

Contract No. 102-23

**INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF PORT ORCHARD  
AND  
KITSAP TRANSIT  
FOR  
FUNDING OF THE DESIGN OF THE RUBY CREEK LIFT  
STATION SEWER PROJECT**

**THIS AGREEMENT** is made and entered into by and between the City of Port Orchard, a municipal corporation of the State of Washington (“**City**” or “**Port Orchard**”) and Kitsap County Public Transportation Benefit Area Authority, a Washington municipal corporation, (“**Kitsap Transit**”) (collectively “**Parties**” or individually a “**Party**”).

**RECITALS:**

A. Kitsap Transit is constructing a park and ride facility known as the Ruby Creek Park and Ride (“**Project**”) which is located within the City of Port Orchard at SW Sedgwick Rd. and Sidney Rd. SW.

B. The Project will require Kitsap Transit to construct sewer improvements to support the development (“**Sewer Improvements**”). These improvements must be designed and constructed to City standards and will be dedicated to the City once completed, approved, and accepted.

C. In addition, Kitsap Transit has requested that the City enter into a Latecomer Agreement under Chapter 13.08 of the Port Orchard Municipal Code for the Sewer Improvements once the improvements have been constructed.

D. Kitsap Transit has requested that the City perform the design work for the Sewer Improvements and that the City perform the permitting applications for Kitsap Transit for the Sewer Improvements. In exchange, Kitsap Transit will reimburse the City for the design and permitting costs.

E. Once permits for the Sewer Improvements are issued, Kitsap Transit will build the Sewer Improvements.

F. Port Orchard and Kitsap Transit each have the legal authority enter into design contracts, design capital improvements, and apply for permits. Pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW, public agencies may contract with one another to perform governmental functions or services.

## AGREEMENT:

In furtherance of the foregoing and in consideration of the following terms and conditions, the Parties agree as follows:

**1. Purpose.** The purpose of this Agreement is for Port Orchard to perform or contract to perform design and permitting work for certain Sewer Improvements that must be constructed by Kitsap Transit as part of its Park and Ride Development Project.

**2. Effective Date; Duration.** This Agreement shall be effective upon execution by both Parties ("**Effective Date**"). There shall be no fixed term associated with this Agreement, however, this Agreement may be terminated by mutual agreement of the Parties per RCW 39.34.030(3).

**3. Property Ownership.** Unless otherwise expressly provided herein, ownership of any real and personal property acquired or owned by a Party before and during the term of this Agreement shall remain vested in said Party upon termination.

**4. No Separate Entity Created.** The Parties do not by this Agreement create any separate legal or administrative entity. The City of Port Orchard Mayor, or his designee shall be responsible for working with the Kitsap Transit Executive Director, or his designee to administer the terms of this Agreement. Except as expressly provided herein, the Parties do not intend to jointly own any real or personal property as part of this undertaking. The Parties will cooperatively work together to further the intent and purpose of this Agreement.

**5. Tasks Performed by Port Orchard.** Port Orchard agrees undertake the following tasks for Kitsap Transit:

5.1 *Task Order for Pre-Design Work.* Port Orchard has begun pre-design work with its on-call sewer consultant to identify the design parameters for the Sewer Improvements as described in Sections 5.3 and 5.4 below.

5.2 *Contract for Design Work.* Port Orchard will enter into a contract with a consultant of Port Orchard's choosing to design the Sewer Improvements as described in Sections 5.3 and 5.4 below. The contract between Port Orchard and the consultant shall include language requiring the consultant to have insurance and to indemnify both Port Orchard and Kitsap Transit for design defects. In addition, the agreement will require the consultant to name both Port Orchard and Kitsap Transit as additional insureds on the consultant's insurance policies that are required by the agreement.

5.3 *Design of Sewer Improvements.* The City will contract with a consultant to create a design for the Sewer Improvements which are

compliant with Port Orchard's standards. These improvements will include the following components:

5.3.1 Approximately 430 linear feet of 10-inch sewer force main located within Sidney Road connecting the proposed Ruby Creek Lift Station to the City constructed sewer force main located at the south property line of Parcel 102301-1-053-2000. The associated Capital Project (including the City constructed portions) is Project SD in Table 7-1 of the June 2022 City of Port Orchard Comprehensive Plan. The total project is approximately 4,800 linear feet of 10-inch sewer force main project beginning at the proposed Ruby Creek Lift Station and discharging to the Cedar Heights Sewer Lift Station located approximately one mile to the north. Project SD is being constructed in phases associated with upcoming road projects. The southernmost section of this force main will be designed and constructed in conjunction with the Ruby Creek Lift Station as described above.

