



PORT of OLYMPIA
Serving All of Thurston County
Commission Meeting
Monday, May 22, 2023
5:30 PM

Percival Plaza - Olympics Room
626 Columbia Street NW
Olympia, WA 98501

The meeting agenda is available on the Port's website as of May 18, 2023.

<https://www.portolympia.com/commission>

The public may join the meeting from their computer, tablet or smartphone at:

<https://us02web.zoom.us/j/86397129781?pwd=aElVYncwVktqbEtXdnpTQktzQWxqQT09>

or Telephone: 1 253 215 8782

Webinar ID: 863 9712 9781

Passcode: 136167

Please note that the Zoom link changes for each meeting.

Written public comments may be submitted to commissioncoordinator@portolympia.com by 12:00 p.m. on the date of the meeting. All written comments will be compiled and sent to the Commissioners prior to the meeting.

Verbal public comment is accepted in person at the meeting.

If you are attending the meeting via Zoom, you may raise your hand during the meeting to give public comment. For those listening by phone, press *9 if you wish to raise your hand and provide comment.

Individual public comments are limited to 3 minutes per person.

AGENDA

- A. Call to Order
- B. Pledge of Allegiance
- C. Approval of Agenda
- D. Executive Director Report
- E. Public Comment

NOTE: Guidelines for public comment can be found in the Commission Rules in Resolution Article VI.

- *Comments should be directed to Commission:* Comments should be directed to the Commission as a whole and should not include comments about individual Port staff or members of the public.
- *Courtesy:* All speakers (members of the public, Port staff, and Commissioners) shall be courteous in language and demeanor and shall confine remarks to those facts that are germane and relevant to the question or issue under discussion.

Port of Olympia Mission

Creating economic opportunities and building community for all of Thurston County through responsible resource use.

- F. Consent Calendar
 - 1. Bills and Vouchers for March, Batches #9 – 13
- G. Pending Issues or Business
 - 1. FAA Land Release
 - 2. Public Comment Best Practices
 - 3. Off-Site Commission Meetings
 - 4. Commission Compensation
- H. Action Calendar
 - 1. Budd Inlet Agreed Order Amendment – Lisa Parks, Executive Services Director
 - 2. 608 Washington Purchase and Sale Agreement with LOTT – Rudy Rudolph, Operations Director
 - 3. Allied Universal Security Services – Purchased Services Agreement Amendment – Afsin Yilmaz, Marine Terminal Senior Manager
 - 4. Resolution 2023-02 Economic Development Corporation Revision – Lisa Parks, Executive Services Director
- I. Action/Other Calendar
 - 1. None
 - 2. Public Comment
- J. Advisory Calendar
 - 1. None
 - 2. Public Comment on Advisory Items
- K. Commissioner Reports/Discussion
- L. Other Business
- M. Meeting Announcements
- N. Adjourn

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING, Batch # 9-13
March

GENERAL FUND		
	COMPUTER PREPARED	987,579.19
	BOND ACCOUNT PAYMENTS	-
	VOIDED WARRANT(S) / ELECTONIC PAYMENT(S)	(6,555.92)
	PAYROLL	
	ELECTRONIC PAYMENTS	154,398.93
		-
	TOTAL GENERAL FUND WARRANTS, BOND ACCOUNT WARRANTS & ELECTRONIC PAYENTS:	<u>1,135,422.20</u>

General Fund Warrants Issued: 086659-086862
Electronic Payments Issued: 001036-001055
Bond Account Warrants Issued:
Payroll Warrants Issued:
Voided Warrant(s): 086697, 086650, 086602 & 086603
Voided Electronic Payment(s):
Zero Warrants: 010051

We the undersigned Board of Commissioners of the Port of Olympia, Olympia Washington, do hereby authorize the issuance of the warrants described above.

Total Warrants: \$1,135,422.20

Warrants over \$200,000:

Amy Harding, Commission President

Joe Downing, Commission Vice President

Sam Gibboney, Executive Director

Charles Iyall, Commission Secretary

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
March

Batch #:
9

WARRANTS ISSUED:	WARRANT NUMBERS:	
COMPUTER PREPARED issued week ending 03/03/23		269,648.23
COMPUTER PREPARED	086659-086715	
Voided Warrant(s)	086697	(4,332.75)
Zero Warrant(s)	010051	-

PROJECTS:
COMPUTER PREPARED
Voided Warrant(s)

ELECTRONIC PAYMENTS:	ACH NUMBERS:	
Electronic Payments, issued week ending 03/03/23		<u>19,907.48</u>
COMPUTER PREPARED	001036-001038	
Voided Warrant(s)		

TOTAL WARRANTS \$ 285,222.96

RCW 42.24.080: "I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished the services rendered or the labor performed as described herein, and that the claims are just, due and unpaid obligations of the Port of Olympia, and that I am authorized to authenticate and certify to said claims".



Matt Peach, Controller

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
March

Batch #:
10

WARRANTS ISSUED:	WARRANT NUMBERS:	
COMPUTER PREPARED, Issued week ending 03/10/23		305,843.77
COMPUTER PREPARED	086716-086722	
Voided Warrant(s)	086650	(79.92)
Zero Checks		
PROJECTS:		
COMPUTER PREPARED		-
Voided Warrant(s)		-
ELECTRONIC PAYMENTS:	ACH NUMBERS:	
Electronic Payments, issued week ending 03/10/23		21,642.81
COMPUTER PREPARED	001039-001043	
Voided Warrant(s)		
		<hr/>
	TOTAL WARRANTS	<u>\$ 327,406.66</u>

RCW 42.24.080: "I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished the services rendered or the labor performed as described herein, and that the claims are just, due and unpaid obligations of the Port of Olympia, and that I am authorized to authenticate and certify to said claims".


Matt Peach, Controller

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
March

Batch #:
11

WARRANTS ISSUED:

COMPUTER PREPARED, Issued week ending 03/17/23
COMPUTER PREPARED
Voided Warrant(s)
Zero Checks

WARRANT NUMBERS:

PROJECTS:

COMPUTER PREPARED
Voided Warrant(s)

ELECTRONIC PAYMENTS:

Electronic Payments, issued week ending 03/17/23
COMPUTER PREPARED
Voided Warrant(s)

ACH NUMBERS:

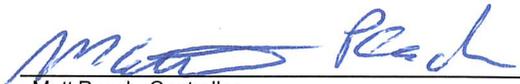
001044-001048

47,288.91

TOTAL WARRANTS

\$ 47,288.91

RCW 42.24.080: "I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished the services rendered or the labor performed as described herein, and that the claims are just, due and unpaid obligations of the Port of Olympia, and that I am authorized to authenticate and certify to said claims".



Matt Peach, Controller

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
March

Batch #:
12

WARRANTS ISSUED:	WARRANT NUMBERS:	
COMPUTER PREPARED issued week ending 03/24/23		146,276.27
COMPUTER PREPARED	086773-086815	-
Voided Warrant(s)	086602 & 086603	(2,143.25)
Zero Checks		-
PROJECTS:		
COMPUTER PREPARED		-
Voided Warrant(s)		-
ELECTRONIC PAYMENTS:	ACH NUMBERS:	
Electronic Payments, issued week ending 03/24/23		<u>7,594.14</u>
COMPUTER PREPARED	001049-001051	
Voided Warrant(s)		
	TOTAL WARRANTS	<u>\$ 151,727.16</u>

RCW 42.24.080: "I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished the services rendered or the labor performed as described herein, and that the claims are just, due and unpaid obligations of the Port of Olympia, and that I am authorized to authenticate and certify to said claims".



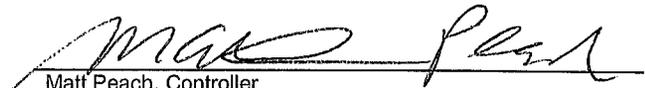
Matt Peach, Controller

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
March

Batch #:
13

WARRANTS ISSUED:	WARRANT NUMBERS:	
COMPUTER PREPARED issued week ending 03/31/23		265,810.92
COMPUTER PREPARED	086816-086862	-
Voided Warrant(s)		
Zero Checks		
PROJECTS:		
COMPUTER PREPARED		-
Voided Warrant(s)		-
ELECTRONIC PAYMENTS:	ACH NUMBERS:	
Electronic Payments, issued week ending 03/31/23		57,965.59
COMPUTER PREPARED	001052-001055	
Voided Warrant(s)		
	TOTAL WARRANTS	<u>\$ 323,776.51</u>

RCW 42.24.080: "I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished the services rendered or the labor performed as described herein, and that the claims are just, due and unpaid obligations of the Port of Olympia, and that I am authorized to authenticate and certify to said claims".


Matt Peach, Controller

COVER MEMO

Briefing Date: May 22, 2023

Staff Contact/Title: Lisa Parks, Executive Services Director, 360.528.8020,
lisap@portolympia.com

Subject: Budd Inlet Cleanup Agreed Order Amendment No. 2

Purpose: Information Only Decision Needed

Background/Overview:

The Model Toxics Control Act (MTCA) directs the investigation and cleanup of sites that are contaminated by hazardous substances. In addition to providing funds to support these cleanups, MTCA imposes joint and several liability on the current owner of contaminated property, the prior owners or operators of the property at the time hazardous substances were released, and the current or past owners or operators of adjacent properties that caused the contamination, if applicable. RCW 70A.305.040(1). These parties are known as potentially liable parties or “PLPs.” The Department of Ecology (Ecology) may hold any of the parties wholly responsible to remediate a site, but that party may pursue financial contribution from the other liable parties. RCW 70A.305.080.

In 2008, the Port received a determination from Ecology that the Port is one of the PLPs for the Budd Inlet Sediments Site due to dioxin and PAH (hydrocarbons) contamination found in sediment in Budd Bay. *See* Dept. of Ecology, *Agreed Order No. DE 6083* (Dec. 5, 2008) at 8. Ecology and the Port also entered into an Agreed Order (AO) for the site. An AO is a legal mechanism that provides certainty to PLPs, by outlining specific actions that will be taken at the site, with Ecology agreeing it “will not take additional enforcement action” (WAC 173-340-530(1)) if such actions are completed.

In 2012, the AO was amended to focus the investigation and remediation on a study area generally consisting of the Port’s West Bay berthing areas and East Bay (Amended AO). *See* Dept. of Ecology, *First Amendment to Agreed Order No. DE 6083* (Feb. 15, 2012). Under the Amended AO, “the Port shall fully define the nature and

extent of contamination in the Study Area, investigate potential sources of contamination to sediments in East and West Bays of Budd Inlet, draft an Investigation Report [and] draft an Interim Action Plan to address sediment contamination at the Study Area.” *Id.* at 4. The Port would achieve this through completion of six tasks. However, the Amended AO was not intended to cover finalizing the Interim Action Plan or implementing the Plan. A future amendment was intended to cover those steps. *Id.*

The Port has nearly completed the tasks in the Amended AO. The attached AO Amendment No. 2, developed collaboratively between the Port and the Department of Ecology, builds on the Amended AO by identifying the tasks necessary to implement the current approach to the Budd Inlet cleanup project.

