes the Contract. The Contractor shall designate the option desired by checking the appropriate space.

**NOTE 2**: Regardless of choice under Section 2 of this form, the Contractor will be required to provide a warranty/maintenance bond **effective at project close out** prior to either release of the performance bond or release of the 10% retainage.

	rase of the 10% retainage.
1.	The Contractor shall provide 5% retainage, pursuant to RCW 60.28.011(1)(a).
2.	In addition, the Contractor elects to (select one):
	(1) Furnish a performance bond in the amount of the total contract sum. An executed performance bond on the required form is included with the executed contract documents.
	(2) Have the City retain, in lieu of the performance and payment bonds, an additional 5% for a total of ten percent (10%) of the total contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later. (RCW 39.08.010)
	In choosing option 2, the Contractor agrees that if the Contractor, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract, and shall faithfully perform all the provisions of such Contract and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of the Contract that may hereafter be made, at the time and in the manner therein specified, and shall pay all laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, on his or her part, and shall defend, indemnify, and save harmless the City of Port Orchard, Washington, its officers and agents from any claim for such payment, then the funds retained in lieu of a performance bond shall be released at the time provided in said option 2; otherwise, the funds shall be retained until the Contractor fulfills the said obligations.
	Contractor Signature

Contractor Signature	
Date	
Rand Na	

#### PERFORMANCE AND PAYMENT BOND

# CITY OF PORT ORCHARD TREMONT PLACE LIFT STATION REPAIRS PUBLIC WORKS PROJECT NO. PW2024-002

Bond to City of Port Orchard, Washington

	Bond No
We,	, and,
(Principal)	(Surety)
a	Corporation, and as a surety corporation authorized to become
a surety upon Bonds of Contracto	ors with municipal corporations in Washington State, are jointly and
severally bound to the City of	of Port Orchard, Washington ("Owner"), in the penal sum of
	Dollars (\$),
	emand, we bind ourselves and our successors, heirs, administrators,
• •	ives, as the case may be. This Performance Bond is provided to secure
·	nection with a contract dated, 20, between Principal
and Owner for a project entitled	TREMONT PLACE LIFT STATION REPAIRS Project No. PW2024-002
("Project"). The initial penal sum	shall equal 100 percent of the Total Bid Price, including sales tax, as
specified in the Proposal submitted	d by Principal.

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

- Faithfully performs all provisions of the Contract and changes authorized by Owner in the manner and within the time specified as may be extended under the Contract;
- Pays all laborers, mechanics, subcontractors, lower tier subcontractors, material persons, and all other persons or agents who supply labor, equipment, or materials to the Project;
- Pays the taxes, increases and penalties incurred on the Project under Titles 50, 51 and 82 RCW on:

   (A) Projects referred to in RCW 60.28.011(1)(b); and/or (B) Projects for which the bond is conditioned on the payment of such taxes, increases and penalties; and
- Posts a two-year warranty/maintenance bond to secure the project. Such bond shall be in the amount of twenty percent (20%) of the project costs.

Provided, further that this bond shall remain in full force and effect until released in writing by the City at the request of the Surety or Principal.

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

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

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

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

No change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed under the Contract shall in any way affect Surety's obligation on the Performance Bond. Surety hereby waives notice of any change, extension of time, alteration, or addition to the terms of the Contract or the Work, with the exception that Surety shall be notified if the Contract time is extended by more than twenty percent (20%).

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

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

IN WITNESS WHEREOF, the parties have e day of, 20	executed this instrument in two (2) identical counterparts this
Principal	Surety
Signature of Authorized Official	Signature of Authorized Official
By Printed Name and Title	By Attorney in Fact (Attach Power of Attorney)
Name and address of local office of Agent and/or Surety Company:	

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

### **ACKNOWLEDGEMENT**

## Corporation, Partnership, or Individual

STATE OF		)		
		)ss.		
COUNTY O	F	)		
On this	day of	_, 20	, before me, the undersigr	ned, a Notary Public in and for the
	ashington, duly commis vn to be the (check one			ared
	corporation,	of		, the
	-	of		, the
_	individual,			
partne		the use	s and purposes therein menti	t and deed of said corporation oned, and on oath stated that
WITNESS n	ny hand and official seal	hereto	affixed the day and year first	above written.
			Dated:	·
			Print or type name	
			NOTARY PUBLIC,	
			in and for the State of Was	hington
			Residing at:	
	Notary Seal with Ink Stamp		My Commission expires:	·

Page 150 of 276

### **SURETY ACKNOWLEDGEMENT**

STATE OF	)
	)ss.
COUNTY OF	)
	, 20, before me, the undersigned, a Notary Public in and y commissioned and sworn, personally appeared,
	of, the
stated that  he  she was au	id corporation, for the uses and purposes therein mentioned, and on oath athorized to execute said instrument.
WITNESS My hand and official Se	ear hereto arrixed the day and year first above written.
	Dated:
	Print or type name
	NOTARY PUBLIC,
	in and for the State of Washington
	Residing at:
Notary Scal with Ink Stamp	My Commission expires:

# CITY OF PORT ORCHARD MAINTENANCE/WARRANTY BOND

(Note: Contractor will be required to provide a two-year warranty/maintenance bond <u>effective at project close out</u> prior to either release of the performance bond or release of the 10% retainage.)

			PROJECT #, PERMI	T#, <u>P</u>	W2024-002	2		
			CONTRACT # SURETY BOND #:					
			DATE POSTED:					
			EXPIRATION DATE					
Ow	-	er/Contractor: _	ift Station Repairs					
			RESENTS: That we,					the
"Principal"	), and		, a corporation	organize	d under the	e laws of the	State of	
		held and firmly b	o transact surety bu bound unto the City	of Port C	Orchard, Wa		n the sum o	of
bind ourse	elves, our hei	rs, executors, adn	ates of America, for ninistrators, success obligation are such	ors and				
			cipal has constructe described above wit			•	•	ublic
and final a and/or rep	cceptance of place said im	the project in or provements agai	ed to post a bond for der to provide secu inst defects in worl d final approval/acc	rity for tl kmanship	he obligation, materials	on of the Pr s or installa	incipal to re tion during	epair
is understo	ood and agree	ed that this obliga	nce Bond has been tion shall continue i d satisfied the follow	າ effect ເ	ıntil release	=		-
			led by the Principal scription of work her	-	ect to the t	terms and co	onditions o	f this

B. The Principal and Surety agree that the work and improvements installed in the above-referenced project shall remain free from defects in material, workmanship and installation (or, in the case of landscaping, shall survive,) for a period of twenty-four (24) months after written and final acceptance of the

same and approval by the City. Maintenance is defined as acts carried out to prevent a decline, lapse or cessation of the state of the project or improvements as accepted by the City during the twenty-four (24) month period after final and written acceptance, and includes, but is not limited to, repair or replacement of defective workmanship, materials or installations.

- C. The Principal shall, at its sole cost and expense, carefully replace and/or repair any damage or defects in workmanship, materials or installation to the City-owned real property on which improvements have been installed, and shall leave the same in as good condition as it was before commencement of the work.
- D. The Principal and the Surety agree that in the event any of the improvements or restoration work installed or completed by the Principal as described herein, fail to remain free from defects in materials, workmanship or installation (or in the case of landscaping, fail to survive), for a period of <a href="twenty-four">twenty-four</a> (24) months from the date of approval/acceptance of the work by the City, the Principal shall repair and/replace the same within ten (10) days of demand by the City, and if the Principal should fail to do so, then the Surety shall:
  - 1. Within twenty (20) days of demand of the City, make written commitment to the City that it will either:
    - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
    - b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

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

- 2. In the event the Principal fails to make repairs or provide maintenance within the time period requested by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of repairing or maintaining the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to repair or maintain such improvements.
- E. <u>Corrections</u>. Any corrections required by the City shall be commenced within ten (10) days of notification by the City and completed within thirty (30) days of the date of notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section D above.
- F. <u>Extensions and Changes</u>. No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The Surety waives notice of any such change, extension, alteration or addition thereunder.
- G. <u>Enforcement</u>. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of

securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this bond shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this bond shall be in Kitsap County Superior Court.

Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby

have been fully performed and until released in writing by the City at the request of the Surety or Principal. DATED this \_\_\_\_\_ day of \_\_\_\_\_\_\_, 20 . **SURETY COMPANY DEVELOPER/OWNER** (Signature must be notarized) (Signature must be notarized) Business Name: Business Name: Business Address: \_\_\_\_\_ Business Address: \_\_\_\_\_ City/State/Zip Code: \_\_\_\_\_ City/State/Zip Code: \_\_\_\_\_ Telephone Number: Telephone Number: \_\_\_\_\_ CITY OF PORT ORCHARD By: \_\_\_\_\_ Date: Its Public Works Director **CHECK FOR ATTACHED NOTARY SIGNATURE** Developer/Owner (Form P-1) Surety Company (Form P-2)

Η.

# FORM P-1 / NOTARY BLOCK (Developer/Owner)

STATE (	OF WAS	SHINGT	ON		)									
COUNT	Y OF KI	TSAP			) ss. )									
I certify	that I l	know o	r have	satisfacto	ry evidenc	e that _					is the p	erson	who a	ppeared
before	me,	and	said	person	acknowle	edged	as	the						of
					that (h	e/she)	signe	d this	instrum	ent, c	n oath	state	d that	(he/she)
was au	thorize	d to ex	ecute t	he instrur	nent and a	cknowl	edge	d it to	be (his/	her) fr	ee and	volur	ntary ac	t for the
uses an	d purp	oses m	ention	ed in the i	nstrument	t.								
					Da	ated:								
						_								
								(pi	rint or ty	/pe na	me)			
						N	OTAF	RY PUE	BLIC in a	nd for	the			
									hington	, resid	ing			
									sion expi	ires:				

# FORM P-2 / NOTARY BLOCK (Surety Company)

STATE OF WASHINGTON	)		
	) ss.		
COUNTY OF	)		
I certify that I know or ha	ve satisfactory evidence th	nat	is the person who
appeared before me, and sa	id person acknowledged	as the	of
	that (he/she) si	gned this instrument, on oa	th stated that (he/she)
was authorized to execute the uses and purposes mentioned		dged it to be (his/her) free a	nd voluntary act for the
		ted:	
			<del></del>
		(print or type name)	
	NO	TARY PUBLIC in and for the	
	Sta	te of Washington, residing	
	at:		
	My	Commission expires:	

#### APPENDIX A

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



PumpTech, LLC

12020 SE 32ND Street Suite 2

Page: 1

0180029-B

1/15/2024

Bellevue, WA 98005 Phone: 425-644-8501 Fax: 425-562-9213 jjoyce@pumptechnw.com

# **Sales Quotation**

Customer#: 0123600

Quote #:

Salesperson: Jim Joyce / Kenny Sluis

Lead Time: 6 to 8 Weeks Date:

FOB: FOB ORIGIN - FFA Expires: 2/14/2024

Ship Via: PUMPTECH TRUCK

**Project Name:** Port Orchard Tremont PI Lift Station Upgrades

\*\*\*\*\*\*\*\*\*Email invoice: ap@cityofportorchard.us Port Orchard, WA 98366 Phone: (360) 536-8330

Port Orchard, City of

TO:

Mike DeLine

Item		Price	Qty	Extend
	PumpTech is pleased to offer for your consideration the following pumps and related equipment and services for upgrading the pumps in the Tremont PI Lift Station:	0.00		0.00
Grundfos Pumps	Grundfos Submersible Vortex Pump Model SLV.30.A30.18.EX.4.60J.C - 60 gpm @ 26.73' Head, 29.13% Efficiency - Cast Iron Pump Housing and Impeller - 3" ANSI Discharge - 208-230V/3ph/60Hz 1800RPM Motor, 1.8HP - 49.21' Cable Length - Pump Moisture and overtemp relay (TO BE INSTALLED IN EXISTING PANEL BY OTHERS)	0.00	2.00	0.00
	Guide Rail Assembly - 3" Cast Iron Base Elbow - 3" Cast Iron Guide Claw - 3" SST Intermediate Guide Rail Bracket - 2", Sch40, 304SS Guide Rail Pipe - 3/16" Chain, 304SS and 1/4" Fasteners			
Discharge Pump Piping	Vertical Discharge Piping Including:  - (2) ea. 3" x 8' Ductile Iron Pipe, Flanged x Plain End  - (2) ea. 3" Flanged DI Elbow  - (2) ea. 3/4" SS ball valves  - (2) ea. 3" Flanged check valve  - (2) ea. 3" Flanged isolation valve  - (2) ea. RFCA Restrained Flanged Coupling Adapter, B&N SBR Gasket  - (8) ea. 3" SS Bolt and Nut Kit  - (8) ea. 3" 1/8" Full Face Rubber Gasket	0.00	1.00	0.00

Continued



PumpTech, LLC

12020 SE 32ND Street Suite 2

Page: 2

0180029-B

1/15/2024

2/14/2024

Bellevue, WA 98005 Phone: 425-644-8501 Fax: 425-562-9213 jjoyce@pumptechnw.com

Customer#: 0123600

Date:

**Expires:** 

Quote #:

## **Sales Quotation**

TO:

Mike DeLine
Port Orchard, City of
\*\*\*\*\*\*\*Email invoice:
ap@cityofportorchard.us

Port Orchard, WA 98366 Phone: (360) 536-8330 Salesperson: Jim Joyce / Kenny Sluis

Lead Time: 6 to 8 Weeks

FOB: FOB ORIGIN - FFA

**Ship Via:** PUMPTECH TRUCK

Project Name: Port Orchard Tremont PI Lift Station Upgrades

Phone: (360) 536-8330				
Item		Price	Qty	Extend
Small Boom Truck	Small Boom Truck	0.00	1.00	0.00
Field Mechanical Labor	Field Labor to remove old pumps and failed piping and install new pumps, piping and related equipment.	0.00	1.00	0.00
Electrical	Modify exiting conduit from wetwell into existing control panel and upgrade to code, per discussion with Mike DeLine.	0.00	1.00	0.00
Startup	(1) Day Standard Startup Services	0.00	1.00	0.00
Total Grundfos Pump Option	Total for Grundfos Pump Option	56,750.00	1.00	56,750.00

#### NOTICE: ONGOING GLOBAL AND DOMESTIC SUPPLY INSTABILITIES

Due to the global supply chain disruptions, and material shortages, PumpTech, LLC is unable to guarantee any current or previously quoted lead times. We always work vigorously to fulfill all orders as quickly as possible. Due to the continuous and ongoing global freight and material price increases, we are strictly following our Quotation Validity Time of 30 days from the date of the quote. We are doing our best to contain both costs and shipment dates.

Estimated lead times are subject to prior sale, availability and current shop loads. Lead times will be determined, per order, at the time of receipt of order acknowledgment from our suppliers. Once we have received acknowledgment, we will alert you to the current lead time. Where applicable, lead times will not begin until: internal engineering review and approval, 100% signed off approved submittals, and signed off drawings and/or contract approval. Freight is not included in this quote, unless specifically stated. PumpTech, LLC will not accept any penalties or LD's for any delays caused by COVID-19, material shortages, supply chain issues, or transportation delays.

The above order is subject to Pumptech, LLC's standard terms and conditions and credit approval which are attached and made part of this agreement. We appreciate your interest in our products and services and if

, ,	ons on our offerings please do not hesitate to call. w, I accept this offering:		
, ,	t, recoupt and offering.	Sales Tax:	5,277.75
Signed:		Total - Check/Cash:	62,027.75
Name:	Title:	Total - Card:	64.043.65

56,750.00

SubTotal



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

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

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

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

WARRANTY: The only warranty/guarantee implied or applied to this Agreement are those as put forth by the original manufacturer. New equipment manufactured by PUMPTECH, LLC are warranted to be free from defects in material and workmanship for a period of one (1) year from the date of shipment (ninety (90) days for repaired equipment) provided that the Purchaser has timely made all payments due under the Agreement and the product is properly installed, serviced, and operated under normal conditions. If within one (1) year of installation PUMPTECH, LLC receives written notice from Purchaser of defective material or workmanship with respect to Equipment, (Pumptech, LLC's sole obligation shall be, at PUMPTECH INC's option, either to (i) repair the Equipment, (ii) replace the Equipment, or (iii) refund the amount paid by Purchaser. PUMPTECH, LLC shall have no other obligation or liability whatsoever with respect to any defective material(s) or service. Materials to be replaced or items for which services are to be re-performed shall be shipped by Purchaser to, PUMPTECH, LLC's shop in Bellevue, Washington or to such location as PUMPTECH, LLC may designate. Purchaser is responsible for prepayment of freight and insurance of such shipment. Purchaser shall provide returned items to PUMPTECH, LLC in such a state that PUMPTECH, LLC may inspect the item immediately upon PUMPTECH, LLC's receipt thereof. If found to be defective, PUMPTECH, LLC will prepay all freight and insurance costs of the return shipment of the repaired or replaced item. Any repaired or replaced items shall be warranted only for the remaining period of the original warranty. Expedited repairs are subject to expediting fees. Products inspected and proven to be non-defective are subject to service charges and will be returned to Purchaser at Purchaser's expense. ThIS AGREEMENT DOES NOT GRANT ANY OTHER WARRANTY OR GURANTEE OR MAKE ANY REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTES OF MERCHANTABILITY OR FITNESS FO

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

PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT IN NO EVENT WILL PUMPTECH, LLC BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL

PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT IN NO EVENT WILL PUMPTECH, LLC BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAD DAMAGES, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, THOSE FOR LABOR, EXPENSES, LOSS OF PROFITS OR REVENUE, LOST OPPORTUNITIES, OR SIMILAR DAMAGES OF ANY KIND. INDEMNIFICATION: Purchaser agrees to defend, indemnify and hold harmless PUMPTECH, LLC and its respective affiliates, officers, directors, employees, shareholders and agents from and against all losses, costs, expenses, damages, suits or liability of any nature incurred in whole or in part as a result of the conduct, negligence, or willful misconduct of Purchaser, its agents, servants, employees or customers or caused by Purchaser's property or property under the responsibility of Purchaser.

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

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

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

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

[Purchaser's signature] Printed Name & Title (Date)



#### **City of Port Orchard**

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

### **Agenda Staff Report**

Agenda Item No.: Business Item 8D Meeting Date: January 23, 2024

Subject: Adoption of a Resolution Approving a Prepared by: Denis Ryan

Contract with SCJ Alliance for the Sidney Public Works Director

Non-Motorized Road Improvements Atty Routing No: 366922-0009
Atty Review Date: 01/18/2024

**Summary:** The City of Port Orchard's Public Works Department identified the need for Non-Motorized Road improvements on Sidney Road from SR16 to Hovde Rd. (the "Project"). The Project will provide new sidewalks, bike lanes, installation of street lighting, stormwater improvements and improvements to a portion of the sanitary sewer force main. The Public Works Department applied for and received a grant from 2023-25 Safe Routes to School Program State funding through the Washington State Department of Transportation (WSDOT) for the Project. On June 27, 2023, the Port Orchard City Council adopted a Resolution accepting the grant to fund the Project.

The assistance of a consultant with professional architecture and engineering expertise in street design, sanitary sewer design, and construction phase consulting is vital to the Project. Pursuant to Ch. 39.80 RCW and the City's Procurement Procedures Policies adopted as Resolution No. 073-23, as amended, Public Works Department staff published a Request for Qualifications (RFQ) for Architectural and Engineering Services for the Project in the Kitsap Sun and the Daily Journal of Commerce on August 11, 2023, and August 18, 2023. By the September 8, 2023, submission deadline, the Public Works Department received three (3) Statements of Qualification (SOQ) from qualified firms. After reviewing the SOQs, the qualified firms receiving the highest scores were interviewed on October 11, 2023, and October 13, 2023. Based upon the scoring of the SOQs, interview scoring, and upon reviewing the overall qualifications of the submitting firms, the Public Works staff determined Shea Carr Jewell, Inc, dba SCJ Alliance, met the requirements and criteria as described in the RFQ and was the most responsible and responsive consultant to provide the architectural and engineering services for the Project. Public Works Staff met with SCJ Alliance to discuss the project scope and the associated contract terms. On December 28, 2023, the City received a proposed scope of work (consistent with the initial RFQ), budget, and fees from SCJ Alliance in an amount of \$277,455.29.

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

**Recommendation:** Staff recommends adoption of a Resolution approving and authorizing the Mayor to execute a contract with shea Carr Jewell, Inc dba SCJ Alliance for the Sidney Non-Motorized Road Improvements Project in an amount of \$277,455.29.

**Motion for Consideration**: I move to adopt a resolution, approving and authorizing the Mayor to execute a contract with Shea Carr Jewell, Inc for the Sidney Non-Motorized Road Improvements Project in the amount of \$277,455.29.

**Fiscal Impact:** The project is funded with 2023-25 Safe Routes to School Program State Funding administered by WSDOT and a local match funded by Transportation Impact Fees. (GL Account 304.05.595.10.60).

**Attachments:** Resolution

Agreement

#### **RESOLUTION NO. \*\*-24**

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH SHEA CARR JEWELL, INC DBA SCJ ALLIANCE FOR ARCHITECTUAL AND ENGINEERING SERVICES FOR THE SIDNEY ROAD NON-MOTORIZED PROJECT AND DOCUMENTING PROCUREMENT PROCEDURES.

WHEREAS, the City of Port Orchard's Public Works Department identified the need for Non-Motorized Road improvements on Sidney Road from SR16 to Hovde Rd. (the "Project"); and

WHEREAS, the Public Works Department applied for and received a grant from 2023-25 Safe Routes to School Program State funding through the Washington State Department of Transportation (WSDOT) for the Project; and

**WHEREAS**, on June 27, 2023, the Port Orchard City Council adopted a Resolution accepting the 2023-25 Safe Routes to School Program grant to fund the Project; and

**WHEREAS**, the assistance of a consultant with professional architecture and engineering expertise in street design, sanitary sewer design, and construction phase consulting is vital to the Project; and

WHEREAS, pursuant to Ch. 39.80 RCW and the City's Procurement Procedures Policies adopted as Resolution No. 073-23, as amended, Public Works Department staff published a Request for Qualifications (RFQ) for Architectural and Engineering Services for the Project in the Kitsap Sun and the Daily Journal of Commerce on August 11, 2023, and August 18, 2023; and

WHEREAS, by the September 8, 2023, submission deadline, the Public Works Department received three (3) Statements of Qualification (SOQ) from qualified firms; and

WHEREAS, after reviewing the SOQs the qualified firms receiving the two highest scores were interviewed on October 11, 2023, and October 13, 2023. Based upon the scoring of the SOQs, interview scoring, and upon reviewing the overall qualifications of the submitting firms, the Public Works staff determined Shea Carr Jewell, Inc dba SCJ Alliance met the requirements and criteria as described in the RFQ and was the most responsible and responsive consultant to provide the Architectural and Engineering services for the Project; and

WHEREAS, Public Works Staff then met with SCJ Alliance to discuss the project scope and the associated contract terms, and on December 28, 2023, the City received a defined scope of work, budget, and fees from SCJ Alliance; and

**WHEREAS,** the Port Orchard City Council believes SCJ Alliance to be a highly qualified consulting firm for this Project; and

**WHEREAS,** the Port Orchard City Council, at the 2015 recommendation of the State Auditor's Office, wishes to document their consultant selection process as described above for

this particular contract by Resolution; now, therefore,

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

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

**THAT:** The City Council approves and authorizes the Mayor to sign a contract with Shea Carr Jewell, Inc dba SCJ Alliance for the Sidney Non-Motorized Road Improvements Project as attached hereto as Exhibit A and incorporated herein by this reference.

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

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the Clerk in authentication of such passage this 23rd day of January 2024

	Robert Putaansuu, Mayor	
ATTEST:		
Brandy Wallace, MMC, City Clerk	_	

#### Port Orchard Contract #:

Authorized Amount: \$277,455.29

Date Start: January 23, 2024

Date End: April 30, 2025

# CONSULTANT SERVICES AGREEMENT Sidney Road Non-Motorized Improvements

THIS AGREEMENT is entered into by and between the City of Port Orchard, Washington, a municipal corporation organized under the laws of the State of Washington ("City") and <a href="Shear Carr & Jewell">Shea Carr & Jewell</a>, Inc. dba SCJ Alliance, ("Consultant") organized under the laws of the State of Washington, located and doing business at 2727 Hollycroft Street, Suite 230, Gig Harbor, WA 98335, Phone: (253) 201-0777, Contact: Aaron Knight, Email: Aaron.knight@scjalliance.com (hereinafter the "Consultant").

