

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of Commissioners

FROM: Josh Peters, Community Development Director
Chelsea Pronovost, Administrative Services Manager

DATE: 8/21/2023

RE: Professional Services Agreement – SCJ Alliance

STATEMENT OF ISSUE:

The Department of Community Development (DCD) desires to engage in a professional services contract with SCJ Alliance for on-call development review and long-range planning. The proposed scope of work includes this consultant performing in the role of “Contract Planner” for development permit applications associated with buildout of the Pleasant Harbor Master Planned Resort (PHMPR).

ANALYSIS:

Implementation of the PHMPR Development Agreement (DA) includes assignment of a Contract Planner. The PHMPR developer has provided express written consent for our selection of a consultant to serve as Contract Planner, pursuant to the Future Staffing and Consultant Agreement for PHMPR. SCJ Alliance has agreed to serve in this capacity, and this proposed professional services agreement establishes the scope of work and invoice process to implement that aspect of the Future Staffing and Consultant Agreement.

SCJ Alliance has also accepted our request to serve in an application management capacity for the C-PACER program that DCD has been working to establish at the request of the community. The proposed scope of work includes this element.

Furthermore, DCD is currently experiencing both a significant land use permit backlog and a staff capacity challenge. Compared to this time last year, the department is down three positions. Although we expect to hire additional staff in the coming weeks, even at full capacity (i.e., equivalent to this time last year, yet still approximately six FTE fewer than before the 2008-era recession), we continue to have needs for additional development review and long-range planning capacity. Development review needs include Type I permits under Title 18 Jefferson County Code (JCC), including Site Development Review (SDR) and stormwater management permits, and the more complex permits, including Type II with notice, Type III with public hearings, and Type IV land division. We also have long-range planning needs for our annual Comprehensive Plan amendment cycles and the 2025 Periodic Review required by the Growth Management Act (GMA). In addition to the services described

above, under this proposed agreement SCJ Alliance could perform general planning services on an on-call basis.

FISCAL IMPACT:

The Future Staffing and Consultant Agreement addresses anticipated consultant (and in-house) costs associated with development review for implementation of the PHMPR DA. Consultant charges for work performed as the PHMPR Contract Planner will be paid by the PHMPR developer.

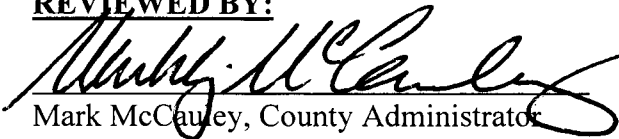
Application management costs associated with the C-PACER program will be paid by applicants through application fees.

For other development review, expenditures would be covered through a combination of land use permit fees and use of the department's fund balance and/or general fund, as appropriate. For long-range planning, DCD expects revenue—at least \$350,000 in the state's 2023-2025 biennium—through the State Department of Commerce for the 2025 Periodic Review.

RECOMMENDATION:

Staff recommends that the Board approve this professional services agreement.

REVIEWED BY:

 8/17/23
Mark McCauley, County Administrator Date

PROFESSIONAL SERVICES AGREEMENT FOR ON-CALL PLANNING SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT FOR ON-CALL PLANNING SERVICES ("this Agreement") is entered into between the County of Jefferson, a municipal corporation ("the County"), and Shea Carr & Jewell, Inc. dba SCJ Alliance (UBI Number: 602 612 261, "the Contractor"), in consideration of the mutual benefits, terms, and conditions specified below.

1. Project Designation. The Contractor is retained by the County to perform On-Call Planning Services.
2. Scope of Services.
 - a. The Contractor agrees to perform the On-Call Planning Services including, but not limited to all labor identified on Exhibit "A."
 - b. All On-Call Planning Services shall be conducted pursuant to Exhibit "A."
 - c. The Contractor shall perform its services consistent with the professional skill and care ordinarily provided by contractors practicing in the same or similar locality under the same or similar circumstances.
3. Effective Date. The Effective Date is the date that the last party signs this Agreement.
4. Time for Performance. This Agreement shall commence on the Effective Date and continue for five years. Work performed consistent with this Agreement during its term, put prior to the adoption of this Agreement, is hereby ratified. The Contractor shall perform all services pursuant to this Agreement as outlined above in Section 2. The Contractor shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the project.
5. Payment. The Contractor shall be paid by the County for completed work and for services rendered under this Agreement as follows:
 - a. Payment for the work provided by the Contractor shall be made on a time and materials basis as provided on Exhibit "B."
 - b. The total amount of payment to the Contractor for development review projects shall not exceed the amount of the fee estimated staff hours in the County's current fee schedule without express written approval by the Director of Community Development ("the Director").
 - c. The total amount of payment to the Contractor for long-range planning projects shall not exceed the budget for a task order, without express written approval by the Director.
 - d. Invoices must be submitted by the 15th of the month for the previous month's expenses. Such invoices shall be checked by the County, and upon approval thereof, payment shall be made to the Contractor in the amount approved.

- e. Failure to submit timely invoices and reports pursuant to Exhibit "B" of this Agreement may result in a denial of reimbursement. Invoices not submitted within 60 days may be denied.
 - f. Final payment of any balance due the Contractor of the total amount earned on any task order shall be made promptly upon its ascertainment and verification by the County after the completion of the work and submittal of reports under this Agreement and its acceptance by the County.
 - g. Consultant understands and agrees that the County only can fees charged for the work covered by this Agreement that comply with RCW 82.02.020, so Consultant shall be paid for all reasonable and necessary work. Consultant shall bill time in quarter hour increments and provide a reasonable description of the work performed. Quarter hour increments shall be the minimum billing increment for invoices. Consultant shall provide invoices and necessary backup documentation for all services including timesheets and statements (specifying the services provided).
 - h. The Contractor's records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the County and state for a period of six (6) years after final payments. Copies shall be made available upon request.
6. Ownership and Use of Documents. All non-confidential or de-identified documents, drawings, specifications, and other materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the County whether the project for which they are made is executed or not. The Contractor shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with the Contractor's endeavors. The Contractor shall not be held liable for reuse of documents or modifications thereof, including electronic data, by County or its representatives for any purpose other than the intent of this Agreement.
7. Compliance with laws. The Contractor shall, in performing the services contemplated by this Agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this Agreement.
8. Indemnification. The Contractor shall indemnify and hold harmless the County, its past or present employees, officers, agents, elected or appointed officials or volunteers (and their marital communities), from and against all claims, losses or liability, or any portion thereof, including reasonable attorney's fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to the Contractor's own employees, or damage to property occasioned by a negligent act, omission or failure of the Contractor. The Contractor shall be liable only to the extent of the Contractor's proportional negligence. Both parties specifically assume potential liability for actions brought against the one party by the other party's employees, including all other persons engaged in the performance of any work or service required under this Agreement and, solely for the purpose of this indemnification and defense, the parties specifically waive any immunity under the state

industrial insurance law, Title 51 RCW. The parties recognize that this waiver was specifically entered into pursuant to provisions of RCW 4.24.115 and was subject of mutual negotiation.

