



Meeting Location:
Council Chambers, 3rd 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
February 27, 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/82712667951>

Zoom Meeting ID: 827 1266 7951

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 Approving Amendment No. 1 to Contract No. 034-23 with 4Leaf, Inc. for Building/Fire Code Plan Review and Building/Fire Code Inspection Services (Bond) **Page 4**
- D.** Adoption of a Resolution Approving Amendment No. 3 to Contract No. 094-20 with Grette Associates LLC for On-Call Consulting Services (Bond) **Page 29**
- E.** Adoption of a Resolution Approving a Tree Conservation Easement with JL Group, LLC (Bond) **Page 35**

- F. [Adoption of a Resolution Approving the Purchase of Equipment for the Equipment Rental and Revolving Fund 500 \(M. Brown\) Page 54](#)
- G. [Approval of the February 13, 2024, City Council Regular Meeting Minutes Page 59](#)

5. PRESENTATION

6. PUBLIC HEARING

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

7. BUSINESS ITEMS

- A. [Adoption of a Resolution Approving a Contract with Washington State Public Works Board for the Bay Street Lift Station Replacement Project and Ratifying the Mayor’s Signature \(Ryan\) Page 64](#)
- B. [Adoption of a Resolution Approving a Contract with Miles Resources, LLC for the Pottery Ave Non-Motorized Improvements Project \(Ryan\) Page 91](#)

8. DISCUSSION ITEMS (No Action to be Taken)

- A. Transportation Funding (Crocker)

9. REPORTS OF COUNCIL COMMITTEES

10. REPORT OF MAYOR

11. REPORT OF DEPARTMENT HEADS

12. 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.)*

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

14. CITY COUNCIL GOOD OF THE ORDER

15. ADJOURNMENT

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
Economic Development and Tourism	February 26, 2024; 2:00pm	Remote Access
Utilities	March 12, 2024; 5:00pm – 2 nd Tuesday of the month	Remote Access
Finance	March 19, 2024; 4:30pm – 3 rd Tuesday of the month	Remote Access
Transportation	March 26, 2024; 4:30pm- 4 th Tuesday of the month	Remote Access
Land Use	March 20, 2024; 4:30pm-3 rd Wednesday of the month	Remote Access
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 the 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: <https://portorchardwa.gov/subscribe>

Robert (Rob) Putaansuu
Mayor
Administrative Official

Eric Worden
Councilmember Position 4
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
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, CPWP-M, CPRP
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



Agenda Staff Report

Agenda Item.: Consent Agenda 4C

Meeting Date: February 27, 2024

Subject: Adoption of a Resolution Approving
Amendment No.1 to Contract No. 034-23
with 4Leaf, Inc. for Building/Fire Code Plan
Review and Building/Fire Code Inspection
Services

Prepared By: Nick Bond
DCD Director

Summary: Due to the volume of building and development permits and plans submitted to the City, the City utilizes consulting services to assist staff with plan review and building inspections to ensure that the need is timely met. On April 17, 2023, the City executed a Professional Service Agreement with 4Leaf Inc, a qualified consultant, for As-Requested Building/Fire Code Plan review and Inspection Services.

Contract No. C034-23 included a not to exceed total amount of \$140,000 through April 17, 2024. At the time of approval, staff believed that the City would not reach the contract amount prior to the end of the contract date but given permitting volumes, particularly for multi-family development, and the City's targets for time periods in which to turn around building permit applications, the City requires additional services for the City to maintain levels of service. By this action the City Council would authorize an amendment to the contract for an additional \$140,000 and extend the original contract term for an additional year.

Recommendation: Staff recommends that the City Council authorize the Mayor to adopt a resolution to execute Amendment No. 1 to C034-23.

Relationship to Comprehensive Plan: N/A

Motion for consideration: "I move to adopt a resolution to execute Amendment No. 1 to Contract No. 034-23 with 4Leaf Inc for building /fire code plan review and building/fire code inspection services."

Fiscal Impact: The existing contract is not to exceed \$140,000 during the biennium. This amendment would increase the not to exceed amount to \$280,000. Building plan review and permit revenues for the past 2 years have been very strong and have exceeded budgeted revenue.

If the city uses the consultant, it will be because there are corresponding unbudgeted revenues to offset the cost.

Alternatives: Do not approve the contract as presented.

Attachments: Resolution, Contract and updated fee schedule identified as Exhibit B-2

RESOLUTION NO. ____-2024

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING
AMENDMENT NO. 1 TO CONTRACT NO. C034-23 WITH 4LEAF, INC. FOR BUILDING
DEPARTMENT PLAN REVIEW AND INSPECTION SERVICES AND AUTHORIZING THE
MAYOR OR DESIGNEE TO SIGN AMENDMENT NO. 1.**

WHEREAS, the City identified the need for additional professional consultant services to support the City's Building Department for plan review and inspection services due to an influx of submissions to the Department; and

WHEREAS, the City Department of Community Development utilized the MRSC Professional Services Rosters, main category Building Department Services and subcategory Building Inspection Services, for qualified consultants to provide Building Plan Review and Inspection Services; and

WHEREAS, the City evaluated the statements of qualifications posted on the roster and selected 4LEAF, Inc. and the most highly qualified firm to provide these services; and

WHEREAS, the City Council approved a Consultant Services Agreement with 4LEAF, Inc., on March 31, 2023, and finds it desires to extend said Agreement for an additional year and amend the Agreement to authorize a not to exceed amount of \$280,000; and

WHEREAS, the City Council finds that it is in the best interests of the residents of Port Orchard to amend the Agreement with 4LEAF, Inc., as described herein and to authorize the Mayor to sign the same; 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 "Amendment No. 1 to Contract No. C034-023 City of Port Orchard Professional Services Agreement with 4LEAF, Inc.," ("Amendment No. 1"), as set forth in Exhibit 1 to this resolution, which is attached hereto and incorporated herein by this reference and authorizes the Mayor or designee to execute Amendment No. 1.

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 27th day of February 2024.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

Amendment No. 1 to Contract No. C034-23
CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT WITH
4LEAF, INC.

THIS AMENDMENT to Contract No. C034-23 (“Amendment”) is made effective as of the 17th day of April 2024, by and between the City of Port Orchard (“City”), a municipal corporation, organized under the laws of the State of Washington, and 4LEAF, Inc., a corporation organized under the laws of the State of California, located and doing business at 2126 Rheem Drive, Pleasanton, CA, 94588 and 1201 Pacific Ave., Ste. 600, Tacoma, WA 98402 (“Consultant”).

RECITALS:

- A. The City and Consultant entered into an agreement on April 17, 2023, for the purpose of Consultant providing on-call Plan Review and Building Inspection Services (“Agreement”) for one year with a not to exceed amount of \$140,000.
- B. The City finds the need for continued plan review and building inspection services from Consultant, and therefore, desires to extend the contract term and increase the not to exceed amount to \$280,000 for the duration of the Agreement.
- C. The parties desire to memorialize these changes and amend the Agreement.

FIRST AMENDMENT TO AGREEMENT:

In consideration of the mutual benefits accruing, the parties agree as follows:

- 1. **Extension.** The City hereby exercises the first one-year contract extension set forth in Section 4.A, making the new expiration date April 17, 2025.
- 2. **Amendment.** Section 2 of the Agreement is hereby amended to read as follows:

2. Compensation.

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

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$ 280,000 without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit “B”.

- 3. **Amendment.** Exhibit “B” to the Agreement and the rates set forth therein for services are hereby amended as set forth in Exhibit “B-2” entitled “Fee Schedule FY 2024-2025 Fee Schedule & Basis of Charges”, which is attached to this Amendment and incorporated

herein by reference as if set forth in full. The effective date for the rates in Exhibit “B-2,” shall be April 17, 2024.

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

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

6. **Effective date.** This Amendment shall be effective as of April 17, 2024.

DATED this ____ day of _____, 2024.

**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

034-23

Port Orchard Contract #: **XXXXXX**Authorized Amount: \$ \$140,000.Date Start: April 17, 2023Date End: April 17, 2024**CONSULTANT SERVICES AGREEMENT**

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 4LEAF, Inc., ("Consultant") organized under the laws of the State of California, located and doing business at 2126 Rheem Drive, Pleasanton, CA 94588 and 1201 Pacific Ave., Ste. 600, Tacoma, WA 98402 (hereinafter the "Consultant").

RECITALS:

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

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

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

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

The Consultant shall perform *Plan Review and Building Inspection Services* as assigned by the City, which may include the services described in Exhibit "A" of this Agreement which is attached hereto and incorporated herein by this reference as if set forth in full. Additional work may be assigned by the City, however, this Agreement does not obligate the City to assign any specific work or any work to the Consultant. In performing the services, the Consultant shall comply with all federal, state, and local laws and regulations applicable to the services. The Consultant shall perform the services diligently and completely and in accordance with professional standards of conduct and performance.

2. Compensation.

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

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$ \$140,000 without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."

3. Payment.

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

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

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

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

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

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

4. Duration of Agreement.

A. This Agreement shall be in full force and effect for a period commencing on April 17, 2023 and ending April 17, 2024, 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 without additional action by the City Council to authorize execution of the document, provided the additional costs are budgeted.

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

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

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

5. Standard of Care.

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

6. Ownership and Use of Documents.

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

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

7. Relationship of the Parties; Independent Consultant.

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

performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

8. Indemnification.

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

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

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

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

9. Insurance.

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

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

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

iv. Professional Liability insurance appropriate to the Consultant's profession.

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

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

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

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

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

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

G. *Failure to Maintain Insurance.* Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

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

10. Record Keeping and Reporting.

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

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

11. City's Right of Inspection and Audit.

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

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

12. Work Performed at the Consultant's Risk.

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

13. Termination.

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

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

C. *Rights Upon Termination.*

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

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

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

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

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

14. Discrimination Prohibited.

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

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

15. Force Majeure.

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

16. Assignment and Subcontract.

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

17. Conflict of Interest.

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

18. Confidentiality.

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

19. Non-Appropriation of Funds.

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

20. Employment of State Retirees.

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

21. Entire Agreement.

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

22. Non-waiver of Breach.

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

23. Modification.

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

24. Notices.

All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered, in which case the notice or communication shall be deemed given on the date of receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, in which case the notice or communication shall be deemed given three (3) business days after the date of deposit in the United States mail; or (c) sent by overnight delivery using a nationally recognized overnight courier service, in which case the notice or communication shall be

deemed given one business day after the date of deposit with such courier. In addition, all notices shall also be emailed, however, email does not substitute for an official notice. Notices shall be sent to the following addresses:

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

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

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

4LEAF Inc.
Joe Nicholas
2126 Rheem Drive
Pleasanton, CA 94588
Phone No.: 925-462-5959
Email: jnicolas@4leafinc.com

25. Resolution of Disputes; Governing Law.

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

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

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

26. Compliance with Laws.

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

27. Title VI.

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

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

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

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

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

D. *Information and Reports.* The Consultant will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City 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.

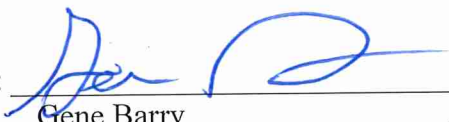
This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement.

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

By: 
 Title: Vice President
 Date: April 7, 2023



CITY OF PORT ORCHARD

DocuSigned by:
 By: 
 3B96492E3F5847D...
 Robert Putaansuu, Mayor
 Date: 4/12/2023

ATTEST/AUTHENTICATE

DocuSigned by:

 46A5A54BBD00418...
 Brandy Wallace, MMC, City Clerk

APPROVED AS TO FORM

DocuSigned by:

 203701F25520457...
 Port Orchard City Attorney's Office

EXHIBIT A

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

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.

If this is a multi-year contract and the rates may be increased after the first or second year, then Consultant shall provide the City a minimum of a 60-day advance notice for raising rates, provided the rate adjustment shall not exceed the CPI-U for Seattle/Tacoma/Bellevue.

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).

**4LEAF, INC.**ENGINEERING . CONSTRUCTION MANAGEMENT
PLAN CHECK . BUILDING INSPECTION . PLANNING

SECTION 6: FEE SCHEDULE

FY2023-2024 FEE SCHEDULE & BASIS OF CHARGES

For the City of Port Orchard

All Rates are Subject to Basis of Charges

PLAN REVIEW COST STRUCTURE	NOTES
Plan Review Percentage: 70% <i>(Inclusive of all disciplines except Fire and Civil, which are billed on an hourly basis.)</i> Hourly Plan Review: \$95 Non-Structural Review \$120 Structural Review	Fee includes: <ul style="list-style-type: none"> ➤ Initial review and two (2) rechecks. Hourly charges apply after three (3) or more rechecks. ➤ Shipping, courier, and electronic service.

Staff Augmentation Building Department Services

Interim Chief Building Official.....	\$116/hour
Senior Combination Building Inspector (Building Inspector III)	\$95/hour
Commercial Building Inspector (Building Inspector II)	\$85/hour
Residential Building Inspector (Building Inspector I).....	\$75/hour
Civil Plan Review Engineer.....	\$140/hour
Code Enforcement Officer.....	\$85/hour
Senior Code Enforcement Officer.....	\$95/hour
Administrative Support	\$52/hour
Permit Technician.....	\$60/hour
Senior Permit Technician.....	\$70/hour
Structural Plan Review Engineer	\$120/hour
Non-Structural Plans Examiner	\$95/hour
Fire Review	\$115/hour
Fire Inspector I.....	\$85/hour
Fire Inspector II.....	\$95/hour
Fire Protection Engineer.....	\$185/hour
Principal Planner.....	\$155/hour
Senior Planner	\$140/hour
Associate Planner	\$120/hour
Assistant Planner	\$100/hour
Planning Technician.....	\$70/hour
Public Works Inspector.....	\$101/hour
ADA Inspection / Review	\$125/hour
Software Consultant.....	\$150/hour
Project Inspector / Inspector of Record	\$110/hour
OSHPD Review / Inspector	\$120/hour
Permit / Counter Manager	\$90/hour

Off-Site Project Manager.....	\$140/hour
Principal-in-Charge	\$180/hour
Director.....	\$185/hour
Approved Subconsultant.....	Cost + 20%
Hourly overtime charge per inspector	1.5 x hourly rate
Mileage (for inspections performed within the City).....	IRS Rate + 20%

*Rates will be communicated with the City Management at time of request. Rates will vary based on the qualifications and experience of the personnel. The rates listed in this fee schedule are valid for one (1) year from the effective date of contract.

BASIS OF CHARGES

Rates are inclusive of “tools of the trade” such as forms, telephones, and consumables.

- All invoicing will be submitted monthly.
- Staff Augmentation work (excluding plan review) is subject to 2-hour minimum charges unless stated otherwise. Services billed in 2-hour increments.
- Most plan reviews will be done in 10 business days or less and 5 business days or less for re-checks. This is not inclusive of holidays or the day of the pick-up of plans.
- Expedited reviews will be billed:
 - *Scenario #1 (Applicant requested):* at 1.5x the plan review fee listed in the Fee Schedule.
 - *Scenario #2 (City requested):* at no additional cost to the City.
- Plan review of deferred submittals and revisions will be billed at the hourly rates listed above.
- All plan review services will be subject to a \$250.00 minimum fee if percentage-based fee or two 2-hour minimum charge if hourly rates apply.
- All plan review services are billed on a percentage basis and includes the initial review and 2 rechecks.
 - Plan reviews will be billed on an hourly basis only after the initial review and 2 rechecks unless otherwise agreed upon on a case-by-case basis.
 - Fire and Civil Reviews are billed on an hourly basis and are not included in the percentage.
- 4LEAF assumes that these rates reflect the FY2023-2024 contract period. 3% escalation for FY2025-2026 is negotiable per market conditions.
- Overtime and Premium time will be charged as follows:

- <i>Regular time (work begun after 5AM or before 4PM)</i>	<i>1 x hourly rate</i>
- <i>Nighttime (work begun after 4PM or before 5AM)</i>	<i>1.125 x hourly rate</i>
- <i>Overtime (over 8-hour M-F or Saturdays)</i>	<i>1.5 x hourly rate</i>
- <i>Overtime (over 8 hours Sat or 1st 8-hour Sun)</i>	<i>2 x hourly rate</i>
- <i>Overtime (over 8 hours Sun or Holidays)</i>	<i>3 x hourly rate</i>
- Overtime will only be billed with prior authorization of the designated City personnel.
- All work with less than 8 hours rest between shifts will be charged the appropriate overtime rate.
- All billable expenses will be charged at cost plus 10%.
- Payment due on receipt. All payments over 30 days will be assessed a 1.5% interest charge.
- Client shall pay attorneys’ fees, or other costs incurred in collecting delinquent amounts.



Fire Plans Examiner	\$148/hour
Fire Inspector II.....	\$110/hour
Fire Inspector I.....	\$99/hour

Project Management

Project Manager	\$175/hour
Principal-in-Charge	\$225/hour

Planning

Housing Policy Director	\$210/hour
Planning Director	\$175/hour
Principal/Planning Manager	\$155/hour
Senior Planner	\$145/hour
Associate Planner	\$125/hour
Assistant Planner	\$110/hour
Planning Technician.....	\$90/hour

Engineering, Public Works, Inspection & Construction Management (Prevailing Wage)

Civil Plan Review (Grading, Improvement Plans)	\$165/hour
Traffic Engineer.....	\$175/hour
Construction Manager.....	\$165/hour
Public Works Inspector (Regular Time)	\$130/hour

BASIS OF CHARGES

- Rates are inclusive of “tools of the trade” such as forms, telephones, and consumables.
- All invoicing will be submitted monthly.
- Staff Augmentation work (excluding plan review) is subject to 4-hour minimum charges unless stated otherwise. Services billed in 4-hour increments.
- Most plan reviews will be done in 10 business days or less and 5 business days or less for re-checks. This is not inclusive of holidays or the day of the pick-up of plans.
- Expedited reviews will be billed at 1.5x the plan review fee listed in the fee schedule. Return time will be within seven (7) days of receipt of the plans from the City.
- Plan review of deferred submittals & revisions will be billed at the hourly rates listed.
- All plan review services will be subject to a \$265.00 minimum fee if percentage-based fee or 2-hour minimum charge if hourly rates apply.
- Larger complex plan reviews can be negotiated to achieve the best possible pricing.
- All plan review services will be subject to 2-hour minimum fee.
- All plan review services are billed on a percentage basis and includes the initial review and 2 rechecks.
 - Plan reviews will be billed on an hourly basis only after the initial review and 2 rechecks unless otherwise agreed upon on a case-by-case basis.
 - Fire and Civil Reviews are billed on an hourly basis and are not included in our plan review percentage.
- Mileage driven during the course of Inspections will be charged at cost plus 20%.

Agenda Staff Report

Agenda Item.: Consent Agenda 4D

Meeting Date: February 27, 2024

Subject: Adoption of a Resolution Approving
Amendment No. 3 to Contract 094-20
with Grette Associates LLC for On-Call
Consulting Services

Prepared By: Nick Bond, AICP
DCD Director

Summary: On December 15, 2020, the City approved Contract No. C094-20 a Professional Service Agreement with Grette Associates LLC for On-call Consulting Services. Subsequent amendments (Amendment No. 1 and Amendment No. 2) extended the contract term through December 31, 2024, and updated service rates.

