

**HARTSTENE POINTE WATER-SEWER DISTRICT  
REGULAR MEETING  
CONDUCTED VIA TELECONFERENCE  
Per State of Emergency Declared in Washington State and Mason County  
February 4, 2021 1:00 P.M.**

**AGENDA**

1. Call to Order
2. Roll Call
3. Subscriber Remarks
4. Correspondence
5. Present Agenda
6. Minutes of the January 21, 2021 Regular Meeting (2-3)

**REPORTS:**

7. Update from Century West Engineering
8. Commissioner Reports
9. Financial/Administrative Report:
  - Bills to Be Authorized:
    - Voucher 2021-06
  - Bills to Be Reviewed:
    - Voucher 2021-05
  - Monthly Financial Report: December 2020 (4-5)
  - Monthly Billing Report: February 2021 (6)
10. Emergency Response Plan Update

**BUSINESS:**

11. Approve Professional Service Agreement between HPWSD and Century West Engineering (7-46)
12. Approve Conversion of Water System Plan to Small Water System Management Plan
13. Review Impact of Puget Sound Nutrient General Permit Draft (47-50)

**HARTSTENE POINTE WATER-SEWER DISTRICT  
REGULAR MEETING of the BOARD OF COMMISSIONERS  
January 21, 2021  
Conducted Via Teleconference  
Per State of Emergency Declared in Washington State and Mason County**

**MINUTES**

**PRESENT:** President E. J. Anderson, Secretary S. Swart, Audit Commissioner A. Hospador, General Manager (GM) D. Carnahan, Project & Accounts Manager (PM) J. Sartori.

**CALL TO ORDER:** The meeting was called to order at 1:03 pm.

**SUBSCRIBER REMARKS:**

- Commissioners reviewed and discussed a letter received from a subscriber and drafted a letter to reply.

**CORRESPONDENCE:** PM presented annual agreement letter from Wittenberg CPA

**PRESENT AGENDA:** *Commissioner Swart moved to adopt the agenda as presented. Commissioner Anderson seconded. Hearing 3 aye votes and 0 nay votes, the agenda was adopted.*

**MINUTES:** The minutes of the January 7, 2021 regular meeting were presented. *Commissioner Swart moved to approve the minutes as presented. Commissioner Anderson seconded. Hearing 3 aye votes and 0 nay votes, the minutes were approved.*

The minutes of the January 14, 2021 special meeting were presented. *Commissioner Anderson moved to approve the minutes as presented. Commissioner Swart seconded. Hearing 3 aye votes and 0 nay votes, the minutes were approved.*

**REPORTS:**

**Commissioner Reports:**

- Commissioner Swart shared updates from WASWD regarding the legislative session
- Commissioner Swart noted she is attending the WASWD commissioner workshop tomorrow. Commissioner Anderson noted he will participate also.

**Financial/Administrative Report:**

- Bills to Be Authorized:
  - Voucher 2021-04, in the amount of \$29,144.44, was presented in full. *Commissioner Hospador moved to approve voucher 2021-04 in the amount of \$29,144.44. Commissioner Anderson seconded. Hearing 3 aye votes and 0 nay votes, the voucher was approved.*
- Bills to Be Reviewed:
  - PM presented voucher 2021-03 for review

**BUSINESS:**

**Elect Officers:** Commissioners discussed current officer positions and will remain in the same roles.

***Commissioner Hospador moved to adjourn the meeting. Commissioner Swart seconded. Hearing 3 aye votes and 0 nay votes, the meeting adjourned at 2:00 pm.***

Respectfully Submitted By:

