

Commission Meeting Monday, Jan. 22, 2024 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 Jan. 16, 2024. https://www.portolympia.com/commission

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

https://us02web.zoom.us/j/82643754702

or Telephone: 1 253 215 8782 Webinar ID: 826 4375 4702

Written public comments may be submitted to <u>commissioncoordinator@portolympia.com</u> 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.

AGENDA

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

Individual public comments are limited to 3 minutes per person. Members of the public may comment on agenda items and other port business.

NOTE: Guidelines for public comment can be found in the Commission Rules in Resolution 2022-09 Article VI.

- <u>Comments should be directed to Commission</u>: Comments should be directed to the Commission as a whole and should not include comments about individual Port staff or members of the public.
- <u>Courtesy</u>: 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.

F. Consent Calendar

- 1. CBC #2 Roof Replacement Final Acceptance: James Sommer, Capital Assets Program Manager
- 2. Port/Tumwater Habitat Conservation Plan (HCP) Interlocal Agreement Amendment 3: Shawn Gilbertson, Director of Environmental Planning and Programs

G. Pending Issues or Business

- 1. None
- H. Action Calendar
 - 1. None
- I. Action/Other Calendar
 - 2024 Commissioner Committee Assignments: Camille St. Onge, Director of Strategic Initiatives and Commission Affairs
 - Public Comment on Action/Other Calendar
 - Election of Officers: Camille St. Onge, Director of Strategic Initiatives and Commission Affairs Public Comment on Action/Other Calendar
 - Commission Rules Resolution 2023-08: Rudy Rudolph, Interim Executive Director Public Comment on Action/Other Calendar
 - 4. Interim Executive Director Performance/Compensation: Rudy Rudolph, Interim Executive Director Public Comment on Action/Other Calendar
- J. Advisory Calendar
 - 1. Contract Amendment for Chris Rieve: Shawn Gilbertson, Director of Environmental Planning and Programs
 - 2. Public Comment on Advisory Calendar
- K. Commissioner Reports/Discussion
- L. Other Business
- M. Meeting Announcements
- N. Adjourn



COVER MEMO

Briefing Date/Time: Jan. 22, 2024

Staff Contact/Title: James Sommer, Capital Assets Program Manager,

360.528.8005, James Saportolympia.com)

Subject: CBC Building 2 Roof Replacement – Final Acceptance

Purpose:

Information Only

Decision Needed

Overview:

This is a Consent agenda item before the Commission. Approval requested.

Background:

In 2019 an Asset Assessment of port-owned buildings and properties was completed. The Assessment included facility condition assessments of 41 structures and their associated site improvements, structural, building envelope, mechanical and electrical systems; and it evaluated 16 properties for civil and electrical site improvements. Recommended improvements to these assets were identified and estimated, including minor and major repairs, as well as life-cycle/replacement costs, for a ten-year period of time, from 2020 to 2030.

The Asset Assessment included an evaluation of all three buildings at the Lacey Commerce Business Center (CBC). Each building had recommended repairs to their roof structures identified for calendar year (CY) 2023, and Buildings 2 and 3 had roof replacements programed for 2030. Throughout 2020 and 2021, repairs were made as needed, however, in December of 2021 and January of 2022, significant rain and snow events caused leaking into tenant spaces in Building 2 & 3. During this time, Port maintenance staff implemented several interim measures to remedy the leaks until roof replacements could be performed. Building 3 roof replacement was completed in early 2023 and the building 2 roof replacement project immediately followed.

Following the bid opening on August 31, 2023, the Commission awarded the CBC Building 2 roof replacement project to the lowest responsible bidder, Chehalis Sheet Metal, in the amount of \$326,310.00, including Washington State Sales Tax (WSST), at the September 11, 2023, Commission meeting.

Project Timeline:

- 08/17/23 Bids solicited
- 08/31/23 Bids opened
- 9/11/23 Project awarded to Chehalis Sheet Metal
- 11/1/23 Construction began
- 12/4/23 Final inspection walkthrough completed with engineer of record
- 12/15/23 Substantial completion
- 01/09/24 City of Lacey permit inspection and approval

There was one change order approved during the term of the project (for additional subroof plywood sheeting and lumber) that resulted in an overall increase in total project cost. The below table summarizes the project costs.

Engineer's Estimate	\$265,000 - \$331,000 (not including WSST)
Low Bid Award: Chehalis Sheet Metal	\$298,000 (not including WSST)
Total Value of Change Order #1	\$ 18,000
Total Adjusted Project Cost	\$316,000 (not including WSST)
Final Project Cost (WSST @ 9.5%)	\$346,020.00

Port staff requests the Commission provide "Final Acceptance" of the project at tonight's meeting. This approval allows the Port to pay the contractor (minus the required retainage at 5% of the project cost, not including sales tax), and file a Notice of Completion with applicable state agencies who then verify that statutory requirements for this public works project have been met (payment of prevailing wages, appropriate taxes and fees, etc.). Upon Port receipt of certification from the state agencies, the final retainage amount will be paid by the Port to the Contractor, at which point the project will be completed.

Documents Attached:

Change Order #1

Staff Recommendation:

Authorize "Final Acceptance" of the work performed under contract 2023-1026 – CBC Building 2 Roof Replacement and authorize payment in the amount of \$346,020.00.



"Dedicated to your comfort"

Chehalis Sheet Metal 350 SW Riverside Drive Chehalis WA 98532 Phone: 360-748-9221 Fax: 360-748-4950

INVOICE

DATE 12/18/2023

INVOICE# 0000075251

CUST.# ** 0016300

0526

R23-157

07



Port Of Olympia 606 Columbia St NW Olympia WA 98501

SHIP TO:

Port Of Olympia 2633 Willamette Dr NE Lacey WA 98516

, P.O. N U	MBER	TERMS TERMS	SALES PER	SON
	_	ON RECEIPT	0484	
QUAN "	ACM CONTRACTOR	DESCRIPTION CONTROL OF THE PROPERTY OF THE PRO	PRICE EACH.	AMOUNT
1.00	Change C included i =\$4200.)	order: used 52 sheets of plywood, 10 where n orginial bid. (material cost = \$4200. and labor	8,400.00	8,400.00
1.00	Change C	order : used 800 feet of 2x6 primed boards ent (material cost =\$4800. Labor to put on =\$4800.)	9,600.00	9,600.00

SUBTOTAL TAX TOTAL

\$18,000.00 \$1,710.00 \$19,710.00



COVER MEMO

Briefing Date/Time: Jan. 22, 2024

Staff Contact/Title: Shawn Gilbertson, Director of Environmental Planning

and Programs, 360.528.8061, shawng@portolympia.com

Subject: Port/Tumwater Habitat Conservation Plan

Interlocal Agreement Amendment 3

Purpose: ☐ Information Only ☐ Decision Needed

Consent Agenda:

Approval of this Consent Agenda item will authorize the Executive Director to sign the HCP ILA third amendment.

Background/Overview:

The Port of Olympia and the City of Tumwater have been working under an Interlocal Agreement to complete the Bush Prairie Habitat Conservation Plan (HCP).

HCPs are required under the Endangered Species Act (ESA) for development and other activities that could impact threatened or endangered species. HCPs are documents detailing the protection, mitigation, and restrictions necessary to protect species of concern from impacts from development or other activities. In Tumwater, an HCP is required to protect the habitat and populations of the Mazama Pocket Gopher, the Streak-Horned Lark, the Oregon Spotted Frog, and the Oregon Vesper Sparrow.