Grette Associates LLC has been acquired by Farallon Consulting, LLC, an environmental and engineering consulting firm with offices in Washington, Oregon, and California, broadening the range of services available. Both Grette Associates LLC and Farallon Consulting have requested the City's approval for the assignment of the Underlying Agreement to Farallon Consulting. The City, recognizing the benefits of the assignment, desires to consent to the request and amend the Agreement accordingly.

The proposed assignment and amendment align with the City's interests and ability to provide Critical Areas Review and Critical Area Report creation.

Recommendation: Staff recommends approval of a Resolution authorizing the Mayor to execute the Amendment 3 to Contract 094.20 approving the assignment to Farallon Consulting, LLC.

Relationship to Comprehensive Plan: N/A

Motion for consideration: "I move to adopt a Resolution approving the assignment and authorizing the Mayor to execute the amended Agreement with Farallon Consulting, LLC.

Fiscal Impact: This on-call pass-through contract is included in the 2024 budget.

Alternatives: Do not approve the Resolution. Failing to approve this resolution will result in an inability for the City of Port Orchard to acquire third-party review of critical areas reports.

Attachments: Resolution, Contract Amendment #3

RESOLUTION NO. ____-2024

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING AMENDMENT NO. 3 TO CONTRACT NO. 094-20 WITH GRETTE ASSOCIATES LLC, FOR ON-CALL CONSULTING SERVICES AND AUTHORIZING THE MAYOR OR DESIGNEE TO SIGN AMENDMENT NO. 3.

WHEREAS, on December 31, 2020, the City executed a Professional Service Agreement with Consultant, for the provision of On-call Consulting Services (“Underlying Agreement”); and

WHEREAS, the City adopted Amendment No. 1 and Amendment No. 2 to the Underlying Agreement to extend the term of the contract through December 31, 2024, and to update the rates for services; and

WHEREAS, the Consultant’s company has been acquired by Farallon Consulting, LLC, an environmental and engineering consulting firm with offices in Washington, Oregon and California (“Farallon Consulting”), which has broadened the range of services available to clients; and

WHEREAS, the Consultant and Farallon Consulting have requested the City to approve the assignment of the Underlying Agreement, as amended, to Farallon Consulting; and

WHEREAS, the City desires to consent to the request for assignment and to memorialize this change and amend the Agreement; and

WHEREAS, the City Council finds that it is in the best interests of the residents of Port Orchard to amend the Agreement with Grette Associates LLC, as described herein and to authorize the Mayor to sign the same; 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 “Amendment No. 3 to Contract No. 094-20 City of Port Orchard Professional Services Agreement with Grette Associates LLC (“Amendment No. 3”), as set forth in Exhibit 1 to this resolution, which is attached hereto and incorporated herein by this reference and authorizes the Mayor or designee to execute Amendment No. 3.

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 27th day of February 2024.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

Amendment No. 3 to Contract No. 094-20
CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT WITH
GRETTE ASSOCIATES LLC

THIS AMENDMENT to Contract No. 094-20 (“Amendment”) is made effective as of the 27th day of February 2024, by and between the City of Port Orchard (“City”), a municipal corporation, organized under the laws of the State of Washington, and Grette Associates LLC, a limited liability company organized under the laws of the State of Washington, located and doing business at 2709 Jahn Ave NW, STE H5, Gig Harbor, WA 98335 (“Consultant”).

RECITALS:

- A. On December 31, 2020, the City executed a Professional Service Agreement with Consultant for the provision of On-call Consulting Services (“Agreement”).
- B. The City adopted Amendment No. 1 and Amendment No. 2 to the Agreement to extend the term of the Agreement through December 31, 2024, and to update the rates for services.
- C. The Consultant has notified the City that it has been acquired by Farallon Consulting, LLC, an environmental and engineering consulting firm with offices in Washington, Oregon and California (“Farallon Consulting”), which has broadened the range of services available to clients.
- D. Section 13 of the Agreement provides that Consultant shall not assign the contract without express written consent of the City.
- E. The Consultant and Farallon Consulting have requested that the City consent to the assignment of the Agreement, as amended, to Farallon Consulting.
- F. Pursuant to the Agreement, the City desires to consent to the request for assignment and memorialize this change to the Agreement.

THIRD AMENDMENT TO AGREEMENT:

In consideration of the mutual benefits accruing, the parties agree as follows:

- 1. **Assignment.** The City hereby consents to the assignment of the Agreement, as amended by Amendment No. 1 and Amendment No. 2, from Grette Associates LLC to Farallon Consulting, LLC.
- 2. **Amendment.** Section 14 of the Agreement is hereby amended to read as follows:

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

Robert Putaansuu

Farallon Consulting, LLC

Mayor
216 Prospect Street
Port Orchard, WA 98366
Phone: 360.876.4407
Fax: 360.895.9029

Contracts Department
975 5th Avenue Northwest
Issaquah, WA 98027
Phone: 425.295.0800

3. **Agreement in effect.** In all other respects, the Agreement, as amended by Amendment No. 1 and Amendment No. 2, shall remain in full force and effect, amended as set forth herein, but only as set forth herein.

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

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

6. **Effective date.** This Amendment shall be effective as of February 27, 2024.

DATED this 27th day of February 2024.

**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

Agenda Staff Report

Agenda Item.: Consent Agenda 4E

Meeting Date: February 27, 2024

Subject: Adoption of a Resolution Approving a
Tree Conservation Easement with JL
Group, LLC

Prepared By: Nick Bond, AICP
DCD Director

Summary: On October 24, 2024, the City and JL Group LLC entered a development agreement establishing the terms and conditions for the development of an orthodontic clinic by JL Group, LLC at the subject property addressed as 791 Mitchell Avenue. The agreement pertains to the development of a medical office and addresses various aspects such as protection of a significant tree, dedication of right of way, and relief from certain design standards. The property contains a significant redwood tree with a diameter of around 96 inches. The City, acknowledging a need to balance the development requirements with tree protection entered into the agreement to preserve the significant tree and agreed to departures from certain city design standards preserving the tree and meet the goals outlined in the City's Comprehensive Plan related to urban design, pedestrian orientation, and open space preservation.

The requirements of applicable development standards would have resulted in a site design encroaching upon the drip line and root protection area of the significant redwood tree at the southwest corner of the property, necessitating removal of the tree. Upon Notice of Application for the related Land Disturbing Activity Permit and Conditional Use Permit, the proposal generated significant public interest, with more than 20 public comments and a petition featuring 248 signatures, all urging the preservation of the significant tree.

As a result of the significant public interest and comment on the preservation of the tree, the developer and City negotiated the terms of a Development Agreement which provided relief from some development standards to allow the preservation of the tree. This agreement was formalized through ORD 030-23 and requires the recording of a Grant of Conservation Easement for tree preservation ensuring the protection of the tree.

As such, the City and developer have drafted a conservation easement for execution where the City of Port Orchard is the grantee of a Conservation Easement for the Protected Property located on subject property. The property to be encumbered by this easement is approximately 4,536 square feet, and

owned in fee simple by JL Group, LLC and warrants good legal title, the right to convey the easement, and the absence of encumbrances, except those specified in the title policy and Preliminary Commitment. The easement addresses the Tree Area, prohibiting development and ensuring perpetual protection. A Site Plan and legal descriptions of the Protected Property and Tree Area are attached, with the City recognized as a qualified holder of conservation easements under RCW 64.04.130.

Recommendation: Staff recommends approval of a Resolution authorizing the mayor to execute a Conservation Easement between the City of Port Orchard and JL Group, LLC as presented.

Relationship to Comprehensive Plan: The Conservation Easement implements the previously entered Development Agreement for the conservation of the redwood tree which sought to achieve a balance between development goals, tree protection, and compliance with local regulations while aligning with the City's Comprehensive Plan Land Use Element (Policy LU-3 and LU-25) and Parks Element (Goal 3).

Motion for consideration: "I move to adopt a Resolution authorizing the Mayor to execute a Conservation Easement with JL Group, LLC as presented."

Fiscal Impact: None foreseen.

Alternatives: Do not approve the Conservation Easement; request changes to the Conservation Easement.

Attachments: Resolution, Grant of Conservation Easement for Tree Preservation

RESOLUTION NO. **

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING
AND ACCEPTING CONSERVATION EASEMENT FOR TREE AREA**

WHEREAS; the City of Port Orchard, hereinafter referred to as the "Grantee," and JL Group, LLC, hereinafter referred to as the "Grantor," entered into a Development Agreement on October 24, 2024, allowing modifications to the required development standards to preserve a significant redwood tree on the property identified by tax parcel 252401-3-007-2005 Kitsap County, Washington, legally described on Exhibit A of the Conservation Easement attached hereto and incorporated herein by reference (the "Protected Property"); and

WHEREAS; in accordance with the Development Agreement, the Grantor is obligated to grant a conservation easement to the City to protect the redwood tree in perpetuity; and

WHEREAS; the Grantor is the sole owner in fee simple of the Protected Property and warrants good legal title to the Protected Property, with the right to convey the Conservation Easement, free and clear of encumbrances, except those general exceptions contained in the title policy and any special exceptions accepted by the Grantee; and

WHEREAS; the Protected Property, zoned Commercial Mixed-Use, is in the process of redevelopment for medical office purposes, containing a significant redwood tree on the southwest corner of the Protected Property; and

WHEREAS; the Conservation Easement is authorized by RCW 64.04.130, the provision of state law governing conservation easements; and

WHEREAS; the Grantor and the Grantee intend to retain the Tree Area, encompassing the significant redwood tree and the surrounding land to the tree dripline, as a protected area to be preserved and not developed, with the legal description set forth on Exhibit B of the Conservation Easement attached hereto and incorporated herein by reference; and

WHEREAS, a Site Plan, attached hereto as Exhibit C of the Conservation Easement and incorporated herein by reference, identifies the Tree Area, describes the current condition and size of the redwood tree, and serves as a reference for the monitoring and enforcement of the Conservation Easement restrictions; and

WHEREAS; the City, as the Grantee of this Conservation Easement for the Tree Area, is a qualified holder of conservation easements under RCW 64.04.130; now, therefore,

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

THAT: The Conservation Easement for the Tree Area of the Protected Property, as described in Exhibit B and depicted in the Site Plan, is hereby accepted, and

THAT: The Mayor is authorized to execute the Conservation Easement on behalf of the City, and the City Clerk is directed to record the Conservation Easement with the Kitsap County Auditor's Office, and

THAT: The City Attorney is directed to take any necessary legal actions to effectuate the terms and conditions of the Conservation Easement, and

THAT: This Resolution shall take effect immediately upon passage.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 27th day of February 2024.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

After Recording Return to:

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

Document Title:	Grant of Conservation Easement
Reference Numbers:	XXX
Grantor:	JL Group, LLC, a Washington limited liability company
Grantee:	City of Port Orchard, a Washington municipal corporation
Abbreviated Legal Description:	THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 24 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON (Full Legal on Exhibit A)
Assessor's Property Tax Parcel No.:	252401-3-007-2005

GRANT OF CONSERVATION EASEMENT FOR TREE PRESERVATION

THIS GRANT OF A PERPETUAL CONSERVATION EASEMENT (hereinafter "**Conservation Easement**") is made this ____ day of _____, 2023, by JL Group, LLC, a Washington limited liability company (hereinafter "**Grantor**"), to City of Port Orchard, a Washington municipal corporation (hereinafter "**Grantee**" or "**City**"), in perpetuity as holder of the Conservation Easement pursuant to RCW 64.04.130. Individually they are a "**Party**" and together they are the "**Parties**."

RECITALS:

A. Grantor is the sole owner in fee simple of the property located on tax parcel 252401-3-007-2005 Kitsap County, Washington which is legally described on **Exhibit A**, which is attached hereto and incorporated herein by reference (the "**Protected Property**"). The Protected Property consists of approximately 4,536 square feet of land,; and

B. Grantor warrants that Grantor has good legal title to the Protected Property, as well as the right to convey this Conservation Easement, and that the Protected Property is free and clear of any encumbrances except those general exceptions contained in the title policy and any special exceptions shown on the Preliminary Commitment that are accepted by the Grantee; and;

C. Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or waste on the Protected Property; and

D. The Protected Property is zoned Commercial Mixed-Use and is in the process of being redeveloped for medical office. The Protected Property contains a large redwood tree of significance on the south-west corner of the Protected Property; and

E. On October 24, 2024, the City and the Grantor entered into a Development Agreement to allow modifications to the required development standards in order to preserve the redwood tree on the Protected Property in perpetuity. This Development Agreement required Grantor to grant a conservation easement to the City to protect the tree; and

E. This Conservation Easement is authorized by RCW 64.04.130, the provision of state law governing conservation easements; and

F. The Grantor and the Grantee intend and have the common purpose of retaining the portion of the Protected Property which contains the tree and the surrounding land to the tree dripline (hereinafter “**Tree Area**”) as a protected area which shall not be developed. The legal description for the Tree Area is set forth on **Exhibit B** which is attached hereto and incorporated herein by reference. Such protection of the Tree Area shall continue as a servitude running with the land, and authorizing Grantee to monitor and enforce such restrictions, as described herein; and

G. A site plan that is to scale identifying the Tree Area and describing the current condition and size of the redwood tree is attached to this Agreement as **Exhibit C** and incorporated herein by reference as though set forth in full (the “**Site Plan**”); and

H. City, as the Grantee of this Conservation Easement of the Tree Area portion of the Protected Property, is a qualified holder of conservation easements under RCW 64.04.130;

AGREEMENT:

NOW, THEREFORE, for and in consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein and other valuable consideration by Grantee, the receipt of which is hereby acknowledged by Grantor, and pursuant to the laws of the State of Washington, including Chapter 64.04 of the Revised Code of Washington, the Parties hereby agree as follows:

I. Grant. Grantor hereby grants to the Grantee a perpetual Conservation Easement over, under, across and through the Tree Area of the Protected Property, as described in **Exhibits B** and **C**, to protect, preserve, maintain, improve, restore, limit future use of or otherwise conserve the Tree Area for the perpetual health of the tree.

II. Purpose. The purpose of this Conservation Easement is to assure that the Tree Area will be retained forever in its natural and open space condition and to prevent any use of the Protected Property that will significantly impair or interfere with health of the tree or Tree Area. Grantor intends that this Conservation Easement will confine the

use of, or activity on, the Tree Area to such uses and activities that are consistent with this purpose. This statement of purpose is intended as a substantive provision of the Conservation Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Conservation Easement will be resolved so as to further this purpose.

III. Rights of the Grantee. Grantor hereby conveys to the Grantee all rights necessary to accomplish the purpose of this Conservation Easement, including, without limitation, the following:

- A. The right to protect, conserve, maintain, improve and restore the Tree Area for the health and preservation of the tree.
- B. The right to enter the Protected Property or allow Grantee's invitees or licensees to enter, at a reasonable time and upon prior written notice to the Grantor, for the following purposes (i) to make general inspection of the Tree Area to monitor compliance with this Conservation Easement; (ii) to protect, preserve, maintain, improve and restore the Tree Area; and (iii) to mitigate or terminate any violation or otherwise enforce the provisions of this Conservation Easement.
- C. The right to enjoin any use of, or activity on, the Tree Area that is inconsistent with the purpose of this Conservation Easement, including trespasses by members of the public, and to require the restoration of such area or features of the Tree Area as may be damaged by uses or activities inconsistent with the provisions of this Conservation Easement, all in accordance with Section VIII.
- D. The right to enforce the terms of this Conservation Easement, consistent with Section VIII.
- E. The right to place a sign on the Protected Property which acknowledges this Conservation Easement and any conditions of access under this Conservation Easement.

The foregoing are rights, not obligations, and shall not create any third party rights of enforcement.

IV. Permitted Uses and Activities.

- A. Grantor reserves to itself, and to its successors and assigns all rights accruing from its ownership of the Protected Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not prohibited herein and are not inconsistent with the purpose of this Conservation Easement. In the event Grantor plans to undertake actions that could be inconsistent with the purpose of this Conservation Easement, Grantor shall provide Grantee written notice of such intent not less than sixty (60) days prior to the date Grantor intends to

undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Conservation Easement. Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's notice. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action proposed would be inconsistent with the purpose of this Conservation Easement.

- B. Improvements to the Protected Property shall be limited to those which do not impact the Tree Area or endanger the health of the redwood tree. Any activities, improvements, or development that do not impact the Tree Area or the health of the redwood tree are allowed consistent with applicable code. Grantee acknowledges and agrees that the Development Project described in the Development Agreement between the Parties, including work performed under Port Orchard development permits PW23-033, PW23-034, and PW23-035, is authorized and no additional notice or requirements under this Conservation Easement are required in order for Grantee to implement the Development Project.
- C. Nothing herein precludes the Grantor from demolishing, removing, and remediating existing improvements on the Protected Property as of the date of this Conservation Easement.

V. **Transfer of Property.** The Grantor agrees to:

- A. Incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, leasehold interests.
- B. Describe the Conservation Easement in and append it to any contract for the transfer of any interest in the Protected Property.
- C. Give written notice to the Grantee of the transfer of any interest in all or any portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to the Grantee shall include the name, address and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of the Grantor to perform any act required by this subsection shall not impair the validity of this Conservation Easement or limit its enforceability.

VI. Extinguishment. This Conservation Easement may be terminated or extinguished, whether in whole or in part, only under one or more of the following circumstances:

- A. By judicial determination, by a court having jurisdiction over the Conservation Easement, those circumstances have rendered the purpose of this Conservation Easement impossible to achieve.
- B. In the event the redwood tree is no longer standing in the Tree Area, through no fault of the Grantor, as a result of acts of God, such as fire, flood, storm, and earth movement. Any and all costs of the clean-up and removal shall be borne by Grantor.
- C. In the event the redwood tree deteriorates through no fault of Grantor and such deterioration creates a risk to public safety, the Grantor may provide the report of a certified arborist to the City with information about the condition of the tree, the viability of preserving the tree, and any applicable risk to public safety. In such case, the City will consider whether the tree should be removed, and the Conservation Easement terminated or whether the tree can be saved or replaced, and the Conservation Easement maintained. The City's decision shall be final. Any and all costs for such removal, including clean-up and restoration shall be borne by Grantor.
- D. By mutual agreement of the Parties.

VII. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep, and maintenance of the Protected Property, including performing routine and general maintenance in and upon the Tree Area.

- A. Taxes. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property.
- B. Attorneys' fees and costs for enforcement. If the Grantee commences and successfully prosecutes an enforcement action pursuant to Section VIII below, the Grantor shall pay all reasonable costs and expenses associated with the enforcement action, including but not limited to, reasonable attorneys' fees.