9. Insurance. Prior to commencing work, the Contractor shall obtain at its own cost and expense the following insurance coverage specified below and shall keep such coverage in force during the terms of this Agreement.
 - a. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than \$500,000 each occurrence with the County named as an additional insured in connection with the Contractor's performance of this Agreement. This insurance shall indicate on the certificate of insurance the following coverage: (a) Owned automobiles; (b) Hired automobiles; and, (3) Non-owned automobiles.
 - b. Commercial General Liability Insurance in an amount not less than a single limit of one million dollars (\$1,000,000) per occurrence and an aggregate of not less than two (2) times the occurrence amount (\$2,000,000.00 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the contract specifications. The insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:
 - i. Broad Form Property Damage, with no employee exclusion;
 - ii. Personal Injury Liability, including extended bodily injury;
 - iii. Broad Form Contractual/Commercial Liability – including coverage for products and completed operations;
 - iv. Premises – Operations Liability (M&C);
 - v. Independent Contractors and subcontractors;
 - vi. Blanket Contractual Liability.
 - c. Professional Liability Insurance. The Contractor shall maintain professional liability insurance against legal liability arising out of activity related to the performance of this Agreement, on a form acceptable to Jefferson County Risk Management in the amounts of not less than \$1,000,000 Each Claim and \$2,000,000 Aggregate. The professional liability insurance policy should be on an "occurrence" form. If the professional liability policy is "claims made," then an extended reporting periods coverage (tail coverage) shall be purchased for three (3) years after the end of this Agreement, at the Contractor's sole expense. The Contractor agrees the Contractor's insurance obligation to provide professional liability insurance shall survive the completion or termination of this Agreement for a minimum period of three (3) years.

- l. Insurance companies issuing the Contractor's insurance policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of insurance policy.
- m. Any judgments for which the County may be liable, in excess of insured amounts required by this Agreement, or any portion thereof, may be withheld from payment due, or to become due, to the Contractor until the Contractor shall furnish additional security covering such judgment as may be determined by the County.
- n. Any coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any policy of insurance the Contractor must provide in order to comply with this Agreement.
- o. The County may, upon the Contractor's failure to comply with all provisions of this Agreement relating to insurance, withhold payment or compensation that would otherwise be due to the Contractor.
- p. The Contractor's liability insurance provisions shall be primary and noncontributory with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees, and agents.
- q. Any failure to comply with reporting provisions of the insurance policies shall not affect coverage provided to the County, its officers, officials, employees, or agents.
- r. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- s. The Contractor shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all the requirements stated herein.
- t. The insurance limits mandated for any insurance coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.
- u. The Contractor shall maintain all required insurance policies in force from the time services commence until services are completed. Certificates, insurance policies, and endorsements expiring before completion of services shall be promptly replaced. All the insurance policies required by this Agreement shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the Jefferson County Risk Manager by registered mail, return receipt requested.

- v. The Contractor shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.
- w. The County reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

10. Worker's Compensation (Industrial Insurance).

- a. If and only if the Contractor employs any person(s) in the status of employee or employees separate from or in addition to any equity owners, sole proprietor, partners, owners or shareholders of the Contractor, the Contractor shall maintain workers' compensation insurance at its own expense, as required by Title 51 RCW, for the term of this Agreement and shall provide evidence of coverage to Jefferson County Risk Manager, upon request.
- b. Worker's compensation insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws.
- c. This coverage shall extend to any subcontractor that does not have their own worker's compensation and employer's liability insurance.
- d. Both parties expressly waive by mutual negotiation all immunity and limitations on liability, with respect to the other party, under any industrial insurance act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.
- e. If either party incurs any costs to enforce the provisions of this subsection, all cost and fees shall be recoverable from the other party.

11. Independent Contractor. The Contractor and the County agree that the Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. The Contractor specifically has the right to direct and control the Contractor's own activities, and the activities of its subcontractors, employees, agents, and representatives, in providing the agreed services in accordance with the specifications set out in this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties. Neither the Contractor nor any employee of the Contractor shall be entitled to any benefits accorded County employees by virtue of the services provided under this Agreement, including, but not limited to: retirement, vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to Jefferson County employees. The County shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to the Contractor, or any employee of the Contractor.

12. Subcontracting Requirements.

- a. The Contractor is responsible for meeting all terms and conditions of this Agreement including standards of service, quality of materials and workmanship, costs, and schedules. Failure of a subcontractor to perform is no defense to a breach of this Agreement. The Contractor assumes responsibility for and all liability for the actions and quality of services performed by any subcontractor.
- b. Every subcontractor must agree in writing to follow every term of this Agreement. The Contractor must provide every subcontractor's written agreement to follow every term of this Agreement before the subcontractor can perform any services under this Agreement. The Director or their designee must approve any proposed subcontractors in writing.
- c. Any dispute arising between the Contractor and any subcontractors or between subcontractors must be resolved without involvement of any kind on the part of the County and without detrimental impact on the Contractor's performance required by this Agreement.

13. Covenant Against Contingent Fees. The Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. Discrimination Prohibited. The Contractor, with regard to the work performed by it under this Agreement, shall not discriminate on the grounds of race, color, national origin, religion, creed, age, gender, sexual orientation, marital status, sex, or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.

15. No Assignment. The Contractor shall not sublet or assign any of the services covered by this Agreement without the express written consent of the County. Assignment does not include printing or other customary reimbursable expenses that may be provided in an agreement.

16. Non-Waiver. Waiver by the County of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

17. Termination.

- a. The County and reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to the Contractor.
- b. In the event of the death of a member, partner, or officer of the Contractor, or any of its supervisory personnel assigned to the project, the surviving members of the Contractor hereby agree to complete the work under the terms of this Agreement, if requested to do so by the County. This section shall not be a bar to renegotiations of this Agreement between surviving members of the Contractor and the County, if the County so chooses.
- c. The Contractor understands and agrees that County may terminate this Agreement in whole or in part, with 10 days' notice, in the event that expected or actual funding from any funding source is withdrawn, reduced, or limited in any way after the effective date of this Agreement. In the event of termination under this clause, the County shall be liable for only payment for services rendered prior to the effective date of termination.

