

Contractor: City of Oak Harbor
Project: Oak Harbor Clean Water Facility
Contract No.: RM-GSA-2016-330

INTERLOCAL AGREEMENT RURAL COUNTY ECONOMIC DEVELOPMENT FUNDS

THIS INTERLOCAL AGREEMENT is made and entered into pursuant to Chapter 39.34 of the Revised Code of Washington, by and between Island County, Washington, a political subdivision of the State of Washington, acting by and through its Board of County Commissioners, (the "County") and the City of Oak Harbor, a municipal corporation organized under the laws of the State of Washington, and wholly situated in Island County, Washington, (the "City"), on the date shown below.

RECITALS

A. The County is eligible for and receives sales and use taxes for rural counties authorized in RCW 82.14.370 and imposed in Island County Code Chapter 3.02C. Such tax is authorized for the purpose of financing public facilities serving economic development purposes in rural areas.

B. The Island County Council of Governments at its May 25, 2016 meeting by way of a unanimous motion recommended for approval by the County the award of Rural County Economic Development Funds to assist the City in financing the costs of a utility improvement project known as City of Oak Harbor Clean Water Facility (the "Project"). Said improvements are more particularly described in "Exhibit A Application for Rural County Economic Development Funds", submitted by the City on May 2, 2016.

C. The County approved on September 13, 2016 an award of Rural County Economic Development Funds in the amount of One Million Dollars (\$1,000,000.00) for the Project, subject to availability of funds in the Rural County Economic Development Fund Account.

D. The Project is listed in the City of Oak Harbor Capital Facilities Plan.

E. The City has the appropriate statutory authority pursuant to Chapter 35A.11 RCW, and is ready, willing, and able to complete the Project described herein, and the parties are entering into this Agreement to carry out such purpose.

F. Entry into this Agreement is authorized under Chapter 39.34 of the Revised Code of Washington, the Interlocal Cooperation Act.

AGREEMENT

1. For and in consideration of the mutual covenants contained herein, the parties hereto

agree as follows:

2. Purpose. The purpose of this Agreement is to allow the County to provide partial funding assistance to the City for costs of the Project. Said improvements are more particularly described in the Application for Rural County Economic Development Funds, submitted to the County by the City.

3. Project Time / Budget. Work on the Project shall be substantially complete no later than December 31, 2018. For purposes of RCW 39.34.030(3)(d), the City will establish and maintain a Project construction budget. The City will be responsible for acquiring, holding and disposing of Project property. Unless otherwise agreed by the parties by subsequent written instrument, the County shall not own any real or personal property acquired with the funds distributed to the City hereunder.

4. Construction. The County shall have no responsibility for the design, construction or Project management of said Project. The City shall have the sole authority to determine its design, construction and Project management, and to enter into partnerships, contracts, or other legal arrangements with potential investors and/or users thereof to assist in financing and/or construction and permitting, in the manner allowed by law.

5. Allowable uses. All funds disbursed by the County to the City under this Agreement shall be used by the City solely for Project costs considered permitted uses under RCW 82.14.370 and Island County Code Chapter 3.02C.040(A). In addition, funding provided under this agreement can only be used for construction of infrastructure. City administrative costs are not eligible for reimbursement. The City hereby warrants and guarantees that the said Project shall be completed for uses as described herein.

6. Financing. The contribution to the City from County rural county sales and use tax proceeds for this Project will be in the amount of One Million dollars (\$1,000,000.00). Disbursement of funding shall be in 3 equal annual installments over a 3-year period ending December 31, 2018. Upon receipt of a request for reimbursement and documentation evidencing that the City has paid Project costs allowable under this Agreement, the County shall pay said reimbursement request within forty-five (45) days of receipt.

7. Repayment Guarantee. In the event that it is determined that any portion of the funds provided by the County is used for any purpose not authorized under this Interlocal Agreement, the City hereby guarantees that it will repay to the County all such funds, together with accrued interest at the same rate as if the funds had been invested with the Washington State Local Government Investment Pool. Any repayments due to the County shall be paid by the City within forty-five (45) days of written request made by the County.

8. Documentation. The City shall maintain for a period of six (6) years proper records documenting that the funds provided by the County were used solely for the purposes contained herein. The City shall make Project records available for inspection or audit by the County or its duly authorized representatives.

9. Reporting. The City shall file a report with the Board of County Commissioners by

January 31st of the year succeeding completion of the Project, for 5 years, reflecting the number of jobs and businesses created and retained as a result of the Project, along with other related information reasonably required by the County to measure the economic impact of its financial assistance.