VIII. Enforcement and Monitoring. Grantee shall have the authority to enforce the terms of this Conservation Easement. To exercise this authority and thereby further the purpose of this Conservation Easement, the Grantee shall have the following rights under this Conservation Easement, which are subject to the stated limitations:

- A. Entry onto Protected Property with Reasonable Notice. If the Grantee has reason to believe that a violation of the terms of this Conservation Easement has occurred or is occurring, the Grantee shall have the right to enter the Protected Property, provided that reasonable advance notice is given to the Grantor, for the purpose of inspecting it for violations of any requirement set forth in this Conservation Easement. Additionally, the Grantee shall have the right to enter the Protected Property at least once a year, at a mutually agreed time, for purposes of inspection and compliance monitoring regardless of whether Grantee has reason to believe that a violation of this Conservation Easement exists.
- B. Enforcement Mechanisms and Remedial Measures. If the Grantee finds what it believes to be a violation of this Conservation Easement, it may, at its discretion, use any available legal or equitable remedy to secure compliance, including but not limited to seeking injunctive relief and/or specific performance requiring the Grantor to cease and desist all activity in violation of the terms of this Conservation Easement and to return the Protected Property to its condition prior to any violation(s). Except when an imminent violation could irreversibly diminish or impair the Tree Area of the Protected Property, the Grantee shall give the Grantor written notice of the violation and thirty (30) days in which to take corrective action prior to commencing any legal action. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time or constitute a waiver of its rights. Grantee may use the Site Plan as a basis for enforcing the provisions of this Conservation Easement, but is not limited to the use of the Site Plan to show a change of conditions.
- C. Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damages to the Tree Area of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire. The costs of such action shall be borne by Grantor.
- D. Scope of Relief. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that the Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- E. Costs of Enforcement. In the event Grantee must enforce the terms of this Conservation Easement, any costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, invitees or licensees in violation of the terms of this Conservation Easement and Grantee's reasonable enforcement expenses, including reasonable attorneys' and consultants' fees and costs, shall be borne by Grantor, its successors or assigns.
- F. Waiver of Defenses. Grantor acknowledges it has carefully reviewed this Conservation Easement and has consulted or had the opportunity to consult with counsel of its terms and requirements. In full knowledge of the provisions of this Conservation Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Conservation Easement based upon waiver, laches, estoppel or prescription.
- G. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle the Grantee to bring any action against Grantor to abate, correct or restore any condition in the Tree Area or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement or the like.

IX. Hold Harmless. Grantor hereby agrees to release and hold harmless, indemnify and defend Grantee, its officers, elected and appointed officials, employees and agents (collectively "Indemnified Parties") from all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys' and consultants' fees arising from or in any way connected with:

- A. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Protected Property that is not a consequence of an activity of the Indemnified Parties undertaken under the rights granted to Grantee under this Conservation Easement;
- B. Violations or alleged violations of, or other failure to comply with, any federal, state or local law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, including without limitation CERCLA (42 U.S.C. 9601 et seq.) and MTCA (Ch. 70.105D RCW), by any person other than any of the Indemnified Parties, in any way affecting, involving or relating to the Tree Area of the Protected Property, unless such violations or alleged violations are due to the sole acts or omissions of any of the Indemnified Parties on the Protected Property;
- C. The presence or release in, on, from or about the Tree Area of the Protected Property, at any time, of any substance now or hereafter defined, listed or

otherwise classified pursuant to any federal, state or local law, regulation or requirement of any substance hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

X. Recordation. Grantee shall record this instrument in the Office of the Kitsap County Auditor and may re-record it at any time.

XI. Notices. Any notice, demand, request, consent, approval, or communication that any Party desires or is required to give to another Party under the terms of this Conservation Easement shall be in writing and either served at or mailed to:

Grantee: City of Port Orchard
216 Prospect Street
Port Orchard WA 98366

Grantor(s): JL Group, LLC
Shelly Cook
2893 Erlands Beach Loop NW
Bremerton, WA 98312

or to such other address as any Party from time to time shall designate by written notice to others.

XII. General Provisions.

- A. Amendment. If circumstances arise under which an amendment to this Conservation Easement would be appropriate, the Grantor and Grantee may jointly amend this Conservation Easement by a written instrument to be recorded with the Kitsap County Auditor, provided that such an amendment does not diminish the effectiveness of this Conservation Easement in carrying out its purpose to permanently preserve and protect in perpetuity the Tree Area of the Protected Property.
- B. Controlling Law. The interpretation or performance of this Conservation Easement shall be governed by the laws of the State of Washington and the Laws of the United States. Any legal proceeding regarding this Conservation Easement shall be initiated in Kitsap County Superior Court.
- C. Interpretation. This Conservation Easement shall be interpreted to resolve any ambiguities and questions of the validity of specific provisions to give maximum effect to its preservation purpose, as stated in Section II, above. If the Grantor has any doubt concerning the Conservation Easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the said Protected Property, it may submit a written request to the Grantee for consideration and approval of such use.

- D. Definitions. Any masculine term used in this Conservation Easement shall include the female gender. The terms “Grantor” and “Grantee,” wherever used in this Conservation Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its successors, and assigns, and the above-named Grantee, its successors and assigns.
- E. Entire Agreement. This Conservation Easement sets forth the entire agreement of the Parties with respect to the issues addressed herein and supersedes all prior discussions, negotiations, understandings, or agreements relating to these issues, all of which are merged herein.
- F. No Forfeiture. Nothing in this Conservation Easement shall result in a forfeiture or revision of Grantor’s title in any respect.
- G. Successors. As stated in the above recitals, all covenants, terms, conditions, and restrictions of this Conservation Easement shall run with the land and be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.
- H. Severability. If any portion of this Conservation Easement is declared unlawful or invalid, the remainder of the Conservation Easement shall remain in full force and effect.
- I. Authority of Signatories. The individuals executing this Conservation Easement warrant and represent that they are duly authorized to execute and deliver this Conservation Easement.
- J. No Merger. If Grantee at some future time acquires the underlying fee title in the Protected Property, the interest conveyed by this Deed will not merge with fee title but will continue to exist and be managed as a separate estate.

XIII. Environmental Compliance.

- A. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor’s knowledge, Grantor and the Protected Property are in compliance with all federal, state and local laws, regulations and requirements applicable to the Protected Property and its use, including without limitation all federal, state and local environmental laws, regulations and requirements.
- B. Grantor further represents and warrants that there has been no release, dumping, burying, abandonment or migration from offsite onto the Property of any substances, materials or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are subject to regulation as hazardous, toxic, dangerous, or harmful by any

C. Remediation. If at any time there occurs or has occurred a release in, on or about the Property of any substances now or hereafter defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by the Grantee, in which case Grantee shall be responsible for remediation.

IN WITNESS WHEREOF the Parties have, by their authorized officers, set their own hands as of the day and year first stated above.

By: _____
Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
the day and year first above written.

Printed Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My Commission Expires: _____.

ACCEPTED BY GRANTEE:

On **February 27, 2024** the Port Orchard City Council adopted Resolution No. **XXX**
authorizing the Mayor to accept the Conservation Easement, pursuant to RCW 64.04.130.

GRANTEE:
CITY OF PORT ORCHARD

By: _____
Robert Putaansuu, Mayor

Attest:

Brandy Wallace, City Clerk

Approved as to form:

Charlotte Archer, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
the day and year first above written.

Printed Name: _____
NOTARY PUBLIC in and for the State of

Washington, residing at _____.
My Commission Expires: _____.

EXHIBIT A

Legal Description of Protected Property

For APN/Parcel ID(s): 252401-3-007-2005

Legal Description of Protected Property:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 24 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING 685 FEET SOUTH OF THE NORTHWEST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 24 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON; THENCE SOUTH 120 FEET; THENCE EAST 335 FEET; THENCE NORTH 120 FEET; THENCE WEST 335 FEET TO THE POINT OF BEGINNING; EXCEPT THAT PORTION THEREOF LYING WEST OF THE EAST MARGIN OF MITCHELL ROAD; TOGETHER WITH THAT PORTION OF VACATED COUNTY ROAD PER VOLUME 8 OF COMMISSIONER'S JOURNAL, PAGE 591, ADJOINING SAID PREMISES ON THE EAST.

Subject to easements and reservations of record.

Situate in the County of Kitsap, State of Washington

EXHIBIT B

Legal Description of Tree Area

For APN/Parcel ID(s): 252401-3-007-2005

Legal Description of Tree Area Portion of Protected Property:

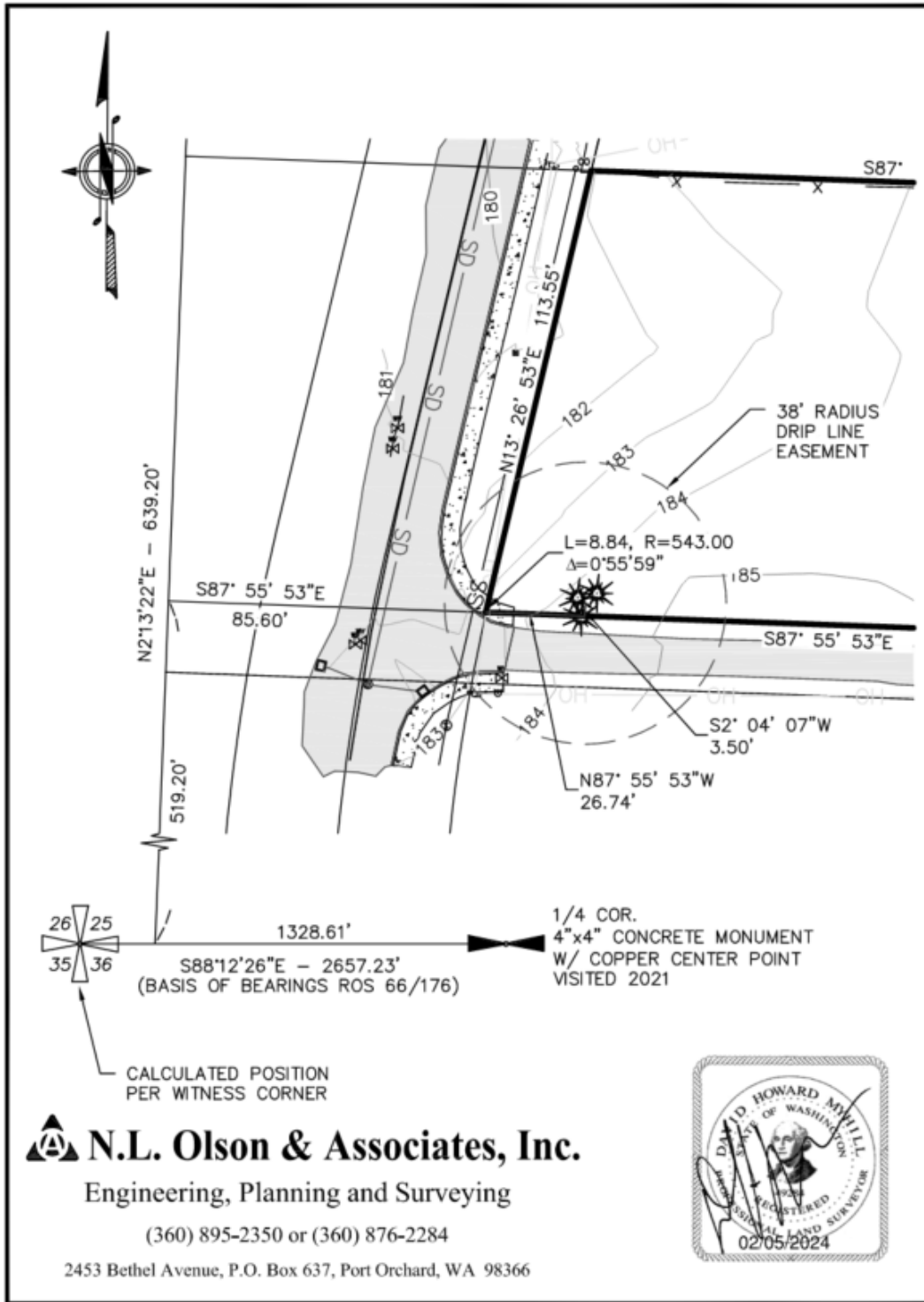
In the Southeast Quarter of the Southwest Quarter of Section 25, Township 24 North, Range 1 East, W.M., in Kitsap County, Washington: That portion of the Parcel conveyed and described in the Statutory Warranty Deed recorded under AFN 201409260134, records of Kitsap County, which falls within the following described Circle: Commencing at the South Quarter Corner of said Section 25 as shown on the Survey recorded in Volume 66 of Surveys, Page 159, Records of Kitsap County; THENCE N88°12'26"W 1328.61 feet along the South Section Line as shown on said Survey; THENCE N2°13'22"E 519.20 feet; THENCE S87°55'53"E 85.60 feet to the Southwest Corner of said Parcel; THENCE S87°55'53"E 26.74 feet along the South Line of said Parcel; THENCE N2°04'07"E to the Center of the herein described Circle, said Circle having a radius of 38 feet.

Subject to easements and reservations of record.

Situate in the County of Kitsap, State of Washington

EXHIBIT C

Site Plan Showing Tree and Surrounding Area Subject to Conservation Easement,
including Description of Current Size and Condition of Redwood Tree





Agenda Staff Report

Agenda Item.: Consent Agenda 4F

Meeting Date: February 27, 2024

Subject: Adoption of a Resolution Approving the
Purchase of Equipment for the Equipment
Rental and Revolving Fund 500

Prepared By: Matt Brown
Chief of Police

Summary: The City Council adopted the 2023-2024 Biennial Budget, which included \$603,000 for the purchase of vehicles, equipment, and outfitting for the Equipment Rental and Revolving Fund 500.

The City Council amended the 2023-2024 Biennial Budget during the biennial review; \$142,200 was included for the purchase of additional vehicles, equipment, and outfitting for the Equipment Rental and Revolving Fund 500.

The total cost for the purchase, equipment, and outfitting of eleven vehicles will cost approximately \$846,850.

Additional funding of \$101,850 will be expensed from the criminal justice fund.

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

The equipment listed in the proposed resolution is within the limits of the Biennial Budget and meets the City's fleet standardization policies.

The proposed Resolution is to provide the City Council's approval of the vehicle purchases in accordance with the procurement procedures established by the City Council.

Recommendation: Staff recommends approving the Resolution as proposed.

Relationship to Comprehensive Plan: None.

Motion for consideration: "I move to adopt a Resolution authorizing the purchase of eleven vehicles, associated equipment, and outfitting, providing City Council approval in accordance with the City's fleet standardization policies and the 2023-2024 Biennial Budget."

Fiscal Impact: The 2023 / 2024 current budget is \$745,200. An additional expenditure of \$101,850 is required to complete the purchase, associated equipment, and outfitting of the eleven vehicles.

The added funds will require a budget amendment. Finance proposes using surplus revenue from the criminal justice fund 103 to cover the additional cost.

Alternatives: Do not approve resolution and provide alternative guidance.

Attachments: Resolution, Quote for 11 Vehicles from Peoria Ford

RESOLUTION NO. **

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING THE PURCHASE OF VEHICLES FOR THE EQUIPMENT RENTAL REVOLVING FUND.

WHEREAS, the City Council has approved Ordinance No. 035-20, approving the 2023-2024 Biennial Budget; and

WHEREAS, the 2023-2024 Biennial Budget includes \$709,000 for capital purchases of vehicles and equipment for the Equipment Rental and Revolving fund; and

WHEREAS, the City Council amended the 2023-2024 Biennial Budget during the biennial review; \$142,200 was included for the purchase of additional vehicles and equipment for the Equipment Rental and Revolving Fund 500; and

WHEREAS, The criminal justice fund can support the additional cost of approximately \$101,850 for the purchase of the vehicles; and

WHEREAS, The added funds will require a budget amendment; and

WHEREAS, the City Council has approved procurement policies which require City Council authorization for purchasing items costing \$35,000 or more; now therefore,

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

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

THAT: The City Council approves the purchase of all eleven vehicles listed in the purchase order attached hereto in Exhibit A. The Mayor or his designee is authorized to take action consistent with this authorization.

THAT: The City Council approves the equipment and outfitting of the associated eleven police cars in an amount not to exceed \$250,000. The Mayor or his designee is authorized to take action 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 this 27th day of February 2024.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk



PFVT MOTORS, LLC.
CLIFF KUJALA
Government Account Team
Direct: 623-239-0340

Purchase Order / Quote

Date	2/12/2024
Valid Until	2/17/2024
Contract	CTR059322 - AZ STATE
PO	
Lead Time	FEB 2024

Customer:	Invoice Address:	Delivery Address:
City of Port Orchard 546 Bay St Port Orchard WA 98366 Matt Brown 360-876-1700	Same	Systems for Public Safety 9412 Front Street South Lakewood WA 98499

