

**PORT OF BREMERTON**  
**BOARD OF COMMISSIONERS**  
**REGULAR BUSINESS MEETING**

**A G E N D A**

December 13, 2022  
10:00 AM

Bill Mahan Conference Room  
Port Administration Offices  
Bremerton Nat'l Airport Terminal Bldg  
8850 SW State Hwy 3, Bremerton

The Port of Bremerton Board of Commissioners have resumed in-person meetings but are maintaining the option for the public to participate remotely as well. The public is invited to view and/or participate in the hybrid meeting by attending in person or through one of the following options:

- To stream online only (via BKAT feed, with no interaction possible):  
<https://bremerton.vod.castus.tv/vod/?live=ch1&nav=live>
- To join the online Zoom meeting: <https://us02web.zoom.us/j/3359030010>
- For audio only; dial 1.253.215.8782; Meeting ID: 335 903 0010

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**Call to Order**

**Pledge of Allegiance**

**Approval of Agenda**

**Consent Items**

All matters listed under Consent Items have been distributed to each member of the Commission for reading and study, are considered to be routine, and will be enacted by one motion of the Commission with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Items and placed under Action Items by request.

- A. Minutes of the regular business meeting of November 22, 2022.
- B. Payment of checks #E01267 and #901677 and #84416 and #84417 through #84464 and #E01268 through #E01271 and #901678 through #901681 from the General Fund for \$359,534.64.  
Payment of checks #901682 through #901685 and #901686 and #E01272 and #84465 through #84486 and #E01273 through #E01281 from the General Fund for \$1,187,194.79.

**Information Items**

1. Update on Bremerton Aviation Center for Education (BACE) Building Solar Panel Installation – Mike Friend, BACE Co-Founder

**Citizen Comments:** *Open to the public for comment. Speakers are asked to keep their comments to less than 3 minutes. Please feel free to submit further comments in writing to the Clerk of the Board (gingerw@portofbremerton.org).*

**Action Items**

1. Bid Authorization for Terminal & Avian Building Sewer Lift Station Replacement
2. Consultant Agreement with N.L. Olson & Associates for Olympic View Industrial Park Imperial Way Sewer Line Replacement
3. City of Port Orchard Pump Station - Memorandum of Understanding

**Staff Reports**

**Commission Reports / New Business**

**Executive Session** *(if necessary)*

**Adjournment**

*Regular business and other meetings that may be attended by members of the Board*

<u><i>Date</i></u>	<u><i>Time</i></u>	<u><i>Meeting</i></u>
<i>12/13</i>	<i>8:00 am</i>	<i>*Commission Special Meeting – Executive Session</i>
<i>12/13</i>	<i>10:00 am</i>	<i>*Commission Regular Meeting</i>
<i>12/16</i>	<i>10:00 am</i>	<i>Peninsula Regional Transportation Planning Organization (PRTPO)</i>
<i>12/26</i>		<i>Port Offices Closed in Observance of the Christmas Holiday</i>
<i>12/27</i>	<i>6:00 pm</i>	<i>*Commission Regular Meeting - CANCELLED</i>

*Meetings are subject to change or cancellation*

*\*Denotes events in which two (2) or more Commissioners may attend*

**PORT OF BREMERTON**  
**BOARD OF COMMISSIONERS**  
**REGULAR BUSINESS MEETING**

**MINUTES**

November 22, 2022  
6:00 PM

Bill Mahan Conference Room  
Port Administration Offices  
Bremerton Nat'l Airport Terminal Bldg  
8850 SW State Hwy 3, Bremerton  
Remote Option: Zoom Meeting ID 335 903 0010

**Commissioners and Staff Present**

Commissioners

Axel Strakeljahn  
Gary Anderson  
Cary Bozeman

Staff Members

Jim Rothlin  
Fred Salisbury  
Jeremiah Wiley  
Arne Bakker  
James Goodman  
James Weaver  
Monroe Whitman IV  
Ginger Waye  
Stephanie Frame  
Anne Montgomery, Atty

**Call to Order**

President Strakeljahn called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

**Approval of Agenda**

**It was moved by BOZEMAN, seconded by ANDERSON to:**

Approve the Agenda as presented.

**MOTION CARRIES, 3-0**

**Consent Items**

- A. Minutes of the regular business meeting of November 8, 2022.
- B. Payment of checks #901669 and #901670 and #E01249 and #84366 through #84388 and #E01250 through #E01255 from the General Fund for \$57,448.84.  
Payment of checks #901671 through #901674 and #901675 through #901676 and #84389 through #84415 and #E01256 through #E01266 from the General Fund for \$155,936.61. Void Check #84293, #84310

**It was moved by ANDERSON, seconded by BOZEMAN to:**

Approve the Consent Items as presented.

**MOTION CARRIES, 3-0**

## Information Items

1. Memorandum of Understanding (MOU) for City of Port Orchard Pump Station Project Status Update – James Weaver, Director of Marine Facilities

Director Weaver used a PowerPoint presentation to update the Board on the detail and status of the MOU with the City of Port Orchard for their Pump Station Project including background and location of DNR leases; conceptual drawing of new facilities; compensation; project timelines and Port impacts including parking. Board questions were addressed.

**Citizen Comments** - None

## Action Items

1. Final Acceptance of Emergency Culvert Repair at Pirate's Cove Road Project with Henderson Partners, LLC  
*Presented by Arne Bakker, Chief Operations Officer*

Following presentation and discussion;

**It was moved by STRAKELJAHN, seconded by ANDERSON to:**

Accept as final the construction contract with Henderson Partners, LLC, for the Emergency Culvert Repair at Pirate's Cove Road Project for a total of \$53,480.70 including tax.

**MOTION CARRIES, 3-0**

## Staff Reports

*Jim Rothlin, Chief Executive Officer reported on the following topics:*

- Welcomed new employee Peyton Volpe-Ludwig as Marina Customer Services Specialist.
- Strength of current staffing levels
- Recent award of a \$50K Community Economic Revitalization Board (CERB) grant for the scheduled 2023 Imperial Way sewer replacement
- Finalizing parking details for Bremerton Marina parking at Marina Square
- Holiday preparations beginning at all facilities
- Update on construction progress for the multipurpose facility
- Washington Public Ports Association's (WPPA) selection of Eric ffitch as their new Executive Director and naming CEO Rothlin to the WPPA Executive Committee which has previously only been held by commissioners.

- In keeping with tradition, plans are to cancel the second meeting of December. The Board concurred with canceling the regular business meeting scheduled for December 27, 2022.

### **Commission Reports / New Business**

#### *Commissioner Strakeljahn*

- Attended the Tacoma-Pierce County Economic Development Board annual meeting which was very well done.
- Have several Central Puget Sound Economic Development District Board meetings coming up.

#### **Executive Session - None**

### **Adjournment**

There being no further business before the Board, the meeting was adjourned at 6:52 p.m.