The City shall also file a report with the County Auditor by January 31 of each year thereafter when the City has been reimbursed in the prior year under Section 6 above. The report must show the following:

- (a) List the name of the project;
- (b) Indicate where the project is listed in the City's economic development plan or the economic development section of the City's comprehensive plan;
- (c) List the City's total expenditures for the project from rural county sales and use tax funds received from the County in previous year and in prior years, if applicable;
- (d) List the actual or estimated number of businesses created/retained by the Project; and
- (e) List the actual or estimated number of jobs created/retained by the Project.

10. **Indemnification.** The City shall be solely responsible for administration of the Project. The City shall at all times protect, indemnify and save harmless the County from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable counsel fees, and expenses) imposed upon or reasonably incurred by or asserted against the County on account of (i) any failure of the City to comply with any of the terms of this Agreement or (ii) any loss or damage to real or personal property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project or the use or financing thereof or (iii) any use of the Project in violation of applicable law (including environmental laws); provided, the City has no obligation to indemnify the County for any claim or liability resulting from the County's negligence or willful misconduct. This paragraph shall survive the completion, expiration, and/or termination of this Agreement.

The City shall maintain, during the life of the Agreement, Industry Standard Occurrence Commercial General Liability in the amount of \$1,000,000.00 Per Occurrence and \$2,000,000.00 Aggregate, including Premises/Operations, Products/Completed Operations, Blanket Contractual Liability and Personal Injury Coverage, to protect the City from claims for damages for bodily injury, including wrongful death, as well as from claims of property damage which may arise from any operations under this contract whether such operations be by the City or by anyone directly employed by or contracting with the City.

The City shall maintain, during the life of this Agreement, Business Automobile Liability Insurance in the amount of \$1,000,000.00 Bodily Injury and Property Damage per combined single limit to protect the City from claims which may arise from the performance of this Contract, whether such operations are by the City or by anyone directly or indirectly employed by the City.

11. **No Separate Legal Entity.** It is not the intention that a separate legal entity be established to conduct this cooperative undertaking. For purposes of RCW 39.34.030(4)(a), the City's chief administrative officer shall administer the Project.

12. Modification of the Agreement. This Agreement may be modified only by the written consent of each party.

13. Arbitration. Any dispute between the parties concerning the application of or violation of the express terms of this Agreement shall be resolved through arbitration. For purposes of arbitration, each party shall pick its own arbitrator and the two arbitrators within ten (10) days shall pick a third arbitrator. If the two arbitrators do not agree within ten (10) days to pick a third arbitrator, either party may apply to the Superior Court of Island County to select a third arbitrator. A majority decision of the arbitrators shall be final and conclusive.

Except where expressly provided in this Agreement, the arbitration shall be governed by Ch. 7.04A RCW. The cost of arbitration shall be borne by each party paying for its own arbitrator and its attorney fees and costs. Should all parties participate in an arbitration, those parties' arbitrators shall meet and choose an arbitrator who shall join in deciding the matters in the dispute in the manner set forth above. The arbitrator will be compensated by the parties as follows: Each party shall pay one half the costs of all arbitration including the compensation for the third arbitrator. Each party shall pay the cost for the arbitrator it selects.

14. Term of Agreement and Termination. This Agreement shall become effective on full execution hereof and compliance with Section 15, and shall expire upon the payment in full to the City, if any, for any documented reimbursement request owed by the County pursuant to Section 6 of this Agreement.

15. Filing of Agreement. Under RCW 39.34.040, prior to its entry into force this Agreement must be either filed with the Island County Auditor or, alternatively, listed by subject on the City's Internet website.

16. Survival. Sections 5, 7, 8, 9, 10 and 13 of this Agreement shall survive the termination of this Agreement.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

By: *Neil Johnson* Date: 2/7/17
Chair *Neil Johnson*

Attest:
Debra Hamp
Clerk of the Board



CITY OF OAK HARBOR
By: *[Signature]* Date: 12/20/2016

Mayor

Attest:



City Clerk

EXHIBIT A
ISLAND COUNTY - APPLICATION FOR 2016

RURAL COUNTY ECONOMIC DEVELOPMENT FUNDS

Applicant: City of Oak Harbor
Contact: Doug Merriman, City Administrator
(360) 279-4531
Project Title: City of Oak Harbor Clean Water Facility