Description	Line Total
POLICE INTERCEPTOR 2024 UTILITY AWD EXTERIOR 119" WHEELBASE 3.0L ECOBOOST V6 ENGINE INTERIOR 10-SPEED AUTO TRANSMISSION EBONY CLOTH FRT/VINYL REAR	\$47,165.00
EXTERIOR <input type="checkbox"/> 18" H.D. STEEL WHEELS <input type="checkbox"/> 255/60R18 A/S BSW POLICE TIRES <input type="checkbox"/> CLASS III HITCH RECEIVER <input type="checkbox"/> DUAL EXHAUST SYSTEM <input type="checkbox"/> DUAL POWER MIRRORS <input type="checkbox"/> FULL SIZE 18" SPARE W/TPMS <input type="checkbox"/> HEADLAMPS - AUTO, LED LOW/HIGH INCLUDES FRONT HOUSING (W/ LED WIG-WAG) <input type="checkbox"/> KEY LOCKS (DR/PASS/LFTGT) <input type="checkbox"/> PRIVACY GLASS 2ND/3RD ROW	
INTERIOR <input type="checkbox"/> 35/30/35 SPLIT VINYL REAR <input type="checkbox"/> A/C W/AUTOMATIC CLIMATE CONTROL, DUAL ZONE <input type="checkbox"/> BLACK VINYL FLOOR COVERING <input type="checkbox"/> CERTIFIED SPEEDOMETER <input type="checkbox"/> CLOTH BUCKET FRONT SEATS <input type="checkbox"/> CONSOLE MOUNTING PLATE <input type="checkbox"/> ENGINE HOUR / IDLE METER <input type="checkbox"/> HTD SANITIZATION SOLUTION <input type="checkbox"/> PWR DR SEAT/6-WAY/M LUMBAR <input type="checkbox"/> RED/WHITE TASK LIGHTING <input type="checkbox"/> SEATBACK INTRUSION PLATES <input type="checkbox"/> TILT/TELESCOPING STEERING WHL W/ 4 CONFIGURABLE LATCHING SWITCHES	
UNIVERSAL TOP TRAY FUNCTIONAL <input type="checkbox"/> AM/FM/MP3/BLEETOOTH & USB <input type="checkbox"/> COLUMN MOUNTED SHIFTER <input type="checkbox"/> ENGINE OIL COOLER <input type="checkbox"/> FULL-TIME ALL WHEEL DRIVE SYSTEM <input type="checkbox"/> HEAVY DUTY SUSPENSION <input type="checkbox"/> HEAVY-DUTY 80-AMP BATTERY <input type="checkbox"/> INTERIOR TRUNK/LIFTGATE RELEASE <input type="checkbox"/> POLICE BRAKES: 4 WHL DISC W/ ABS & TRACTION CONTROL <input type="checkbox"/> POWER STEERING W/EPAS <input type="checkbox"/> REAR VIEW CAMERA <input type="checkbox"/> TRANSMISSION OIL COOLER	
<input type="checkbox"/> TRANSMISSION-10-SPEED AUTO SAFETY/SECURITY <input type="checkbox"/> 75 MPH REAR-CRASH TESTED <input type="checkbox"/> ADVANCETRAC™ WITH RSC® <input type="checkbox"/> AIRBAGS - FRONT AND SIDE <input type="checkbox"/> AIRBAGS - SAFETY CANOPY <input type="checkbox"/> SOS POST CRASH ALERT SYS <input type="checkbox"/> TIRE PRESSURE MONITOR SYS WARRANTY <input type="checkbox"/> 3 YR/36K MILE BUMPER-TO-BUMPER WARRANTY <input type="checkbox"/> 5 YR/100K MILE POWERTRAIN CARE EXTENDED SERVICE PLAN (ZERO DEDUCTIBLE)	
INCLUDED ON THIS VEHICLE EQUIPMENT GROUP 500A OPTIONAL EQUIPMENT/OTHER .AM/FM STEREO 3.0L ECOBOOST V6 ENGINE 950.00 10-SPEED AUTO TRANSMISSION NO CHARGE HID PLUNG W/R HNDL INOPERABLE 160.00 CARGO DOME LAMP -RED/WHITE 50.00 H8 AGM BATTERY 110.00 REAR CAMERA ON DEMAND 230.00 50 STATE EMISSIONS NO CHARGE COURTESY LAMP DISABLE 25.00 POLICE ENGINE IDLE FEATURE 260.00 SPOT LAMP LED DR - WHELEN 420.00 KEYLESS ENTRY - 4 FOBS 340.00 4G LTE WI-FI HOTSPOT CREDIT - 20.00 WIRING GRILL/LAMP/SIREN/SPKRS 50.00 NOISE SUPPRESSION BOND STRAPS 100.00 OBD-II SPLIT CONNECTOR 55.00 SIDE MARKER LIGHTS SKULL CAPS 290.00 STNLS STL HUB WHL CVR CREDIT - 50.00	
POL WIRE HARNESS CONNECTOR KIT 185.00 .POLICE WIRING KIT REAR .POLICE WIRING KIT FRONT PERIMETER ALERT 675.00 REAR DR HNDL AND LOCKS INOPR NO CHARGE DEFLECTOR PLATE 335.00 PRE-COLLISION ASSIST 145.00 REAR CONSOLE MOUNTING PLATE 45.00 REAR TAILLAMP HOUSING 60.00 REAR VIEW MIRROR W/REAR CAMERA NO CHARGE FRONT LICENSE PLATE BRACKET NO CHARGE	
OPTIONS / OTHER	\$4,415.00
FORD DESITNATION AND DELIVERY	\$1,595.00
DISCOUNT	-\$1,595.25
Subtotal	\$51,579.75
Sales Tax 0.00%	\$0.00
Tire Tax 5	\$5.00
Extended Warranty	\$0.00
Flooring	\$0.00
Freight	\$0.00
MSO / ODO	\$0.00
Total Per Unit less Trade-In	\$51,584.75
Quantity of Units	11
Sale Total	\$567,432.25

Special Notes and Instructions
MSO/ODO Statement. Cust Responsible for registration in home state. Phase 2 Out of Stock / Incoming VIN QUOTED 1FM5K8AC3RGA06009 - DARK BLUE 1FM5K8AC5RGA06108 - DARK BLUE 1FM5K8AC4RGA05967 - BLACK 1FM5K8AC0RGA05691 - BLACK 1FM5K8AC9RGA05933 - BLACK 1FM5K8AC1RGA05909 - BLACK 1FM5K8AC0RGA05884 - BLACK 1FM5K8AC0RGA06081 - BLACK 1FM5K8AC3RGA06026 - BLACK 1FM5K8AC2RGA05711 - BLACK 1FM5K8AC7RGA05803 - BLACK

Above information is not an invoice and only an estimate of services/goods described above. Quote subject to change.

Please confirm your acceptance of this quote by signing this document, and returning your
Signature
PO. Print Name
Date

If you have any questions concerning this quote, contact Cliff Kujala

Thank you for your business!

9130 W Bell Road, Peoria AZ 85382
623-239-0340 - cliff.kujala@governmentautosales.com

PFVT Motors, LLC
9130 W Bell Road
Peoria, AZ 85382
623.239.0340

P.O. No. 013-24
Date: February 28, 2024

Ship To:
Systems for Public Safety
9412 Front Street South
Lakewood, WA 98499

Bill To:
Attn: Accounts Payable
City of Port Orchard
216 Prospect Street
Port Orchard, WA 98366
ap@portorchardwa.gov

Ordered By:	Authorized Signature:
Matt Brown Police Department	City Clerk or Authorized Representative Signature

Qty		Unit Price	Total
	Police Vehicles		
11	2024 Police Interceptor	\$51,584.75	\$567,432.25
	Per Unit: \$47,165.00		
	Options/Other: \$4,415.00		
	Ford Destination and Delivery: \$1,595.00		
	Discount: (\$1,595.25)		
	Subtotal: \$51,579.75		
	Tire Tax: \$5.00		
	Total Per Unit Less Trade-In: \$51,584.75		
	* See attached Peoria Quote Dated 2/12/2024 for more information		
	** Contract No. CTR059322-AZ State		
	IF TOTAL COST IS OVER \$7,500.00 ATTACH PROCUREMENT DOCUMENTS		

THIS ORDER IS A CONFIRMATION	Yes
THIS ORDER IS NOT A CONFIRMATION	
ACCOUNT CODE	

Total	\$567,432.25 plus applicable sales tax
Sales Tax	TBD
Balance Due	



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 Chang	Present
Councilmember Diener	Present
Councilmember Fenton	Present
Councilmember Morrissey	Present
Councilmember Rosapepe	Present
Councilmember Trenary	Present
Councilmember Worden	Present
Mayor Putaansuu	Present

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

The meeting streamed live on YouTube.

A. PLEDGE OF ALLEGIANCE (Time Stamp 00:34)

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

2. APPROVAL OF AGENDA (Time Stamp: 00:56)

MOTION: By Councilmember Chang, seconded by Councilmember Trenary, to move Consent Agenda Item 4C 'Adoption of a Resolution Authorizing the Purchase of Radios for Radio Read Meters from Ferguson Waterworks via DES Contract No. 01118' to Business Items.

The motion carried.

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

The motion carried.

3. CITIZENS COMMENTS ON AGENDA ITEMS (Time Stamp 02:06)

There were no citizen comments.

4. CONSENT AGENDA (Time Stamp: 02:44)

- A.** Approval of Voucher Nos. 87219 through 87287 and 87294 through 87325 including bank drafts in the amount of \$844,630.98 and EFT's in the amount of \$2,038.939.59 totaling \$2,883.570.57.
- B.** Approval of Payroll Check Nos. 87288 through 87293 including bank drafts and EFT's in the amount of \$259,453.63 and Direct Deposits in the amount of \$247,982.57 totaling \$570,436.20.
- C.** ~~Adoption of a Resolution Authorizing the Purchase of Radios for Radio Read Meters from Ferguson Waterworks via DES Contract No. 01118~~ MOVED TO BUSINESS ITEMS
- D.** Approval of the January 23, 2024, City Council Regular Meeting Minutes

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

The motion carried.

5. PRESENTATION

There were no presentations.

6. PUBLIC HEARING

There were no public hearings.

7. BUSINESS ITEMS

- A. Adoption of an Ordinance for the McCormick Village Overlay District Amendment-Fourplex (Time Stamp 03:23)**

MOTION: By Councilmember Trenary, seconded by Councilmember Diener, to adopt an ordinance amending POMC Sections 20.38.225, 20.38.230, 20.38.240, and 20.38.270, and adding Sections 20.38.285 and 20.38.290 as presented.

The motion carried.
(Ordinance No. 003-24)

- B. Approval of a Memorandum of Understanding Between the City of Port Orchard and Century Communities of Washington, LLC Concerning the Mitigation of Traffic Impacts at Sinclair Ridge in Bremerton (Time Stamp: 06:59)**

MOTION: By Councilmember Worden, seconded by Councilmember Diener, to approve a Memorandum of Understanding between the City and Century Communities of Washington, LLC, as presented.

The motion carried.
(Contract No. 025-24)

C. Approval of the January 15, 2024, Special Meeting Minutes, Legislative Reception Dinner (Time Stamp 17:40)

MOTION: By Councilmember Rosapepe, seconded by Councilmember Morrissey, to approve the minutes as presented.

The motion carried. Councilmembers Chang and Diener abstained.

D. Adoption of a Resolution Authorizing the Purchase of Radios for Radio Read Meters from Ferguson Waterworks via DES Contract No. 01118 (Time Stamp: 18:18)

MOTION: By Councilmember Diener, seconded by Councilmember Trenary, to adopt a resolution authorizing the purchase of water meters and equipment from Ferguson Waterworks.

The motion carried.

(Resolution No. 008-24 and Purchase Order No. 010-24)

8. DISCUSSION ITEMS (No Action to be Taken)

A. Development Activity (Time Stamp 30:02)

Community Development Director Bond provided a presentation 'City of Port Orchard Development Activity and City Projects' which included the Kitsap County Campus Parking Expansion, Forest Song Apartments, McCormick Village Phase 1-4, McCormick Village Master Plan, McCormick Village Park Phase 3, McCormick Trails (McCormick West), McCormick Trails Division 18, McCormick Woods Remaining Phases, St. Andrews Park, Stetson Heights/Stetson Ridge, Haven Townhomes, Kitsap Transit Park and Ride, Meyer's Sedgwick, Pottery Creek Apartments Phase 2, Blueberry Apartments, Hidden Hills Apartments, Thimbleberry Townhomes, Salmonberry Apartments, Home Depot, Riverstone Plat and Bridgeview Apartments, Contour Apartments, Plisko Apartments, Overlook Apartments, Kitsap Bank, 429 Bay Street, Diaz Meadows, and total residential development activity.

B. Downtown Presentation (Time Stamp 1:01:55)

Mayor Putaansuu provided a presentation 'Downtown Revitalization' which included downtown projects-total investments, Marina Breakwater, Electric Ferry and Charging Infrastructure, Bay Street Reconstruction, Bay Street Pedestrian Path Phase 2, Bay Street Pedestrian Path West Pre-Design, City Hall Reskin Project, Community Event Center, Orchard Street Plaza, Marina Lift Station, Environmental Cleanup, and Kitsap Bank Headquarters.

9. REPORTS OF COUNCIL COMMITTEES (Time Stamp 1:15:35)

Mayor Putaansuu reported the Finance Committee is scheduled to meet next week [February 20, 2024].

Councilmember Rosapepe reported the Sewer Advisory Committee is scheduled to meet next week [February 21, 2024].

10. REPORT OF THE MAYOR (Time Stamp: 1:16:44)

The Mayor reported on the following:

- Council Retreat and presentations.
- Port Orchard Bay Street Association and the Chimes and Lights event.
- Pottery Avenue Non-Motorized Project updates.
- City Hall renovations, clock tower, and weathervane updates.
- Marina pump station.
- WSDOT fish culvert on Mile Hill Drive needs a bridge. Options are to completely close the road for 60-days and build one bridge with a narrow footprint, or 18-months of construction with keeping the road open, build one bridge to divert traffic, then build a second bridge.

After a brief discussion, Council would like the second option of 18-months of construction and keeping the road open.

- Puget Sound Regional Council General Assembly.
- Bethel Road roundabouts.
- Discussions held during the Association of Washington Cities Action Days conference.

11. REPORT OF DEPARTMENT HEADS (Time Stamp 1:35:57)

Public Works Director Ryan reported on a small slide on Bethel Road.

HR Manager Lund reported in accordance with Resolution 076-23, she reported on changes made to the City's Accident Prevention Plan. Also, in accordance with Resolution 007-11 'Establishing a Process for Future Amendments to the City's Personnel Policies and Procedures', she reported on policy revisions regarding drug and alcohol testing of CDL drivers.

Community Development Director Bond said they have been removing temporary signs from City rights-of-way.

Police Chief Brown spoke to an article that was originally published back in December.

12. CITIZEN COMMENTS ON ANY ITEM (Time Stamp 1:43:05)

Richard Brown voiced concerns about building apartments on Sedgwick/Sidney without acquiring the right-of-way, and voiced concern about the Growth Management Act.

13. CITY COUNCIL GOOD OF THE ORDER (Time Stamp: 1:46:39)

Councilmember Chang reported former Councilmember Carolyn Powers passed away.

Councilmember Rosapepe encouraged everyone to vote as this year may be a very low turnout.

Councilmember Worden reported on the first Coffee with Council event.

14. EXECUTIVE SESSION

At 8:19 p.m., Mayor Putaansuu recessed the meeting for a 20-minute executive session pursuant to RCW 42.30.110(1)(i) to discuss legal risks of a proposed action where public discussion could have adverse legal or financial consequences. City Attorney Archer and Public Works Director Ryan were invited to attend, and Mayor Putaansuu stated no action would be taken.

At 8:39 p.m., Mayor Putaansuu extended the meeting an additional 15-minutes.

At 8:54 p.m., Mayor Putaansuu extended the meeting an additional 10-minutes.

At 9:04 p.m., Mayor Putaansuu extended the meeting an additional 2-minutes.

At 9:06 p.m., Mayor Putaansuu reconvened the meeting back into session.

15. ADJOURNMENT

The meeting adjourned at 9:06 p.m. No other action was taken. Audio/Visual was successful.

Brandy Wallace, MMC, City Clerk

Robert Putaansuu, Mayor



Agenda Staff Report

Agenda Item.: Business Item 7A

Meeting Date: February 27, 2024

Subject: Adoption of a Resolution Approving a Contract with Washington State Public Works Board for the Bay Street Lift Station Replacement Project and Ratifying the Mayor's Signature

Prepared By: Denis Ryan
Public Works Director

Summary: The Bay Street Lift Station was identified as a priority task for the City of Port Orchard's Public Works Department ("the Project"). Public works staff applied for pre-construction funding to the Washington State Public Works Board ("PWB), for the project.

On September 15, 2023 the City of Port Orchard was officially notified that it was awarded funding from the PWB's Pre-Construction Program in the amount of 1,000,000. The award consists of an \$850,000 loan and a \$150,000 grant. The funding is for the Bay Street Lift Station Replacement Project (PR24-96103-006), a necessary project for the City's sanitary sewer system. The City of Port Orchard Public Works Department received PWB Contract No. PR24-96103-006 from the Washington State Public Works Board with a summary of the terms and conditions as follows;

LOAN FUNDING:

Loan Amount:	\$850,000
Loan Term, if applicable:	5 years
Interest Rate:	0.69%
Payment Month:	June 1

GRANT FUNDING:

Grant Amount:	\$150,000
% of Funding as Grant:	15%

PROJECT TOTALS:

Total Funding:	\$1,000,000
Total Estimated Project Cost:	\$1,000,000
Earliest Date for Cost Reimbursement:	08/04/2023
Time of Performance:	24 months from the Execution Date of this Contract to Project Completion

Recommendation: Staff recommends that the City Council adopt an Ordinance, thereby approving and ratifying the Mayor's execution of a Contract with the Washington State Public Works Board for grant and loan funding for the Bay Street Lift Station Replacement Project in the amount of \$1,000,000 (a loan amount of \$850,000 and a grant amount of \$150,000).

Relationship to Comprehensive Plan: Ch 7 - Utilities

Motion for consideration: I move to adopt a Resolution, approving and ratifying the Mayor's execution of a Contract with the Washington State Public Works Board for the Sewer Lift Station Controls Upgrades Project in the loan/grant amount of \$1,000,000.

Fiscal Impact: The loan will be paid with 75% Sewer operating funds and 25% Sewer Capital Facilities funds.

Alternatives: Do not authorize and provide alternative direction.

Attachments: Resolution, PWB Contract No. PR24-96103-006, PWB Award Letter

RESOLUTION NO **

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH WASHINGTON STATE PUBLIC WORKS BOARD (PWB) THEREBY ACCEPTING A LOAN AND GRANT FOR BAY STREET LIFT STATION PROJECT.

WHEREAS, the Bay Street Lift Station replacement was identified as a priority task for the City of Port Orchard’s Public Works Department (“the Project”); and

WHEREAS, Public works staff applied for pre-construction funding to the Washington State Public Works Board (“PWB”), for the project; and

WHEREAS, on September 15, 2023 the City of Port Orchard was officially notified that it was awarded funding from the PWB’s Pre-Construction Program in the amount of \$1,000,000 (\$850,000 loan and a \$150,000 grant); and

WHEREAS, the Port Orchard City Council has determined it to be in the best interest of the City to accept the grant funding from PWB for the Project; 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 the Pre-Construction Funding Agreement with the Washington State Public Works Board, 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 City Clerk in authentication of such passage this 27th day of February 2024.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk



**Washington State
Public Works Board**

Post Office Box 42525
Olympia, Washington 98504-2525

September 15, 2023

Robert Putaansuu
City of Port Orchard
214 Prospect St
Port Orchard, WA 98366

Dear Mayor Putaansuu,

Thank you for applying to the Public Works Board (PWB) Pre-construction Program. Congratulations, the PWB conditionally approved your pre-construction application at its August 4, 2023 board meeting. Your Bay Street Lift Station Replacement project has been awarded \$1,000,000.00. The approval date is the award date. Any eligible costs incurred from that date forward are reimbursable.

The threshold checks and underwriting for your project are complete. The PWB offers this rate and term for your project: the award will be \$850,000.00 as a loan and \$150,000.00 as a grant. The loan interest rate is 0.69% with a loan term of 5 years.

The PWB processes contracts electronically. Upon receipt of the contract, please facilitate its review through your internal process in a timely manner and return an executed contract by February 5, 2024. Failure to do so by this date will result in withdrawal of the award.

Once again, thank you for applying to the Public Works Board. Please contact PWB Project Manager Max Wedding by email at max.wedding@commerce.wa.gov if you have any questions.