#### **RECITALS:**

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

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

WHEREAS, the City complied with the requirements for hiring Consultant contained in Chapter 39.80 RCW;

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

#### **AGREEMENT:**

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

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

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

#### 2. Compensation.

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

	LUMP SUM. Compensation for these services set forth in Exhibit A shall be a Lump Sum of \$
<b>✓</b>	TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$277,455.29 without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."
	TIME AND MATERIALS. Compensation for these services shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."
	OTHER

#### 3. <u>Payment.</u>

- A. The Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.
- B. All invoices shall be paid by City warrant within thirty (30) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the Parties shall immediately make every effort to settle the disputed portion.
- C. The Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.
- D. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors, including, but not limited to, the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to Revised Code of Washington (RCW) 51.08.195, as required by law, to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties, which is subject to Title 51 RCW, Industrial Insurance.
- E. If the services rendered do not meet the requirements of the Agreement, the Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement. The City shall pay the Consultant for services rendered within ten (10) days after City Council voucher approval. However, if the City objects

to all or any portion of an invoice, it shall notify Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the Parties will immediately make every effort to settle the disputed portion.

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

#### 4. <u>Duration of Agreement</u>.

- A. This Agreement shall be in full force and effect for a period commencing on <u>January 23</u>, <u>2024</u> and ending <u>April 30</u>, <u>2025</u> unless sooner terminated under the provisions of this Agreement. The City reserves the right to offer two (2) one-year extensions prior to expiration of the Agreement to retain the Consultant's services.
- B. Time is of the essence of this Agreement in each and all of its provisions in which performance is required. If delays beyond the Consultant's reasonable control occur, the Parties will negotiate in good faith to determine whether an extension is appropriate.
- C. The Consultant shall obtain a City of Port Orchard business license prior to commencing work pursuant to a written Notice to Proceed.
- D. The Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

#### 5. Standard of Care.

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

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

- A. Ownership. Any records, files, documents, drawings, specifications, data, or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not.
- B. Records preservation. Consultant understands that this Agreement is with a government agency and thus all records created or used in the course of Consultant's work for the City are considered "public records" and are subject to disclosure by the City under the Public Records Act, Chapter 42.56 RCW ("the Act"). Consultant agrees to safeguard and preserve records in accordance with the Act. The City may be required, upon request, to disclose the Agreement, and the documents

and records submitted to the City by Consultant, unless an exemption under the Public Records Act applies. If the City receives a public records request and asks Consultant to search its files for responsive records, Consultant agrees to make a prompt and thorough search through its files for responsive records and to promptly turn over any responsive records to the City's public records officer at no cost to the City.

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

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

#### 8. Indemnification.

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

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

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

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

#### 9. Insurance.

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

- A. *Minimum Scope of Insurance*. Consultant shall obtain insurance of the types described below:
  - i. <u>Automobile Liability</u> insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
  - ii. <u>Commercial General Liability</u> insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent Consultants and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
  - iii. <u>Workers' Compensation</u> coverage as required by the Industrial Insurance laws of the State of Washington.
  - iv. Professional Liability insurance appropriate to the Consultant's profession.
- B. *Minimum Amounts of Insurance*. Consultant shall maintain the following insurance limits:
  - i. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
  - ii. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
  - iii. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- C. Other Insurance Provision. The Consultant's Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

- D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-VII.
- E. Verification of Coverage. The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.
- F. Notice of Cancellation. The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
- G. Failure to Maintain Insurance. Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.
- H. No Limitation. Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

#### 10. Record Keeping and Reporting.

- A. The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.
- B. The foregoing records shall be maintained for a period of seven (7) years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14 RCW and by the City.

#### 11. <u>City's Right of Inspection and Audit.</u>

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

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

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

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

### 13. <u>Termination</u>.

- A. Termination without cause. This Agreement may be terminated by the City at any time for public convenience, for the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors.
- B. Termination with cause. This Agreement may be terminated upon the default of the Consultant and the failure of the Consultant to cure such default within a reasonable time after receiving written notice of the default.

#### C. Rights Upon Termination.

- i. <u>With or Without Cause</u>. Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to the City, and the Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. The Consultant shall not be entitled to any reallocation of cost, profit or overhead. The Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. The Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.
- ii. <u>Default</u>. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased

costs for completing the work, and all damage sustained, or which may be sustained, by the City by reason of such default.

- D. Suspension. The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.
- E. Notice of Termination or Suspension. If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to the Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in the "Notices" Section herein.
- F. Nothing in this Subsection shall prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

#### 14. Discrimination Prohibited.

- A. The Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.
- B. Violation of this Section shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

#### 15. <u>Force Majeure</u>.

Notwithstanding anything to the contrary in this Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, governmental laws, regulations or restrictions, civil commotions, casualty, actual or threatened public health emergency (including, without limitation, epidemic, pandemic, famine, disease, plague, quarantine, and other significant public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization, breaches in cybersecurity, and other causes beyond the reasonable control of the Party obligated to perform, regardless of whether such other causes are (i) foreseeable or unforeseeable or (ii) related to the specifically enumerated events in this paragraph (collectively, a "Force Majeure"), shall excuse the performance of such Party for a period equal to any such prevention, delay or stoppage. To the extent this Agreement specifies a time period for performance of an obligation of either Party, that time period shall be extended by the period of any delay in such Party's performance caused by a Force Majeure. Provided however, that the current

COVID-19 pandemic shall not be considered a Force Majeure unless constraints on a Party's performance that result from the pandemic become substantially more onerous after the effective date of this Agreement.

#### 16. Assignment and Subcontract.

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

#### 17. Conflict of Interest.

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

#### 18. Confidentiality.

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

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

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

#### 20. Employment of State Retirees.

The City is a "DRS-covered employer" which is an organization that employs one or more members of any retirement system administered by the Washington State Department of Retirement Systems (DRS). Pursuant to RCW 41.50.139(1) and WAC 415-02-325(1), the City is required to elicit on a written form if any of the Contractor's employees providing services to the City retired using the 2008 Early Retirement Factors (ERFs), or if the Contractor is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. Failure to make this determination exposes the City to significant liability for pension overpayments. As a result, before commencing work under this Agreement, Contractor shall determine whether any of its employees providing services to the City or any of the Contractor's owners retired using the 2008 ERFs, and shall immediately notify the City and shall promptly complete the form provided by the City after this notification is made. This notification to DRS could impact the payment of retirement benefits to employees and owners of Contractor. Contractor shall indemnify, defend, and

hold harmless the City from any and all claims, damages, or other liability, including attorneys' fees and costs, relating to a claim by DRS of a pension overpayment caused by or resulting from Contractor's failure to comply with the terms of this provision. This provision shall survive termination of this Agreement.

#### 21. Entire Agreement.

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

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

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

#### 23. Modification.

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

#### 24. Notices.

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

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

City Clerk
City of Port Orchard
216 Prospect Street
Port Orchard, Washington 98366
Bwallace@cityofportorchard.us

Phone: 360.876.4407 Fax: 360.895.9029

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

Aaron Knight
8730 Tallon Lane NE, Suite 200
Lacey, WA 98516
Phone No.: 253-201-0777
Email: aaron.knight@scjalliance.com

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

- A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor, who shall determine the term or provision's true intent or meaning. The Mayor shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.
- B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor's determination in a reasonable time, or if the Consultant does not agree with the Mayor's decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in Kitsap County Superior Court, Kitsap County, Washington.
- C. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys' fees from the other Party.

#### 26. Compliance with Laws.

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

#### 27. <u>Title VI.</u>

The City of Port Orchard, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the

Department of Transportation issued pursuant to such Act, must affirmatively insure that its contracts comply with these regulations.

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

- A. Compliance with Regulations. The Consultant will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- B. Nondiscrimination. The Consultant, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix A, attached hereto and incorporated herein by this reference, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding, or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.
- D. Information and Reports. The Consultant will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the City or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the Consultant's noncompliance with the non-discrimination provisions of this Agreement, the City will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding payments to the Consultant under the Agreement until the contractor complies; and/or
  - ii. cancelling, terminating, or suspending the Agreement, in whole or in part.
- F. Incorporation of Provisions. The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take

action with respect to any subcontract or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the City to enter into any litigation to protect the interests of the City. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

#### 28. Counterparts.

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

#### 29. Severability.

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

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

CONSULTANT	CITY OF PORT ORCHARD
By: Scott Sawyer  Title: Principal	By: Robert Putaansuu, Mayor
Date:	Date:
	ATTEST/AUTHENTICATE
	Brandy Wallace, MMC, City Clerk
	APPROVED AS TO FORM
	Port Orchard City Attorney's Office

#### **EXHIBIT A**





### **SCOPE OF WORK**

#### for

# Sidney Road Non-Motorized Improvements City of Port Orchard, WA

Prepared For: Christian Williams, PE

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

Prepared By: Aaron Knight, PE

Date Prepared: December 28, 2023

#### Overview

The following Scope of Work outlines the effort required to prepare Plans, Specifications, and Engineer's Estimate (PS&E) for the Sidney Road Non-Motorized Improvements Project. The project generally includes multimodal improvements serving Sidney Glen Elementary as shown in **Attachment 1 – Conceptual Design Drawings**. In addition, the project will include a sewer force main and associated roadway restoration.

### **Proposed Improvements**

Design of improvements within the project limits are assumed as follows:

- On Sidney Road SW between SW Hovde Road and a point 200' north of SR-16 overpass install
  - Sidewalk (6' wide + with curb and gutter, some areas will be separated by a buffer:
    - east side of road from SW Hovde Rd to Glenwood Rd SW (340');
    - west side of the road from Glenwood Rd SW to Birch Rd SW (600');
    - west side of the road from north boundary of mini-storage development to the northern terminus -200' north of SR-16 overpass (1,500'),
  - Sidewalk 5' wide for
    - short segments (<100') adjacent to a culvert that narrows the available street ROW width</li>
    - between SW Hovde Rd and Glenwood Rd SW (320') with limited ROW availability.
  - o Bike lanes (6' wide), where sidewalks are constructed
- At the intersection of Sydney Rd SW and SW Hovde Rd install
  - Marked crosswalks (1, east leg)
  - ADA curb ramps (1)
  - Advance stop bars



- At the intersection of Sidney Rd SW and Glenwood Rd SW install
  - o RRFBs (2) on SW and SE corners
  - Advance stop bars
  - o ADA curb ramps (4)
  - Marked crosswalks (2, south leg and west leg)
- At the intersection of Sidney Rd SW and SW Birch Rd install
  - Updated marked crosswalks (south leg and west leg) to align with curb ramps
  - Advance stop bars
  - o ADA curb ramps (4), including 2 on path to school entrance
  - o RRFBs (2) on SW and SE corners
- At the intersection of Sidney Rd SW and SW Berry Lake Rd install
  - ADA curb ramps (4)
  - o Marked crosswalk (1, revised to align with new curb ramp on south leg)
  - Advance stop bars
- Sanitary Sewer Force Main beginning at Berry Lake Road and terminating at a point approximately 850' south of Hovde Road, north of the existing stream culvert.
  - The north end of the force main will connect to the pipe installed with the City's Pottery Avenue project
  - The south end of the force main will be capped with a pin located on the surface to designate the cap location.
  - The force main is for future connection to a lift station to be completed with a separate project.
- Pavement preservation will include the following:
  - o Full-width overlay of Sidney road between Hovde Road and the northern project limit
  - o Half street (west) overlay between Hovde road and the southern project limit



# **Assumptions**

The following assumptions were made to establish a scope and budget for this project:

# Contracting

- Funding is provided by the State of Washington through the Safe Routes to School (state) program and
  is administered by WSDOT for eligible work. FHWA or other external funding sources are not included.
  Local funding by the City of Port Orchard is included for local match requirements and for costs
  associated with non-eligible work. Addition or changes of funding sources may modify permitting
  and/or approval requirements, which may result in an amendment to this scope of work.
- WSDOT's "Local Agency A&E Professional Services Negotiated Hourly Rates Consultant Agreement" will be used for the Consultant contract.
- Project duration will be for <u>twelve (12) months</u> following execution of the contract.
- The City will be responsible for all permit fees, which will be invoiced to the City directly outside of this contract.
- Any right of way activities such as Temporary Construction Easements or Right of Way Acquisitions will be completed by the City's on-call ROW Agent and are not included in this scope of work.
- All field activities will occur within the Right of Way (ROW) or on School District owned parcels. Access to School District property will be coordinated by the City. Right of entry onto private property is not included in this scope of work.

# **Applicable Regulations & Permitting**

- Work will be based on City of Port Orchard standards for design, permitting, and specifications.
- The City will complete all necessary SEPA permitting.
- The project is exempt from Critical Areas review and permitting.
- A Construction Stormwater General Permit, if required, will be completed by the CITY.
- It is assumed that work within the existing County Right of Way north of Birch Road will require a Right of Way permit from Kitsap County.

# Utilities

- The City will lead coordination with all utility providers, including all potholing activities and proposed relocations.
- Modifications to existing sewer, water, and franchise utilities (outside of those explicitly described herein) are not included in this scope of work. Should utility improvements be desired by the purveyor, the design will be completed by the respective purveyor and provided to the CONSULTANT.
   Incorporation of franchise utility improvements (outside of those explicitly described herein) is not included in this scope of work and an amendment to this contract may be required.
- Modifications to existing sewer and water utilities due to conflicts with proposed improvements is not
  included in this scope of work and an amendment to this contract will be required.



# Design

- Plans will be developed using AutoCAD 2022 Civil 3D using SCJ drafting standards.
- Design of lighting along the corridor will be completed as part of a separate project and is not included in this scope of work.
- It is assumed that all walls will be less than 4-foot high (including embedment). If proposed walls exceed 4 feet high, Geotechnical and/or Structural Engineering will be required as an amendment to this scope of work.
- Special Provisions will be developed based on the current version of the WSDOT Standard
   Specifications at the time of first writing of project manual. Revisions to the Special Provisions due to
   annual update of the Standard Specifications will require an amendment to this contract. Revisions to
   the Special provisions due to periodic updates to the General Special Provisions (GSPs) by WSDOT or
   APWA will not require an amendment to the contract.
- Cost estimates will be prepared using the following three (3) schedules.
  - Schedule A SRTS eligible work
  - Schedule B Street Improvements (SRTS non-eligible)
  - Schedule C Sewer utility (SRTS non-eligible)
- The City of Port Orchard has adopted the 2019 Edition of the Washington State Department of Ecology Stormwater Manual for Western Washington as the guiding criteria for planning, design, and construction of stormwater facilities. The project is located in two separate threshold discharge areas (TDAs). It is assumed that Minimum Requirements #1-9 will be required for the project, however based upon preliminary discussion with the City, the project is unlikely to require BMPs for flow control or quality treatment (due to the TDA Threshold approach to MR #6 & #7).
- Existing downstream conveyance will be evaluated with the project's stormwater reporting, using City provided data to identify existing pipe sizes. Design of replacement of existing stormwater conveyance systems (pipes or open channel) downstream of the project limits, if insufficient capacity is identified downstream, is not included in this scope of work.
- Design of landscaping, planting, and irrigation systems are not included in this scope of work. Existing
  private landscaping or irrigation systems within the Right of Way will be noted for removal by the
  Contractor and salvage to the property owner. The City will coordinate with property owners for these
  removals. Restoration of back of sidewalk will be limited to minor restoration of lawn or placement of
  wood chip mulch.
- RRFBs will be powered using solar/battery systems and will not require AC power connection.

# Information Provided by the City

- Available utility maps for all City utilities within the project area, including downstream path for the stormwater system.
- Available As-built drawings for the project area.
- Roadway pavement structural cross section.



# Phase 1: Management/Coordination/Administration

This task covers the effort required to manage the project. This Scope of Work assumes a 12-month contract duration:

# Task 1 Management

- **Task 1.1 Management:** Manage the project by directing and supervising staff and reviewing work for the duration of the project. This management is for the overall work rather than specific tasks.
- **Task 1.2 Schedule:** Develop a critical path project schedule to match the scope of work. Identify task durations, predecessors, City reviews, deliverables, and milestones. Review and update the schedule concurrent with milestone submittals with an additional allowance for additional schedule updates as requested by the City (up to nine (9) schedule updates).

#### Task 2 Administration

- **Task 2.1 Progress Reports:** Prepare and submit a monthly progress report. Progress reports will show: (1) prior work performed, (2) current work planned, (3) schedule and budget status (including a 3-line earned value chart), (4) a summary of scope changes/added value, and (5) items needed from the CITY and/or others. Assume 12 progress reports.
- **Task 2.2 Progress Billings:** Prepare a monthly progress invoice with progress reports attached. Invoices will show staff hours for each phase (i.e., Phase 1: Project Management).

# Task 3 Subconsultant Coordination

**Task 3.1 Coordination with subconsultants** for executing and administering subagreements, reviewing monthly invoices, scheduling, exchanging files, and additional coordination as needed.

# Task 4 Progress Meetings

- **Task 4.1 Kickoff Meeting:** The CONSULTANT shall attend one (1) project Kickoff Meeting. Assume two (2) CONSULTANT staff present at the meeting.
- **Task 4.2 Outside Agency Kickoff Meeting:** The CONSULTANT shall attend one (1) virtual Kickoff Meeting with Kitsap County and WSDOT. Assume two (2) CONSULTANT staff present at the meeting.
- **Task 4.3 Progress Meetings:** The Consultant will host <u>monthly</u> virtual progress meetings. Assume two (2) CONSULTANT staff for twelve (12) meetings.

# **Assumptions**

- Extension of the project timeframe may require an amendment to this scope of work.
- Delay of scheduled submittals due to outstanding information required from the City may require an amendment to this scope of work.

#### **Deliverables**

- Monthly Progress Report and billings submitted via email in PDF format.
- MS Project baseline and updated schedules submitted via email in PDF format.
- Meeting notes for the kickoff meeting and each progress meeting, submitted via email in MS Word format.



# Phase 2: 30% Design

This Phase will include preparation of 30% design scroll plots. The design will begin following completion of the topographic survey. Senior level QA/QC will be provided for all documents prior to submitting to the City.

# Task 1 Data Collection

- **Task 1.1 Data Collection**: Gather and review available background data, as-builts, and utility provider system maps from the City.
- **Task 1.2 Site Review**: Complete photo documentation of existing conditions. Assume two (2) CONSULTANT staff present for one (1) site visit.

# Task 2 Roadway 30% Design

# Task 2.1 Horizontal Layout

Prepare a scroll plot of the project site including the following level of detail:

- Establish design centerlines within the project area.
- Develop 2-dimensional layouts for the improvements outlined in the "Proposed Improvements" section of this scope of work.
  - Curbline and limits of paving
  - Sidewalk and/or shared-use paths
  - Location of curb ramps and driveways
  - Designated parking areas
  - o Channelization and RRFBs
  - o Potential wall locations, with approximated heights.
  - Sewer force main alignment
- Show recent aerial imagery.

Vertical design of improvements will not be specified on the exhibits.

**Task 2.2 30% Design Cost Estimates:** Develop quantities based on each of the horizontal layouts from Task 2.1. Assign unit costs for quantified items and assign lump sum costs to other items based on professional judgment.

# Task 3 30% Design Report

- **Task 3.1 30% Design Report:** Prepare a design report describing the technical basis for the improvements.
- **Task 3.2** Pedestrian Crossing Technical Memo: Collect traffic data and determine if a flashing beacon crossing treatment is warranted at the two (2) intersections as noted in the Proposed Improvements section of this Scope of Work. Evaluation will be based on the City of Port Orchard Pedestrian Crossing Guidelines (2016), the Manual on Uniform Traffic Control Devices (MUTCD), and the Nation Cooperative Highway Research Program (NCHRP) Report 562. The technical memo summarizing the findings of flashing beacon analysis will be included as an attachment to the 30% Design Report.



# **Assumptions**

- Layout of corridor elements not directly impacting the project footprint (e.g. stormwater facilities) will not be designed during this task.
- Traffic Counts are included as an expense in the fee estimate.

#### **Deliverables**

- One (1) 30% Design scroll plot, submitted via email in PDF format.
- One (1) 30% Design cost estimate, submitted via email in PDF format.
- 30% Design Report, submitted via email in PDF format.
- Pedestrian Crossing Technical Memo submitted via email in PDF format

# Phase 3: Public Involvement

This phase includes the following outreach to the School District and the City Council:

# Task 1 School District Coordination

- **Task 1.1 School Kickoff Meeting:** Meet with City Staff and South Kitsap School District representatives (such as Sidney Glen Elem Principal, Facilities, etc.) to discuss the proposed improvements.
- **Task 1.2 School Informational Flyer:** Design an informational flyer about the project to be provided to the school. Assume one (1) flyer will be provided in PDF format, for reproduction and distribution by the school.

# Task 2 Council Updates

**Task 2.1** Council Updates: Attend and present at up to two (2) in-person briefings to the City Council to provide project updates.

It is assumed that the two meetings will include one (1) update to the Transportation Committee and one (1) General Business meeting.

Each briefing will include preparation of presentation materials. The City will distribute the presentation materials on the City website and email lists. Assume two (2) Consultant staff for two (2) meetings.

# **Assumptions**

• The City will host the project website and will complete all updates. The City may use materials prepared as part of the completion of other tasks, however no specific materials will be prepared by the Consultant for the website.

# **Deliverables**

- One (1) information project flyer, submitted via email in PDF format.
- Two (2) council presentations, submitted via email in PDF and PowerPoint formats.

# **Phase 4: Environmental Permitting**

#### Task 1 Cultural Resources

**Task 1.1 Background Research and Records Review:** The consultant will conduct a review of soils and geomorphological information, development history of the project area, County Assessor's records,



DAHP's Washington Information System for Architectural and Archaeological Records Data (WISAARD) database for previous sites and surveys within one mile of the project alignment, EPA's NEPAssist Data, and other pertinent environmental and historical sources.

**Task 1.2 Reporting and Deliverables:** The consultant will prepare the DAHP EZ/Project Form in compliance with GEO 21-02. The form will contain information gathered in the background research and records review, along with project specific information about the proposed action. The consultant will submit a draft EZ Form to the City for review. Any comments will be addressed and a revised form will be provided for final submittal to DAHP and any concerned Tribes.

# **Assumptions**

- Project plans, detailed project description, shapefiles, and previous communication with agencies and the Tribes will be provided by the City.
- The City of Port Orchard will conduct formal consultation with DAHP and the Tribes.
- This project consists of a professional desktop review and analysis of the proposed project's activities and their potential impacts and or effects to any historic properties.
- If DAHP determines that an archaeological survey or historic property inventory forms are required, this scope and budget would be amended.

# Phase 5: 60% Design

The CONSULTANT shall provide 60% Design Plans and Estimates for review by the CITY. The design will include addressing City comments from the 30% Design submittal and additional level of detail summarized herein. Senior level QA/QC will be provided for all documents prior to submitting to the City.

# Task 1 60% Design Plans

- **Task 1.1 Response to Comments:** Respond to the City's comments from the 30% Design. The City will provide a comment response matrix.
- **Task 1.2 Horizontal and Vertical Layout**: The CONSULTANT shall prepare 60% design horizontal layout based on the 30% Design and City comments. The 60% submittal will include horizontal location of improvements with the following level of detail:
  - Construction limits / limits of grading
  - Curbline, sidewalk and limits of paving
  - Develop corridor vertical design including centerline, flow line, back of walk elevations, walls, and cut/fill lines
  - Location and types of curb ramps (excluding grading)
  - Design stormwater conveyance system, including profiles
  - Design sewer force main, including profiles
  - Channelization (excluding signing)
  - RRFB layouts
  - Potential utility impacts, required relocations, and recommended pothole locations



**Task 1.3 60% Plans:** Prepare the following 60% Design Plans.

The following plan sheets are anticipated:

Title	Estimated Sheets
Cover Sheet	1
Legend, Abbreviations, General Notes	1
Survey Control (Plan/Plan, 50 scale)	2
Typical Sections	1
Site Preparation and TESC (Plan/Plan, 20 scale)	4
Roadway and Drainage (Plan/Profile, 20 scale)	10
Intersection Plan (10 scale)	4
Sanitary Sewer (Plan/Profile, 20 scale)	8
RRFB Plan and Details (20 scale)	3
Channelization and Signing (Plan/Plan, 20 scale)	5
TOTAL	39

# Task 2 Stormwater Modeling and Reporting

- **Task 2.1 Stormwater Model:** Prepare a hydrologic model of the existing and proposed land use conditions for the limits of disturbance to determine the water quality treatment requirements. Determine preliminary type and location of facilities.
- **Task 2.2 Draft Stormwater Site Plan and Report:** Prepare a draft technical stormwater site plan describing the stormwater design, document major design decisions, and all applicable exhibits, including locations of structures and storm drain, locations of water quality BMPs, and modifications to downstream conveyance. Prepare a draft technical report describing the stormwater design, document major design decisions, and all applicable exhibits.
- **Task 2.3 Temporary Erosion and Sediment Control (TESC):** Design TESC Best Management Practice (BMP) applications for the project area.

