JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS

CONSENT AGENDA REQUEST

TO: **Board of County Commissioners**

FROM: **Mark McCauley, County Administrator**

DATE: **March 20, 2023**

SUBJECT: **Request for Board of County Commissioners approval of an American Rescue Plan Act (ARPA) Grant Agreement with the Port of Port Townsend**

STATEMENT OF ISSUE: On Monday, February 27, 2023 the Board of County Commissioners reviewed 48 ARPA grant proposals received from a variety of sources. These 48 proposals were submitted as a result of a BOCC "Last Call" for proposals as it sought to distribute $834,718 in remaining ARPA funds ($1.692 million in 2023 ARPA funds have yet to be received). The Board selected 17 projects for funding.

Each Commissioner scored each of the 48 projects individually. Their scores were consolidated in a spreadsheet and the projects were ranked using these consolidated scores. The Board discussed each project for the benefit of the public. The Commissioners then made funding allocations until all but $718 of the funds were allocated and directed the County Administrator to prepare the appropriate grant agreements.

ANALYSIS: The Port of Port Townsend submitted a request for $100,000 to help fund the feasibility/preliminary design phase of Phase 1 of their Port Townsend Climate Change Resilience, Flood Protection and Water Walk project. The Board allocated $50,000.

A grant agreement funding this project is attached.

FISCAL IMPACT: This request costs $50,000 which will be paid using ARPA funds in Fund 123, Grants Management.

RECOMMENDATION: That the Board of County Commissioners approve the attached grant agreement.

REVIEWED BY:

Mark McCauley, County Administrator   Date 3/15/23

GRANTEE AGREEMENT WITH THE PORT OF PORT TOWNSEND

This Grantee Agreement ("Agreement") is by and between Jefferson County, a Washington political subdivision ("County") and the Port of Port Townsend, ("Grantee").

WHEREAS, on March 11, 2021, President Biden signed the American Rescue Plan Act (ARPA) into law; and

WHEREAS, the ARPA has allocated funds to revenue sharing counties, of which Jefferson County is one; and

WHEREAS, revenue sharing ARPA funds may be used for any governmental purpose; and

WHEREAS, Grantee wishes perform a feasibility/preliminary design study for a project that would protect Port Townsend's Flats District from rising seas; and,

WHEREAS, recent king tides have flooded some of this area and caused some storm damage: and

WHEREAS, Jefferson County agrees that protecting Port Townsend's Flats District is a high priority for this community: and

WHEREAS, the Jefferson County Board of Commissioners committed to provide $50,000 in ARPA funds to this project and directed the County Administrator to bring forth a grant agreement to make said funds available to the Grantee:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the terms and conditions set forth below, the parties agree as follows:

<u>Grant Amount and Grantee's Use of Grant Funds.</u> The Grant amount is $50,000. The Grant is to be used for the purposes outlined in Exhibit A. These grants funds may be made available contingent upon receipt of the second tranche of ARPA revenue sharing funds.

<u>Reporting Requirements.</u> Grantee will submit a report to the County following the completion of the project. The report will include information regarding the usage of the $50,000 grant amount and the completed project.

<u>Effective Date and Term.</u> This Agreement shall commence on the date when last executed by the parties and remain in effect until the Grant is exhausted.

<u>Termination.</u> The County may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Grantee.

<u>Independent Grantee.</u> Each party under this Agreement shall be for all purposes an independent Grantee. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties.

The Grantee shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County for any purpose.

Indemnification. The Grantee shall defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers (and their marital communities) harmless from any claims, injuries, damages, losses or suits, including attorney's fees, arising out of or resulting from the acts, errors or omissions of the Grantee in performance of this Agreement, except for injuries and damages caused by the sole negligence of the County. Should a court of competent jurisdiction determine this Agreement is subject to RCW 4.24.115 if liability for damages occurs arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the County, its officers, officials, employees, agents and volunteers (and their marital communities) the Grantee's liability, including the duty and cost to defend, shall be only for the Grantee's negligence. It is further specifically understood that the indemnification provided constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. This section shall survive the expiration or termination of this Agreement.

Required Liability Coverages. Prior to commencing work, the Grantee shall obtain at its own cost and expense the following coverage specified below either by a policy of insurance or by an agreement with a "Risk Pool" created pursuant to Ch. 48.62 RCW such as the Washington Cities Insurance Authority and shall keep such coverage in force during the terms of the Agreement.