Submitted,

Approved,

Jim Rothlin  
Chief Executive Officer  
December 8, 2022

Cary Bozeman  
Commission Secretary  
December 13, 2022

**PORT OF BREMERTON**  
**AGENDA SUMMARY**

Agenda Item No: Action Item #1  
Subject: Bid Authorization for Replacement of Terminal & Avian Building Sewer Lift Station  
Exhibits: None  
Prepared By: James Goodman, Director of Facilities & Property Development  
Meeting Date: December 13, 2022

**Summary:**

The Airport Terminal Building and Avian Building share a duplex sewage pump lift station that transfers raw sewage to our sewer treatment facility. The lift station is located in the parking lot between both buildings and has reached the end of its effective service life. The aging station is a contributing factor to the frequent sewage backups, incurring high expense costs due to emergency plumbing calls. The current risk is that both buildings will lose water and restroom capabilities should the pump station completely fail.

A completed engineering estimate by “MAP Limited” identified several issues that need repair, replacement, and/or retrofitting. (Note: These upgrades will meet the expectations of “Washington Labor and Industries” for commercial sewage pump stations.)

- Replacement of existing pumps and the integrated fittings.
- Replacement and upgrading to the wiring and control panel.
- Retrofitting to a rated 2-hp explosion-proof grinder pump system and discharge piping.
- Repair of transducer sewage level sensors.
- Installation of a stainless-steel pump lift-out rail assemblies and concrete flat top with access hatch.
- Installation of control panels with audible and visual alarms in an all-weather enclosure.

**Fiscal Impact:**

Total Budget: (2022 and 2023 Capital Budget \$65,000)

Funding comes from the 2022 and 2023 Capital Funds for Port Terminal /Avian Building Sewer Lift Station Replacement of \$65,000.

The total available budget is \$65,000 for this project. The estimated repair cost for this project is between \$55,000 - \$65,000. This is based on an Engineering Estimate from “MAP

Limited". The estimate was received in September of 2021 at \$43,750 plus tax. An anticipated %20 markup in parts and labor is now factored.

**Strategic Purpose:**

This action conforms with the Port's strategic plan in Goal #2. Operate all Port facilities efficiently and cost effectively with a high degree of customer service.

**Recommendation:**

Authorize staff to proceed with the bid call for the Sewer Lift Station project in accordance with the approved contracting guidances.

**Motion for Consideration:**

**Move to authorize staff to proceed with the bid call for the Sewer Lift Station project repair.**

# PORT OF BREMERTON AGENDA SUMMARY

Agenda Item No:     Action Item #2  
Subject:             Consultant Agreement with NL Olson & Associates for OVIP Sewer Replacement  
Exhibits:            Consultant Agreement  
Prepared By:        Arne Bakker, COO  
Meeting Date:       December 13, 2022

Summary:

In 2020, the Port of Bremerton was under construction for the SR3 Frontage Development including a 5300-sf building. During construction it was discovered that the sewer line that would be connected to this building was deteriorating, and 80 linear feet of sewer was replaced at that time. Due to this discovery, port staff assessed the remaining sewer line along Imperial Way and found that the sewer was in disrepair and in need of replacement before failure would occur.

In the Capital Budget for 2023, Port Commission approved the replacement of 1400 linear feet of failing sewer line along Imperial Way in the Olympic View Industrial Park. NL Olson designed the original 80 linear feet that was replaced in 2020 and has been selected to design and engineer (including permitting documents for the City of Bremerton) the remaining 1400 linear feet. This phase of the Sewer Replacement project is expected to be completed in Q2 of 2023.

Fiscal Impact:

Budget OVIP Sewer Replacement:	\$600,000
CERB Grant:	+\$50,000
Design & Engineering:	-\$62,500
Budget Remaining:	\$587,500

Strategic Purpose:

This action conforms with the Port's strategic plan in Goal 2: Operate all Port facilities efficiently and cost effectively with a high degree of customer service.

Recommendation:

Staff recommends the approval of the Consultant Agreement with NL Olson & Associates for the design and engineering for the replacement of the OVIP sewer line in the amount of \$62,500 and authorize CEO for signature

Motion for Consideration:

**Move to approve the Consultant Agreement with NL Olson & Associates for the design and engineering for the replacement of the OVIP sewer line in the amount of \$62,500 and authorize CEO for signature.**

**PORT OF BREMERTON  
AGREEMENT FOR PROFESSIONAL SERVICES  
(CHAPTER 39.80 RCW)**

This **AGREEMENT FOR PROFESSIONAL SERVICES** ("Agreement") is made and entered into as of the later of the two signature dates below, by and between:

**PORT OF BREMERTON**  
Attn: Jim Rothlin  
8850 SW State Highway 3  
Bremerton, WA 98312

(the "Port")

AND

**N.L. Olson & Associates Inc.**  
Attn: Norm Olson, P.E.  
2453 Bethel Avenue  
Port Orchard, Washington 98366

("Consultant")

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**Term of Contract:** 01/01/2023 – 03/31/2023

- **SCOPE OF WORK:** See attached Exhibit "A".
- **COMPENSATION:** The Consultant shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown herein: See attached Exhibit "B". (NOT USED)
- **GENERAL PROVISIONS:** Services covered by this Agreement shall be performed in accordance with the General Provisions (which are attached hereto and form a part of this Agreement) and any attachments or schedules.
- **ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the later of the dates indicated below. By signing below, each signatory represents that he or she has authority on behalf of his or her respective party to enter into this agreement, which shall be binding upon the parties according to its terms.

**CONSULTANT NAME**

**PORT OF BREMERTON**

Signature: 

Signature: \_\_\_\_\_

Name/Title: Norm Olson, P.E., President

Name/Title: Jim Rothlin, Chief Executive Officer

Date: 11/28/22

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

## GENERAL PROVISIONS

In consideration of the mutual covenants and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. Scope of Work.** The objective of this Agreement is the timely preparation, completion and/or delivery of the scope of work and/or deliverables (the "Services" or "Work") described in Exhibit A issued pursuant to and governed by the terms of this Agreement. Additional work and/or amendments to Exhibit "A" shall be attached hereto as Amendments and shall be made part of this Agreement upon approval as required herein. Any Amendments issued by the Port prior to the termination date of this Agreement shall be governed by the terms of this Agreement until completed even if the Amendment work extends beyond the termination date of this Agreement.

1.1 Services covered by this Agreement shall be performed in accordance with the provisions and any attachments or schedules. Except as may be otherwise provided for herein, this Agreement may only be amended by the mutual consent of both parties hereto, in writing and signed by duly authorized representatives of both parties.

**2. Term of Agreement.** The Consultant shall not begin Work under the Agreement or any Amendment until the Port has specifically authorized the Consultant to do so in writing. The time required for completion of all Work under Exhibit "A" or an Amendment and, if appropriate under a schedule for completion of phases of the Work, shall be specified in Exhibit "A" and any Amendment. The completion dates for phases of Work under Exhibit "A" or an Amendment may be modified only upon written agreement of the parties hereto. The completion dates for Exhibit "A", or for phases of Work under an Amendment may be, but are not required to be, extended in the event of a delay caused by Extra Work requested by the Port, or if the Consultant's Work is delayed by unavoidable circumstances beyond the control of the Consultant and which the Consultant could not reasonably have anticipated. This Agreement may be extended for multiple terms at the sole discretion of the Port and subject to budget appropriations and Commission approval when required; if so extended, all of the terms and conditions herein shall apply to such extension.