# Task 3 Design Report

**Task 3.1 Design Report**: Update the design report to include work completed and decisions made through 60% Design. Include technical memorandums prepared separately for roadway design and stormwater design. Include plans and cost estimates.

# Task 4 60% Design Cost Estimate

**Task 4.1 60% Design Cost Estimate:** Develop a construction cost estimate based on the 60% design. Bid items will include a column stating if the item is paid per Standard Specification or a Special Provision.

# **Assumptions**

• Preparation of Special Provisions is not included in this submittal.



#### **Deliverables**

- Responses to the City 30% Comments in the City's comment response matrix, submitted via email in Excel and PDF format
- 60% Design Full Size Plans (22x34) submitted via email in PDF format
- Design Report including the following appendices in PDF via email
  - o 60% Design Stormwater Report
- 60% Design Engineer's Estimate submitted via email in Excel and PDF format

# Phase 6: 100% Design

The CONSULTANT shall provide 100% Design Plans, Specifications and Estimates for review by the CITY. The design will include addressing City comments from the 60% Design submittal and additional level of detail summarized herein. Senior level QA/QC and constructability review will be provided for all documents prior to submitting to the City.

# Task 1 100% Design Plans

- Task 1.1 Response to Comments: Respond to the City's comments from the 60% Design
- **Task 1.2 Horizontal and Vertical Layout**: Revise layout based on City comments. Develop final wall profiles and ADA ramp grading.

**Task 1.3 100% Plans:** Prepare the following 100% Design Plans.

The following plan sheets are anticipated:

Title	Estimated Sheets
Cover Sheet	1
Legend, Abbreviations, General Notes	1
Survey Control (Plan/Plan, 50 scale)	2
Typical Sections	1
Typical Details	1
Site Preparation and TESC (Plan/Plan, 20 scale)	4
TESC Details	1
Roadway and Drainage (Plan/Profile, 20 scale)	10
Intersection Plan (10 scale)	4
Drainage Details	1
Sanitary Sewer (Plan/Profile, 20 scale)	8
Retaining Wall (Plan/Profile, 20 scale)	1
RRFB Plan and Details (20 scale)	3
Channelization and Signing (Plan/Plan, 20 scale)	5
Temporary Traffic Control Plan	2
TOTAL	45

**Bold** sheet(s) are new to this milestone submittal



# Task 2 Stormwater

- **Task 2.1 Final Stormwater Report:** Update the 60% Design Stormwater Reports based on City comments and design revisions. Reports will be included as an appendix to the Design Report.
- **Task 2.2 SWPPP**: Prepare a Stormwater Pollution Prevention Plan per the Depart of Ecology's 2019 SMMWW.

# Task 3 Design Report

**Task 3.1 Design Report**: Update the design report to include work completed and decisions made through 100% Design. Prepare Maximum Extent Feasible (MEF) documentation, if required. Include plans and cost estimates. This will be the final submittal for the Design Report.

# Task 4 100% Design Cost Estimate

**Task 4.1 100% Design Cost Estimate**: Prepare 100% Design quantities and opinion of probable cost for review and approval by the City.

# Task 5 100% Design Project Manual

**Task 5.1 100% Project Manual**: Prepare the 100% Design Project Manual including City provided front end bidding documents, WSDOT & APWA General Special Provisions (GSPs), project specific special provisions, and appendices.

# Task 6 Kitsap County Right of Way Permit

**Task 6.1 Right of Way Permit Support:** Prepare a subset of the construction plans (including traffic control plans) and cost estimation for work completed within Kitsap County Right of Way for inclusion in the Right of Way permit. Prepare a draft project application for final execution and submittal by the City. All permit fees will be paid directly by the City.

# **Assumptions**

- The CITY will provide the CONSULTANT front-end bidding documents and a special provisions template or recent project example in Word format.
- The 100% Design submittal will be provided to WSDOT for review. A PS&E Checklist will not be required. All WSDOT comments will be confirmed by the CITY prior to incorporation by the CONSULTANT. If requested, up to one (1) resubmittal to WSDOT will be included. Additional submittals to WSDOT will require an amendment to this scope of work.
- Temporary traffic control plans will include applicable WSDOT TC plans and will not include site specific design and layout of traffic control. Except for the Kitsap County Right of Way permit which will include a site specific traffic control plan.



#### **Deliverables**

- Responses to the City 60% Comments submitted via email in Excel and PDF format
- 100% Design Full Size Plans (22x34) submitted via email in PDF format
- Design Report including the following appendices in PDF via email:
  - o Final Stormwater Report
  - SWPPP
- 100% Design Cost Estimate submitted via email in Excel and PDF format
- 100% Design Project Manual submitted via email in Word and PDF format

# Phase 7: Bid Documents

The CONSULTANT shall prepare final BID Design Plans, Specifications, and Estimates for advertisement by the CITY.

# Task 1 BID Document Plans, Specifications & Estimate

**Task 1.1 Bid Document Plans, Specifications & Estimate:** The CONSULTANT shall prepare Final Bid Documents (Plans, Specifications and Cost Estimate) for advertisement by the CITY. The CONSULTANT will provide senior level QA/QC prior to submitting to the CITY. The final bid documents will address comments received from the 100% Design review submittal.

**Task 1.2** Response to Comments: Respond to the City's comments from the 100% Design.

# **Assumptions**

- 100% Design comments from the City and/or WSDOT are assumed to be related to new information provided with the 100% Design milestone and will not include comments which could have reasonably been provided and resolved during prior milestone reviews. Any such comments which impact the horizontal geometry, vertical design and/or the stormwater conveyance design and exceed the budgeted hours for this task will require an amendment to this scope of work.
- Revision of project elements due to franchise utility designs will require an amendment to this scope of work.

# **Deliverables**

- Bid Document Full Size Plans (22x34) submitted via email in PDF format
- Bid Document Project Manual submitted via email in Word and PDF format
- Bid Document Engineer's Estimate submitted via email in Excel and PDF format
- Responses to the City 100% Comments submitted via email in Excel and PDF format
- All project related AutoCAD Files

# Task 2 Assistance during Bidding

**Task 2.1 Bid Addendum:** Prepare an addendum and respond to bidders' questions relayed through the CITY. It is assumed that the CONSULTANT will prepare one (1) addendum.

# Phase 8: Survey and Right-of-Way Base Mapping (by MTN2Coast)

See attached proposal prepared by Mtn2Coast Surveyors.



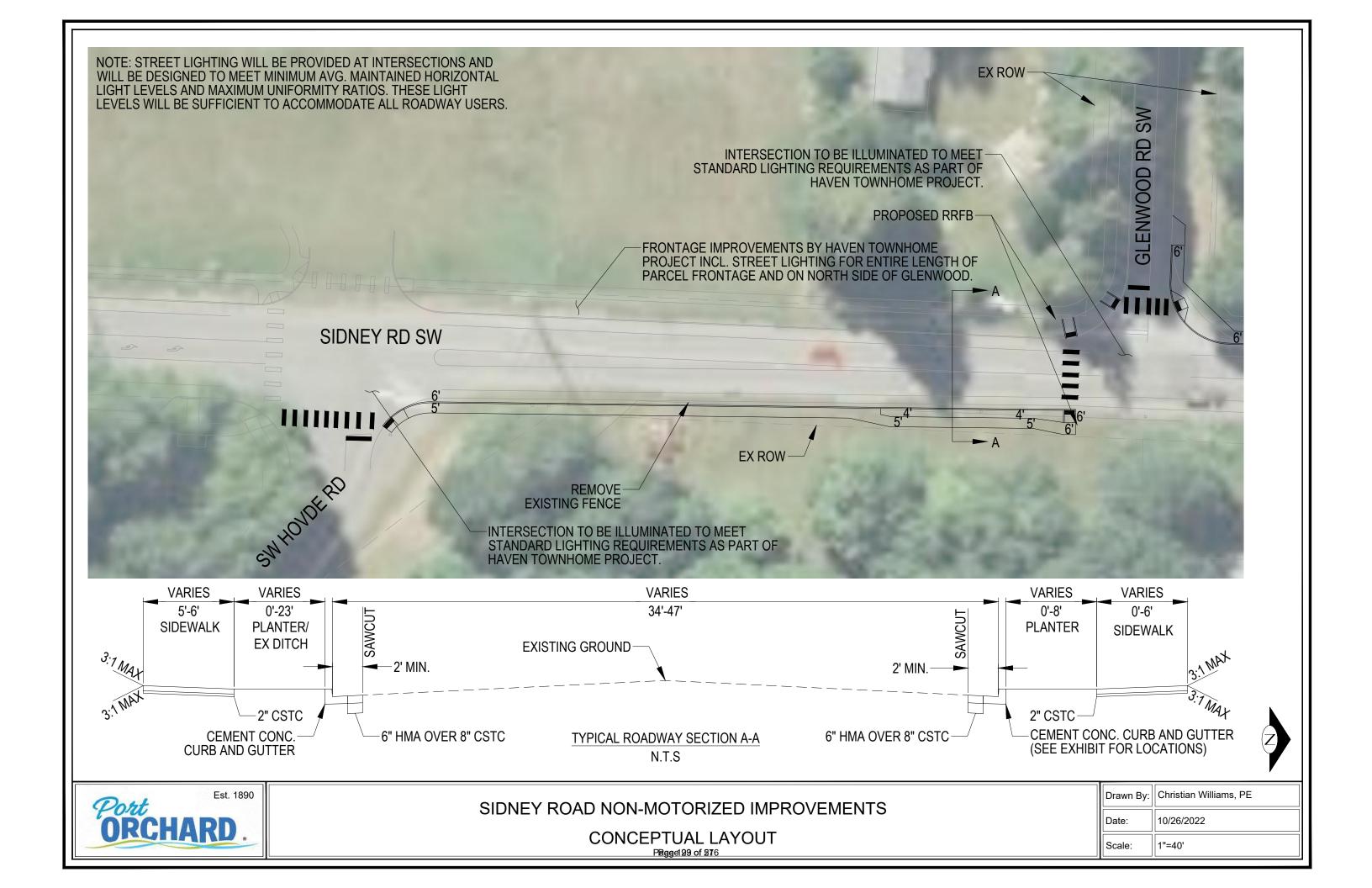
City of Port Orchard Sidney Road Non-Motorized Improvements December 28, 2023 Page 9 of 9

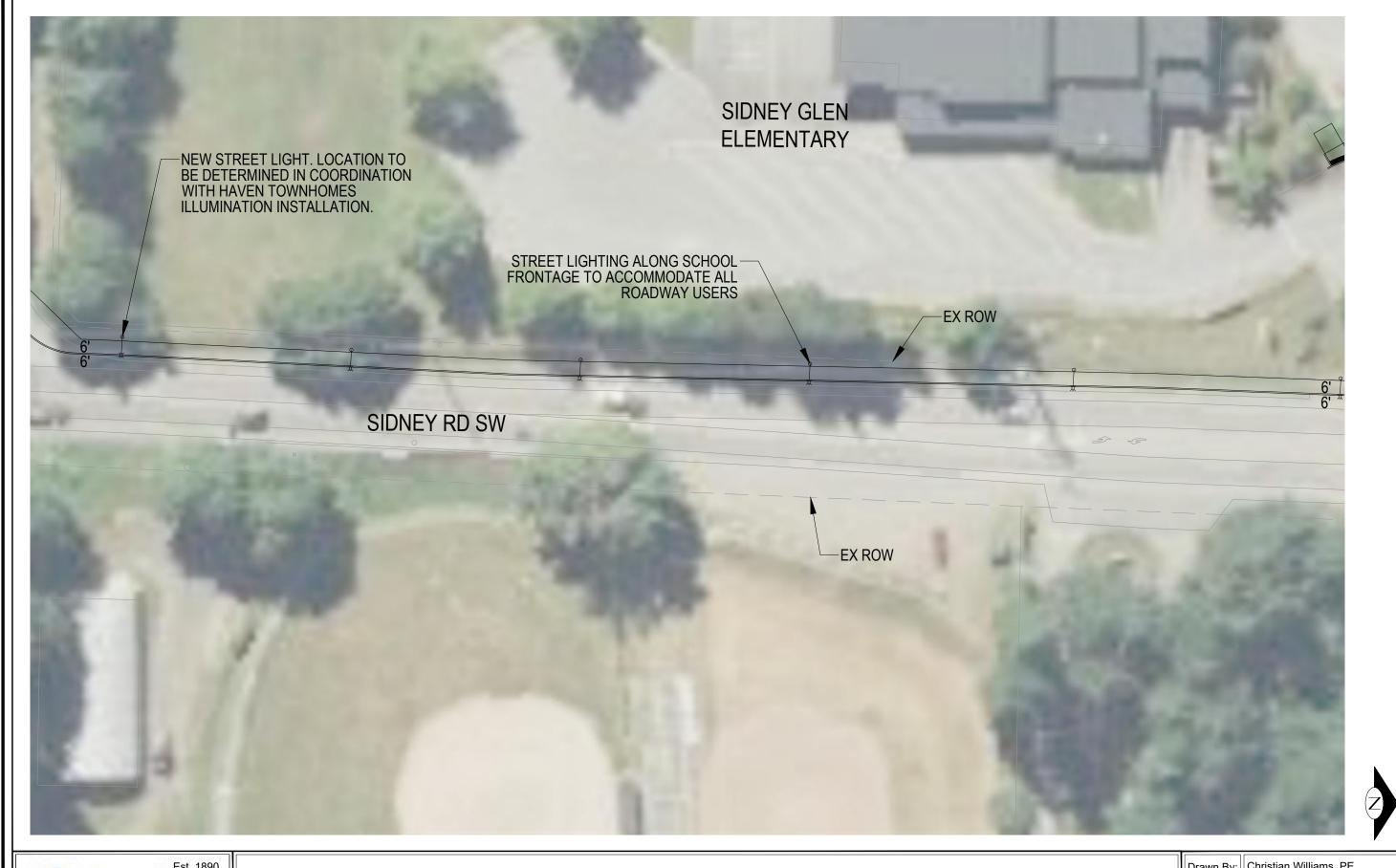
# **Additional Services**

The CITY may require additional and/or modified services of the CONSULTANT. These additional and/or modified services will be authorized under management reserve and/or a future contract amendment where services are not included in this scope of work whether expressly stated or implied. The CONSULTANT shall provide a scope of work and a budget for any additional and/or modified services. The CONSULTANT shall not proceed with the work until the CITY has authorized the work and issued a notice to proceed.



# ATTACHMENT 1 CONCEPTUAL DESIGN DRAWINGS







SIDNEY ROAD NON-MOTORIZED IMPROVEMENTS

CONCEPTUAL LAYOUT
Pragged 90 of 276

Drawn By:	Christian Williams, PE
Date:	10/26/2022
Scale:	1"=40'



Port ORCHARD.

SIDNEY ROAD NON-MOTORIZED IMPROVEMENTS

CONCEPTUAL LAYOUT
PROGRESS of 276

Drawn By:	Christian Williams, PE
Date:	10/26/2022
Scale:	1"=40'







SIDNEY ROAD NON-MOTORIZED IMPROVEMENTS

CONCEPTUAL LAYOUT
Pragged 90 of 276

Drawn By:	Christian Williams, PE
Date:	10/26/2022
Scale:	1"=40'

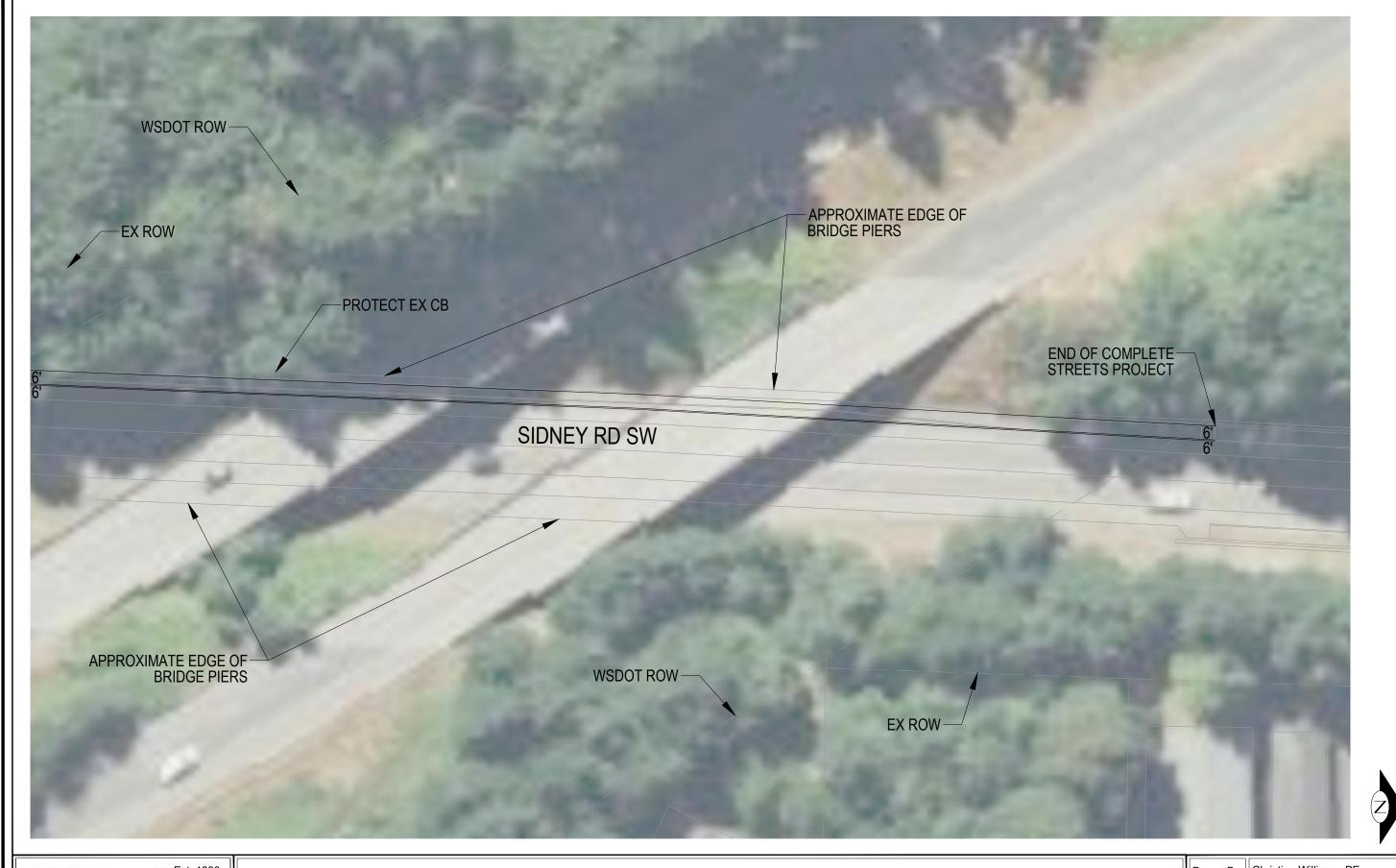




SIDNEY ROAD NON-MOTORIZED IMPROVEMENTS

CONCEPTUAL LAYOUT
PROGRESS of 276

Drawn By:	Christian Williams, PE
Date:	10/26/2022
Scale:	1"=40'





SIDNEY ROAD NON-MOTORIZED IMPROVEMENTS CONCEPTUAL LAYOUT
Pragged 98 of 276

Drawn By:	Christian Williams, PE
Date:	10/26/2022
Scale:	1"=40'



# ATTACHMENT 2 SURVEY LIMITS EXHIBIT





8730 TALLON LANE NE, SUITE 200, LACEY, WA 98516 P: 360.352.1465 SCJALLIANCE.COM

10/31/2023 JOB No.: 23-P00875

SIDNEY ROAD NON-MOTORIZED IMPROVEMENTS **SURVEY LIMITS** 

Plage 200 of 276

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

# **Consultant Billing Rate Schedule**



**SCJ Alliance** 

City of Port Orchard Client: Hourly Rate Table Format: Billing Rate Schedule

Project: Sidney Road Non-Motorized Improvements Allowable Overhead Rate: N/A 23-000875 Job #: Negotiated Fixed Fee: N/A 8/17/2023 Labor Template Version:

File Name: Port Orchard Sidney Rd\_Rates.xlsm 1/5/24 Date:

Billing Rate Schedule

	Billing R	ate Schedule		
Job Classifications	-	-	Total Hourly Billing Rates Minimum	Total Hourly Billing Rates NTE
Principal	-	-	\$185.00	\$400.00
Senior Consultant	-	-	\$165.00	\$390.00
Senior Project Manager	-	-	\$185.00	\$325.00
PM3 Project Manager	=	-	\$165.00	\$250.00
PM2 Project Manager	=	=	\$145.00	\$235.00
PM1 Project Manager	-	-	\$130.00	\$225.00
Senior Engineer	-	=	\$155.00	\$240.00
E4 Engineer	-	-	\$145.00	\$215.00
E3 Engineer	-	=	\$125.00	\$185.00
E2 Engineer	-	=	\$105.00	\$160.00
E1 Engineer	-	=	\$100.00	\$145.00
Senior Landscape Architect	-	-	\$130.00	\$180.00
L4 Landscape	-	-	\$120.00	\$170.00
L3 Landscape	-	-	\$115.00	\$150.00
L2 Landscape	-	-	\$105.00	\$140.00
L1 Landscape	-	-	\$100.00	\$130.00
Senior Planner	-	-	\$155.00	\$245.00
P4 Planner	-	-	\$125.00	\$180.00
P3 Planner	-	-	\$115.00	\$170.00
P2 Planner	-	-	\$105.00	\$160.00
P1 Planner	-	-	\$90.00	\$145.00
Senior Technician	-	-	\$115.00	\$180.00
T4 Technician	-	-	\$110.00	\$155.00
T3 Technician	-	-	\$100.00	\$145.00
T2 Technician	-	-	\$90.00	\$135.00
T1 Technician	-	-	\$80.00	\$125.00
Construction Inspector	-	-	\$0.00	\$0.00
Senior Construction Manager	-	-	\$185.00	\$290.00
RE 3 Construction Resident Engineer	-	-	\$170.00	\$250.00
RE 2 Construction Resident Engineer	-	-	\$145.00	\$230.00
RE 1 Construction Resident Engineer	-	-	\$140.00	\$190.00
Construction Office Engineer	-	-	\$145.00	\$230.00
CI 4 Construction Inspector	-	-	\$170.00	\$250.00
CI 3 Construction Inspector	-	-	\$145.00	\$230.00
CI 2 Construction Inspector	-	-	\$120.00	\$165.00
CI 1 Construction Inspector	-	-	\$100.00	\$155.00
Graphic Designer	-	-	\$100.00	\$155.00
PC 3 Project Coordinator - CM Only	-	-	\$125.00	\$165.00
PC 2 Project Coordinator	=	=	\$115.00	\$155.00
PC 1 Project Coordinator	=	=	\$100.00	\$140.00
Project Accountant	-	-	\$100.00	\$200.00