18. Notices. All notices or other communications which any party desires or is required to give shall be given in writing and shall be deemed to have been given if hand-delivered, sent by facsimile, email, or mailed by depositing in the United States mail, prepaid to the party at the address listed below or such other address as a party may designate in writing from time to time. Notices to the County shall be sent to the following address:

Jefferson County Risk Manager
PO Box 1220
Port Townsend, WA 98368

Notices to the Contractor shall be sent to the following address:

Shea Carr & Jewell, Inc. dba SCJ Alliance
8730 Tallon Lane NE, Suite 200
Lacey, WA 98516

19. Integrated Agreement. This Agreement together with attachments or addenda represents the entire and integrated Agreement between the County and the Contractor and supersedes all prior negotiations, representations, or agreements written or oral. No representation or promise not expressly contained in this Agreement has been made. This Agreement supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, by the County within the scope of this Agreement. The Contractor ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in its proposal, and the supporting material submitted by the Contractor, accepts this Agreement and agrees to all of the terms and conditions of this Agreement.
20. Modification of this Agreement. This Agreement may be amended only by written instrument signed by both County and Contractor.

21. Disputes. The parties agree to use their best efforts to prevent and resolve disputes before they escalate into claims or legal actions. Any disputed issue not resolved pursuant to the terms of this Agreement shall be submitted in writing within 10 days to the County Risk Manager, whose decision in the matter shall be final, but shall be subject to judicial review. If either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this Agreement, each party in such action shall bear the cost of its own attorney's fees and court costs. Any legal action shall be initiated in the Superior Court of the State of Washington for Jefferson County. The parties agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The Contractor hereby consents to the personal jurisdiction of the Superior Court of the State of Washington for Jefferson County.
22. Section Headings. The headings of the sections of this Agreement are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of the sections or this Agreement.
23. Limits of Any Waiver of Default. No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.
24. No Oral Waiver. No term or provision of this Agreement will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. Failure of a party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.
25. Severability. Provided it does not result in a material change in the terms of this Agreement, if any provision of this Agreement or the application of this Agreement to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.
26. Binding on Successors, Heirs and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest, heirs, and assigns.
27. No Assignment. The Contractor shall not sell, assign, or transfer any of rights obtained by this Agreement without the express written consent of the County.
28. No Third-party Beneficiaries. The parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement is for the benefit of any person or entity who is not a party.
29. Signature in Counterparts. The parties agree that separate copies of this Agreement may be signed by each of the parties and this Agreement shall have the same force and effect as if all the parties had signed the original.

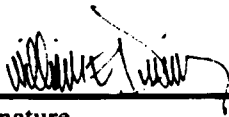
30. Facsimile and Electronic Signatures. The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.
31. Arms-Length Negotiations. The parties agree that this Agreement has been negotiated at arms-length, with the assistance and advice of competent, independent legal counsel.
32. Public Records Act. Notwithstanding the provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter 42.56 RCW, as may hereafter be amended, the Contractor agrees to maintain all records constituting public records and to produce or assist the County in producing such records, within the time frames and parameters set forth in state law. The Contractor further agrees that upon receipt of any written public record request, Contractor shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Agreement. This Agreement, once executed, will be a "public record" subject to production to a third party if same is requested pursuant to the Washington Public Records Act, Chapter 42.56 RCW, as may hereafter be amended.
33. Confidentiality. With respect to all information relating to County that is confidential and clearly so designated, as required by the Health Insurance Portability and Accountability Act (HIPAA) and any other applicable privacy laws, the Contractor agrees to keep such information confidential. The Contractor shall not disclose, transfer, or sell any such information to any party, except as provided by law or, in the case of personal information, with the prior written consent of the person to whom the personal information pertains. The Contractor shall maintain the confidentiality of all personal information and other information gained by reason of this Agreement, and shall return or certify the destruction of such information if requested in writing by Jefferson County.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

JEFFERSON COUNTY WASHINGTON
Board of County Commissioners
Jefferson County, Washington

SHEA CARR & JEWELL, INC.
DBA SCJ ALLIANCE

By: _____
Greg Brotherton, Chair Date

By:  _____
Signature

By: _____
Kate Dean, Commissioner Date

Name: William Dunning

Title: Principal

By: _____
Heidi Eisenhour, Commissioner Date

Date: August 15, 2023

SEAL:

ATTEST:

Carolyn Galloway Date
Clerk of the Board

Approved as to form only:

 _____
August 16, 2023

Philip C. Hunsucker, Date
Chief Civil Deputy Prosecuting Attorney

EXHIBIT "A"
SCOPE OF SERVICES

1. Consultant's Commitment to Providing Efficient and Cost-Effective Services.
Consultant's goal is to fully satisfy the County's needs in the most efficient and cost-effective means possible. To achieve this goal:
 - a. Consultant shall collaborate with County staff to understand each project's needs, the expected level of effort, and desired deliverables;
 - b. Consultant shall provide high-quality service so the County develop confidence and trust in Consultant's work;
 - c. Consultant shall gain an understanding of local issues and concerns;
 - d. Consultant shall eliminate, to the extent possible, duplication of efforts on projects by utilizing experience and existing resources, as well as by implementing and exploiting computerized support that is tailored to the requirements of each individual scope of work;
 - e. Consultant shall track budgets, use best efforts to stay within budgets, and inform the County immediately when there is a possibility that any budget cannot be maintained;
 - f. Consultant shall utilize a team approach to staffing, to ensure that the persons comprising the team are the most qualified and most cost-effective personnel;
 - g. Consultant shall designate a single point of contact for each scope of work;
 - h. Consultant shall maintain an overarching understanding of all necessary services during times of multiple task order implementation—preventing over-commitment of available resources and promoting a better understanding of additional resources that may be needed;
 - i. Consultant shall maintain institutional knowledge of Jefferson County procedures and protocols for invoicing procedures, plan preparation protocols, and the County communication protocols;
 - j. Consultant shall be reliable; responsive; and available by phone, email, and virtually, as needed;
 - k. Consultant shall use clear, easy-to-understand communication with the public, developers, engineers, property owners, contractors, and other interested parties in understanding code requirements and the development process; and,
 - l. Consultant shall build trust and familiarity when interacting with the local community.

These components are not independent; rather, they are integral pieces that allow Consultant to create effective and efficient solutions in an era of regulatory and political

complexity. Consultant has invested in training to develop these competencies in Consultant's staff so that Consultant can deliver exceptional project management and delivery services to the County. Consultant's project managers have the support of a strong technical team that is committed to each project for its full duration.