**3. Compensation and Payment.** The Consultant shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown in the attached Consultant's Fee Schedule, Exhibit "B." The Consultant shall receive no other payment for materials or disbursements unless expressly allowed by the Scope of Work or Amendment(s). The Consultant shall not adjust the wage rates in Exhibit "B" without written authorization from the Port.

3.1 Consultant shall supply Port with a monthly invoice and written documentation, satisfactory to Port, for all amounts due under this Agreement, including but not limited to project budget status and a narrative progress description of Services rendered that is acceptable in form to the Port. All invoices submitted by Consultant to Port shall reference any applicable billing codes provided by Port to Consultant. Any applicable taxes shall be listed as separate line items on each Consultant invoice. All invoices and documentation may be reviewed and audited by Port and payment may be subject to review or audit. Subject to the preceding, payments shall be net thirty (30) days of receipt of such invoice by Port. In no event shall the Port be charged interest on payments due under this Agreement. If required by Port, Consultant shall provide periodic forecasts of its total fees and costs incurred to date. With regard to time and materials, only the reimbursable expenses specifically listed in the attached Exhibit "B" will be payable expenses under this Agreement.

3.2 If Exhibit "A" specifies that the Work is to be performed on a fixed fee basis, the Consultant shall be paid the amount of the fixed fee as consideration for full and satisfactory performance of the Work regardless of the Consultant's cost to perform the Work. The Port shall have sole authority for determining when all Work has been satisfactorily performed by the Consultant. The Consultant's payment for the Work shall not exceed the specific amount unless authorized in writing by the Port, as provided herein. The fixed fee amount comprises all of the Consultant's payment for the Work and includes without limitation all costs of salaries, overhead, non-salary expenses (including, but not limited to,

travel, reproductions, telephone, supplies, and fees of outside consultants), as well as the Consultant's profits. The Consultant's payment for the Work shall not exceed the specified amount unless first authorized by the Port.

3.3 The Consultant shall obtain the prior written approval of the Port for any charges for additional services by the Consultant, the additional services of others retained by Consultant, or the furnishing of additional supplies, materials or equipment. The Consultant shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

4. **Payment of Subconsultants.** At the time of project completion, the Consultant agrees to certify to the Port that all employees (including without limitation any union fees and any benefit plans), and subconsultants have been paid in full. Final payment shall be preconditioned upon receipt of such certification by the Port; the Port may, in its sole discretion, withhold final payment until receipt of such certification. The Consultant shall be solely responsible for the performance and payment of any and all subconsultants. All such sub-consultants shall possess all licenses and insurance as required by the laws of the State of Washington.

5. **Termination.** This Agreement may be terminated by either party upon seven (7) days' written notice should one party fail to perform in accordance with its terms through no fault of the other. In the event the party that fails to perform is the Consultant, the determination of "fail to perform in accordance with its terms" shall be in the sole judgment of the Port. In the event of termination, the Consultant shall be compensated for satisfactory Services performed to the termination date by reimbursement of the Consultant's actual costs directly related to the project plus normal overhead and reasonable profit. The Port shall have sole authority for determining when all Work has been satisfactorily performed by the Consultant. In no case, however, shall such reimbursement exceed the agreed upon fee as approved and amended by the Port. Any work product generated by the Consultant prior to such termination shall be the sole property of the Port, and the Consultant agrees to provide the Port with all such materials. If the accumulated payment made to the Consultant prior to notice of intent to terminate exceeds the total amount that

would be due as set forth herein above, then no final payment shall be due and the Consultant shall promptly reimburse the Port for the excess paid.

5.1 Further, this Agreement may be terminated by the Port at any time for any reason whatsoever, at the sole discretion of the Port, with seven (7) days' written notice. If the Port terminates for convenience, the Port will pay according to the payment terms as provided in Paragraph 5, above. If, after termination for failure of the Consultant to fulfill contractual obligations, it is determined that the Consultant has not so failed, the termination shall be deemed to have been effected for the convenience of the Port.

5.2 In addition to the above, the Port reserves the right to suspend all or any portion of the Work and Services for Consultant's default or Port's convenience. If the Consultant's Work is delayed for more than thirty (30) calendar days due to circumstances for which the Consultant is responsible, the Port may find the Consultant in default and terminate this Agreement.

6. **Deviations from Scope of Work.** The Port may at any time issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affects any other provision of this Agreement, the Consultant shall immediately notify the Port and take no further action concerning those written directions until such time as the parties have executed a written change order. No additional work shall be performed or charges incurred unless and until the Port approves in writing the change order and the increased cost thereof. Any work done in violation of this paragraph shall be at the sole expense of the Consultant. Additionally, the Port reserves the right to modify the amount spent for identified project tasks within the scope of work, provided that the Contract Amount, as may be modified under Paragraph 3.3, is not exceeded.

6.1 The Consultant shall make all revisions and changes in the completed Work under this Agreement as are necessary to correct the Consultant's, and its subconsultants' errors or omissions, without additional compensation from Port.

7. **Insurance.** Consultant, concurrently with the execution of this Agreement, shall provide the Port with evidence that Consultant has obtained and is maintaining the insurance listed as follows:

7.1 **Workers' Compensation Insurance** as required by law.

7.2 **Employers' Liability Insurance** (bodily injuries) with a limit of One Hundred Thousand Dollars (\$100,000) per occurrence with an insurance company authorized to write such insurance in all states where the Consultant will have employees located in the performance of its work covering its common law liability to such employees.

7.3 **Commercial General Liability Insurance** with limits of Two Million Dollar (\$2,000,000 per occurrence and Two Million Dollar (\$2,000,000) aggregate and **Automobile Liability Insurance** covering all owned and non-owned automobiles or vehicles used by or on behalf of Consultant with a One Million Dollar (\$1,000,000) combined single limit for bodily injury and/or property damage per occurrence.

7.4 **Professional Liability Insurance** covering Errors and Omissions of the Consultant in the amount of not less than One Million Dollars (\$1,000,000) per claim.

7.5 Except with regard to the Professional Liability Insurance and Worker's Compensation Insurance, each of the policies required herein **shall endorse the Port as an additional insured.** Furthermore, each policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to the Port except upon thirty (30) days' prior written notice from the insurance company to the Port; (iii) contain an express waiver of any right of subrogation by the insurance company against the Port and its elected officials, employees, or agents; (iv) expressly provide that the defense and indemnification of the Port as an "additional insured" will not be effected by any act or omission by Consultant which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; (vi) not contain a cross-

claim, cross-suit, or other exclusion that eliminates coverage by one insured against another; and (vii) provide for coverage for damage to the Port's property caused by the Consultant.

7.6 With regard to the Professional Liability Insurance, the Consultant shall maintain the same in full force and effect during the term of this Agreement and for a period of one year thereafter.

7.7 The Consultant shall furnish the Port with copies of Certificates of Insurance evidencing policies of insurance required herein. The Consultant shall maintain these policies as identified above for itself and its sub-consultants for the term of this Agreement and for a period of one year thereafter. The Port's failure to request such certificates shall not relieve the Consultant of the obligation to provide them.