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*Signature*

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*Name and Title*

Approved at the Regular Meeting of the Board on: 2-4-2021

## Hartstene Pointe Water Sewer District Monthly Financial Report - Fund Activity

December 2020

|   | Beginning Balances | Payments & Transfers Out | Deposits & Transfers In | Ending Balances | Fund Balance Change |
|---|--------------------|--------------------------|-------------------------|-----------------|---------------------|
| Reserve Funds                                 |                    |                          |                         |                 |                     |
| <b>030 - Ecology Reserve</b>                  | 40,505.70          | -                        | 5.10                    | 40,510.80       | 5.10                |
| <b>050 - DWSRF Loan Reserve</b>               | 7,000.39           | -                        | 13,430.88               | 20,431.27       | 13,430.88           |
| <b>060 - Bond Fund</b>                        | 0.00               | -                        | -                       | 0.00            | -                   |
| <b>070 - USDA Revenue Bond Reserve</b>        | 33,127.73          | -                        | 659.67                  | 33,787.40       | 659.67              |
| Total Reserve Funds                           | 80,633.82          | -                        | 14,095.65               | 94,729.47       | 14,095.65           |
| Unreserved Funds                              |                    |                          |                         |                 |                     |
| <b>EFT Account - Columbia Bank</b>            | 30,777.31          | (49,738.76)              | 50,293.36               | 31,331.91       | 554.60              |
| <b>Petty Cash Account</b>                     | 2,000.00           | (763.53)                 | 615.43                  | 1,851.90        | (148.10)            |
| <b>Xpress Deposit Account</b>                 | 9,838.09           | (47,758.22)              | 42,230.52               | 4,310.39        | (5,527.70)          |
| <b>010 - Operating Fund</b>                   |                    |                          |                         |                 |                     |
| <i>Operating Investment Fund</i>              | 50,000.00          | (16,000.00)              | -                       | 34,000.00       | (16,000.00)         |
| <i>010 - Operating Fund - Other</i>           | 41,487.57          | (84,929.82)              | 89,843.40               | 46,401.15       | 4,913.58            |
| <b>Total 010 - Operating Fund</b>             | 91,487.57          | (100,929.82)             | 89,843.40               | 80,401.15       | (11,086.42)         |
| <b>065 - Capital Project Account</b>          | 0.00               | -                        | -                       | 0.00            | -                   |
| Total Unreserved Funds                        | 134,102.97         | (199,190.33)             | 182,982.71              | 117,895.35      | (16,207.62)         |
| Committed Funds                               |                    |                          |                         |                 |                     |
| <b>020 - Water/Sewer Committed Fund</b>       |                    |                          |                         |                 |                     |
| Asset Replacement Fund                        | 39,540.00          | 9,000.00                 | -                       | 48,540.00       | 9,000.00            |
| Capital Improvement Fund                      |                    |                          |                         |                 |                     |
| <i>I&amp;I Repair</i>                         | 80,617.25          | -                        | -                       | 80,617.25       | -                   |
| <i>Reservoir Repair</i>                       | 56,714.95          | -                        | -                       | 56,714.95       | -                   |
| Total Capital Improvement Fund                | 137,332.20         | -                        | -                       | 137,332.20      | -                   |
| Risk Management Fund                          | 139,470.98         | -                        | 39.85                   | 139,510.83      | 39.85               |
| <b>Total 020 - Water/Sewer Committed Fund</b> | 316,343.18         | 9,000.00                 | 39.85                   | 325,383.03      | 9,039.85            |
| Total Committed Funds                         | 316,343.18         | 9,000.00                 | 39.85                   | 325,383.03      | 9,039.85            |
| Total Funds                                   | 531,079.97         | (190,190.33)             | 197,118.21              | 538,007.85      | 6,927.88            |

I hereby certify that the above statement is true.