Completion of the HCP and approval by the US Fish and Wildlife Service (USFWS) will result in an Incidental Take Permit under the Endangered Species Act. This will allow Port business lines and infrastructure projects to proceed per the conditions of the HCP.

The Port of Olympia and Tumwater have shared interest in protecting the species of concern on and around Port assets in Tumwater. The partnership has jointly sought and received funding grants to pay for the development of the HCP by a consultant. Good progress has been made and we are jointly seeking more grant funding and working with consultants to complete the HCP. The HCP Interlocal Agreement was originally signed in 2016 and amended in 2020 and 2022.

This amendment will change the duration of the Interlocal Agreement to terminate 90 days after issuance of the Incidental Take Permit or December 31, 2028, whichever is sooner. This amendment also describes the HCP Phase 3 and 4 Grants' cost-sharing arrangement.

Documents Attached:

Original Interlocal Agreement and Amendments 1, 2, and 3

Summary and Financial Impact:

Grant match obligations of up to \$129,500. Past HCP grant matches have been made with in-kind work, mainly staff time. This will be the strategy for future HCP grants and if additional grant match funding needs arise, the Commission will be consulted for approval per Port policy.

CITY OF TUMWATER/PORT OF OLYMPIA

INTERLOCAL AGREEMENT FOR

HABITAT CONSERVATION PLAN PREPARATION

THIS INTERLOCAL AGREEMENT is made and executed this _____ day of ______ 2016, by and between the CITY OF TUMWATER, a Washington municipal corporation, located and doing business at 555 Israel Road SW, Tumwater, and the PORT OF OLYMPIA, a Washington public port district, located and doing business at 606 Columbia Street NW, Olympia, Washington.

RECITALS

WHEREAS, on October 3, 2013, the U.S. Fish and Wildlife Service issued a final rule listing the Taylor's Checkerspot Butterfly as an endangered species and the Streaked Horned Lark as a threatened species under the Endangered Species Act ("ESA") of 1973, 16 U.S.C. §1531 *et seq* (78 Fed. Reg. 61452 (Oct. 3, 2013)); and

WHEREAS, on October 3, 2013, the U.S. Fish and Wildlife Service issued a final rule designating critical habitat for the Taylor's Checkerspot Butterfly and the Streaked Horned Lark pursuant to the ESA (78 Fed. Reg. 61506 (Oct. 3, 2013)); and

WHEREAS, on April 9, 2014 the U.S. Fish and Wildlife Service issued a final rule listing four subspecies of the Mazama pocket gopher as threatened under the ESA (79 Fed. Reg. 19760 (Apr. 9, 2014)); and

WHEREAS, on April 9, 2014, the U.S. Fish and Wildlife Service issued a final rule designating critical habitat for the Mazama pocket gopher pursuant to the ESA (79 Fed. Reg. 19712 (Apr. 9, 2014)); and

WHEREAS, the range of the three above-referenced listed species' includes Thurston County, and critical habitat designations for the Mazama pocket gopher and the Streaked Horned Lark include the Port's Olympia Regional Airport, which is located within the City of Tumwater; and

WHEREAS, under Section 7 of the ESA, programs or projects with a federal nexus are required to consult with the U.S Fish and Wildlife Service to determine effects on listed wildlife species and must comply with conservation measures to avoid prohibited "incidental take" of such species; and

WHEREAS, under Section 10 of the ESA, non-Federal entities risk civil and/or criminal enforcement if development activities cause prohibited "incidental take" of listed wildlife species without an appropriate permit; and

WHEREAS, in light of the above-referenced ESA listings and designation of critical habitat impacting properties within the Parties' respective jurisdictions and/or direct ownership, the Parties jointly acknowledge the need for a habitat conservation plan (HCP) to provide programmatic incidental take coverage under Section 10 of the ESA in order to allow future development on impacted properties; and

WHEREAS, a City HCP that includes the Port-owned properties within the City will more effectively protect listed species and also provide for a more certain and streamlined development review processes for impacted properties, including Port-owned properties and Port tenants; and

WHEREAS, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other agencies on a basis of mutual advantage; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service which each public agency is authorized to perform, provided that such contract shall be authorized by the governing body of each Party to the contract; and

WHEREAS, the City has been awarded a \$132,000 Cooperative Endangered Species Conservation Fund (Section 6) grant for development of an HCP; and

WHEREAS, the City has committed to a cash match of \$58,000.00 and to in-kind services for \$30,000.00 associated with this grant; and

WHEREAS, the Port desires to partner with the City to develop an HCP that provides incidental take coverage for Port and City properties; and

WHEREAS, the Port is a key partner with the City in the preparation of an HCP, as the Olympia Regional Airport contains critical habitat for the Olympia subspecies of Mazama pocket gopher and the Streaked Horned Lark; and

WHEREAS, it is beneficial to and consistent with the duties and obligations of the Parties to work cooperatively in order to protect listed species and habitat while allowing for continued economic growth and development within the City of Tumwater; and

WHEREAS, it is necessary for the Parties to enter into an agreement to set forth the terms, conditions, and requirements for cooperative preparation of an HCP under Section 10 of the ESA.

NOW, THEREFORE, in consideration for the terms, conditions, requirements, and mutual benefits contained herein, it is hereby agreed between the Parties as follows:

Section 1. Agreement.

- A. The City will maintain and fulfill the grant financial commitment for the HCP Phase 1 completion of \$58,000.00 in cash matching funds and \$30,000.00 of in-kind matching funds:
- B. The Port will be responsible for additional funding not to exceed \$58,000, resulting from Port participation in the HCP Phase 1 that result from an expanded scope and additional process associated with inclusion of Port properties;
- C. The City of Tumwater will seek reimbursement from the Washington Department of Fish and Wildlife ("WDFW") for activities covered under this ILA. The City of Tumwater will then bill the Port of Olympia for the Port's portion;
- D. The City is responsible for the HCP Phase 1 grant reporting and deliverables directly to WDFW and will therefore maintain primary responsibility for project completion for the HCP Phase 1;
- E. The Parties agree to apply for HCP Phase 2 grant funds jointly, with the Port working with U.S. Fish & Wildlife as lead to prepare the application. The Port and the City will

- jointly ensure all reporting requirements are met and deliverables submitted on time for HCP Phase 2;
- F. The Parties agree to split grant funding match obligations for HCP Phase 2 grant funds evenly in an amount not to exceed \$150,000 per party;
- G. The Parties agree to cooperate in jointly developing and implementing mitigation measures identified as part of the HCP process, with specific allocation of mitigation costs and obligations to be determined by later agreement of the Parties prior to approval of the final HCP; and
- H. It is expected upon approval of the HCP that incidental take permits under the ESA will be issued to both Parties.
- Section 2. <u>Duration.</u> The terms and performance of this Agreement shall commence after the approval by the governing body of each Party and following the recording of this Agreement with the Thurston County Auditor or posting of this Agreement on each Party's website as provided in RCW 39.34.040. This Agreement shall terminate upon USFWS approval of the joint HCP and the granting of associated incidental take permits to each Party or <u>December 31, 2020</u>, whichever occurs sooner.
- Section 3. <u>Termination</u>. This Agreement may be terminated in whole or in part, with or without cause prior to the date specified in Section 2 with thirty (30) calendar days' written notice to the non-terminating party.
- <u>Section 4.</u> <u>Administration.</u> Each Party shall be responsible for administering the terms of this Agreement. No disparate legal entity is created because of entering into this Agreement. No joint organization is created. No common budget is to be established. No personal or real property is to be jointly acquired or held.
- Section 5. Entire Agreement. The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein shall constitute material breach of contract and cause for termination. It is also agreed by the Parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.
- <u>Section 6.</u> <u>Severability.</u> If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is found to be invalid, unconstitutional, or otherwise unenforceable by a court of competent jurisdiction, such invalidity shall not affect other terms, conditions, or applications, which can be given effect without the invalid term, condition, or application; to this end, the terms and conditions of this Agreement are declared severable.
- <u>Section 7.</u> <u>Review of Agreement.</u> The terms and conditions of this Agreement shall be reviewed periodically by each Party for appropriateness and currency.
- <u>Section 8.</u> <u>Amendments.</u> Any addition, deletion, or change to the terms and conditions of this Agreement shall be in the form of a written amendment approved by each of the Parties.
- <u>Section 9.</u> <u>Governing Law.</u> This contract shall be governed in all aspects by the laws and statutes of the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