Commercial Automobile Liability coverage 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 in connection with the Consultant's performance of his Agreement. This coverage shall indicate on the certificate the following coverage: (a) Owned automobiles; (b) Hired automobiles; and, (3) Non-owned automobiles.

Commercial General Liability. Coverage in an amount not less than a single limit of $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 commercial general liability coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:

a. Broad Form Property Damage, with no employee exclusion;

b. Personal Injury Liability, including extended bodily injury;

c. Broad Form Contractual/Commercial Liability – including coverage for products and completed operations;

d. Premises – Operations Liability (M&C);

e. Blanket Contractual Liability.

Such coverage shall be evidenced by one of the following methods: (a) Certificate of Coverage; or, (b) Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

The Grantee shall furnish the County with properly executed certificates of coverage that, at a minimum, shall include: (a) The limits of overage; (b) The project name to which it applies; (c) The certificate holder as Jefferson County, Washington and its elected officials, officers, and employees with the address of Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368, and, (d) A statement that the coverage shall not be canceled or allowed to expire except on thirty (30) days prior written notice to the County. Certificates of coverage as required by this section shall be delivered to the County within fifteen (15) days of execution of this Agreement.

Failure of the Grantee to take out or maintain any required coverage shall not relieve the Grantee from any liability under this Agreement, nor shall the coverage requirements be construed to conflict with or otherwise limit the obligations concerning indemnification of the County.

The Grantee's insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the coverage, with the exception of Professional Liability coverage, so affected shall protect all the parties and shall be primary coverage for all losses covered by the above described insurance.

Insurance companies or risk pools issuing the Grantee's coverages 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 agreement providing coverage.

All deductibles in the Grantee's coverages shall be assumed by and be at the sole risk of the Grantee.

Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of this Agreement by the County. At the option of the County, the insurer or risk pool shall reduce or eliminate deductibles or self-insured retention, or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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 Grantee until the Grantee shall furnish additional security covering such judgment as may be determined by the County.

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 coverage the Grantee shall provide to comply with this Agreement.

The County may, upon the Grantee's failure to comply with all provisions of this Agreement relating to coverage, withhold payment or compensation that would otherwise be due to the Grantee.

The Grantee shall provide a copy of all agreements providing any coverage specified in this Agreement.

Written notice of cancellation or change in the Grantee's coverage required by this Agreement shall reference the project name and agreement number and shall be mailed to the County at the following address: Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368.

The Grantee's liability coverage 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.

Any failure to comply with reporting provisions of any agreement providing coverage shall not affect coverage provided to the County, its officers, officials, employees, or agents.

The Grantee's coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of liability.

The Grantee shall include all Sub-Grantees as persons covered under its coverages or shall furnish separate certificates and endorsements for each Sub-Grantee. All coverage for Sub-Grantees shall be subject to all the requirements stated in this Agreement.

The coverage limits mandated for any coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.

The Grantee shall maintain all required coverages in force from the time services commence until services are completed. Certificates, coverages, and endorsements expiring before completion of services shall be promptly replaced. All the coverages 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 County Risk Manager by registered mail, return receipt requested.

The Grantee shall place coverages with a "Risk Pool" created pursuant to Ch. 48.62 RCW or 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.

The County reserves the right to request additional coverage on an individual basis for extra hazardous contracts and specific service agreements.

<u>Worker's Compensation (Industrial Insurance)</u>.

If and only if the Consultant 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 Consultant, the Grantee 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 Management, upon request.

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.

This coverage shall extend to any Sub-Grantee that does not have their own worker's compensation and employer's liability coverage.

The Grantee expressly waives by mutual negotiation all immunity and limitations on liability, with respect to the County, 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.

If the County incurs any costs to enforce the provisions of this subsection, all cost and fees shall be recoverable from the Grantee.

Compliance with Laws. Guidelines. The Grantee shall comply with all federal, state, and local laws and all requirements (including certifications and audits), to the extent applicable, when seeking Reimbursement.

Maintenance and Audit of Records. The Grantee shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by the County or its designee, the Washington State Auditor's Office. If it is determined during the course of the audit that the Grantee was reimbursed for unallowable costs under this Agreement or any, the Grantee agrees to promptly reimburse the County for such payments upon request.