\_\_\_\_\_  
Project & Accounts Manager

\_\_\_\_\_  
Date

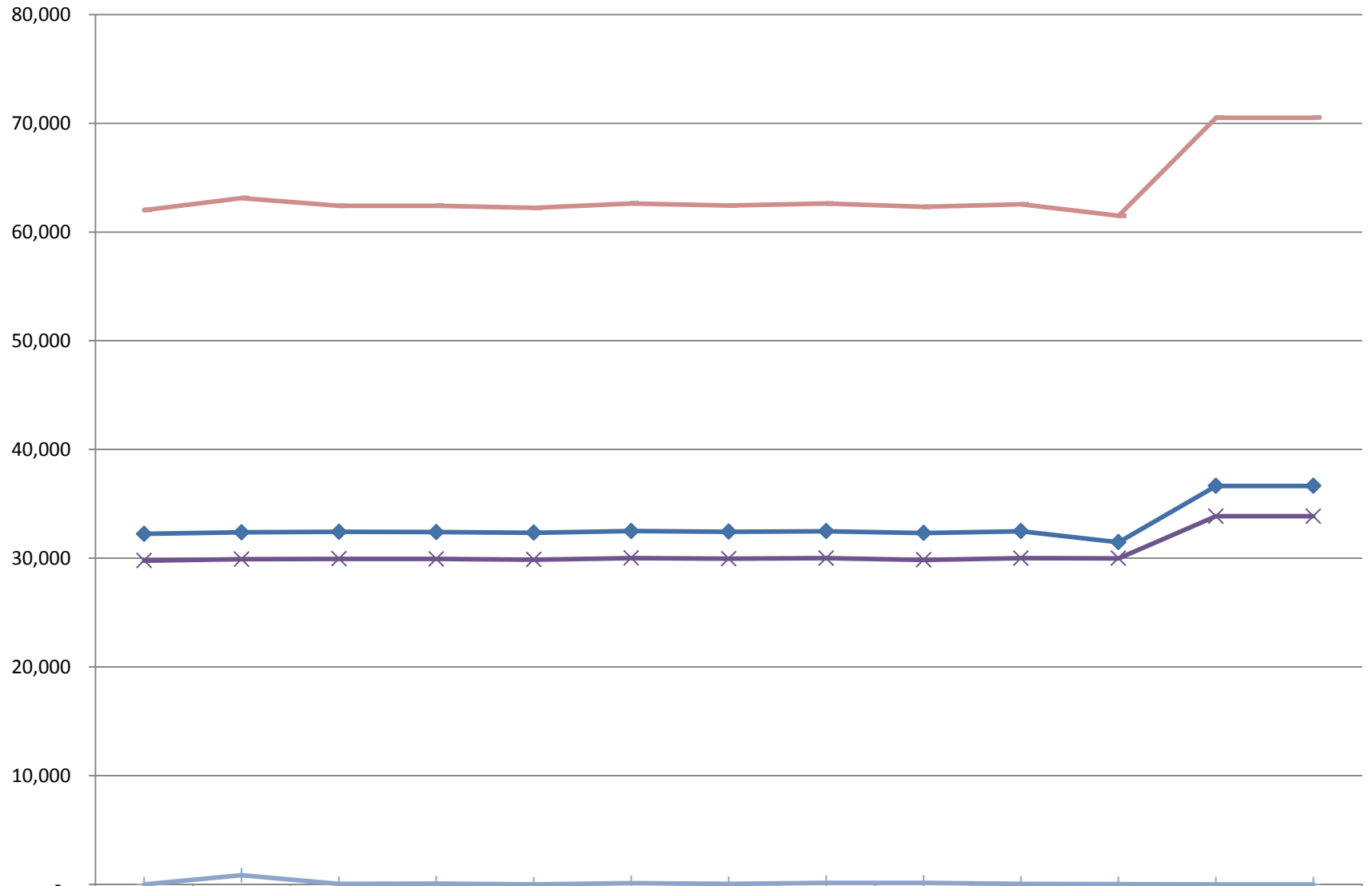
\_\_\_\_\_  
Audit Commissioner

\_\_\_\_\_  
Date

**Hartstene Pointe Water Sewer District  
Profit & Loss Budget vs. Actual  
January through December 2020**

|  | <u>Profit &amp; Loss</u> | <u>Budget v Actual</u>                |                              |                                   |                              |
|--|--------------------------|---------------------------------------|------------------------------|-----------------------------------|------------------------------|
|  | <u>Dec '20</u>           | <u>Jan - Dec '20<br/>(100% of Yr)</u> | <u>Total 2020<br/>Budget</u> | <u>\$ Over (Under)<br/>Budget</u> | <u>% of Total<br/>Budget</u> |
| <b>Ordinary Income/Expense</b>         |                          |                                       |                              |                                   |                              |
| <b>Income</b>                          |                          |                                       |                              |                                   |                              |
| <b>Non-Operating Revenue</b>           | 56.30                    | 25,427.09                             | 11,535.00                    | 13,892.09                         | 220.43%                      |
| <b>Operating Revenue</b>               | 62,182.30                | 751,177.81                            | 766,586.00                   | -15,408.19                        | 97.99%                       |
| <b>Total Income</b>                    | 62,238.60                | 776,604.90                            | 778,121.00                   | -1,516.10                         | 99.81%                       |
| <b>Expense</b>                         |                          |                                       |                              |                                   |                              |
| <b>534 - Water Expenditures</b>        | 7,925.97                 | 266,768.68                            | 259,730.00                   | 7,038.68                          | 102.71%                      |
| <b>535 - WW Treatment Expenditures</b> | 34,346.45                | 243,715.08                            | 217,086.00                   | 26,629.08                         | 112.27%                      |
| <b>538 - Combined W/S Expenditures</b> | 19,828.46                | 280,852.81                            | 295,612.00                   | -14,759.19                        | 95.01%                       |
| <b>Total Expense</b>                   | 62,100.88                | 791,336.57                            | 772,428.00                   | 18,908.57                         | 102.45%                      |
| <b>Net Ordinary Income</b>             | 137.72                   | -14,731.67                            | 5,693.00                     |                                   |                              |
| <b>Net Income</b>                      | <u>137.72</u>            | <u>-14,731.67</u>                     | <u>5,693.00</u>              |                                   |                              |

## Regular Utility Billing



|                 | Feb 2020 | Mar 2020 | Apr 2020 | May 2020 | June 2020 | July 2020 | Aug 2020 | Sept 2020 | Oct 2020 | Nov 2020 | Dec 2020 | Jan 2021 | Feb 2021 |
|-----------------|----------|----------|----------|----------|-----------|-----------|----------|-----------|----------|----------|----------|----------|----------|
| Water Service   | 32,241   | 32,380   | 32,422   | 32,405   | 32,344    | 32,493    | 32,435   | 32,481    | 32,315   | 32,482   | 31,472   | 36,656   | 36,656   |
| Sewer Service   | 29,781   | 29,910   | 29,949   | 29,932   | 29,875    | 30,013    | 29,958   | 30,001    | 29,848   | 30,001   | 29,992   | 33,862   | 33,862   |
| Late/Misc. Fees | -        | 840      | 40       | 80       | -         | 120       | 40       | 140       | 155      | 60       | 20       | -        | -        |
| Total Charges   | 62,022   | 63,130   | 62,411   | 62,416   | 62,219    | 62,626    | 62,433   | 62,622    | 62,318   | 62,543   | 61,484   | 70,518   | 70,518   |