The AO Amendment No. 2 includes the following tasks:

- Task 5A: Clarifies that the Port will incorporate Ecology’s comments on the draft Interim Action Plan, and Ecology will conduct necessary public outreach, and approve the final Plan.
- Task 6: Continues the regular progress report.
- Task 7: After approval of the Interim Action Plan, the Port will produce a Pre-Remedial Design Data Gaps memo that identifies existing data and information needed to conduct remedial dredging within the navigation and adjacent areas.
- Task 8: The Port will develop a Pre-Remedial Design Data Gaps Work Plan (Work Plan) to collect data addressing the gaps identified in Task 7.
- Task 9: After approval of the Work Plan, the Port will implement the Work Plan and repeat steps 7-9 as necessary if additional data gaps are identified.
- Task 10: The Port will submit to Ecology the Engineering Design Report and documents necessary to complete the design and permitting of the Interim Action.

MTCA Agreed Orders, for complex cleanups, typically involve several amendments to reflect the iterative nature of such cleanups.

Documents Attached:

- PowerPoint Presentation
- Final Draft Agreed Order Amendment No. 2

Pros & Cons:

Amending the AO as proposed would provide three benefits to the Port:

- First, the Proposed AO Amendment will continue to provide the Port with certainty that, if it complies with the AO, it will not face enforcement actions from Ecology under MTCA.
- Second, the Proposed AO Amendment will demonstrate to Ecology that the Port is moving forward and should receive the full remedial action grant amounts that Ecology has planned to provide to the Port for Budd Bay. The 2023 Washington legislative session capital budget included \$6.25 million for the Port's Budd Bay cleanup.
- Third, the Proposed AO Amendment contemplates dredging as a potential component of the Interim Cleanup Action, which could include but not be limited to improvement of Port operations by restoring navigation depths at the marine terminal, Swantown Marina, and Boatworks.
- Under the Proposed AO Amendment, the Port is not bound to a specific Interim Action design or strategy. However, the AO requires the Port to continue moving forward to meet the proposed deadlines.
- Allowing the current AO to lapse without further amendment creates uncertainty for the Port, as Ecology may proceed with enforcement actions that the Port does not have control over or input on. It may also jeopardize the remedial action grant funding the state allocated to Ecology that is intended for the Port.

Staff Recommendation:

Staff is requesting and recommending the Port Commission take action to authorize the Executive Director to sign the Agreed Order Amendment No. 2 as presented.

BUDD INLET CLEANUP AGREED ORDER AMENDMENT #2

MAY 22, 2023

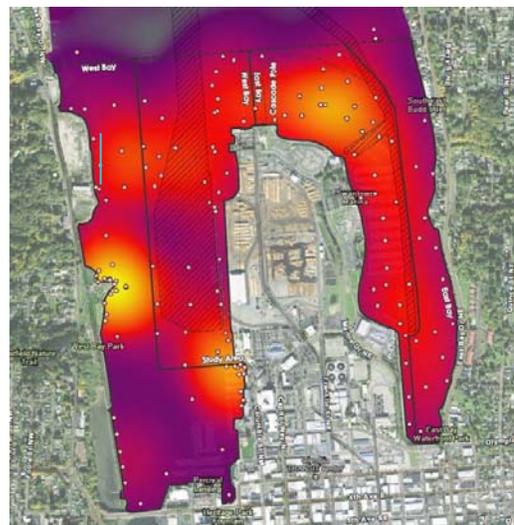
LISA PARKS, EXECUTIVE SERVICES DIRECTOR
 MAIA BELLON, CASCADIA LAW GROUP

1

MTCA Overview

Model Toxics Control Act (MTCA)

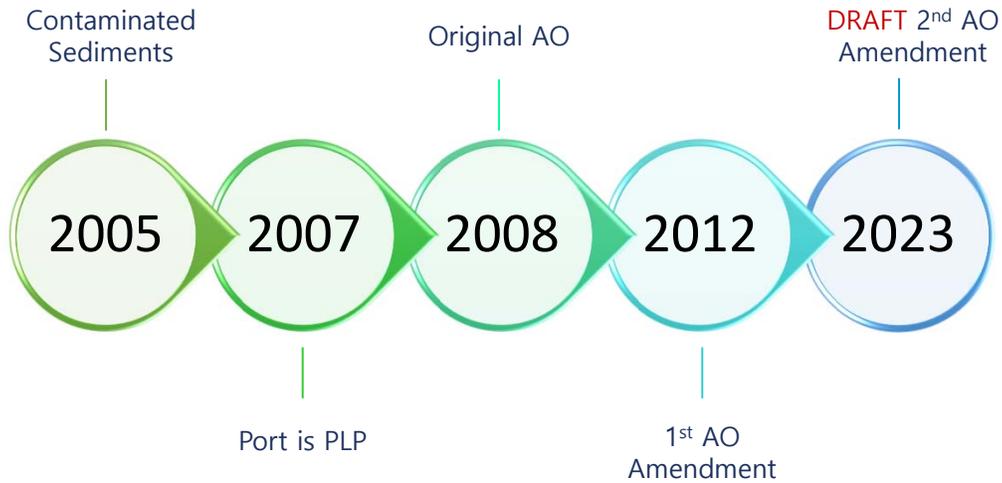
- Investigate & cleanup contaminated sites
- Obligate owners/operators to complete cleanup
 - Potentially Liable Party (PLP)
 - Agreed Orders (AO)
 - Enforcement Orders/Violations
- Provides grant funds
 - Remedial Action Grant (RAG) Program



2

2

Background: Budd Inlet Sediment Site



3



3

Proposed AO Amendment #2

- Task 5A: Finalize Interim Action Plan
- Task 6: Ongoing progress reporting (no change)
- Task 7 Pre-Design Data Gaps Report
- Task 8 Pre-Design Field Investigation to address data gaps
- Task 9 Pre-Design data Report
- Task 10 Remedial Design

4



4

Suggested Motion

"...move to authorize the Executive Director to sign the Second Amendment to Agreed Order No. DE 6083 between the Port of Olympia and the Washington State Department of Ecology, as presented."

5



5

In the Matter of Remedial Action by:

Port of Olympia

SECOND AMENDMENT
TO AGREED ORDER

No. DE 6083

TO: Port of Olympia
Attn: Sam Gibboney
Executive Director
915 Washington St NE
Olympia, WA 98501

I. INTRODUCTION

Agreed Order No. DE 6083 (Order), entered into by the State of Washington, Department of Ecology (Ecology) and the Port of Olympia (Port) on December 5, 2008, requires the Port to perform remedial actions in response to releases of hazardous substances at the Budd Inlet Sediments Site (Site). The Order required the Port to complete an Interim Action to remove contaminated sediment from portions of the berth area in the West Bay of Budd Inlet, and to conduct a pilot study assessment of the characteristics of the in-place sediment and analysis of the benefits of proposed dredging technologies for future cleanup of Budd Inlet. On February 15, 2012, the First Amendment to the Order was entered into by Ecology and the Port, and required the Port to investigate the nature and extent of contamination in a portion of the Site referred to as the Study Area, investigate potential sources of contamination to sediments near the Port's peninsula in Budd Inlet, prepare an Investigation Report, identify and analyze remedial action alternatives to address sediments containing contaminants above applicable cleanup levels in the Study Area, and prepare a draft Interim Action Plan to address sediment contamination in the Study Area within the Site.

Ecology and the Port hereby agree to a Second Amendment of the Order. Under this Second Amendment to the Order, the Port will prepare public review draft and final versions of the Interim Action Plan, prepare a pre-remedial design data gaps memorandum and investigation work plan, perform the pre-remedial design investigation described in the work plan, prepare a pre-remedial design data report, and prepare engineering design and permitting documents for the interim action.

This Amendment does not attempt to recite all provisions of the Order. Provisions of the Order not specifically addressed in this Amendment remain in full force and effect. Format and section numbering of the Order have been maintained to the extent possible.

II. JURISDICTION

This Second Amendment to Agreed Order No. DE 6083 is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70A.305.050(1).

III. AMENDMENT

Agreed Order No. DE 6083, Section VII, WORK TO BE PERFORMED, is amended to revise the following:

E.3. Subsection E.3. in Amendment 1 is deleted and replaced with the following: The Port shall prepare a public review draft and final Interim Action Plans for the Study Area as detailed in Task 5A of the Interim Action Plan and Design Scope of Work (Exhibit I) and in accordance with the Amended Schedule of Work and Deliverables (Exhibit J). The proposed interim action plan shall not foreclose reasonable alternatives for the ultimate cleanup action for the site as a whole and shall meet the minimum requirements found in WAC 173-204-570. Construction of the interim action is not a part of this amendment. Ecology and the Port intend to negotiate an amendment to Agreed Order DE 6083 or a subsequent agreed order for construction of the interim action.

Agreed Order No. DE 6083, Section VII, WORK TO BE PERFORMED, is amended to add the following:

E.5. The Port is required to prepare a pre-remedial design data gaps memorandum, pre-remedial design investigation work plan, pre-remedial design investigation and report, and interim action remedial design and permitting as detailed in Tasks 7 through 10 of the Interim Action Plan and Design Scope of Work (Exhibit I) in accordance with the Amended Schedule of Work and Deliverables (Exhibit J).

Agreed Order No. DE 6083, Section VIII, TERMS AND CONDITIONS OF ORDER, H. Public Participation, is amended to add the following:

RCW 70A.305.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing this public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

Effective date of this Second Amendment to Agreed Order No. DE 6083:

PORT OF OLYMPIA

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Sam Gibboney
Executive Director
Port of Olympia
360-528-8000

Rebecca S. Lawson, PE, LHG
Section Manager
Toxics Cleanup Program
Southwest Region Office
360-407-6241

Dated: _____

Dated: _____

DRAFT

EXHIBIT I
INTERIM ACTION PLAN AND DESIGN SCOPE OF WORK

The scope of work under the Second Amendment to Agreed Order No. DE 6083 includes a public review draft and final Interim Action Plans, pre-remedial design data gaps memorandum, pre-remedial design investigation work plan, data gaps investigation, pre-remedial design investigation report, and engineering design and permitting for the Study Area. The Port shall coordinate with Ecology throughout the tasks, and keep Ecology informed of changes to the work plan and of any issues or problems as they develop. Changes to the work plan will be addressed in accordance with Section VIII.L of the Order. Tasks completed for this scope of work will meet the requirements of the Model Toxics Control Act Regulation and Statute, WAC 173-340 and RCW 70A.305, and the Sediment Management Standards, WAC 173-204. For each version of each deliverable identified in this scope of work, the Port shall submit to Ecology one (1) hard copy, plus one electronic copy each in Word (.docx) and Adobe (.pdf) formats. Up to five (5) additional hard copies of deliverables may be required for public comment periods and document repositories.