7.8 The Consultant shall maintain the insurance in effect at all times that it is performing Work under this Agreement. Failure to obtain and/or maintain such insurance shall be grounds for the Port to find the Consultant in default and terminate the Agreement accordingly. Alternatively, the Port may at its option purchase such insurance and deduct the reasonable expense therefore from payments made to or owing to the Consultant.

8. **Consultant Not an Agent or Employee of the Port.** In performing Work and Services hereunder, the Consultant and Consultant's employees, agents, and representatives shall be acting as independent Consultants and shall not be deemed or construed to be partners, employees or agents of the Port in any manner whatsoever. No employee of the Consultant shall be considered an employee of the Port even while performing Work required under this Agreement. Furthermore, the Consultant shall not hold itself out as, nor claim to be, an officer or employee of the Port by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Port.

9. **Conflict of Interest.** Consultant covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. Consultant further covenants that in the performance of this

Agreement, no person having such interest shall be employed by it or any of its Subconsultants.

10. **Compliance With Applicable Law.** The Consultant shall comply with all the Port's resolutions and all federal, state, and local laws, regulations and ordinances that are applicable to the Work performed pursuant to this Agreement. Both parties mutually agree to re-negotiate scope, budget, and schedule should a change in any of the applicable Port's resolutions, federal, state or local laws, regulations or ordinances during the performance of the Work affect the cost of performing the Work. The Consultant shall register (and shall require the same of all subconsultants), as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to the Port. By executing this Agreement, Consultant further certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. It further agrees by acceptance of this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, agreements, contracts, and subcontracts. Where the offeror/consultant or any lower tier participant is unable to certify to this statement it shall attach an explanation to this Agreement. The Port reserves the right to require Consultant to replace a sub-consultant or lower tier participant who cannot meet the foregoing certification requirement.

11. **Indemnification.** The Consultant shall defend (with legal counsel satisfactory to the Port), indemnify and hold the Port, its elected officials, agents and employees (collectively "Port") harmless from and against all liabilities, obligations, fines, claims, damages, penalties, lawsuits, governmental proceedings, judgments, costs and expenses (including, without limitation, all attorneys' fees, costs and expenses of litigation):

- Arising out of any negligent act or omission of Consultant, its directors, officers, subconsultants, agents and/or employees (collectively "Consultant") in connection with the Services provided pursuant to this Agreement; provided, however, that in the event of concurrent negligence of the Consultant and the Port, then this defense and

indemnification shall apply only to the extent of the Consultant's negligence; and/or

- Arising from a breach of this Agreement by Consultant; and/or
- Arising out of or due to any failure on the part of Consultant to perform or comply with any rule, ordinance or law to be kept and performed.

The Port will inform Consultant of any such claim or demand that alleges liability based in whole or in part on any act or omission of Consultant, its directors, officers, agents, or employees. Thereafter the Consultant shall (i) reasonably cooperate in the defense of such claim and (ii) pay its defense of such claim as incurred, whether or not such claim is ultimately successful. In this regard, the Port will reasonably cooperate with Consultant in allowing Consultant to jointly select, with the Port, attorneys to defend the Port and Consultant provided that Consultant confirms its obligation to pay the Port's defense costs.

11.1 In the event of concurrent negligence by the Port and Consultant, then at the conclusion of the action (e.g., judgment, arbitration award or settlement), the attorneys' fees and costs incurred in defending the Port shall be apportioned to the parties based on their respective fault as provided by RCW 4.24.115.

11.2 The foregoing indemnification obligation shall include, but is not limited to, all claims against the Port by an employee or former employee of the Consultant or any subconsultant or service provider. For this purpose, the Consultant expressly waives, as respects the Port only, all immunity and limitation on liability under any industrial insurance Act, including Title 51 RCW, or other workers compensation act, disability act, or other employees benefits of any act of any jurisdiction which would otherwise be applicable in the case of such a claim. **BY INITIALING BELOW THE PORT AND CONSULTANT CERTIFY THE WAIVER OF IMMUNITY SPECIFIED BY THIS PROVISION WAS MUTUALLY NEGOTIATED.**

\_\_\_\_\_  
**Consultant**

\_\_\_\_\_  
**Port**

12. **Work Product Confidentiality.** Any reports, documents, questionnaires, records, information or data given to or prepared or assembled under this Agreement which the Port requests to be kept confidential shall not be made available by the Consultant to any individual or organization without prior written approval of the Port except as may be ordered by a court of competent jurisdiction. The provisions of this section shall survive the expiration or earlier termination of this Agreement. No reports, records, questionnaires, or software programs provided by the Port or other documents produced in whole or in part by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

13. **Public Disclosure Request.**

Correspondence, reports, and other written work product will be generated during the course of the relationship created by this Agreement, and third parties may request such information pursuant to the Washington State Public Disclosure Act (RCW 42.17.250 *et. seq.*). The parties agree that in the event that such a request is filed, the party with whom the request is filed will promptly notify all other parties to this Agreement. The parties further agree that they will not disclose any such requested material until at least ten (10) business days after providing notification to all other parties to this Agreement. The intent of this clause is to provide all parties the opportunity to seek injunctive relief pursuant to RCW 42.17.330 so as to protect the vital functions of those entities. This clause shall survive the termination or expiration of this Agreement.

14. **Plans, etc. Property of Port.** All Work performed under this Agreement is work for hire. All deliverables, including but not limited to original plans, drawings and specifications, prepared by the Consultant and any and all sub-consultants for the Port and funded by the Port are and shall remain the property of the Port whether or not the Project for which they are made is executed. This shall not apply to proprietary software or documentation that may be provided to the Port and that was developed independent of funding by the Port. The Consultant assumes no liability for any use of the Drawings and Specifications other than that originally intended for this Project. Originals, including electronic forms of the data prepared by the Consultant and funded by the Port, shall become the property of the Port. No

reports, records, questionnaires, software programs provided by Port or other documents produced in whole or in part by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant. The Consultant's Work shall not infringe on any copyright, patent, trade secret, or other proprietary rights held by any third party.

15. **Electronic File Compatibility.** All electronically- transmitted output must be compatible with existing Port software and shall be provided to the Port in a CAD or other appropriate electronic format. All CAD deliverables shall be consistent with the Port's standard CAD layering system, as provided by the Port to the Consultant. Consultants shall check with the Port for software application, system compatibility and preferred file type.

16. **Non-Discrimination.** In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran or a member of any other protected class. The Consultant shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, or being a handicapped or disadvantaged person or a disabled or Vietnam-era veteran or a member of any other protected class.

17. **Federal Restrictions on Lobbying.** Consultant certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 *et seq.*, no Federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

18. **Federal Debarment and Suspension.** The Consultant certifies, that neither it nor its “principals” (as defined in 49 CFR.29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

19. **Subletting or Assigning of Agreement.** The Consultant shall not sublet or assign any of the Work covered by this Agreement without the express written consent of the Port.

20. **Notices.** All notices and payments hereunder may be delivered or mailed to the addresses listed above. If delivered by messenger, courier (including overnight air courier) or facsimile transmittal, they shall be deemed delivered when received at the street address or facsimile numbers listed above. All notices and payments mailed, whether sent by regular post or by certified or registered mail, shall be deemed to have been given on the second business day following the date of mailing, if properly mailed to the mailing addresses provided above, and shall be conclusive evidence of the date of mailing. The parties may designate new or additional addresses for mail or delivery by providing notice to the other party as provided in this section. The address for delivery of notices and payments are as set forth in the introductory paragraph of this Agreement.

