

PORT OF BREMERTON
BOARD OF COMMISSIONERS
REGULAR BUSINESS MEETING

A G E N D A

August 8, 2023
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

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 and executive session of July 11, 2023.
- B. Payment of checks #901881 through #901882 and #85045 through #85056 and #E01566 through #E01571 from the General Fund for \$170,460.77.
Payment of checks #901883 through #901888 and #901889 through #901893 and #85057 through #85078 and #E01572 through #E01587 and #901894 through #901897 from the General Fund for \$228,975.29.
Payment of checks #901898 and #901899 and #E01588 through #E01589 and #901900 and #E01590 and #85079 through #85112 and #E01591 through #E01599 and #901901 through #901904 from the General Fund for \$546,230.61.
Payment of checks #901905 and #901906 through #901909 and #901910 through #901911 and #901912 and #901913 and #901914 and #85113 through #85127 and

#E01600 through #E01608 and #901915 through #901918 and #901919 through #901920 and #901921 from the General Fund for \$331,763.49. Void Ck #82158.

Information Items

1. The Cruz Car Show – Roger Jensen, Saints Car Club
2. Port Orchard Marina Breakwater Replacement Project Status Update – Jon Keiser, PND Engineers, Inc.

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. Authorization for Washington Department of Commerce Agreement
2. PND Engineers Contract Amendment #3
3. Authorization for Mitigation Credit Pre-Sale Agreement with Puget Sound Partnership
4. Authorization to Perform Wastewater Pumping
5. Bid Authorization for Airport Office Water Line Re-Pipe

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>Date</u>	<u>Time</u>	<u>Meeting</u>
08/08	10:00 am	*Commission Regular Business Meeting
08/18	10:00 am	Peninsula Regional Transportation Planning Organization (PRTPO) Executive Board
08/19-20		Wings over Washington Freedom Airshow
08/22	6:00 pm	*Commission Regular Business Meeting

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

July 11, 2023
10:00 AM

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

Commissioners and Staff Present

Commissioners
Axel Strakeljahn
Gary Anderson
Cary Bozeman

Staff Members
Jim Rothlin
Arne Bakker
Jeremiah Wiley
James Weaver
Monroe Whitman IV
Ginger Waye
Stephanie Frame
Anne Montgomery, Atty

Call to Order

President Strakeljahn called the meeting to order at 10:00 a.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 June 27, 2023.
- B. Payment of checks #901862 and #901863 through #901866 and #901867 through #901869 and #85020 through #85032 and #E01548 through #E01553 from the General Fund for \$143,142.59.

Payment of checks #901870 and #901871 through #901872 and #901873 through #901876 and #901877 and #85033 through #85044 and #E01554 through #E01565 and #901878 through #901880 from the General Fund for \$93,747.62.

It was moved by STRAKELJAHN, seconded by ANDERSON to:

Approve the Consent Items as presented.

MOTION CARRIES, 3-0

Citizen Comments - None

Action Items

1. Department of Natural Resources (DNR) Sub-Lease Agreement with City of Port Orchard
Presented by James Weaver, Director of Marine Facilities

Following presentation and after questions were addressed;

It was moved by BOZEMAN, seconded by ANDERSON to:

Approve the Department of Natural Resources (DNR) Sublease Agreement with the City of Port Orchard and authorize the CEO to execute the agreement.

MOTION CARRIES, 3-0

2. Memorandum of Agreement with City of Port Orchard for Marina Waterfront Parking -
POSTPONED

3. Final Acceptance of Hangar 7 Stormwater Repair Project with Henderson Partners, LLC
Presented by Arne Bakker, Chief Operations Officer

Following presentation and after questions were addressed;

It was moved by BOZEMAN, seconded by SRAKELJAHN to:

Move to accept as final the contract with Henderson Partners, LLC for the Hangar 7 Stormwater Repair Project in the amount of \$289,537.04.

MOTION CARRIES, 3-0

4. Final Acceptance of Multi-Purpose Facility Project with Henderson Partners, LLC
Presented by Arne Bakker, Chief Operations Officer

Following presentation and after questions were addressed;

It was moved by BOZEMAN, seconded by ANDERSON to:

Accept as final the contract with Henderson Partners, LLC for the Multi-Purpose Facility in the amount of \$5,096,002.07.

MOTION CARRIES, 3-0

5. Seabeck Community Center
Jim Rothlin, Chief Executive Officer

Following presentation and after questions were addressed;

It was moved by STRAKELJAHN, seconded by ANDERSON to:

Approve the funding of \$15,000 to support the Seabeck Community Center picnic area project.

MOTION CARRIES, 3-0

Staff Reports

Jim Rothlin, Chief Executive Officer

- Provided detail on July employee milestones:
 - Arne Bakker; 6 years with the Port beginning as Director of Business Development and currently as Chief Operations Officer
- Discussed in detail our recent successes with grants:
 - The \$800,000 U.S. Environmental Protection Agency (EPA) grant for environmental cleanup of the Port's Bay Street properties which was celebrated with a media event including Congressman Derek Kilmer and EPA Region 10 Administrator Casey Sixkiller.
 - The \$9.4M U.S. Department of Transportation's Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grant for the Port Orchard Marina breakwater replacement project which was celebrated with a press conference at the Soroptimist Overlook near the marina and included U.S. Secretary of Transportation Pete Buttigieg, U.S. Senators Patty Murray and Maria Cantwell, Congressman Derek Kilmer, and Governor Jay Inslee.
- Reported on recent meeting which included Commissioner Anderson, City of Bremerton, Congressman Kilmer, Senator Emily Randall, Kitsap Economic Development Alliance, and private real estate brokers to discuss industrial lands and infrastructure.
- There is a conflict with the next Commission meeting on July 25 as the Washington Public Ports Association Commissioner seminar is being held over that time period. The meeting will either be rescheduled or cancelled.
- Reminder that the plaque dedication ceremony at Marina Square for Cary Bozeman Place is being held at 1:00 p.m., Tuesday, July 18, 2023.

Commission Reports / New Business

Commissioner Anderson

- Put emphasis on what was accomplished in getting the grants and thanked not only all the effort put into it by Port staff and lobbyist but by our state and national legislators. Also wanted to give credit to CEO Rothlin for being the architect. Would like to have line items in upcoming budgets to protect future projects.

Commissioner Bozeman

- Enjoyed the press conference for the RAISE grant and relayed a story of meeting with Senator Cantwell in 1984 regarding her thoughts of running for the state legislature and the impressive fact that in talking with her at the press conference, she remembered every detail of that meeting.

Commissioner Strakeljahn

- Congratulations to all on the grant awards; they should not be taken lightly or under celebrated; very proud of our accomplishments.