Notices. Any notice desired or required to be given hereunder shall be in writing, and shall be deemed received five (5) days after deposit with the U.S. Postal Service, postage fully prepaid, certified mail, return receipt requested, and addressed to the party to which it is intended at its last known address, or to such other person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

Grantee
Eron Berg
Director
Port of Port Townsend
2701 Jefferson Street
Port Townsend, WA 98368

Jefferson County
Mark McCauley
County Administrator
Jefferson County Courthouse
1820 Jefferson Street
Port Townsend, WA 98368

Improper Influence. Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

Time. Time is of the essence in this Agreement.

Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of this Agreement shall so survive. Those provisions include without limitation Indemnification and Maintenance and Audit of Records.

Amendment. No amendment or modification to this Agreement will be effective without the prior written consent of the authorized representatives of the parties.

Governing Law; Venue. This Agreement will be governed in all respects by the laws of Washington state, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with this Agreement may be instituted and maintained only in a court of competent jurisdiction in Jefferson County, Washington or as provided by RCW 36.01.050.

Non-Waiver. No failure on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a wavier thereof; nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the County at law or in equity.

Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

Assignment. Neither party shall assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the other party.

Entire Agreement. This Agreement constitutes the entire agreement between the County and the Grantee for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.

No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either party has to the Washington State Department of Commerce of these grant funds, including the obligation to provide access to records and cooperate with audits as provided in this Agreement.

Severability. In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of this Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.

Counterparts. This Agreement may be executed in counterparts, any of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Authorization. Each party warrants to the other party, that the person executing this Agreement on its behalf has the full power and authority to do so.

Public Records Act. Notwithstanding any 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 be amended), the Grantee 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 Grantee also agrees that upon receipt of any written public record request, Grantee shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Agreement.

(SIGNATURES APPEAR ON THE NEXT PAGE)

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

JEFFERSON COUNTY BOARD OF COMMISSIONERS

By: ______________________________
Greg Brotherton, Chair DATE

PORT OF PORT TOWNSEND

By: ______________________________
Eron Berg, Director DATE

SEAL:

ATTEST:

____
Carolyn Gallaway DATE
Clerk of the Board

Approved as to form only:

P.C. Hunsucker March 16, 2023
Philip C. Hunsucker DATE
Chief Civil Deputy Prosecuting Attorney

EXHIBIT A – SEE THE NEXT PAGE

PORT OF PORT TOWNSEND
EST. 1924

2701 Jefferson Street
P.O. Box 1180
Port Townsend, WA 98368

360-385-0656
fax:360-385-3988
info@portofpt.com

www.portofpt.com

January 30, 2023

Jefferson County Commissioners
P.O. Box 1220
Port Townsend, WA 98368

RE: ARPA/Climate Change Resilience, Flood Protection & Waterwalk Project

Dear Commissioners:

Thank you for the opportunity to request funding for the feasibility/preliminary design phase work on the Port Townsend Climate Change Resilience, Flood Protection & Waterwalk Project, Phase I. This project would protect Port Townsend's Flats District, including the Port Townsend Boatyard, SR 20/Sims Way, the Haines Place Park & Ride and many businesses from rising seas by constructing approximately 4,500 feet of flood protection from approximately the Leafwing Sculpture on the Larry Scott Trail to high ground in proximity to the Tides Inn. If feasible, future phases would seek to protect downtown Port Townsend, including Point Hudson.