Sincerely,

Sheila Richardson
PWB Programs Director

cc: Application File

CONTRACT FACE SHEET

Contract Number: PR24-96103-006

PUBLIC WORKS BOARD PRE-CONSTRUCTION FUNDING CONTRACT

1. Contractor City of Port Orchard 214 Prospect St Port Orchard, WA, 98366		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative Jacki Brown		4. Public Works Board Representative Max Wedding	
5. Contract Amount \$ 1,000,000	6. Funding Source: Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Contract Start Date Contract Execution Date	8. Contract End Date: June 1, 2029
9. Federal Funds (as applicable) N/A	Federal Agency N/A	CFDA Number N/A	
10. Tax ID # N/A	11. SWV # SWV00265665-00	12. UBI # 182-000-005	13. UEI # N/A
14. Contract Purpose Fund a project of a local government for Pre-Construction activities that include, but are not limited to, design engineering, bid-document preparation, environmental studies, right-of-way acquisition, value planning, permits, cultural and historic resources, and public notification.			
The BOARD, defined as the Washington State Public Works Board, and the Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents that are incorporated by reference: Contract Terms and Conditions including Declarations Page; the BOARD Traditional Program Policy Handbook; and Attachment I: Attorney's Certification.			
FOR THE CONTRACTOR		FOR PUBLIC WORKS BOARD	
Signature		Kathryn A. Gardow, Public Works Board Chair	
Print Name		Date	
Title		APPROVED AS TO FORM ONLY November 15, 2023	
Date		Signature on File Dawn C. Cortez Assistant Attorney General	

This page is intentionally blank



DECLARATIONS

CLIENT INFORMATION

Legal Name: City of Port Orchard
Contract Number: PR24-96103-006

PROJECT INFORMATION

Project Title: Bay Street Lift Station Replacement
Project City: Port Orchard
Project State: **Washington**
Project Zip Code: 98366

FUNDING INFORMATION

LOAN FUNDING:

Loan Amount: \$850,000
Loan Term, if applicable: 5 years
Interest Rate: 0.69%
Payment Month: June 1

GRANT FUNDING:

Grant Amount: \$150,000
% of Funding as Grant: 15%

PROJECT TOTALS:

Total Funding: \$1,000,000
Total Estimated Project Cost: \$1,000,000
Earliest Date for Cost Reimbursement: 08/04/2023
Time of Performance: 24 months from the Execution Date of this Contract to Project Completion.

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS CONTRACT

n/a

LOAN SECURITY CONDITION GOVERNING THIS CONTRACT

This loan is a revenue obligation of the CONTRACTOR payable solely from the net revenue of the Sanitary Sewer (Wastewater system. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The BOARD grants the CONTRACTOR the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan agreement.

SCOPE OF WORK

This project will complete the Preliminary Engineering Report and begin 100% design engineering to replace and re-site the existing Bay Street Lift Station away from Blackjack Creek, which may include the acquisition of property.

The project costs may include but are not limited to: engineering, cultural and historical resources, environmental documentation, review, permits, public involvement, and bid documents.

The project needs to meet all applicable Local, State, and/or Federal standards.

Contents

PART 1. SPECIAL TERMS AND CONDITIONS.....	6
1.1 DEFINITIONS	6
1.2 AUTHORITY	6
1.3 PURPOSE	6
1.4 ORDER of PRECEDENCE	6
1.5 COMPETITIVE BIDDING REQUIREMENTS.....	6
1.6 DEFAULT in REPAYMENT	6
1.7 SUB-CONTRACTOR DATA COLLECTION	7
1.8 ELIGIBLE PROJECT COSTS	7
1.9 HISTORICAL and CULTURAL RESOURCES.....	7
1.10 PROJECT COMPLETION AMENDMENT and CERTIFIED PROJECT COMPLETION REPORT	8
1.11 RATE and TERM of LOAN.....	8
1.12 RECAPTURE.....	9
1.13 REIMBURSEMENT PROCEDURES and PAYMENT	9
1.14 REPAYMENT.....	10
1.15 REPORTS	10
1.16 TERMINATION for CAUSE	10
1.17 TERMINATION for CONVENIENCE	10
1.18 TIME of PERFORMANCE	10
1.19 CONTRACT SUSPENSION.....	11
1.20 SPECIAL CONDITIONS	11
1.21 LOAN SECURITY	11
PART 2. GENERAL TERMS AND CONDITIONS.....	12
2.1 DEFINITIONS	12
2.2 ALLOWABLE COSTS	12
2.3 ALL WRITINGS CONTAINED HEREIN.....	12
2.4 AMENDMENTS	12
2.5 AMERICANS WITH DISABILITIES ACT (ADA).....	12
2.6 APPROVAL	13
2.7 ASSIGNMENT	13
2.8 ATTORNEYS' FEES	13
2.9 AUDIT	13
2.10 CODE REQUIREMENTS	13
2.11 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION	14
2.12 CONFORMANCE	14
2.13 COPYRIGHT PROVISIONS.....	14

2.14	DISALLOWED COSTS	15
2.15	DISPUTES.....	15
2.16	DUPLICATE PAYMENT.....	16
2.17	ETHICS/CONFLICTS OF INTEREST	16
2.18	GOVERNING LAW AND VENUE.....	16
2.19	INDEMNIFICATION	16
2.20	INDEPENDENT CAPACITY OF THE CONTRACTOR.....	16
2.21	INDUSTRIAL INSURANCE COVERAGE.....	16
2.22	LAWS	17
2.23	LICENSING, ACCREDITATION AND REGISTRATION.....	17
2.24	LIMITATION OF AUTHORITY	17
2.25	LOCAL PUBLIC TRANSPORTATION COORDINATION	18
2.26	NONCOMPLIANCE WITH NONDISCRIMINATION LAWS	18
2.27	PAY EQUITY	18
2.28	POLITICAL ACTIVITIES	18
2.29	PREVAILING WAGE LAW	19
2.30	PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION	19
2.31	PUBLICITY	19
2.32	RECAPTURE.....	19
2.33	RECORDS MAINTENANCE	19
2.34	REGISTRATION WITH DEPARTMENT OF REVENUE.....	19
2.35	RIGHT OF INSPECTION.....	20
2.36	SAVINGS.....	20
2.37	SEVERABILITY	20
2.38	SUBCONTRACTING	20
2.39	SURVIVAL	20
2.40	TAXES.....	21
2.41	TERMINATION FOR CAUSE.....	21
2.42	TERMINATION FOR CONVENIENCE	21
2.43	TERMINATION PROCEDURES	21
2.44	TREATMENT OF ASSETS.....	22
2.45	WAIVER.....	22
ATTACHMENT I: ATTORNEY CERTIFICATION		23

CONTRACT TERMS AND CONDITIONS

PUBLIC WORKS BOARD PRE-CONSTRUCTION FUNDING PROGRAM

PART 1. SPECIAL TERMS AND CONDITIONS

1.1 DEFINITIONS

As used throughout this Pre-Construction Funding Contract the following terms shall have the meaning set forth below:

A. "The BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.

B. "Contract" shall mean this Pre-Construction Funding Contract.

C. "Contractor" shall mean the local government identified on the Contract Face Sheet receiving funding to complete the project described in the scope of work described in this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.

D. "Declarations " and "Declared" shall refer to the project information, loan terms and conditions as stated on the Declarations Page of this Funding Contract, displayed within the Contract in **THIS STYLE** for easier identification.

E. The BOARD Traditional Program Policy Handbook shall mean the handbook found on the PWB website or available upon request in PDF.

1.2 AUTHORITY

Acting under the authority of RCW 43.155, the BOARD has awarded the Contractor a Public Works Board pre-construction funding for an approved public works project.

1.3 PURPOSE

The BOARD and the Contractor have entered into this Contract to provide funds to enable the Contractor to undertake a local public works project that furthers the goals and objectives of the Washington State Public Works Program. The project will be undertaken by the Contractor and will include the activities described in the **SCOPE OF WORK** shown on the Declarations page. The project must be undertaken in accordance with the Contract terms and conditions, and all applicable federal, state and local laws and ordinances, which are incorporated by reference.

1.4 ORDER of PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

A. Applicable federal and state of Washington statutes and regulations.

B. Special Terms and Conditions, including attachments.

C. General Terms and Conditions.

1.5 COMPETITIVE BIDDING REQUIREMENTS

The Contractor shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Public Works Program.

1.6 DEFAULT in REPAYMENT

If the funding under this Contract constitutes a loan, loan repayments shall be made on the loan in accordance with Section 1.14 of this Contract. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning

on the first (1st) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be one percent (1%) per month or twelve percent (12%) per annum. The same penalty terms shall apply at project completion if the repayment of loan funds in excess of eligible costs are not repaid at the time the Project Completion Amendment is submitted, as provided for in Section 1.13.

The Contractor acknowledges and agrees to the BOARD's right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the Contractor of such delinquency.

The Contractor shall be responsible for all legal fees incurred by the BOARD in any action undertaken to enforce its rights under this section.

1.7 SUB-CONTRACTOR DATA COLLECTION

Contractor will submit reports, in a form and format to be provided by the BOARD and at intervals as agreed by the parties, regarding work under this Contract performed by sub-contractors and the portion of the Contract funds expended for work performed by sub-contractors, including but not necessarily limited to minority-owned, women-owned, and veteran-owned business sub-contractors. "Sub-Contractors" shall mean sub-contractors of any tier.

1.8 ELIGIBLE PROJECT COSTS

The Eligible project costs must consist of expenditures eligible under Washington Administrative Code (WAC) 399-30-030 and be related only to project activities described in the declared **SCOPE OF WORK**. Eligible costs for reimbursement shall be construed to mean expenditures incurred and paid, or incurred and payable within thirty (30) days of the reimbursement request. Only costs that have been incurred on or after the Start Date shown in the Declarations are eligible for reimbursement under this Contract.

The Contractor assures compliance with WAC 399-30-030, which identifies eligible costs for projects assisted with BOARD funding.

These terms supersede the terms in Section 2.2. Allowable Costs.

1.9 HISTORICAL and CULTURAL RESOURCES

Prior to approval and disbursement of any funds awarded under this Contract, the Contractor shall cooperate with the BOARD to complete the requirements of Governor's Executive Order 21-02 or the Contractor shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless the BOARD and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, the Contractor shall, in accordance with Governor's Executive Order 21-02 as applicable, coordinate with the BOARD and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommendation consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by the Project. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memoranda of agreement, if historical or cultural artifacts found during the construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the BOARD Representative identified on the Face Sheet. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Contract shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in the Contract, the Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records. RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

In the event that the Contractor finds it necessary to amend the Scope of Work the Contract may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act.

1.10 PROJECT COMPLETION AMENDMENT and CERTIFIED PROJECT COMPLETION REPORT

The Contractor shall complete a Certified Project Completion Report when all activities identified in the **SCOPE OF WORK** are complete. The BOARD will supply the Contractor with the Certified Project Completion Report form, which shall include:

- A. A certified statement that the project, as described in the declared **SCOPE OF WORK**, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in the **SCOPE OF WORK**.
- C. Certification that all costs associated with the project have been incurred and have been accounted for. Costs are incurred when goods and services are received and/or contract work is performed.
- D. A final voucher for the remaining eligible funds.
- E. Pictures of Completed Project, as appropriate.

The Contractor will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the loan amount. The final Invoice Voucher payment shall not occur prior to the completion of all project activities identified in the **SCOPE OF WORK** and the BOARD's receipt and acceptance of the Certified Project Completion Report.

The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount, local share, term, and interest rate.

1.11 RATE and TERM of LOAN

If the Contractor is awarded a loan, the BOARD shall fund the Contractor a sum not to exceed the **LOAN AMOUNT** shown on the Contract Face Sheet and declared on the Contract Declarations Page. The interest rate shall be the declared **INTEREST RATE** per annum on the outstanding principal balance. The length of the loan shall not exceed the declared **LOAN TERM** in years, with the final payment due by the **CONTRACT END DATE** as shown on the Contract Face Sheet.

The loan forgiveness shall be applied at project completion and shall apply to the lesser of the loan amount or the actual eligible costs and that declared percent on any accrued interest. The percent of loan forgiveness and interest rate shall not be changed, regardless of the actual cost of the project and the Affordability Index at project completion.

The BOARD may extend the term limit of the Pre-Construction project to twenty years when the jurisdiction demonstrates that 30% of the funding necessary for construction of the project has been secured. The BORROWER must provide written documentation of construction funding commitment before the first principal payment is due.

1.12 RECAPTURE

In addition to the recapture provisions in Section 2.32, the right to recapture, shall exist for a period not to exceed six (6) years following Contract termination. In the event that the BOARD is required to institute legal proceedings to enforce the recapture provision, the BOARD shall be entitled to its costs thereof, including attorney's fees.

1.13 REIMBURSEMENT PROCEDURES and PAYMENT

If funding or appropriation is not available at the time the invoice is submitted, or when this Contract is executed, the issuance of warrants will be delayed or suspended until such time as funds or appropriation become available. Therefore, subject to the availability of funds, warrants shall be issued to the Contractor for reimbursement of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared SCOPE OF WORK.

The BOARD shall reimburse the Contractor for eligible project expenditures up to the maximum loan amount under this Contract, as identified in Section 1.10.

The CONTRACTOR shall submit all Invoice Vouchers and all required documentation per guidance in the BOARD Traditional Program Policy Handbook, which is incorporated by reference.

When requesting reimbursement for expenditures made, the Contractor shall submit all Invoice Vouchers and any required documentation electronically through the Department of Commerce's (COMMERCE) Contracts Management System (CMS), which is available through the Secure Access Washington (SAW) portal. If the Contractor has constraints preventing access to COMMERCE's online A19 portal, a hard copy A-19 form may be provided by the BOARD Project Manager upon request.

Requests for reimbursements for costs related to ground-disturbing or land acquisition activities will not be accepted until the Contractor provides and the PWB approves proof of compliance with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act, as Described in Section 1.9 of this Contract.

If the Contractor receives funding in the form of both a grant and a loan, the Contractor shall bill to the loan and grant proportionally until and if funds are exhausted.

The BOARD will pay the Contractor upon acceptance of the work performed and receipt of properly completed invoices. Invoices shall be submitted to the BOARD not more often than monthly nor less than quarterly.

Payment shall be considered timely if made by the BOARD within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The BOARD may, at its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by the BOARD.

Duplication of Billed Costs. If the Contractor is entitled to payment or has been or will be paid by another source for an eligible project cost, then the Contractor shall not be reimbursed by the Board for that cost.

Disallowed Costs. The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

At the time of project completion, the Contractor shall submit to the BOARD a Project Completion Amendment certifying the total actual project costs and local share. The final BOARD funding disbursement shall bring the total funding to the lesser of 100% of the eligible project costs or the total

declared **funding under this CONTRACT**. The Project Completion Amendment shall serve as an amendment to this Contract determining the final funding amount, local share, and interest rate.

In the event that the final costs identified in the Project Completion Amendment indicate that the Contractor has received BOARD monies in excess of 100.00% of eligible costs, all funds in excess of 100.00% shall be repaid to the BOARD by payment to the Department of Commerce, or its successor, together with the submission of the Project Completion Amendment.

1.14 REPAYMENT

If the Contract is a loan, then repayment installments are due on the day and month identified under the term: PAYMENT MONTH on the Declarations Page. Payments are due each year during the term of the loan beginning one year from the date of Contract execution. Interest only will be charged for this payment if a warrant is issued prior to this date. All subsequent payments shall consist of principal and accrued interest due on the specified PAYMENT MONTH date of each year during the remaining term of the loan.

Repayment of a loan under this Contract shall include the declared INTEREST RATE per annum based on a three hundred and sixty (360) day year of twelve (12) thirty (30) day months. Interest will begin to accrue from the date each warrant is issued to the Contractor. The final payment shall be on or before the CONTRACT END DATE shown on the Declarations page, of an amount sufficient to bring the loan balance to zero.

The Contractor will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Washington State Department of Commerce, or its successor.

1.15 REPORTS

The Contractor shall furnish the BOARD with:

- A. Project progress reports per guidance in the BOARD Traditional Program Policy Handbook;
- B. Estimated Quarterly Expenditures Report;
- C. Certified Project Completion Report at project completion (as described in Section 1.13);
- D. Pictures and short videos of various stages of the project; and
- E. Other reports as the BOARD may require.

1.16 TERMINATION for CAUSE

If the Contractor fails to comply with the terms of this Contract, or fails to use the funds only for those activities identified in the SCOPE OF WORK, the BOARD may terminate the Contract in whole or in part at any time. The BOARD shall notify the Contractor in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of a loan.

These terms supersede the terms in Section 2.41 Termination for Cause/Suspension.

1.17 TERMINATION for CONVENIENCE

Notwithstanding anything in Section 2.42 Termination for Convenience, the BOARD may suspend or terminate this Contract in the event that funds are no longer available to the BOARD, or are not appropriated for the purpose of meeting the BOARD's obligations under this Contract. Termination will be effective when the BOARD sends written notice of termination to the Contractor. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of the loan.

1.18 TIME of PERFORMANCE

No later than twenty-four (24) months after the date of Contract execution, the Contractor must reach project completion.

Failure to meet Time of Performance shall constitute default of this Contract. In the event of extenuating circumstances, the Contractor may request, in writing, that the BOARD extend the deadline for project completion. The BOARD may extend the deadline.

The term of this Contract shall be for the entire term stated in Section 8 of the Contract Face Sheet, regardless of actual project completion, unless terminated in writing sooner.

1.19 CONTRACT SUSPENSION

In the event that the Washington State Legislature fails to pass and the Governor does not authorize a Capital Budget by June 30 of each biennium, the Washington State Constitution Article 8 and RCW 43.88.130 and RCW 43.88.290 prohibit expenditures or commitments of state funds in the absence of appropriation.

In such event, all work under this Contract will be suspended effective July 1. The Contractor shall immediately suspend work under this Contract and take all reasonable steps necessary to minimize the cost of performance directly attributable to such suspension until the suspension is cancelled.

The BOARD shall notify the Contractor immediately upon lifting of the Contract suspension.

1.20 SPECIAL CONDITIONS

If SPECIAL CONDITIONS are listed on the Contract Declarations Page then these conditions are herein incorporated as part of the terms and requirements of this Contract.

1.21 LOAN SECURITY

Loan Security payments shall be made as stated on the attached Declarations Page, and identified as LOAN SECURITY.

PART 2. GENERAL TERMS AND CONDITIONS

2.1 DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subcontractor" shall mean one not in the employment of the Contractor who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2.2 ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

2.3 ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

2.4 AMENDMENTS

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

2.5 AMERICANS WITH DISABILITIES ACT (ADA)

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

2.6 APPROVAL

This contract shall be subject to the written approval of the BOARD's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

2.7 ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the BOARD.

2.8 ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorney's fees and costs.

2.9 AUDIT

A. General Requirements

- If requested by the Board at any time during the contract period and six (6) years following termination of the Contract, Contractor will obtain an audit, at its own expense.
- Contractors are to procure audit services based on the following guidelines.
- The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.
- The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.
- The BOARD reserves the right to recover from the Contractor all disallowed costs resulting from the audit.
- Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to the BOARD's request for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

- In the event an audit is required, if the Contractor is a local government entity, the Office of the State Auditor shall conduct the audit.
- Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.
- The Contractor shall include the above audit requirements in any subcontracts.
- In any case, the Contractor's financial records must be available for review by the BOARD.

2.10 CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

2.11 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. “Confidential Information” as used in this section includes:

1. All material provided to the Contractor by the BOARD that is designated as “confidential” by the BOARD;
2. All material produced by the Contractor that is designated as “confidential” by the BOARD; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the BOARD or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the BOARD with its policies and procedures on confidentiality. The BOARD may require changes to such policies and procedures as they apply to this Contract whenever the BOARD reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the BOARD. Upon request, the Contractor shall immediately return to the BOARD any Confidential Information that the BOARD reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify the BOARD within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

2.12 CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

2.13 COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered “works for hire” as defined by the U.S. Copyright Act and shall be owned by the BOARD. The BOARD shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the BOARD effective from the moment of creation of such Materials.

“Materials” means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. “Ownership” includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the BOARD a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the BOARD.