2. On-Call Planning Service Consultant Shall Provide.

- a. Basis. Consultant shall provide the its services to the County on a cost-not-to-exceed basis.
- b. Limits on Consultant's Staff. Consultants shall provide a written list a core team of planners within five (5) business days of the Effective Date that will interact with Jefferson County Department of Community Development (DCD) staff on a day-to-day basis. The Director shall approve this list within five (5) business days. Adding consultant staff to this list requires written approval by the Director. Other technical experts for specific projects shall support this team, but only as approved in writing by the Director. A task order-specific list of Consultant's staff may be provided with a task order and budget for a specific long-range planning project.
- c. Projects. Consultant shall provide services on the following projects.
 - i. General Planning Assistance. Consultant shall provide planning support for Jefferson County, including code research to respond to questions, development review team meetings, and meetings with the Planning Commission or Board of County Commissioners to discuss planning-related topics.
 - ii. Development Review.
 - A. Consultant shall review development applications, including but not limited to Type I-IV land use permit applications as defined in Title 18 of the Jefferson County Code (JCC), as well as environmental review under the State Environmental Policy Act (SEPA), as assigned by the County.
 - B. Individual projects shall be assigned individual task numbers to track time relating to application review and processing.
 - C. Consultant shall work on a time and materials basis for all development review projects without a task order and budget to enable Consultant to begin work immediately when a development review project is submitted.
 - D. Consultant shall track the hours and expenditures for each project and tailor Consultant's effort to the estimated staff hours in the County's current fee schedule. Consultant shall notify the County immediately if it believes a project shall take more than the hours noted in the schedule and provide the County with Consultant's best estimate for completing the work.
 - E. Consultant shall process applications in compliance with the Planning Enabling Act and the Growth Management Act, and the Jefferson County Code,

following requirements specific to each type of application. This includes pre-application meetings; determinations of completeness; legal notices; technical review and preparation of comment letters; preparation of staff reports and administrative decisions, as necessary; and presentations to the Board of County Commissioners, the Planning Commission, or the Hearing Examiner.

- iii. Long-Range Planning. Consultant shall work on a time and materials basis for all long-range planning projects pursuant to the requirements in Exhibit "B." Consultant shall prepare task orders and budgets for individual long-range planning projects to agree on a scope, budget, and timeline to complete the work. All task orders and budgets must be approved in writing by the Director or their designee. Tasks could include:
 - A. High-profile long-range planning projects such as comprehensive plan support, master planned resort support, and similar tasks;
 - B. Development code audits and updates, such as critical areas regulations;
 - C. Non-project SEPA processes, including environmental impact statements or supplements/addenda;
 - D. Data compilation and analysis related to economic, social, environmental, and physical factors to support long-range planning or SEPA review; or,
 - E. Community engagement efforts for any of the above.

The services provided in task order shall terminate upon completion of that work.

- iv. Contract Planner for Pleasant Harbor Master Planned Resort.
 - A. Consultant shall be the "Contract Planner" required by the Future Staffing and Consultant Agreement for the Pleasant Harbor Master Planned Resort between the County and Pleasant Harbor Marina and Golf Resort, LLC, a Washington limited liability partnership, UBI Number: 602 815 685, attached as Appendix 1.
 - B. Work includes reviewing development applications for conformance with the Development Agreement, Title 17 JCC, and Title 18 JCC, and related services.
 - C. Consultant shall work on a time and materials basis as the Contract Planner pursuant to the Future Staffing and Consultant Agreement and as required in Exhibit "B." If there are differences between the Future Staffing and Consultant Agreement and Exhibit "B," the requirements in the Future Staffing and Consultant Agreement shall control.

v. C-Pacer Administration.

- A. Consultant shall support to review and administer C-PACER applications. Each C-PACER application shall be assigned an individual task number to track time relating to application and review processing.
- B. This is an on-call planning contract that requires authorization for each task from the County prior to engaging in any work. At the County's direction, tasks (such as development review tasks) may be authorized via email without a separate scope and fee estimate.
- C. For each C-PACER application processed by Consultant, the following deliverables shall be provided by Consultant to the County:
 - 1) All planning documents, including, but not limited to notices, SEPA checklists, application materials, draft and final submittals, staff reports, and other necessary documents;
 - 2) Meeting summaries; and,
 - 3) Monthly progress billing emailed in PDF format.

EXHIBIT "B"
PAYMENT

Consultant shall be paid for its reasonable and necessary fees and costs pursuant the requirement in this Exhibit "B." The County shall have the right to withhold payment to Consultant for any work not completed in a satisfactory manner until such time that Consultant modifies such work to the satisfaction of the County. Fees shall be based on the Labor Rate Schedule below:

LABOR RATE SCHEDULE

Classification	Hourly Rate
Senior Planner	\$195
Planner 2	\$116
Planner 4	\$170
Project Manager – Environmental Review	\$247

The Labor Rate Schedule is effective as of the Effective Date and shall be effective for the duration of this Agreement or until amended and mutually agreed upon by Consultant and the County.

Fees Explained. Fees are based upon hourly rates and are calculated by multiplying the time spent by the hourly rates in effect at the time the work is performed.

Billing Increments. Time spent by Consultant personnel is recorded in increments of 15 minutes.

Costs Explained. Costs typically incurred on behalf of the County may include the items in the categories identified in the Disbursement Schedule below:

DISBURSEMENT SCHEDULE

Type of Costs¹	Amount of Charge
Database or other computing costs	No Charge
Photocopying	15¢ a page
Postage and Delivery Services	At Cost
Courier service or next day service such as Federal Express	At Cost
Mileage	At the prevailing IRS reimbursement rate
Pre-approved travel ²	At Cost

¹Other disbursements are generally charged at cost, depending on the nature of the item.

²Travel must be pre-approved by the Director in writing.

FUTURE STAFFING AND CONSULTANT AGREEMENT FOR THE PLEASANT HARBOR MASTER PLANNED RESORT¹

¹ This document is being negotiated and is subject to the deliberative process exemption of the Public Records Act. Approval of any final agreement is conditioned on approval or delegation at an open public meeting by motion made and passed by the **Jefferson County** Board of County Commissioners.

March 17, 2023 Version clean

**FUTURE STAFFING AND CONSULTANT AGREEMENT FOR
THE PLEASANT HARBOR MASTER PLANNED RESORT**

**FUTURE STAFFING AND CONSULTANT AGREEMENT
FOR THE PLEASANT HARBOR MASTER PLANNED RESORT**

This **Agreement** is made between **Jefferson County** and **PHMPR**. (All terms in **bold** in this **Agreement** are defined in Section 2.4, below.)