# Consultant Labor Hour Estimate

SCJ Alliance



 Client:
 City of Port Orchard
 Template Version:
 8/17/2023

 Project:
 Sidney Road Non-Motorized Improvements
 Contract Type:
 LAG Contract

Job #: 23-000875

File Name:	2023-1214 Port Orchard Sidney Rd_Fee.xlsm													
Phase & Task No.	Phase & Task Title	Principal	Senior Project Manager	E4 Engineer	E1 Engineer	Senior Technician	T3 Technician	Senior Project Manager	Senior Consultant	P4 Planner	Project Accountant	Total Direct Labor Hours & Cost	To	tal Cost
PHASE 01	Management/Coordination/Administration													
Task 01	Management													
1	Management		36.0									36.0	\$	8,401.75
2	Schedule		8.0									8.0	\$	1,867.05
	Subtotal Hours:		44.0									44.0	\$	10,268.80
Task 02	Administration													
1	Progress Reports (assume 12)		12.0									12.0	\$	2,800.58
2	Progress Billings (assume 12)		12.0								18.0	30.0	\$	5,014.76
	Subtotal Hours:		24.0								18.0	42.0	\$	7,815.34
Task 03	Subconsultant Coordination													
1	Coordination with Subconsultants		4.0								6.0	10.0	\$	1,671.59
	Subtotal Hours:		4.0								6.0	10.0	\$	1,671.59
Task 04	Progress Meetings													
1	Kickoff Meeting		3.0	2.0								5.0	\$	991.79
3	Outside Agency Kickoff Meeting  Monthly Progress Meetings (assume 12)		3.0	2.0								5.0 30.0	\$	991.79
3	Monthly Progress Meetings (assume 12)  Subtotal Hours:		18.0 24.0	12.0 16.0								40.0	\$	5,950.72 7,934.30
													,	
	Total Phase Hours:		96.0	16.0							24.0	136.0	\$	136.0 27,690.02
	Total Phase Direct Labor:		\$7,538.83	\$785.06							\$993.38	\$9,317.28	ş	27,690.02
PHASE 02	30% Design													
Task 01	Data Collection													
1	Data Collection		4.0	8.0								12.0	\$	2,100.09
2	Site Review		6.0	6.0								12.0	\$	2,275.22
	Subtotal Hours:		10.0	14.0								24.0	\$	4,375.31
Task 02	Roadway 30% Design													
1	Draft Horizontal Layout	2.0	8.0	40.0	16.0	40.0	24.0					130.0	\$	18,717.49
2	30% Design Cost Estimate  Subtotal Hours:	2.0	10.0	4.0	8.0 24.0	4.0	24.0					18.0 148.0	\$	2,477.99
Task 03	30% Design Technical Memorandum	2.0	10.0	44.0	24.0	44.0	24.0		I			140.0	7	21,133.47
1	30% Design Technical Memorandum		4.0	8.0								12.0	\$	2,100.09
2	Pedestrian Crossing Technical Memo	2.0	4.0	12.0	6.0							24.0	\$	3,865.18
	Subtotal Hours:	2.0	8.0	20.0	6.0							36.0	\$	5,965.27
	Total Phase Hours:	4.0	28.0	78.0	30.0	44.0	24.0					208.0	Ś	208.0
	Total Phase Direct Labor:	\$392.12	\$2,198.83	\$3,827.19	\$1,008.00	\$2,328.48	\$856.80					\$10,611.41	\$	31,536.06
PHASE 03	Public Involvement													
Task 01	School District Coordination													
1	School Kickoff Meeting		3.0									3.0	\$	700.15
2	School Information Flyer		2.0	2.0						12.0		16.0	\$	2,399.66 3,099.81
Task 02	Subtotal Hours: Council Update		5.0	2.0						12.0		19.0	,	3,033.81
Task 02			400						I	2.0		46.0	-	7.004.5
1	Council Updates  Subtotal Hours:		16.0 16.0	6.0						24.0		46.0 46.0	\$	7,891.54 7,891.54
	Total Phase Hours: Total Phase Direct Labor:		21.0 \$1,649.12	\$392.53						36.0 \$1,656.77		65.0 \$3,698.43	\$	65.0 10,991.35
			72,043.12	\$33E.33						92,030.77		93,030.43		,
PHASE 04	Environmental Permitting													
	Environmental Permitting  Cultural Resources													
Task 01	Cultural Resources								10.0			10.0	Ś	2,465.19
									10.0			10.0	\$	2,465.19 986.08
Task 01	Cultural Resources  Background Research and Records Review								10.0 4.0 14.0				\$ \$ \$	2,465.19 986.08 3,451.27
Task 01	Cultural Resources  Background Research and Records Review Reporting and Deliverables								4.0			4.0	\$	986.08

# Consultant Labor Hour Estimate

SCJ Alliance

SCJ ALLIANCE

 Client:
 City of Port Orchard
 Template Version:
 8/17/2023

 Project:
 Sidney Road Non-Motorized Improvements
 Contract Type:
 LAG Contract

Job #: 23-000875

Phase &												Total Direct			
Task No.	Phase & Task Title	Principal	Project Manager	E4 Engineer	E1 Engineer	Technician	Technician	Project Manager	Consultant	P4 Planner	Accountant	Labor Hours & Cost	То	otal Cost	
PHASE 05	60% Design														
Task 01	60% Design Plans														
1	Response to Comments		2.0	4.0		4.0						10.0	\$	1,679.14	
2	Horizontal and Vertical Layout		4.0	40.0	8.0	60.0						112.0	\$	17,001.58	
3	60% Plans	2.0	24.0	60.0	16.0	40.0	120.0					262.0	\$	35,553.31	
	Subtotal Hours:	2.0	30.0	104.0	24.0	104.0	120.0					384.0	\$	54,234.03	
Task 02	Stormwater Modeling and Reporting												ļ		
1	Stormwater Model		1.0	8.0								9.0	\$	1,399.95	
2	Draft Stormwater Site Plan and Report Temporary Erosion and Sediment Control		2.0	20.0			8.0					30.0	\$	4,231.95	
3	Subtotal Hours:		4.0	4.0 32.0			8.0					5.0	\$	816.66 6,448.57	
Task 04	Design Report		4.0	32.0			6.0	l				44.0	Ť	0,440.57	
1	Design Report		1.0	4.0		4.0						9.0	Ś	1,445.76	
	Subtotal Hours:		1.0	4.0		4.0						9.0	\$	1,445.76	
Task 05	60% Design Cost Estimate														
1	60% Design Cost Estimate	1.0	2.0	4.0		4.0	8.0					19.0	s	2,819.25	
-	Subtotal Hours:	1.0	2.0	4.0		4.0	8.0					19.0	\$	2,819.25	
	Total Phase Hours:	3.0	37.0	144.0	24.0	112.0	136.0					456.0	\$	456.0	
	Total Phase Direct Labor:	\$294.09	\$2,905.59	\$7,065.58	\$806.40	\$5,927.04	\$4,855.20					\$21,853.90	\$	64,947.60	
PHASE 06	100% Design														
Task 01	100% Design Plans														
1	Response to Comments		2.0	4.0		4.0						10.0	\$	1,679.14	
2	Horizontal and Vertical Layout		2.0	24.0		24.0						50.0	\$	7,741.01	
3	100% Plans	2.0	20.0	48.0	20.0	40.0	60.0	8.0				198.0	\$	28,675.99	
	Subtotal Hours:	2.0	24.0	76.0	20.0	68.0	60.0	8.0				258.0	\$	38,096.14	
Task 02	Stormwater														
1	Final Stormwater Report		2.0	16.0								18.0	\$	2,799.90	
2	SWPPP		1.0	8.0								9.0	\$	1,399.95	
	Subtotal Hours:		3.0	24.0								27.0	\$	4,199.84	
Task 03	Design Report														
1	Design Report		1.0	4.0		2.0						7.0	\$	1,131.21	
	Subtotal Hours:		1.0	4.0		2.0						7.0	\$	1,131.21	
Task 04	100% Design Cost Estimate														
1	100% Design Cost Estimate		1.0	4.0		4.0	8.0					17.0	\$	2,294.53	
	Subtotal Hours:		1.0	4.0		4.0	8.0					17.0	\$	2,294.53	
Task 05	100% Design Project Manual												<u> </u>		
1	100% Design Project Manual	2.0	40.0	16.0				8.0				66.0	\$	14,023.52	
	Subtotal Hours:	2.0	40.0	16.0				8.0				66.0	\$	14,023.52	
Task 06	Kitsap County Right of Way Permit												ļ		
1	Right of Way Permit Support  Subtotal Hours:		6.0	2.0		4.0	8.0					20.0	\$	3,169.80 3,169.80	
	Subtotal Hours:		6.0	2.0		4.0	8.0					20.0			
	Total Phase Hours: Total Phase Direct Labor:	4.0 \$392.12	75.0 \$5,889.71	126.0 \$6,182.38	20.0 \$672.00	78.0 \$4,127.76	76.0 \$2,713.20	16.0 \$1,192.80				395.0 \$21,169.97	\$	395.0 62,915.04	
PHASE 07	Bid Documents		1,7,7	117	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	1,7	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,							
Task 01	BID Document Plans, Specifications and Estimate														
1	BID Document Plans, Specifications and Estimate		20.0	20.0		20.0	16.0					76.0	s	12,427.06	
2	Response to Comments		2.0	4.0		4.0	10.0					10.0	\$	1,679.14	
-	Subtotal Hours:		22.0	24.0		24.0	16.0					86.0	\$	14,106.20	
Task 02	Assistance During Bidding					-			•						
1	Bid Addendum (Assume 1)	2.0	4.0	8.0		12.0						26.0	\$	4,570.04	
	Subtotal Hours:	2.0	4.0	8.0		12.0						26.0	\$	4,570.04	
	Total Phase Hours:	2.0	26.0	32.0		36.0	16.0					112.0	\$	112.0	

# Consultant Labor Hour Estimate

SCJ Alliance



 Client:
 City of Port Orchard
 Template Version:
 8/17/2023

 Project:
 Sidney Road Non-Motorized Improvements
 Contract Type:
 LAG Contract

Job #: 23-000875

File Name: 2023-1214 Port Orchard Sidney Rd Fee.xlsm

File Name:	2023-1214 Port Orchard Sidney Rd_Fee.xlsm														
Phase & Task No.	Phase & Task Title		Principal	Senior Project Manager	E4 Engineer	E1 Engineer	Senior Technician	T3 Technician	Senior Project Manager	Senior Consultant	P4 Planner	Project Accountant	Total Direct Labor Hours & Cost	Т	Fotal Cost
PHASE 08	Survey and Right of Way Base Mapping (b	y MTN2Coast)													
	See Subconsultants														
	See Subconsultants													\$	-
		Subtotal Hours:												\$	-
		Total Phase Hours:												\$	
		Total Phase Direct Labor:												\$	
		Total Frage Direct Eddor.												,	
		Total Hours All Phases	13.0	283.0	404.0	74.0	270.0	252.0	16.0	14.0	36.0	24.0	1,386.0		1386.0
		Total Direct Labor Estimate All Phases	\$1,274.39	\$22,223.85	\$19,822.87	\$2,486.40	\$14,288.40	\$8,996.40	\$1,192.80	\$1,161.30	\$1,656.77	\$993.38	\$74,096.56	\$	220,207.57
		Indirect Costs													
		Subconsultants:													
		Subconsultant Subtotal:						Mtn2Co	ast					\$	\$30,420.22 30,420.22
		Subconsultant Markup:												\$	
		Subconsultant Total:												\$	30,420.22
		Reimbursable Expenses:													
									Printing, etc.					\$	-
								Traffic C						\$	1,500.00
		Expenses Subtotal:						Mileage						\$ \$	327.50 1,827.50
		Expenses Markup:												Ś	1,027.30
		Expenses Total:												\$	1,827.50
		Management Reserve:												\$	25,000.00
		Total Indirect Costs:												\$	57,247.72
	•	Total:												\$	277,455.29

#### Consultant Fee Determination Summary - Exhibit D-1



**Fixed Fee Cost** 

\$22,969.93

# SCJ Alliance

Client: City of Port Orchard

Project: Sidney Road Non-Motorized Improvemen

 Job #:
 23-000875
 Template Version:
 8/17/2023

 File Name:
 2023-1214 Port Orchard Sidney Rd\_Fee.xlsm
 Contract Type:
 LAG Contract

# **Consultant Fee Determination**

#### DIRECT SALARY COST

Classification	<u>Hours</u>	<b>Direct Hourly Rate</b>	<u>Amount</u>
Principal	13.0	\$98.03	\$1,274.39
Senior Project Manager	283.0	\$78.53	\$22,223.85
E4 Engineer	404.0	\$49.07	\$19,822.87
E1 Engineer	74.0	\$33.60	\$2,486.40
Senior Technician	270.0	\$52.92	\$14,288.40
T3 Technician	252.0	\$35.70	\$8,996.40
Senior Project Manager	16.0	\$74.55	\$1,192.80
Senior Consultant	14.0	\$82.95	\$1,161.30
P4 Planner	36.0	\$46.02	\$1,656.77
Project Accountant	24.0	\$41.39	\$993.38

Total Direct Salary Cost \$74,096.56

#### **OVERHEAD**

Overhead Rate: 166.19% Direct Salary Cost: \$74,096.56 Overhead Cost \$123,141.08

Direct Salary Cost:

TOTAL SALARY COST Total Salary Cost \$220,207.57

#### **SUBCONSULTANTS**

Mtn2Coast PHASE 08 Survey and Right of Way Base Mapping (by MTN2C \$30,420.22

Subconsultant Fee Subtotal: \$0 \$30,420.22 Subconsultant Markup: 0% \$0,00

\$74,096.56

# REIMBURSABLE EXPENSES

 Copies, Printing, etc.
 0.0%
 of the Direct Salary Costs
 \$0.00

 Traffic Counts
 TC2
 \$1,500

 Mileage
 500
 miles at
 \$0.655
 per mile
 \$327.50

 Expenses Subtotal:
 \$1,827.50

 Expenses Markup:
 0%
 \$0.00

#### SUBTOTAL (SALARY, SUBCONSULTANTS AND EXPENSES)

Fixed Fee Rate:

31.00%

Subtotal (Salary, Subconsultants and Expenses) \$252,455.29

# MANAGEMENT RESERVE FUND (MRF)

Management Reserve: \$25,000.00 **\$25,000.00** 

Total Estimated Budget: \$277,455.29



Development Division Contract Services Office PO Box 47408 Olympia, WA 98504-7408 7345 Linderson Way SW Tumwater, WA 98501-6504

TTY: 1-800-833-6388 www.wsdot.wa.gov

July 6, 2023

Shea, Carr & Jewell, Inc. (dba SCJ Alliance) 8370 Tallon Lane NE, Suite 200 Lacey, WA 98516-6642

Subject: Acceptance FYE 2022 ICR – CPA Report

Dear Heather Seago:

We have accepted your firms FYE 2022 Indirect Cost Rate (ICR) of 166.19% of direct labor (rate includes 0.28% Facilities Capital Cost of Money) based on the "Independent CPA Report," prepared by Stambaugh Ness. This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

This was not a cognizant review. Any other entity contracting with the firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at (360) 704-6397 or via email consultantrates@wsdot.wa.gov.

Regards;

Schatzie Harvey (Jul 6, 2023 13:38 P SCHATZIE HARVEY, CPA

Contract Services Manager

SH:BJO



# Professional Land Surveyors

Where Sound Practice, Innovation and Client Service Collide

2320 Mottman Road SW, Suite 106, Tumwater, WA 98512 (360) 688-1949 • www.mtn2coast.com

December 12, 2023

Aaron Knight SCJ Alliance Aaron.knight@scjalliance.com 253.201.0777, ext. 293

Re: Sidney Road, Port Orchard, WA – Topographic Survey and Right-of-Way Establishment

Dear Aaron:

Thank you for the opportunity to provide professional surveying services.

# Scope

# Right-of-Way (ROW) Establishment

MTN2COAST, LLC (M2C) will complete the necessary field and office work to establish the right-of-way lines along the project roadway based upon record information available. This right-of-way establishment will be preliminary. No title reports will be obtained for this project and M2C will not be completing a property survey of adjacent lots or showing easements on those properties. No corners will be set by M2C.

# **Topographic Survey**

M2C will complete a Topographic Survey of the site. The mapping limits of the site are shown on the attached Survey Limits Exhibit. The Topographic Survey will be completed to the attached SCJ Subconsultant Requirements - Topographic Survey October 2023. If traffic control is needed to access roadway features and utilities, an additional fee will be required.

# **Deliverables**

M2C will deliver the following:

- Topographic Survey Map in pdf form.
- ACAD electronic drawing file of the project by email.



# **Professional Land Surveyors**

Where Sound Practice, Innovation and Client Service Collide

2320 Mottman Road SW, Suite 106, Tumwater, WA 98512 (360) 688-1949 • www.mtn2coast.com

# Fee

M2C fee for completing the survey shall be lump sum as follows:

ROW Establishment \$7,267.77 T&M
Topographic Survey \$19,652.45 T&M
Utility Locator Service \$3,500 Lump Sum

# General Conditions

M2C's General Conditions of Contract, attached, are included as part of this Agreement for professional services. Please sign a copy of this letter and return to M2C as notice to proceed. Please feel free to contact me at Blair@mtn2coast.com or by phone at 360.688.1949 if you have any questions.

Best regards, MTN2COAST, LLC	Proposal and General Conditions of Contract Accepted SCJ Alliance			
Blair Elense				
Blair E. Prigge, PLS, EIT				
Survey Manager	Signature	Date:		



Professional Land Surveyors Where Sound Practice, Innovation and Client Service Collide

2320 Mottman Road SW, Suite 106, Tumwater, WA 98512 (360) 688-1949 • www.mtn2coast.com

# Survey Limits Exhibit

Limits of topographic mapping and right of way establishment highlighted in red.



# Exhibit E-1 Subconsultant Fee Determination - Summary Sheet (Mandatory when Subconsultants are utilized)

Project: Port Orchard Sidney Road - ROW Establishment
Sub Consultant: MTN2COAST, LLC

Direct Salary Cost (DSC):

Classification	Ma	n Hours		Rate	=		Cost
<b>ROW Plan and Determination</b>							
Senior Surveyor		8	Х	80.00			640.00
Surveyor -LSIT	<u>,                                      </u>	8	Χ	50.00			400.00
Senior Survey Technician		24	Χ	35.00			840.00
Survey Technician	24		Χ	35.00	_	840.00	
Jr Survey Technician	24		Χ	30.00		720.00	
			Χ				
Topographic Mapping and Map			Χ		_		
Senior Surveyor			Χ	80.00	_		
Surveyor -LSIT			Χ	50.00	_		
Senior Survey Technician			Χ	35.00	_		
Survey Technician			Χ	30.00	_		
Jr Survey Technician			Χ	24.00	_		
			Χ		_		
			Χ		_		
			Χ		_		
				Total DSC	=		3,440.00
Overhead (OH Cost including Salary Additives):							
OH Rate x DSC of		73.47%	Х	3,440.0	<u> </u>		2,527.37
Fixed Fee (FF):							
FF Rate x DSC of		31.00%	Х	3,440.0	<u> </u>		1,066.40
Reimbursables:							
Mileage		360	Х	\$ 0.65	=	\$	234.00
Locator Service	\$	-	X	\$ 1.10		\$	-
title reports x5	\$	-	Х	\$ 1.10	=	\$	-
SubConsultant Total					=	\$	7,267.77
Grand Total					=		
Prepared By:	PJ Bough	nal		Date:			12/12/2023

DOT Form 140-089 EF Exhibit G-1 Revised 01/09

# Exhibit E-1 Subconsultant Fee Determination - Summary Sheet (Mandatory when Subconsultants are utilized)

Port Orchard Sidney Road - Topography Sub Consultant: MTN2COAST, LLC Direct Salary Cost (DSC): Classification Man Hours Rate Cost **ROW Plan and Determination** Senior Surveyor 80.00 Χ Surveyor -LSIT Χ 50.00 Senior Survey Technician Χ 35.00 Survey Technician Χ 35.00 Jr Survey Technician Χ 30.00 Χ **Topographic Mapping and Map** Χ Χ Senior Surveyor 16 80.00 1,280.00 Χ Surveyor -LSIT 1,000.00 20 50.00 Senior Survey Technician 56 Χ 35.00 1,960.00 Χ Survey Technician 120 35.00 4,200.00 Jr Survey Technician 24 Χ 30.00 720.00 Χ Χ Χ Total DSC = 9,160.00 Overhead (OH Cost -- including Salary Additives): OH Rate x DSC of 73.47% 9,160.00 = 6,729.85 Fixed Fee (FF): FF Rate x DSC of 31.00% 9,160.00 = 2,839.60 Reimbursables: 1420 0.65 923.00 Mileage \$ 1.10 Locator Service \$ title reports x5 \$ \$ 1.10 \$ SubConsultant Total \$ 19,652.45 **Grand Total** 

PJ Boughal

DOT Form 140-089 EF Exhibit G-1 Revised 01/09

Prepared By:

Date:

12/12/2023



Development Division Contract Services Office PO Box 47408 Olympia, WA 98504-7408 7345 Linderson Way SW Tumwater, WA 98501-6504

TTY: 1-800-833-6388 www.wsdot.wa.gov

October 10, 2023

MTN2COAST, LLC 2320 Mottman Road SW, Suite 106 Tumwater, WA 98512

Subject: Acceptance FYE 2022 ICR – Audit Office Review

Dear Jessica Prigge:

Transmitted herewith is the WSDOT Audit Office's memo of "Acceptance" of your firm's FYE 2022 Indirect Cost Rate (ICR) of 73.47% of direct labor. This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

This was not a cognizant review. Any other entity contracting with your firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at (360) 704-6397 or via email consultantrates@wsdot.wa.gov.

Regards,

Schatzie Harvey (Oct 11, 2023 15:23 PDT)

SCHATZIE HARVEY, CPA Contract Services Manager

SH:leg

#### **APPENDIX A**

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

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

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

- Executive Order 13166, Improving Access to Services for Persons with Limited English
  Proficiency, and resulting agency guidance, national origin discrimination includes
  discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI,
  you must take reasonable steps to -ensure that LEP persons have meaningful access to your
  programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



# **City of Port Orchard**

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

# **Agenda Staff Report**

Agenda Item No.:	Business Item 8E	Meeting Date:	January 23, 2024
Subject:	Adoption of a Resolution Approving the	Prepared by:	Denis Ryan
	Purchase of Asset Management Software	_	Public Works Director
		Atty Routing No.:	366922-0009
		Atty Review Date:	01/17/2024

**Summary**: The Public Works Department identified the need for an Asset Management Software Program to document and track the City's infrastructure. In accordance with the City's Procurement Policies, the City hired KCI Technologies, Inc. (Consultant), a qualified consultant, to develop a plan, and facilitate implementation of the asset management software program that would best meet the needs of the City. The Public Works department, working with the Consultant, researched and determined that the Cartegraph Software Program best met the City's requirements.

The City is a member of Washington State Department of Enterprise Services (DES) purchasing cooperative, via City Contract No. C057-13, which allows the City to utilize contracts procured by DES for services and purchases, so long as the City confirms the contract complies with all applicable statutory procurement requirements for the purchase or service, per RCW 39.34.030. Consistent with City Contract No. C057-13 and the City's Procurement Procedures Policies, adopted as Resolution No. 073-23, as amended, the City's Public Works Department identified Carahsoft Technology Corporation and as an approved vendor for the Cartegraph Software Program, awarded via DES Contract No. 05116 ("DES Contract").

Staff requested a quote from the vendor, and on January 16, 2024, the City received a quote in the amount of \$282 417.50 (plus applicable Washington State Sales Tax).

Staff confirmed the quote was consistent with the DES Contract pricing. Staff also confirmed the expense is within the limits of the 2023-2024 Biennial Budget. On January 16, 2024, the City Public Works Department completed the Interlocal Agreement Purchase Checklist for Software. Staff reviewed the procurement process utilized by DES for the DES Contract and confirmed the applicable procurement requirements were met and obtained all necessary documentation from DES and the vendor regarding procurement.

The City's Procurement Policies require City Council authorization for purchasing budgeted items that cost \$35,000 or more.

**Recommendation**: Staff recommends approving a Resolution authorizing the purchase of Asset Management Software in accordance with the City's procurement policies and the 2023-2024 Biennial Budget.

Relationship to Comprehensive Plan: N/A

**Motion for consideration**: "I move to adopt a resolution authorizing the purchase of Asset Management Software from Carahsoft Technology Corporation."

**Fiscal Impact**: There is funding available in the 2023-2024 Biennial Budget for year 1; however, a budget amendment may be required (GL Codes, 411.05.534.10.40, 421.05.531.10.40, 431.05.535.10.40). Years two and three will be contemplated in upcoming the 2025-2026 Budget cycle.

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

**Attachment**: Resolution, Exhibit A-Quote, Interlocal Agreement Checklist

#### **RESOLUTION NO. \*\*-24**

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING THE PURCHASE OF ASSET MANAGEMENT SOFTWARE AND DOCUMENTING PROCUREMENT PROCEDURES.