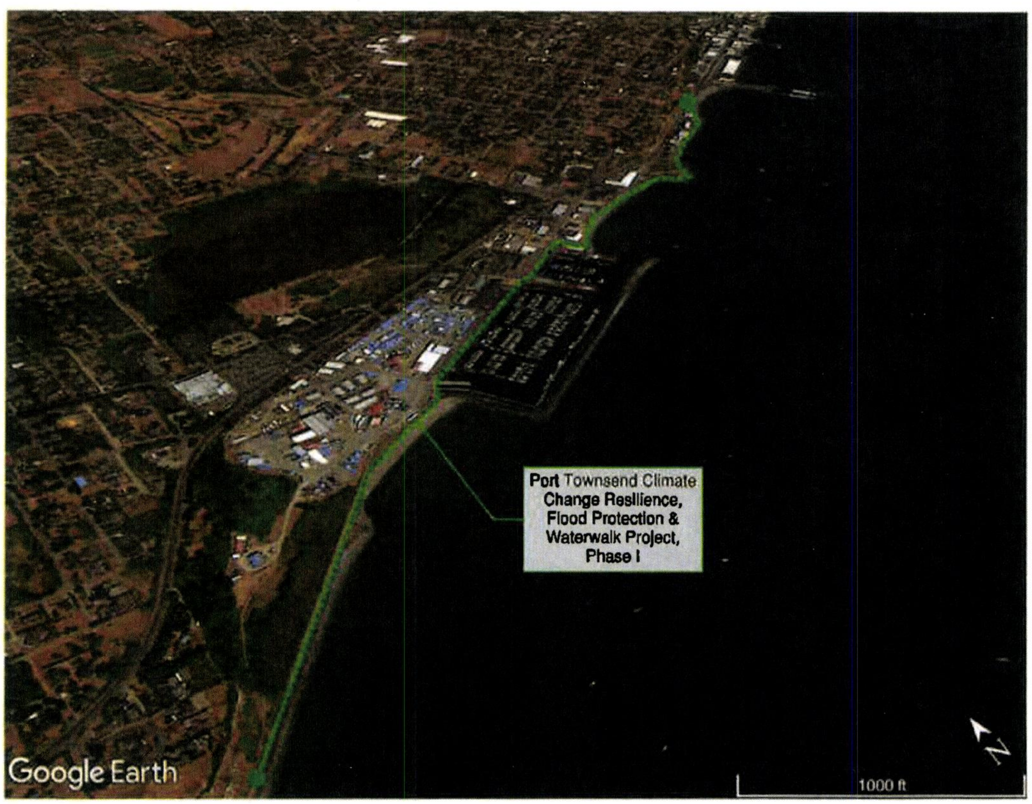
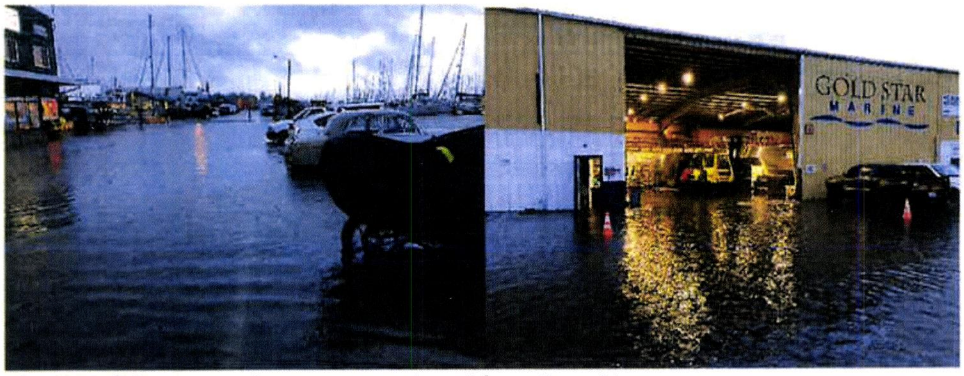


Exhibit showing approximate project limits

Two of the highest tides recorded occurred in 2022 with the December 27, 2022 King Tide event breaking the records. A portion of the Skookum Building (home of Goldstar Marine/ACI) had 12" of water in it. Roadways, storm drains and other infrastructure was under water during this event; ramps to the marina's docks reversed direction and required an uphill walk to go down to the docks. This event exacerbated prior damage along the Boat Haven Marina's bulkhead; the Port has been working with FEMA to address damage from that event.



Photos of the December 27, 2022 King Tide at Boat Haven

As the Port continues with laser focus to repair, maintain and improve the Port Townsend Boatyard for future generations to use, enjoy and prosper, the threat of recurring flooding is an existential threat. With rising sea levels, climate modeling indicates that we all need to be prepared for more King Tide events. Based on this modeling, the recently constructed north breakwater at Point Hudson is built to elevation 16, replacing a structure that was built at elevation 13. Phase I of this project is intended to consider alternatives, determine feasibility, preliminary alignment, design elevation, preliminary cost estimates right-of-way constraints and probable permitting pathways.