TASK 5A: PUBLIC REVIEW DRAFT AND FINAL INTERIM ACTION PLANS

Following preparation and submittal of the draft Interim Action Plan described in the First Amendment to Agreed Order DE 6083, Exhibit G, Task 5, the Port shall prepare the public review draft Interim Action Plan by revising the plan to address Ecology's comments on the draft Interim Action Plan. Ecology will provide public notice and opportunity to comment on the public review draft Interim Action Plan in accordance with WAC 173-340-600(16). The Port shall assist Ecology, as requested, to comply with State Environmental Policy Act (SEPA) Rules, such as by preparing draft SEPA environmental checklists. The Port shall assist Ecology, as requested, with coordinating SEPA public involvement requirements, or with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently. After a public notice and comment period for the public review draft Interim Action Plan, the Port will incorporate any final changes provided by Ecology, and Ecology will approve the Interim Action Plan (if appropriate) and the document will be considered Final. Amended Schedule of Work and Deliverables (Exhibit J) specifies the required deliverables and the schedule by which they must be submitted.

TASK 7: PRE-REMEDIAL DESIGN DATA GAPS MEMORANDUM

A Pre-Remedial Design Data Gaps Memorandum (PRD Memo) will be prepared to present data gaps primarily focused on remedial dredging within the navigational areas (channels, marinas, and adjacent areas). The PRD Memo will present compiled existing data and a summary of data needs for design of dredging and dredging-related portions of the remedial action and be consistent with the Identification and Evaluation of Interim Action Alternatives Memorandum, including source control and remedy protection. In addition, the PRD Memo will address dredged

material management considerations including data that will support evaluations of sediment reuse and disposal options. The PRD Memo will identify existing nearshore, shoreline, and overwater structures that could be impacted by an interim action and the data needed to evaluate remedial actions near these structures.

The Port will provide Ecology with a Draft Pre-Remedial Design Data Gaps Memorandum. After Ecology's comments have been incorporated into the Draft Pre-Remedial Design Data Gaps Memorandum, and Ecology reviews and approves the Pre-Remedial Design Investigation Data Gaps Memorandum, it will be considered the final Pre-Remedial Design Data Gaps Memorandum.

TASK 8: PRE-REMEDIAL DESIGN INVESTIGATION WORK PLAN

The Port will prepare a Pre-Remedial Design Data Gaps Work Plan (Work Plan) describing the field investigations to be performed, data use, data collection methodologies, schedule, and reporting requirements. The Work Plan shall be prepared in compliance with WAC 173-340-350 and WAC 173-204-550. The Work Plan will be focused on collection of data to fill data gaps identified in the PRD Memo.

The Work Plan will include the following supporting plans in compliance with WAC 173-340-820 and WAC 173-204-600, and the Sediment Cleanup User's Manual as applicable:

- Sampling and Analysis Plan (SAP)
- Quality Assurance Project Plan (QAPP)
- Health and Safety Plan (HASP)
- Inadvertent Discovery Plan (IDP)

The Port will provide Ecology with a Draft Pre-Remedial Design Investigation Work Plan. After Ecology's comments have been incorporated into the Draft Pre-Remedial Design Investigation Work Plan, the Port will submit the Pre-Remedial Design Investigation Work Plan. Once Ecology reviews and approves the Work Plan, it will be the final Work Plan. The Work Plan shall not be implemented until approved by Ecology.

TASK 9: PRE-REMEDIAL DESIGN INVESTIGATION

Once approved by Ecology, the Port will implement the final Work Plan according to the schedule in Exhibit J. Field sampling and analysis shall be completed in general accordance with the SAP and QAPP. Deviations from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology.

Following field investigation and data analysis, the Port shall prepare a Pre-Remedial Design Investigation Report and submit it to Ecology for review and comment. The investigation report will present the data collected during the Pre-Remedial Design Field Investigation and identify if

there are additional data gaps that need to be addressed by another phase of pre-remedial design sampling. If further data gaps are identified by Ecology, Tasks 7 through 9 will be repeated until there is sufficient data. If future data gaps are identified by Ecology, they will be addressed through a schedule change.

Environmental data will be entered into Ecology's Environmental Information Management System (EIM).

The Port will provide Ecology with a Draft Pre-Remedial Design Investigation Report. After Ecology's comments have been incorporated into the Draft Pre-Remedial Design Investigation Report, the Port will submit the Pre-Remedial Design Investigation Report. Once Ecology reviews and approves the Pre-Remedial Design Investigation Report, it will be the final Pre-Remedial Design Investigation Report.

Electronic survey data for monitoring locations, electronic lab data, and GIS maps of contaminant distribution shall be provided, either in the report or as attachments. The Pre-Remedial Design Report will not be considered final until Ecology approves the report.

TASK 10: INTERIM ACTION REMEDIAL DESIGN AND PERMITTING

The Port shall prepare and submit for Ecology review and approval all documents necessary to complete the design and permitting of the interim action described in the Final Interim Action Plan (IAP), per WAC 173-340-400, including compliance monitoring per WAC 173-340-410 and WAC 173-204-560. The Amended Schedule of Work and Deliverables (Exhibit J) specifies the required deliverables and the schedule by which they must be submitted. The work to be performed includes the following:

A. Per WAC 173-340-400(4), preparation of a draft Engineering Design Report for Ecology review, followed by preparation of a final document addressing Ecology's review comments. The Engineering Design Report shall incorporate pre-remedial design findings, results of engineering evaluations required to complete the design, and requirements imposed by permitting agencies, to the extent those requirements are available.

B. Per WAC 173-340-400(4)(b), preparation of 60 percent complete Construction Plans and Specifications for Ecology review, followed by preparation of the 100 percent complete documents, each incorporating Ecology's review comments. The Construction Plans and Specifications shall be based on the EDR.

Sixty percent (60%) Construction Plans and Specifications also shall include a Construction Quality Assurance Plan and a Construction (Performance) Monitoring and Contingency Response Plan. One hundred percent (100%) Construction Plans and Specifications also shall include a Water Quality Monitoring Plan, a Health and Safety Plan, and other plans necessary to complete the work.

C. Preparation of Post-Construction Monitoring Plans per WAC 173-340-410 and WAC 173-204-560 to evaluate whether sources are being controlled, confirm interim action

construction requirements have been met, verify compliance with permit conditions or substantive requirements of applicable laws after construction, and confirm interim action standards have been met both immediately following construction and in the long term.

D. Preparation of permitting application documents from the appropriate permitting authorities, if both Ecology and the Port agree it is advisable to proceed with this aspect of the remedial action. The Port shall provide draft permitting documents to Ecology for review, followed by preparation of final permitting documents addressing Ecology's review comments.

DRAFT

EXHIBIT J
AMENDED SCHEDULE OF WORK AND DELIVERABLES

The following schedule of work and deliverables lists the schedule for Scope of Work tasks included in Exhibit I of the Second Amendment, and (as of the date of the Second Amendment) remaining tasks due from the First Amendment Exhibit G, Scope of Work. Where there is a conflict, this Schedule replaces the First Amendment Exhibit H, Schedule of Deliverables.

For each version of each deliverable identified in this scope of work, the Port shall submit to Ecology one (1) hard copy, plus one electronic copy each in Word (.docx) and Adobe (.pdf) formats. Up to five (5) additional hard copies of deliverables may be required for public comment periods and document repositories. Completion times listed below are calendar days. Any deadline that falls on a holiday or weekend shall be extended to the next business day. Ecology shall endeavor to provide comments within 60 days of receipt of a formal deliverable for review. If unanticipated conditions or changed circumstances are discovered that could result in a schedule delay, the Port will notify Ecology. Ecology will determine if a schedule extension is warranted in accordance with the provisions of the Agreed Order, Section VIII.K. (Extension of Schedule).

Task	Work or Deliverable	Schedule
4	Draft Identification and Evaluation of Interim Action Alternatives Memorandum	On or before May 1, 2023
	Final Identification and Evaluation of Interim Action Alternatives Memorandum	90 calendar days from receipt of Ecology's final comments on the Draft Identification and Evaluation of Interim Action Alternatives Memorandum
5	Draft Interim Action Plan	75 calendar days from receipt of Ecology's approval of the Final Identification and Evaluation of Interim Action Alternatives Memorandum
5A	Public Review Draft Interim Action Plan	60 calendar days following receipt of Ecology's final comments on the Draft Interim Action Plan
	Final Interim Action Plan	30 calendar days following receipt of Ecology's final comments on the Public Review Draft Interim Action Plan, which will

Task	Work or Deliverable	Schedule
		be provided following public notice of the plan
6	Progress Reports	15 th of every month until the Agreed Order is satisfied.
7	Draft Pre-Remedial Design Data Gaps Memorandum	60 calendar days following the effective date of Amendment 2 to Agreed Order DE 6083
	Final Pre-Remedial Design Data Gaps Memorandum	30 calendar days following receipt of Ecology's final comments on the Draft Pre-Remedial Design Data Gaps Memorandum
8	Draft Pre-Remedial Design Investigation Work Plan	30 calendar days following Ecology approval of the Final Pre-Remedial Design Data Gaps Memorandum
	Final Pre-Remedial Design Investigation Work Plan	30 calendar days following receipt of Ecology's final comments on the Draft Pre-Remedial Design Investigation Work Plan
9	Pre-Design Investigation Field Work	Begin within 90 days of completion of the Final Pre-Remedial Design Investigation Work Plan
	Draft Pre-Remedial Design Investigation Report and submittal of data to EIM	90 calendar days following receipt of all pre-validated laboratory data
	Final Pre-Remedial Design Investigation Report	60 calendar days following receipt of Ecology's comments on the Draft Pre-Remedial Design Investigation Report
10A	Agency Review Draft Engineering Design Report	Within 210 calendar days of completion of field investigations
	Public Review Draft Engineering Design Report	Within 90 calendar days of receipt of Ecology's comments on the Ecology Review Draft Engineering Design Report
	Final Engineering Design Report	Within 30 calendar days of receipt of issuance of Ecology comments on Public Review Draft Engineering Design Report
10B	60% Construction Plans and Specifications	Within 120 calendar days of receipt of Ecology comments on Public Review Draft

Task	Work or Deliverable	Schedule
		Engineering Design Report and resolution of substantive permit issues.
	<p>90% Construction Plans and Specifications</p> <p>Response to Ecology Comments on 60% detailing how comments will be addressed in 100% design</p>	Within 30 calendar days of receipt of Ecology comments on the 60% Construction Plans and Specifications
	100% Construction Plans and Specifications	Within 120 calendar days of receipt of Ecology comments on the 60% Construction Plans and Specifications
10C	Post-Construction Monitoring Plans	Concurrent with submittal of the Agency Review Draft Engineering Design Report
10D	Permitting application documents	Concurrent with submittal of the Agency Review Draft Engineering Design Report

DRAFT

COVER MEMO

Briefing Date/Time: May 22, 2023

Staff Contact/Title: Rudy Rudolph, Operations Director, 360.584-4126,
rudyr@portolympia.com

Subject: LOTT Purchase & Sale Agreement

Purpose: Information Only Decision Needed

Background/Overview:

The Port and LOTT executed a Memorandum of Understanding (MOU) on December 13, 2021, to evaluate a Purchase and Sale Agreement (PSA) for two parcels known as 620 and 608 Washington St. NE, Olympia.