1 RECITALS

1.1 **WHEREAS**, on June 4, 2018, the **Jefferson County** Board of County Commissioners adopted Ordinance No. 03-0604-18 (approving development regulations for the **Master Planned Resort**), and Ordinance No. 04-0604-18 (approving a development agreement between **Jefferson County** and **PHMPR**);

1.2 **WHEREAS**, after legal challenges by The Brinnon Group to Ordinance No. 03-0604-18 (approving development regulations for the **Master Planned Resort**) and Ordinance No. 04-0604-18 (approving the development agreement between **Jefferson County** and **PHMPR**), **Jefferson County** adopted Ordinance No. 08-0722-19, which approved the **Development Agreement**, amending the June 4, 2018 development agreement approved in Ordinance No. 04-0604-18;

1.3 **WHEREAS**, the **Development Agreement** contemplates additional permits for developing the **Master Planned Resort**;

1.4 **WHEREAS**, RCW 82.02.020 allows **Jefferson County** to collect reasonable fees from an applicant for a permit or other government approval to cover the cost to the County of processing applications;

1.5 **WHEREAS**, by the **Settlement Agreement**, the **Parties** resolved the **Past Billing Dispute**, where **PHMPR** claimed that certain fees charged by **Jefferson County** related to the **Development Agreement** were not reasonable and violated RCW 82.02.020;

1.6 **WHEREAS**, the **Parties** wish to avoid future billing disputes about timely payment of invoices for reasonable charges for work done by **Jefferson County** employees or consultants on the additional permits required for developing the **Master Planned Resort** and monitoring by **Jefferson County** required by the **Development Agreement**;

1.7 **WHEREAS**, **Jefferson County** follows the International Building Code practice of assessing permit fees based on the estimated value of a building when issuing building permits;

1.8 **WHEREAS**, the **Parties** agree that the **Jefferson County's** standard operating procedure (SOP) pertaining to **Stock Plans** shall apply to this project to reduce the permit fee for plans reviewed by **DCD** and approved for use on multiple sites;

1.9 WHEREAS, the Parties agree that any additional fee for **Stock Plans** resulting from adoption by **Jefferson County** of new **ICC** codes will be equal to the cost of the staff time for any additional building review caused by this adoption but shall not be based on the building valuation;

1.10 WHEREAS, **DCD** cannot allocate the resources necessary to timely and consistently process the additional permits for developing the **Master Planned Resort**;

1.11 WHEREAS, the Parties agree that **Jefferson County** should retain the **Contract Planner** at the expense of **PHMPR** to timely and consistently process the additional permits for developing the **Master Planned Resort**;

1.12 WHEREAS, the Parties agree that **Jefferson County** may need to retain **Other Consultants**, managed by the **Contract Planner** or **JCWQ** and that **PHMPR** is responsible to pay all the reasonable fees and costs related to that work;

1.13 WHEREAS, **Jefferson County** agrees to provide **PHMPR** an opportunity to review and approve any potential **Consultant** retained by **Jefferson County** to review future permits and approvals for the **Master Planned Resort**; and,

1.14 WHEREAS, Appendix N of **Development Agreement** provides a water quality monitoring plan that satisfies the requirements in **JCC 17.80.020(2)** and requires oversight from **Jefferson County**;

1.15 WHEREFORE, the Parties hereby agree to the terms and conditions in this **Agreement**; and,

1.16 NOW, THEREFORE, in consideration of the mutual promises and obligations in this **Agreement** and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree to these terms and agree to be bound by the terms and conditions in this **Agreement**.

2 TERMS OF THIS AGREEMENT

2.1 Parties Bound.

This **Agreement** applies to and is binding upon, and inures to the benefit of each of the Parties. The persons signing this **Agreement** on behalf of the Parties certify that they are fully authorized to enter into the terms and conditions of this **Agreement** and to execute this **Agreement**.

2.2 Effective Date.

This **Agreement** is effective on the date the last Party executes this **Agreement**.

2.3 **Purposes of this Agreement.**

The purposes of this **Agreement** are to: (a) Provide a mechanism for **Jefferson County** to meet its obligations to timely and consistently process the additional permits for developing the **Master Planned Resort**; (b) Ensure timely payment for only the reasonable fees of **Jefferson County** authorized by **RCW 82.02.020** to timely and consistently process the additional permits for developing the **Master Planned Resort**; (c) Ensure **Invoices** contain a reasonable amount of detail to allows for evaluation of the reasonableness fees billed therein; and, (d) Ensure timely payment for only the reasonable fees of **Jefferson County** for overseeing monitoring and mitigation activities of **PHMPR** required by Chapter **17.80 JCC** and the **Development Agreement**.

2.4 **Definitions.**

2.4.1 Words used in this **Agreement** are to be taken and understood in their natural and ordinary sense. Words not defined in this request have their usual and ordinary meaning in the context used and as defined in the Dictionary by Merriam-Webster (<https://www.merriam-webster.com/>), unless this **Agreement** indicates that a different meaning was intended. Whenever these terms are used in this **Agreement** (including, without limitation, this **Section 2.4**), the meanings in this **Section 2.4** apply.

2.4.2 **Singular/Plural:** The use of the singular form of a word includes the plural form and vice versa.

2.4.3 **And & Or:** “and” means “or” and “or” means “and,” to make the term inclusive rather than exclusive.

2.4.4 **“Agreement”** means this Future Staffing and Consultant Agreement for the Pleasant Harbor Master Planned Resort.

2.4.5 **“Base Permit Fee”** means the permit fee charged by **Jefferson County** for land use permits as updated annually.

2.4.6 **“Building Inspector”** means a building inspector performing building inspections at the **Master Planned Resort** who either is employed by **Jefferson County** or a is commercial building inspector hired by **Jefferson County** and who has a working knowledge of modular and panelized engineered construction.

2.4.7 **“Consultants”** means the Building Inspector, the Contract Planner, the Environmental Consultant and Other Consultants.

2.4.8 **“Contract Planner”** means the planner selected under **Section 2.5**.