The marine trades are a vital part of Jefferson County's economy and that activity, along with the working waterfront culture, is centered in the Port Townsend Boatyard. Below is a summary of the economic impact of the marine trades sector from the 2018 PTMTA study performed by Dr. martin & Associates (currently being updated with 2022 data).

2017 Economic Impacts of the Maritime Trades - Summary of Results

2,243 jobs are supported by Marine Trades activity	•1,154 direct jobs •676 induced jobs •413 indirect jobs
$336.7 million of total economic value supported in the region	•$275.7 million of direct business revenue •$61.0 million of re-spending of direct income and local consumption
$135.4 million total personal income/local consumption	•$54.9 million: direct personal income, average salary = $47,583 for these employees •$61.0 million: re-spending/local consumption •$19.5 million: indirect income
$12.6 **million** state and local taxes	•$6.8 million: state level •$5.8 million: local and county level

*Totals may not add up exactly due to rounding

While not the primary objective of this project, completion of a significant portion of the City's planned Waterwalk is a huge benefit to the community. Completion of the Waterwalk is consistent with the City's Urban Waterfront Plan, Comprehensive Plan and Shoreline Management Plan. A similar project, combining flood protection and a pedestrian walkway, was completed by the City of Mount Vernon and won the APWA project of the year award in 2020.

Photos of Mount Vernon's flood protection structure/walkway along the Skagit River.

City of Port Townsend's Urban Waterfront Plan, Page 87, visualization of Boat Haven's new Waterwalk (1990)

We hope to substantially complete the feasibility stage for $200,000. The Port is asking for $100,000 in ARPA funding from the County and will commit the other $100,000 from Port funds. As we look to an uncertain future, it is difficult to imagine a more critical project than one that will protect the working waterfront.

The City of Port Townsend is a partner in this project and recently completed the Sea Level Rise and Coastal Flooding Risk Assessment (October 2022). Separately, the city is pursuing funding to perform additional study of rising sea mitigation for critical infrastructure which will also inform this work. Attached is a letter from Acting City Manager Steve King supporting this request.

If you have any questions or would like any additional information about this request, please ask!

Sincerely,

Eron Berg
Executive Director

cc: Mark McCauley, County Administrator

City of Port Townsend 250 Madison Street, Suite 2R | Port Townsend, WA 98368 | 360.379.5096 | www.cityofpt.us

January 30, 2023

Jefferson County Commissioners
P.O. Box 1220
Port Townsend, WA 98368

RE: Letter of Support for the Port of Port Townsend's ARPA/Climate Change Resilience, Flood Protection & Waterwalk Project

Dear Commissioners,

Thank you for the opportunity to submit a letter of support for the subject project. The City appreciates the Port of Port Townsend advancing the topic of sea level rise protection in the Boat Haven area. As illustrated in the Port's proposal, addressing sea level rise in this area requires a comprehensive approach which results in the added benefit of sea level rise solutions providing protection to the east of the Port as well as properties surrounding Kah Tail Lagoon.

City plans have long envisioned the Waterwalk connection between the Larry Scott Trail and east through Downtown. Merging sea level rise protection with the Waterwalk vision, provides the first real opportunity to pursue funding for this scale of project. The development of feasibility plan is the fist step to leveraging State and Federal funding sources for this project. The City currently is requesting $250,000 in funding from the State to initiate a similar feasibility study for Downtown. This PIF request builds upon the recent Sea Level Rise and Coastal Flooding Risk Assessment completed in 2022. The risk assessment served as a vulnerability assessment for existing infrastructure and illustrated that the assets along the southeasterly shoreline of Port Townsend is currently at risk of inundation due to the combined effects of King Tide events, storm surge, and wave runup. The study was validated with the recent King Tide events. Should the City receive this State funding, the Port's PIF proposal will provide additional leverage benefiting the City and Port. Furthermore, the Port's PIF proposal provides the opportunity to study feasibility in the level of detail needed to protect and ultimately enhance the economic value of the boatyard.

In summary, the City is requesting consideration of the Port's proposal for funding to move the ball forward in protecting the economic value of the boatyard and surrounding properties as well as further the plan of connecting the Larry Scott Trail to Downtown with the long envisioned Waterwalk. Please do not hesitate to contact me with any questions you may have.

Sincerely,

Steve King
Acting City Manager

cc: Mark McCauley, County Administrator