21. **Review of Title Documents.** Prior to the execution or recordation of any documents effecting title to any property, said document shall be reviewed by the Port. Consultant shall not execute or record (or make to be executed or recorded) any such document prior to the Port’s review and approval.

22. **Jurisdiction.** This Agreement is made and delivered in the State of Washington and shall be construed and enforced in accordance with the laws thereof. Jurisdiction and venue of any dispute hereunder shall be solely in the Superior Court of the State of Washington in and for Kitsap County. In the event of a dispute arising out of or under this Agreement, the substantially prevailing party shall be entitled to its reasonable attorney’s fees

and costs. The parties irrevocably waive any right to federal court jurisdiction for disputes arising hereunder.

23. **Pollution.** Port acknowledges that the Consultant is not responsible for the creation or presence of contamination or pollution, if any, at the property except to the extent that such a discharge, release or escape is caused by the negligent act or failure to act of the Consultant. For the purpose of this clause, contamination conditions shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant, contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. The Consultant will promptly notify the Port of contamination conditions, if identified. Notwithstanding the foregoing, the Port does not herein waive any cause of action for damages resulting from the Port’s reliance on any misrepresentation (made either knowingly or negligently) by the Contractor with regard to the presence of any contamination or pollution.

24. **Standard of Performance:** Consultant represents that the Services will be performed within the limits prescribed by the Port and that its findings, recommendations, specifications and/or professional advice provided hereunder will be prepared and presented in a manner consistent with, or exceeding, the standard of care and skill ordinarily exercised by other professionals in the State of Washington under similar circumstances at the time the Services are performed.

25. **Entire Agreement.** This is the entire agreement between the parties. There is no other oral or written understanding between the parties concerning this matter. The Consultant specifically understands that no Port employees other than the project manager or his/her supervisor are authorized to direct the work of the Consultant.

26. **Signing Authority.** Anyone signing this Agreement by said signature certifies that he/she has the authority to execute said document on behalf of the Consultant and that his/her signature is binding upon the firm or corporation.

**EXHIBIT A**  
**SCOPE OF WORK**



**N.L. Olson & Associates, INC.**  
*Engineering, Planning & Land Surveying*

**Imperial Way Sewer Replacement & Street Improvement Project  
Proposal - Scope of Work & Budget**

**For**

**The Port of Bremerton  
Attn: Arne Bakker  
Director of Business Development  
arneb@portofbremerton.org**

**November 11, 2022**

The following is N.L. Olson & Associates, Inc.'s (NLO's) proposal to provide professional civil engineering and surveying services to the Port of Bremerton (The Client) for the proposed sewer main upgrade/replacement within portions of Imperial Way combined with street improvements for pedestrian facilities within the Port of Bremerton Industrial Park.

The project scope includes replacement of approximately 1400 lineal feet of existing 8" diameter gravity sewer located on the east side of SW Imperial Way extending north from the Lot 1 Wedge north project boundary to SW Barney White Road. The project scope will also include design and construction of a new 6ft wide sidewalk with curb/gutter as well as a 5ft wide bike lane and planter strip all located along the east side of the road.

NLO's proposal for the sewer design submittal to POB for review and approval and submittal of the roadway surface improvements design to the City of Bremerton for Site Development Permit (SDP) acquisition and to prepare the approved design and specifications for construction, includes the following Tasks:

- Task 1 – Topographic Survey and base map
- Task 2 – Civil Engineering Design, Report(s) and Coordination
- Task 3 – Permit Application & Submittal Package Coordination

The following is NLO's proposed scope of work and associated fee estimate:

**Task 1 - Topographic Survey:**

A field topographic survey of the site will be performed. The topographic survey will include all existing conditions within the Imperial Way roadway located on the east side of the existing median and/or road

centerline including the existing underground utilities and existing surface features. The newly constructed sewer replacement and the existing old sewer utility will be measured along with the other existing utilities. Vertical contours will be prepared and shown at 2-foot intervals. Existing trees will not be surveyed. The prior survey data acquired for the Wedge project will be used to the extent possible.

**Assumptions:**

NLO will request utility locates for the sewer replacement route and all existing utilities will be sufficiently located with paint marks provided by the appropriate jurisdictions.

**Deliverables:**

A base map will be prepared and stamped by N.L. Olson’s professional land surveyor (PLS) licensed in the State of Washington. The base map will provide the basis for the civil engineering design and plans.

**Estimated Fee for Task 1: \$8,500.00**

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**Task 2 – Civil Engineering Design & Report for Site Development**

NLO will prepare the civil design documents, given the deliverables from Task 1, to acquire sewer design approval from the POB and acquire a Site Development Permit (SDP) from the City of Bremerton. NLO will prepare the civil site construction plans and specifications, i.e., bid ready set. The following design plans and reports will be prepared:

- Sewer Replacement Plans – Parallel placement of the new piping offset from the existing sewer will be proposed to minimize services disruption.
- Roadway Widening Site & Surfacing Design Plans – The same frontage improvements designed and constructed for Lot 1 of the Wedge project will be matched for the sewer replacement route.
- Storm Drainage & Grading Design Plans – no runoff quantity or quality mitigation will be required but minor grading and drainage design is expected.
- Temporary Erosion & Sedimentation Control Plans.
- Applicable Construction Notes & Details.
- Specifications – WSDOT Format.
- Storm Drainage Analysis & Report.

**Deliverables:**

Final Design Civil Engineering Plans and Storm Drainage Report. It is assumed the design will be prepared to approximately 50% completion for client review prior to proceeding to 100%.

**Assumptions:**

- Landscape Plans will not be required. The landscape strip will be planted with street tree plantings selected by the POB. No irrigation will be necessary.
- Neither Water quality nor Flow control design will be required due to the existence of a downstream regional storm facility that is allowed to be used for this project and the fact no additional pollution generating surfaces will be created.
- The Construction Discharge NPDES from WA Department of Ecology will not be required due to the size of site disturbance being less than one acre. The SWPPP manual preparation is not included in this SOW.

**Estimated Fee for Task 2: \$48,000.00**

**Task 3: Project Management, Permit coordination and Application Package Preparation:**

NLO will manage the design and permitting phase of the project and will attend meetings with the client, City and other consultants as needed. NLO will prepare project document & application packages and provide package submittal to the City for the acquisitions of the SDP. NLO will compile application submittal elements and deliver to the City.

**Assumptions:**

- N.L. Olson will prepare the Applications but permit fees will be paid by the Client or owner.