- 2.4.9 “**DCD**” means **Jefferson County’s** Department of Community Development.
- 2.4.10 “**Development Agreement**” means the modified development agreement adopted in **Jefferson County** Ordinance No. 08-0722-19.
- 2.4.11 “**Ecology**” means the Washington State Department of Ecology.
- 2.4.12 “**Effective Date**” means the date described in Section 2.2.
- 2.4.13 “**Environmental Consultant**” means a person licensed as a professional geologist in the State of Washington, who, reviews and assesses the water quality monitoring and mitigation activities of **PHMPR** required by the **Water Quality Monitoring Plan**.
- 2.4.14 “**ICC**” means the International Code Council.
- 2.4.15 “**Invoices**” means **Invoices for Contractor Services** and **Invoices for County Services**.
- 2.4.16 “**Invoices for Contractor Services**” means the invoices identified in Section 2.9.1.
- 2.4.17 “**Invoices for County Services**” means the invoices identified in Section 2.9.2.
- 2.4.18 “**Jefferson County**” means **Jefferson County**, Washington.
- 2.4.19 “**JCC**” means the **Jefferson County** Code, published by Code Publishing at <https://www.codepublishing.com/WA/JeffersonCounty/>.
- 2.4.20 “**JCWQ**” means the Jefferson County Public Health Water Quality Division.
- 2.4.21 “**Master Planned Resort**” means the Pleasant Harbor Master Planned Resort covered by the **Development Agreement** and the development regulations in Division II of Title 17 JCC.
- 2.4.22 “**Parties**” means **Jefferson County** and **PHMPR**, collectively.
- 2.4.23 “**Party**” means one of the **Parties**.
- 2.4.24 “**Past Billing Dispute**” means the billing dispute resolved by a settlement between the **Parties**, effective March 3, 2022.
- 2.4.25 “**Other Consultants**” means persons to perform services for the County with specialized expertise or knowledge that the **Building Inspector**, the **Contract Planner** or **JCWQ** does not have and which **Jefferson County** determines are necessary to process permit applications or monitoring reports under the **Water Quality Monitoring Plan**.

2.4.26 “**PHMPR**” means Pleasant Harbor Marina and Golf Resort, LLC, a Washington limited liability partnership, UBI Number: 602 815 685.

2.4.27 “**RCW**” means the Revised Code of Washington.

2.4.28 “**Retainer Account**” means the account required by Section 2.6.1.

2.4.29 “**Settlement Agreement**” means the settlement agreement between the **Parties** with an effective date of March 3, 2022.

2.4.30 “**Stock Plan**” means a building plan that has been reviewed by **DCD** whose reproduction for use on one or more sites is permissible with reduced building fees as outlined in **DCD**’s standard operating procedure for stock plans.

2.4.31 “**Water Quality Monitoring Plan**” the water quality monitoring plan required by Condition 63-R of Ordinance No. 01-0128-08 that was prepared as Appendix N to the **Development Agreement**.

2.5 **Selection of Consultants.**

2.5.1 The **Parties** agree that **Jefferson County** shall hire a **Contract Planner**; and, **Other Consultants**, as needed. **Jefferson County** shall enter into a professional services agreement after a competitive process to select a **Contract Planner** on terms and conditions consistent with **Jefferson County**’s standard professional services agreement template attached as Exhibit 1. **Contract Planner**; and, **Other Consultants** will be selected by **Jefferson County** only with **PHMPR**’s express written consent which shall not be unreasonably withheld, conditioned or delayed. **PHMPR** shall have 10 days after nomination of the **Consultants** by notice given in writing by **Jefferson County** to object in writing to the nomination; otherwise, consent is waived.

2.5.2 The **Parties** agree that **PHMPR** shall hire the **Environmental Consultant**. The **Environmental Consultant** shall be paid for by **PHMPR** through a yearly reserve maintained by **PHMPR**. The **Environmental Consultant** will be selected by **PHMPR** only with **Jefferson County**’s express written consent, which shall not be unreasonable withheld, conditioned or delayed. **Jefferson County** shall have 10 days after the **Environmental Consultant** is nominated by notice given in writing by **PHMPR** to object in writing to the nomination; otherwise, consent is waived. **Jefferson County** consents to the retention of Scott Bender as the **Environmental Consultant**. A copy of Scott Bender’s resume is attached as Exhibit 2.

2.5.3 The **Contract Planner** shall be responsible for accepting and reviewing all applications filed by **PHMPR** for consistency with the **Development Agreement**,

the JCC and other applicable laws or regulations. The **Contract Planner** shall make good faith efforts to return comments or requests for corrections on any application submitted by **PHMPR** within 20 business days of receipt of an application. If the **Contract Planner** cannot provide comments or requests for corrections within 20 business days, the **Contract Planner** shall notify **PHMPR** and provide an estimate of when comments will be returned and the reason for additional review time.

- 2.5.4 If the **Contract Planner** or **JCWQ** determines that **Other Consultants** are required and **Jefferson County** does not have staff capable of completing the needed reviews, then **Jefferson County** shall notify **PHMPR** of the need to hire **Other Consultants** and shall promptly begin the retention process. The **Parties** shall use best efforts to come to an agreement on the scope and services of the **Other Consultants**. However, if no such agreement can be reached, **PHMPR** retains the right to object to the services provided by the **Other Consultants** as not reasonable.

2.6 **Fees for Building Permits.**

2.6.1 **Basis for Building Permit Fees.** **PHMPR** shall be responsible for paying all applicable building permit fees as outlined in **JCC 15.05.030(1)** at the time of the application for the building permit; provided, however, that **PHMPR** shall be entitled to reimbursement for any unearned permit fees.

2.6.2 **Building Base Fees.** **PHMPR** understands and agrees to pay all applicable building based fees customarily charged by **Jefferson County**, which may include, but not be limited to, a building base fee (**DCD010**), a land use review fee (**DCD018**), a plan check review fee (**DCD019**), a water system approval fee (**EH160**), a scanning fee (**DCD022**) and a State fee (**DCD 032**).

2.6.3 **Payment of Building Permit Fees.** Payment of building permit fees shall be paid based on an estimate of the fair market value of the structure covered by the building permit.. Payment of the entire estimate must be made by **PHMPR** before any work by **Jefferson County** begins on a building permit application. After **Jefferson County** completes all the work required to issue a building permit, it will advise **PHMPR** of the final total building permit fees incurred and issue a refund of any unspent portion of the plan check fee.

2.6.4 **Disputes on Total Fees for Building Permits.** Disputes about the total building permit fee shall be subject to the dispute resolution provision in Section 3.2.

2.7 **Fees for Water Quality Monitoring Required by the Water Quality Monitoring Plan.** The **Water Quality Monitoring Plan** requires **PHMPR** to conduct certain water quality monitoring and mitigation activities, including the periodic submission of data to **JCWQ**. **PHMPR** agrees to pay **Jefferson County** for the reasonable costs of the **JCWQ** to review the data submissions required by the **Water Quality Monitoring Plan**.