Executive Session

President Strakeljahn recessed the meeting at 10:45 a.m. and reconvened into executive session at 10:50 a.m. for approximately 40 minutes for the purpose of considering the price and terms at which real estate may be leased or sold when public discussions could disadvantage the Port's negotiations [RCW 42.30.110(1)(b)]. At 11:30 a.m., executive session was extended 15 minutes and at 11:45 a.m. extended another 5 minutes.

At 11:50 a.m. the regular meeting was reconvened.

Adjournment

There being no further business before the Board, the meeting was adjourned at 11:50 a.m.

Submitted,

Approved,

Jim Rothlin
Chief Executive Officer
August 3, 2023

Cary Bozeman
Commission Secretary
August 8, 2023

PORT OF BREMERTON
BOARD OF COMMISSIONERS
EXECUTIVE SESSION

MINUTES

July 11, 2023
10:50 AM

CEO Office
Port Administration Offices
Bremerton Nat'l Airport Terminal Bldg
8850 SW State Hwy 3, Bremerton

Call to Order

President Strakeljahn called the executive session to order at 10:50 a.m., July 11, 2023.

Commissioners and Staff Present

Commissioners

Axel Strakeljahn
Gary Anderson
Cary Bozeman

Staff Members

Jim Rothlin
Arne Bakker
Jeremiah Wiley
Anne Montgomery, Atty

Item #1: Considered the price and terms at which real estate may be leased or sold when public discussions could disadvantage the Port's negotiations [RCW 42.30.110(1)(c)].

With no further business to come before the Board, the meeting was adjourned into regular session at 11:50 a.m.

Submitted,

Approved,

Jim Rothlin
Chief Executive Officer
August 3, 2023

Cary Bozeman
Commission Secretary
August 8, 2023

PORT OF BREMERTON

AGENDA SUMMARY

Agenda Item No: Action Item #1
Subject: Authorization for WA Dept. of Commerce Agreement
Exhibits: WA Dept. of Commerce Agreement S18136 for POM Breakwater
Prepared By: James Weaver, Director of Marine Facilities
Meeting Date: August 8, 2023

Summary:

In 2017, the Port of Bremerton requested a capital budget appropriation from the Washington State legislature for the Port Orchard Marina Breakwater Refurbishment. The Port was successful in that request and was awarded a Local and Community Projects Program Grant in 2018, subject to Department of Commerce requirements.

The Washington State Department of Commerce expects completion of specific pre-contractual requirements, including certain permitting and environmental documents, prior to initiating any contractual agreements for Capital Budget awards.

Since 2018, the Port of Bremerton staff have endeavored to complete these requirements on behalf of the project and in 2020, PND Engineers were contracted to assist with these design and permitting services. With the recent permitting process status for the Port Orchard Marina Breakwater Replacement project, the Department of Commerce has now agreed to initiate and award contract for obligation and disbursement of the 2018 Local and Community Projects Program Grant funds.

The Department of Commerce agreement is in the amount of \$ 988,430.00 for the design, engineering, and permitting of the Port Orchard Marina Breakwater Replacement project.

Fiscal Impact:

The engineers estimate of the breakwater replacement project, including construction is \$15,710,000. The Department of Commerce agreement S18136 is for \$988,430.00, to be used for design, engineering & permitting of the Port Orchard Marina Breakwater Replacement project. Matching fund commitments from the Port of Bremerton for this agreement amount to \$ 531,570.00.

Strategic Purpose:

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

Recommendation:

Authorize the CEO to sign the Department of Commerce Agreement S18136 in the amount of \$ 988,430.00 for the Port Orchard Marina Breakwater Replacement project.

Motion for Consideration:

Move to authorize the CEO to sign the Department of Commerce Agreement S18136 in the amount of \$ 988,430.00 for the Port Orchard Marina Breakwater Replacement project.



Grant to

Port of Bremerton

through

The Local and Community Projects Program

For

Port Orchard Marina Breakwater Refurbishment – Funding for engineering, construction management and design costs for marina breakwater project

Start date: 1/19/2018

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Attachment D Certification of Prevailing Wages; Attachment E, Certification of LEED

FACE SHEET

Grant Number: 18-96616-136

**Washington State Department of Commerce
Local Government Division
Community Capital Facilities Unit**

1. GRANTEE Port of Bremerton 8850 SW State Hwy 3 Bremerton, Washington 98312		2. GRANTEE Doing Business As (optional)	
3. Grantee Representative James Weaver Marine Facilities Director Port of Bremerton (360) 813-0829 jamesw@portofbremerton.org		4. COMMERCE Representative Mark Porter Project Manager (360) 742-4868 Fax 360-586-5880 mark.porter@commerce.wa.gov P.O. Box 42525 1011 Plum Street SE Olympia, WA 98504-2525	
5. Grant Amount \$988,430.00	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date 1/19/2018	8. End Date 6/30/2027, contingent on reappropriation, 6/30/2025 if funds are not reappropriated
9. Federal Funds (as applicable) N/A	Federal Agency N/A	CFDA Number N/A	
10. Tax ID # 91-0778077	11. SWV # SWV0013796	12. UBI # 182-003-273	13. DUNS # N/A
14. Grant Purpose The purpose of this performance-based contract is to provide funding for design, structural engineering and construction management for the refurbishment of the Port Orchard Marina Breakwater as described in Attachment A – Scope of Work (the “Project”).			
COMMERCE, defined as the Department of Commerce, and the GRANTEE, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grant Terms and Conditions including Attachment “A” – Scope of Work, Attachment “B” – Budget, Attachment “C” – Certification of Availability of Funds to Complete the Project, Attachment “D” – Certification of the Payment and Reporting of Prevailing Wages, Attachment “E” – Certification of Intent to Enter LEED process.			
FOR GRANTEE _____ Jim Rothlin, Chief Executive Officer _____ Date		FOR COMMERCE _____ Mark K. Barkley, Assistant Director _____ Date APPROVED AS TO FORM _____ _____ Date	

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

THIS CONTRACT, entered into by and between Port of Bremerton (“GRANTEE”), a unit of local government, and the Washington State Department of Commerce (“COMMERCE”), WITNESSES THAT:

WHEREAS, COMMERCE has the statutory authority under RCW 43.330.050 (5) to cooperate with and provide assistance to local governments, businesses, and community-based organizations; and

WHEREAS, COMMERCE is also given the responsibility to administer state funds and programs which are assigned to COMMERCE by the Governor or the Washington State Legislature; and

WHEREAS, the Washington State Legislature has, in Laws of 2018, Chapter 2, Section 1016, made an appropriation to support the Local and Community Projects Program, and made reappropriations in Laws of 2019, Chapter 413, Section 6003, in Laws of 2021, Chapter 332, Section 6004, in Laws of 2023, Chapter 474, Section 6012, and directed COMMERCE to administer those funds; and

WHEREAS, the GRANTEE intends to complete the Project, which will result in the rehabilitation of the Port Orchard Marina Breakwater; and

WHEREAS, the enabling legislation stipulates that the GRANTEE is eligible to receive funding for the Project.