**Estimated Fee for Task 3 = \$6,000.00**

**Budget Summary:**

<b>Task 1 – Topographic Survey &amp; Base Map</b>	<b>\$ 8,500.00</b>
<b>Task 2 – Civil Engineering &amp; Drainage Report</b>	<b>\$48,000.00</b>
<b>Task 3 - Permit(s) coordination and package(s) preparation &amp; delivery</b>	<b><u>\$ 6,000.00</u></b>
<b>Total</b>	<b>\$62,500.00</b>

Please note that the following are not included in the scope of this proposal:

- Traffic Impact Analysis (TIA)
- Landscape Design
- Environmental Studies/Reports
- Geotechnical Report – NLO Proposal can be provided if determined to be warranted and it is requested.
- Construction Related Services

If you should have any questions or comments regarding this proposal, please do not hesitate to contact me at (360) 876-2284. We look forward to working with the Port of Bremerton on this project.

Thank you.



Norm Olson, P.E.

President,

NL Olson & Associates, Inc.

## **PORT OF BREMERTON** **AGENDA SUMMARY**

Agenda Item No: Action Item #3  
Subject: Port Orchard Pump Station-Memorandum of Understanding (MOU)  
Exhibits: Resolution 2022-10 and Draft MOU  
Prepared By: James Weaver, Director of Marine Facilities  
Meeting Date: December 14, 2022

### Summary:

This resolution is for an agreement for a Memorandum of Understanding with the City of Port Orchard for the temporary use of a 1,500 square foot portion of the existing Port of Bremerton Department of Natural Resources lease area for the upcoming City Pump Station project. The Port DNR lease area and the City DNR lease areas are adjacent. This item was discussed as an information item at the November 22, 2022 Commission Meeting.

The agreement provides the mechanism for the City to move forward on the permitting and construction of the important pump station project and sets the parameters for protecting ongoing access and operations for Port facilities during construction. The agreement also identifies the goal for both entities to work cooperatively with the Department of Natural Resources to have both adjacent City and Port leases revised to permanently reflect the subject area of this agreement.

### Fiscal Impact:

Fiscal impact to the Port of Bremerton includes approximately \$ 1,500 in annual payments from the City of Port Orchard to mitigate the use of the DNR lease areas for the City pump station. Additional fiscal impacts include the contribution of a up to \$5,000 to offset legal fees for the DNR lease revision, and protections ensuring the uninterrupted business operations of Port facilities.

### Strategic Purpose:

Goal 6. Develop and fund a 20-year asset replacement/major maintenance schedule.

### Recommendation:

Port staff recommends the approval of Resolution 2022-10 related to the Memorandum of Understanding with the City of Port Orchard.

### Motion for Consideration:

**Move to approve Port of Bremerton Resolution 2022-10 and authorize the CEO to execute the Memorandum of Understanding with the City of Port Orchard.**

**PORT OF BREMERTON**  
**KITSAP COUNTY, WASHINGTON**  
**RESOLUTION NO. 2022-10**  
**DATED: December 13, 2022**

**A RESOLUTION** of the Board of Commissioners, Port of Bremerton, to provide a memorandum of understanding related to the use of Port controlled DNR lease land for the City of Port Orchard Marina Pump Station project.

**WHEREAS**, the City of Port Orchard has worked since 2008 to develop a plan to revitalize its waterfront area, and

**WHEREAS**, the City of Port Orchard has established as its first priority the development of a wastewater pump station project identified as the Port Orchard Marina Pump Station Improvement project; and

**WHEREAS**, the Port Orchard Marina Pump Station Improvement project will provide an essential replacement and upgrade to the City wastewater utility services; and

**WHEREAS**, the Port Orchard Marina Pump Station Improvement project design encroaches upon the adjacent Port of Bremerton lease area; and

**WHEREAS**, the Memorandum of Understanding provides the means, terms, and conditions of agreement for use of the adjacent lease area by the project.

**NOW, THEREFORE BE IT RESOLVED** by the Board of Commissioners, Port of Bremerton, that the Port supports the development of the Port Orchard City Marina Pump Station project, and

**BE IT FURTHER RESOLVED** that the Port of Bremerton agrees to the Port Orchard Pump Station Memorandum of Understanding with the City of Port Orchard.

**ADOPTED** by the Board of Commissioners of the Port of Bremerton at the regular public meeting thereof held this 13th day of December 2022, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission.

\_\_\_\_\_  
President and Commissioner

ATTEST:

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Secretary and Commissioner

# **Memorandum of Understanding**

**for**

**Use of Department of Natural Resources (DNR)**

**Aquatics Land Area in Port of Bremerton**

**Port Management Agreement (PMA) 22-080016**

**Between**

**City of Port Orchard**

**and**

**Port of Bremerton**

**2022**

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DRAFT

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is dated January 2, 2023, for reference purposes only, by and between the Port of Bremerton (“Port”), a public port district, and the City of Port Orchard (“City”), a Washington State municipal corporation.

### RECITALS

- A.** The Port Orchard Marina is owned and operated by the Port of Bremerton, which has a Port Management Agreement (PMA) no. 22-080016 with Department of Natural Resources (“DNR”) for use of State-owned aquatics lands for port purposes. It is located within the Port Orchard Harbor Area in Sinclair Inlet, in Kitsap County, Washington.
- B.** The Port of Bremerton has a lease no. 22-B02235 with DNR for use of State-owned aquatic lands commonly known as the Port of Bremerton Port Orchard Waterfront, for the Port use with the Port Orchard equipment and water dependent uses serving the Port Orchard Marina. The present termination date for lease no. 22-B02235 is August 31, 2041. Throughout this Agreement, this lease is referred to as the “Port’s DNR Lease”.
- C.** The City of Port Orchard has a lease no. 22-A02582 with DNR for use of State-owned aquatics lands for parking lot, public access, and City public sewage pump station. The lease area is located within the Port Orchard harbor area of Sinclair Inlet, in the City of Port Orchard, Kitsap County, Washington. The present termination date for lease no. 22-0A2582 is June 3, 2024. Throughout this Agreement, this lease is referred to as the “City’s DNR Lease”.
- D.** The State-owned aquatics lands under the Port’s DNR lease and the City’s DNR Lease for the City Pump Station are adjacent parcels.
- E.** The City of Port Orchard existing City sewage pump station impacts and encroaches into the Port of Bremerton lease area within the Port’s DNR Lease, and the City proposes to demolish the existing station and to construct a new sewage pump station, holding tanks, conveyance pipes, and power generation improvements with an increased impact and encroachment into the Port of Bremerton lease area subject to the Port’s DNR Lease. An Exhibit of those proposed, expanded encroachments are depicted in Exhibit A.
- F.** The Port is willing to allow City use of the portion of upland state-owned lands area that overlaps the Port’s DNR Lease of the Port’s PMA no. 22-0800016 shown in Exhibit A.
- G.** The Port is willing to allow the City temporary use of the upland state-owned lands for temporary project construction access and staging and that overlaps the Port’s DNR lease shown in Exhibit B.
- H.** The City commits that the Port shall have use and public access to Port Marina Buildings, Marina Access Gates, and to the Port facilities for uninterrupted operations throughout the construction period for the City Marina Sewage Pump Construction project.