2.8 Payment by PHMPR for the Services of the Building Inspector, the Contract Planner, and Other Consultants. PHMPR shall pay for the services of the **Building Inspector, the Contract Planner, and Other Consultants**, as required by this Section 2.8.

2.8.1 Retainer Account. Jefferson County shall establish the **Retainer Account** with the Auditor and Treasurer of **Jefferson County** for the deposit of funds from **PHMPR** to ensure that payments to the **Building Inspector, the Contract Planner, and Other Consultants** are made timely and consistently to pay for their work contemplated by this **Agreement**.

2.8.2 Deposits to Retainer Account. PHMPR shall deposit in the **Retainer Account** an initial amount of \$30,000, from which **Jefferson County** may draw upon to cover any undisputed amounts that **PHMPR** does not timely pay as required by Section 2.9.7 PHMPR shall immediately replenish the **Retainer Account**

2.8.3. Failure to Replenish the Retainer Account. Jefferson County, the **Building Inspector, the Contract Planner, and the Other Consultants** shall suspend all work on applications for permits until **PHMPR** replenishes the **Retainer Account** as required by Section 2.8.2.

2.9 Billing Process.

2.9.1 Submission of Invoices for Contractor Services. DCD shall send to **PHMPR** **Invoices for Contractor Services** incurred in excess of the applicable **Base Permit Fee** not later than 30-days after receipt by **DCD**.

2.9.2 Submission of Invoices for County Services. DCD shall send to **PHMPR** **Invoices for County Services** by 45 days following the performance of work. Failure by **DCD** to bill for such services under the requirements of this Section 2.9.2, shall not be subject to payment by **PHMPR**. **DCD** shall collect billing information from other County departments for transmission to **PHMPR** under this Section 2.9.2.

2.9.3 Transmission and Receipt of Invoices. **Invoices for Contractor Services and Invoices for County Services** shall be submitted by **DCD** to **PHMPR** by email, which shall promptly be acknowledged by return email by **PHMPR**. Invoices transmitted by **DCD** to **PHMPR** shall be deemed received by **PHMPR** on the date they are sent.

2.9.4 Invoice Detail. **Invoices for Contractor Services and County Services** shall bill time in quarter hour increments and provide a reasonably description of the work performed. Quarter hour increments shall be the minimum billing increment for invoices.

- 2.9.5 **PHMPR has 30 Days After Receipt to Object to Entries in an Invoices.** PHMPR has 30 days to object to an entry on a submitted **Invoice for Contractor Services** or **Invoice for County Services**. Objection shall be made by each entry to which there is an objection, stating the reason(s) for the objection to every disputed entry on an invoice. Failure by PHMPR to object to any entry on a submitted invoice or before 30 days after receipt, shall be deemed a voluntary waiver of objection.
- 2.9.6 **Transmission and Receipt of Objections to Invoices.** Objections to **Invoices for Contractor Services** and **Invoices for County Services** shall be submitted by PHMPR to DCD by email, which shall promptly be acknowledged by return email by DCD. Objections to invoices transmitted by PHMPR to DCD shall be deemed received by DCD on the date they are sent.
- 2.9.7 **PHMPR Must Make Payment of All Undisputed Amounts within 45 Days.** PHMPR must pay all undisputed amounts within 45 days of receipt of a submitted **Invoice for Contractor Services** or **Invoice for County Services**. In the event PHMPR fails to make timely payment as required by this Section Jefferson County may, in its sole discretion, immediately draw upon the **Retainer Account** to satisfy unpaid **Invoice for Contractor Services** or **Invoice for County Services**. Interest shall accrue monthly as a fractional percentage of 7 percent annually and shall compound monthly until paid by PHMPR. The failure by PHMPR to pay all undisputed amounts or any interest because of its failure to pay undisputed amounts, shall constitute a material breach of this **Agreement**, which PHMPR understands will cause the **County** stopping all work on pending for permits.
- 2.9.8 **Dispute Resolution for Billing Disputes.** PHMPR and DCD shall attempt to resolve any billing disputes within 15 days of receipt of any objection sent to DCD by PHMPR. Upon a failure to resolve any billing disputes under this **Section 2.9.6**, the dispute resolution procedures in **Section 3.2** shall apply.
- 2.10 **Submission and Review of Report Required by Section VI(2) of the Water Quality Monitoring Plan.** PHMPR agrees to provide to JCWQ the report required by Section VI(2) of the **Water Quality Monitoring Plan** which satisfies the performance standards required by Section VI (8) of the **Water Quality Monitoring Plan**. The report will include best management practices to be applied so that when all appropriate combinations of individual best management practices are utilized, PHMPR will not cause a violation of water quality criteria. PHMPR will establish baseline conditions at least 60 days prior to submitting the first development application, as required by Section VI of the **Water Quality Monitoring Plan**. JCWQ shall provide comments on the report to PHMPR promptly. The format for the report shall be provided to JCWQ within 30 days after the **Effective Date**. JCWQ shall provide comments on the format of the report to PHMPR promptly.

2.11 **Satisfaction of Settlement Agreement Condition.**

The **Parties** agree this **Agreement**, once effective, constitutes completion of the **Future Staffing Agreement** in Section 2.5 of the **Settlement Agreement**, and payment of \$83,823.16 (eighty-three thousand, eight hundred, twenty-three dollars and sixteen cents), the remaining one-half of the settlement amount required to be paid by the **Settlement Agreement**.

3 **GENERAL PROVISIONS**

3.1 **Controlling Law.**

It is understood and agreed this **Agreement** is entered into in the State of Washington. It is agreed this **Agreement** is governed by and construed under the laws of the United States and of the State of Washington as if applied to transactions entered into and to be performed wholly within Washington between Washington residents. No **Parties** may argue or assert that any law other than Washington law applies to the governance or construction of this **Agreement**.

3.2 **Disputes.**

The **Parties** agree to use their best efforts to prevent and resolve disputes before they escalate into claims or legal actions. Any disputed issue not resolved under this **Agreement** shall be submitted in writing within 10 days to the County Risk Manager, whose decision in the matter shall be final, but shall be subject to judicial review. If either **Parties** deems it necessary to institute legal action or proceeding to enforce any right or obligation under this **Agreement**, the prevailing party in such action shall be entitled to recover its attorneys' fees and court costs. Any legal action shall be initiated in the Superior Court of the State of Washington for **Jefferson County**, subject to the venue provisions for actions against counties in **RCW 36.01.050**.

3.3 **Entire Agreement.**

This **Agreement** is an integrated agreement and it contains the entire agreement between the **Parties** relating to this subject and its terms are contractual, not a mere recital. Except as specifically provided in this **Agreement**, this **Agreement** supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral. This **Agreement** supersedes and controls all prior communications between the **Parties** or their representatives relative to the matters in this **Agreement**.