WHEREAS, the GRANTEE has received an additional appropriation for grant activities relating to the current project, not yet administered, in Laws of 2023, Chapter 474, Section 1025, COMMERCE contract 24-96647-216.

WHEREAS, the Project is one component of a larger multiphase project, which will result in the restoration and improvement of the Port Orchard Marina Breakwater in Port Orchard, WA.

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

1. GRANT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the GRANTEE and their contact information are identified on the Face Sheet of this Grant.

2. COMPENSATION

COMMERCE shall pay an amount not to exceed \$988,430.00 for the capital costs necessary for or incidental to the performance of work as set forth in the Scope of Work.

3. CERTIFICATION OF FUNDS PERFORMANCE MEASURES

A. The release of state funds under this contract is contingent upon the GRANTEE certifying that it has expended or has access to funds from non-state sources as set forth in ATTACHMENT C (CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT), hereof. Such non-state sources may consist of a combination of any of the following:

- i) Eligible Project expenditures prior to the execution of this contract.

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

- ii) Cash dedicated to the Project.
- iii) Funds available through a letter of credit or other binding loan commitment(s).
- iv) Pledges from foundations or corporations.
- v) Pledges from individual donors.
- vi) The value of real property when acquired solely for the purposes of this Project, as established and evidenced by a current market value appraisal performed by a licensed, professional real estate appraiser, or a current property tax statement. COMMERCE will not consider appraisals for prospective values of such property for the purposes of calculating the amount of non-state matching fund credit.
- vii) In-kind contributions, subject to COMMERCE'S approval.

B. The GRANTEE shall maintain records sufficient to evidence that it has access to or has expended funds from such non-state sources, and shall make such records available for COMMERCE'S review upon reasonable request.

4. PREVAILING WAGE LAW

The Project funded under this Grant may be subject to state prevailing wage law (Chapter 39.12 RCW). The GRANTEE is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine whether prevailing wages must be paid. COMMERCE is not responsible for determining whether prevailing wage applies to this Project or for any prevailing wage payments that may be required by law.

5. DOCUMENTATION AND SECURITY

The provisions of this section shall apply to capital projects performed by nonprofit organizations and public benefit corporations that involve the expenditure of over \$250,000 in state funds. Additionally, Commerce reserves the right to review all state-funded projects and to require that projects performed by other entity types comply with this section. Projects for which the grant award or legislative intent documents specify that the state funding is to be used for pre-design or design only are exempt from this section.

- A. Deed of Trust.** This Grant shall be evidenced by a promissory note and secured by a deed of trust or other appropriate security instrument in favor of COMMERCE (the "Deed of Trust"). The Deed of Trust shall be recorded in the County where the Project is located, and the original returned to COMMERCE after recordation within ninety (90) days of contract execution. The Deed of Trust must be recorded before COMMERCE will reimburse the GRANTEE for any Project costs. The amount secured by the Deed of Trust shall be the amount of the grant as set forth in Section 2, hereof.
- B. Term of Deed of Trust.** The Deed of Trust shall remain in full force and effect for a minimum period of ten (10) years following the later of: (1) final payment of state funds to the GRANTEE under this grant; or (2) the date when the facility improved or acquired with grant funds, or a distinct phase of the Project, is made useable to the public for the purpose intended by the Legislature. Upon satisfaction of the ten-year term requirement and all other grant terms and conditions, COMMERCE shall, upon written request of the GRANTEE, take appropriate action to reconvey the Deed of Trust.
- C. Title Insurance.** The GRANTEE shall purchase an extended coverage lender's policy of title insurance insuring the lien position of the Deed of Trust in an amount not less than the amount of the grant.

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

- D. Covenant. If the project will be partially funded by a loan and the term of said loan is less than the commitment period under this grant contract, COMMERCE may require that GRANTEE record or cause to be recorded a covenant in a superior lien position ahead of the lender's security instrument that restricts use of the facility or property for the purpose(s) stated elsewhere in this contract for at least the term of the commitment period
- E. Subordination. COMMERCE may agree to subordinate its deed of trust upon request from a private or public lender. Any such request shall be submitted to COMMERCE in writing, and COMMERCE shall respond to the request in writing within thirty (30) days of receiving the request.

6. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES

When all or part of the grant is used to fund the acquisition of real property, before funds are disbursed, the GRANTEE shall procure and provide to COMMERCE evidence establishing the value of the real property eligible for reimbursement as follows:

- a. GRANTEE purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.
- b. GRANTEE purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

7. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

The GRANTEE may be reimbursed, at the rate set forth elsewhere in this contract, for Project expenditures corresponding to activities described in the Scope of Work in the following cost categories:

- A. Real property, and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the Project;
- B. Design, engineering, architectural, and planning;
- C. Construction management and observation (from external sources only);
- D. Construction costs including, but not limited to, the following:
 - Site preparation and improvements;
 - Permits and fees;
 - Labor and materials;
 - Taxes on Project goods and services;
 - Capitalized equipment;
 - Information technology infrastructure; and
 - Landscaping.

8. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the GRANTEE for one-hundred percent (100%) of eligible Project expenditures, up to the maximum payable under this contract. When requesting reimbursement for expenditures made, the GRANTEE shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed – by budget line item – for the billing period.

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

The GRANTEE shall evidence the costs claimed on each voucher by including copies of each invoice received from vendors providing Project goods or services covered by the contract. The GRANTEE shall also provide COMMERCE with a copy of the cancelled check or electronic funds transfer, as applicable, that confirms that they have paid each expenditure being claimed. The cancelled checks or electronic funds transfers may be submitted to COMMERCE at the time the voucher is initially submitted, or within thirty (30) days thereafter.

The voucher must be certified (signed) by an official of the GRANTEE with authority to bind the GRANTEE. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this contract, or within fifteen (15) days following the end of the state biennium unless contract funds are reappropriated by the Legislature in accordance with Section 19, hereof.

If GRANTEE has or will be submitting any of the invoices attached to a request for payment for partial reimbursement under another grant contract, GRANTEE must clearly identify such grant contracts in the transmittal letter and request for payment.

Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the GRANTEE.

COMMERCE will pay GRANTEE upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly.

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

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the GRANTEE for services rendered if the GRANTEE fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Duplication of Billed Costs

The GRANTEE shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the GRANTEE, if the GRANTEE is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

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

9. SUBCONTRACTOR DATA COLLECTION

GRANTEE will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

10. INSURANCE

A. Insurance Requirements for Reimbursable Activities

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

The GRANTEE will maintain appropriate insurance coverage throughout any period in which reimbursable activities are conducted. The intent of the required insurance is to protect the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the GRANTEE, or Subgrantee, or agents of either, while performing under the terms of this Grant.