Section 10. Indemnification. The Port shall defend, indemnify, and hold the City, its officers, employees, agents, and assigns harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising from or in connection with the preparation of an HCP, but only to the extent of the Port's negligence or comparative fault. The City shall defend, indemnify, and hold the Port, it officers, employees, agents, and assigns harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising from or in connection with the preparation of an HCP, but only to the extent of the City's negligence or comparative fault.

EXECUTION

IN WITNESS WHEREOF, each Party has caused to be signed by its duly authorized officer or representative as of the date set forth below its signature.

THE PORT OF OLYMPIA	THE CITY OF TUMWATER		
E.B. Galligan, Executive Director	Pete Kmet, Mayor		
Date:	Date:		
APPROVED AS TO FORM:			
Heather Burgess, Port Legal Counsel	Karen Kirkpatrick, Tumwater City Attorney		

FIRST AMENDMENT TO CITY OF TUMWATER/PORT OF OLYMPIA INTERLOCAL AGREEMENT FOR HABITAT CONSERVATION PLAN PREPARATION

This	First	Amendment	("Amendment")	is	dated	effective	this
	da	y of	, 20	20, a	and is ent	tered into b	y and
between th	e CITY C	F TUMWATER	R, a Washington m	unic	ipal corp	oration ("Cl	TY"),
and the PC	ORT OF O	LYMPIA ("POR	T"), a Washington	pub	lic port d	istrict.	

- A. The CITY and the PORT entered into an Interlocal Agreement dated effective 1st day of November 2016, whereby the parties agreed to prepare a Habitat Conservation Plan jointly ("Agreement").
- B. Section 8 of the Agreement provided that the Agreement may only be amended by written agreement signed by the parties.
- C. The CITY and the PORT desire to amend the Agreement to continue the activities described in Section 1 of the Agreement by extending the duration of the Agreement found in Section 2.

NOW, THEREFORE, the parties agree to the following terms and conditions:

1. <u>Duration</u>.

Section 2 of the Agreement shall be amended to extend the term of the Agreement until <u>December 31, 2022</u>.

2. FULL FORCE AND EFFECT.

All other terms and conditions of the Agreement not modified by this Amendment shall remain in full force and effect.

DATED the effective date set forth above.

<u>CITY</u> :	PORT:
CITY OF TUMWATER	PORT OF OLYMPIA
555 Israel Road SW	606 Columbia Street NW
Tumwater, WA 98501	Olympia, WA 98501
Pete Kmet, Mayor	Sam Gibboney, Executive Director
Date:	Date:
1.DDD 01.1DD 1.0 M0 D0D15	
APPROVED AS TO FORM:	
Karen Kirkpatrick	Heather Burgess
Tumwater City Attorney	Port Legal Counsel

SECOND AMENDMENT TO CITY OF TUMWATER/PORT OF OLYMPIA INTERLOCAL AGREEMENT FOR HABITAT CONSERVATION PLAN PREPARATION

_	This	Second	Amendment	("Second	Amendment")	is	dated	effective	this
1st		da	y of November	er	Amendment") , 2021, a:	nd:	is enter	ed into by	and
betwe	en the	e CITY C	F TUMWAT	ER, a Was	hington munici	pal	corpora	ation ("CI"	ГΥ"),
and tl	he PO	RT OF O	LYMPIA ("P	ORT"), a W	ashington publ	ic p	ort dist	rict.	

- A. The CITY and the PORT entered into an Interlocal Agreement dated effective the 1st day of November 2016, whereby the parties agreed to prepare a Habitat Conservation Plan jointly ("Agreement").
- B. The CITY and the PORT entered into the First Amendment to City of Tumwater/Port of Olympia Interlocal Agreement for Habitat Conservation Plan Preparation dated May 11, 2020 that extended the Agreement until December 31, 2021 ("First Amendment").
- C. Section 8 of the Agreement provided that the Agreement may only be amended by written agreement signed by the parties.
- D. The CITY and the PORT desire to amend the Agreement to continue the activities described in Section 1 of the Agreement by extending the duration of the Agreement found in Section 2.

NOW, THEREFORE, the parties agree to the following terms and conditions:

1. <u>Duration</u>.

Section 2 of the Agreement shall be amended to extend the term of the Agreement until <u>December 31, 2023</u>.

2. FULL FORCE AND EFFECT.

All other terms and conditions of the Agreement not modified by this Amendment shall remain in full force and effect.

DATED the effective date set forth above.

CITY:	PORT:
CITY OF TUMWATER	PORT OF OLYMPIA
555 Israel Road SW	606 Columbia Street NW
Tumwater, WA 98501	Olympia, WA 98501
Pete Kmet, Mayor	Samo Gibboney, Executive Director
Pete Kmet	Sam Gibboney
Date:	Date:

APPROVED AS TO FORM:

karen kirkpatrick Karen Kirkpatrick

Karen Kirkpatrick Tumwater City Attorney DocuSigned by:

VaLiesha Brown

Port Legal Counsel

Valiesha Brown

THIRD AMENDMENT TO CITY OF TUMWATER/PORT OF OLYMPIA INTERLOCAL AGREEMENT FOR HABITAT CONSERVATION PLAN PREPARATION

This Third Amendment ("Third Amendment") is dated effective this <u>1st</u> day of <u>January</u>, 2024, and is entered into by and between the CITY OF TUMWATER, a Washington municipal corporation ("CITY"), and the PORT OF OLYMPIA ("PORT"), a Washington public port district.

- A. The CITY and the PORT entered into an Interlocal Agreement dated effective November 1, 2016, whereby the parties agreed to prepare a Habitat Conservation Plan jointly ("Agreement").
- B. The CITY and the PORT entered into the First Amendment to City of Tumwater/Port of Olympia Interlocal Agreement for Habitat Conservation Plan Preparation dated May 11, 2020, that extended the Agreement until December 31, 2021 ("First Amendment").
- C. The CITY and the PORT entered into the Second Amendment to City of Tumwater/Port of Olympia Interlocal Agreement for Habitat Conservation Plan Preparation dated November 1, 2021, that extended the Agreement until December 31, 2023 ("Second Amendment").
- D. Section 8 of the Agreement provided that the Agreement may only be amended by written agreement signed by the parties.
- E. The CITY and the PORT desire to amend the Agreement to continue the activities described in Section 1 of the Agreement, add additional activities, and extend the duration of the Agreement.