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of 2/1/2021 ("Effective Date") between  
Hartstene pointe Water/Sewer District, Washington ("Owner") and  
Century West Engineering Corporation ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:  
Generation of a Preliminary Engineering Report (PER) and Environmental Report (ER) related to sewer system improvements.

("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows: See Attachment #1.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
  2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.
- E. No member of the governing body of the Owner and no other officer, employee, or agent of the Owner who exercises any functions or responsibilities in connection with the planning or carrying out of the project, shall have any personal financial interest, direct, or indirect, in this contract; and the Engineer shall also take appropriate steps to assure compliance.
- F. No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning or carrying out of the project, shall have any personal financial interest, direct or indirect, in this contract; and the Engineer shall take appropriate steps to assure compliance.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### **3.01 Commencement**

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### **3.02 Time for Completion**

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### **4.01 Invoices**

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Invoices must include a breakdown of services provided. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

#### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 60 days after receipt of Engineer's invoice, then:
  - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
  - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

### **ARTICLE 5 – OPINIONS OF COST**

#### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate. Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.
- B. Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

**ARTICLE 6 – GENERAL CONSIDERATIONS**

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
  - 1. The Engineer represents that he/she has, or will secure at his/her own expense, all personnel required in order to perform under this contract. Such personnel shall not be employees of, or have a contractual relationship to the Owner.
  - 2. All services required hereunder will be performed by the Consultant or under his/her supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under federal, state and local law to perform such services.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or

customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
1. Engineer and Owner shall comply with applicable Laws and Regulations.
  2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws and Regulations;
    - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
    - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.
- O. The Engineer covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. The Engineer further covenants that in the performance of this contract, no person having such interest shall be employed.
- P. Engineer must be authorized to do business in the State of Washington and be in full compliance with the requirements of the Board of Professional Registration.

#### 6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

### 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.
- E. All of the reports, information, data, etc., prepared or assembled by the Engineer under this contract are confidential and the Engineer agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.
- F. No report, maps or other documents produced in whole or in part under this contract shall be subject of an application for copyright by or on behalf of the Engineer.

### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.



- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer may jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
  - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same,

then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective 10 days after Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
  2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

#### 6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

#### 6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

#### 6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

#### 6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.
- B. The Consultant agrees to maintain such records and follow such procedures as may be required under the state's CDBG Program and any such procedures as the Owner or COMMERCE may prescribe. In general, such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

The Owner, the Washington State Department of Commerce, and other authorized representatives of the state and federal government shall have access to any books, documents, papers and records of the consultant which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.

The Owner, COMMERCE and duly authorized officials of the state and federal government shall have full access and the right to examine and pertinent documents, papers, records and books of the Consultant involving transactions related to this local program and contract.

#### 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, creed, religion, sex or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- G. Section 109 of the Housing and Community Development Act of 1974: No person in the United States shall on the grounds of race, color, creed, religion, sex or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
- H. Age Discrimination Act of 1975, as Amended: No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance. (42 U.S.C. 610 et. seq.)
- I. Section 504 of the Rehabilitation Act of 1973, as Amended: No otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funds. (29 U.S.C. 794)
- J. Public Law 101-336, Americans with Disabilities Act of 1990: Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
- K. Section 3 of the Housing and Community Development Act of 1968 Compliance in the Provision of Training, Employment, and Business Opportunities: The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower-income residents of the project area; and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.
- L. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR 135, and all applicable rules and orders of HUD and COMMERCE issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these provisions.

- M. The Engineer will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- N. The Engineer will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. The Engineer will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract, unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- O. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of HUD and COMMERCE issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant, or recipient, its consultants and subcontractors, its successors and assigned to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
  - 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.



6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders,

and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals

and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
38. *Agency* – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, NOT USED
- F. Exhibit F, NOT USED
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.

- K. Exhibit K, Amendment to Owner-Engineer Agreement.

#### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

#### 8.05 *Federal Requirements*

- A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 (2014) hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. Audit and Access to Records. Owner, Agency, COMMERCE, the State Auditor, HUD and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and

transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

- C. Restrictions on Lobbying. Engineer and each Consultant shall comply with *"Byrd anti-lobbying amendment (31 U.S.C. 1352)"* if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certification and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
  
- D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it to the USDA, Rural Development processing office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Hartstene Pointe Water/Sewer District,  
Washington

Engineer: Century West Engineering Corporation

By: [ ]  
Print name: [ ]  
Title: [ ]  
Date Signed: [ ]

By: [ ]  
Print name: Matthew Morkert P.E.  
Title: Vice President  
Date Signed: [ ]

Engineer License or Firm's Certificate No. (if required):  
487  
State of: Washington

Address for Owner's receipt of notices:  
772 E Chesapeake Dr.  
Shelton, WA 98584

Address for Engineer's receipt of notices:  
11707 E Montgomery Drive  
Spokane Valley, WA 99206

Designated Representative (Paragraph 8.03.A):  
[ ]  
Title: [ ]  
Phone Number: [ ]  
E-Mail Address: [ ]

Designated Representative (Paragraph 8.03.A):  
[ ]  
Title: [ ]  
Phone Number: [ ]  
E-Mail Address: [ ]

This is **EXHIBIT A**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 2/1/2021.

## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

### **PART 1 – BASIC SERVICES**

#### **A1.00 Engineer-Owner Relationship**

- A. The relationship of the Consultant to the Owner shall be that of an independent Consultant rendering professional services. The Consultant shall have no authority to execute contracts or to make commitments on behalf of the Owner and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the Owner and the Consultant.

#### **A1.02 Study and Report Phase**

A. Engineer shall:

1. Preliminary Engineering Report (PER) shall conform to the requirements of RUS Bulletin 1780-2.
2. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
  - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: None
  - b. In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.
3. Identify potential solution(s) to meet Owner's Project requirements, as needed.
4. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
5. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
6. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study

---

**Exhibit A – Engineer's Services**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

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and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

7. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
8. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
9. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. The Report mentioned in Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.
10. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
11. When mutually agreed and approved by the Agency, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
12. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
13. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
14. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
15. Perform or provide the following other Study and Report Phase tasks or deliverables: Provide an Environmental Report as defined at 7 CFR 1970 or other Agency approved format. The Environmental Report must be concurred in by the Agency.

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**Exhibit A – Engineer's Services**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

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16. Furnish 2 review copies of the Report and any other Study and Report Phase deliverables to Owner within 30 days of the Effective Date and review it with Owner. Within 7 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
  17. Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within 7 days of receipt of Owner's comments.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.03 *Completion Date*

- A. The termination date of this contract shall be 12/31/2022.

This is EXHIBIT B, consisting of 4 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 2/1/2021.

## Owner's Responsibilities

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Utility and topographic mapping and surveys.
  - 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  - 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  - 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  - 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- D. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

- E. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- F. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- G. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- H. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- I. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- J. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- K. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. Perform or provide the following: None

B2.02 Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

- A. **Signing** loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.
- B. **Signing** change orders (i.e. C-941 of EJDC) and partial payment estimates (i.e. C-620 of EJDC) and thereby **acknowledging** responsibility for compliance with American Iron and Steel requirements.
- C. **Obtaining** the certification letters from the consulting Engineer upon substantial completion of the project and **maintaining** this documentation for the life of the loan.
- D. Where the Owner provides their own engineering and/or construction services, **providing** copies of Engineers', Contractors', and Manufacturers' Certification letters (as applicable) to the Agency. All Certification letters must be kept in the Engineer's project file and on site during construction. For Owner Construction (Force Account), all clauses from Section 17 of RUS Bulletin 1780-35 must be included in the Agreement for Engineering Services.
- E. Where the Owner directly procures American Iron and steel products, **including** American Iron and Steel clauses in the procurement contracts and **obtaining** Manufacturers' Certification letters and **providing** copies to consulting Engineers and Contractors.

This is EXHIBIT C, consisting of 6 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 2/1/2021.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

**C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment**

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A Lump Sum amount of \$30,000 based on the following estimated distribution of compensation:

a. Study and Report Phase \$30,000

2. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges).

3. The portion of the Lump Sum amount billed for Engineer’s services will be 50% at submittal of the PER to the Agency for review and the remaining 50% at agency approval. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

A. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 18 months. If such period of service is extended, the compensation amount for Engineer’s services shall be appropriately adjusted.

This is Appendix 1 to EXHIBIT C, consisting of 1 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 2/1/2021.

### Reimbursable Expenses Schedule

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Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

|                           |                                   |
|---------------------------|-----------------------------------|
| 8"x11" Copies/Impressions | \$ .05/page                       |
| Copies of Drawings        | \$ 0.50/sq. ft.                   |
| Mileage (auto)            | \$ 0.535/mile or current IRS rate |
| Air Transportation        | at cost                           |
| Laboratory Testing        | at cost                           |
| Meals and Lodging         | at cost                           |
| Nuclear Density Gage      | \$45/day or \$125/wk or \$450/mo  |

This is EXHIBIT G, consisting of 1 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 2/1/2021.