LOTT identified the specific parcels as an essential expansion location adjacent to the Budd Inlet Treatment Plant. The Port recognizes that LOTT provides essential public services.

The MOU also identified certain mutual conditions which included a survey and an appraisal to define an acceptable sale price. Following negotiations, the Port and LOTT propose to move forward with a PSA for only one of the parcels (608). The appraised value \$1,130,000.

The parcel is to be used solely for construction and operation of wastewater facilities and related infrastructure meeting LOTT's mission. The purchase and sale agreement would include use restrictions and an option for the Port to buy back the land if proposed for other purposes, not needed by LOTT, or if the intended improvements are not completed by year 2032.

In addition, the Port would have access and use of the parcel in a separate leaseback agreement for the needs of the Port for a period up to 5 years.

Having an acceptable sale price, defined legal description, a survey of the 608 Washington St NE parcel, and agreeing to the conditions and restriction for its use, Port and LOTT concur to move forward to execute the PSA subject to respective boards' approval.

Consistent with RCW's 53.08.090 and 53.20.020, the Port has completed the Commission action procedures to declare property surplus to Port District needs,

amend the Comprehensive Scheme of Harbor Improvements (CSHI) to delete the property and allow for this negotiated transfer.



Terms Summary

- Location: Thurston County Tax Parcel #78509600000
- Buyer: LOTT Clean Water Alliance
- Purchase Price: \$1,130,000
- Valuation: Appraisal
- Payment Date: Closing
- Conditions: As Is, Where IS, and With all Faults
Lease Back Agreement

Documents Attached:

PPT, Final Purchase & Sale Agreement

Summary & Financial Impact:

Proceeds Subject to Real Estate Reinvestment Policy

Affected Parties:

Port / LOTT

Options with Pros & Cons:

Sale in the Public Interest

Staff Recommendation:

Port Commission Approval

Surplus Property Sale

May 22, 2023
Rudy Rudolph, AAE
Operations Director

1

Background

History

- LOTT provides essential public services
- Port and LOTT executed MOU December 13, 2021
- Evaluated the purchase two Port parcels
- Survey and appraisal completed
- Decision to proceed with purchase of one parcel
- Contingent on surplus property resolution
- Port Commission Advisory 4/24/23

2

2

Background

Location



3

3

Requirements

RCW 53.08.090 & RCW 53.20.020

- Property disposal by Commission Resolution
- Port Commission action May 8, 2023



4

4

Schedule

Action Items

- | | |
|---|----------|
| • Appraisal | Complete |
| • Draft final Purchase and Sale Agreement | Complete |
| • Commission Advisory | Complete |
| • Commission action on surplus property | Complete |
| • Commission Action PSA | 5/22/23 |

5



5

Term Sheet

608 Washington Street Property

- | | |
|-------------------|--|
| • Location: | Thurston County Tax Parcel #78509600000 |
| • Buyer: | LOTT Clean Water Alliance |
| • Purchase Price: | \$1,130,000 |
| • Valuation: | Appraisal |
| • Payment Date: | Closing |
| • RFR: | Port Retains Right of First Refusal Through 2032 |
| • Conditions: | As Is, Where Is, and With All Faults
Lease Back Agreement |

6



6

Proposed Motion

Subject to CSHI Action

.....move to authorize the Executive Director to execute the Purchase and Sale Agreement with the LOTT Clean Air Alliance for Designated Port Surplus Property, Thurston County Tax Parcel # 78509600000 (Located at 608 Washington Street NE, Olympia, WA) in the amount of \$1,130,000.

7



7

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase And Sale Agreement ("Agreement") is made and entered into this ___ day of _____, 2023, by and between the PORT OF OLYMPIA, a Washington port district ("Seller"), and the LOTT CLEAN WATER ALLIANCE, a Washington nonprofit corporation ("Buyer"). Seller and Buyer are collectively referred to as the "Parties".

WHEREAS, Seller is the owner of certain real property located in Olympia, Thurston County, Washington, generally depicted in Exhibit A and legally described in Exhibit A-1; and

WHEREAS, Buyer wishes to purchase from Seller, and Seller wishes to sell to Buyer, upon the terms and conditions set forth herein, the Property (as defined in Section 1 below);

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement, and the mutual promises and covenants herein, the Parties hereby agree as follows:

1. PROPERTY

1.1. Property Description. The Property consists of parcel #78509600000 located at 608 Washington Street NE, Olympia, as depicted in Exhibit A hereto, hereinafter referred to as the "Property". Seller shall sell and convey the Property to Buyer, and Buyer shall purchase and acquire the Property from Seller, upon and subject to the terms and conditions set forth in this Agreement.

1.2. Obligations of Seller regarding Property prior to Closing.

1.2.1 Within fifteen (15) days of mutual acceptance of this Agreement, Seller shall inform Buyer of all tenancies affecting the property, including their type of use and duration of use/lease.

1.2.3 Seller shall notify all tenancies affecting the Property of sale pursuant to a mutually agreed upon notice form. The notice will notify tenants of any material impacts or changes the tenant might experience in the duration of their respective existing use as a result of the sale.

1.3 Leaseback.

1.3.1 Buyer agrees to lease the Property back to Seller after closing for nominal consideration for an initial lease period of three (3) years, with two (2) one-year options to extend, the combined initial lease period not to exceed 5 years, and Seller agrees during the lease term to maintain the Property, all in accordance with the terms of the attached Leaseback Agreement, attached hereto as Exhibit B and incorporated herein by this reference.

2. PURCHASE PRICE. The Purchase Price to be paid by Buyer to Seller for the Property shall be One Million One Hundred Thirty Thousand Dollars (\$1,130,000.00).

3. FUNDS TO BE PAID AT CLOSING. At Closing, the entire amount of the Purchase Price shall be paid by Buyer to Escrow Agent in a form of payment recognized by Escrow Agent as immediately available funds, subject, however, to the closing adjustments, prorations, and other provisions set forth in this agreement.

4. CONDITIONS TO PURCHASE AND SALE.

4.1 Title Matters.

4.1.1 Title Binder. Within ten (10) business days from the execution of this Agreement by Buyer and Seller, Buyer may obtain a title insurance policy commitment issued by Thurston County Title Insurance Company (the "Title Company"), or such other Title Company that the Parties may agree to in writing, describing the Property, showing all matters pertaining to the Property, listing Buyer as the prospective named insured, and showing as the policy amount the total Property value without any deduction for credits. At the same time, the Title Company shall deliver to Buyer true, correct, and legible copies of all instruments referred to in such title commitment as affecting title to the Property. Such title insurance policy commitment and instruments affecting title are herein collectively referred to as the "Title Binder".

4.1.2 Title Objections. Buyer shall have twenty (20) business days after Buyer's receipt of the Title Binder as to exceptions contained in such Title Binder, and twenty (20) business days after Buyer's receipt of any supplemental report as to exceptions contained in such supplemental report to disapprove any such exceptions other than Permitted Exceptions (defined below), in Buyer's sole and absolute discretion. If Buyer fails to give Seller notice of its disapproval of any exception (including any exception noted in the Title Binder as an exception to be deleted at or prior to Closing upon the occurrence of certain specified events) within such period, then Buyer shall be deemed to have approved such exception (except for monetary liens attributable to Seller, which Seller shall pay or cause to be satisfied at or prior to Closing).

4.1.3 Action on Objections. If Buyer disapproves any exception (other than a Permitted Exception) appearing in the Title Binder or any supplemental report, then Seller shall have thirty (30) days after receipt of Buyer's notice to notify Buyer, in writing, of its agreement to cure or remove any of the disapproved exceptions. Seller's failure to notify Buyer that it will cure or remove a particular exception shall be deemed to constitute notice by Seller that it will not cure or remove that exception. Seller shall remove or cure by Closing those exceptions that Seller has agreed to remove or cure. If Seller notifies or is deemed to have notified Buyer that it will not cure or remove any exception disapproved by Buyer, Buyer shall have thirty (30) days from the date of such notification to notify Seller, in writing, whether Buyer in its sole discretion will waive such objections and close the transaction or terminate this Agreement. Buyer's failure to give such notice shall constitute Buyer's election to waive its objections and close the transaction. In that event, the disapproved exceptions shall become Permitted Exceptions. If Buyer elects to terminate this Agreement, then Escrow Agent shall immediately return the entire amount of the Earnest Money Deposit and any accrued interest to Buyer, Seller shall pay any cancellation fee or other cost of the Title Company and Escrow Agent, and this Agreement and all rights and obligations of the parties under this Agreement shall terminate, except for such obligations as expressly survive any termination of this Agreement. Notwithstanding anything to the contrary contained herein, a lien, encumbrance, or other exception to title representing a security interest relating to an obligation to pay money and attributable to Seller shall be deemed disapproved and shall be removed by Seller at or before Closing.

4.1.4 Title Policy. At Closing, Buyer may request the Title Company to issue to Buyer an ALTA standard or extended coverage owner's policy of title insurance, in Buyer's discretion, in the

amount of the Purchase Price, without any deduction for credits, insuring Buyer against loss or damage arising from defects in title to the Property other than Permitted Exceptions (the "Title Policy"). The policy shall contain such endorsements as may be reasonably requested by Buyer. The cost of such policy shall be paid by Buyer, together with the cost of a survey or an update of any existing survey, if such is required in order to obtain the extended owner's coverage. Buyer will also pay for the cost of any endorsements requested by Buyer. If at Closing the Title Company will not insure the title as provided above, Buyer may either proceed to close despite the lack of required insurance or terminate this Agreement. If Buyer terminates this Agreement, then Escrow Agent shall immediately return the Earnest Money Deposit to Buyer, Seller shall pay any cancellation fee or other cost of the Title Company, and this Agreement and all rights and obligations of the parties thereunder shall terminate, except for such obligations as expressly survive any termination of this Agreement.

4.1.5 Permitted Exceptions. As used herein, the term "Permitted Exceptions" means: (i) all existing building and use restrictions, easements, rights of way, reservations, conditions, covenants, and restrictions presently of record or general to the area; (ii) all building and zoning ordinances, laws, regulations, and restrictions of any municipal or other governmental authority applicable to the Property; (iii) all easements, encroachments, and other encumbrances that do not materially affect the value of the Property or unduly interfere with Buyer's reasonable use of the Property; (iv) all taxes and special assessments which are a lien but which are not yet due and payable or for which statements have not yet been tendered; (v) all matters created by Buyer; (vi) all other matters contained in the preprinted exceptions for a standard owner's policy of title insurance contained in the Title Binder; and (vii) all exceptions which have been approved by Buyer or which Buyer is deemed to have approved as provided in this Agreement.