B. Additional Insurance Requirements During the Term of the Grant

The GRANTEE shall provide proof to COMMERCE of the following insurance coverage as applicable:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability related to this Grant but no less than \$1,000,000 per occurrence. Additionally, the GRANTEE is responsible for ensuring that any Subgrantees provide adequate insurance coverage for the activities arising out of subgrants. Commercial General Liability Insurance coverage shall be maintained in full force and effect during the term of this Grant and throughout the commitment period described in Special Terms and Conditions Section 5, 14, and 15.

Property Insurance. The GRANTEE shall keep the property insured in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis. Such insurance shall cover the following hazards, as applicable:

- Loss or damage by fire and such other risks;
- Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises;
- Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed in a building or building on the premises.

Property Insurance coverage shall be maintained in full force and effect during the term of this Grant and throughout the commitment period described in Special Terms and Conditions Section 5, 14, and 15

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the GRANTEE for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A.** The amount of fidelity coverage secured pursuant to this Grant shall be \$2,000,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B.** Subgrantees that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees pursuant to this paragraph shall name the GRANTEE and the GRANTEE's fiscal agent as beneficiary.

Fidelity Insurance coverage shall be maintained in full force and effect from the start date of this Grant until Commerce has issued a Close-Out Letter to the Grantee. Fidelity Insurance must be issued on either (a) a "loss sustained" basis; or (b) if issued on a "loss-discovered" basis, provide coverage for at least six months (6 months) following the date of the Close-Out Letter or include an extended reporting period of at least six months following the date of the Close-Out Letter.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. The insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The GRANTEE shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation or modification.

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The GRANTEE shall provide to COMMERCE copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

During the term of the Grant, the GRANTEE shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

Professional Liability, Errors and Omissions Insurance for Contractors. The GRANTEE shall require that any contractors providing professional services that are reimbursable under this Grant maintain Professional Liability or Errors and Omissions Insurance. The GRANTEE shall require such contractors to maintain minimum limits of no less than \$1,000,000 per occurrence. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under these policies.

GRANTEES and Local Governments that Participate in a Self-Insurance Program.

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from COMMERCE, the GRANTEE may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the GRANTEE shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. GRANTEE's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

GRANTEE shall provide annually to COMMERCE a summary of coverages and a letter of self insurance, evidencing continued coverage under GRANTEE's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self insurance will be provided on the anniversary of the start date of this Agreement.

11. ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Certification of the Availability of Funds to Complete the Project
- Attachment D – Certification of the Payment and Reporting of Prevailing Wages
- Attachment E – Certification of Intent to Enter the Leadership in Energy and Environmental Design (LEED) Certification Process

12. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this contract are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the contract accordingly.

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13. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this contract and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this contract; provided, however, that COMMERCE may be granted a security interest in real property, to secure funds awarded under this contract. This provision does not extend to claims that COMMERCE may bring against the GRANTEE in recapturing funds expended in violation of this contract.

14. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY

- A. The GRANTEE understands and agrees that any and all real property or facilities owned by the GRANTEE that are acquired, constructed, or otherwise improved by the GRANTEE using state funds under this contract, shall be held and used by the GRANTEE for the purpose or purposes stated elsewhere in this contract for a period of at least ten (10) years from the later of: (1) the date the final payment is made hereunder; or (2) the date when the facility improved or acquired with grant funds, or a distinct phase of the Project, is made usable to the public for the purpose intended by the Legislature.
- B. This provision shall not be construed to prohibit the GRANTEE from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this contract.
- C. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 27 (Recapture provision) of the General Terms and Conditions.

15. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

- A. The GRANTEE understands and agrees that any facility leased by the GRANTEE that is constructed, renovated, or otherwise improved using state funds under this contract shall be used by the GRANTEE for the purpose or purposes stated elsewhere in this contract for a period of at least ten (10) years from the later of: (1) the date the final payment is made hereunder; or (2) the date when the facility improved or acquired with grant funds, or a distinct phase of the Project, is made usable to the public for the purpose intended by the Legislature.
- B. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 27 (Recapture provision) of the General Terms and Conditions.

16. MODIFICATION TO THE PROJECT BUDGET

- A. Notwithstanding any other provision of this contract, the GRANTEE may, at its discretion, make modifications to line items in the Project Budget (Attachment B), hereof, that will not increase the line item by more than fifteen percent (15%).
- B. The GRANTEE shall notify COMMERCE in writing (by email or regular mail) when proposing any budget modification or modifications to a line item in the Project Budget (Attachment B,) hereof, that would increase the line item by more than fifteen percent (15%). Conversely, COMMERCE may initiate the budget modification approval process if presented with a request for payment

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under this contract that would cause one or more budget line items to exceed the 15 percent (15%) threshold increase described above.

- C. Any such budget modification or modifications as described above shall require the written approval of COMMERCE (by email or regular mail), and such written approval shall amend the Project Budget. Each party to this contract will retain and make any and all documents related to such budget modifications a part of their respective contract file.
- D. Nothing in this section shall be construed to permit an increase in the amount of funds available for the Project, as set forth in Section 2 of this contract.

17. SIGNAGE, MARKERS AND PUBLICATIONS

If, during the period covered by this contract, the GRANTEE displays or circulates any communication, publication, or donor recognition identifying the financial participants in the Project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

18. HISTORICAL AND CULTURAL ARTIFACTS

Prior to approval and disbursement of any funds awarded under this Contract, GRANTEE shall cooperate with COMMERCE to complete the requirements of Governor's Executive Order 21-02 or GRANTEE shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. GRANTEE agrees that the GRANTEE 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 COMMERCE 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, GRANTEE shall, in accordance with Governor's Executive Order 21-02 as applicable, coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. GRANTEE agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The GRANTEE agrees that, unless the GRANTEE is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the GRANTEE shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the GRANTEE 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 GRANTEE 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 this Contract, GRANTEE 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.

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

19. REAPPROPRIATION

- A. The parties hereto understand and agree that any state funds not expended by June 30, 2025 will lapse on that date unless specifically reappropriated by the Washington State Legislature. If funds are so reappropriated, the state's obligation under the terms of this contract shall be contingent upon the terms of such reappropriation.
- B. In the event any funds awarded under this contract are reappropriated for use in a future biennium, COMMERCE reserves the right to assign a reasonable share of any such reappropriation for administrative costs.

20. TERMINATION FOR FRAUD OR MISREPRESENTATION

In the event the GRANTEE commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this contract, COMMERCE reserves the right to terminate or amend this contract accordingly, including the right to recapture all funds disbursed to the GRANTEE under the Grant.