NOW, THEREFORE, the parties agree to the following terms and conditions:

1. Agreement.

Section 1 of the Agreement shall be amended to add additional responsibilities of the parties, as follows:

A. The City will maintain and fulfill the grant financial commitment for the HCP Phase 1 completion of \$58,000.00 in cash matching funds and \$30,000.00 of in-kind matching funds;

- B. The Port will be responsible for additional funding not to exceed \$58,000, resulting from Port participation in the HCP Phase 1 that result from an expanded scope and additional process associated with inclusion of Port properties;
- C. The City of Tumwater will seek reimbursement from the Washington Department of Fish and Wildlife ("WDFW") for activities covered under this ILA. The City of Tumwater will then bill the Port of Olympia for the Port's portion;
- D. The City is responsible for the HCP Phase 1 grant reporting and deliverables directly to WDFW and will therefore maintain primary responsibility for project completion for the HCP Phase 1;
- E. The Parties agree to apply for HCP Phase 2 grant funds jointly, with the Port working with U.S. Fish & Wildlife as lead to prepare the application. The Port and the City will jointly ensure all reporting requirements are met and deliverables submitted on time for HCP Phase 2:
- F. The Parties agree to split grant funding match obligations for HCP Phase 2 grant funds evenly in an amount not to exceed \$150,000 per party;
- G. The Parties agree to apply for grant funds for additional HCP phases jointly, as required by necessity or practicality. The City will be responsible for grant applications, reporting, and deliverables with assistance provided by the Port as required. Prior to acceptance of future phase grants, the Parties agree that grant funding match obligations will be split evenly and with an identified not-to-exceed dollar amount per Party;
- H. The HCP Phase 3 grant obligates the Parties to funding match obligations not to exceed \$39,500 per party. Additionally, the HCP Phase 4 grant is anticipated to obligate the Parties to funding match obligations not to exceed \$90,000 per party. Future phase grants meeting the criteria listed in Paragraph G need not be incorporated into subsequent formal amendments of this Agreement.
- I. The Parties agree to cooperate in jointly developing and implementing mitigation measures identified as part of the HCP process, with specific allocation of mitigation costs and obligations to be determined by later agreement of the Parties prior to approval of the final HCP; and

J. It is expected upon approval of the HCP that incidental take permits under the ESA will be issued to both Parties.

2. <u>Duration</u>.

Section 2 of the Agreement shall be amended to extend the term of the Agreement, as follows:

The terms and performance of this Agreement shall commence after the approval by the governing body of each Party and following the recording of this Agreement with the Thurston County Auditor or posting of this Agreement on each Party's website as provided in RCW 39.34.040. This Agreement shall terminate ninety (90) days after issuance of an Incidental Take Permit by the U.S. Fish and Wildlife Service, indicative of U.S. Fish and Wildlife Service approval of the HCP, and subsequent City approval of revisions to applicable municipal codes regarding development related to an Incidental Take Permit or December 31, 2028, whichever occurs sooner.

3. <u>FULL FORCE AND EFFECT</u>.

All other terms and conditions of the Agreement not modified by this Amendment shall remain in full force and effect.

DATED the effective date set forth above.

<u>CITY</u> : CITY OF TUMWATER 555 Israel Road SW Tumwater, WA 98501 Debbie Sullivan, Mayor	<u>PORT</u> : PORT OF OLYMPIA 606 Columbia Street NW Olympia, WA 98501 Rudy Rudolph,
Date:	Interim Executive Director Date:
APPROVED AS TO FORM:	
Karen Kirkpatrick	Rick Hughes
Tumwater City Attorney	Port General Legal Counsel



COVER MEMO

Briefing Date/Time: Jan. 22, 2024

Staff Contact/Title: Camille St. Onge, Director of Strategic Initiatives &

Commission Affairs, 564-669-3100

camilles@portolympia.com

Subject: Annual Commission Meeting Schedule

Purpose: □ Information Only ⊠ Decision Needed

Background/Overview:

The Commission has traditionally assigned a commissioner representing the Port at various councils and boards. The attached document shows the assignments from the calendar year 2023 and a proposal for the 2024 assignments for the Commission's consideration.

Commissioner Iyall reached out to the Thurston County Chamber of Commerce. The CEO David Schaffert shared that representation should be a staff member and can be determined after an executive director is hired. Because this is a staff position, the committee has been removed from the list.

Documents Attached:

- 2024 draft Commission committee assignments
- PowerPoint Presentation

Entity/Group/Board	Scheduled Meeting	2023 Assignments	Commissioner
Experience Olympia and Beyond	Monthly 3 rd Tuesday 3:30 PM	Commissioner Evans Harding	Commissioner Tonge Commissioner Harding
Transportation Policy Board	Monthly 2 nd Wednesday 7:00 AM	Commissioner Downing	Commissioner Vasavada
Solid Waste Advisory Committee	Monthly 1st Wednesday at 10:00 AM	Commissioner Downing	Commissioner Harding
Tenino Chamber	Monthly 3 rd Wednesday 11:30 AM	Commissioner Iyall	Commissioner Sanders
Economic Development Council	Monthly 4th Wednesday 12:00 PM	Commissioner Downing	Commissioner Vasavada
Yelm Chamber	Monthly 2 nd Tuesday 11:30 AM	Commissioner Iyall	Commissioner Iyall
Lacey Chamber	Monthly 1st Wednesday 11:30 AM	Commissioner Downing	Commissioner Tonge
Makers Space	Scheduled As Needed	Commissioner Iyall	Commissioner Tonge
Thurston Regional Planning Council	Monthly 1st Friday 8:30 AM	Commissioner Evans Harding	Commissioner Harding
Capital Lake-Deschutes Estuary Executive Work Group	Scheduled Quarterly	Commissioner Downing	Commissioner Sanders Commissioner Vasavada
Sea Level Rise Collaborative: Executive Committee	Scheduled Quarterly	Commissioner Iyall	Commissioner Sanders Commissioner Vasavada
Tumwater Chamber	Monthly 3 rd Wednesday at 11:30 PM	Commissioner Evans Harding	Commissioner Harding
Grand Mound Rochester Chamber	Monthly 1st Wednesday at 12:00 PM	Commissioner Evans Harding	Commissioner Sanders
South Thurston Economic Development Initiative	Monthly 3 rd Friday 8 am	Commissioner Iyall	Commissioner Sanders
Washington Public Ports Association Trustee	Two Annual Meetings & As Needed	Commissioner Evans Harding	Chair
JBLM Community Connector	Scheduled As Needed	Commissioner Iyall	Commissioner Iyall



Community Committee Assignments

Camille St. Onge
Director of Strategic Initiatives and Commission Affairs
Jan. 22, 2024

1



Today's Presentation

Action/Other, Action Requested

- Adopt the 2024 community committee assignments.
- Creates a connection and leadership opportunities within our community.

2



Overview of Committees

Review Committee Matrix

- Alignment with districts.
- **Continuity** of assignments.
- Expertise or interest in topics.

3

2

Community Committees

- Experience Olympia and Beyond
- Transportation Policy Board
- Solid Waste Advisory Committee
- Tenino Chamber
- Economic Development Council
- Yelm Chamber
- Lacey Chamber
- Makers Space
- Thurston Regional Planning Council

- Capital Lake-Deschutes Estuary Executive Work Group
- Sea Level Rise Collaborative: Executive Committee
- Tumwater Chamber
- Grand Mound Rochester Chamber
- South Thurston Economic Development Initiative
- Washington Public Ports Association Trustee
- JBLM Community Connector

4

Δ

Questions and Comments

"... I move to approve the 2024 Commission community committee assignments as presented."

"...I move to approve the 2024 Commission community committee assignments with the following amendments."