4.2 Buyer's Feasibility Contingency. Buyer's obligation to purchase the Property is subject to and contingent on the satisfaction or waiver, within the applicable contingency period outlined below, of the following conditions:

4.2.1 Documents from Seller. Within fifteen (15) days of mutual acceptance of this Agreement, Seller agrees to provide Buyer with access to all documents regarding the Property in the possession or control of Seller, including but not limited to all environmental reports, inspection reports, related lease agreements, surveys, engineering reports and analyses, and other documents in the possession or control of Seller relating to the Property, excluding statements of value and attorney-client privileged information. Seller will make copies of such documents as Buyer may request and Buyer shall pay for the cost of such copies. Buyer shall use the documents and information obtained from Seller only for purposes of analyzing whether it will complete the purchase of the Property and shall not disclose the contents thereof to any person other than its employees, attorneys, accountants, consultants, agents and representatives who are assisting Buyer in evaluating the Property, unless required by law. Seller represents and warrants to Buyer that to the best of its knowledge, the information provided is true, accurate and complete. Upon termination of this Agreement, Buyer shall return all copies of Seller's documents to Seller, upon Seller's written request, except such copies as Buyer is required to retain pursuant to any applicable law.

4.2.2 Review of Property and Related Matters by Buyer. Buyer shall have until thirty (30) days from the date documents are due from Seller pursuant to paragraph 4.2.1 herein, as the "Feasibility Contingency Period", in which to investigate and review the Property and all matters relating thereto and to determine, in Buyer's sole and absolute discretion, whether to proceed with this transaction. Buyer's investigation and review may include, but is not limited to, the review of all existing surveys, reports, studies, and other written materials regarding the Property; the conducting of surveys, toxic and hazardous waste studies, engineering, electrical, mechanical, historical use, structural, geologic, hydrologic, and other studies, and physical inspections, soils sampling and/or tests (including borings) with respect to the Property; the investigation and review of endangered species, habitat, wetlands, zoning, and other laws, ordinances, codes, covenants, and/or restrictions affecting the Property; and the review of the requirements and conditions of governmental bodies with jurisdiction over the Property, the restrictions, if any, to demolishing any existing improvements on the Property, the certificates, licenses, and permits existing with respect to the Property and the likelihood and anticipated cost of obtaining additional certificates, licenses, and permits that Buyer desires to obtain with respect thereto, the availability and access to public roads, the availability of utilities and sewer capacity, the potential opportunity to acquire additional property adjacent to or contiguous with the Property, the leases and other agreements affecting the Property, the past performance of the Property and the potential future performance of the Property, the potential to finance the Property and/or the development thereof in a manner satisfactory to Buyer, in all respects, and the feasibility of Buyer's planned use of the Property. All reviews, investigations, inspections, and studies made by Buyer shall be at Buyer's sole cost and expense. All investigations of the physical condition of the Property shall be pursuant to the license provision, Section 5, or other agreement between Seller and Buyer. If Buyer terminates this Agreement as provided elsewhere herein, then the results of all tests, surveys, reviews, investigations, inspections, and studies of the Property made by or for Buyer, and all reports and other documents relating thereto, except internal reports and strategic analyses prepared by or for Buyer, shall be made available to Seller upon Seller's written request at no cost to Seller.

4.2.3 Extension of Feasibility Period. If Buyer has made a good faith and diligent effort to complete its feasibility investigation within the initial Feasibility Contingency Period but is unable to do so, then Buyer may request an extension of the Feasibility Contingency Period by up to an additional 90 days if necessary to complete its feasibility investigation, and Seller shall not unreasonably withhold its consent to such an extension.

4.2.4 Buyer's Right to Terminate. If Buyer does not approve the results of its investigation and review of the Property and all matters relating thereto, and/or Buyer decides not to proceed with this transaction, then Buyer may terminate this Agreement by giving a written notice to Seller and Escrow Agent stating Buyer's disapproval and/or intent to terminate this Agreement ("Feasibility Termination Notice"). Buyer's failure to give written notice of its dissatisfaction with the results of its investigation and review prior to the expiration of the Feasibility Contingency Period shall be deemed to constitute a waiver of the Feasibility Contingency. Unless prior to the expiration of the Feasibility Contingency Period, Buyer has given Seller notice of waiver or

satisfaction of the Feasibility Contingency and a written statement that it will proceed to Closing, then this Agreement will terminate at the expiration of the Feasibility Contingency, as the same may be extended, and thereafter, neither Buyer nor Seller shall have any further liability to the other under this Agreement, except for such obligations as expressly survive any termination of this Agreement.

4.3 Buyer's Closing Conditions. Buyer's obligation to purchase the Property is subject to and contingent upon the satisfaction or waiver, as of Closing, of the following conditions:

4.3.1 At the time of Closing, Seller shall have notified all tenancies affecting the Property and Buyer and Seller will establish terms for Seller leasing of Property to meet obligations to existing tenants for an initial period not to exceed 5 years following closing.

4.3.2 Seller shall have performed all other obligations to be performed by Seller hereunder and under escrow on or before the Closing Date (or, if earlier, on or before the date set forth in this Agreement for such performance).

4.3.3 At the time of Closing, Seller shall deliver title to the Property in the form of a statutory warranty deed, conveying fee simple title to the Property in the condition specified in Section 4.1 of this Agreement, subject to the Permitted Exceptions, and the Title Company shall deliver the Standard Owner's A.L.T.A. Title Policy specified in Section 4.1 of this Agreement, or an Extended Title Policy if requested by Buyer, and Seller shall deliver the Affidavit specified in Section 10.2.2 of this Agreement.

4.3.4 At the time of Closing, the condition of the Property shall be substantially the same as it was on the effective date of this Agreement, except for the effects of ordinary wear and tear and completion of actions taken by either party in accordance with this Agreement.

4.4 Parties' Closing Conditions Concerning Governing Body Approval/Necessary Actions. The Parties' obligations for the purchase and sale of the Property under this Agreement are subject to and contingent on the following conditions being satisfied prior to Closing:

4.4.1 The approval of this Agreement and all terms of this transaction by the Port of Olympia Commission prior to Closing.

4.4.2 The Port of Olympia Commission declaring the Property to be surplus and amending the Port's comprehensive plan if necessary to permit the sale of the Property in open public meeting prior to Closing.

4.4.3 The successful completion of all appropriate environmental review processes necessary for the sale of the Property by the Port of Olympia, including any appeals, prior to Closing.

4.4.4 The approval of this Agreement and all terms of this transaction by the LOTT Clean Water Alliance Board of Directors in open public meeting prior to Closing.

4.5 Right of First Refusal. If Buyer determines at any time prior to December 31, 2032, that the Property should be sold, the Port shall have a Right of First Refusal (ROFR) on any sales offer that comes into Buyer from a bonafide arms-length third party purchaser. The ROFR shall be exercisable as to the offer exactly as it was presented to Buyer. The Buyer shall notify the Seller of the offer and provide Buyer with the material terms of the offer, and Seller shall have ten (10) days to accept or reject the opportunity to purchase and close on the sale of the property on the same terms as those presented by the third-party offeror, provided that in any event, any such sale shall close within one hundred eighty (180) days of mutual acceptance of the sales offer, notwithstanding anything to the contrary set forth in the offer.

4.6 Deed. The deed to be delivered by Seller at Closing shall contain the ROFR in accordance with Section 4.5 above.

4.7 Obligations of Parties Post-Closing. As additional consideration for this Agreement, unless this Agreement is terminated by either party prior to Closing in accordance with this Agreement, Buyer and Seller shall have the following obligations post-Closing, which obligations shall survive Closing and shall not be merged into the Deed.

4.7.1 Access to Property. After Closing, Seller shall have the right to access the Property and perform such maintenance as necessary to meet their obligations to tenant parking for the agreed upon time period not to exceed five years from Closing. Seller will coordinate such actions with Buyer and will use reasonable efforts to minimize disruption to any improvements or interference with any activities on the Property.

5. BUYER'S LICENSE TO ENTER PROPERTY.

5.1 License to Enter Property. From the date of this Agreement through the end of the Feasibility Contingency Period or earlier termination of this Agreement, Buyer and its contractors, agents, servants, employees, and licensees shall have the right and permission to enter upon the Property or any part thereof at all reasonable times after notice to Seller, without materially interfering with the use of the Property by Seller or any other person rightfully in possession of the Property, for the purpose of making any and all soil tests, surveys, and such other studies and investigations of the Property as Buyer may desire to make, all at Buyer's sole cost and expense. Provided, however, that Buyer shall not conduct any sampling, boring, or other investigation of the soil or groundwater on the Property without first providing a work plan for such investigation to Seller and obtaining Seller's prior written consent to such work plan, which consent will not be unreasonably withheld, conditioned, or delayed, and provided further that all work conducted by Buyer on the Property shall be strictly in accordance with any work plan approved by Seller.

5.2 Insurance. Before entering the Property and thereafter for the duration of this Agreement, Buyer at its sole cost and expense shall procure and maintain liability coverage valid in the State of Washington reasonably acceptable to Seller, protecting Buyer against loss or liability caused by or in connection with the performance of this Agreement by Buyer, its agents, servants, employees,

invitees, guests, contractors or subcontractors, in types and amounts not less than: (i) a Commercial General Liability coverage or equivalent, with a minimum combined single limit of One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) aggregate, for Bodily Injury, Personal Injury, and Property Damage; and (ii) Workers' Compensation Insurance as required by law. Buyer shall deliver to Seller documentation satisfactory to Seller evidencing the existence of coverage. Buyer agrees that coverage will not be canceled or materially changed without thirty (30) days' advance written notice to Seller.

5.3 Restoration of Property. If Buyer does not close the purchase of the Property, then Buyer shall, as soon as possible and in any event within sixty (60) days from the termination of this Agreement, and at Buyer's sole cost and expense, repair any damage to the Property caused by Buyer or its agents, employees or contractors, and restore the Property to the same physical condition it was in immediately prior to the time Buyer and its agents, employees, or contractors entered on the Property. If Buyer fails to so restore the Property, then Seller may perform the restoration work and Buyer shall reimburse Seller for the reasonable third-party cost thereof within thirty (30) days after Seller's delivery of a bill for such costs to Buyer.

5.4 Indemnification. Buyer shall defend, indemnify and hold harmless Seller from and against any mechanic's or other liens, and any other claims or encumbrances, that may be filed or asserted against the Property or Seller arising out of or related to any actions of Buyer or Buyer's contractors, agents, servants, employees, or licensees in connection with Buyer's license to enter the Property. In addition, to the fullest extent it may lawfully do so, Buyer shall defend, indemnify and hold harmless Seller, its commissioners, members, directors, officers, agents, servants and employees, from and against any and all liability, loss, costs, and expense of whatsoever nature growing out of property damage, personal injury to, or death of, persons whomsoever, where such property damage, personal injury, death, loss, destruction or damage arises from the occupation or use of the Property by, or the presence thereon of, Buyer or Buyer's contractors, agents, servants, employees, or licensees prior to Closing.

5.5 Survival of Buyer's Obligations. Notwithstanding anything in this Agreement to the contrary, the obligations of Buyer in this Section 5 shall survive any termination or Closing of this Agreement.

6. "AS IS" PURCHASE.