## Insurance

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Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

### G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

a. Workers' Compensation: Statutory

b. General Liability --

1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000

2) General Aggregate: \$2,000,000

c. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

\$1,000,000

d. Professional Liability --

1) Each Claim Made \$2,000,000

2) Annual Aggregate \$2,000,000

B. *Additional Insureds:*

1. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
2. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

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### Exhibit G – Insurance.



This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 2/1/2021.

## **Dispute Resolution**

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

### **H6.08 *Dispute Resolution***

- A. *Mediation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is EXHIBIT I, consisting of 1 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 2/1/2021

## Limitations of Liability

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Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.
- 

- E. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is EXHIBIT J, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 2/1/2021.

**Special Provisions**

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**RUS CERTIFICATION PAGE**

**PROJECT NAME:** \_\_\_\_\_

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500 (2014). In addition, Engineer certifies to the following:

All modifications required by RUS Bulletin 1780-26 have been made in accordance with the terms of the license agreement, which states in part that the Engineer "must plainly show all changes to the Standard EJCDC Text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

**SUMMARY OF ENGINEERING FEES**

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

|                |                  |
|----------------|------------------|
| Basic Services | \$ <u>30,000</u> |
| <b>TOTAL:</b>  | \$ <u>30,000</u> |

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

\_\_\_\_\_  
Engineer Date

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Owner Date

\_\_\_\_\_  
Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

\_\_\_\_\_  
Agency Representative Date

\_\_\_\_\_  
Name and Title

**Exhibit J - Special Provisions.**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

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This is EXHIBIT K, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 2/1/2021.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
Amendment No. \_\_\_\_\_

The Effective Date of this Amendment is: \_\_\_\_\_.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- \_\_\_\_\_ Additional Services to be performed by Engineer
- \_\_\_\_\_ Modifications to services of Engineer
- \_\_\_\_\_ Modifications to responsibilities of Owner
- \_\_\_\_\_ Modifications of payment to Engineer
- \_\_\_\_\_ Modifications to time(s) for rendering services
- \_\_\_\_\_ Modifications to other terms and conditions of the Agreement

Description of Modifications:

***Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.***

Agreement Summary:

|                                  |          |
|----------------------------------|----------|
| Original agreement amount:       | \$ _____ |
| Net change for prior amendments: | \$ _____ |
| This amendment amount:           | \$ _____ |
| Adjusted Agreement amount:       | \$ _____ |

Change in time for services (days or date, as applicable): \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



# Potential Permittee List For a Puget Sound Nutrients General Permit

The following list is the domestic wastewater treatment plants (WWTPs), permitted by Ecology, that are included in the Salish Sea Model as point sources. If Ecology proceeds with developing a Puget Sound Nutrients General Permit, these WWTPs may be subject to its conditions.