The Contractor shall exert all reasonable effort to advise the BOARD, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the BOARD with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The BOARD shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

2.14 DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

2.15 DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Chair of the BOARD, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the BOARD Chair and the other party's (respondent's) Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Chair or the Chair's designee and the requestor within five (5) working days.

The Chair or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Chair or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

2.16 DUPLICATE PAYMENT

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

2.17 ETHICS/CONFLICTS OF INTEREST

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act, RCW 42.52 and any other applicable local, state or federal law related to ethics or conflicts of interests.

2.18 GOVERNING LAW AND VENUE

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

2.19 INDEMNIFICATION

To the fullest extent permitted by law, the GRANTEE shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The GRANTEE's obligation to indemnify, defend, and hold harmless includes any claim by GRANTEE's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

The Contractor's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Contractor, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors, agents, or employees.

The GRANTEE waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

2.20 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or the BOARD. The Contractor will not hold itself out as or claim to be an officer or employee of the BOARD or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

2.21 INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the BOARD may

collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The BOARD may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the BOARD under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

2.22 LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

Washington State Laws and Regulations

- A. Affirmative Action, RCW 41.06.020 (11).
- B. Boards of Directors or Officers of Non-profit Corporations – Liability – Limitations, RCW 4.24.264.
- C. Contracts for Architectural and Engineering Services, RCW 39.80
- D. Disclosure-Campaign Finances-Lobbying, RCW 42.17.
- E. Discrimination-Human Rights Commission, RCW 49.60.
- F. Ethics in Public Service, RCW 42.52
- G. Growth Management, RCW 36.70A
- H. Housing Assistance Program, RCW 43.185.
- I. Interlocal Cooperation Act, RCW 39.34.
- J. Noise Control, RCW 70.107.
- K. Office of Minority and Women's Business Enterprises, RCW 39.19 and WAC 326-02.
- L. Open Public Meetings Act, RCW 42.30.
- M. Prevailing Wages on Public Works, RCW 39.12.
- N. Public Records Act, RCW 42.56.
- O. Public Works Projects, RCW 43.155
- P. Relocation Assistance – Real Property Acquisition Policy, RCW 8.26.
- Q. Shoreline Management Act of 1971, RCW 90.58.
- R. State Budgeting, Accounting, and Reporting System, RCW 43.88
- S. State Building Code, RCW 19.27 and Energy-related building standards, RCW 19.27A, and Provisions in buildings for aged and handicapped persons, RCW 70.92.
- T. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- U. State Environmental Policy, RCW 43.21C.
- V. State Executive Order 21-02 Archeological and Cultural Resources.

2.23 LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

2.24 LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

2.25 LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

2.26 NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the BOARD. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

2.27 PAY EQUITY

The Contractor agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - 1. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
 - 2. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 - 3. A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the BOARD, if the BOARD, the Department of Commerce, or the Department of Enterprise Services determines that the Contractor is not in compliance with this provision.

2.28 POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

2.29 PREVAILING WAGE LAW

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, RCW 39.12 as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with RCW 39.12, and shall make such records available for the BOARD's review upon request.

2.30 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

2.31 PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the BOARD'S name is mentioned, or language used from which the connection with the state of Washington's or the BOARD'S name may reasonably be inferred or implied, without the prior written consent of the BOARD.

2.32 RECAPTURE

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, the BOARD reserves the right to recapture funds in an amount to compensate the BOARD for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the BOARD. In the alternative, the BOARD may recapture such funds from payments due under this contract.

2.33 RECORDS MAINTENANCE

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

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

2.34 REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

2.35 RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the BOARD, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

2.36 SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the BOARD may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

2.37 SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

2.38 SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the BOARD.

If the BOARD approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the BOARD in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the BOARD if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the BOARD for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the BOARD and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

2.39 SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

2.40 TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

2.41 TERMINATION FOR CAUSE

In the event the BOARD determines the Contractor has failed to comply with the conditions of this contract in a timely manner, the BOARD has the right to suspend or terminate this contract. Before suspending or terminating the contract, the BOARD shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law.

The BOARD reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the BOARD to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of the BOARD provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

2.42 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract the BOARD may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the BOARD shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

2.43 TERMINATION PROCEDURES

Upon termination of this contract, the BOARD, in addition to any other rights provided in this contract.

The rights and remedies of the BOARD provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to the BOARD, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the BOARD has the right, at its

discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to the BOARD and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to the BOARD;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the BOARD has or may acquire an interest.

2.44 TREATMENT OF ASSETS

Title to all property furnished by the BOARD shall remain with the BOARD. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to, and vest in the Contractor.

2.45 WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of the BOARD.

ATTACHMENT I: ATTORNEY CERTIFICATION

***PUBLIC WORKS BOARD
PRE-CONSTRUCTION PROGRAM***

CONTRACTOR: City of Port Orchard

CONTRACT Number: PR24-96103-006

I, _____, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the City of Port Orchard (the CONTRACTOR); and

I have also examined any and all documents and records which are pertinent to the CONTRACT, including the application requesting this financial assistance.

Based on the foregoing, it is my opinion that:

1. The CONTRACTOR is properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state and local funds, to CONTRACT with the State of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.
2. The CONTRACTOR is empowered to accept the BOARD's financial assistance and to provide for repayment of the loan as set forth in the CONTRACT.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the CONTRACTOR from repaying the loan extended by the BOARD with respect to such project. The CONTRACTOR is not a party to litigation which will materially affect its ability to repay such loan on the terms contained in the CONTRACT.
4. Assumption of this obligation would not exceed statutory and administrative rule, debt limitations applicable to the CONTRACTOR.

Signature of Attorney

Date

Name



Agenda Staff Report

Agenda Item.: Business Item 7B

Meeting Date: February 27, 2024

Subject: Adoption of a Resolution Approving a
Contract with Miles Resources, LLC for
the Pottery Ave Non-Motorized
Improvements Project

Prepared By: Denis Ryan
Public Works Director

Summary: The City of Port Orchard’s Public Works Department identified the need for the Pottery Ave Non-Motorized Improvement Project (the “Project”). This project includes non-motorized improvements along Pottery Ave (Sunset Lane to SW Berry Lake Road) including installation of sidewalks, rectangular rapid flashing beacons (RRFBs), buffered bike lanes, and rechannelization, installation of new drainage structures and conveyance systems replacement of an existing water main, installation of new sewer mains and structures, and roadway patching and repair. On May 10, 2022, the Port Orchard City Council accepted a Complete Street grant award from Washington State Transportation Improvement Board (TIB) which provided funding for the Project. Pursuant to the City’s Procurement Policies, as adopted by Resolution No. 072-23, the City’s Public Works Department prepared an Invitation to Bid (ITB) for the project. The ITB was published in the Kitsap Sun and Daily Journal of Commerce on January 12, 2024 and January 19, 2024. On January 12, 2024, staff uploaded the bid documents to the Washington Builder’s Exchange and the City’s Webpage. On February 8, 2024, by the 1:00 pm bid deadline, the City Clerk received seven (7) sealed bids. After confirming that there were no objections made and that there were no challenges to the Public Opening process, the seven (7) sealed bids were opened and read aloud by the City Clerk. The City Clerk then prepared a Bid Tabulation form, and the Public Works Department prepared a Bid Evaluation form (including applicable taxes, labor, equipment, material, and fees), resulting in the initial determination that Miles Resources, LLC, was the lowest qualified, responsible, and responsive bid. There were two schedules of work requested: Schedules A and B. The final bid amounts for both schedules were as follows:

<i>Name of Contractor</i>	<i>Bid Total</i>
Active Construction, Inc	\$2,190,190.00
Ceccanti, Inc	\$2,154,463.61
Miles Resources, LLC	\$2,009,727.61

Nordland Construction, NW, Inc.	\$2,587,840.54
Northwest Cascade, Inc.	\$2,216,179.91
Rodarte Construction, Inc.	\$2,213,655.10
Tucci & Sons, Inc.	\$2,276,283.98

On February 12, 2024, the City's Public Works Department Staff completed the MRSC Mandatory Bidder Responsibility Checklist and confirmed that Miles Resources, LLC's bid was a qualified, responsible, and responsive bid. The Public Works Department also reviewed all materials and confirmed that the bidding requirements for this public work have been followed. The Public Works Department recommends awarding the Contract for both Schedule A and B to Miles Resources, LLC.

Recommendation: Staff recommends that the City Council adopt a Resolution Authorizing the Mayor to execute a contract with Miles Resources, LLC for the Pottery Ave Non-Motorized Improvements Project in the amount of \$2,009,727.61 (applicable tax included).

Relationship to Comprehensive Plan: Chapter 7: Utilities, and Chapter 8: Transportation

Motion for consideration: I move to adopt a Resolution authorizing the Mayor to execute a contract in a form acceptable to the City Attorney with Miles Resources, LLC for Schedules A and B for the Pottery Ave Non-Motorized Improvements Project for the in the amount of \$2,009,727.61 (applicable tax included).

Fiscal Impact: The City received a Complete Streets Grant Award in the amount of \$650,000 from Washington State Transportation Improvement Board (TIB). Additional local funding from Transportation Impact Fees will also be included in the funding packet. The project is budgeted in the 2023-2024 Biennial budget. A budget Amendment may be required.

Alternatives: Do not approve and provide further guidance.

Attachments: Resolution
Contract

RESOLUTION NO. **

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH MILES RESOURCES, LLC FOR THE POTTERY AVE NON-MOTORIZED IMPROVEMENTS PROJECT AND DOCUMENTING PROCUREMENT PROCEDURES.

WHEREAS, The City identified the need for the Pottery Ave Non-Motorized Improvement Project (the “Project”); and

WHEREAS, On May 10, 2022, the Port Orchard City Council accepted a Complete Street grant award from Washington State Transportation Improvement Board (TIB) which provided funding for the Project; and

WHEREAS, Pursuant to the City’s Procurement Policies, as adopted by Resolution No. 072-23, the City’s Public Works Department prepared an Invitation to Bid (ITB) for the project; and

WHEREAS, on March 4, 2022, and March 11, 2022, staff solicited bids in the Kitsap Sun and Daily Journal of Commerce, and on March 4, 2022, staff uploaded the bid documents to the Washington Builder’s Exchange and the City’s Webpage; and

WHEREAS, on February 8, 2024 by the 1:00pm bid deadline, the City Clerk received seven (7) sealed bids; and

WHEREAS, confirming that there were no objections made and that there were no challenges to the Public Opening process, the seven (7) Sealed Bids were opened and read aloud; and

WHEREAS, the City Clerk prepared a Bid Tabulation form and a Bid Evaluation form, and the City’s Public Works Department completed the MRSC Mandatory Bidder Responsibility Checklist; and

WHEREAS, the Public Works Department reviewed all materials and confirmed that the bidding requirements for this public work have been followed; and

WHEREAS, Miles Resources, LLC is found to be the lowest responsible, qualified, and responsive bidder; and

WHEREAS, the City’s call for bids included two bid schedules: Schedule A and Schedule B, both of which are recommended to be awarded at this time; and

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

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

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

THAT: The City Council authorizes the Mayor to execute a Contract for both Schedule A and Schedule B work with Miles Resources, LLC for the Pottery Ave Non-Motorized project.

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

PASSED by the City Council of the City of Port Orchard, **SIGNED** by the Mayor and attested by the City Clerk in authentication of such passage on this 27th day of February 2024.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

CONTRACT

**CITY OF PORT ORCHARD
POTTERY AVE NON-MOTORIZED IMPROVEMENTS
PUBLIC WORKS PROJECT No. PW2023-002
CONTRACT NO. _____**

THIS CONTRACT ("Contract") is made and entered into this 27th day of February, 2024, by and between the City of Port Orchard, a municipality incorporated and existing under the laws of the State of Washington, hereinafter called the "City," and **Miles Resources, LLC**, hereinafter called the "Contractor."

WITNESSETH:

I. General Provisions.

A. Description of Work.

The Contractor, in consideration of the covenants, agreements and payments to be performed and made by the City, hereby covenants and agrees to furnish all labor, tools, materials, equipment and supplies required for, and to execute, construct and finish in full compliance with the Contract Documents, **Pottery Ave Non-Motorized Improvements**. The Contractor further agrees to perform all such work for the Contract Price stated in the Contractor's Bid Proposal dated February 8, 2024, attached hereto and incorporated herein by this reference as if set forth in full. Contractor further represents that the services furnished under this Agreement will be performed in accordance with and as described in the attached plans and specifications and with the Port Orchard Municipal Code, the City's Public Works Standards, which includes (but is not limited to) the 2021 edition of the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction (which shall apply except where noted otherwise). All of these standards are by this reference incorporated herein and made a part hereof. Contractor further represents that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time such services are performed.

The Contract Documents include:

Exhibit A -a confirmed copy of the Proposal made by the Contractor on February 8, 2024, together with the Instructions to Bidders.

Exhibit B – The Project Manual for the Pottery Ave Non-Motorized Improvements Project.

Exhibit C – Retainage Options

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

B. Time of Completion.

Time is of the essence of this Contract. It is agreed that the work covered by this Contract shall start within 14 calendar days after Notice to Proceed is issued and that all construction shall be complete within **125 working days** after the Notice to Proceed Date.

C. Liquidated Damages.

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

II. Non-Discrimination.

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub- recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Title VI of the Civil Rights Act of 1964

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

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

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

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

procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix A, attached hereto and incorporated herein by this reference, including employment practices when this Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.

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

III. Public Records Act Chapter 42.56 RCW

Contractor understands that her/his bid response documents, and any contract documents may be subject to release under the Public Records Act Chapter 42.56 RCW and the City may be required to disclose such documents upon a request. Contractor acknowledges that s/he has been advised to mark any records believed to be trade secrets or confidential in nature as "confidential." If records marked as "confidential" are found to be responsive to the request for records, the City as a courtesy to the Contractor, may elect to give notice to Contractor of the request so as to allow Contractor to seek a protective order from a Court. Contractor acknowledges and agrees that any records deemed responsive to a public records request may be released at the sole discretion of, and without notice by, the City.

IV. Termination

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

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

whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments.

V. Corporate Surety Bond

With this Contract, Contractor is furnishing a Corporate Surety Bond in the amount of

Two Million Nine thousand seven hundred twenty seven dollars and sixty one cents _____ Dollars (\$ 2,009,727.61) with Liberty Mutual Insurance Company

as Surety, to ensure full compliance, execution and performance of this Contract by the Contractor in accordance with all its terms and provisions.

VI. Independent Contractor.

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

VII. Employment of State Retirees.

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

VIII. Changes.

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

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

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

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

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

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

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

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

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

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

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

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

X. Limitation Of Actions.

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

XI. Warranty.

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

XII. Indemnification.

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

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

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

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

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

XIII. Insurance.

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

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

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

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

of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

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

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

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

1. The Contractor's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

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

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

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

G. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional

insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this Project.

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

XIV. WORK PERFORMED AT CONTRACTOR'S RISK.

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

XV. MISCELLANEOUS PROVISIONS.

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

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

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

addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

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

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

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

H. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement. IN WITNESS WHEREOF the parties hereto have caused these presents to be duly executed.

CITY OF PORT ORCHARD

By: _____
Robert Putaansuu, Mayor

CONTRACTOR Miles Resources, LLC

By: _____
Title: Joseph Harrison General Manager
Address: 400 Valley Ave NE
Puyallup, WA 98372

ATTEST:

Brandy Wallace, MMC, City Clerk

APPROVED AS TO FORM:

Charlotte Archer, City Attorney

NOTICES TO BE SENT TO:

CONTRACTOR:

NAME Anna Lear, Contract Administrator
ADDRESS 400 Valley Ave NE Puyallup, WA 98397
TELEPHONE 253-383-3585
Email Anna.lear@milesresources.com

CITY:

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

With a copy to the City Clerk at the same address

5% RETAINAGE INVESTMENT OPTION¹Contractor: Miles Resources, LLCProject Name: Pottery Ave Non-Motorized Improvements ProjectDate: 2/19/23 Project Number: PW2023-002

Pursuant to RCW 60.28.010, as amended, you may exercise an option as to how the 5% retainage under this contract will be invested. Please complete and sign this form indicating your preference. If you fail to do so you will miss the benefit of any interest earned. Select one of the following options:

☐

1. **Savings Account:** Money will be placed in an interest-bearing account. The interest will be paid to you directly, rather than kept on deposit. If this is your choice, then please complete attached **SAVINGS ACCOUNT AGREEMENT**. Please state the name of your bank.

Bank: _____

☐

2. **Escrow/Investments:** The City will deliver retainage checks to a selected bank, pursuant to an escrow agreement. The bank will then invest the funds in securities or bonds selected by you, and interest will be paid to you as it accrues. If this is your choice then please complete attached **ESCROW AGREEMENT**.

Preferred Bank: _____

Securities/Bonds: _____

☐

3. **Guarantee Deposit:** Retainage will be held by the City. No interest is payable to the Contractor

Retainage is normally released 45 days after final acceptance of the work or following receipt of Labor and Industries/Department of Revenue clearance, whichever date is the later. Retainage on landscaping work may be longer, due to its seasonal nature. However, if this project is subject to grant funding, then the retainage may also be held until such time as the Contractor meets its obligations to the City to provide required information and documentation for compliance with the grant funding requirements.

State law allows for limited early release of retainage in certain circumstance.



Contractor's Signature
General Manager

Title

Retainage Bond Will be posted

¹ If the Contractor opts to post a retainage bond under RCW 60.28.011, such bond shall be in a form acceptable to the City, shall be with a surety with a minimum of A.M. Best financial strength rating of a minimum of A-.

SAVING ACCOUNT AGREEMENT

TO BANK: _____ SAVINGS ACCOUNT NO: _____

BANK'S ADDRESS: _____

AGENCY: CITY OF PORT ORCHARD
216 Prospect Street
Port Orchard WA 98366

CONTRACT NO: _____

PROJECT TITLE: _____

The estimated completion date of contract is: _____

The undersigned, _____, herein referred to as the CONTRACTOR, has directed the CITY OF PORT ORCHARD, Washington, hereinafter referred to as the AGENCY, to deliver to you its warrants which shall be payable to you and the CONTRACTOR jointly. Such warrants are to be held and disposed of by you in accordance with the following instructions and upon the terms and conditions hereinafter set forth.

INSTRUCTIONS

1. Warrants or checks made payable to you and the CONTRACTOR jointly upon delivery to you shall be endorsed by you and forwarded for collection. The moneys will then be placed by you in an interest-bearing savings account.
2. When and as interest on the savings account accrues and is paid, you shall collect such interest and forward it to the CONTRACTOR at its address designated below unless otherwise directed by the CONTRACTOR.
3. You are not authorized to deliver to the CONTRACTOR all or any part of the principal held by you pursuant to this agreement, except in accordance with written instruction from the AGENCY. Compliance with such instructions shall relieve you of any further liability related thereto.
4. The CONTRACTOR agrees to pay you as compensation for your services hereunder as follows:
Payment of all fees shall be the sole responsibility of the CONTRACTOR and shall not be deducted from any moneys placed with you pursuant to this agreement until and unless the AGENCY directs the release to the CONTRACTOR, whereupon you shall be granted a first lien upon such moneys released and shall be entitled to reimburse yourself from such moneys for the entire amount of your fees as provided for herein above. In the event that you are made a party to any litigation with respect to the moneys held by you hereunder, or in the event that the conditions of this agreement are not promptly fulfilled, or that you are required to render any service not provided for in these

instructions, or that there is any assignment of the interests of this agreement, or any modification hereof, you shall be entitled to reasonable compensation for such extraordinary services from the CONTRACTOR and reimbursement from the CONTRACTOR for all costs and expenses, including attorney fees occasioned by such default, delay, controversy or litigation.