Except as otherwise expressly provided in this Agreement, Buyer agrees that the Property is being sold to and purchased by Buyer "AS IS, WHERE IS, AND WITH ALL FAULTS", and Seller hereby disclaims any and all warranties, and makes no representations or warranties to Buyer of any kind, express or implied, regarding the Property, including, without limitation, the physical or environmental condition, habitability, or suitability for any particular purpose of the Property or any improvements or personal property located thereon. Buyer acknowledges, covenants, represents, and warrants that: (i) Buyer has inspected or will inspect the Property, the improvements thereon, if any, and all matters relating thereto which Buyer desires; (ii) except as otherwise expressly provided in this Agreement, neither Seller nor anyone on Seller's behalf has made or is making any representations or warranties with respect to the Property, and Seller expressly disclaims any representations or warranties concerning the accuracy or completeness of any of the disclosures

made to Buyer with respect to the Property; (iii) Buyer is relying solely on Buyer's own investigation of the Property and all matters pertaining thereto, including but not limited to the environmental condition of the Property; and (iv) except as otherwise expressly set forth in this Agreement, Buyer is purchasing the Property "AS IS, WHERE IS, AND WITH ALL FAULTS". Buyer further agrees that, notwithstanding anything in this Agreement to the contrary, in no event shall Seller be liable to Buyer for any special, indirect, incidental or consequential damages, including but not limited to claims for loss of use, rents, anticipated profit or business opportunity, business interruption, diminution in value, or mental or emotional distress or fear of injury or disease. This Section 6 shall survive closing.

7. ENVIRONMENTAL MATTERS.

7.1 Condition of Property. Seller and Buyer acknowledge that the Property and surrounding properties have been developed with buildings and/or other improvements and have been used for various commercial and industrial purposes for many years, and that portions of the Property and surrounding properties are or may be affected by releases or threatened releases of hazardous substances, as those terms are defined under applicable environmental laws, and that such area constitutes a "Facility" under RCW 70.1050.020(4). The boundaries of the Facility, as defined under applicable environmental laws, may include an area larger than the boundaries of the Property, and the boundaries of the Facility may change from time to time based on additional information obtained and activities undertaken with respect to the Facility. Existing site assessments and other environmental reports describe the known physical condition of the Property and surrounding properties. Further environmental investigations that may be conducted in the future may reveal additional releases or threatened releases of hazardous substances affecting the Property or surrounding properties. Subject to the provisions of Sections 7.2 and 7.3 below, Seller and Buyer shall cooperate regarding the remediation of the Property and surrounding properties, and the Parties' involvement with the Washington State Department of Ecology regarding such remediation.

7.2 Buyer's Indemnification of Seller. From and after Closing, Buyer shall assume all liability for the environmental conditions of the Property as of Closing, and Buyer shall release, defend, indemnify, and hold harmless Seller and Seller's officers, directors, commissioners, employees, and their successors and assigns from and against any and all claims, liabilities, losses, damages, costs, liens, causes of action, suits, demands, judgments, and expenses (including without limitation, court costs, attorneys' fees, and costs of investigation, removal, and remediation, and governmental oversight costs), arising out of or relating to the presence of any hazardous substances, as defined under applicable environmental laws, that (a) exist on the Property as of Closing, or (b) migrate from the Property at any time after Closing, or (c) originate from the Property or any other property owned by Buyer now or in the future at Buyer's Budd Inlet, Olympia, treatment plant, or (d) where Buyer's own act or omission is a legal cause of liability or damage to those to be indemnified, provided that Buyer's obligation to defend and indemnify under this part (d) shall be proportional to its share of fault for liability or damage legally caused to those to be indemnified; provided, however, that this indemnity shall not apply to third party personal injury claims based on contact with hazardous substances on the Property prior to Closing. The obligations of Buyer under this Section 7.2 shall survive indefinitely after Closing.

7.3 Seller's Indemnification of Buyer. From and after Closing, Seller shall defend, indemnify, and hold harmless Buyer and Buyer's officers, directors, commissioners, employees, and their successors and assigns from and against any and all claims, liabilities, losses, damages, costs, liens, causes of action, suits, demands, judgments, and expenses (including without limitation, court costs, attorneys' fees, and costs of investigation, removal, and remediation, and governmental oversight costs), arising out of or relating to the presence of any hazardous substances, as defined under applicable environmental laws, that exist on any part of the Facility other than the Property, except to the extent such hazardous substances are (a) caused by Buyer, or (b) migrated from the Property at any time after Closing, or (c) originate from the Property or any other property owned by Buyer now or in the future at Buyer's Budd Inlet, Olympia, treatment plant, or any other property owned or operated by Buyer at the time such migration occurred, or (d) where Buyer's own act or omission is a legal cause of liability or damage to those to be indemnified, provided that Buyer's obligation to defend and indemnify under this part (d) shall be proportional to its share of fault for liability or damage legally caused to those to be indemnified. The obligations of Seller under this Section 7.3 shall survive indefinitely after Closing.

8. REPRESENTATIONS AND WARRANTIES OF BUYER. Buyer hereby represents and warrants to Seller, which representations and warranties shall be deemed made by Buyer to Seller also as of the Closing Date, that:

8.1 Buyer has the power and authority to enter into this Agreement, and each individual executing this Agreement on behalf of Buyer has the full power and authority to enter into this Agreement and to perform on Buyer's behalf all of Buyer's obligations hereunder.

8.2 Except as provided in Section 4.4 above, no consent, approval, authorization, or order of, or registration or filing with, any court or governmental agency or body or other third party is required in connection with Buyer's execution and delivery of this Agreement or the performance by Buyer of its obligations hereunder.

8.3 The obligations of Buyer set forth in this Agreement are valid and binding obligations of Buyer, enforceable against Buyer in accordance with the provisions of this Agreement.

8.4 Neither execution or delivery of this Agreement, nor consummation of the transactions contemplated hereby, nor fulfillment of or compliance with the terms and conditions hereof, contravenes any provision of any law, rule, statute, or ordinance to which Buyer is subject, or conflicts with or results in a breach of, or constitutes a default under, any of the terms, conditions, or provisions of any agreement or instrument to which Buyer is a party.

9. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller hereby makes the following representations and warranties to Buyer, which representations and warranties shall also be deemed to be made by Seller to Buyer as of Closing:

9.1 Seller has the power and authority to enter into this Agreement, and each individual executing this Agreement on behalf of Seller has the full power and authority to enter into this Agreement and to perform on Seller's behalf all of Seller's obligations hereunder.

9.2 Except as provided in Section 4.4 above, no consent, approval, authorization, or order of, or registration or filing with, any court or governmental agency or body or other third party is required in connection with Seller's execution and delivery of this Agreement or the performance by Seller of its obligations hereunder.

9.3 The obligations of Seller set forth in this Agreement are valid and binding obligations of Seller, enforceable against Seller in accordance with the provisions of this Agreement.

9.4 Neither execution or delivery of this Agreement, nor consummation of the transactions contemplated hereby, nor fulfillment of or compliance with the terms and conditions hereof, contravenes any provision of any law, rule, statute, or ordinance to which Seller is subject, or conflicts with or results in a breach of, or constitutes a default under, any of the terms, conditions, or provisions of any agreement or instrument to which Seller is a party.

9.5 Seller is the sole legal fee owner of the Property and is not holding fee title as a nominee for any other person or entity. No person or entity other than Buyer has any right of first refusal or option to acquire any interest in the Property or any part thereof, and Seller has not sold or contracted to sell the Property or any portion thereof or interest therein other than as set forth herein.

9.6 Except as expressly set forth in this Agreement, Seller makes no representations or warranties regarding the Property or any improvements, including without limitation any warranties with respect to condition or suitability for a particular purpose.

10. ESCROW.

10.1 Opening of Escrow. Upon execution of this Agreement by Buyer and Seller, Buyer shall open escrow with Thurston County Title Insurance Company in Olympia, Washington ("Escrow Agent"), by depositing with Escrow Agent a copy of this Agreement. This Agreement shall become a part of the escrow and shall constitute the basic instructions of Buyer and Seller to Escrow Agent. However, Buyer and Seller agree to execute such additional instructions and documents as are reasonably required to complete the closing of the sale of the Property in accordance with the terms and conditions of this Agreement. In case of conflict, this Agreement shall control.

10.2 Deposits into Escrow. Buyer and Seller shall deposit into Escrow, on or before the Closing Date, all documents and funds necessary to carry out this Agreement, including the following:

10.2.1 Deposits by Buyer. Buyer shall deposit into Escrow: (i) Funds in a form acceptable to Escrow Agent equal to the Purchase Price, plus Buyer's share of escrow fees and related charges; and (ii) the exact vesting required by Buyer for title to the Property. Buyer shall also deposit into Escrow such other documents and funds as are reasonably required to close the sale of the Property pursuant to the terms of this Agreement.

10.2.2 Deposits by Seller. Seller shall deposit into Escrow: (i) a Statutory Warranty Deed, in proper form for recording, which shall be duly executed and acknowledged by Seller so as to convey to Buyer all of the Property in accordance with the terms of this Agreement; (ii) a Real Estate Excise Tax Affidavit, in proper form for submission to the Thurston County Auditor, and duly executed by Seller; and (iii) an affidavit executed by Seller to the effect that as of the Close of Escrow Seller is a "United States person" as that term is defined in Section 7701 (a)(30) of the Internal Revenue Code of 1986 as amended (the "Code"), and is not a foreign person as defined by the Code ("FIRPTA Affidavit"). Seller shall also deposit into Escrow such other documents and funds as are reasonably required to close the sale of the Property pursuant to the terms of this Agreement.

10.3 Prorations. The following items shall be prorated as follows:

10.3.1 Real and personal property taxes and assessments with respect to the Property, and any refunds thereof, which shall be prorated as of Closing.

10.3.2 Utility charges and assessments with respect to the Property, which shall be prorated as of Closing, but Buyer and Seller hereby waive the services of the Closing Agent in disbursing closing funds necessary to satisfy unpaid utility charges affecting the Property, pursuant to RCW 60.80.

10.3.3 All charges and payments made or received with respect to any contracts with respect to the Property which are assigned to and assumed by Buyer, which shall be prorated as of Closing.

10.4 Fees and Costs. Buyer and Seller shall pay their own respective fees and costs incurred with respect to this transaction including, without limitation, attorney fees. Notwithstanding the foregoing, Buyer shall pay at Closing the cost of recording the Deed, all escrow fees pertaining to this transaction, and all real estate excise taxes or similar charges incident to the conveyance of title to the Property to Buyer. Buyer shall also pay the cost of any standard or extended coverage ALTA owner's title insurance policy requested by Buyer, together with the cost of a survey or an update of the existing survey, if such is required in order to obtain the extended owner's coverage, and the cost of any endorsements requested by Buyer. Provided, however, that if escrow is terminated due to the failure of both parties to perform any of their respective material obligations, then the parties shall each pay one-half (1 /2) of the escrow fees charged, but if escrow is terminated due to the failure of only one party to perform any of its material obligations, then such defaulting party shall pay all escrow fees charged. Such payment shall not affect any other rights between the parties.