21. FRAUD AND OTHER LOSS REPORTING

Grantee shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

22. PUBLIC RECORDS ACT

Notwithstanding General Terms and Conditions Section 11, COMMERCE is a public agency subject to the Public Records Act, Chapter 42.56 RCW (the "PRA"). Under the PRA, all materials relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by COMMERCE or its functional equivalents are considered public records. The PRA requires that public records responsive to a public records request be promptly produced unless the PRA or an "other statute" exempts such records from production. This Agreement is not intended to alter COMMERCE's obligations under the PRA. The parties agree that if COMMERCE receives a public records request for files that may include confidential information under General Terms and Conditions Section 11, COMMERCE will notify the other party of the request and of the date that the records will be released to the requester unless GRANTEE obtains a court order enjoining disclosure. If the GRANTEE fails to obtain the court order enjoining disclosure, COMMERCE may release the requested information on the date specified. If the GRANTEE obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to the PRA, COMMERCE shall maintain the confidentiality of the information per the court order.

23. APPLICABILITY OF COPYRIGHT PROVISIONS TO ARCHITECTURAL/ENGINEERING DESIGN WORK

The "Copyright Provisions", Section 13 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

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1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Grant" and "Agreement" and "Contract" shall mean the entire written agreement between COMMERCE and the GRANTEE, including any exhibits, attachments, documents, or materials incorporated by reference, and any amendments executed by the parties.
- D. "GRANTEE" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the GRANTEE.
- E. "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.
- F. "State" shall mean the state of Washington.
- G. "Subgrantee/subcontractor" shall mean one not in the employment of the GRANTEE, who is performing all or part of those services under this Grant under a separate Grant with the GRANTEE. The terms "subgrantee/subcontractor" refers to any tier.
- H. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- I. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

2. ACCESS TO DATA

In compliance with RCW 39.26.180, the GRANTEE shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the GRANTEE's reports, including computer models and the methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Grant shall be made by COMMERCE.

4. ALL WRITINGS CONTAINED HEREIN

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

5. AMENDMENTS

This Grant 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.

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6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The GRANTEE 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.

7. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the GRANTEE without prior written consent of COMMERCE.

8. ATTORNEYS' FEES

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

9. AUDIT

A. General Requirements

COMMERCE reserves the right to require an audit. If required, GRANTEEs are to procure audit services based on the following guidelines.

The GRANTEE shall maintain its records and accounts so as to facilitate audits and shall ensure that subgrantees also maintain auditable records.

The GRANTEE is responsible for any audit exceptions incurred by its own organization or that of its subgrantees.

COMMERCE reserves the right to recover from the GRANTEE 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 GRANTEE must respond to COMMERCE requests 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 GRANTEE is a state or 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 GRANTEE.

The GRANTEE shall include the above audit requirements in any subcontracts.

In any case, the GRANTEE's records must be available for review by COMMERCE.

C. Documentation Requirements

The GRANTEE must send a copy of the audit report described above no later than nine (9) months after the end of the GRANTEE's fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the GRANTEE must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.

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- Copy of the Management Letter.

If the GRANTEE is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to COMMERCE; no other report is required.

10. BREACHES OF OTHER STATE CONTRACTS

GRANTEE is expected to comply with all other contracts executed between GRANTEE and the State of Washington. A breach of any other agreement entered into between GRANTEE and the State of Washington may, in COMMERCE's discretion, be deemed a breach of this Agreement.

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A.** "Confidential Information" as used in this section includes:
1. All material provided to the GRANTEE by COMMERCE that is designated as "confidential" by COMMERCE;
 2. All material produced by the GRANTEE that is designated as "confidential" by COMMERCE; and
 3. All personal information in the possession of the GRANTEE 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 GRANTEE shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The GRANTEE shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The GRANTEE 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 GRANTEE shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The GRANTEE shall make the changes within the time period specified by COMMERCE. Upon request, the GRANTEE shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the GRANTEE against unauthorized disclosure.
- C.** Unauthorized Use or Disclosure. The GRANTEE shall notify COMMERCE 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.

12. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the GRANTEE terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The GRANTEE and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on this Grant, or any matter related to the project funded under this Grant or any other state funded project, including but not limited to formulating or drafting legislation, participating in grant procurement, planning and

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execution, awarding grants, or monitoring grants, during the 24 month period preceding the start date of this Grant. Any person identified by the GRANTEE and their subcontractors(s) must be identified individually by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the GRANTEE may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the contract by the GRANTEE. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

13. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE 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 GRANTEE hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE 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 Grant, but that incorporate pre-existing materials not produced under the Grant, the GRANTEE hereby grants to COMMERCE 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 GRANTEE warrants and represents that the GRANTEE has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The GRANTEE shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, 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 Grant. The GRANTEE shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the GRANTEE with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the GRANTEE.

14. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, 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 GRANTEE's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Grant 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 Director or the Director's designee and the requestor within five (5) working days.

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The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director 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 Grant 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.

15. DUPLICATE PAYMENT

COMMERCE shall not pay the GRANTEE, if the GRANTEE has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses. The GRANTEE certifies that work to be performed under this contract does not duplicate any work to be charged against any other grant, subgrant/subcontract, or agreement.

16. GOVERNING LAW AND VENUE

This Grant 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.

17. 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.

18. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The GRANTEE and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The GRANTEE will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the GRANTEE 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 GRANTEE.

19. INDUSTRIAL INSURANCE COVERAGE

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The GRANTEE shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the GRANTEE fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the GRANTEE the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the GRANTEE to the accident fund from the amount payable to the GRANTEE by COMMERCE 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 GRANTEE.

20. LAWS

The GRANTEE shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended.

21. LICENSING, ACCREDITATION AND REGISTRATION

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

22. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's delegate by writing (delegation 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. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Authorized Representative.

23. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the GRANTEE shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the GRANTEE's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the GRANTEE may be declared ineligible for further Grants with COMMERCE. The GRANTEE 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.

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

24. PAY EQUITY

The GRANTEE 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. GRANTEE may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) 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.

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(ii) 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.

(iii) 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 COMMERCE, if COMMERCE or the Department of Enterprise services determines that the GRANTEE is not in compliance with this provision.

25. POLITICAL ACTIVITIES

Political activity of GRANTEE employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17a 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.

26. PUBLICITY

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

27. RECAPTURE

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

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

28. RECORDS MAINTENANCE

The GRANTEE shall maintain books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant.

GRANTEE shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Grant, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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 resolved.

29. REGISTRATION WITH DEPARTMENT OF REVENUE

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

30. RIGHT OF INSPECTION

**GENERAL TERMS AND CONDITIONS
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At no additional cost, the GRANTEE shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Grant.

31. 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 Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

32. SEVERABILITY

The provisions of this Grant are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Grant.