5





COI	TOD		Λ
CUI	/ER	MEN	VIV.

Briefing Date/Time: Jan. 22, 2024

Staff Contact/Title: Camille St. Onge, Director of Strategic Initiatives &

Commission Affairs, 564-669-3100

Subject: Election of Officers

Purpose:

Information Only

Decision Needed

Background/Overview:

The Commission elects officers at the first meeting of each year, for that calendar year. The appointments are effective immediately and continue until the first meeting of the following year. The appointments to be filled include Commission President, Commission Vice President, and Commission Secretary.

As outlined in the Commission's Rules Resolution, the President presides over all meetings, signs documents on behalf of the Commission, and meets with the Executive Director to review agendas. The Vice President carries out the President's duties during his/her absence, as needed. The Secretary ensures the minutes, motions, and resolutions adopted by the Commission are recorded.

In 2023, the officers were as follows:

Commission President - Commissioner, Amy Harding

Commission Vice President - Commissioner, Joe Downing

Commission Secretary - Commissioner, Bob Iyall

Documents Attached:

PowerPoint Presentation



Election of Officers

Camille St. Onge Director of Strategic Initiatives and Commission Affairs Jan. 22, 2024

1



Today's Presentation

Action/Other, Action Requested

- Effective immediately upon approved motion
- Positions to be filled:
 - **President** presides at meetings, signs documents, sets agendas with Executive Director, etc.
 - Vice President performs duties of President when he/she is absent or as assigned from time to time.
 - **Secretary** ensures recording of minutes, motions and resolutions, are followed as adopted.

2

Questions & Comments

Suggested Motion...

"I move to appoint the following Port of Olympia Commission officers to serve during calendar year, 2024:

- Commissioner _____as President;
- Commissioner ______as Vice President; and
- Commissioner _____as Secretary"





COVER MEMO Briefing Date/Time: Jan. 22, 2024 Staff Contact/Title: Rudy Rudolph, Interim Executive Director 360.584-4126, rudyr@portolympia.com) Subject: Commission Rules Resolution 2023-08

Background/Overview:

At a previous Port Commission meeting, the proposed changes to the Commission Rules Resolution 2023-08 were discussed. These proposed changes are related to the duties of the Commission Vice-President.

☐ Information Only

□ Decision Needed

Yellow indicates additional language.

Article III:

Purpose:

A. (ADD; line 5); meet with the vice president and the executive director to prepare and review agendas....

B. (ADD;) The Vice President shall: Meet with the president and the executive director to prepare and review agendas. During the absence or disability....

Article IV(C) Page 3, a purpose of work sessions

 [ADD Line 6] Scheduling of topics for particular work sessions will be agreed upon by the President, the Vice President, and the Executive Director......

(ADD) The President and Vice President will set the agenda for work session.

Article V.

1. (ADD) The President and vice president of the Commission and the Executive Director determine the placement

Affected Parties:

Commissioners

Sample Motion:

Move to authorize the Interim Executive Director to make the above listed changes to Commission Rules Resolution 2023-08 and bring a new updated resolution back to the Port Commission for adoption/signatures.



COVER MEMO

Briefing Date/Time: Jan. 22, 2024

Staff Contact/Title: Rudy Rudolph, Interim Executive Director

360.584-4126, rudyr@portolympia.com)

Subject: Interim Executive Director Performance/Compensation

Purpose: ☐ Information Only ☐ Decision Needed

Background/Overview:

On January 8, 2024, the Port Commission held an Executive Session on Executive Director Performance.

The actions requested from that meeting are listed below.

Summary & Financial Impact:

Funds budgeted for 2024

Affected Parties:

Interim Executive Director, Commissioners

Sample Motions:

Move to approve 4% Cost of Living increase for the Interim Executive Director, effective January 1, 2024, consistent with other Port Staff.

Move to authorize 80 hrs. of vacation leave cash-out for the Interim Executive Director effective immediately.

Move to authorize four weeks of vacation for the Interim Executive Director prior to separation from Port service.

COVER MEMO

Briefing Date/Time: Jan. 22, 2024

Staff Contact/Title: Shawn Gilbertson, Director of Environmental Planning

and Programs

360.528.8061, shawng@portolympia.com)

Subject: Chris Reive, Contract Amendment #2

Purpose:

☑ Information Only □ Decision Needed

Background/Overview:

This is a proposed amendment to Chris Reive's Personal Services Contract – No. 2023-1010 – Budd Inlet Insurance Recovery. This contract was originally approved April 2023 for a Not to Exceed amount of \$100,000. Amendment #1 was approved June 2023 with a revised Not to Exceed amount of \$175,000. This second amendment to the contract will increase the Not to Exceed amount of \$225,000, an increase of \$50,000.

This work was deemed critical for cost recovery on the Budd Inlet Remediation Project. The Port had several insurance carriers and policies throughout the 1990s and 2000s which may still have a duty to defend the Port of Olympia in its efforts to investigate the nature and extent of the contamination in Budd Inlet, work that is currently underway.

The work associated with this contract has proved tedious and detailed and has required more time and resources to complete. The additional budget is to allow the completion of insurance policy gathering and review process to determine which policies may provide an opportunity for cost recovery. After this phase of the insurance recovery work, Port staff will work with Port general council to determine next steps.

Documents Attached:

Original contract, Amendment #1, Draft Amendment #2, PowerPoint Presentation

Financial Impact:

Additional \$50,000 expended from Budd Inlet Remediation 2024 Budget

Staff Recommendation:

Approve Amendment #2



Chris Reive, Contract Amendment #2

Shawn Gilbertson Director of Environmental Planning and Programs Jan. 22, 2024

1



Today's Presentation

Advisory only

- Contract amendment
- Budd Inlet insurance recovery strategy

PORT of OLYMPIA

Purpose of Contract

Insurance Recovery

- Forensic investigation of insurance policies
 - Evaluate previous settlements
 - Identify additional Port coverage
 - Assess third-party coverage

3



3

History of Contract

Request: Amend Contract to Add \$50,000

Contract History	Amount	Effective Date
Initial Contract	\$100,000	April 11, 2023
Amendment #1 increase	\$75,000	June 29, 2023
Proposed Amendment #2 increase	\$50,000	February 10, 2024
New Total NTE	\$225,000	



Budd Inlet Restoration

Funding Sources

- Liability insurance
- Additional PLPs
- Port revenue and reserves
- Grants and appropriations state and federal
- Borrow
- Taxes

5



5

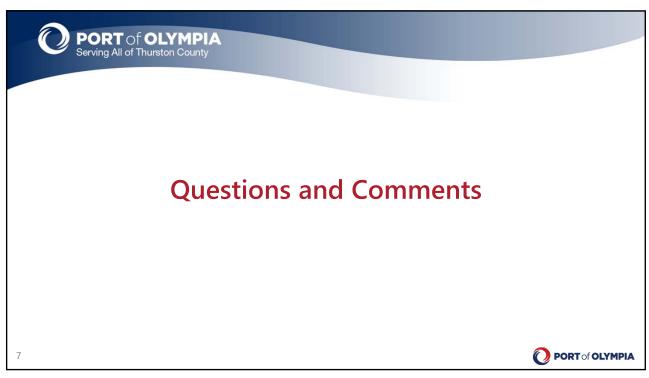


Insurance Policies

Evidence of Policy Coverage

- Investigation timeframe
 - 1997 2008
- Not applicable
 - 2008 present
- Future investigation
 - 1990 1996







PERSONAL SERVICES CONTRACT NO. 2023-1010 BUDD INLET INSURANCE RECOVERY

This Contract is made by and between the Port of Olympia, a Washington municipal corporation (hereafter referred to as the "Port") and Christopher L. Reive, Counselor at Law and Mediation Services, (hereafter referred to as the "Consultant"), and collectively sometimes referred to as "Parties" or individually as "Party".