10.5 Closing Date. Provided that all conditions set forth in this Agreement have been fulfilled or waived, this transaction shall be closed at the offices of the Escrow Agent on a date to be selected by Buyer which shall be on or before: (i) thirty (30) days after the satisfaction or waiver of Buyer's Feasibility Contingency, or (ii) April 30, , 2023 (date), whichever is later (the "Closing Date"); provided, however, that the Parties may by mutual agreement select a Closing Date prior to April 30, 2023 (date); and provided further that Closing shall not be later than June 30, 2023 unless otherwise

mutually agreed to by the parties. This escrow may be extended only by a written extension agreed to and signed by both Buyer and Seller. If this transaction does not close by the Closing Date as provided herein or as subsequently agreed to by the parties in writing, then escrow shall be terminated. Notwithstanding anything to the contrary, if Seller requires additional time to complete actions required to be completed by Seller prior to Closing, then Closing shall be extended for a reasonable time to permit Seller to complete such actions and all other dates set forth herein shall adjust according to the same formula stated herein for each number of days necessary for completion by Seller, provided that Seller diligently pursues completion of such actions.

10.6 Closing. When all of the conditions and instructions provided for herein have been satisfied and complied with, and this transaction is ready to close, then Escrow Agent shall promptly close this transaction (the "Close of Escrow" or "Closing") and shall:

10.6.1 Record the original Statutory Warranty Deed for the Property;

10.6.2 Disburse funds on deposit in escrow to the appropriate persons in accordance with this Agreement and final settlement statements approved by the Parties;

10.6.3 Deliver the original title insurance policy to Buyer; and

10.6.4 Deliver copies of the recorded Deed, filed excise tax affidavit, final settlement statements, and all other documents included in the sale of the Property, to Buyer and to Seller.

11. GENERAL PROVISIONS.

11.1 No Agency or Partnership. Buyer and Seller agree that nothing herein shall be construed to create the relationship of principal and agent, joint venture, partnership, or any other form of legal association which would impose liability upon one party for the act or failure to act of another party.

11.2 Amendment or Modification. No amendment, modification, or change of this Agreement shall be valid unless made in writing and signed by the parties hereto.

11.3 Assignment. Buyer shall not assign, agree to assign, offer to assign, or solicit offers for, Buyer's interest in or rights to purchase the Property, without the prior written consent of Seller, in its sole and absolute discretion; provided, that upon notice to Seller, Buyer may assign its rights hereunder to a wholly-owned subsidiary, parent, or sister entity of Buyer.

11.4 Further Assurances. Each of the parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder in good faith, to carry out the intent of the parties herein.

11.5 Authority. Each of the signatories hereto hereby represents and warrants that they have the right, power, legal capacity, and authority to enter into this Agreement and to bind the entity they represent to this Agreement and the obligations hereunder.

11.6 Casualty or Condemnation. If on or after the date of this Agreement and prior to Closing any fire, windstorm, or other casualty occurs with respect to the Property or any part thereof, or any action is initiated by any governmental entity other than Buyer or Seller to acquire the Property or any part thereof by condemnation, and such casualty or condemnation has a material and substantial affect on the Property and on Buyer's proposed use of the Property, then Buyer may elect, by written notice to Seller prior to Closing, to terminate this Agreement and the escrow created pursuant hereto, and be relieved of its obligation to purchase the Property. If Buyer makes such election, then the entire Earnest Money Deposit and all interest earned thereon shall be disbursed by Escrow Agent to Buyer, and upon such disbursement neither Buyer nor Seller shall have any further liability to the other under this Agreement, except for such obligations as expressly survive termination of this Agreement. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect, and Seller shall, prior to the Closing Date, assign to Buyer, by an assignment in form and substance satisfactory to Buyer, its entire right, title, and interest in and to all insurance and condemnation claims and proceeds to which Seller may be entitled in connection with such casualty or condemnation. For purposes of this subsection, the term "material and substantial affect" shall mean one that would make the remaining or unaffected portion of the Property unsuitable or economically unfeasible for Buyer's intended use. Seller shall forthwith notify Buyer in writing of any casualty or condemnation affecting the Property. In the event of any condemnation (or deed in lieu thereof) that does not have a material and substantial affect, the Purchase Price shall be reduced pro rata based on the area of the Property so taken.

11.7 Commissions. Each party represents and warrants that it is not represented by any broker or agent in connection with any of the transactions contemplated by this Agreement, and that it has not dealt with any broker or other person to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement, and that insofar as it knows, no broker or other person is entitled to any commission, charge, or fee in connection with any of the transactions contemplated by this Agreement. Each party agrees to indemnify, defend, and hold harmless the other party against any loss, liability, damage, cost, claim, or expense, including interest, penalties, and reasonable attorney fees that the other party shall incur or suffer by reason of a breach by the first party of the representations and warranties set forth in the preceding sentence.

11.8 Counterparts. This Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one Agreement binding on the parties.

11.9 Default. In the event of a breach or default under this Agreement by Seller without any default by Buyer or failure of any condition to Seller's obligations hereunder, Buyer at its election may either (i) request specific performance, or (ii) terminate this Agreement. The foregoing shall be Buyer's sole and exclusive remedies for Seller's breach or default, other than breach or default of a post-Closing obligation. In the event of Buyer's breach of its obligation to purchase the Property pursuant to this Agreement without any default by Seller or failure of any condition to Buyer's obligations hereunder, Seller at its election may either (i) request specific performance, or (ii) terminate this Agreement. The foregoing shall be Seller's sole and exclusive remedies for Buyer's breach or default,

other than breach or default of a post-Closing obligation. Buyer further agrees that, notwithstanding anything in this Agreement to the contrary, in no event shall Seller be liable for any special, consequential, or other damages, including but not limited to claims for loss of use, rents, anticipated profit or business opportunity, business interruption, diminution in value, or mental or emotional distress or fear of injury or disease.

11.10 Exhibits. All exhibits attached hereto are incorporated herein by reference.

11.11 Extensions for Benefit of Seller. Should any dates of this Agreement be extended by mutual agreement, to permit Seller to meet its obligations under this Agreement (including, but not limited to, any time needed to complete the creation of a separate legal lot or cure title defects), then all dates of this Agreement shall be extended by an equal number of days.

11.12 Headings. The captions and paragraph headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit, or otherwise affect the interpretation or construction of any term or provision of this Agreement.

11.13 Inducements. The execution and delivery of this Agreement by the parties hereto has not been induced by any statements, representations, warranties, or agreements other than those expressed herein.

11.14 Integration. This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter, and any and all other agreements, understandings, or representations with respect thereto are of no force or effect.

11.15 Interpretation. This Agreement is the result of negotiations between the parties hereto, each of which was represented by legal counsel or had the opportunity to be represented by legal counsel. Each party participated in the preparation of this Agreement and reviewed this Agreement. No particular provision shall be deemed to have been drafted by any particular party, and no question of interpretation shall be resolved by any rule of interpretation providing for interpretation against a drafting party. This Agreement shall be interpreted and construed according to the intent of the parties and a fair reading of the language of this Agreement as a whole, and not for or against any particular party.

11.16 Notices. Any and all notices, requests, approvals, or other communications required or desired to be given hereunder (collectively, "notice") shall be in writing and shall be validly given or made if: (i) personally served; (ii) sent by certified, registered, or express mail with postage prepaid thereon and return receipt requested; (iii) sent by e-mail if e-mail addresses are provided; or (iv) sent by facsimile transmission with transmission and receipt confirmed and the original sent by certified, registered, or express mail with postage prepaid thereon and return receipt requested; provided, that in case of notice of breach or termination, notice shall be in writing and (i) personally served or (ii) sent by certified, registered, or express mail with postage prepaid thereon and return receipt requested. Notice shall be deemed given (i) at the time of personal service; (ii) three (3) business days after mailing; or (iii) one (1) business day after e-mail or fax transmission as set forth above. Notice shall be effective and deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To Seller: Port of Olympia

915 Washington St NE
Olympia, WA 98501
Attn: Executive Director
Fax: (360) 528-8090
Phone: (360) 528-8000

With a copy to Seller's attorney:

Richard L. Hughes, General Counsel
Law Office of Richard L. Hughes PLLC
1824 Black Lake Blvd. Ste. 101
Olympia, WA 98512

To Buyer: LOTT Clean Water Alliance
500 Adams Street NE
Olympia, WA 98501
Attn: Matt Kennelly
Fax: (360) 664-2236
Phone: (360) 528-5750

With a copy to Buyer's attorney:

Jemima J. McCullum, Esq.
Gordon Thomas Honeywell LLP
1201 Pacific Avenue, Ste. 2100
Tacoma, WA 98401
Fax: 253-620-6565
Phone: 253-620-6520

To Escrow Agent:

Thurston County Title Insurance Company
105 8th Avenue SE
Olympia, Washington 98501
Attn: _____
Fax: (360) 786-9315
Phone: (360) 743-7300

Any party may change its address for the purpose of receiving notices as herein provided by a written notice given to the other parties hereto.

11.17 Possession. Buyer shall be entitled to possession of the Property upon closing.

11.18 Successors and Assigns. Subject to the provisions of Section 11.3 above, this Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns.

11.19 Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and assigns, if any, nor shall any provision give any third parties any right of subrogation or action against any party to this Agreement.

11.20 Time. Time is of the essence of each provision of this Agreement.

11.21 Waiver. No waiver shall be effective against a party unless set forth in writing and signed by the party charged with making the waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall any waiver constitute a waiver of any preceding, succeeding, or continuing occurrence or condition, unless expressly stated in the waiver.

11.22 Applicable Law; Venue. This Agreement shall be governed in all respects by the internal laws of the State of Washington. The venue of any action or dispute regarding this Agreement shall be Thurston County Superior Court, Thurston County, Washington.

11.23 Attorney Fees. In any legal action or proceeding, including but not limited to arbitration, brought to enforce this Agreement, to declare the rights and duties under this Agreement, or to resolve a dispute, breach, or default in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs, including expert witness fees, incurred in such action or proceeding, in addition to any other relief to which such party may be entitled.

11.24 Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable resolution. If the Parties do not reach such resolution within a period of 60 days from the date the dispute first arose, then, upon written notice by a Party to the other, all disputes, claims, questions, or differences shall be referred to non-binding arbitration administered by Judicial Dispute Resolution ("JDR"), or such other organization as may be mutually agreed to by the Parties. The Parties shall make good faith efforts to agree upon a single arbitrator to preside over any arbitration. In the event the Parties cannot agree to the selection of an arbitrator, they will defer to the organization selected by the Parties pursuant to this section for the selection of an appropriate arbitrator. The Parties may by written stipulation agree to a panel of three arbitrators in lieu of a single arbitrator and, if they so agree, each Party shall select one arbitrator from JDR or from a list of arbitrators approved by the American Arbitration Association for the subject matter in dispute, and the two arbitrators selected shall select a third arbitrator, who shall also be from JDR or from a list of arbitrators approved by the American Arbitration Association for the subject matter in dispute. Should an arbitration panel be selected and hear a dispute arising under this Agreement, a vote of at least two out of the three shall be required for an award or decision to be rendered. If the Parties do not reach a resolution of the dispute within thirty (30) days from the date of the decision rendered in the non-binding arbitration, then either party may file a lawsuit to resolve the dispute.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year written below.