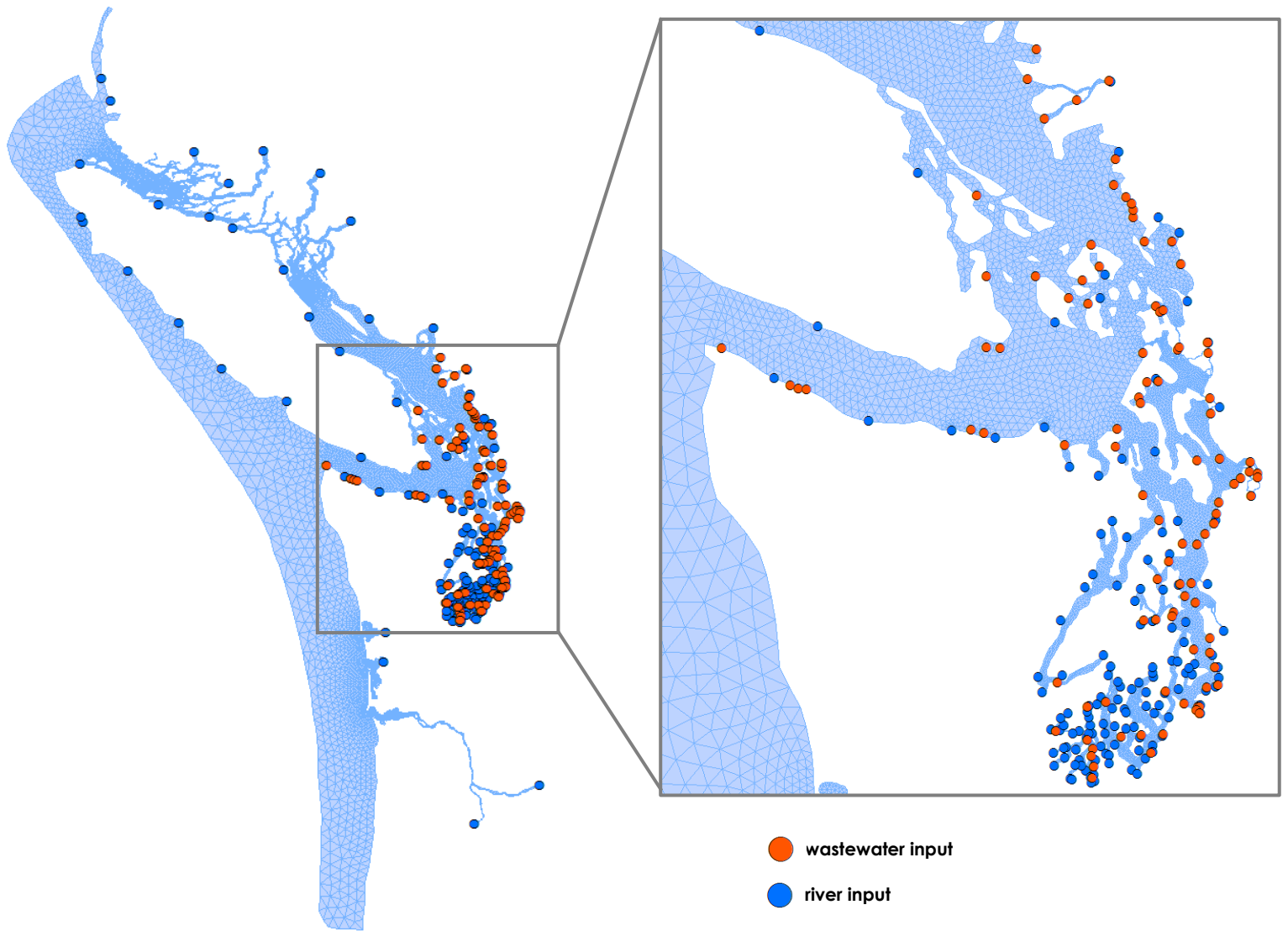
Privately-owned facilities are marked with an asterisk (\*). Facilities with nutrient reduction technology installed are marked with (nutrient reduction).

| Individual NPDES Permit Number | Facility Name                            | Responsible Entity                              | Facility Capacity: Maximum Month Design Flow, as Million Gallons per Day (MGD) |
|--------------------------------|--|---|--|
| WA0037753                      | Alderbrook Resort & Spa*                 | Alderbrook Resort & Spa/North Forty Lodging LLC | 0.04   |
| WA0020826                      | Alderwood WWTP                           | Alderwood Water and Sewer District              | 6  |
| WA0020257                      | Anacortes WWTP                           | City of Anacortes                               | 4.5  |
| WA0020907                      | Bainbridge Island WWTP                   | City of Bainbridge Island                       | 1.2  |
| WA0029556                      | Birch Bay Sewage Treatment Plant (STP)   | Birch Bay Water and Sewer District              | 1.44   |
| WA0040291                      | Boston Harbor STP                        | Thurston County                                 | 0.054  |
| WA0029289                      | Bremerton STP                            | City of Bremerton                               | 11/15.5  |
| WA0037915                      | Carlyon Beach STP*                       | Carlyon Beach Homeowners Association            | 0.06   |
| WA0039624                      | Chambers Creek WWTP (nutrient reduction) | Pierce County                                   | 55.8   |
| WA0024431                      | Clallam Bay STP                          | Clallam County                                  | 0.12   |
| WA0029378                      | Coupeville STP                           | Town of Coupeville                              | 0.44   |
| WA0030911                      | Eastsound Orcas Village WWTP             | Eastsound Sewer and Water District              | 0.015  |
| WA0030571                      | Eastsound Sewer and Water District WWTP  | Eastsound Sewer and Water District              | 0.16   |
| WA0024058                      | Edmonds STP                              | City of Edmonds                                 | 11.8   |
| WA0024490                      | Everett STP                              | City of Everett                                 | 40.3   |
| WA0030589                      | Fisherman Bay STP                        | Fisherman Bay Sewer District                    | 0.053  |
| WA0023582                      | Friday Harbor STP                        | Town of Friday Harbor                           | 0.69   |
| WA0023957                      | Gig Harbor STP                           | City of Gig Harbor                              | 2.4  |