WHEREAS, the Public Works Department identified a need for an Asset Management Software Program (Program) to document and track the City of Port Orchard's infrastructure); and

**WHEREAS**, the City hired a qualified consultant, to develop a plan, and implement the asset management software program that would best meet the needs of the City; and

**WHEREAS**, Public Works staff, working with the consultant, researched, and determined that Cartegraph Software Program best met the City's requirements; and

**WHEREAS,** the City is a member of Washington State Department of Enterprise Services (DES); and

WHEREAS, consistent with City Contract No. C057-13 and the City's Procurement Procedures Policies, adopted as Resolution No. 073-23, as amended, City's Public Works Department identified Carahsoft Technology Corporation and as an approved vendor for the Cartegraph Software Program through DES Contract No. 05116 (DES Contract); and

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

WHEREAS, Public Works staff requested quotes and on January 16, 2024, the City received a quote in the amount of \$282,417.50 (plus applicable Washington State Sales Tax); and

WHEREAS, on January 16, 2024, the City's Public Works Department completed the Interlocal Agreement Purchase Checklist for the selected vendor and confirmed the quote was consistent with the DES Contract; and

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

**WHEREAS,** the Carahsoft Technologies Corporation Quote, attached as Exhibit A, is 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 Asset Management Software from Carahsoft Technologies Corporation Quote in the amount of \$282,417.50 (plus applicable Washington State Sales Tax). 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 23rd day of January 2024.

	Robert Putaansuu, Mayor	
ATTEST:		
Brandy Wallace, MMC, City Clerk		

## **CITY OF PORT ORCHARD**

## PURCHASES THROUGH INTERLOCAL AGREEMENTS

City Contract No.: C057-13				
Interlocal Agreement with the Host Agend	c <b>y</b> (go	vern	ment age	ncy or Purchasing Co-Op name): DES
Item Description: Asset Management Sc	oftwa	re		
Do you have an Interlocal agreement sign  ☐ If yes, where is it filed:Ci ☐ If no, get a mutually signed A	ity Cle	erk		
State OSP Contract No.#: 05116				
				ber you may skip the remainder of this test ts and retain the documentation on hand for
Is this a technology contract?  ☐ If yes, do your own rules allow ☐ If your own rules allow for no			<i></i>	
Is this a services contract?  ☐ If yes, do your own rules allo ☐ If your own rules allow for no			_	tiated? I can skip the remainder of the test.
Are you using this as only one of multiple quo  If yes, you can skip the remai			-	nase? r purchase will not mandate the sealed bid rules.
				uired Compliance
Is the Host agency a public agency <sup>1</sup> ?		Yes	□No	If Yes, what state laws apply to Host Agency:
Does the host agency have a requirement to run a newspaper ad in their local paper and did they comply		Yes	□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?	_ `	Yes	□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?		Yes	□No	If Yes, obtain documentation to support answer from Host Agency. If No, you cannot use the

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

## PRICE QUOTATION

#### CARAHSOFT TECHNOLOGY CORP

11493 SUNSET HILLS ROAD | SUITE 100 | RESTON, VIRGINIA 20190 PHONE (703) 871-8500 | FAX (703) 871-8505 | TOLL FREE (888) 66CARAH WWW.CARAHSOFT.COM | SALES@CARAHSOFT.COM



TO: Jacki Brown

City of Port Orchard, WA Port Orchard, WA USA

FROM: Heather Castellanos

Carahsoft Technology Corp. 11493 Sunset Hills Road

Suite 100

Reston, Virginia 20190

EMAIL:

jbrown@portorchardwa.gov

EMAIL:

Heather.Castellanos@carahsoft.com

PHONE:

PHONE: (571) 662-3750

TERMS:

Contract Number: 05116 NASPO Master Contract Number: AR2472

Contract Term: 07/17/2017 to 09/15/2026 Shipping Point: FOB Destination
Credit Cards: VISA/MasterCard/AMEX

Remit To: Same as Above

Payment Terms: Net 30 (On Approved Credit)

Sales Tax May Apply

QUOTE NO: **QUOTE DATE:** 

42532136 01/16/2024 01/31/2024

**QUOTE EXPIRES:** RFQ NO:

SHIPPING:

ESD

**TOTAL PRICE:** 

\$282,417.50

**TOTAL QUOTE:** 

\$282,417.50

INE NO.	. PART NO.	DESCRIPTION	СООР	QUOTE PRICE		QTY	EXTENDED PRICE
		TERM 1					
3.70	OG-CUSN-22-CG- ALL-491	FMS & OMS: FMS Property Portfolio; FMS Space Management; OMS Plus Edition; OMS Named User Licenses; OMS Facilities Domain; Orange Advantage – Large; OpenGov Professional Services Deployment OpenGov, Inc OG-CUSN-22-CG-ALL Start Date: 02/01/2024 End Date: 01/31/2025	\$343,000.00	\$55,699.19	COOP	1	\$55,699.19
_	OG-TWAS-B150200M -AR-3Y-491	Asset Builder - Between \$150-200 Million - 3Y OpenGov, Inc OG-TWAS-B150200M-AR-3Y Start Date: 02/01/2024 End Date: 01/31/2025	\$6,762.00	\$4,015.54	COOP	1	\$4,015.54
	OG-TWAZ-B150200M -AR-3Y-491	Sanitary Sewer Domain - Between \$150-200 Million - 3Y OpenGov, Inc OG-TWAZ-B150200M-AR-3Y Start Date: 02/01/2024 End Date: 01/31/2025	\$37,191.00	\$3,011.66	COOP	1	\$3,011.66
	OG-TWBF-B150200M -AR-3Y-491	Water Distribution Domain - Between \$150- 200 Million - 3Y OpenGov, Inc OG-TWBF-B150200M-AR-3Y Start Date: 02/01/2024 End Date: 01/31/2025	\$40,166.28	\$3,011.65	COOP	1	\$3,011.65
	OG-TWBB-B150200M -AR-3Y-491	Stormwater Domain - Between \$150-200 Million - 3Y OpenGov, Inc OG-TWBB-B150200M-AR-3Y Start Date: 02/01/2024 End Date: 01/31/2025	\$37,191.00	\$3,011.66	9000	1	\$3,011.66
	OG-PSBG-B150200M -OT-0Y-491	Professional Services Deployment - Prepaid - Between \$150-200 Million - 0Y OpenGov, Inc OG-PSBG-B150200M-OT-0Y Start Date: 02/01/2024 End Date: 01/31/2025	\$294.00	\$228.58	COOP	285	\$65,145.30
		TERM 1 SUBTOTAL:					\$133,895.00

# **PRICE QUOTATION**

## **CARAHSOFT TECHNOLOGY CORP**

11493 SUNSET HILLS ROAD | SUITE 100 | RESTON, VIRGINIA 20190 PHONE (703) 871-8500 | FAX (703) 871-8505 | TOLL FREE (888) 66CARAH WWW.CARAHSOFT.COM | SALES@CARAHSOFT.COM



INE NO.	. PART NO.	DESCRIPTION	СООР	QUOTE PRICE		QTY	EXTENDED PRICE
		TERM 2					
	OG-CUSN-22-CG- ALL-491	FMS & OMS: FMS Property Portfolio; FMS Space Management; OMS Plus Edition; OMS Named User Licenses; OMS Facilities Domain; Orange Advantage – Large; OpenGov Professional Services Deployment OpenGov, Inc OG-CUSN-22-CG-ALL Start Date: 02/01/2025 End Date: 01/31/2026	\$343,000.00	\$58,746.97	COOP	1	\$58,746.97
	OG-TWAS-B150200M -AR-3Y-491	Asset Builder - Between \$150-200 Million - 3Y OpenGov, Inc OG-TWAS-B150200M-AR-3Y Start Date: 02/01/2025 End Date: 01/31/2026	\$6,762.00	\$4,216.31	COOP	1	\$4,216.31
	OG-TWAZ-B150200M -AR-3Y-491	Sanitary Sewer Domain - Between \$150-200 Million - 3Y OpenGov, Inc OG-TWAZ-B150200M-AR-3Y Start Date: 02/01/2025 End Date: 01/31/2026	\$37,191.00	\$3,162.24	COOP	1	\$3,162.24
	OG-TWBF-B150200M -AR-3Y-491	Water Distribution Domain - Between \$150- 200 Million - 3Y OpenGov, Inc OG-TWBF-B150200M-AR-3Y Start Date: 02/01/2025 End Date: 01/31/2026	\$40,166.28	\$3,162.24	COOP	1	\$3,162.24
	OG-TWBB-B150200M -AR-3Y-491	Stormwater Domain - Between \$150-200 Million - 3Y OpenGov, Inc OG-TWBB-B150200M-AR-3Y Start Date: 02/01/2025 End Date: 01/31/2026	\$37,191.00	\$3,162.24	COOP	1	\$3,162.24
		TERM 2 SUBTOTAL:					\$72,450.00
		T-0.10					
	OG-CUSN-22-CG- ALL-491	TERM 3  FMS & OMS: FMS Property Portfolio; FMS Space Management; OMS Plus Edition; OMS Named User Licenses; OMS Facilities Domain; Orange Advantage – Large; OpenGov Professional Services Deployment OpenGov, Inc OG-CUSN-22-CG-ALL Start Date: 02/01/2026 End Date: 01/31/2027	\$343,000.00	\$61,684.31	COOP	1	\$61,684.31
	OG-TWAS-B150200M -AR-3Y-491	Asset Builder - Between \$150-200 Million - 3Y OpenGov, Inc OG-TWAS-B150200M-AR-3Y Start Date: 02/01/2026 End Date: 01/31/2027	\$6,762.00	\$4,427.14	COOP	1	\$4,427.14
	OG-TWAZ-B150200M -AR-3Y-491	Sanitary Sewer Domain - Between \$150-200 Million - 3Y OpenGov, Inc OG-TWAZ-B150200M-AR-3Y Start Date: 02/01/2026 End Date: 01/31/2027	\$37,191.00	\$3,320.35	COOP	1	\$3,320.35
	OG-TWBF-B150200M -AR-3Y-491	Water Distribution Domain - Between \$150- 200 Million - 3Y OpenGov, Inc OG-TWBF-B150200M-AR-3Y Start Date: 02/01/2026 End Date: 01/31/2027	\$40,166.28	\$3,320.35	COOP	1	\$3,320.35
	OG-TWBB-B150200M -AR-3Y-491	Stormwater Domain - Between \$150-200 Million - 3Y OpenGov, Inc OG-TWBB-B150200M-AR-3Y Start Date: 02/01/2026 End Date: 01/31/2027	\$37,191.00	\$3,320.35	COOP	1	\$3,320.35
		TERM 3 SUBTOTAL:					\$76,072.50

Page 222 of 276

**QUOTE DATE**: 01/16/2024

**CONFIDENTIAL** 

OHOTENO

17527126

# **PRICE QUOTATION**

#### CARAHSOFT TECHNOLOGY CORP

11493 SUNSET HILLS ROAD | SUITE 100 | RESTON, VIRGINIA 20190 PHONE (703) 871-8500 | FAX (703) 871-8505 | TOLL FREE (888) 66CARAH WWW.CARAHSOFT.COM | SALES@CARAHSOFT.COM



LINE NO. PART NO.	DESCRIPTION	COOP	QUOTE PRICE	QTY	EXTENDED PRICE
	SUBTOTAL:				\$282,417.50
		TOTAL PRICE:		-	\$282,417.50
		TOTAL QUOTE:			\$282,417.50

Billing Frequency: Annually in Advance

**Opengov Terms of Service** 

Annual invoices will be delivered by the start of each consecutive annual period. Payment of invoices shall be annually in advance. Customer's use of the OpenGov services is pursuant to the OpenGov End User License Agreement set forth at https://opengov.com/terms-of-service/end-user-license-agreement/

#### \*\*PLEASE NOTE\*\*

Please be sure to include any applicable contract numbers on your purchase order, as well as, all billing and shipping emails and mailing addresses to ensure your order can be processed in a timely manner.

For orders that may be subject to taxes, please provide the end user's mailing address so the correct tax rate, if any, can be applied.

Page 223 of 276

QUOTE DATE: 01/16/2024 OHOTE NO.



# 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 8F

Subject: Approval of Amendment No. 13 to Contract

No. 066-20 with Rice Fergus Miller, Inc. for

the Community Events Center

Meeting Date: January 23,2024

Prepared by: Nicholas Bond

DCD Director

Atty Routing No.: NA

Atty Review Date: 01/18/2024

Summary: The City of Port Orchard is under contract with Rice Fergus Miller, Inc (RFM). for the Community Event Center (CEC) project (C066-20). In the spring of 2023, the City Council approved amendment #11 to the contract to perform preliminary design and engineering on the Orchard Street Plaza associated with the CEC. Now that this work on amendment #11 is mostly complete (see the design presentation from September 2023 attached), a contract amendment has been prepared to take this plaza design to 100% construction drawings. The attached scope of work is in an amount of \$630,147 and will provide funding to complete all design phases for the CEC, the waterfront plaza and restoration project, and the Orchard Street Plaza. It is likely that the only remaining contract amendments for this project will be a bid for support and construction management to be brought forward closer the start of construction for the project.

**Relationship to Comprehensive Plan:** The planned CEC project is shown in the City's Comprehensive Plan, Parks Plan, and Downtown Subarea Plan.

**Recommendation**: Staff recommends approval of Contract Amendment #13 to C066-20 as presented.

Motion for consideration: "I move to approve amendment #13 to C066-20 as presented."

**Fiscal Impact**: The amount of the contract amendment, \$630,147, is less than what was budgeted in the amended 2023-2024 city budget.

Alternatives: None.

Attachments: Amendment #13, Amendment #13 scope and fee, September 2023 plaza preliminary design

presentation

#### Amendment No. 13 to Contract No. C066-20

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

THIS AMENDMENT to Contract No. C066-20 ("Amendment") is made effective as of the \_\_ day of January, 2024, by and between the City of Port Orchard ("City"), a municipal corporation, organized under the laws of the State of Washington, and Rice Fergus Miller, Inc., a corporation organized under the laws of the State of Washington, located and doing business at 275 5th St., Bremerton, WA 98337 ("Consultant").

WHEREAS, on July 29, 2020, the City executed a Professional Services Agreement with Consultant for the South Kitsap Community Event Center Project (the "Project") ("Underlying Agreement"); and

WHEREAS, on July 27, 2021, the City and Consultant executed Amendment No. 1 to the Underlying Agreement, increasing the contract amount and adding additional scope of work (work within the scope of the initial Request for Qualifications); and

WHEREAS, on September 17, 2021, the City and Consultant executed Amendment No. 2 to the Underlying Agreement, adding additional scope of work (work within the scope of the initial Request for Qualifications); and

WHEREAS, on October 12, 2021, the City and Consultant executed Amendment No. 3 to the Underlying Agreement, increasing the contract amount and adding additional scope of work (work within the scope of the initial Request for Qualifications); and

WHEREAS, on January 25, 2022, the City and Consultant executed Amendment No. 4 to the Underlying Agreement, increasing the contract amount and adding additional scope of work due to unforeseen on-site conditions; and

WHEREAS, on March 21, 2022, the City and Consultant executed Amendment No. 5 to the Underlying Agreement, extending the contract term to accommodate the scope of work; and

WHEREAS, on April 12, 2022, the City and Consultant executed Amendment No. 6 to the Underlying Agreement, updating the scope and fee for tasks 4 and 5 of C082-19; and

WHEREAS, on September 13, 2022, the City and the Consultant executed Amendment No. 7 to the Underlying Agreement, adding additional design work related to shoreline improvements and permitting; and

WHEREAS, on December 13, 2022, the City and the Consultant executed Amendment No. 8 to the Underlying Agreement, adding additional design work LEED Certification feasibility; and

WHEREAS, in February 2023, the City and Consultant executed Amendment No. 9 to the Underlying Agreement, adding a modification to the architectural plans to meet LEED silver certification; and

WHEREAS, in May 2023, the City and Consultant executed Amendment No. 10 to the Underlying

Agreement, making design modifications to portions of the CEC space to be occupied by the Library; and

WHEREAS, in June 2023, the City and Consultant executed Amendment No. 11 to the Underlying Agreement, extending site design scope to include Orchard Plaza Schematic Design as an element of the Community Event Center; and

WHEREAS, in December 2023, the City and Consultant executed Amendment No. 12 to the Underlying Agreement, incorporating on-call work necessary for the Project pertaining to necessary modifications to existing Washington State Department of Natural Resources aquatic land lease(s) and associated permits for the CEC; and

WHEREAS, the Project is now poised for additional design development through the preparation of construction documents to move to bid, which is a phase included in the original procurement but not included in the Underlying Agreement, as the City elected to phase the Project with the selected Consultant;

WHEREAS, Contract Amendment #13 provides for the performance of the next phase of services, to include preparation of the following: Design Development (60% design level); Permits Documents (90% design level); and Construction Documents (100% design level); and

WHEREAS, the Consultant was selected as the most qualified firm to perform all phases of the Project; and

WHEREAS, the Parties wish to memorialize their agreement to so amend the Underlying Agreement; NOW, THEREFORE,

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

- 1. The Underlying Agreement, including previous Amendments Nos. 1-12, is amended as follows (amendment shown in legislative marks):
  - a. The Scope of Work is amended to add the tasks as set out in Attachment 1 hereto (Amendment #13 Request).
  - b. For the Amendment #13 Scope of Work, compensation for these services shall be based on the list of billing rates set out in Attachment 1 and incorporated herein by this reference, not to exceed \$630,147 for the performance of the Amendment #13 Scope of Work, plus reimbursable expenses and any applicable taxes, as se out in Attachment 1 hereto.
  - c. The contract term remains with a termination date of December 31, 2024, unless extended or earlier terminated in accordance with the terms of the Underlying Agreement.
- 2. In all other respects, the Underlying Agreement between the parties shall remain in full force and effect, amended as set forth herein, but only as set forth herein.

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

CITY OF PORT ORCHARD, WASHINGTON	CONSULTANT
Robert Putaansuu, Mayor	Signature
ATTEST/AUTHENTICATED:	Printed Name and Title
Brandy Wallace, MMC, City Clerk	
APPROVED AS TO FORM:	
Charlotte A. Archer, City Attorney	



January 17, 2024

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

Re: South Kitsap Community Events Center

Amendment 13 Request

Orchard Plaza Design Development thru Construction Documents Phase

RFM Project: 2020002.00

Dear Nick.

Rice Fergus Miller (RFM) is pleased to present the following Letter of Proposal to amend our contract for the above referenced project.

#### I. Project Description

The City of Port Orchard's Master Plan includes sites surrounding the above referenced project. This proposal is to continue our work under Amendment 11 Orchard Plaza Schematic Design which extended our site design scope to include "Orchard Plaza" from Orchard Avenue to Frederick Avenue per the attached Site Scope Delineation map. This contract amendment takes us to the next phases of design for this area.

#### II. Scope of Services

The following scope includes typical deliverables for Design Development and Construction Documents Phase for the referenced area. The goal is to further develop the design and details thru completion of permit submittals and completing bid ready documents. The following disciplines are included in this scope of work. Please see their attached proposals for a detailed description of their scope:

- Architect / Project Management
- Civil Engineer
- Structural Engineer
- Landscape Architect

- Electrical Engineer
- Cost Estimator
- Cultural / Archeological Consultant

#### III. Exclusions and Additional Services

This proposal excludes Bid Support and Construction Administration. Schedule of this work is undetermined at this stage and will be part of a future contract amendment. Work beyond the listed disciplines and scope described above is excluded.

South Kitsap Community Events Center

Amendment 13 – Orchard Plaza Design Development thru Construction Documents Phase January 17, 2024

## IV. Owner Responsibilities

It is our understanding that City of Port Orchard will provide full information, including a program, setting forth its design objectives, constraints, and criteria; and, the services of other consultants not included here when such services are deemed to be necessary.

#### V. Schedule

Work can proceed as soon as this proposal is approved and an executed contract is provided. We estimate approximately 3 months for Design Development Phase and 3 months for Construction Documents Phase for a total of 6 months to complete the documents and submit for permit. Permit approval is dependent on City of Port Orchard's own timeline.

## VI. Compensation

For the Scope of Services outlined above for Rice Fergus Miller and its consultants, compensation shall be a Fixed Fee of Six Hundred Thirty Thousand One Hundred Forty-Seven Dollars (\$630,147) plus reimbursable expenses and any applicable taxes.

See attached consultant proposals for breakdown of this fee. Consultant fees are calculated with RFM standard 12% markup.

# VII. Terms of Agreement

Please provide an amendment to our South Kitsap Community Events Center contract upon accepting this proposal.

#### VIII. Summary

Thank you for the opportunity to propose on your project. We look forward to discussing our proposal further and working with you. Please contact me if you have any questions.

Sincerely,

Rice Fergus Miller, Inc.

Dean Kelly, Principal Architect

Attachments:

**Consultant Proposals:** 

- KPFF Civil & Structural Engineer
- KPG Landscape Architect
- Sider Byers Electrical Engineer
- RLB Cost Estimate
- CRC Cultural/Archeological



January 4, 2024

Lorie Limson Cook Rice Fergus Miller 275 Fifth Street, Suite 100 Bremerton, WA, 98337

Subject: Port Orchard Community Event Center

Proposal for Civil Engineering Sevices for Orchard Plaza Scope of Work

#### Dear Lorie:

This proposal is for the additional services request (ASRs) related to the scope progression associated with the Port Orchard Community Event Center, which includes preparation of the following:

- Design Development (60% design level)
- Permits Documents (90% design level)
- Construction Documents (100% design level)

#### SCOPE OF WORK

This scope and fee are for the continued civil engineering of the project design from Design Development through Construction Documents efforts. Bid and Construction Support Services (CSS) will be formally scoped at a later date; however, we have included a fee estimate for those efforts for budgeting purposes.

#### **BASE SERVICES**

The base scope of work will include preparation of the civil engineering documents for the project specific designs, including site demolition, erosion control, grading, storm drainage, water service for pedestrian plaza and trail, and vehicular paving and the proposed parking lot for the following design phases.

#### **DESIGN DEVELOPMENT**

The following civil efforts will be provided during design development phase (60% design level):

- Coordination with the project team. We anticipate attending up to 11 meetings, including eight design team meetings, two meetings with the City, and one meeting with Stakeholders to coordinate design efforts
- Prepare Design Development documents and drawings:
  - o Site Demolition Plan
  - Temporary Erosion and Sediment Control (TESC) Plan
  - o Grading and Storm Drainage Plan
  - Utility Service Plan
  - Parking Lot Horizontal Control and Paving Plan
  - Outline of civil technical specifications
- Coordinate civil design elements with the project team. We have included two rounds of review with KPG to coordinate grading design documentation
- Review and comment on cost estimate for civil-related items

#### **PERMIT DOCUMENTS**

The following civil efforts will be provided during permit document preparation (90% design level):

- Coordination with the project team. We anticipate attending up to 11 meetings, including eight design team meetings, two meetings with the City, and one meeting with Stakeholders to coordinate design efforts
- Prepare Permit level documents and drawings:
  - Plans noted under Design Development phase
  - Drainage Technical Information Report (TIR) addressing stormwater management for the project per Department of Ecology (DOE) and City requirements
  - Draft of civil technical specifications
- Respond to two cycles of City, Utility, and AHJ review comments with team consultants' input
- Coordinate civil design elements with the project team. We have included two rounds of review with KPG to coordinate grading design documentation
- Review and comment on cost estimate for civil-related items

#### **CONSTRUCTION DOCUMENTS**

The following civil efforts will be provided during construction document preparation (100%):

- Coordination with the project team. We anticipate attending up to eight meetings, including six design team meetings, one meetings with the City, and one meeting with Stakeholders to finalize design efforts
  - We have included one final round of review with KPG to coordinate grading design documentation
- Finalize civil technical specifications
- Prepare and provide 50% Construction Documents and associated technical specifications for civil design for team coordination
- Participate in one round of value engineering review. Efforts to revise the civil plans will be scoped when the extent of modifications is defined

#### PERMITS ANTICIPATED

The project is anticipated to obtain permits from the City of Port Orchard. Architect (RFM) will lead the building permitting, Landscape, with KPFF support, will lead the Public Works permitting, and KPFF permitting team will lead the SEPA (refer to KPFF's separate proposal relating to permitting efforts). Architect will compile and submit the permits to the City of Port Orchard.