5. This agreement shall not be binding until executed by the CONTRACTOR and the AGENCY and accepted by you.
6. This instrument contains the entire agreement between you, the CONTRACTOR and the AGENCY. You are not a party to nor bound by any instrument or agreement other than this. You shall not be required to take notice of any default or any other matter nor be bound by nor required to give notice or demand, nor required to take any action whatever except as herein expressly provided. You shall not be liable for any loss or damage not caused by your own negligence or willful misconduct.
7. The foregoing provisions shall be binding upon the assigns, successors, personal representative and heir of the Parties hereto.

Contractor

CITY OF PORT ORCHARD
Agency

BY: _____

BY: _____

Title: _____

Date: _____

Date: _____

Address: _____

The above savings account agreement and instruction received and accepted this _____ day of _____, 20____

Bank Name

Authorized Bank Officer

ESCROW AGREEMENT

TO BANK: _____ ESCROW NO.: _____

BANK'S ADDRESS: _____

AGENCY: _____
CITY OF PORT ORCHARD
216 Prospect Street
Port Orchard WA 98366

CONTRACT NO.: _____

PROJECT TITLE: _____

The estimated completion date of contract is: _____

The undersigned, _____, herein referred to as the CONTRACTOR, has directed the CITY OF PORT ORCHARD, Washington, hereinafter referred to as the AGENCY, to deliver to you its warrants which shall be payable to you and the CONTRACTOR jointly. Such warrants are to be held and disposed of by you in accordance with the following instructions and upon the terms and conditions hereinafter set forth.

INSTRUCTIONS

1. Warrants or checks made payable to you and the CONTRACTOR jointly upon delivery to you shall be endorsed by you and forwarded for collection. The moneys will then be used by you to purchase, as directed by the CONTRACTOR, bonds or other securities chosen by the CONTRACTOR and approved by the AGENCY. Attached is a list of such bonds, or other securities approved by the AGENCY. Other bonds or securities, except stocks may be selected by the CONTRACTOR, subject to express written approval of the AGENCY. Purchase of such bonds or other securities shall be in a form which shall allow you alone to reconvert such bonds or other securities into money if you are required to do so by the AGENCY as provided in Paragraph 4 of this Escrow Agreement.
2. When and as interest on the securities held by you pursuant to this agreement accrues and is paid, you shall collect such interest and forward it to the CONTRACTOR at its address designated below unless otherwise directed by the CONTRACTOR.
3. You are not authorized to deliver to the CONTRACTOR all or any part of the securities held by you pursuant to this agreement (or any moneys derived from the sale of such securities,

or the negotiation of the AGENCY'S warrants) except in accordance with written instructions from the AGENCY. Compliance with such instruction shall relieve you of any further liability related thereto.

4. In the event the AGENCY orders you to do so in writing, you shall within thirty-five (35) days of receipt of such order, reconvert into money the securities held by you pursuant to this agreement and return such money together with any other moneys held by you hereunder, to the AGENCY.
5. The CONTRACTOR agrees to pay you as compensation for your services hereunder as follows:

Payment of all fees shall be the sole responsibility of the CONTRACTOR and shall not be deducted from any property placed with you pursuant to this agreement until and unless the AGENCY directs the release to the CONTRACTOR of the securities and moneys held hereunder whereupon you shall be granted a first lien upon such property released and shall be entitled to reimburse yourself from such property for the entire amount of your fees as provided for herein above. In the event that are made a party to any litigation with respect to the property held by you hereunder, or in the event that the conditions of this escrow are not promptly fulfilled or that you are required to render any service not provided for in these instructions, or that there is any assignment of the interest of this escrow or any modification hereof, you shall be entitled to reasonable compensation for such extraordinary services from the CONTRACTOR and reimbursement from the CONTRACTOR for all costs and expenses, including attorney fees occasioned by such default, delay, controversy or litigation.

6. This agreement shall not be binding until executed by the CONTRACTOR and the AGENCY and accepted by you.
7. This instrument contains the entire agreement between you, the CONTRACTOR and the AGENCY with respect to this escrow and you are not a party to nor bound by any instrument or agreement other than this; you shall not be required to take notice of any default or any other matter nor be bound by nor be bound by nor required to give notice or demand , nor required to take action whatever except as herein expressly provided; you shall not be liable for any loss or damage not caused by your own negligence or willful misconduct.

The foregoing provision shall be binding upon the assigns, successors, personal representative, and heir of the Parties hereto.

Contractor CITY OF PORT ORCHARD
Agency

By: _____ By: _____
Title: _____
Date: _____ Date: _____
Address: _____

The above escrow agreement and instruction received and accepted this _____ day of _____, 20__.

Bank Name

Authorized Bank Officer

SECURITIES AUTHORIZED BY AGENCY

1. Bills, certificates, notes or bonds of the United States;
2. Other obligations of the United States or its agencies;
3. Obligation of any corporation wholly-owned by the government of the United States;
4. Indebtedness of the Federal National Mortgage Association; and
5. Time deposits in commercial banks.

PERFORMANCE AND PAYMENT BOND

CITY OF PORT ORCHARD
POTTERY AVE NON-MOTORIZED IMPROVEMENTS PROJECT
PW PROJECT NO. 2023-002
Bond to City of Port Orchard, Washington
Bond No. 023229880

We, Miles Resources, LLC, and Liberty Mutual Insurance Company
(Principal) (Surety)

a Massachusetts Corporation, and as a surety corporation authorized to become a surety upon Bonds of Contractors with municipal corporations in Washington State, are jointly and severally bound to the City of Port Orchard, Washington ("Owner"), in the penal sum of Two Million Nine Thousand Seven Hundred Twenty-Seven and 61/100THS Dollars (\$ 2,009,727.61), the payment of which sum, on demand, we bind ourselves and our successors, heirs, administrators, executors, or personal representatives, as the case may be. This Performance Bond is provided to secure the performance of Principal in connection with a contract dated , 20 , between Principal and Owner for a project entitled Pottery Ave Non-Motorized Improvements ("Project") – Public Works Project No. PW2023-002 ("Contract"). The initial penal sum shall equal 100 percent of the Total Bid Price, including all applicable state sales tax, as specified in the Proposal submitted by Principal.

NOW, THEREFORE, this Performance and Payment Bond shall be satisfied and released only upon the condition that Principal:

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.

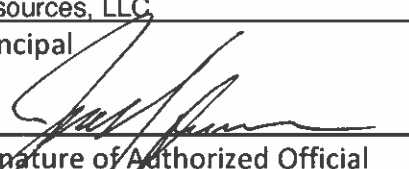
The liability of Surety shall be limited to the penal sum of this Performance and Payment Bond.


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

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

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

IN WITNESS WHEREOF, the parties have executed this instrument in two (2) identical counterparts this 15th day of February, 20 24.

Miles Resources, LLC
Principal

Signature of Authorized Official
Joseph Harrison, General Manager
Printed Name and Title

Liberty Mutual Insurance Company
Surety

Signature of Authorized Official
By Jamie L. Marques, Attorney-in-Fact
Attorney in Fact (Attach Power of Attorney)

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

Propel Insurance
1201 Pacific Ave, Suite 1000
Tacoma, WA 98402

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

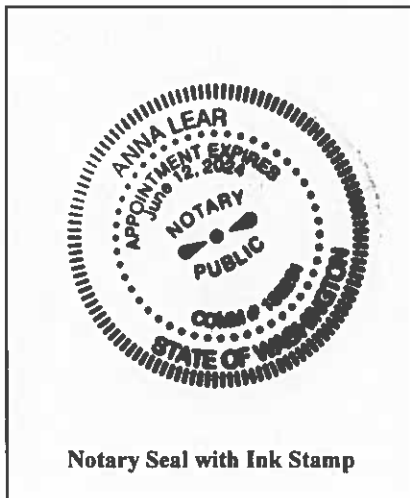
STATE OF WA)
COUNTY OF Pierce) ss.

On this 15th day of February, 2024, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Joseph Harrison, to me known to be the (check one of the following boxes):

- ☐ _____ of _____, the
corporation,
☒ General Manager of Miles Resources, LLC, the
partnership, LLC
☐ individual,

that executed the foregoing instrument to be the free and voluntary act and deed of said ☒ corporation, ☐ partnership, ☐ individual for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

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



Anna Lear
Print or type name

NOTARY PUBLIC,
in and for the State of Washington

Residing at Gig Harbor, WA

My Commission expires: 6/12/24

SURETY ACKNOWLEDGEMENT

STATE OF Washington)
)ss.
COUNTY OF Pierce)

On this 15th day of February, 20 24, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jamie L. Marques, to me known to be the Attorney-in-Fact of Liberty Mutual Insurance Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

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

Evan William Marques

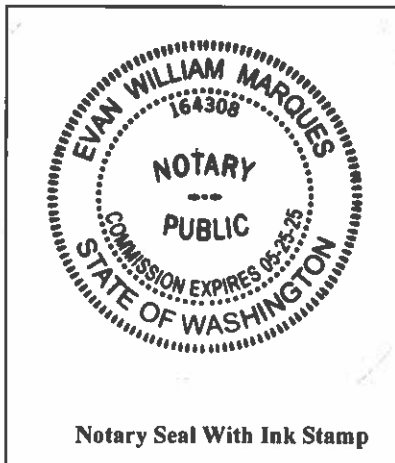
Print or type name

NOTARY PUBLIC,

in and for the State of Washington

Residing Gig Harbor, WA

My Commission expires: 05/25/2025



Notary Seal With Ink Stamp



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8210464 - 023049**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Alicia A. Keltner, Alyssa J. Lopez, Amber Lynn Reese, Amelia G. Burrill, Andrew James Carretto, Annelies M. Richie, Audrey M. Turner, Brandon K. Bush, Brent E. Heilesen, Carley Espirito, Christopher Amos Hayes, Christopher Kinyon, Cynthia L. Jay, Dana Marie Brinkley, Diane M. Harding, Donald Shanklin, Jr., Edward Sims, Eric A. Zimmerman, Holli Albers, Jacob T. Haddock, James B. Binder, Jamie L. Marques, Julie R. Truitt, Justin Dean Price, Kari Michelle Motley, Katharine J. Snider, Lindsey Elaine Jorgensen, Lois F. Weathers, Michael Mansfield, Misti M. Webb, Sara Sophie Sellin, Sarah Whitaker, Tamara A. Ringeisen all of the city of Tacoma state of WA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 20th day of July, 2023.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 20th day of July, 2023 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 15th day of February, 2024.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

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

Note: This form must be completed at Contract Completion. Before the Performance Bond or retainage can be released, the City must receive the two year Maintenance/Warranty Bond

Project #: _____

Contract #: _____

Surety Bond #: _____

Date Posted: _____

Expiration Date: _____

RE: Project Name: _____

Owner/Developer/Contractor: _____

Project Address: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this ____ day of _____, 20__.

SURETY COMPANY

(Signature must be notarized)

By: _____

Its: _____

Business Name: _____

Business Address: _____

City/State/Zip Code: _____

Telephone Number: _____

DEVELOPER/OWNER

(Signature must be notarized)

By: _____

Its: _____

Business Name: _____

Business Address: _____

City/State/Zip Code: _____

Telephone Number: _____

CHECK FOR ATTACHED NOTARY SIGNATURE

Developer/Owner (Form P-1)

Surety Company (Form P-2)

FORM P1-NOTARY BLOCK

(Developer/Owner)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that they signed this instrument, on oath stated that they are authorized to execute the instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

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

My Commission expires: _____

FORM P2-NOTARY BLOCK

(Surety Company)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that they signed this instrument, on oath stated that they are authorized to execute the instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

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

PROPOSAL

**CITY OF PORT ORCHARD
POTTERY AVE NON-MOTORIZED IMPROVEMENTS
PROJECT NO. PW2023-002**

To: Mayor and City Council
City of Port Orchard, Washington

Contractor: Miles Resources, LLC

State Contractor's: MILESRL897RK
State License No. State Business License: 602 870 349

Date: 2/8/2024

Month/Day/Year

Bidder's Declaration and Understanding

The Bidder declares that they have carefully examined the Contract Documents for the construction of the project, that they have personally inspected the site, that they have satisfied themselves as to the quantities involved, including materials and equipment, and conditions of work involved, including the fact that the description of the quantities of work and materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the said quantities with the detailed requirements of the Contract Documents, and that this Proposal is made according the provisions and under the terms of the Contract Documents, which Documents are hereby made a part of this Proposal. The Bidder further declares that they have exercised their own judgment regarding the interpretation, of subsurface information and have utilized all data, which they believes pertinent from City and other sources and have made such independent investigations as the Bidder deems necessary in arriving at their conclusions.

Bidder understands that any bid response documents may be subject to release under the Public Records Act Chapter 42.56 RCW and the City may be required to disclose bid responses upon a request. Bidder acknowledges that they have 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 Bidder may elect to give notice to Bidder of the request so as to allow Bidder to seek a protective order from a Court. Bidder 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.

Contract Execution

The Bidder agrees that if this Proposal is accepted, the bidder will, within fourteen (14) calendar days after Notice of Award, complete and sign the Contract in the form annexed hereto, and will at that time deliver to the City executed copies of the Performance Bond, Labor and Material Payment bond, the Certificate of Insurance, and other documentation required by the Contract Documents, and will, to the extent of the Proposal, furnish all machinery, tools, apparatus and other means of construction and do the work and furnish all the materials or services necessary to complete all work as specified or indicated in the Contract Documents.

Start of Construction and Contract Completion

The Bidder further agrees that within 14 calendar days of CONTRACT START DATE, they will meet with engineering personnel and begin work no earlier than March 11th, 2024, and complete the construction within 125 working days of START DATE.

Lump Sum and Unit Price Work

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

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

SCHEDULE OF CONTRACT PRICES
Pottery Ave Non-Motorized Improvements
Project No PW2023-002

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

SALES TAX-Schedule A In accordance with Section 1-07.2(1) State Sales Tax (DOR rule 171): Work performed on City, County, or Federally-owned land, the Contractor shall include applicable Washington State retail sales taxes in the various unit bid prices or other amounts. These retail sales taxes shall include those the Contractor pays on purchases of materials, equipment, and supplies used or consumed in doing the work.

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

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount in Words	Unit Price	Total Amount
Schedule A - Sidewalk/Channelization/Roadway Repair Related Work					
A-1	Lump Sum	STD (1-09)	Mobilization	LS \$101,000.00	\$ 101,000.00
			\$ One hundred one thousand dollars		
			(Total Amount in Words)		
A-2	Calculation	SP (1-04)	Minor Changes	CALC \$15,000.00	\$ 15,000.00
			\$ Fifteen thousand dollars		
			(Total Amount in Words)		
A-3	Lump Sum	SP (1-05)	Record Drawings (Minimum Bid \$2,000)	LS \$ 2,000.00	\$ 2,000.00
			\$ Two thousand dollars		
			(Total Amount in Words)		
A-4	Lump Sum	SP (1-07)	SPCC Plan	LS \$ 250.00	\$ 250.00
			\$ Two hundred and Fifty dollars		
			(Total Amount in Words)		
A-5	Lump Sum	STD (1-10)	Project Temporary Traffic Control	LS \$137,500.00	\$ 137,500.00

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount In Words	Unit Price	Total Amount
<u>\$ One hundred thirty seven thousand Five hundred dollars</u> (Total Amount in Words)					
A-6	0.4 AC	SP (2-01)	Clearing and Grubbing	AC \$223,000.00	\$ 8,920.00
<u>\$ Eight thousand nine hundred and twenty dollars</u> (Total Amount in Words)					
A-7	1,390 CY	STD (2-03)	Roadway Excavation Incl. Haul	CY \$ 66.00	\$ 91,740.00
<u>\$ Ninety one thousand seven hundred and Forty dollars</u> (Total Amount in Words)					
A-8	10 TN	STD (2-03)	Gravel Borrow Incl. Haul	TN \$ 167.00	\$ 1,670.00
<u>\$ One thousand Six hundred and Seventy dollars</u> (Total Amount in Words)					
A-9	330 CY	STD (2-09)	Structure Excavation Class A Incl. Haul	CY \$ 60.00	\$ 19,800.00
<u>\$ Nineteen thousand Eight hundred dollars</u> (Total Amount in Words)					
A-10	Lump Sum	STD (2-09)	Shoring or Extra Excavation Class A	LS \$ 5,000.00	\$ 5,000.00
<u>\$ Five thousand dollars</u> (Total Amount in Words)					
A-11	120 CY	STD (2-09)	Structure Excavation Class B Incl. Haul	CY \$ 27.00	\$ 3,240.00
<u>\$ Three thousand two hundred and forty dollars</u> (Total Amount in Words)					
A-12	880 SF	STD (2-09)	Shoring or Extra Excavation Class B	SF \$ 1.65	\$ 1,452.00
<u>\$ One thousand four hundred fifty two dollars</u> (Total Amount in Words)					
A-13	890 TN	STD (4-04)	Crushed Surfacing Top Course	TN \$ 63.00	\$ 56,070.00
<u>\$ Fifty six thousand seventy dollars</u> (Total Amount in Words)					
A-14	FA	STD (5-03)	Crack Sealing Bit Pmnt - FA	FA \$10,000.00	\$ 10,000.00
<u>\$ ten thousand dollars</u> (Total Amount in Words)					
A-15	950 SY	SP (5-04)	Planing Bituminous Pavement	SY \$ 16.00	\$ 15,200.00

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount In Words	Unit Price	Total Amount
<u>\$ Fifteen thousand two hundred dollars</u> (Total Amount in Words)					
A-16	1,500 TN	SP (5-04)	HMA Cl. 1/2 In. PG 58H-22	TN \$ 136.35	\$ 204,525.00
<u>\$ Two hundred Four thousand Five hundred and twenty Five dollars</u> (Total Amount in Words)					
A-17	5 TN	SP (5-04)	HMA for Approach Cl. 1/2 In. PG 58H-22	TN \$ 200.00	\$ 1,000.00
<u>\$ One thousand dollars</u> (Total Amount in Words)					
A-18	160 LF	STD (7-04)	Testing Storm Sewer Pipe	LF \$ 5.40	\$ 864.00
<u>\$ Eight hundred and Sixty Four dollars</u> (Total Amount in Words)					
A-19	160 LF	SP (7-04)	High-Density Polyethylene (HDPE) Pipe 12 In. Diam.	LF \$ 84.00	\$ 13,440.00
<u>\$ Thirteen thousand Four hundred and Forty dollars</u> (Total Amount in Words)					
A-20	4 EA	STD (7-05)	Adjust Manhole	EA \$ 1,225.00	\$ 4,900.00
<u>\$ Four thousand Nine hundred dollars</u> (Total Amount in Words)					
A-21	12 EA	STD (7-05)	Adjust Catch Basin	EA \$ 440.00	\$ 5,280.00
<u>\$ Five thousand two hundred and Eighty dollars</u> (Total Amount in Words)					
A-22	5 EA	STD (7-05)	Catch Basin Type 1	EA \$ 2,150.00	\$ 10,750.00
<u>\$ Ten thousand Seven hundred and Fifty dollars</u> (Total Amount in Words)					
A-23	5 EA	STD (7-05)	Connection to Drainage Structure	EA \$ 1,370.00	\$ 6,850.00
<u>\$ Six thousand Eight hundred and Fifty dollars</u> (Total Amount in Words)					
A-24	3 EA	SP (7-05)	Locking Solid Metal Cover for Catch Basin	EA \$ 460.00	\$ 1,380.00
<u>\$ One thousand Three hundred and Eighty dollars</u> (Total Amount in Words)					
A-25	50 CY	STD (7-08)	Gravel Backfill for Pipe Zone Bedding	CY \$ 22.00	\$ 1,100.00