SELLER: PORT OF OLYMPIA

By: _____
Sam Gibboney, Executive Director

Date: _____

BUYER: LOTT CLEAN WATER ALLIANCE

By: _____
Matt Kennelly, Executive Director

Date: _____

Final Draft

EXHIBIT A – General Depiction of the Property

Final Draft

Exhibit A-1: Legal Description of the Property

Final Draft

Final Draft

COVER MEMO

Briefing Date/Time: May 22, 2023

Staff Contact/Title: Conley Booth, Marine Terminal Operations Manager
360.528.8007

Subject: Allied Universal Security Services Purchased Services
Agreement Amendment 2

Purpose: Information Only Decision Needed

Background/Overview:

Allied Universal Contract (2021-1002) for purchased services was executed under Executive Director authority on May 17, 2021 after a competitively solicited request for proposals. The initial term of the contract was through May 31, 2023 with a Not to Exceed amount of \$839,054.

Amendment 1 was executed June 14, 2022 to reflect a rate increase of less than 10% of the original contract with a Not To Exceed of \$900,500. This was within the Executive Director's authority.

The request before the Port Commission today is to extend the date of the contract to December 31, 2023 and to allow for an additional \$319,500 with a new Not to Exceed amount of \$1,220,000 for essential security services.

Documents Attached:

PowerPoint Presentation

Affected Parties:

Marine Terminal, Swantown Marina, Swantown Boatworks, Marine Drive, and the Peninsula Properties.

Pros:

1. Extending to the end of 2023 aligns the contract changes with our fiscal year budget which would allow us to predict yearly expenses more accurately.
2. Extension allows us time to review the security needs for the Port and make any revisions. The USCG Facilities Security Plan is currently under review.
3. No breaks in coverage or new contractor transition issues as we move into peak boating season.

4. Hiring time for a new contract manager.

Cons:

1. Not extending the contract in time would disrupt services and put our Facility Security Plan with USCG in jeopardy.

Staff Recommendation:

Commission approval to extend the contract to December 31, 2023 and to increase the Not to Exceed amount to a total of \$1,220,000.



ALLIED UNIVERSAL SECURITY SERVICES AGREEMENT AMENDMENT

May 22, 2023

Afsin Yilmaz
Marine Terminal Senior Manager

1

Agreement No. 2021-1002 Amendment #2: Allied Universal Security Services

Summary

- Purchased Services Agreement
- Competitive Selection
- Authorized Services:
 - On-site location and roving security guard services for the Port of Olympia Peninsula area
 - On-call security guard services for in-port vessels
 - One—Marine Terminal gate site supervisor (40 hours per week)
 - One—Marine Terminal gate security guard (25 hours per week)
 - One—Swantown Marina roving security guard (90 hours per week)

2



2

Agreement No. 2021-1002 Amendment #2: Allied Universal Services

Request: Approve Agreement Amendment #2

Term	
Amendment 1	May 31, 2023
Proposed Amendment 2	December 31, 2023
Costs	
Initial Contract	\$ 839,054
Amendment 1	\$ 900,500
Proposed Amendment 2	\$ 319,500
New Total NTE	\$1,220,000

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Suggested Motion

"...move to authorize the Executive Director to sign contract Amendment #2 with Allied Universal Security Services extending the term of the agreement through December 31, 2023, and adding \$319,500 for a new total not to exceed amount of \$1,220,000."

4



4

COVER MEMO

Briefing Date/Time: May 22, 2023

Staff Contact/Title: Lisa Parks, Executive Services Director, 360-528-8020, lisap@portolympia.com

Subject: Resolution No. 2023-02 Amending the Port of Olympia Economic Development Corporation (EDC)

Purpose: Information Only Decision Needed

Background/Overview:

The Port of Olympia Economic Development Corporation – Port EDC – was created in 1983 to facilitate local economic development and employment opportunities. The impetus and primary purpose of the EDC has been to take advantage of a program administered by the Internal Revenue Service allowing for Industrial Development Revenue Bonds (IDRB) to be issued. IDRBs are tax-exempt debt obligations issued by public corporations to support qualified manufacturing and processing companies with below-market interest rates for eligible uses. The Port’s EDC serves as a conduit agency, with security to the bond purchase provided by the borrower, working through a bank or other lending institution. IDRBs do not affect the Port’s bonding capacity, nor do they become an obligation of the Port if there is any type of default.

Currently, the authorizing Resolution for the EDC states the EDC Board of Directors is made up of the three elected Port Commissioners and two additional “At-Large” members who are appointed by the EDC Board. The existing Resolution describes the three Port Commissioners as serving on the EDC Board “ex-officio”, meaning they serve by virtue of their position as Port Commissioner. However, the Resolution does not explicitly state they are voting members of the Board, as best practice would suggest. Therefore, staff is recommending the Port Commission amend the EDC authorizing Resolution to clearly state Port Commissioners serve on the Board in a voting capacity.

At the March 13, 2023 regular Commission meeting, staff presented two alternatives for amending the Resolution, as follows:



Alternative 1: The first alternative would be to retain the Board composition (port commissioners and appointed citizens) as currently provided for in the Resolution with 2 changes:

- Clarify all board members vote; and,
- There are/will be 5 Port Commissioners and 2 At-Large Citizen Members (7 total).

Alternative 2: The second alternative would be to reference the Port Commission as the only members of the EDC board, resulting in no longer having At-Large Citizen Members. This alternative clears up any confusion as to voting versus non-voting members, it accommodates the expanded, five-member Port Commission, and it retains the current number of EDC board members at five. Additionally, because the EDC Board currently meets infrequently, it avoids having citizens volunteer to participate in a board that ends up having very little to do.

The Commissioners directed staff to prepare a Resolution accomplishing Alternative 2, above, which is on the agenda tonight for Action, if the Commission would so choose. Following adoption of the updated Resolution, there will be a special meeting of the Port EDC advertised and held, at which time the EDC Board of Directors can amend their Bylaws to address the issues of meeting frequency (preference for “As-needed” meeting schedule) and general updates to reflect more current technology conditions. Additionally, the Port Commission is required by RCW 39.84.060 to **annually** review the financial status of the EDC at a regular business meeting.

Documents Attached:

PowerPoint Presentation

Final Draft Resolution 2023-02

RESOLUTION 2023-02 AMENDING THE PORT OF OLYMPIA EDC

MAY 22, 2023

LISA PARKS

EXECUTIVE SERVICES DIRECTOR

1

Port of Olympia Economic Development Corporation (EDC)

History & Purpose

- Created in 1983
- Board of Directors
- Purpose – Economic Development thru Industrial Development Revenue Bonds (IDRB)
- IDRB - Federal IRS program
 - Tax-exempt debt obligations
 - Below-market interest rates
 - Issued by public corporation
 - Qualified manufacturing and processing companies for eligible uses
 - Port EDC is conduit agency
- Very little utilization since early 2000's

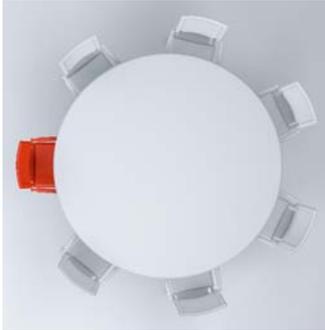


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2

Proposed EDC Resolution Changes

Background



- Recent Commission Reviews:
 - August, 2021 - Review status of the Port EDC:
 - Meeting frequency
 - Election of officers
 - General updates (technology)
 - Small Cities Program
 - March, 2022 - Resolution No. 2022-04 Amending the Small City Program
 - Simplified Small City Program, removed EDC review step
- Additional Consideration: Five Member Port Commission in January, 2024

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Proposed EDC Resolution Changes

Action Requested

- **March 13, 2023** – Two Alternatives presented for Commission Direction
 - **Alternative 1:** Retain composition with clarifications;
 - **Alternative 2:** Port Commissioners (5) are only Board members
- **May 22, 2023** - Adopt Resolution 2023-02

4



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Next Steps

Following approval of the proposed Resolution...

- Schedule, advertise and hold an EDC Board of Director's special meeting to amend the EDC By-Laws:
 - Meeting frequency
 - General updates (technology)
- **Port Commission** must annually review the financial status of the EDC at a regular meeting (RCW 39.84.060).



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Suggested Motion...

"...move to approve Resolution No. 2023-02, as presented, amending the membership of the Port's Economic Development Corporation Board of Directors to be composed of all members of the Port Commission."

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PORT OF OLYMPIA COMMISSION
Resolution 2023-02

**A resolution amending the Port Economic Development Corporation Charter
adopted in Resolution No. 926, September 1983**

A RESOLUTION of the Port of Olympia Commission (Port Commission) amending Resolution 926, the Charter of the Development Corporation, adopted on September 7, 1983, to provide that members of the Port Economic Development Corporation (EDC) shall consist exclusively of members of the Port Commission.

WHEREAS, on December 16, 1981 the Port Commission adopted Resolution No. 895 creating and establishing a public corporation pursuant to Chapter 300, Washington Laws 1981, now codified as RCW 39.84 for the purposes facilitating economic development and employment opportunities through the financing of the project costs of industrial development facilities; and

WHEREAS, on or about September 7, 1983 the Port adopted Resolution 926, which amended Resolution 895, and provided for appointment of both Port Commission members and citizen members; and

WHEREAS, on or about May 14, 2007 the Port adopted Resolution 2007-12 which amended Resolution 926; and

WHEREAS, RCW 39.84.040 provides that the resolution establishing a public corporation “shall include provisions of a board of directors to govern the affairs of the public corporation, what constitutes a quorum of the board of directors, and how the public corporation shall conduct its affairs”; and

WHEREAS, since enactment of the legislation allowing creation of public corporations, Ports often provide that the corporation be governed exclusively by members of the respective Port Commission; and

WHEREAS, the Port Commission now deems it to be in the interest of the Port and the Port EDC to amend Resolution 926; and

WHEREAS, the Charter is amended and restated, after review by the Port Commission, with the changes provided herein.

NOW, THEREFORE BE IT RESOLVED BY THE PORT COMMISSION OF THE PORT OF OLYMPIA, THURSTON COUNTY, WASHINGTON AS FOLLOWS:

Section 1, of Resolution 926, is hereby amended to read as follows in its entirety:

“Section 1. The Board of Directors of the Corporation shall be composed of all members of the Port Commission.”

BE IT FURTHER RESOLVED:

Resolution 926, and any other amendments to the Corporation Charter, are hereby repealed to the extent inconsistent with this Resolution.

ADOPTED by the Port Commission of the Port of Olympia this ____ day of May, 2023.

PORT OF OLYMPIA COMMISSION

Amy Harding, President

Joe Downing, Vice President

Bob Iyall, Secretary