- Architect will be the primary coordinator for the Building and Land Use, if needed, permits associated with the project and we will provide civil supporting documents for the elements relating to these permits. These permits are anticipated to be:
  - Commercial Building Permit, New Construction (CBP)
    - KPFF will provide the civil plans to document the necessary Block Frontage and Site Planning Standards, and necessary Departures pertaining to our scope of work
    - Our drainage report will be submitted with this application
- Architect or Landscape, with civil support, will be the primary coordinator for the site
  related Public Works permits associated with the project, and will receive support from
  the project design team for elements relating to these permits. These permits are
  anticipated to be:
  - Capacity Reservation Certificate (CRC)
    - If a traffic analysis is required, the traffic consultant will provide the necessary documentation
    - A water hydraulic report will be provided by the City if needed for this application

- A sewer hydraulic report will be provided by the City if needed for this application
- Our drainage report will be submitted with this application
- Design team members will provide relevant input and documents, as necessary, to support this application and permit
- Land Disturbing Activity (LDAP), minor or major, depending on earthwork quantities generated by the project
  - Requirements for this permit are very similar to the CBP. We anticipate the documents prepared for that permit will be applied to this permit as well
  - Design team members will provide relevant input and documents, as necessary, to support this application and permit
- Stormwater Drainage Permit
  - Our drainage report and drainage related plans will be submitted with this application, if needed
  - Design team members will provide relevant input and documents, as necessary, to support this application and permit
- KPFF's Permitting team will be the primary coordinator for the SEPA checklist, if needed, and application associated with the project, and we will provide civil supporting documents for the elements relating to these permits.
  - Civil related elements associated with these permits are anticipated to be:
    - Drainage report and drainage and utility related plans
    - Bank estimate of earthwork quantities. This estimate is not intended for cost purposes

#### **ADDITIONAL SERVICES**

The following scope of work is provided for estimating and planning purposes, and is not included in our base fee for this phase of the project work.

#### TASK A: BIDDING AND NEGOTIATION

We will provide bid support for our designs, and we anticipate the following efforts:

- Document and respond to bidder questions about the civil design scope of work
- We anticipate this scope of work will be issued as one phase and packaged for estimating efforts

#### TASK B: CONSTRUCTION SUPPORT SERVICES

We have assumed the project's construction will last approximately 18 months and anticipate approximately 184 hours for the civil design support noted below:

- Review and respond to contractor requests for information (RFIs) and submittals of materials and systems related to civil engineering design elements during construction
- Review material testing and inspection reports, prepared by the Owner's testing agency, related to civil engineering design elements
- Review proposal requests, Architect supplemental instructions, construction change orders, and directives. Prepare and issue revision sketches as needed in support of the proposal requests related to civil design elements for value of work versus construction cost
- Attend up to eight construction site meetings virtually and attend up to four site visits in person for site walks or to prepare and back-check a punch list for the civil related completed work
- Review General Contractor's Record Drawings for conformance to the work observed and the approved change

## TASK C: SWPPP INCLUDE

If required and with support of the Contractor and/or owner, we will prepare the project's Stormwater Pollution Protection Plan (SWPPP) and coordinate the submittal to the DOE to obtain the project's National Pollutant Discharge Elimination System (NPDES) permit. The general contractor and their subcontractors will be responsible for application to DOE and will be responsible for updating the SWPPP plan, as required to meet the permit conditions.

#### TASK D: FUEL TANK LID ADJUSTMENTS DESIGN INCLUDE

If required, we can provide detailed design to adjust the lid elevations of the existing fuel tank lids. The following is a summarized list of assumptions for the proposed work:

- Existing tanks and equipment are fully functional, meet current code requirements, and require no repairs
- Existing tank modifications have a rated maximum burial depth that can accommodate the grade increase of approximately three feet

We have estimated a fee to support these efforts and can provide a detailed proposal should this service be required.

#### **INFORMATION REQUIREMENTS**

- Landscape site plan, in AutoCAD format, for our use as background
- A geotechnical report with recommendations for earthwork, compaction, pavement sections, subsurface drainage, retaining walls, and lateral earth pressures and documentation of infiltration infeasibility if applicable

- If contamination is present on the site, the owner's environmental consultant will provide recommendations for any impacts to the civil-related design
- A final utility and topographic survey and base map in AutoCAD format with Civil 3D surface meeting jurisdictional requirements

#### **ASSUMPTIONS**

- Existing structures and utilities along the shoreline will remain in place and at grade and not require modifications to building structure. Existing utility structures and lids can be adjusted to grade and do not require redesign
- Existing utilities in the adjacent right-of-way have sufficient capacity to support the project, and main extensions or upsizing are not anticipated
- Traffic study, if needed, will be provided by traffic consultant (KPG)
- We have included providing up to two rounds of vehicle turning studies
- Right-of-way frontage improvements are not anticipated
- Variances and street vacations are not anticipated with this project
- All work associated with this project will be considered upland work. In-water work and a Shoreline Development Phasing Plan are not anticipated at this time
- All work outside of the CEC LEED boundary will not be designed to meet LEED requirements
- Revisions to civil design elements and systems initiated by Owner/Architect or the Contractor's team after plans have been approved and permitted can be provided as an additional service and negotiated once the scope of revision is determined
- NEPA documentation or design requirements are not anticipated, but can be provided as an additional service if needed
- If the owner is interested in applying for a FEMA LOMA permit, those effort can be scoped at a later date
- Up to four design meetings will be held within the City of Port Orchard. We anticipate the remaining meetings will be virtual
- The civil designs will be prepared and issued together with the site related permit and construction document packages. We have not included efforts to organize the contract documents for phased permitting or bidding purposes and packages
- Architect will be responsible for deliveries and reprographics of plans for permitting, bidding, and construction plan distribution
- Architect will contract with others for demolition and/or hazardous material abatement of existing structures or elements

- Architect will contract with others for design of power, telephone, gas, illumination, etc.
   We will coordinate the civil design with the designer of these elements and reflect their background drawing (AutoCAD xref) in our design plans
- Landscape Architect will lead the on-site site plan and grading concept development and detail non-standard hardscape, stairs, trails, grass-pavers, custom road surfacing if needed, site walls and revealed heights, and sidewalks finishes
- Coordination with the power and communication utility purveyors for site loads and services, rerouting, or undergrounding of power and communications will be by the project's Electrical Engineer. We will provide horizontal and vertical control for the routing of these utilities based on provided diagrams that also identify number, size, and configuration of duct banks, as well as number, size, and general location of vaults
- Cost estimating for civil design elements is anticipated to be provided by RLB. We will
  review the estimate for civil-related items
- The Contractor will be responsible for preparing, submitting, and obtaining approval of Contractor-prepared Record Drawings from the City of Port Orchard and AHJ
- Pumping design, if needed, will be designed by the mechanical engineer, or the design/build subcontractor
- Remote fueling detailing and final design will be designed by specialized consultant that will be brought onto the project once scope is determined

#### **SCHEDULE AND SEQUENCE**

 We have assumed that the design work of this proposal will be substantially completed within 2024 and have assumed the following approximate durations by phase. We have not included allowances for schedule modifications or delays.

Design Development 3 months
 Permit Documents 3 months
 Construction Documents 2 months

- We assume the related projects in this vicinity will be completed in the following sequence:
  - Lift Station
  - Bay Street ROW and utility improvements
  - Kitsap Bank Headquarters
  - CEC building and shoreline improvements
  - Orchard Plaza improvements (may be concurrent with CEC project work)

Lorie Limson Cook January 4, 2024 Page 8

#### **FEE**

We propose to provide the above services for the following lump-sum (LS) or hourly not to exceed (HR) fees in accordance with the contract, which are made part of this proposal.

#### **BASIC SERVICES**

Civil Tasks	Lump Sum	Design Fees				
Design Development	ĹS	\$ 38,900				
Permit Documents	LS	\$ 46,800				
Construction Documents	LS	\$ <u>33,900</u>				
Total Basic Services		\$ 119,600				

#### **ADDITIONAL SERVICES\***

Tasks	Hourly/Lump Sum	De	Design Fees						
A. Did Compart	- 10	φ.	10 200	SCOPE UP TO CD					
A. Dia Support	LO	Ψ	10,200						
B: CSS	LID	Φ.	27 000	PHASE ONLY					
D. 000	TIIN	Ψ	27,000						
C: SWPPP	LS	\$		INCLUDE					
D: Fuel Tank Adjustment	HR	\$	14,500	INCLUDE					

<sup>\*</sup>Estimated for budgeting purposes.

## **TOTAL CONTRACT FEE \$139,500**

Reimbursable expenses may include deliveries and reprographics of plan sets up to permit approval, and will be billed at our cost. We recommend an allowance of \$500.

We appreciate the opportunity to contribute to the success of Port Orchard's Community Event Center project redevelopment. If you have any questions regarding this proposal, please contact me at (206) 926-0549.

Sincerely,

Jenifer Clapham, PE

Principal

**Enclosures** 

2000522



January 5, 2024

Lorie Limson Cook Rice Fergus Miller 275 Fifth Street, Suite 100 Bremerton, WA, 98337

Subject:

Port Orchard Community Event Center – Orchard Plaza

Structural Engineering Proposal

#### Dear Lorie:

Thank you for inviting us to propose on the Orchard Plaza project. We value our relationship with you, and Port Orchard, and are looking forward to improving the downtown waterfront experience.

#### **PROJECT DESCRIPTION**

This proposal is based on the civil schematic design plan provided by KPFF, dated December 14, 2023, and the 30% schematic design plan by KPG Psomas, dated December 15, 2023.

KPFF will provide structural engineering services for the following items:

- Bioretention curbs and retaining walls associated with landscaping and grade changes on site.
- Support or anchorage of seating on concrete walls and slabs.
- Design of (3) boardwalks over retention areas.
- Design of concrete stair on grade.
- Design of catenary light pole foundations and verification of anchorage dimensions provided by manufacturer.
- Design of light pole foundations (assuming two unique details).
- Design of swing gate foundations and anchorage.
- Design of permanent raised stage, including overhead structures for lighting support. The stage is assumed to be open air without a roof or covering.
- Design of one (1) steel shade structure and foundations.
- Bench swing support and foundations (swing is assumed by others)
- Handrail support details (assuming two unique details).
- Foundations for public art installation.

KPFF will provide structural drawings and calculations for above scope suitable for permit and construction to the city of Port Orchard.

#### SCOPE OF WORK

Our basic scope of structural design services for the project consists of the following:

- Design Development Phase: Produce preliminary framing plans and typical detail. Attend design team coordination meetings.
- Construction Document Phase: Produce final framing plans and structural details.
   Coordinate with other disciplines on structural elements of design. Provide plan check corrections and consultation with Building Department. Attend design team coordination meetings.
- Construction Support Services: Review shop drawings, respond to field questions and provide phone consultation to general contractor on items related to our structural scope. Make one site visit to observe construction progress.

#### **ASSUMPTIONS**

- Modification to the waterfront structures and lift station are excluded from this proposal.
- Slabs, sidewalks, and ramps are assumed to be designed by others and not in the structural scope of work.
- We assume one permit will be issued for the structural scope (no phasing), which will be issued after the completion of construction documents.
- As-builts or record drawings are excluded from this proposal.
- Architectural screen panels and supports are excluded from this proposal.
- Bollards are assumed to be bidder design and are excluded from this proposal.
- Foundation elements are assumed to be shallow foundations per forthcoming geotechnical recommendation for site elements.

#### **SCHEDULE**

The schedule for this project is under development. KPFF's proposal is based upon the following durations:

Design Development 3 months
Construction Documents/Permit 3 months
Construction Support 6 months

Lorie Limson Cook January 5, 2024 Page 3

## **FEES**

We propose to provide the above services for the following lump-sum fees.

Fee Total	<del>\$ 56,600</del> \$40,100
Construction Support Services	<del>16,500</del>
Construction Documents/Permit	27,800
Design Development	\$ 12,300

We appreciate the opportunity to work with you on this project. If you have any questions concerning this proposal, please feel free to call me at (206) 622-5822.

Sincerely, /

Jora Lehrman, PE, SE

Associate

JBL:

# Orchard Plaza Enhancements Project – FINAL DESIGN Amendment 11

#### **Urban Design, Landscape Architecture and Lighting Design**

KPG Psomas Scope of Work
1.5.24

#### Description

This scope is to provide urban design, landscape architecture and lighting design support to RFM and the project team for the Orchard Street Plaza Project final design, associated with the Port Orchard Community Events Center (POCEC), Shoreline Improvements, Marina Pump Station Improvements, and related projects. KPG Psomas's effort shall include project coordination, Design Development (~60%), Permit Documents (~90%), Construction Documents (100% design). The extent of the improvements for this effort are reflected in the graphic below.



#### **Project Description**

The final design for the Orchard Street Plaza Project consists of unifying and coordinating the Orchard Plaza Enhancements Project with multiple design projects including:

- Community Event Center/Library site (POCEC)
- Community Event Center Shoreline Improvements
- POCEC sidewalk frontage along Bay Street/SR 166)
- Future Kitsap Bank along Orchard Avenue
- Waterfront Trail from Port St ROW to Frederick St ROW
- Waterfront Trail property back of walk restoration and property owner coordination

The Orchard Plaza Enhancements Project will provide design plans and specifications including the following:

- The Orchard Street ROW
- The area surrounding the Marina Pump Station Improvements as well as Marina Pump Station Improvements that need to be revised for the Plaza design.
- The waterfront trail from the CEC site to the west side of the Frederick Avenue ROW
- The public parking lot to the west of Frederick Avenue ROW

#### **ASSUMPTIONS**

- 8-month project duration for Final Design.
- This duration assumes the following project construction sequencing:
  - 1. Marina Pump Station
  - 2. Bay Street ROW and utility improvements
  - 3. Kitsap Bank Headquarters
  - 4. CEC building and shoreline improvements
  - 5. Orchard Plaza improvements (may be concurrent with CEC project work)
- As-builts for the previous listed projects may be needed to complete final construction documents for bidding the Plaza improvements.
- RFM will manage the project, client communication and coordination, scheduling, permitting, submittal compilation, and submittal to the appropriate reviewing agencies.
- The KPG Psomas scope of work supports inherent management responsibilities, including invoicing, client, project, and internal coordination meetings.
- KPFF will provide civil and structural design.
- Rider Levett Bucknall (RLB) will provide the cost estimating for all Plaza related costs. KPG
  Psomas will coordinate with RLB and provide design details and specs as needed for RLB to
  develop the cost estimate.
- Sider Byers will provide electrical design for power sources and transformer requirements such as Electric Vehicle (EV) stations, portable stage, entertainment, and/or food trucks. KPG Psomas will provide exterior plaza site, catenary and specialty lighting design.
- This project will coordinate with and provide refinement at the interfaces of the multiple projects including:
  - 1. Coordination with future Bay Street SR166 design

- 2. Coordination with future Kitsap Bank site design (Kitsap Bank, KPFF and GGLO) along west and north perimeters
- 3. Coordination with the Marina Pump Station Improvements final conditions (RH2 and Anchor QEA)
- 4. Coordination of Port of Bremerton sidewalk and adjacent marina facilities.
- Assumes the Marina Pump Station Improvements construction will not be completed and no asbuilts will be available for this design effort.
- Assumes the Marina Pump Station will be under construction and real-time coordination will be required to integrate future Plaza improvements.
- Assume the areas outside of the CEC LEED boundary will not be designed to LEED requirements.

#### Orchard Avenue Plaza

- Site design will be based upon future programming and activation to be identified with the City.
- Site work, grading, storm drainage & infiltration design will be provided by KPFF. KPFF will coordinate site work, grading and storm drainage design with KPG Psomas as it affects any landscape or hardscape elements.
- Green Stormwater (bioretention) facilities will be designed by KPFF based on design collaboration with KPG Psomas. Bioretention planting and urban design provided by KPG Psomas.
- KPG Psomas shall provide design and coordination for the following:
  - 1. Coordination with KPFF for final grades throughout project area, including parking area and Waterfront trail.
  - 2. Design for new pavement area for the plaza (Grades will be coordinated between KPG Psomas and KPFF), including parking area and Waterfront trail.
  - 3. Landscape Design
  - 4. Irrigation for all planted areas
  - 5. Urban design plaza elements, from "off the shelf" to custom
  - 6. Coordination for future Public Art Integration
  - 7. Coordination and design as required for site, specialty, and decorative illumination.
  - 8. Electrical coordination for outlets, electrical bollards, etc.
  - 9. Public parking lot design confirmation and refinement as needed.
- RFM/KPFF will provide structural design for all site elements as needed, including for foundations, walls, structures.
- KPFF will provide site demo and erosion control plans.
- Electrical design will be provided by Sider Byers.
- Project deliverables for progress and final submittals to RFM will be in KPG Psomas AutoCAD 2022, standards including City of Port Orchard project title blocks, half-size 50% scale, 11x17, and full-size, 22x34, electronic copies.
- Project specifications will be a combination of CSI and WSDOT / APWA standard specifications, current edition.
- RLB will provide project cost estimates.

#### **SCOPE EXCLUSIONS**

The following are excluded from this Scope of Work. At written City request, KPG Psomas may provide the following services as an amendment to the contract.

- Project and Permit submittal compilation and/or submittal to the City or other agency.
- Survey and utilities locate services.
- Fueling tank facility/utility design.
- Transformer design.
- Construction sequencing/staging plans.
- Additional permitting support not identified in this scope.
- Public Engagement (meeting attendance, graphics and presentation materials).
- Additional City Council and/or Steering Committee Presentations or meetings (meeting attendance, graphics, and presentation materials) not identified in this scope.
- Cost estimates.
- Bid and Construction Support.
- Traffic study

#### **KPG PSOMAS SCOPE OF WORK**

#### TASK 1 - PROJECT COORDINATION, MEETINGS AND ADMINISTRATION FOR FINAL DESIGN

**Task 1 Objective:** Coordination with design team (City, RFM, KPFF, Sider & Byers, and other project team consultants), KPG Psomas project team design and coordination meetings and development of invoices. Assuming an average of weekly meeting over the course of the project.

#### Task 1 Work Elements:

- 1.1 Project coordination (8 months), including invoicing and project administration.
- 1.2 Design coordination meetings, assuming an average of (1) virtual meeting per week over the course of the 8-month period.
- 1.3 Council presentations and Stakeholder coordination meetings (Kitsap bank/GGLO and the Marina), up to 4 meetings total.
- 1.4 Property owner coordination time as needed to tie Plaza improvements and grades to the existing properties between the proposed Waterfront Trail and the shoreline.
- 1.5 (1) site visit to review existing site conditions and/or current construction condition of the Marina Pump Station.

#### Task 1 Deliverables:

- Meeting agendas and minutes, including summary of decisions made/needed resulting from design coordination meeting.
- Monthly progress reports including invoices, emailed.

## Task 1 Assumptions:

- RFM will provide timely and immediate notification of any work items or project developments constituting a change to the written scope of work and fee budget estimate and schedule.
- All regular project meetings, workshops, and site visits will be conducted by the Prime Consultant Project Manager or discipline specific Project Manager.

#### TASK 2 – Design Development (~60% Design)

**Task 2 Objective:** KPG Psomas will provide Design Development plans, details, outline specifications, cutsheets, and coordination with RLB (for cost estimating), to RFM for City review of the urban design, lighting and landscape elements associated with Orchard Plaza.

Site elements to be specified and detailed, identified at Schematic Design, include the following, additional or different elements may be determined during final design:

- Custom shade and platform structures\*
- Bioretention planters\*
- Native landscaped planters
- Seat walls\*
- Plaza decorative pavement, decorative concrete and pavers\*
- Waterfront Trail treatments
- Wood deck platform design\*
- Plaza furniture
- Specialty lighting, catenary lighting, decorative site lighting\*
- Holiday tree tie-down system\*
- Bollards, power bollards, and security gates\*
- Locating electrical for Plaza event use
- Trail wayfinding
- Wood boardwalk at bioretention areas\*
- Railings

#### 60% plan set will include:

- Urban Design/Site Elements Plan (1 sheet)
- Urban Design/Site Elements Details (6 sheets)
- Site Paving Plan (1 sheet)
- Planting Plan (preliminary plant schedule) (1 sheet)
- Planting Details (2 sheets)
- Irrigation Plan (POC information) (1 sheet)
- Irrigation Schedule and notes (preliminary) (2 sheets)
- Illumination Design Report (draft)
- Site and Specialty Lighting Plan (1 sheet)
- Site and Specialty Lighting Details (2 sheets)

#### Task 2 Work Elements:

2.1 Response to reviews from Schematic Design (30% design) submittal for the SSDP permit and cost estimating. Design revisions and project coordination effort for reviewing the project teams submittal, providing feedback to project team sub consultants such as electrical and civil design

<sup>\*</sup>KPFF will provide structural and engineering design for these elements.

- and revising site plan base to provide to project team to move into Design Development (60%) design.
- 2.2 Urban Design and Landscape Architecture. Prepare plans and details for the Orchard Plaza extents including site elements and design, landscaping plantings, irrigation, outline specifications and cost estimate support.
- 2.3 Site and Illumination Design.
  - Prepare an Illumination draft analysis report, providing initial illumination plan layout.
  - Coordination of access to power and lighting design with design improvements provided in the scope of the original CEC design contract.
  - Specifications outline
  - Cost estimation coordination with RLB
- 2.3 Presentation Graphics. Update illustrative plan (from 30% design) and develop a 3-D working model of the Plaza to be used as a design tool to vet final design details as well as capture viewports to be utilized as presentation graphics for Council and stakeholder updates, funding proposals, and general project coordination.

#### Task 2 Deliverables:

- 60% coordination and review deliverables include: outline CSI and WSDOT specifications, inprogress plan set.
- Illumination Draft Report
- Presentation graphics, pdf or jpg

#### Task 2 Assumptions:

- The City will provide formal review comments of a consolidated 60% in-progress plan set.
- All comments received during the submittal review will be addressed on the next submittal.
- RLB will develop the Landscape Architecture and Site Lighting costs. KPG Psomas will provide RLB
  with plans and specifications for RLB to compile associated costs. KPG Psomas will provide support
  if RLB needs more specific guidance on design intent and materials.
- RFM shall provide formatted specification document example.

#### TASK 3 – Permit Documents (~90% Design)

**Task 3 Objective:** KPG Psomas shall provide submittal materials to RFM for permit applications and final design package. KPG Psomas shall develop the landscape architecture, urban design and lighting design for the Orchard Plaza which shall be provided to RFM to be added to the permit set. The Permit documents, including plans and specifications, will be provided for permitting submittal and final City review for comments.

Site elements to be specified and detailed, identified at Schematic Design, include the following, additional or different elements may be determined during final design:

- Custom shade and platform structures\*
- Bioretention planters\*
- Native landscaped planters

- Seat walls\*
- Plaza decorative pavement, decorative concrete and pavers\*
- Waterfront Trail treatments
- Wood deck platform design\*
- Plaza furniture
- Specialty lighting, catenary lighting, decorative site lighting\*
- Holiday tree tie-down system\*
- Bollards, power bollards, and security gates\*
- Locating electrical for Plaza event use
- Trail wayfinding
- Wood boardwalk at bioretention areas\*
- Railings

#### 90% Plan set will include:

- Urban Design/Site Elements Plan (1-2 sheets)
- Urban Design/Site Elements Details (6-8 sheets)
  - o Pump Station Improvements
  - o Waterfront Trail and back of trail improvements
  - o Plaza site elements
  - o Biorientation planters
  - o Plaza shade structures
- Site Paving Plan (including Waterfront Trail) (1 sheet)
- Site Paving Details (2 sheets)
- Site Layout Plan (1-2 sheets)
- Site Layout Stationing Points (1 sheet)
- Planting Plan (1 sheet)
- Planting Schedule, Details and Notes
- Irrigation Plan
- Irrigation Schedule, Details and Notes
- Site and Specialty Lighting Plan
- Site and Specialty Lighting Details
- Illumination Design Report

#### Task 3 Work Elements:

- 3.1 Urban Design and Landscape Architecture. Provide 90% plans and specifications for permitting.
- 3.2 Site Lighting. Complete illumination plans, wiring and details. Coordinate foundation design with structural engineer (KPFF).
- 3.3 Update presentation graphics as needed.