33. SITE SECURITY

While on COMMERCE premises, GRANTEE, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

34. SUBGRANTING/SUBCONTRACTING

Neither the GRANTEE nor any subgrantee/subcontractor shall enter into subgrants/subcontracts for any of the work contemplated under this contract without obtaining prior written approval of COMMERCE. In no event shall the existence of the subgrant/subcontract operate to release or reduce the liability of the GRANTEE to COMMERCE for any breach in the performance of the GRANTEE's duties. This clause does not include Grants of employment between the GRANTEE and personnel assigned to work under this Grant.

Additionally, the GRANTEE is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subgrants/subcontracts. Every subgrant/subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a subgrantee's/subcontractor's performance of the subgrant/subcontract. GRANTEE and its subgrantees/subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of COMMERCE or as provided by law.

35. SURVIVAL

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

36. TAXES

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

37. TERMINATION FOR CAUSE

In the event COMMERCE determines the GRANTEE has failed to comply with the conditions of this Grant in a timely manner, COMMERCE has the right to suspend or terminate this Grant.

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Before suspending or terminating the Grant, COMMERCE shall notify the GRANTEE in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Grant may be terminated or suspended.

In the event of termination or suspension, the GRANTEE shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the Grant, withhold further payments, or prohibit the GRANTEE from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by COMMERCE to terminate the Grant. A termination shall be deemed a "Termination for Convenience" if it is determined that the GRANTEE: (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 COMMERCE provided in this Grant are not exclusive and are, in addition to any other rights and remedies, provided by law.

38. TERMINATION FOR CONVENIENCE

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

39. TERMINATION PROCEDURES

Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this Grant, may require the GRANTEE to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Grant as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the GRANTEE the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the GRANTEE and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AUTHORIZED REPRESENTATIVE shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Grant. COMMERCE may withhold from any amounts due the GRANTEE such sum as the AUTHORIZED REPRESENTATIVE determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE 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 GRANTEE shall:

1. Stop work under the Grant on the date, and to the extent specified, in the notice;
2. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant that is not terminated;
3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE, all of the rights, title, and interest of the GRANTEE under the orders and subgrants/subcontracts so terminated, in which case COMMERCE has the right, at its

**GENERAL TERMS AND CONDITIONS
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discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants/subcontracts;

4. 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 AUTHORIZED REPRESENTATIVE may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE any property which, if the Grant had been completed, would have been required to be furnished to COMMERCE;
6. Complete performance of such part of the work as shall not have been terminated by the AUTHORIZED REPRESENTATIVE; and
7. 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 Grant, which is in the possession of the GRANTEE and in which COMMERCE has or may acquire an interest.

40. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the GRANTEE, for the cost of which the GRANTEE is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the GRANTEE. Title to other property, the cost of which is reimbursable to the GRANTEE under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the GRANTEE shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The GRANTEE shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the GRANTEE or which results from the failure on the part of the GRANTEE to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the GRANTEE shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The GRANTEE shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant
All reference to the GRANTEE under this clause shall also include GRANTEE'S employees, agents or subgrantees/subcontractors.

41. 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 Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Scope of Work

Funds awarded under this grant shall be used by The Port of Bremerton for design, structural engineering and construction management for costs related to the refurbishment of the Port Orchard Marina Breakwater located at 707 Sidney Parkway, Port Orchard, WA.

This will include, but not be limited to, costs related to the design, construction management and engineering phase for urgent replacement of 48-year-old breakwater, structural repairs and replacement of floats, pilings, electrical upgrades, water lines and other components protecting maritime infrastructure and facilities for the Port Orchard public marina.

This project will serve as a benefit to the public by facilitating the preservation of a vital infrastructure facility for maritime surface transportation and allow saltwater access for tribes, public recreation, and maritime commercial.

This project is anticipated to be completed by October of 2024.

Costs related to the work will only be reimbursed to the extent the work is determined by Commerce to be within the scope of the legislative appropriation.

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that the Scope of Work set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.

GRANTEE

TITLE

DATE

Budget

Line Item	Amount
Architecture & Engineering	\$1,188,000.00
Site Acquisition	\$0.00
Construction Management	\$332,000.00
Capitalized Equipment	\$0.00
Contingency	\$0.00
Other	\$0.00
Total Contracted Amount:	\$1,520,000.00

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that the Project Budget set forth above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, as of the date and year written below.

GRANTEE

TITLE

DATE

Certification of the Availability of Funds to Complete the Project

Non-State Funds	Amount	Total
Local Funding (Port of Bremerton)	\$531,570.00	
Total Non-State Funds	\$531,570.00	\$531,570.00
State Funds		
State Capital Budget	\$988,430.00	\$988,430.00
Total Non-State and State Sources		\$1,520,000.00

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that project funding from sources other than those provided by this contract and identified above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, and has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this contract, as of the date and year written below. The GRANTEE shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE'S review upon reasonable request.

GRANTEE

TITLE

DATE

Certification of the Payment and Reporting of Prevailing Wages

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable on the date the Project appropriation becomes effective, 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 GRANTEE shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE'S review upon request.

If any state funds are used by the GRANTEE for the purpose of construction, applicable State Prevailing Wages must be paid.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.

GRANTEE

TITLE

DATE

**Certification of Intent to Enter the
Leadership in Energy and Environmental Design (LEED) Certification Process**

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that it will enter into the Leadership in Energy and Environmental Design certification process, as stipulated in RCW 39.35D, as applicable to the Project funded by this contract. The GRANTEE shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to COMMERCE.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, as of the date and year written below.

Exempt - Facility Type

GRANTEE

TITLE

DATE

PORT OF BREMERTON **AGENDA SUMMARY**

Agenda Item No: Action Item # 2
Subject: PND Engineers Contract Amendment #3
Exhibits: Contract Amendment #3 – PND Engineers
Prepared By: James Weaver, Director of Marine Facilities
Meeting Date: August 8, 2023

Summary:

On September 8, of 2020, the Port of Bremerton entered into a contract with PND Engineers, Inc to design, engineering, and permitting for the Port Orchard Marina Breakwater Replacement Project. Since that contract initiation, PND Engineers, Inc have been working diligently in providing the preliminary design, geotechnical, engineering, preparing construction documents, and navigating the complex local, State, and Federal permit approval process for this vital maritime infrastructure replacement project.

The original PND Engineers design & permitting contract scope of work included components related to permitting for State and Federal agencies all to support a successful project to meet all regulatory requirements. The original contract task fee identified for the Permitting Support task of the contract was a total of \$130,000, with an effort identified for mitigation planning as expected in 2020. The original contract also noted the shifting regulatory environment and noted that should project impacts be significant and unavoidable, additional scope may be necessary to address increased mitigation planning.

Environmental permitting complexity, ESA regulations, and Federal requirements have substantially increased since contract initiation. The required permitting services for in-water construction within Puget Sound to accommodate the federal Endangered Species Act, the National Marine Fisheries Service regulations, the US Army Corps permitting requirements, Section 106 and NEPA processes have all substantially increased. This amendment provides for additional work and assistance in regard to securing the environmental permitting and providing the required federal documentation for the breakwater project.