3.4 **Severability.**

Provided it does not result in a material change in the terms of this **Agreement**, if any provision of this **Agreement** or the application of this **Agreement** to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this **Agreement** and the

application this **Agreement** shall not be affected and shall be enforceable to the fullest extent permitted by law.

3.5 Survival.

Those provisions of this **Agreement** that by their sense and purpose should survive the term of this **Agreement** shall survive the term of this **Agreement** Without limiting the generality of the preceding sentence, and to avoid doubt, the provisions that survive the term of this agreement include: (a) controlling law; (b) disputes; and, (c) indemnification.

3.6 No Inducements.

The **Parties** acknowledge there have been no inducements or representations upon which **any party** have relied in entering into this **Agreement**, except as expressly set forth in this **Agreement**.

3.7 No Third-Parties Beneficiaries.

The **Parties** do not intend, and nothing in this **Agreement** will be construed to mean, that any provision is to benefit any other person or entity who is not a **Settling Parties**.

3.8 Modification of this Agreement.

This **Agreement** may be amended or supplemented only by a writing signed by duly authorized representatives of all the **Parties**.

3.9 Signature in Counterparts.

The **Parties** agree that separate copies of this **Agreement** may be signed by each of the **Parties** and this **Agreement** will have the same force and effect as an original signed by all the **Parties**.

3.10 Facsimile and Electronic Signatures.

The **Parties** agree that a facsimile, copied, or scanned signature of this **Agreement** will have the same force and effect as an original signed by all the **Parties**.

3.11 Cooperation.

The **Parties** agree that they will facilitate, in good faith, the effectuation of this **Agreement**.

3.12 Voluntary Undertaking.

The **Parties** acknowledge that they have read this **Agreement** and fully know the contents of this **Agreement** and its legal effect. This **Agreement** is entered into voluntarily and with no coercion by or undue influence by any person, firm, or corporation.

3.13 **Investigation and Complete Understanding.**

The **Parties** acknowledge that they have made such investigation of the facts pertaining to this **Agreement** and all matters in this **Agreement** as they deem necessary, desirable, or appropriate. The **Parties** expressly understand that the facts later may turn out to be other than or different from the facts now known or believed to be true. The **Parties** expressly assume the risk of such different facts and agree that all provisions of this **Agreement** will remain effective and enforceable and not subject to termination or rescission because of any such different facts.

3.14 **Independent Legal Advice and Investigation.**

In entering into this **Agreement**, the **Parties** acknowledge that they have received independent legal advice from their own counsel and have relied on their own investigation and upon the advice of their own attorney regarding the advisability of making the settlement provided in this **Agreement**.

3.15 **No Oral Waiver.**

No term or provision of this **Agreement** will be considered waived by either **Settling Parties**, and no breach excused by either **Settling Parties**, unless such waiver or consent is in writing signed on behalf of the **Settling Parties** against whom the waiver is asserted. No written consent by either **Settling Parties** to, or waiver of, a breach by either **Settling Parties**, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either **Settling Parties**.

3.16 **Arms-Length Negotiations.**

The **Parties** agree this **Agreement** has been negotiated at arms-length, with the assistance and advice of competent, independent legal counsel.

3.17 **Joint Drafting Effort.**

The **Parties** acknowledge and agree that the drafting of this **Agreement** has been a joint effort by the **Parties** and this **Agreement** will not be deemed prepared or drafted by any one of the **Parties**. This **Agreement** will be interpreted fairly and under their intent and not for or against any **Parties**. The **Parties** further acknowledge and agree that each of the **Parties** possesses equal bargaining power regarding this **Agreement**.

3.18 **Notice.**

All communications, notices and demands of any kind which a **Party** under this **Agreement** requires or desires to give to any other **Party** shall be in writing deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

To Jefferson County:

Director
Jefferson County Department of Community Development
621 Sheridan Street
Port Townsend, WA 98368

cc:

Board of County Commissioners
P.O. Box 1220
Port Townsend, WA 98370

Prosecuting Attorney
P.O. Box 1220
Port Townsend, WA 98370

To PHMPR:

c/o M. Garth Mann
Statesman Group of Companies Ltd.
9300 E. Raintree Drive, Suite 100
Scottsdale, Arizona 85269

cc:

John T. Cooke
Houlihan Law
100 N. 35th St.
Seattle, WA 98103

3.19 Attachments.

Any document in this **Agreement** identified as an attachment is part of this **Agreement** and is incorporated by reference into this **Agreement**.

3.20 Reference to Sections in this Agreement.

Any reference to a section in this **Agreement** is a reference to a section of this **Agreement**, unless clearly stated to the contrary.

3.21 Headings.

The section headings in this **Agreement** are included as a matter of convenience and are not intended to and will not be construed as affecting the terms and conditions of this **Agreement**.

4 REPRESENTATIONS AND WARRANTIES.

The **Parties** represent and warrant:

4.1 That each is fully authorized to enter into this **Agreement**;

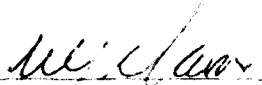
4.2 That each has taken all necessary actions to duly approve the making and performance of this **Agreement** and that no other approval is necessary; and,

4.3 That each has read this **Agreement** in its entirety and know the contents of this **Agreement**, that the terms of this **Agreement** are contractual and not merely recitals, and that each has signed this **Agreement**, having obtained the advice of legal counsel.

(SIGNATURES FOLLOW ON NEXT PAGES)

**THE UNDERSIGNED HAVE READ AND UNDERSTAND THE FOREGOING AND
AGREE TO ITS TERMS:**

PLEASANT HARBOR MARINA AND GOLF RESORT, LLP


M. Garth Mann, Manager

Date: May 15/23

Approved as to Form:

JT Cooke, Counsel for PHMPR

Date: May 23, 2023

THE UNDERSIGNED HAVE READ AND UNDERSTAND THE FOREGOING AND
AGREE TO ITS TERMS:

JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS



Greg Brotherton, Chair

Date: 6/5/23



Kate Dean, Member

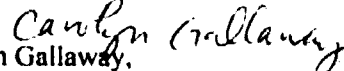
Date: 6/5/23



Heidi Eisenhour, Member

Date: 6/5/23

Attest:


Carolyn Gallaway,

Clerk of the Board

Date: 6/5/23



Approved as to Form:



Philip C. Hunsucker,
Chief Civil Deputy Prosecuting Attorney
Date: May 8, 2023