#### Task 3 Deliverables:

- 90% Permit plans, CSI and/or 2024 WSDOT specifications.
- Final Construction Document package

<sup>\*</sup>KPFF will provide structural and engineering design for these elements.

- Cost Estimate items to RLB.
- Illumination Final Analysis Report

#### Task 3 Assumptions:

• RFM shall compile deliverable documentation of the plans and specifications and provide the package to the City or reviewing agency.

#### **TASK 4 - Construction Documents (100% Design)**

Following permit submittal review KPG Psomas shall develop the landscape architecture urban design and lighting design to 100% design documents based on 90% City comments funding sources and phasing (if needed), assuming no major design changes. The 100% design set will be provided to RFM to be added to the set.

#### Task 4 Work Elements:

4.1 100% final design plans and specifications, based on 90% review comments, for landscape architecture, urban design, irrigation, and illumination.

#### Task 4 Deliverables:

- 100% design drawings and CSI and/or 2024 WSDOT specifications in digital pdf format.
- Cost Estimate items to RLB.
- Illumination Final Analysis Report

#### Task 4 Assumptions:

- RFM shall compile deliverable documentation of the plans and specifications and provide the package to the City.
- City will provide direction on how the package should be structured based on funding sources and payment.
- Contract drawings shall be sized for printing and delivered to RFM in .pdf format.

#### **FUTURE OR ADDITIONAL SERVICES**

RFM or the City may require additional services of the Consultant team, including KPG Psomas. These services could include other work tasks not included in this scope of work or tasks listed above.

The scope of these services will be determined at the sole discretion of the City and RFM. At the time these services are required, KPG Psomas shall provide a detailed scope of work and estimate of costs. KPG Psomas shall not proceed with the work until RFM has authorized the work and issued a notice to proceed.

#### Final bid documentation compilation, bid support and negotiation:

• Update 100% as needed to update and package the set into a bid ready construction document set.

- Revise plans to update 100% design documents to reflect construction phasing or a different funding boundary than what established for final design.
- Provide bid support for our designs.
- Document and respond to bidder questions.

## **Construction Support Services:**

• Review and respond to contractor requests for information (RFIs), material mock-ups, and submittals of materials and systems related to urban design, lighting, landscape and irrigation design elements during construction.

**Project Construction Administration** 

Public and Stakeholder engagement support

**Funding support** 

**Traffic design** 



# **EXHIBIT B**

PRIME CONSULTANT COST COMPUTATIONS

Client: RFM / City of Port Orchard **Project Name:** Orchard Plaza Final Design

KPG Psomas Inc. Project Number: 20040-Community Events Ctr - Ammendment 11

Date:		1/5/2024																-
							Labor	Hour Es	timate									
Task No.	Task Description	Principal	Engineering Manager I	Senior Engineer I	Project Engineer I	Design Engineer II	Urban Design Manager	Project Landscape Architect I	Project Landscape Architect II	Landscape Designer I	Landscape Designer II	Senior CAD Technician	Business Manager	Office Admin	Total Hours and Labor Cost Computions by Task			
		\$290.00	\$226.00	\$194.00	\$166.00	\$139.00	\$220.00	\$155.00	\$166.00	\$105.00	\$116.00	\$139.00	\$177.00	\$110.00	Hours		Totals	
Task 1	- Project Coordination, Meetings and Adm	inistrati	on													•		
1.1	Project Coordination and Invoicing (8 months)								16				4	4	24	<b> </b> \$	3,804.00	1
	Design Team Coordination - weekly (32 meetings)	4	8			8			40		32		·	<u> </u>	92	\$	14,432.00	1
	City and Stakeholder presentations (4 meetings)	8							8		6				22	\$	4,344.00	
	Property and adjacent property owner coordination	2							8		8				18	\$	2,836.00	
	Site Visit (1)	4	4			4			4		4				20	\$	3,748.00	
	Task Total	18	12	0	0	12	0	0	76	0	50	0	4	4	176	\$	29,164.00	50% DD / 50% CI
Tack 2	- Design Development (~60% design)	10	12			12			70				7		170	ΙΨ	23,104.00	\$14,582 EACH
	• • • • • • • • • • • • • • • • • • • •							1 40	0.4	40	40			T T		Ι φ	10.701.00	
	Response to reviews from 30% design	•		4			20	16	24	16	40	40			96	\$	12,784.00	
	Landscape Architecture / Urban Design	8	40	4		400	32	24	120	60	160	16			424	\$	60,860.00	
	Site and Illumination Design and Report		16			100			0		40				116	\$	17,516.00	
2.4	Presentation graphics	•	40		•	400	20	0.4	8	00	40	40			48	\$   •	5,968.00	DD
T 1 0	Task Total	8	16	4	0	100	32	24	128	60	200	16	0	0	588	\$	84,344.00	DD
	- Permit Documents (~90% design)																	
	Landscape Architecture / Urban Design	16		4	24		32	20	80	40	210	8			434	\$	62,492.00	
	Site and Illumination Design and Updated Report		32			140									172	\$	26,692.00	
3.3	Presentation graphics (updates)								4		24				28	\$	3,448.00	
	Task Total	16	32	4	24	140	32	20	84	40	234	8	0	0	634	\$	92,632.00	CD
	- Construction Documents (100% design)																	
4.1	100% Design	4	4			32	8	12	40	20	40	2			162	\$	23,790.00	
	Task Total		4	0	0	32	8	12	40	20	40	2	0	0	162	\$	23,790.00	CD
	Total Labor Hours and Fee	46	64	8	24	284	72	56	328	120	524	26	4	4	1,560	\$	229,930.00	DD \$98,926 CD \$131,004
				R	eimburs	able Dire	ct Non-	Salary Co	osts									CD \$131,004
														ige at curre			100.00	
													Re	production	Allowance	\$	-	
													Total Re	imbursable	e Expense	\$	100.00	
													N	lanagemer	nt Reserve	\$	-	]
													Total E	stimated	Budget	\$	230,030.00	

SIDER + BYERS

MECHANICAL + ELECTRICAL ENGINEERS

Ms. Lorie Limson Cook Rice Fergus Miller 275 Fifth Street, Suite 100 Bremerton, WA 98337

Project: Orchard Plaza – DD thru CD

**Electrical Engineering Proposal** 

Dear Lorie:

The Orchard Plaza project is the area adjacent to the POCEC and off Orchard Street abutting the bank and harbor. This area is being developed into a community space which can be used for multiple functions. Some of the functions may include Christmas tree lighting, farmers market, car show amongst other ideas.

# Scope of Work

 <u>Design Development.</u> This phase includes preliminary discussions of lighting fixtures and power requirements with the Landscape Architect and Architect to be presented to owner for their input/approval.

During this phase, we will coordinate with the owner, RFM, civil engineer (as needed), and landscape architect. This will include developing space planning requirements for the electrical service gear and equipment.

S+BA drawings will include device/lighting layouts per Landscape Architect direction. Where appropriate, these drawings will include scope of work and general systems intent.

We include up to 3 virtual meetings during this phase.

There will be one submittal of deliverables during this phase.

- 2. <u>Electric Utility Application:</u> We will develop initial electrical loads and prepare an initial one-line electrical riser diagram for the plaza infrastructure. We will start the application process and work with local utility. This utility application can be submitted when significant information (power loads, etc.) is obtained.
- 3. <u>Contract Documents:</u> Develop and coordinate Contract Documents (plans and specifications) under the proposed project schedule for electrical systems. Permit submittal will be by the electrical contractor, which is a requirement of the AHJ.

We include up to 4 virtual design team meetings.

Make any permit check corrections required by the local/city building department and other AHJ's. However, submittal to building department and other AHJ's, will not be by S+BA.

Orchard Plaza
DD thru CD Electrical Proposal
January 16, 2024

#### **Fees**

Phase	Fee	Fee Type	
Design Development	\$ 24,000.00	Fixed	
Construction Docs	\$ 40,000.00	Fixed	CD PHASE
Electric Utility Application	\$ 18,000.00	Hourly	CD PHASE

Any other additional services (if required) will be billed at our current hourly rates, as follows.

Principal/Director: \$180.00 Senior Engineer: \$160.00 Project Engineer: \$150.00 CAD Technician: \$100.00

#### **Assumptions**

- 1. Plaza area lighting and adjacent municipal street lighting will not be by S+BA. This work will be completed by others.
- 2. Electrical/Lighting/Low voltage scope of work includes the following:
  - a. Design branch power systems throughout the plaza to accommodate programming such as Farmers Market, Community Festivals/Events, musical performances, holiday lighting, etc.
  - b. Coordinate with the lighting design consultant to provide branch circuit power to the various lighting elements planned for the Plaza area.
  - c. Design a lighting controls system for automatic operation of the various Plaza lighting elements.
  - d. Provide infrastructure for EV Charging facilities. We anticipate 4 charging stations total (2 new and 2 existing to be re-fed).
  - e. Data/telecom, CCTV, building entry, access control coordination/basis of design for design build contractor.
  - f. Bidder design performance criteria in specifications.
  - g. We include providing preliminary drawings showing equipment and device location for bidding by the design build low-voltage sub-contractor.
  - h. We have excluded any, and all work in the right of way, including but not limited to utility work, street crossings, and street lighting. Any design drawings, specifications, coordination, etc. required for work in ROW we have assumed will be by Others.
- 3. The above fees do not include interior or exterior lighting photometrics or street lighting design.
- 4. All owner and design team meetings will be attended virtually.
- 5. The project will be permitted under the 2021 versions of the applicable Energy Codes and the 2023 version of the National Electrical Code with State and local amendments.
- 6. Copying, printing and delivery of MEP documents for design-team coordination are included as Basic Services. Printing and associated costs for submittal to Owner, for bidding or permit(s) or printing of drawings of disciplines other than mechanical will be reimbursable.
- 7. Our fees may be renegotiated if design phase begins after July 2024 and/or construction starts after April 2025.

If the preceding is satisfactory, please sign the signature block below and email a PDF of this letter back to us. An AIA contract is also satisfactory. We look forward to the design and working with RFM and with the RFM team.

Orchard Plaza DD thru CD Electrical Proposal January 16, 2024	
Sincerely,	
Sider + Byers Associates, Inc.	
Charles 12	
Dana Fontes, P.E, Principal	
Accepted this day of	2024
Rice Fergus Miller	
Ву	Officer and Title



Rider Levett Bucknall 101 Stewart Street Suite 301 Seattle, Washington 98101

T: +1 206 441 8872

KM: SEASVR/Fee Proposals 2024/SKCEC January 16, 2024

Lorie Limson Cook Associate Principal Rice Fergus Miller 275 5<sup>th</sup> Street, Suite 100 Bremerton, WA 98337

Dear Ms. Cook:

## SOUTH KITSAP COMMUNITY EVENTS CENTER - COST MANAGEMENT SERVICES

Thank you for inviting us to submit a Fee Proposal for the provision of continued construction cost management services on this project.

We understand the scope of these additional services are to include

- DD Level Estimate for CEC Shoreline Restoration
- DD Level Estimate for the CEC Plaza Site
- CD Level Estimate for the CEC Plaza Site

# **Scope of Our Services**

Our Fee for providing the construction cost management services will be as follows:

		<u>Amount</u>
•	DD Level Estimate for CEC Shoreline Restoration	\$3,800
•	DD Level Estimate for the CEC Plaza Site	\$4,000
•	CD Level Estimate for the CEC Plaza Site	\$5,000

Our fee provides for the provision of Construction Cost Management Services that are reflective of the documentation provided to us for the architectural and structural components of the work. Our fee does not include for reviewing VE/cost saving exercises or new pricing exercises or amendments to pricing exercise necessitated by additional changes in the assessment report.

Should you require us to undertake additional work then, in lieu of agreeing a fee before we commence work, we will charge you on a time charge basis. Our hourly rates for calendar year 2020 are:

	<u>\$/hour</u>
Director	285.00
Associate Principal	260.00
Associate	255.00

RLB.com

January 16, 2024

Yours sincerely,

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# SOUTH KITSAP COMMUNITY EVENTS CENTER - COST MANAGEMENT SERVICES

Senior Cost Manager	240.00
Cost Manager	220.00
Cost Estimator	185.00
Technical Assistant	125.00

Although we do not envisage incurring any additional expenses, our fee also excludes out-of-pocket expenses (such as airfares, color photocopying, reproduction costs associated with other consultants' documents, costs associated with printing drawings if required to prepare estimates, long distance telephone calls, and freight charges), which are to be reimbursed at the actual cos to us plus a 10% administration charge. We have assumed that we will be providing electronic files to be distributed as needed.

Our involvement is strictly limited to this exercise therefore we require closure of this account at the completion of it. We enclose our standard Conditions of Engagement and Payment of Accounts which will apply to this project.

Should you have any questions or would like to discuss some aspect of this proposal, please feel free to contact me.

Kevin Mitchell	
Executive Vice President	
Rider Levett Bucknall Ltd	
Enclosure	
	Accepted:
	D ''' (T''
	Position/Title:

Date:

January 16, 2024

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# SOUTH KITSAP COMMUNITY EVENTS CENTER - COST MANAGEMENT SERVICES

# CONDITIONS OF ENGAGEMENT AND PAYMENT OF ACCOUNTS

- Rider Levett Bucknall Ltd (Rider Levett Bucknall) services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing professionals performing similar services in the same locality, and under the same or similar circumstances and conditions. Rider Levett Bucknall makes no other warranties, express or implied, with respect to the services rendered.
- 2. The scope of Rider Levett Bucknall services shall consist of and be limited to only those activities identified in our proposal unless specifically agreed to otherwise in writing, acknowledged, and executed by Rider Levett Bucknall and the Client for whom Rider Levett Bucknall is performing services for (Client).
- 3. Client understands that fees owed to Rider Levett Bucknall are payment for time expended by Rider Levett Bucknall on behalf of Client and must be paid. As a result, payment is not contingent upon any project outcome that may include but is not limited to: a cost estimate being under a project budget; whether a project commences; whether a project is completed; and/or, when Rider Levett Bucknall is providing advisory/litigation support services based on any outcome of a deposition, mediation, arbitration, litigation, or any other form of adjudication.
- 4. Accounts/invoices will be submitted at monthly intervals unless otherwise agreed to in writing. Payment shall be made within 30 days of the date of the invoice unless a specific payment term is agreed to in writing.
- 5. Rider Levett Bucknall services will be billed in accordance with our proposal (i.e., whether on a fixed fee, percentage of construction cost or hourly). Work that is performed on an hourly basis, and any additional work not included in our scope/proposal, will be billed at the stated hourly rates contained in our proposal.
- 6. Rider Levett Bucknall shall be reimbursed for all reimbursable expenses reasonably incurred in the performance of its services. Reimbursable expenses may include but are not limited to: travel and subsistence expenses for out-of-town travel (subject to Client's approval); long distance telephone (including cellular/mobile charges and facsimile transmissions); costs of postage, overnight express mail, and delivery services; and/or, printing or copying of drawings and other documents (including those received electronically). Unless otherwise agreed to in writing, reimbursable expenses will be marked up 10% above cost.
- 7. Overdue accounts may have interest added at the rate of 1.0% per month on the outstanding balance. In the alternative, Rider Levett Bucknall, in its sole judgment, reserves the right to cease its work to any degree in whole or in part in the event the Client has not provided timely payment.
- 8. Should the original dates for completion of Rider Levett Bucknall services be delayed by more than 20% for any cause beyond the control of Rider Levett Bucknall, then additional fees for services carried out after the original service period will be negotiated.

January 16, 2024

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# SOUTH KITSAP COMMUNITY EVENTS CENTER - COST MANAGEMENT SERVICES

- 9. When Rider Levett Bucknall officers, principals, directors, employees, agents, and independent professional associates/consultants are providing testimony at any hearing or trial, all fees must be current before any testimony is provided by Rider Levett Bucknall unless prior written arrangements have been made. A retainer may be required prior to the commencement of any preparation for testimony. The amount of the retainer is determined by Rider Levett Bucknall and commensurate with the expected work effort.
- 10. Instructions received by Rider Levett Bucknall from the Client's agent or attorney shall be deemed to be the Client's instructions. The Client understands that their agent, attorney, or other consultants may request that Rider Levett Bucknall perform certain tasks in association with the scope of Rider Levett Bucknall services under this appointment/Agreement, that Rider Levett Bucknall will comply with these requests unless written direction is received regarding who is/are the specific persons who may direct Rider Levett Bucknall scope of work, and that Rider Levett Bucknall will bill Client for the work associated with instructions received by Rider Levett Bucknall from the Client's agent or attorney.
- 11. The Client or its agent will provide Rider Levett Bucknall with all documents, drawings, specifications and instructions necessary to enable Rider Levett Bucknall to carry out the professional duties Rider Levett Bucknall was/is engaged to perform. Rider Levett Bucknall shall not in any way be held responsible for any errors, omissions, or discrepancies in the documents provided or for delays resulting therefrom.
- 12. Rider Levett Bucknall shall not be held responsible for any error or discrepancy that may arise as a result of any difference between documents issued to a contractor or sub-contractor and the documents issued to Rider Levett Bucknall for the purpose of carrying out the professional duties Rider Levett Bucknall was/is engaged to perform. Any costs incurred in the preparation of amending documents necessary to correct any such differences shall be the responsibility of the Client.
- 13. Reports, Feasibility Studies, Estimates, Bills of Quantities or any other document(s) prepared by Rider Levett Bucknall shall not be used on any project not specifically covered by this assignment, appointment, or Agreement, and as permitted by law. Copyright in all Feasibility Studies, Estimates, Reports and Bills of Quantities prepared by Rider Levett Bucknall will remain the property of Rider Levett Bucknall.
- 14. Rider Levett Bucknall will maintain any work product, information gathered, or documents provided to us by Client unless otherwise directed in writing by Client.

January 16, 2024

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# SOUTH KITSAP COMMUNITY EVENTS CENTER - COST MANAGEMENT SERVICES

- 15. Client may, by written instruction, make changes to the scope of Rider Levett Bucknall services. To be effective, written direction must be provided in the form of a change order and signed by both parties. In the event that Rider Levett Bucknall performs work at Client direction prior to the execution of any change order, Client hereby agrees to compensate Rider Levett Bucknall for such effort on an hourly basis in accordance with the stated hourly rates contained in our proposal.
- 16. To the fullest extent permitted by law, Rider Levett Bucknall agrees to indemnify and hold the Client harmless from and against any liabilities, claims, damages and costs arising out of or resulting from Rider Levett Bucknall services, but only to the extent caused by the negligent acts of Rider Levett Bucknall in the performance of services under this appointment/Agreement.
- 17. Client and Rider Levett Bucknall hereby acknowledge and expressly agree to waive any and all claims against each other for consequential damages arising out of or relating to this appointment, Rider Levett Bucknall services under this Agreement, and/or due to either party's termination of this Agreement. This waiver includes but is not limited to claims and/or damages for: rental expenses; losses of use; loss of income; loss of profit or anticipated profit; loss of business opportunities; financing costs; business and reputation; loss of productivity; escalation costs; general or extended general conditions costs; and/or, diminution in property value.
- 18. The Client and Rider Levett Bucknall waive all rights against each other, including the officers, principals, directors, employees, agents, and independent professional associates/consultants of the other, for damages to the extent that the damages sustained by either party are covered by insurance.
- 19. To the fullest extent permitted by law, Client acknowledges and expressly agrees that the total maximum liability in the aggregate of Rider Levett Bucknall and that of Rider Levett Bucknall officers, principals, directors, employees, agents, and independent professional associates/consultants, and any of them, to Client and any one claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Rider Levett Bucknall services, the project, or this appointment/Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of Rider Levett Bucknall or Rider Levett Bucknall officers, principals, directors, employees, agents, and independent professional associates/consultants, or any of them, shall be limited and shall not exceed the total compensation received by Rider Levett Bucknall under this appointment/Agreement.
- 20. Either party may terminate this agreement at any time provided 30 days advance written notice is given. In the event of termination by either party all outstanding fees and costs shall be paid in accordance with the proposal fee schedule and these conditions of engagement. Additionally, in the event of termination by either party, and payment of all outstanding fees and costs through the date of termination has been made, Rider Levett Bucknall shall provide copies of its work product associated with the matter that Rider Levett Bucknall is providing services for.

January 16, 2024

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# SOUTH KITSAP COMMUNITY EVENTS CENTER - COST MANAGEMENT SERVICES

- 21. In the event of any dispute between Client and Rider Levett Bucknall regarding this Agreement, the services rendered by Rider Levett Bucknall, or the fees and/or expenses billed for services rendered. Client agrees that such dispute shall be resolved in the following manner unless otherwise agreed to in writing between Rider Levett Bucknall and Client: (1) by attempting to resolve any dispute amicably at a meeting to be attended by persons with decision-making authority; then (2) if, within thirty (30) calendar days after such meeting the parties have not resolved the dispute, they shall submit the dispute to mediation by written demand under the Construction Industry Mediation Procedures and cognizance of the American Arbitration Association and bear equally the costs of the mediation; and then, (3) if within thirty (30) calendar days after mediation is initiated the mediation has not resulted in a settlement of the dispute, then the dispute shall be settled by arbitration under the Construction Arbitration Rules (in place at the time of filing the demand for Arbitration) and cognizance of the American Arbitration Association, and not by litigation. Either party may submit the unresolved dispute to arbitration thirty (30) calendar days after mediation, which arbitration shall be conducted by a sole arbitrator. The arbitrator shall be selected in accordance with American Arbitration Association rules and must have experience in construction disputes and must not have any conflict of interest. Any such ruling or decision of the arbitrator shall be binding on Client and Rider Levett Bucknall and may be entered as a judgment in any judicial forum. The locale for any mediation and/or arbitration under this provision shall be in the city where the Rider Levett Bucknall office that provided the services for this appointment/Agreement is located, and the laws of the State of Oregon shall apply to any arbitration and/or enforcement of any settlement/ruling/decision. The prevailing party in arbitration shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements.
- 22. CLIENT AND RIDER LEVETT BUCKNALL, AFTER CONSULTING WITH COUNSEL,
  HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO TRIAL BY JURY
  AND ACKNOWLEDGE THAT THEY UNDERSTAND AND ACCEPT THE DISPUTE
  RESOLUTION PROCEDURE SET FORTH HEREIN.
- 23. In the event that there are conflicts in the provisions of any Client generated contracts and these Rider Levett Bucknall Conditions of Engagement and Payment of Accounts, these Rider Levett Bucknall Conditions of Engagement and Payment of Accounts shall take precedence unless specifically agreed to otherwise in writing which is acknowledged and executed by Client and Rider Levett Bucknall.



# **Project Scope and Fee Agreement**

# **Client Information**

Company / Contact Name Phone

Rice Fergus Miller Lorie Limson Cook O: 360-377-8773 x130; M: 253-988-3702

Mailing Address City, State, Zip Email

275 Fifth Street, Suite 100 Bremerton, WA 98337 Llimsoncook@rfmarch.com

**Project Information** 

Enhancement

Project Title Regulatory Nexus CRC Project Number

Port Orchard Waterfront Plaza and FO 21 02 (PCO)

EO 21-02 (RCO) 2306N

Project Location Project City

619 Bay Street Port Orchard

Section Township Range County Total Project Area

26 24 N 01 E Kitsap 2.3 acres

# **Project Description**

The project proposes to remove old seawall, armoring and debris, regrade the shoreline to a gently sloping beach, and construct a light transmitting overwater structure supported by approximately 10 concrete pilings. The project also proposes to replace an aging waterfront sidewalk, commercial structure, and parking lot with a new pedestrian pathway, viewpoint, water/tide flat access, landscaping, and gathering space. The project will receive funding from the Washington State Recreation and Conservation Office (Project #22-1648). CRC will prepare a cultural resources assessment incorporating information from its 2021 cultural resources overview report.

# **Project Schedule**

# **Anticipated Completion Date:**

January - April
2024

CRC anticipates completion of this project by the end of April 2024.