5.3.2 Approximately 1,640 linear feet of 15-inch Sewer Gravity line extending from the existing manhole located at the intersection of SW Hayworth Drive and Sidney Road SW to the proposed location of the Ruby Creek Lift Station. The associated Capital Project is Project SB in Table 7-1 of the June 2022 City of Port Orchard Capital Plan which includes the construction of the lift station described in the following section 5.3.3.

5.3.3 Ruby Creek Lift Station which includes the following:

5.3.3.1 Wet well, sized to meet the requirements listed in applicable design manuals;

5.3.3.2 Submersible pumps, duplex pump system meeting the capacity needs of the proposed system with an additional spare pump provided to the City;

5.3.3.3 Weather protection, in accordance with the applicable design manuals and City Standards;

5.3.3.4 Backup generator;

5.3.3.5 Backup diesel pump, sized for full system buildout;

5.3.3.6 Electrical equipment;

5.3.3.7 Mechanical equipment, including but not limited to flow meter; and

5.3.3.8 Communications equipment, to be integrated into the City's SCADA system.

5.4 *Location of Sewer Improvements.* The location and description of the above-described Sewer Improvements are shown on the site plan attached to this Agreement as **Exhibit A** and incorporated herein by this reference as if set forth in full.

5.5 *Application for Permits.* Once the design of the Sewer Improvements is complete, City will apply for the required local (Port Orchard) permits required for construction. The permits will be assigned to Kitsap Transit.

5.6 *Design Plans; Permits.* Once the design plans for the Sewer Improvements are complete and permits issued, the City will transfer and/or assign the design plans and permits to Kitsap Transit for its use or the use of its contractors. There shall be no additional payment required for such transfer.

**6. Kitsap Transit's Obligation to Reimburse City for Costs of Design.** Kitsap Transit agrees to reimburse City for its costs incurred in doing the Tasks listed in Section 5 above.

6.1. *Anticipated Maximum Cost.* At the time of this Agreement, the Parties anticipate that the cost of the design work (including pre-design) for the Sewer Improvements will not exceed \$750,000.00, not including permit costs. If the design work is anticipated to exceed this amount, the City will give notice to Kitsap Transit and the Parties will work in good faith to reduce the costs to extent feasible.

6.2. *Procedure for Payment for Pre-Design and Design Work.* When City receives an invoice for the pre-design or design work, it will first review the invoice and, if acceptable, approve it for payment. The City will then send an invoice to Kitsap Transit with the underlying consultant invoice attached. Kitsap Transit will make payment to City within 30 days of the date of the City's invoice to Kitsap Transit.

6.3. *Procedure for Payment for Permits.* The City will send invoices for all permit fees to Kitsap Transit when due. Kitsap Transit will make payment to City within 30 days of the date of the City's invoice for such fees to Kitsap Transit. Permit fees will be based on the standard charges imposed by Port Orchard based on adopted fees the same as are charged to other applicants. Kitsap Transit acknowledges that delay in payment of permit fees will result in delays in issuance of such permits.

6.4. *Previously Incurred Expenses.* This Agreement includes reimbursement by Kitsap Transit for all pre-design expenses that are or were incurred in accordance with Section 5.1, including expenses that were incurred prior to the effective date of this Agreement. Following the effective date of this Agreement, the City will provide to Kitsap Transit invoices as described in Section 6.2 for all work performed to date.

**7. Administrative Fees.** The Parties agree to fund their respective administrative costs and fees, and not seek reimbursement from each other for the same.

**8. Indemnification.**

8.1. Port Orchard agrees to indemnify and hold Kitsap Transit, its elected officials, officers, employees, agents and volunteers harmless from any and all claims, demands, losses, actions, and liabilities (including costs and all attorneys' fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors, or omissions of Port Orchard, its elected officials, officers, employees, agents, and volunteers, or by Port Orchard's breach of this Agreement.

8.2. Kitsap Transit agrees to indemnify and hold Port Orchard, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions, and liabilities (including costs and all attorneys' fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors, or omissions of Kitsap Transit, its elected officials, officers, employees, agents, and volunteers or by Kitsap Transit's breach of this Agreement.