- I. The City commits that the Port shall have use and access for semi fuel truck delivery to the Port Orchard Marina fuel tanks for uninterrupted fuel dock operations throughout the construction period and after completion of the proposed Sewage Pump Station, subsequent Port Orchard Community Center, and proposed Bay Street Elevation improvement projects. The Port commits to provide the City with 72-hour advanced notice of deliveries, consistent with the terms of this agreement.
- J. The City agrees to coordinate with the Port for any modifications and/or updates to the aforementioned existing DNR leases, as may be required by DNR. The Port authorizes the City to communicate with DNR regarding these specific lease modifications, provided the Port is included on these communications. The City commits that it will provide all needed language and exhibits for lease modifications (if any) for the City encroachments.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

**AGREEMENT**

**1. RECITALS**

The foregoing recitals are true and correct and are incorporated herein by this reference.

**2. PURPOSE**

2.1 The purpose of this Memorandum of Understanding is to set forth the terms and conditions by which the Port will sublet to the City that portion of property described below as the "Premises" for a time certain, conditioned upon and pending DNR approval, as well as the terms and conditions of seeking and obtaining necessary modifications to the City lease referenced above and the Port lease referenced above, conditioned upon DNR approval, which will remove the area described as the "Premises" from the Port lease and add it to the City lease. The parties acknowledge this process may be lengthy, and provide for the time frame below.

2.2 The purpose of this MOU is to also replace and rescind the existing 1987 MOU between the City of Port Orchard and the Port of Bremerton regarding the existing wastewater pump station.

**3. PREMISES**

The "Premises" consists approximately of 1,524.25 square feet of DNR aquatic lease area shown in Exhibit A, attached hereto, and as depicted and legally described in Exhibit A. By this Agreement and subject to DNR approval, the parties intend for the Premises to be removed from the Port's DNR Lease and added to the City's DNR Lease.

The City of Port Orchard acknowledges and agrees that it is familiar with the Premises, accepts the Premises in its "as is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing its use,

occupancy and possession. City acknowledges and agrees that it has investigated and inspected the condition of the Premises and the suitability of the Premises for City's intended use. City acknowledges and agrees that Port has not made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for City's intended use, accessibility of the Premises or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

#### **4. EFFECTIVE DATE**

The "Effective Date" of this MOU shall be the date this MOU has been fully executed.

#### **5. TERM**

5.1 The "Term" of this MOU shall begin on the Effective Date and continue for a period of 24 months, unless earlier terminated as provided herein; provided, the City may exercise one (1) two- year extension without further action by the Port if DNR has not completed the transfer of the Premises from the Port's DNR Lease to the City's DNR Lease. It is the intention of the parties to continue this agreement until the lease "transfer" is completed, provided if the MOU terminate prior to that occurring, the parties will negotiate the terms of a MOU to govern the conditions that exist at that time.

5.2 The City may exercise their option to extend by written notice at least 30 days prior to the expiration of this MOU.

5.3 In the event a modification to the City's DNR Lease to encompass Premises within the City lease is completed, defined as executed by DNR and by the City, prior to the expiration of this MOU, the parties agree this MOU would terminate automatically upon such completion.

5.4 Either the City or the Port shall have the right to terminate this MOU with respect to the Premises by delivering 90 days of written notice to the other party.

#### **6. PERMITTED USE**

6.1 The City shall have the right to use the Premises for the provision of public access to City public facilities, for City pump station facilities, public parks, and similar allowed uses, and for incidental directly related uses identified within Port's DNR Lease and for no other purpose for the duration of this Agreement (collectively, the "Permitted Use").

6.2 Use of the Premises by City will allow for continued public use of the Port Orchard public plaza, park and its benefits and amenities at no cost to Port. Given the existing City DNR Lease, all uses proposed for the parcel shall be compliant with DNR use requirements.

6.3 Written notification shall be provided by the City to the Port within 90 days prior to any proposed use of the premises for a non-water-dependent use, commercial use, or similar use that results in a higher calculation rate for the Port's DNR lease, annual lease amount for either

the Premises or the whole of the Port's DNR lease.

6.4 The City shall ensure that the Port and public shall have use and access to Port Marina Buildings, Marina Access Gates, and to the fuel dock (see below) for uninterrupted operations throughout the construction period for the City Marina Sewage Pump Construction project, subject to any closures that are unavoidable due to conditions outside of the City's control.

6.5 The City shall ensure that the Port shall have use and access for semi fuel truck delivery to the Port Orchard Marina fuel tanks for uninterrupted fuel dock operations throughout the construction period and after completion of the proposed Sewage Pump Station, subsequent Port Orchard Community Center, and proposed Bay Street Elevation improvement projects.

## **7. COMPENSATION**

7.1 The City shall provide the Port of Bremerton annual financial compensation for the proportion share of the annual DNR lease rate for the Port's DNR Lease based upon square footage of 1,524.25 square feet, as identified within Exhibit A . The Port's Lease has a total square footage of 26,051.6 square feet, as identified in Exhibit B. For the duration of this Agreement, the City shall financially compensate the Port each year for the proportional share of the DNR annual lease rate in the proportional amount of 5.85% of the total amount.

7.2 The Port shall provide notification to the City of the annual DNR lease rate amount for the Port's DNR Lease upon payment and acceptance by DNR for each year's payment. Notification and an invoice of the annual DNR proportional share amount shall be provided to the City within 90 days after the annual payment and acceptance to DNR.

7.3 The City shall provide compensation and payment to the Port each year for the proportional share to be provided on or before December 31 of each year, with the initial annual, proportional sub-lease payment due to the Port by December 31, 2023.

7.4 In the event that any City activity, projects, use, or installation results in a non-water-dependent use or commercial use that results in a higher calculation rate for the Port's DNR Lease annual lease amount for either the portion or the whole of the Port's DNR Lease, then the City shall compensate the Port for the differential lease costs for that City directed non-water dependent or commercial use calculation.

7.5 The City shall compensate the Port for the actual cost of any surveys, legal descriptions, or required reports borne by the Port in furtherance of the purposes of this MOU. The City further agrees to compensate the Port for the actual legal costs incurred by the Port in preparing this MOU, not to exceed \$5,000. Reimbursement shall be due 30 days after presentation of billing to City.

7.6 In the event that any City activity, projects, construction or use shall disrupt the Port Orchard Marina fuel dock operations or disrupt access for semi fuel truck delivery to the Port Orchard Marina fuel tanks for uninterrupted fuel dock operations throughout the construction period and after completion of the proposed Sewage Pump Station, subsequent Port Orchard

Community Center, and proposed Bay Street Elevation improvement projects, then the City will be liable for \$ 1,350.00 per day as liquidated damages, payable to the Port for each day of operations disruption, beginning the 3<sup>rd</sup> day of disruption until the resumption of fuel dock operations and/or access. Payments to the Port shall be made monthly to the Port each month after a disruption occurs.

## **8. RESTRICTIONS ON USE; COMPLIANCE WITH LAW**

8.1 City shall not use or permit the Premises, or any part thereof, to be used for any purposes other than the purposes set forth in Paragraph 6 of this MOU. City agrees not to make any material improvements or significant alterations to the Premises or the Overlap Area without the prior written consent of Port as well as obtaining any necessary regulatory permits.