The Port desires to retain the Consultant to provide Legal Consulting related to Budd Inlet Insurance recovery, (the "Services") which requires specialized skills and other support capabilities which the Port is not able to provide.

The Consultant has been deemed to possesses the required skills and the necessary capabilities, including technical and professional expertise, to perform the Services set forth in this Contract. The Parties agree that this Contract is consistent with applicable statutory and Port policy requirements.

Recitals

- I. The Washington State Legislature provides authority for Ports to enter into Personal Services Contracts under Chapter 53.19, of the Revised Code of Washington (RCW);
- II. The Washington State Legislature has empowered Port districts to delegate administrative powers and duties as they deem proper for the efficient and proper management of the Port's operations (RCW 53.12.270);
- III. The Port's Commission has delegated administrative powers and duties, including the ability to contract for Personal Services Contracts, to the Executive Director of the Port through Resolution 2019-06.
- IV. Personal Services are defined under RCW 53.19.010 as services provided by a consultant which involve technical expertise to accomplish a specific study, project, task, or other work. These activities and products are mostly intellectual in nature.
- V. Legal Services for the Port are guided by Port Policy 1009 Legal Services & Other Representation of which this agreement falls under.



The Parties agree as follows:

1. <u>Scope of Services</u>

- 1.1. The Consultant shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof (the "Services"), as detailed in Exhibit "A".
- 1.2. All Services shall be provided according to the care and skill ordinarily used by members of the Consultant's profession practicing under the same or similar circumstances at the same time and in the same locality as the Services being performed.

2. Term.

2.1. This Contract is effective upon execution by an Authorized Representative for the Consultant and the Executive Director of the Port. The Consultant shall begin and complete the provision of the Services, unless sooner terminated according to this Contract or Consultant has entered an on-call Contract as provided in paragraph 1.3 herein, as follows:

Commencement Date:

March 1, 2023 December 31, 2024

Completion Date:

2.2. In the event that the mutual execution date is after the commencement date listed above, the Parties hereby agree that the Commencement date shall be used as the starting date for this Contract.

3. Compensation and Billing.

- 3.1. The Port shall pay the Consultant on a Time and Expense basis, not-to-exceed one hundred thousand dollars and zero cents (\$100,000.00) for the initial term of this Contract and paid at the rate of four hundred dollars and zero cents (\$400.00) per hour.
 - 3.1.1. Expenses are defined as costs incurred by the Consultant, other than payroll costs, which are directly attributable to the performance of the Services and include mileage and related expenses, long-distance telephone, facsimile, postage and delivery, and other expenses incurred in the direct interest of the Services. Expenses shall also include technical or professional services obtained by the Consultant upon prior approval of the Port that are needed



by the Consultant to complete the Services. Such costs shall be the reimbursed by the Port to the Consultant at cost. Mileage shall be reimbursed at the IRS mileage rate in effect at the time travel occurred. The Port will not reimburse Consultant for any costs determined in the Port's discretion to be unreasonable or unrelated to the services provided. Consultant should obtain pre-approval from the Port for any costs which are not typical for the services to be provided.

- 3.2. The Consultant agrees to hold the Rates associated with the Contract for the entirety of the initial term unless otherwise specified in the attached rate sheet. If both Parties agree to extension the Consultant may request a revision of rates. The Port may request documentation of increased costs associated with the Services provided prior to approval of a revision in Consultant's rates.
- 3.3. No payment shall be made for any Service rendered by the Consultant except for Services identified in this Contract and directly related reasonable expenses as determined by the Port. The Consultant will transmit invoices to the Port no more often than once each month, for the Services and expenses pursuant to this Contract.
 - 3.3.1. All invoices shall list the actual time (days and/or hours) and dates during which the Services were performed, with a description of work performed.
 - 3.3.2. All invoices are to be sent electronically to Contracts@portolympia.com with the invoice noting the contract number in order to be deemed complete and ready for Processing.

4. Amendments/Modifications.

- 4.1. Any changes to this Contract, after execution, will be made through a mutually agreed upon Amendment(s) and executed by signature of the appropriate Authorized Representatives of each Party. Any and all amendments must not conflict with the Port's policies at time of execution, or any applicable statutory requirements. Consultant is responsible for compliance with any statutory requirements applicable for the work to Consultant's work or profession.
- 4.2. In the event that a single or combination of Amendments is issued that will increase the aggregate value of the Contract in excess of authority delegated to the Executive Director, the Port must seek approval of the Amendment with the Commission and make said Amendment at a public meeting. Consultant understands that this Contract is a public records under the Washington Public Records Act, RCW 42.56.



5. Information Requests.

The Consultant shall furnish to the Port within a reasonable time such statements, records, report, data, and information as the Port may request pertaining to the Services and the Project. Consultant will cooperate with the Port in conjunction with any audit performed by the Washington State Auditors Office.

6. Independent Contractor Relationship.

- 6.1. The Parties intend that an independent contractor relationship will be created by this Contract. The Port is interested primarily in the results to be achieved by the Services. The implementation of Services will lie solely with the discretion of the Consultant. No agent, employee, servant or representative of the Consultant shall be deemed to be an employee, agent, servant or representative of the Port for any purpose, and the employees of the Consultant are not entitled to any of the benefits the Port provides for its employees.
 - 6.1.1. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of the Services.
- 6.2. In the performance of the Services, the Consultant is an independent contractor with the authority to control and direct the performance of the details of the Services; however, the results of the Services shall be approved by the Port and shall be subject to the Port's general rights of inspection and review to ensure the satisfactory performances of the Services
 - 6.2.1. Notwithstanding, the Port may, at its sole discretion, require the Consultant to remove an employee(s), agent(s) or subcontractor(s) from providing the agreed upon Services.

7. Right to Inspection.

The Port reserves the right to, or have a third party at the Port's request, inspect, audit, or review the Services provided in this Contract at any time and determine the services performed were satisfactory prior to payment.

8. Hold Harmless/Indemnification.

8.1. Consultant shall defend, indemnify and hold the Port, its officers, officials, agents, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees and costs, arising out of, in connection with, or resulting from the acts, errors or omissions of the Consultant in



performance of this Contract, including such losses that would have been covered by insurance coverage for automobile, Commercial General Liability, and Workers Compensation (which coverage has been waived herein), except for injuries and damages caused by the sole negligence of the Port. Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the Port, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

8.2. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract.

9. <u>Insurance</u>.

- 9.1. The Consultant shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from, or in connection with, the performance of the Services by the Consultant, its agents, representatives, or employees.
- 9.2. Consultant shall not be required to obtain Automobile Liability, Commercial General Liability, or Workers Compensation insurance, subject to Section 9.2.1 herein.
 - 9.2.1. Additional insurance coverage as requested by the Port deemed necessary by the Port for the services to be performed.
 - 9.2.2. Within 60 days from the effective date of this Agreement, consultant will obtain professional liability insurance coverage such that the total amount of coverage is \$300,000 primary and \$1.7 million excess specifically applicable to the primary layer, for combined total coverage of \$2 million. Consultant will provide proof of coverage as required under this Agreement upon the effective date of this Agreement, and upon the increased coverage required herein. The Port may terminate this Agreement as provided herein if Consultant fails to obtain the required coverage in a timely manner.