8.3. In the event of a claim, loss, or liability based upon the alleged concurrent or joint negligence of the Parties, the Parties shall bear their respective liability, including cost, in accordance with their respective liability established in accordance with the laws of the State of Washington.

8.4.FOR PURPOSES OF INDEMNIFICATION ONLY, THE PARTIES, BY MUTUAL NEGOTIATION, HEREBY WAIVE, AS RESPECTS THE OTHER PARTY ONLY, ANY IMMUNITY THAT WOULD OTHERWISE BE AVAILABLE AGAINST SUCH CLAIMS UNDER THE INDUSTRIAL INSURANCE PROVISIONS OF TITLE 51 RCW.

8.5.The provisions of this section shall survive the expiration or termination of this Agreement with respect to acts and omissions occurring during the term hereof.

**9. Insurance.** Both Port Orchard and Kitsap Transit shall maintain membership in AWC or WCIA liability and risk pool or have equivalent limits of liability from another insurance program or liability pool.

**10. Jurisdiction; Venue.** This Agreement shall be governed in all respects by the laws of the State of Washington. The Venue for any dispute related to this Agreement shall be Kitsap County Superior Court, with both Parties expressly agreeing to personal jurisdiction in the same. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other Party.

**11. No Assignment.** Neither Party may assign this Agreement or any interest, obligation, or duty therein without the express written consent of the other Party.

**12. Entire Agreement.** This Agreement constitutes the complete and final agreement of the Parties and replaces and supersedes all oral and/or written proposals and agreements heretofore made by the Parties on the subject matter. No provision of this Agreement may be amended or added to except by agreement, in writing, signed by both Parties.

**13. No Third-Party Beneficiaries.** This Agreement is executed for the sole and exclusive benefit of the signatory Parties. Nothing in this Agreement, whether express or implied, is intended to confer any right, remedy, or other entitlement upon any person other than the Parties hereto, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party, nor shall any provision herein give any third party any right of action against any Party hereto.

**14. Written Notice.** Any notice or information required or permitted to be given to the Parties under this Agreement may be sent to the following addresses unless otherwise specified. Unless otherwise specified, any written notice hereunder shall become effective upon the date of both emailing and mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

**City of Port Orchard:**

City of Port Orchard  
Attn: Rob Putaansuu, Mayor  
216 Prospect Street  
Port Orchard, WA 98366

**Kitsap Transit:**

Kitsap Transit  
Attn: Steffani Lillie, Capital Director  
60 Washington Ave. Suite 200  
Bremerton, WA 98337

**15. Website Posting.** Each Party shall post a copy of this fully executed Agreement on its respective website in accordance with RCW 39.34.040. If a Party does not have a website for posting this Agreement, then that Party shall cause the Agreement to be filed with the Kitsap County Auditor and shall pay any fees for the same.


**16. Modification.** No waiver, alteration, or modification of any of the provisions of this Amendment Agreement shall be binding unless in writing and signed by a duly authorized representatives of the City and McCormick.

**17. Severability.** Should any clause, phrase, sentence or paragraph of this Agreement or its application be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement or its applications of those provisions not so declared shall remain in full force and effect.

**18. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all counterparts together shall constitute one agreement.


**IN WITNESS WHEREOF,** authorized representatives of the Parties hereto have signed their names in the spaces below:

**CITY OF PORT ORCHARD**


DocuSigned by:  
  
AFF15B026C3F4D8...  
Robert Putaansuu  
Mayor Pro-Tem  
Mayor

Date: 12/13/2023

**Attested to:**

DocuSigned by:  
  
65D1E6F1BE4E4BE...  
Brandy Wallace  
City Clerk

**KITSAP TRANSIT**

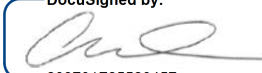
  
John W. Clauson  
Executive Director

Date: 12/11/2023

**Attested to:**

DocuSigned by:  
  
2395D24B46804E7...  
Jacquelyn Bidon  
Clerk of the Board, Interim

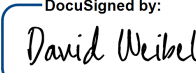
**Approved as to form:**

DocuSigned by:  
  
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Charlotte A. Archer  
City Attorney