|           |  |   |         |
|-----------|--|---|---------|
| WA0038377 | Hartstene Pointe STP   | Hartstene Pointe Water and Sewer District | 0.186   |
| WA0032247 | King County Brightwater WWTP                                     | King County                               | 40.9    |
| WA0029581 | King County South WWTP   | King County                               | 144     |
| WA0022527 | King County Vashon WWTP  | King County                               | 0.52    |
| WA0029181 | King County West Point WWTP                                      | King County                               | 215     |
| WA0030520 | Kitsap County Central Kitsap WWTP                                | Kitsap County                             | 6       |
| WA0032077 | Kitsap County Kingston WWTP                                      | Kitsap County                             | 0.292   |
| WA0023701 | Kitsap County Manchester WWTP                                    | Kitsap County                             | 0.46    |
| WA0030317 | Kitsap County Sewer District #7 Water Reclamation Facility (WRF) | Kitsap County Sewer District No. 7        | 0.28    |
| WA0022446 | La Conner STP  | Town of La Conner                         | 0.52    |
| WA0020893 | Lake Stevens Sewer District WWTP                                 | Lake Stevens Sewer District               | 5.01    |
| WA0022624 | Lakota WWTP  | Lakehaven Water and Sewer District        | 10      |
| WA0020702 | Langley STP  | City of Langley                           | 0.15    |
| WA0022641 | Lighthouse Point WRF   | City of Blaine                            | 1.54    |
| WA0037061 | LOTT Budd Inlet WRF (nutrient reduction)                         | LOTT Clean Water Alliance                 | 28      |
| WA0024031 | Lynnwood STP   | City of Lynnwood                          | 7.4     |
| WA0022497 | Marysville STP   | City of Marysville                        | 12.7    |
| WA0040002 | McNeil Island Special Commitment Center WWTP                     | WA State Department of Corrections        | 0.45    |
| WA0023469 | Messenger House Care Center WWTP*                                | Soundcare, Inc.                           | 0.016   |
| WA0020958 | Midway Sewer District WWTP                                       | Midway Sewer District                     | 9       |
| WA0022764 | Miller Creek WWTP  | Southwest Suburban Sewer District         | 7.1     |
| WA0024074 | Mt Vernon WWTP   | City of Mt Vernon                         | 15      |
| WA0023396 | Mukilteo Water and Wastewater District WWTP                      | Mukilteo Water and Wastewater District    | 2.61    |
| WA0020567 | Oak Harbor STP (nutrient reduction)                              | City of Oak Harbor                        | 2.5/3.2 |
| WA0029386 | Penn Cove WWTP   | Penn Cove Water and Sewer District        | 0.1     |
| WA0023973 | Port Angeles STP   | City of Port Angeles                      | 10.8    |
| WA0021202 | Port Ludlow WWTP*  | Olympic Water and Sewer, Inc.             | 0.32    |



|           |  |  |        |
|-----------|--|--|--------|
| WA0020346 | Port Orchard WWTP                            | City of Port Orchard                     | 4.2    |
| WA0037052 | Port Townsend STP                            | City of Port Townsend                    | 2.05   |
| WA0023744 | Post Point WWTP                              | City of Bellingham                       | 34.3   |
| WA0023451 | Redondo WWTP                                 | Lakehaven Water and Sewer District       | 5.6    |
| WA0021822 | Roche Harbor Resort WWTP*                    | Roche Harbor Resort                      | 0.1296 |
| WA0029891 | Rosario WWTP*                                | Washington Water Service Company         | 0.071  |
| WA0038075 | Rustlewood STP                               | Mason County                             | 0.055  |
| WA0022772 | Salmon Creek WWTP                            | Southwest Suburban Sewer District        | 8.1    |
| WA0037273 | Seashore Villa STP*                          | Emerald Properties, LLC                  | 0.034  |
| WA0024449 | Sekiu STP                                    | Clallam County                           | 0.145  |
| WA0022349 | Sequim WRF (nutrient reduction)              | City of Sequim                           | 1.67   |
| WA0023345 | Shelton STP                                  | City of Shelton                          | 4.02   |
| WA0030597 | Skagit County Sewer District 2 Big Lake WWTP | Skagit County Sewer District No. 2       | 0.35   |
| WA0029548 | Snohomish STP                                | City of Snohomish                        | 2.8    |
| WA0020290 | Stanwood STP                                 | City of Stanwood                         | 1.5    |
| WA0037087 | Tacoma Central No. 1                         | City of Tacoma                           | 60     |
| WA0037214 | Tacoma North No. 3                           | City of Tacoma                           | 7.2    |
| WA0037290 | Tamoshan STP                                 | Thurston County                          | 0.035  |
| WA0037656 | Taylor Bay STP*                              | Taylor Beach Club                        | 0.029  |
| WA0039845 | WA DOC Clallam Bay Corrections Center STP    | WA State Department of Corrections       | 0.16   |
| WA0023787 | WA Parks Larrabee WWTP                       | WA State Parks and Recreation Commission | 0.027  |
| WA0029904 | Warm Beach Campground WWTP*                  | Warm Beach Christian Camp                | 0.15   |



**Figure 1** Map of all Point Source Discharges included in the Salish Sea Model

*(Note: This map includes all wastewater sources included as point source discharges in the Salish Sea Model, including Ecology-permitted domestic and industrial facilities, EPA-permitted facilities, and Canadian facilities.)*