- 9.3. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - 9.3.1. The Consultant's insurance coverage shall be primary insurance with respect to the Port. Any insurance, self-insurance, or insurance pool coverage maintained by the Port shall be excess of the Consultant's insurance and shall not contribute with it.
 - 9.3.2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either Party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Port.
- 9.4. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- 9.5. Consultant shall furnish the Port with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the Consultant deemed adequate in the Port's sole discretion before commencement of the Services.
- 10. <u>Dispute Resolution</u>. Any controversy or claim arising related to this Contract, or the breach thereof, shall be subject to dispute resolution as described:
 - 10.1. Prior to the initiation of any action or proceeding to resolve disputes between the parties, both shall make a good faith effort within 10 business days from the time the dispute first became known to both Parties to resolve any such disputes by negotiation between representatives with decision-making power, who shall not have substantive involvement in the matters involved in the dispute, unless the parties otherwise agree.
 - 10.2. Failing resolution under paragraph 10.1 herein, the parties shall attempt to resolve the dispute through a mediation conducted by a person(s) or organization experienced in mediation initiated within thirty (30) days from the date of the request unless extended by Contract of both parties. If the Parties fail to agree on the appointment of a mediator or mediation service within 10 business days from the date of a mediation request initiated under this paragraph, the dispute shall be mediated by the Washington Arbitration and Mediation Service (WAMS) in Seattle, with each Party to bear its own costs, attorney fees, and one half of the mediation fee.



10.3. The positions expressed and mediator's recommendations, if any, shall not be admissible as evidence in any subsequent proceeding. At all times during the course of any unresolved dispute between the parties, the Consultant shall supervise, direct and perform the Work in a diligent and professional manner and without delay as provided under the terms of the Contract. The good faith completion of negotiation efforts and mediation pursuant to this Article shall be a prerequisite to the filing of any litigation. Jurisdiction and venue shall be in the Thurston County, Washington Superior Court or the Federal District Court for the Western District of Washington, depending on the nature of the dispute. Washington State law shall be applied to any litigation that is brought that arises out of, is related to, or connected with, this Agreement.

11. Ownership of Property.

- 11.1. All property furnished by the Port for the use of the Consultant shall remain the property of the Port.
- 11.2. All documents, including drawings and specifications, prepared by the Consultant pursuant to this Contract are the instruments of service with respect to the Services and shall be owned by the Port upon payment of the Consultant fee by the Port. The Consultant shall provide the Port with both the native file formats and reproducible copies of all documents, drawings, specifications, and other work products constituting the instruments of service. The instruments of service are not intended nor represented by the Consultant to be suitable for reuse by the Port or others on extensions of the services provided for the Services, or any other project. Any reuse without written verification or adaptation by the Consultant will be at the Port's sole risk and without liability or legal exposure to the Consultant, and the Port shall indemnify and hold the Consultant harmless from all claims, damages; losses, and expenses including attorney's fees arising out of or resulting therefrom.

12. Compliance with Laws.

- 12.1. The Consultant, in the performance of this Contract, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Contract to assure quality of services.
- 12.2. Additionally, the consultant acknowledges and understands their responsibilities under WAC 415-02-325 in relation to 2008 early retirement factors and will inform the Port if there is a conflict.



12.3. The Consultant specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Contract, as well as any other tax or fee related to the Consultant's business.

13. Nondiscrimination.

- 13.1. In In the performance of this Contract, Consultant will not discriminate, or allow discrimination, against any employee or applicant for employment on any of the following grounds: race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or any other discrimination prohibited by law or Executive Order.. Consultant shall take such action with respect to this Contract as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.
- 13.2. Additionally, Consultant will not discriminate against any recipient of any services or benefits provided for in this Contract on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability, or other discrimination prohibited by law or Executive Order.
- 13.3. If any assignment or subcontracting has been authorized by the Port, the assignment or subcontract shall include appropriate safeguards against discrimination meeting the requirements of this Contract.

14. Assignment/subcontracting.

- 14.1. The Consultant shall not assign its performance of the Services or any portion of this Contract without the Port's prior written consent of not less than thirty (30) days. The Port reserves the right to reject without cause any such assignment.
- 14.2. Any assignment shall be subject to each provision of this Contract and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.
- 14.3. Any technical/professional service subcontract not listed in this Contract, must have express advance approval by the Port.



15. Maintenance and Inspection of Records.

- 15.1. The Consultant shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Contract and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Contract. These records shall be subject at all reasonable times to inspection, review, or audit, by the Port, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Contract.
- 15.2. The Consultant shall retain all books, records, documents and other material relevant to this Contract, for six (6) years after its expiration. The Consultant agrees that the Port or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

16. Termination.

- 16.1. <u>Termination for Convenience</u>. The Port may terminate this Contract, in whole or in part, at any time, by giving thirty (30) calendar days' written notice to the Consultant. Upon such termination for convenience, the Port shall pay the Consultant for all Services provided under this Contract through the date of termination, as well as any other Services specifically agreed to by the Parties in writing.
- 16.2. Termination for Cause. If the Consultant fails to perform in the manner called for in this Contract, or if the Consultant fails to comply with any other provisions of the Contract and fails to correct such failure or noncompliance within five (5) business days' written notice thereof, the Port may terminate this Contract for cause. Termination shall be effective by serving a notice of termination on the Consultant setting forth the manner in which the Consultant is in default and the date of the termination. The Consultant will only be paid for Services performed in accordance with this Contract through the date of termination.

17. Notice.

17.1. All notices provided for in this Contract shall be sent by certified mail to the addresses designated below:



Port

Contract & Grant Administrator Port of Olympia

606 Columbia St. NW, STE 300 Olympia, WA 98501

Consultant

Christopher L. Reive Christopher L. Reive, Counselor at Law and Mediation Services 1829 NW Columbia Summit Dr. Camas, WA 98607

17.2. In the event either Party needs to change the contact for notices, they shall provide in writing a new contact and the contacts information in writing to the other Party in a reasonable amount of time.

18. Attorney's Fees and Costs.

In any dispute arising from the terms or performance of this Contract, whether a lawsuit is commencing, the prevailing Party shall be entitled to recover from the other Party, in addition to any other relief to which such Party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding, including an appeal.

19. Jurisdiction and Venue.

- 19.1. This Contract has been and shall be construed as having been made and delivered within the State of Washington and shall be governed by laws of the State of Washington, both as to interpretation and performance.
- 19.2. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Contract or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington, or in the United States District Court for the Western District of Washington, depending on the nature of the dispute.

20. Severability.

If any portion of this Contract is held to be invalid or unenforceable for any reason, such holding shall not affect the validity or enforceability of the remaining portions of this Contract.

21. Electronic Signature.

An electronic signature may be used with the same force and effect as a signature affixed by hand, subject to the limitations under state and federal law.



22. Entire Contract.

This Contract, including the Exhibit(s) attached, is the complete and exclusive expression of the Contract between the Parties and shall bind their successors and assigns. Any modification of this Contract shall be in writing and signed by both Parties. Failure to comply with any provision of this Contract shall constitute a material breach of contract and be cause for termination. The Parties recognize time is of the essence in the performance of this Contract. The forgiveness or waiver of the nonperformance of any provision of this Contract does not constitute a waiver of any subsequent nonperformance by a Party.

IN WITNESS WHEREOF, the Parties hereto have signed this Contract on the day and year written below.