This approval is for a \$105,498.73 contract amendment to the existing PND Engineers contract to complete the permitting tasks and documentation required for the permitting and federal RAISE grant requirements for the Port Orchard Marina Breakwater Replacement project.

Fiscal Impact:

The contract amendment is for the amount of \$ 105,498.73 in permitting services to be added to accommodate the federal National Marine Fisheries Service, US Army Corps permitting, and NEPA permitting processes. The net fiscal impact to the Port for the contract amendment would be an additional \$ 105,498.73. The amendment funds are a capital budget

expense sourced from the \$2.5 million dollar capital reserve dedicated to the Port Orchard Marina Breakwater Replacement project.

Strategic Purpose:

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

Recommendation:

Port staff recommends the approval of Contract Amendment #3 for the design, engineering, & permitting contract with PND Engineers, Inc.

Motion for Consideration:

Move to approve contract Amendment #3 to the Port Orchard Marina Breakwater Replacement project contract with PND Engineers, Inc.

**PORT OF BREMERTON
AMENDMENT NO. 3**

Agreement Title: Port Orchard Marina Breakwater Replacement Design

**Project No. 03-15-0224
Date: August 8, 2023**

To: Jon Keiser, PND Engineers, Inc

You are hereby directed to make the changes listed below in the subject contract. All other provisions of the contract remain in full force and effect. This Amendment represents a full and final resolution of these items; all costs and time effects are resolved.

Nature of Amendment

Includes increase amount for permit assistance section of project scope for environmental mitigation and State, Federal, and Tribal project permitting processes.

Justification of Amendment

Environmental permitting complexity and regulations have increased since contract was originally drafted. Provides for additional work and assistance in regards to securing the environmental permitting for the breakwater project.

The changes result in the following adjustment of the Contract Price and Time:

Contract Value Prior to this Amendment	\$ 1,551,000.00
Net (increase) (decrease) Resulting from this Amendment	\$ 105,498.73
Current Contract Price Including this Amendment	\$ 1,656,498.73

Date of Completion Prior to this Amendment	<u>January 2023</u>
Net (increase) Resulting from this Amendment	<u>\$105,498.73</u>
Current Contract Time Including this Amendment	<u>January 2025</u>

**The above Amendment
is recommended**

**The above Amendment
is accepted**

**The above Amendment
is approved**

Engineer:

Contractor:

Owner:

PND Engineers, Inc.

Port of Bremerton

By: _____

By: _____

By: _____

Date: _____

Date: _____

Date: _____

PORT OF BREMERTON

AGENDA SUMMARY

Agenda Item No: Action Item #3

Subject: Authorization for Mitigation Credit Pre-Sale Agreement with Puget Sound Partnership

Exhibits: Puget Sound Partnership Mitigation Credit Pre-Sale Agreement

Prepared By: James Weaver, Director of Marine Facilities

Meeting Date: August 8, 2023

Summary:

The Port Orchard Marina Breakwater Replacement project is a capital construction project in Puget Sound and is required to obtain permitting from the US Army Corps of Engineers. A component of the permitting also includes compliance with the federal National Environmental Protection Act (NEPA), and the Endangered Species Act (ESA) for the habitat impacts that may be determined for endangered species located with Puget Sound and for endangered species habitat directly impacted by the saltwater marine construction.

Throughout the two-year federal permitting process, the US Army Corps (USACE) and the National Marine Fisheries Service (NMFS) have reviewed the project and evaluated the Port Orchard Marina Breakwater Replacement project application, reports, data, and analysis provided.

The federal agencies have completed their evaluation and have determined that, in addition to the habitat mitigation proposed for the project, that a total of 198 additional environmental mitigation credits are required to be able to approve the federal project permits and to offset the Endangered Species habitat impacts.

This Mitigation Credit Pre-Sale Agreement form facilitates the process for federal permittees to purchase 198 conservation credits from Puget Sound Partnership (Partnership) to offset Endangered Species Act (ESA) impacts resulting from the maintenance, replacement, expansion, or new construction of structures in the Puget Sound nearshore.

The Puget Sound Partnership Mitigation Credit agreement is in the amount of in the amount of \$ 279,378.00 for purchase of environmental mitigation credits to complete the federal permitting process for the Port Orchard Marina Breakwater Replacement project.

Fiscal Impact:

The Puget Sound Partnership Mitigation Credit agreement is in the amount of in the amount of \$ 279,378.00. Purchase of environmental mitigation credits is not a project cost that is included in any State or Federal grant reimbursements. These funds are a capital budget

expense sourced from the \$2.5 million dollar capital reserve dedicated to the Port Orchard Marina Breakwater Replacement project.

Strategic Purpose:

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

Recommendation:

Authorize the CEO to sign the Puget Sound Partnership Pre-Sale Agreement in the amount of \$ 279,378.00 for the Port Orchard Marina Breakwater Replacement project.

Motion for Consideration:

Move to authorize the CEO to sign the Puget Sound Partnership Pre-Sale Agreement in the amount of \$ 279,378.00 for the Port Orchard Marina Breakwater Replacement project.

Conservation Credit Purchase Form

Partnership Nearshore Credits: A NOAA-approved conservation credit provider

This form facilitates the process for federal permittees to purchase conservation credits from Puget Sound Partnership (Partnership) to offset Endangered Species Act (ESA) impacts resulting from the maintenance, replacement, expansion, or new construction of structures in the Puget Sound nearshore.

What type of “credits” does the Partnership provide?

Puget Sound Partnership provides conservation credits for obligations under Endangered Species Act (ESA) consultations. If other federal, local, or state agencies also require mitigation, and that mitigation was not already included in the conservation calculator, it is the applicant’s responsibility to clarify with those agencies whether the conservation credits provided by Puget Sound Partnership would meet those obligations. For example, Partnership Nearshore Credits may not be used to satisfy compensatory mitigation obligations under Section 404 of the Clean Water Act.

Conservation Credit Purchase Process

The overall process to purchase conservation credits from Partnership (and the way this form facilitates that process) is illustrated in the figure below.

ATTENTION:

Federal permit applicants must work with the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS) – first to avoid and minimize impacts on site, and then to finalize the number of conservation offsets needed for unavoidable impacts – before attempting to purchase nearshore conservation credits from the Partnership. NMFS must finalize all conservation calculators prior to any credit purchase agreement.



S1 = Section 1 S2 = Section 2 S3 = Section 3

Form Instructions

- Each section of this form is used by a single entity during each step in the credit purchase process, and the responsible entity is named and in bold text at the beginning of each section.
- When populating a section, all boxes must be populated.