8.2 City shall not perform any act which will cause a cancellation of any insurance policy covering the Premises. City, at City's expense, shall comply with all laws, regulations and requirements of any federal, state, and local government authority (including Port and City), now in force or which may hereafter be in force, which shall impose any duty upon Port or City necessitated solely by use, occupation or alteration of the Premises under this MOU, except for any such laws that impose a duty upon Port arising from the condition of the Premises prior to City's use of the Premises. City shall comply, and cause approved agents to comply, with all laws, regulations and requirements of any federal, state, and local government authority (including Port and City), now in force or which may hereafter be in force, in using the Overlap Area for access purposes.

8.3 City shall not sublet described property without written authorization from the Port of Bremerton.

8.4 City shall be responsible for all maintenance, landscape, repairs, janitorial duties, and operations of facilities or improvements located within the area identified within Exhibit A, and areas within the City's DNR Lease.

8.5 City shall comply with all provisions identified and required by the Washington State Department of Natural Requirements indicated and identified within the Port's DNR Lease

## **9. INSURANCE**

9.1 The City shall procure and maintain the following insurance policies to apply to the Premises for the duration of the MOU:

The City will maintain the following levels of insurance while this agreement is in effect

	<b>Type of coverage</b>	<b>Limits</b>	<b>Deductible</b>
<input checked="" type="checkbox"/>	All risk property coverage	\$250 million per occurrence	\$0
<input checked="" type="checkbox"/>	Liability coverage	\$15 million per occurrence	\$0
<input checked="" type="checkbox"/>	Employee fidelity blanket coverage	\$1 million per occurrence	\$0
<input checked="" type="checkbox"/>	Comprehensive auto liability	\$15 million per occurrence	\$0
<input checked="" type="checkbox"/>	Cyber liability	\$3 million per occurrence	\$0
<input checked="" type="checkbox"/>	Pollution liability	\$2 million per occurrence	\$0

Additionally the City will require its Contractor for the Marina Lift Station project to provide the following coverages:

- a. **Primary and Excess Commercial Marine General Liability.** Primary and Excess Commercial General Liability insurance with limits no less than ten million dollars (\$10,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. General liability coverage must be broad enough to include work on or around sewage pump station and electrical equipment, construction activities, generators, commercial activity, or parks, public event issues arising on the upland portion of the Premises. Coverage shall also include impacts due to flooding, sewage, effluent, or similar spills or public health issues, or impacts from a public sewer pump station activity.
- b. **Primary and Excess Protection and Indemnity.** Subject to a minimum coverage of not less than ten million dollars (\$10,000,000) combined single limit per accident for Crew, including Jones Act liability, and passenger’s bodily injury and property damage.
- c. **Primary and Excess Pollution Legal Liability Insurance.** Coverage for sudden and accident damages for facilities, buildings, and infrastructure with limits no less than ten million dollars (\$10,000,000).
- e. **All Risk Property.** “all risk” property insurance coverage written on a replacement cost basis for the fuel tanks, utilities, and all infrastructure serving the marina buildings, piers, ramps, gangways, and floats. City shall be named a sole Loss Payee.

**9.1.1 Additional Insured Status.** The foregoing insurance policies (except for the Hull & Machinery) shall name the Port of Bremerton and DNR as additional insureds as to occurrences arising from the activities of City and its employees. City shall provide certificates of insurance and, if requested, copies of any policy to the Port of Bremerton.

**9.1.2 Other Policy Provisions.** Furthermore, the policies of insurance required herein shall: (i) be written as a primary policy; (ii) written on an occurrence basis, (iii) expressly provide that such insurance may not be materially changed, amended, or canceled except upon thirty (30) days prior written notice; and (iv) shall be written by an insurance company licensed to do business in the State of Washington.

**9.1.3 DNR Requested Construction Bond.** Pursuant to the direction of DNR, the City will procure a construction bond equal to 125% of the Project cost of construction (as per Section 7 of the City’s DNR Lease), or will require its contractor to maintain a construction bond in the same amount.

## 10. RECIPROCAL INDEMNIFICATION

To the maximum extent permitted by law, each Party shall defend, indemnify, and hold harmless

the other Party and all of its officials, Board Members, employees, principals, and agents from all claims, demands, suits, actions, and liability of any kind, including injuries to persons or damages to property ("Claims"), which arise out of, are connected with, or are due to the negligent acts or omissions of the indemnifying Party, its contractors, and/or employees, agents and representatives in performing its obligations under this Agreement, provided each Party's obligation under this section applies only to the extent of the negligence of that Party or its contractors, employees, agents, or representatives.

Each of the Parties agrees that its obligations under this section extend to any claim, demand, cause of action and judgment brought by, or on behalf of, any of its employees or agents. For this purpose, both Parties, by mutual negotiation, hereby waive, regarding the other Party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW.

## **11. PRESENCE OF HAZARDOUS MATERIALS**

11.1 Washington State law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, the City of Port Orchard is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises and the Access Area, including, but not limited to vessel fluids and janitorial products. By execution of this MOU, City of Port Orchard acknowledges that the NOA Laws. City of Port Orchard must disclose the information contained in this Section 11 to any subtenant, licensee, transferee, or assignee of City of Port Orchard's interest in this MOU. City of Port Orchard also acknowledges its own obligations pursuant to Washington State Code as well as the penalties that apply for failure to meet such obligations.

11.2 City of Port Orchard shall notify the Port of Bremerton of any Hazardous Materials

## **12. DEFAULT BY CITY OF PORT ORCHARD**

The occurrence of any one or more of the following events shall constitute a default by City of Port Orchard: Failure to perform any provision of this MOU if the failure to perform is not cured within ninety (90) days after Port has given written notice to City of Port Orchard, provided any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, regulations or controls, enemy or hostile governmental action, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance. If the default cannot reasonably be cured within 90 days, City of Port Orchard shall not be in default of this MOU if City of Port Orchard commences to cure the default within such ninety (90) day period and diligently and in good faith continues to cure the default.

## **13. NOTICE**

Any notice given under this MOU shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier return receipt requested, with postage prepaid, at the following

addresses, or at such other addresses as either the Port or City of Port Orchard may designate by notice as its new address:

Address for Port of Bremerton: Chief Executive Officer  
Port of Bremerton  
8850 SW State Hwy 3  
Bremerton, WA 98312  
Telephone No: (360) 360-674-2381  
Fax No: (360) 674-2807  
Email: [jimr@portofbremerton.org](mailto:jimr@portofbremerton.org)

Address for City of Port Orchard: Mayor  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366  
Telephone No: (360) 876-4407  
Fax No: (360) 895-9029  
Email: [rputaansuu@portorchardwa.gov](mailto:rputaansuu@portorchardwa.gov)

Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is mailed, if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by email, facsimile or telephone to the address or numbers set forth above or such other address or number as may be provided from time to time; however, neither the Port nor City of Port Orchard may give official or binding notice by email, telephone or facsimile.

#### 14. ENTIRE AGREEMENT

This MOU (including attached exhibits, if any) contains the entire understanding between the parties with respect to the subject matter hereof.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date written below.

City of Port Orchard Resolution No. \_\_\_\_\_  
Port of Bremerton Resolution No. \_\_\_\_\_

CITY OF PORT ORCHARD, a public municipality Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Rob Putaansuu  
Mayor  
City of Port Orchard

PORT OF BREMERTON, a public port district

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

Rothlin  
Chief Executive  
Officer Port of  
Bremerton

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