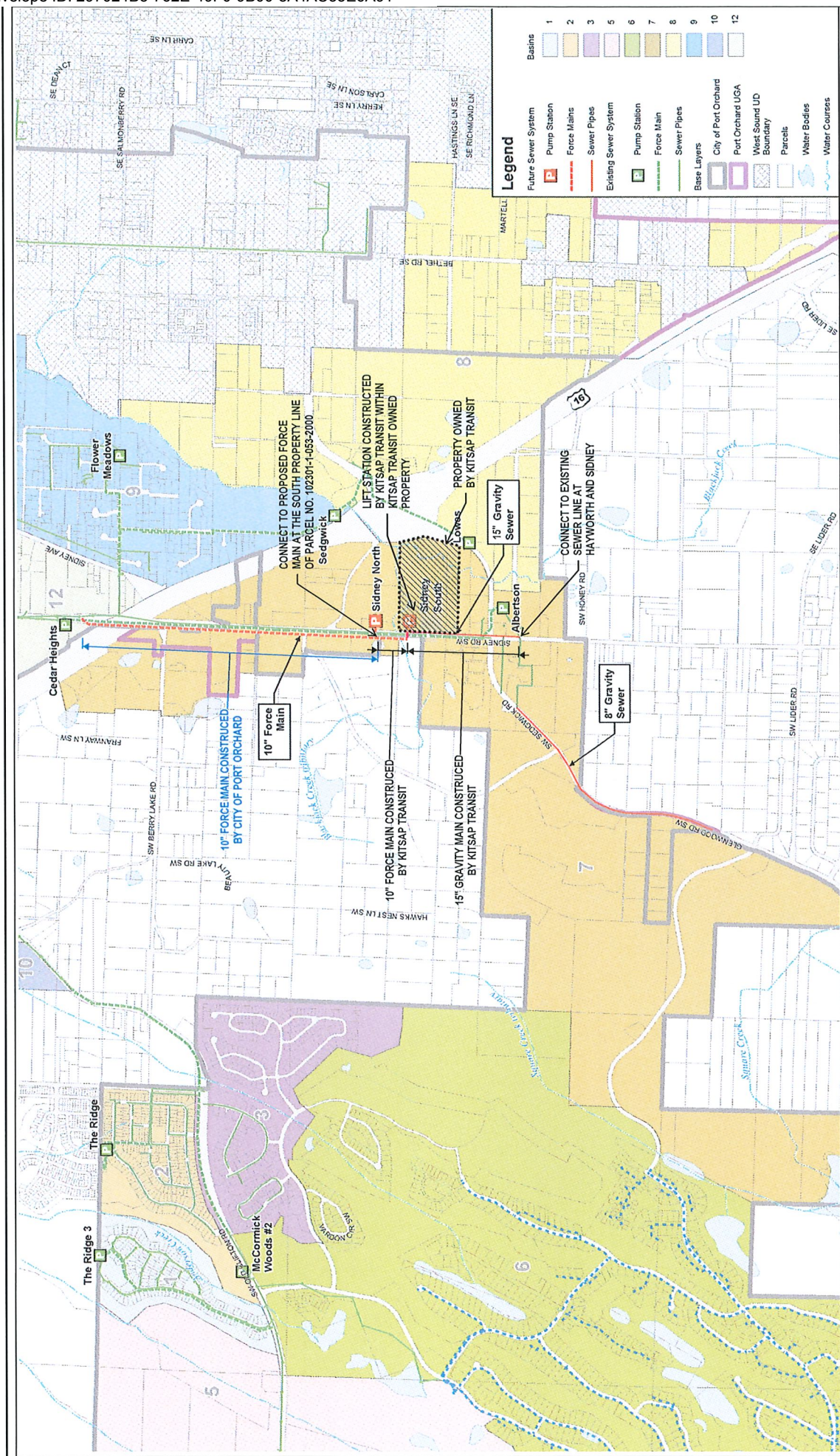
**Approved as to form:**

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David Weibel  
Attorney for Kitsap Transit





**Legend**

Basins	1	2	3	5	6	7	8	9	10	12
Future Sewer System										
Pump Station										
Force Mains										
Sewer Pipes										
Existing Sewer System										
Pump Station										
Force Main										
Sewer Pipes										
Base Layers										
City of Port Orchard										
Port Orchard USA										
West Sound UD										
Boundary										
Parcels										
Water Bodies										
Water Courses										

Drawn By: Ian Smith, PE  
 Date: October 24, 2023  
 Scale: 1"=3,000'

**Exhibit A**  
**City of Port Orchard and Kitsap Transit ILA**