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount in Words	Unit Price	Total Amount
			\$ One thousand one hundred dollars		
			(Total Amount in Words)		
A-26	9 EA	SP (7-12)	Adjust Valve Box	EA \$ 770.00	\$ 6,930.00
			\$ Six thousand Nine hundred and thirty dollars		
			(Total Amount in Words)		
A-27	28 EA	STD (8-01)	Inlet Protection	EA \$ 90.00	\$ 2,520.00
			\$ two thousand Five hundred and twenty dollars		
			(Total Amount in Words)		
A-28	770 LF	STD (8-01)	High Visibility Fence	LF \$ 6.00	\$ 4,620.00
			\$ Four thousand six hundred and twenty dollars		
			(Total Amount in Words)		
A-29	Lump Sum	STD (8-01)	Erosion Control and Water Pollution Prevention	LS \$ 5,025.00	\$ 5,025.00
			\$ Five thousand and twenty five dollars		
			(Total Amount in Words)		
A-30	570 SY	SP (8-02)	Seeding, Fertilizing, and Mulching	SY \$ 9.00	\$ 5,130.00
			\$ Five thousand One hundred and thirty dollars		
			(Total Amount in Words)		
A-31	70 SY	SP (8-02)	Bark or Wood Chip Mulch	SY \$ 9.00	\$ 630.00
			\$ Six hundred and thirty dollars		
			(Total Amount in Words)		
A-32	570 SY	SP (8-02)	Fine Compost	SY \$ 9.00	\$ 5,130.00
			\$ Five thousand One hundred and thirty dollars		
			(Total Amount in Words)		
A-33	630 SY	SP (8-02)	Topsoil Type A	SY \$ 9.00	\$ 5,670.00
			\$ Five thousand six hundred and seventy dollars		
			(Total Amount in Words)		
A-34	65 LF	STD (8-04)	Cement Conc. Pedestrian Curb	LF \$ 36.50	\$ 2,372.50
			\$ Two thousand three hundred and Seventy two dollars and Fifty cents		
			(Total Amount in Words)		
A-35	45 LF	STD (8-04)	Cement Conc. Traffic Curb	LF \$ 38.00	\$ 1,710.00

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount In Words	Unit Price	Total Amount
<u>\$ One thousand seven hundred and ten dollars</u> (Total Amount in Words)					
A-36	1,850 LF	STD (8-04)	Cement Conc. Traffic Curb and Gutter	LF \$ 40.00	\$ 74,000.00
<u>\$ Seventy Four thousand dollars</u> (Total Amount in Words)					
A-37	130 SY	STD (8-06)	Cement Conc. Driveway Entrance Type 1	SY \$ 69.00	\$ 8,970.00
<u>\$ Eight thousand nine hundred and seventy dollars</u> (Total Amount in Words)					
A-38	420 LF	SP (8-12)	Coated Chain Link Fence Type 4	LF \$ 38.00	\$ 15,960.00
<u>\$ Fifteen thousand nine hundred and sixty dollars</u> (Total Amount in Words)					
A-39	3 EA	STD (8-14)	Cement Conc. Curb Ramp Type Perpendicular A	EA \$ 1,600.00	\$ 4,800.00
<u>\$ Four thousand Eight hundred dollars</u> (Total Amount in Words)					
A-40	4 EA	STD (8-14)	Cement Conc. Curb Ramp Type Parallel A	EA \$ 1,900.00	\$ 7,600.00
<u>\$ Seven thousand six hundred dollars</u> (Total Amount in Words)					
A-41	750 SY	STD (8-14)	Cement Conc. Sidewalk	SY \$ 58.00	\$ 43,500.00
<u>\$ Forty three thousand Five hundred dollars</u> (Total Amount in Words)					
A-42	35 SF	STD (8-14)	Detectable Warning Surface	SF \$ 28.50	\$ 997.50
<u>\$ Nine hundred and Ninety seven dollars and Fifty cents</u> (Total Amount in Words)					
A-43	Lump Sum	SP (8-20)	RRFB System (Middle School)	LS \$ 50,050.00	\$ 50,050.00
<u>\$ Fifty thousand and fifty dollars</u> (Total Amount in Words)					
A-44	Lump Sum	SP (8-21)	Permanent Signing	LS \$ 7,920.00	\$ 7,920.00
<u>\$ Seven thousand nine hundred and twenty dollars</u> (Total Amount in Words)					
A-45	8,060 LF	STD (8-22)	Paint Line	LF \$.74	\$ 5,964.40

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount In Words	Unit Price	Total Amount
A-46	700 LF	STD (8-22)	Plastic Line	LF \$ 2.64	\$ 1,848.00
\$ Five thousand nine hundred ^{and} sixty four dollars and Forty cents (Total Amount in Words)					
A-47	5,730 LF	STD (8-22)	Painted Wide Line	LF \$.74	\$ 4,240.20
\$ One thousand Eight hundred and forty eight dollars (Total Amount in Words)					
A-48	820 LF	STD (8-22)	Plastic Wide Line	LF \$ 4.85	\$ 3,977.00
\$ Four thousand two hundred and Forty dollars and twenty cents (Total Amount in Words)					
A-49	1,510 LF	STD (8-22)	Painted Crosshatch Marking	LF \$ 1.10	\$ 1,661.00
\$ Three thousand nine hundred and seventy seven dollars (Total Amount in Words)					
A-50	80 LF	STD (8-22)	Plastic Stop Line	LF \$ 13.20	\$ 1,056.00
\$ One thousand one hundred and sixty one dollars (Total Amount in Words)					
A-51	370 SF	STD (8-22)	Plastic Crosswalk Line	SF \$ 7.12	\$ 2,634.40
\$ Two thousand six hundred and thirty four dollars and Forty cents (Total Amount in Words)					
A-52	8 EA	STD (8-22)	Plastic Bicycle Lane Symbol	EA \$ 467.50	\$ 3,740.00
\$ Three thousand seven hundred and Forty dollars (Total Amount in Words)					
A-53	16 EA	STD (8-22)	Plastic Traffic Arrow	EA \$ 275.00	\$ 4,400.00
\$ Four thousand Four hundred dollars (Total Amount in Words)					
A-54	8,100 LF	STD (8-22)	Removing Paint Line	LF \$ 1.97	\$ 15,957.00
\$ Fifteen thousand nine hundred and Fifty seven dollars (Total Amount in Words)					
A-55	160 SF	STD (8-22)	Removing Plastic Crosswalk Line	SF \$ 4.40	\$ 704.00

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount in Words	Unit Price	Total Amount
			<u>\$ Seven hundred and Four dollars</u> (Total Amount in Words)		
A-56	15 EA	STD (8-22)	Removing Plastic Traffic Marking	EA \$ 330.00	\$ 4,950.00
			<u>\$ Four thousand Nine hundred and Fifty dollars</u> (Total Amount in Words)		
A-57	100 TN	STD (8-24)	Backfill for Rock Wall	TN \$ 161.00	\$ 16,100.00
			<u>\$ Sixteen thousand one hundred dollars</u> (Total Amount in Words)		
A-58	170 TN	SP (8-24)	Rock for Rock Wall	TN \$ 150.00	\$ 25,500.00
			<u>\$ Twenty Five thousand Five hundred dollars</u> (Total Amount in Words)		
Schedule A Subtotal					<u>\$ 1,065,198.00</u>

Schedule B - Sewer Mains and Water Main Replacement

B-1	Calculation	SP (1-04)	Minor Changes	CALC \$ 10,000.00	\$ 10,000.00
			<u>\$ Ten thousand dollars</u> (Total Amount in Words)		
B-2	Lump Sum	SP (1-10)	Project Temporary Traffic Control	LS \$ 115,500.00	\$ 115,500.00
			<u>\$ One hundred fifteen thousand Five hundred dollars</u> (Total Amount in Words)		
B-3	Lump Sum	SP (2-02)	Removal and Disposal of Asbestos Materials	LS \$ 3,300.00	\$ 3,300.00
			<u>\$ Three thousand three hundred dollars</u> (Total Amount in Words)		
B-4	Lump Sum	SP (2-02)	Removal of Structures and Obstructions	LS \$ 13,000.00	\$ 13,000.00
			<u>\$ Thirteen thousand dollars</u> (Total Amount in Words)		
B-5	690 CY	STD (2-03)	Roadway Excavation Incl. Haul	CY \$ 94.00	\$ 64,860.00
			<u>\$ Sixty Four thousand Eight hundred and sixty dollars</u> (Total Amount in Words)		
B-6	255 TN	STD (2-03)	Gravel Borrow Incl. Haul	TN \$ 28.00	\$ 7,140.00

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount In Words	Unit Price	Total Amount
			\$ Seven thousand one hundred and Forty dollars (Total Amount in Words)		
B-7	1,280 CY	STD (2-09)	Structure Excavation Class B Incl. Haul	CY \$ 22.00	\$ 28,160.00
			\$ Twenty eight thousand one hundred and Sixty dollars (Total Amount in Words)		
B-8	13,590 SF	STD (2-09)	Shoring or Extra Excavation Class B	SF \$ 1.65	\$ 22,423.50
			\$ Twenty two thousand four hundred and twenty three dollars and Fifty cents (Total Amount in Words)		
B-9	720 TN	STD (4-04)	Crushed Surfacing Top Course	TN \$ 64.00	\$ 46,080.00
			\$ Forty six thousand and Eighty dollars (Total Amount in Words)		
B-10	1,420 SY	SP (5-04)	Planing Bituminous Pavement	SY \$ 5.00	\$ 7,100.00
			\$ Seven thousand one hundred dollars (Total Amount in Words)		
B-11	770 TN	SP (5-04)	HMA Cl. 1/2 In. PG58H-22	TN \$ 112.00	\$ 86,240.00
			\$ Eighty six thousand two hundred and Forty dollars (Total Amount in Words)		
B-12	1 EA	STD (7-05)	Adjust Manhole	EA \$ 1,200.00	\$ 1,200.00
			\$ One thousand two hundred dollars (Total Amount in Words)		
B-13	1 EA	STD (7-05)	Adjust Catch Basin	EA \$ 440.00	\$ 440.00
			\$ Four hundred th Forty dollars (Total Amount in Words)		
B-14	2 EA	SP (7-05)	Drop Manhole Connection	EA \$ 6,400.00	\$ 12,800.00
			\$ Twelve thousand Eight hundred dollars (Total Amount in Words)		
B-15	2 EA	SP (7-05)	Manhole 48 In. Diam. Type 1	EA \$ 8,800.00	\$ 17,600.00
			\$ Seventeen thousand six hundred dollars (Total Amount in Words)		
B-16	20 LF	SP (7-09)	Ductile Iron Pipe for Water Main 6 In. Diam.	LF \$ 200.00	\$ 4,000.00

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount In Words	Unit Price	Total Amount
<u>\$ Four thousand dollars</u> (Total Amount in Words)					
B-17	240 LF	SP (7-09)	Ductile Iron Pipe for Water Main 8 In. Diam.	LF \$ 140.00	\$ 33,600.00
<u>\$ Thirty three thousand six hundred dollars</u> (Total Amount in Words)					
B-18	440 LF	SP (7-09)	Abandon Existing Water Main	LF \$ 37.00	\$ 16,280.00
<u>\$ Sixteen thousand two hundred and Eighty dollars</u> (Total Amount in Words)					
B-19	5 EA	SP (7-12)	Adjust Valve Box	EA \$ 825.00	\$ 4,125.00
<u>\$ Four thousand one hundred and twenty Five dollars</u> (Total Amount in Words)					
B-20	1 EA	SP (7-12)	Tapping Sleeve and Valve Assembly 8 In.	EA \$ 10,800.00	\$ 10,800.00
<u>\$ Ten thousand Eight hundred dollars</u> (Total Amount in Words)					
B-21	1 EA	STD (7-14)	Moving Existing Hydrant	EA \$ 3,000.00	\$ 3,000.00
<u>\$ Three thousand dollars</u> (Total Amount in Words)					
B-22	8 EA	SP (7-15)	Service Connection 1 In. Diam.	EA \$ 3,700.00	\$ 29,600.00
<u>\$ Twenty nine thousand six hundred dollars</u> (Total Amount in Words)					
B-23	1,820 LF	SP (7-17)	Testing Sewer Pipe	LF \$ 5.40	\$ 9,828.00
<u>\$ Nine thousand Eight hundred and twenty Eight dollars</u> (Total Amount in Words)					
B-24	1,510 LF	SP (7-17)	High-Density Polyethylene (HDPE) Pipe 10 In. Diam.	LF \$ 139.00	\$ 209,890.00
<u>\$ Two hundred nine thousand Eight hundred and Ninety dollars</u> (Total Amount in Words)					
B-25	520 LF	SP (7-17)	High-Density Polyethylene (HDPE) Casing Pipe 16 In. Diam.	LF \$ 137.00	\$ 71,240.00
<u>\$ Seventy one thousand two hundred and Forty dollars</u> (Total Amount in Words)					
B-26	20 LF	SP (7-17)	PVC Sanitary Sewer Pipe 6 In. Diam.	LF \$ 174.00	\$ 3,480.00

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount In Words	Unit Price	Total Amount
<u>\$ Three thousand Four hundred and Eighty dollars</u> (Total Amount in Words)					
B-27	290 LF	SP (7-17)	PVC Sanitary Sewer Pipe 8 In. Diam.	LF \$ 84.00	\$ 24,360.00
<u>\$ Twenty Four thousand three hundred and sixty dollars</u> (Total Amount in Words)					
B-28	1 EA	SP (7-19)	Sewer Cleanout	EA \$ 1,100.00	\$ 1,100.00
<u>\$ One thousand one hundred dollars</u> (Total Amount in Words)					
B-29	9 EA	STD (8-01)	Inlet Protection	EA \$ 95.00	\$ 855.00
<u>\$ Eight hundred and Fifty Five dollars</u> (Total Amount in Words)					
B-30	20 SY	SP (8-02)	Seeding, Fertilizing, and Mulching	SY \$ 22.00	\$ 440.00
<u>\$ Four hundred and Forty dollars</u> (Total Amount in Words)					
B-31	20 SY	SP (8-02)	Fine Compost	SY \$ 22.00	\$ 440.00
<u>\$ Four hundred and Forty dollars</u> (Total Amount in Words)					
B-32	20 SY	SP (8-02)	Topsoil Type A	SY \$ 22.00	\$ 440.00
<u>\$ Four hundred and Forty dollars</u> (Total Amount in Words)					
B-33	10 LF	STD (8-04)	Cement Conc. Traffic Curb	LF \$ 38.00	\$ 380.00
<u>\$ Three hundred and Eighty dollars</u> (Total Amount in Words)					
B-34	10 LF	STD (8-04)	Cement Conc. Traffic Curb and Gutter	LF \$ 40.00	\$ 400.00
<u>\$ Four hundred dollars</u> (Total Amount in Words)					
B-35	20 SY	STD (8-14)	Cement Conc. Sidewalk	SY \$ 58.00	\$ 1,160.00
<u>\$ One thousand one hundred and sixty dollars</u> (Total Amount in Words)					
B-36	1,280 LF	STD (8-22)	Paint Line	LF \$.75	\$ 960.00

Item No.	Estimated Quantity	SP / STD	Description of Item / Total Amount In Words	Unit Price	Total Amount
			<u>\$ Nine hundred and sixty dollars</u>		
			(Total Amount in Words)		
B-37	1,580 LF	STD (8-22)	Painted Wide Line	LF \$.75	\$ 1,185.00
			<u>\$ One thousand one hundred and Eighty Five dollars</u>		
			(Total Amount in Words)		
B-38	100 SF	STD (8-22)	Plastic Crosswalk Line	SF \$ 7.12	\$ 712.00
			<u>\$ Seven hundred and twelve dollars</u>		
			(Total Amount in Words)		
B-39	10 SF	STD (8-22)	Removing Plastic Crosswalk Line	SF \$ 4.40	\$ 44.00
			<u>\$ Forty Four dollars</u>		
			(Total Amount in Words)		
Schedule B Subtotal					\$ 864,162.50
SALES TAX (9.3%)					\$ 80,367.11
Schedule B Total					\$ 944,529.61
Schedule A Total					\$ 1,065,198.00
Schedule B Total					\$ 944,529.61
TOTAL BID					\$ 2,009,727.61

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

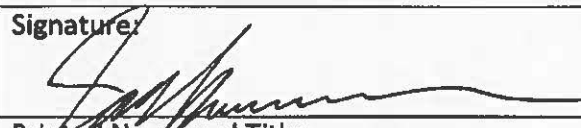
**CITY OF PORT ORCHARD
POTTERY AVE NON-MOTORIZED IMPROVEMENTS
PROJECT NO. PW2023-002**

<u>1</u>	<u>2/1/24</u>		
Addendum No.	Date of Receipt	Addendum No.	Date of Receipt
<u>2</u>	<u>2/6/24</u>		
Addendum No.	Date of Receipt	Addendum No.	Date of Receipt

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

By signing below, Bidder certifies that they have reviewed the insurance provisions of the Bid Documents and will provide the required coverage.

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

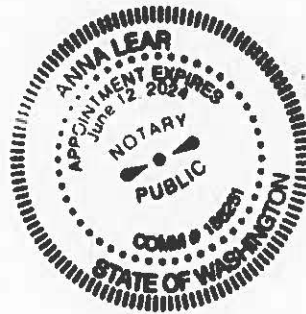
<u>OFFICIAL AUTHORIZED TO SIGN FOR BIDDER:</u>	
"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."	
Signature: 	Date: 2/8/2024
Printed Name and Title: Joseph Harrison / General Manager	Location or Place Executed (City, State): Puyallup, WA
Business Address: 400 Valley Ave NE Puyallup, WA 98372	Business Telephone: 253-383-3585

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

STATE OF WA)
)ss.
 COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Joseph Harrison signed this proposal, on oath stated that he/she was authorized to execute the proposal and acknowledged it as the General Manager (title) of Miles Resources, LLC (name of party on behalf of whom proposal was executed) and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this proposal.

Dated this 8th day of February, 2024.



[Signature]
 Notary Public

Anna Lear

Printed Name

My Commission Expires: 6/12/2024