# **Project Assumptions**

- \* This scope and budget is based upon information provided on 6 November 2023. Any changes may require a change in budget to accommodate updating project information not received prior to the start of this project.
- \* This scope and budget is based upon the project as shown on the provided site scope delineation figure.
- \* This scope and budget is based upon the assumption that CRC's current levels of insurance liabilities are sufficient for this project (sample certificate of insurance attached).
- \* This scope assumes that no more than one (1) archaeological site and one (1) historic site will be identified within the project area. If extensive archaeological deposits are encountered or if additional investigations are warranted within the project area it may be necessary to modify this agreement to accommodate additional investigations for purposes of site identification.
- \* This scope assumes that all relevant project information, prior reports including geotechnical reports, historic/architectural reports, design plans, and project maps in addition to relevant project correspondence with DAHP or other agencies requesting this assessment and/or Tribal cultural resources staff will be provided with the signed Agreement so that CRC may begin this project immediately upon receipt of signed agreement.
- \* This scope does not include additional services for impact mitigation regarding archaeological or historic sites.
- \* This scope assumes that no in person meetings with clients and/or stakeholders will be required.
- \* This scope assumes that project proponents can provide immediate Right Of Entry to CRC so the project may be completed within the stated project schedule.
- \* This scope assumes that the property is safe for CRC archaeologist to enter and free of contaminants, health hazards and other unsafe working conditions.
- \* If human remains are found within the project area, all CRC field investigations will cease immediately, proper authorities will be notified and CRC will not resume field investigations until applicable state laws are addressed.



# **Project Deliverables**

CRC will provide the following project components as part of this cultural resources assessment.

# Task 1 - Background Research

CRC will conduct a search on Washington Department of Archaeology and Historic Preservation's (DAHP) WISAARD system to identify recorded historic built environment, historic register listed properties, archaeological sites, cemeteries, and previously completed cultural resources assessment in proximity to the project location. CRC will review pertinent environmental, archaeological, ethnographic, and historical information appropriate to the project location from a variety of available resources. The goal of background research is to provide contextual information regarding the natural environment and cultural use of the project location, identify recorded cultural resources, and determine the potential for as-yet unrecorded cultural resources to be encountered during proposed project actions.

### Task 2 - Tribal Contact

CRC will contact the cultural resources staff of Tribes that may have an interest in or information regarding the project location. This communication is intended to inform the cultural resources assessment and does not constitute government-to- government consultation. Copies of this correspondence and received responses will be included as an attachment in the cultural resources assessment.

### Task 3 - Field Identification

CRC will conduct field investigations of the project location to identify archaeological and historical resources. Investigation will include pedestrian survey and photo documenation of existing conditions. Methods will be consistent with DAHP guidelines.

### Task 4 - Documentation of Findings

CRC will document and record identified archaeological and historic sites within the project location on DAHP archaeological and/or historic site(s) forms. All identified resources will be photo-documented and recorded in the field. Archaeological materials or deposits will be documented and reburied, if appropriate, within the find location. Cultural resources will be evaluated for significance following local, state, and/or national significance as appropriate based on the project's regulatory nexus. Documentation will be consistent with DAHP standards and will be completed on DAHP's WISAARD system.

# Task 5 - Cultural Resources Assessment Report

CRC will update the technical memo previously completed for a portion of the project. The updated report will describe background research, field methods, results of investigations, and management recommendations. The report will provide supporting documentation of findings, including maps and photographs, and will conform to DAHP reporting standards and the appropriate requirements based on the regulatory nexus. Report and support materials will be provided electronically in PDF format. An RCO inadvertent discovery protocol will be provided as an attachment in the assessment. This task includes one round of consolidated comments from the client prior to the submission of the final report to RCO, who will submit the cultural resources assessment and any associated documentation to DAHP, via their WISAARD system.



\* No cultural resources study can wholly eliminate uncertainty regarding the potential for prehistoric sites, historic properties or traditional cultural properties to be associated with a project. The information we will present within our reports is based on our years of experience and professional opinions derived from the analysis and interpretation of the documents, records, literature, and information we are able to identify and use within our report, and during our field investigation and observations to be conducted in the process of preparing our technical report. The conclusions and recommendations we present will apply to the project conditions existing at the time of our study and those reasonably foreseeable.

_		_
Ura	-	Fee

The fee for services described above is anticipated to be less than \$ 4,630.00

- \* The time frame and fee for services quote is valid through January 2024.
- \* Monthly invoices will be provided to the client electronically.
- \* Payment for work completed is due upon receipt of invoice.

This Agreement expires on 31 December 2024. Related records will be retained through 2027.

Rice Fergus Miller	<b>Cultural Resource Consultants</b>
Lorie Limson Cook	Margaret Berger
275 Fifth Street, Suite 100	P.O. Box 4159
Bremerton, WA 98337 Seattle, WA 98194	
Name/Title:	Owner/Principal Investigator
Date:	Date:

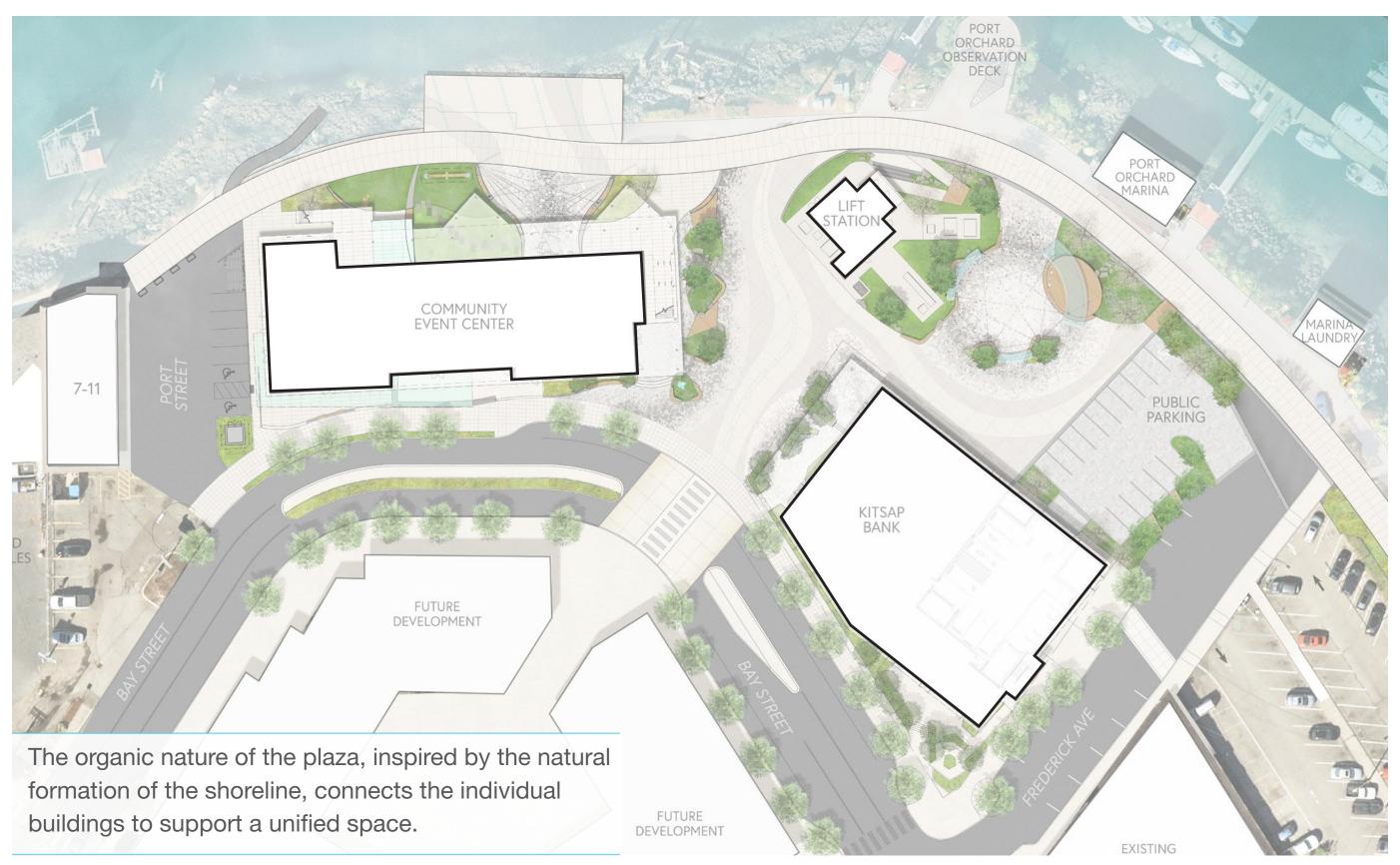




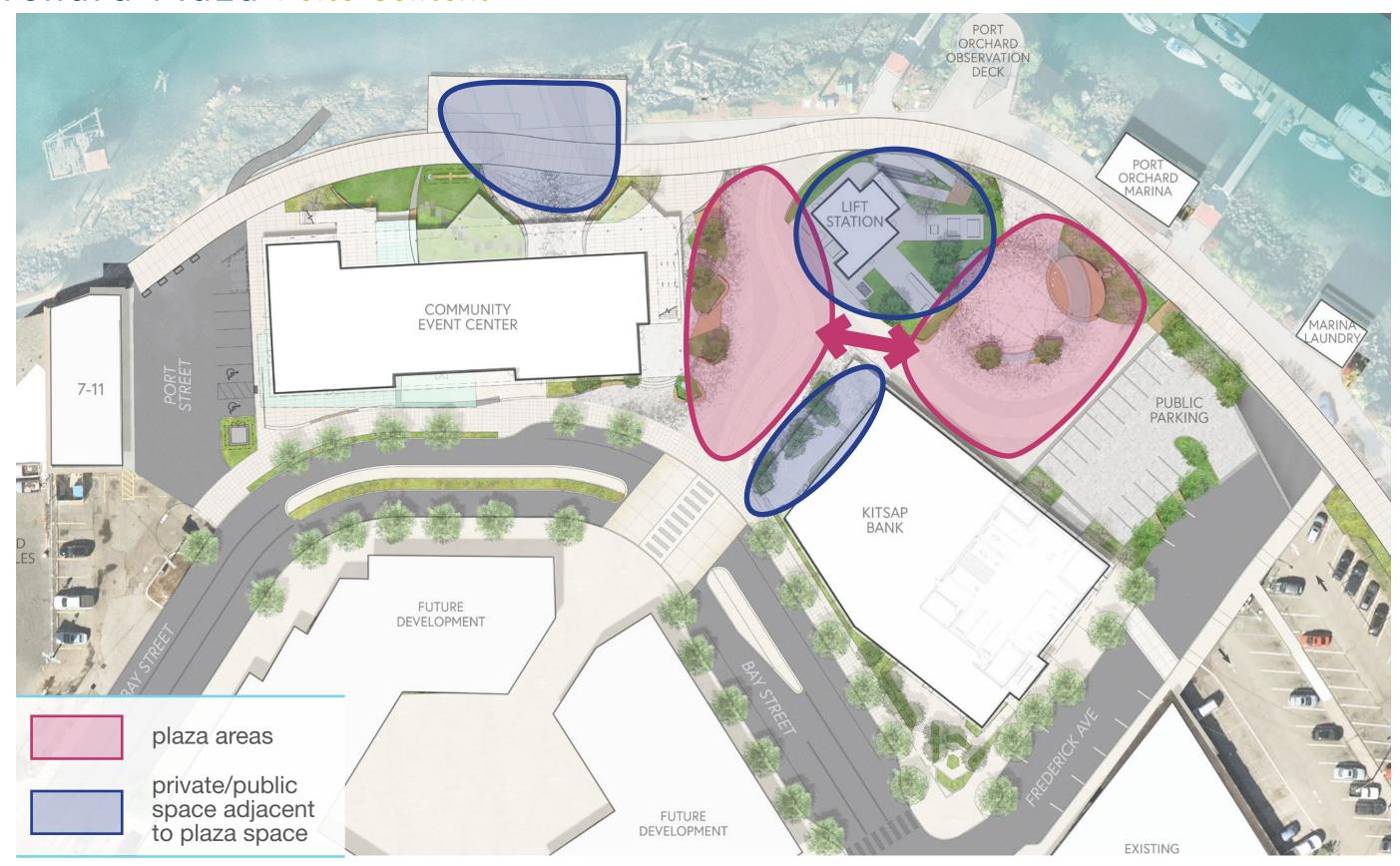
# Orchard Plaza

Preliminary Concept Design September 2023

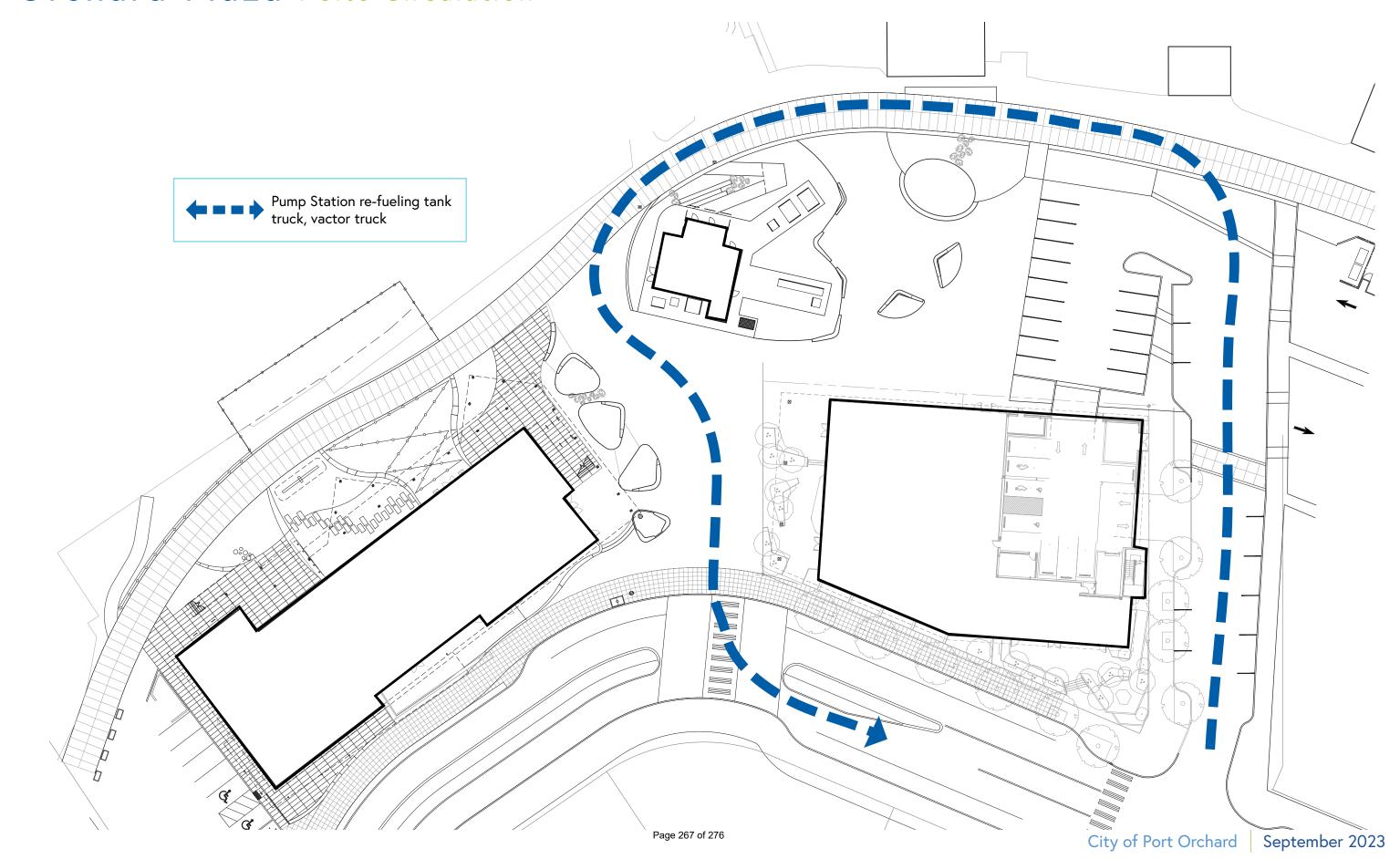
# Orchard Plaza | Site Context



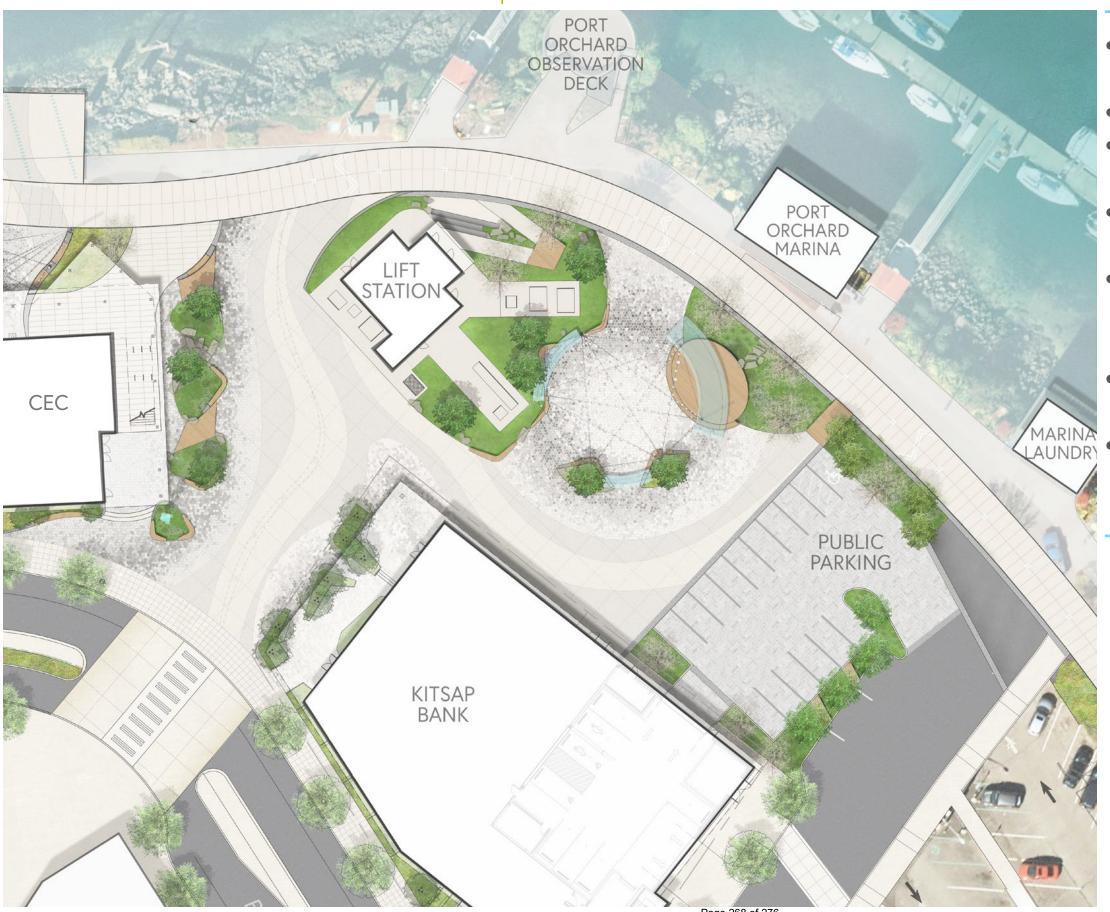
# Orchard Plaza | Site Context



# Orchard Plaza | Site Circulation



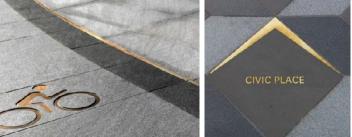
# Orchard Plaza | Site Concept



- The space is pulled together with organic geometries
- Flexibility is Key!
- Great space for both event days and non event days
- High quality of materials this is a special place
- Explore, meander, places to sit, shade...with fun discoveries along the way
- Views out to the water, views within the space
- Coordinating with the Port, Kitsap Bank, the CEC, Lift Station, and Bay St. Trail

# Orchard Plaza | Pavement Materials

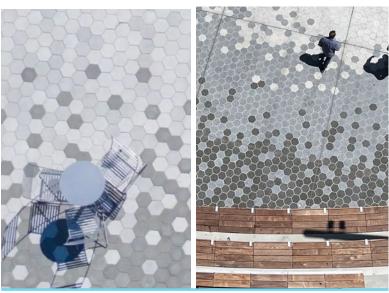




Bay St trail wayfinding markers



decorative concrete that can be driven on



concrete pavers in gathering spaces

# Orchard Plaza | Bioretention + Seating + Discovery

natural materials in the bioretention & seating areas provide a functional zone with an opportunity for learning & discovery

public art sculpture anchoring the entrance of the plaza and CEC

# Orchard Plaza | Seating + Shade + Programming







seating & planters









multi-use wooden platform



# Orchard Plaza | Parking lot + Access + Programming







drivable, decorative pavement materials in the parking lot provides an extension of the plaza space for additional programming



bioretention area to help capture stormwater

# Orchard Plaza | Programming - Small Event Layout Example



# Orchard Plaza | Programming - Large Event Layout Example





# **City of Port Orchard**

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

# **Agenda Staff Report**

Agenda Item No.:	Discussion Item 9A	Meeting Date:	January 23, 2024
Subject:	Council Choice of RMSA Required	Prepared by:	Debbie Lund
	Course for 2024	_	HR Director
		Atty Routing No.:	N/A
		Atty Review Date:	N/A

**Summary**: The City maintains liability coverage through the Association of Washington Cities Risk Management Service Agency (RMSA). As part of the coverage, RMSA has standards for the members. One of the standards is that all employees with direct reports, elected officials, and all department heads complete at least one AWC RMSA approved training course per year on an employment practices topic.

RMSA has provided a list of approved course offerings. The list is attached.

Annually, council is asked to choose one course for all councilmembers to take. Once chosen, Human Resources will assign the class utilizing the online classroom provided by RMSA. The course is pre-recorded, and must be completed by each councilmember in 2024. The deadline will be set as July 31st.

For the council's information, the managers group chose to complete the Workplace Bullying course for 2023. History of previously chosen classes is provided on the attached list.

Recommendation: N/A

Relationship to Comprehensive Plan: N/A

**Motion for consideration**: N/A. This decision can be made by consensus.

**Fiscal Impact**: If there is an employment claim against an elected official (or staff supervisor) and that person has not taken the required annual one hour class, a \$1,000 deductible will be applied.

**Alternatives:** Do not select a topic for 2024 and provide alternative guidance.

Attachments: List of class choices for 2024.

# **RMSA Catalog of Possible Courses** to Satisfy Supervisor and Council Employment Standards **Training Requirement**

1/18/2024

# Anti Harassment in the Workplace

(Assigned to all new employees)

Harassment in the workplace is a serious issue that requires a thorough understanding to promote awareness and ultimately prevention. Improper behavior in the workplace may have significant consequences for those involved, for yourself as an employee, and your employer. Recognizing the various types of harassment will help you to identify potential warning signs and take the necessary steps to report harassment. 1 hour, Liked by 1436 users.

# **Discipline and Termination**

(Completed in 2019 by Council & Managers) (Managers chosen topic for 2024)

In every organization, employees are let go for various reasons. The decision to discipline or even terminate an employee is not one that should be taken lightly, and there is a right and wrong way to approach the situation. In this course, learners will explore ways to appropriately address issues before termination is necessary, be able to terminate employees confidently if discipline fails, and for employees to understand the need for a disciplinary process and the rules and expectations that inform them. 1 hour, liked by 57 users

# **Sexual Harassment for Managers**

(Some took in 2013)

Sexual harassment in the workplace can happen to anyone, male or female, regardless of sexual orientation. Recognizing what sexual harassment is a leader, both the subtle cues as well as the overt advances, will help you to identify potential warning signs and take the necessary steps to prevent sexual harassment. There are a number of

preventive measures that can be employed as well as recommendations of what to do if you or one of your employees have been or are the victim of sexual harassment. 2 hours, liked by 224 users

# Sexual Harassment in the Workplace

Improper behavior in the workplace may have significant consequences both for yourself and your employer. If you are a victim of sexual harassment, this may create a hostile work environment which takes a toll on your career, your personal life, and your health. Recognizing what sexual harassment is, both the subtle cues as well as the overt advances, will help you to identify potential warning signs and take the necessary steps to report sexual harassment. 1 hour, liked by 3926 users

# Workplace Bullying

(Completed in 2023 by Managers and City Council)

When we think of bullying, we immediately associate it with the school yard, certainly not something we face as an adult. Unfortunately, bullying in the workplace occurs more often than you think. In fact, there are various forms of bullying, from overt forms to those which are quite passive. Workplace bullying may have significant consequences for those involved, for yourself as an employee as well as your employer. A thorough understanding of workplace bullying will help promote awareness and ultimately prevention. 1 hour, liked by 654 users