THE PORT OF OLYMPIA

606 Columbia St. NW, STE 300 Olympia, WA 98501 **CHRISTOPHER L. REIVE**

1829 Columbia Summit Dr. Camas, WA 98607

Sam Gibboney

Executive Director

Date

Christopher L. Reive

Counselor at Law

Date



DRAFT

Legal Assistance for Insurance and PLP Liability Settlements

Budd Inlet Sediment Site Scope of Work – Chris Rieve January 10, 2023

The Port of Olympia (Port) is a potentially liable person (PLP) under the Model Toxics Control Act (MTCA) and is party to an Agreed Order (AO) with the Washinton Department of Ecology (Ecology) to clean up legacy contamination in sediments in South Budd Inlet. As a result, the Port is required to identify a remedy for sediment contamination in South Budd Inlet and is responsible for implementing a future cleanup action for sediment. The area has been subject to a host of direct and indirect environmental impacts from former Port tenants, and other private and public entities.

The Port intends to pursue insurance recovery as well as liability contributions from other PLPs and requires legal assistance for this work. The Port also has legal representation for the Budd Inlet matter, and it may be necessary to you to work collaboratively with the Port's counsel.

SCOPE OF WORK

The following are the work tasks for which the Port will require legal assistance.

Task 1- Evaluate Previous Settlements with Insurance Carriers

The Port has historically settled with a number of its previous insurance carriers. Evaluate previous settlement agreements and seek to obtain any remaining unsettled policies (it appears that policies from Safeco and Travelers remain). The Port has background data on this matter, though additional research to capture all remaining coverage is necessary.

Task 2- Assess Potential Remaining Coverage

Determine the extent of the Port's remaining insurance coverage. As part of that analysis determine what the coverage limits are for future environmental remediation as well as the potential for securing defense' costs necessary to provide funds to the Port for additional environmental investigations and analyses to respond to Ecology's requirements. The work should include recommending a path forward to identify the remaining policy limits as well as triggering the insurer's defense obligation.

Task 3- Additional Coverage Identification

In addition to identifying direct Port liability coverages, determine whether the Port has recourse to pursue liability coverage derived from its membership in industry associations. Such associations may include the Northwest Marine Terminal Association. It is believed that membership within associations may have included liability coverage. Further, there may be coverage available to the Port from both

Exhibit A

known and unknown PLPs (e.g., current, and former tenants of the Port) for which attorney should seek to identify as well as confirm the amount of coverage.

Task 4- Potential PLP Settlements

The Port has begun to identify sources of pollution impacting Budd Inlet that may lead to seeking negotiated liability contributions from PLPs. This task is intended to confirm the identification of those PLPs, determine the potential and timing of recovery, the probable extent of financial recovery, recommend a legal strategy to pursue the various categories of PLPs and assist the Port in negotiation of settlements. The Port's technical team will work collaboratively with to accomplish this work.

Task 5- Litigation Strategy

If negotiated settlements with individual PLPs do not materialize the Port may pursue litigation against those PLPs. Task 4, if initiated, seeks a recommendation on the approach to litigation including recommendation as to s legal firms the Port may consider to for this work. This task would also include a recommendation for how attorney would divide tasks with the litigation firm retained, as well as assist in the creation of a litigation budget. Additionally, assist the Port in soliciting proposals from identified legal firms upon request by the Port.

2023-1010 - Budd Inlet Insurance Reecovery - Contract Final

Final Audit Report

2023-03-09

Created:

2023-03-09

By:

Christopher Martinez (chrism@portolympia.com)

Status:

Signed

Transaction ID:

CBJCHBCAABAAnFo4VOxnVMEe7JKQxEMXLCQ5QD4gg1-h

"2023-1010 - Budd Inlet Insurance Reecovery - Contract Final" History

- Document created by Christopher Martinez (chrism@portolympia.com) 2023-03-09 4:34:05 PM GMT
- Document emailed to chris.reive@gmail.com for signature 2023-03-09 4:34:41 PM GMT
- Email viewed by chris.reive@gmail.com 2023-03-09 4:41:35 PM GMT
- Signer chris.reive@gmail.com entered name at signing as Christopher L. Reive 2023-03-09 4:47:43 PM GMT
- Document e-signed by Christopher L. Reive (chris.reive@gmail.com)
 Signature Date: 2023-03-09 4:47:45 PM GMT Time Source: server
- Agreement completed. 2023-03-09 - 4:47:45 PM GMT



PERSONAL SERVICES AGREEMENT NO. 2023-1010 AMENDMENT No. 1 BUDD INLET INSURANCE RECOVERY

Port Representative: Sam Gibboney

Consultant/Firm: Christopher L. Reive, Counselor at Law and Mediation Services

Consultant/Firm Representative: Christopher L. Reive

This **Amendment No. 1** is made by and between the Port of Olympia, a Washington municipal corporation (the "Port") and Christopher L. Reive, Counselor at Law and Mediation Services, (the "Consultant"), and collectively sometimes referred to as "Parties" or individually as "Party" to the above referenced Agreement, which was previously executed by an authorized representative of both Parties.

The Parties now desire to amend the Agreement as allowed through mutual written agreement. Specifically, the Parties hereby agree to the following changes:

1. Section 4 – Compensation: The not to exceed amount is changed to a **new not to exceed amount of \$175,000.00** for the entirety of the Agreement.

This Amendment constitutes the entire agreement and understanding of the amended Sections listed and supersedes all prior negotiations and representations. In the event any portion of the original Agreement conflicts with this, or any other amendment, the document most recently mutually executed shall take precedence.

The Parties have read the above referenced Agreement, previous amendments, and this Amendment in its entirety and assert they have full authority to bind their respective party to these changes.

Executed and Effective, as of the latter of dates of the mutual signatures below.

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CHRISTOPHER L. REIVE, COUNSELOR AT LAW

DocuSigned by:		DocuSigned by:				
Rudy Rudolph		Christopher Reine				
Rudy Rudolph	Date	Christopher L. Reive	Date			
Acting Executive Director		Authorized Representative				



PERSONAL SERVICES AGREEMENT NO. 2024-10XX AMENDMENT No. 2 BUDD INLET INSURANCE RECOVERY

Port Representative: Shawn Gilbertson

Consultant/Firm: Christopher L. Reive, Counselor at Law and Mediation Services

Consultant/Firm Representative: Christopher L. Reive

This **Amendment No. 2** is made by and between the Port of Olympia, a Washington municipal corporation (the "Port") and Christopher L. Reive, Counselor at Law and Mediation Services, (the "Consultant"), and collectively sometimes referred to as "Parties" or individually as "Party" to the above referenced Agreement, which was previously executed by an authorized representative of both Parties.

The Parties now desire to amend the Agreement as allowed through mutual written agreement. Specifically, the Parties hereby agree to the following changes:

1. Section 4 – Compensation: The not to exceed amount is changed to a **new not to exceed amount of \$225,000.00** for the entirety of the Agreement.

This Amendment constitutes the entire agreement and understanding of the amended Sections listed and supersedes all prior negotiations and representations. In the event any portion of the original Agreement conflicts with this, or any other amendment, the document most recently mutually executed shall take precedence.

The Parties have read the above referenced Agreement, previous amendments, and this Amendment in its entirety and assert they have full authority to bind their respective party to these changes.

Executed and Effective, as of the latter of dates of the mutual signatures below.

THE PORT OF OLYN	ЛРІА	CHRISTOPHER L. REIVE, COUN	SELOR AT LAW
Rudy Rudolph	Date	Christopher L. Reive	Date
Interim Executive Dir	ector	Authorized Representative	