Section II: Conservation Credit Pre-Sale Agreement

The credit pre-sale terms outlined in this section are completed by the **Partnership** to provide the permittee a formal offer to sell conservation credits to the permittee according to the terms and conditions below pending receipt of the credit purchase price from the permittee. If the permittee agrees to purchase conservation credits from Partnership on the terms and conditions below, the **permittee** signs and returns this section to the Partnership for the **Partnership** to countersign. The permittee must include a copy of completed Sections I and II of this form with payment to purchase credits.

CREDIT PRE-SALE TERMS

Buyer Organization Name: Port of Bremerton
Buyer Mailing Address: 8850 State Highway 3 SW City: Bremerton Zip: 98312
Buyer Permit Project Name: Port Orchard Marina Breakwater Replacement Permit Project Number: NWS-2022-513
Number of Partnership Credits to be Purchased: 198 Per Credit Purchase Price: \$1,411.00
Total Purchase Price: \$279,378.00 Pre-Sale Expiration Date: 7/24/2024

Successors and Assigns

This agreement shall inure to the benefit of and be binding upon the successors and assigns of the buyer and the Partnership.

Applicable Law

This agreement shall be construed and enforced in accordance with the laws of the State of Washington.

Notices

Any notice or demand permitted or required by this agreement shall be made in writing and delivered to the Buyer Mailing Address listed above or the Partnership's address listed under the Partnership Commitment to Sale Credits below with conformation of transmission. Any such notice or demand shall be effective and deemed received on the date delivered, as indicated on receipt confirmation.

Entire Agreement

This agreement contains the entire understanding between the buyer and the Partnership. This agreement shall not be binding upon the buyer and Partnership until executed by an authorized agent of the buyer and Partnership, and an executed copy of this agreement has been delivered to the buyer and Partnership.

Amendments and Waivers

This agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the buyer and the Partnership.

Credit Pre-Sale Terms

The buyer listed above agrees to purchase the Number of Credits to Purchase listed above according to the credit pre-sale terms listed above and prior to the Pre-Sale Expiration Date listed above if the buyer's permit is approved by NOAA Fisheries. The buyer agrees that this conservation credit pre-sale agreement is terminated if the buyer fails to deliver the Purchase Price above on or before the Pre-sale Expiration Date listed above, and upon which neither the buyer or Partnership shall have no further rights or obligations hereunder.

Name of Authorized Agent: _____

Authorized Agent Signature: _____ Date: _____

Payment Instructions

Checks should be made payable to:
Recreation and Conservation Office

and sent to:
Recreation and Conservation Office
PO Box 40917
Olympia, WA 98504-0917

Partnership Commitment To Sell Credits

Puget Sound Partnership, whose mailing address is PO Box WT-41, Olympia, WA 98504-7000, agrees to sell the Number of Credits to Purchase listed above according to the credit pre-sale terms listed above and receipt of the Purchase Price listed above prior to the Pre-Sale Expiration Date listed above. Partnership agrees that it will comply with all terms and conditions set forth in the Partnership's memorandum of understanding with NOAA Fisheries and USFWS to generate the Number of Credits to Purchase listed above. Upon receipt of payment, of the Purchase Price listed above, Partnership shall provide the buyer within 30 days thereafter documentation as required by the Services to effectuate the purchase of credits. The Partnership agrees to reduce the Number of Credits to Purchase listed above and the Purchased Price pro rata if the regulatory agency requirement is decreased at no penalty to the buyer. If the Number of Credits to Purchase listed above is reduced, the Partnership will provide an addendum to this agreement at the request of the buyer.

Name of Authorized Agent: _____

Authorized Agent Signature: _____ Date: _____

Link to Section I
(Internal Agency Use Only)

Link to Section III
(Internal Agency Use Only)

PORT OF BREMERTON
AGENDA SUMMARY

Agenda Item No: Action Item #4
Subject: Authorization to perform Wastewater Pumping
Exhibits: None
Prepared By: James Goodman, Director of Facilities and Property Development
Meeting Date: August 8th, 2023

Summary:

The Port is working to modernize our aging small wastewater plant by replacing and updating the system. Upgrades include new electrical panels, replacing pumps, and updating our sewer aeration process. In partnership and oversight with the Ports water consultant, the Port's Maintenance Team has completed most of the repairs and upgrades. To further the project, commercial services are required to remove sewer sludge from two small retention ponds.

We are procuring these pumping services through the State of Washington contract number #01818 for waste pumping service awarded to Liquid Environmental Solutions of WA. LLC. - dba. Flo-Hawks. State contracts offer fixed pricing for competitively bid services.

Fiscal Impact:

This project is planned and included in the 2023 Capital Budget.	
Total 2023 Capital Budget:	\$110,000
Estimated cost of equipment and materials	\$25,000
Estimated cost for pumping services (Flo-Hawks)	\$85,000
 Total Cost Project Cost:	 \$110,000

Strategic Purpose:

This action conforms with the Port's strategic plan in Goal: Develop and fund a 20-year asset replacement/major maintenance schedule.

Recommendation:

Port staff recommends a contract with Flo-Hawks for waste pumping services not to exceed \$85,000 and authorizes the CEO to issue notice to proceed.

Motion for Consideration:

Move to approve a contract with Flo-Hawks for waste pumping services not to exceed \$85,000 and authorizes the CEO to issue notice to proceed.

PORT OF BREMERTON
AGENDA SUMMARY

Agenda Item No: Action Item 5
Subject: Bid Authorization for Airport Office Water Line Re-pipe
Exhibits: None
Prepared By: James Goodman, Director of Facilities and Property Development
Meeting Date: August 8, 2023

Summary:

In 1974, the Port completed the original section of the airport's terminal building. Over the years, several building additions expanded the terminal structure. However, the building's water supply lines have never been replaced or updated. Currently, the building staff utilizes water delivery services and bottled water. The galvanized pipes have degraded over the years, causing the water lines to become unpotable. Additionally, due to the grit and sediment from the lines, we found this contributes to the recent high amount of clogs in our sewer lines.

This project is planned and included in the 2023 Airport Operations and Maintenance (O&M) budget. The awarded contractor will demo, remove, and dispose of all the old water lines and install all new water lines throughout the original building. After the contractor has completed the re-pipe work, the Port Facilities Team will finalize and complete all finish work within the restrooms and kitchen.

Fiscal Impact:

Available Budget:	2023 Airport O&M	\$ 48,155
	2023 Industrial Park O&M	\$ 9,845
Total Estimated Project Cost:		\$ 58,000

This cost is based on the received estimates of an anticipated 10% markup in parts and labor to reflect 2023 material and labor pricing.

Strategic Purpose:

This action conforms with the Port's strategic plan in Goal: Develop and fund a 20-year asset replacement/major maintenance schedule.

Recommendation:

Authorize staff to proceed with the bid call for replacing waterlines at the Port's main office building per approved contracting guidelines.

Motion for Consideration:

Move to authorize staff to proceed with the bid call for replacing waterlines at the Port's main office building per approved contracting guidelines.