RECEIVED

MAY 02 2016

ISLAND COUNTY
COMMISSIONER'S OFFICE



Application Date: April 2016
Total Project Cost: Approximately \$115 million
Amount Raised to Date: \$103,175,003
Is this a phased project? Yes
Over how many years? 3 years, expected date of final completion December 31, 2018
Requesting a funding gap? Yes
What amount are you requesting now?
Option A: Requesting \$1,000,000 as a lump sum
Option B: \$1,000,000 over a 3 year term

Briefly describe your project:

The City of Oak Harbor is currently in the process of replacing two aging wastewater treatment plants with a new, state of the art, membrane bioreactor (MBR) treatment plant. The City is modernizing its existing wastewater system to improve aging infrastructure, to serve its growing community and to provide future capacity for growth, and to better protect Puget Sound – specifically the waters of Oak and Crescent Harbors. The City's current wastewater treatment system, which consists of two facilities, is aging, difficult to maintain, nearing capacity, and ill-equipped to meet future growth capacity water quality standards. The City is constructing a new wastewater treatment facility designed to deliver long-term, reliable service to the residents we serve in Oak Harbor, to reclaim valuable resources from wastewater, and equally as important, to serve as a critical infrastructure capacity element for potential economic development projects designed to enhance and increase the sustainability of Oak Harbor.

The sanitary system currently serves approximately 25,000 residents of the City, with this service being a contributing factor to local economic activity, growth, and the redevelopment of urban and suburban sections of the City of Oak Harbor. With this objective in mind, one of many critical factors in attracting new business to our community is the City's ability to provide adequate wastewater treatment facilities with available capacity for expansion. By our building modular expansion slots in the new wastewater treatment facility today, we will be able to offer potential industries the ability to locate their businesses here without having to wait for the City to catch-up on expanding facilities to meet their wastewater needs. Our proactive approach to building infrastructure now allows our central business corridor to grow without the constraints of the availability of immediate treatment capacity, or the burden of waiting for an extended period of time while the City builds infrastructure to meet their needs.

While the City's request for funding in a general sense represents the construction of the Clean Water Facility as a whole, the City is seeking financial support for the portion of the project which centers on the provision of future expansion components. The City of Oak Harbor anticipates that this approach will be the most cost-effective way to expand the use of the plant's existing technology and add to the infrastructure footprint. The new infrastructure enhancements are oriented towards improvements that are growth related and are necessary to expand the City's ability to take the capacity of wastewater to our economic community.

How does the project satisfy, in whole or in part, your economic diversification strategy?

The City's recent economic development activities have been focused on a number of efforts to cultivate a growing and sustainable market environment which encourages both the retention of existing market sectors and the attraction of new business opportunities. Through the development of infrastructure capacity, the City's objective is to encourage economic growth and fiscal expansion which will give the community both a renewed level of economic vitality in addition to creating opportunities for entrepreneurs to establish new services and products, or facilities that would not be sustainable based on the existing level of utility infrastructure.

The following information demonstrates how this project is consistent with the City's economic development strategy as embodied in both the Comprehensive Plan and the North Whidbey Community Diversification Plan. Also included in this section is information relating to contemporary economic development issues, influences, and trends, by which this project is all supported.

Comprehensive Plan Policies

The Clean Water Facility Project and the entire Windjammer Park Plan arose out of existing economic development policy framework. The policies are defined within the City's Comprehensive Plan - Economic Development Element. Within the Element, Goal 2 and its associated policies envision a combination of public-private activities that could create a climate ripe for business retention and growth:

Goal 2- Implement the Waterfront Redevelopment, Branding and Marketing Program to increase visitor spending and enhance the quality of life and economic vitality of Oak Harbor.

Other support for this economic diversification effort can be found in the Land Use Element of the City's Comprehensive Plan. The policies therein speak to economic diversification through implementing projects and community asset development.

Land Use Element Goal 14- To strengthen and enlarge the commercial economic base of the community by promoting the development of facilities that provide a competitive and stimulating business environment

North Whidbey Community Diversity Action Plan

The North Whidbey Community Diversity Action Plan has been a key strategy document to recent economic development activities within North Whidbey Island and Oak Harbor. This document sets out policies for improving the stability, growth and resilience of the economy of the region. These policies are clearly broad in nature, but have provided direction in the development of refined project initiatives such as the Clean Water Facility, and the Windjammer Park Plan.

What planning has taken place regarding this project, and is the project part of a plan?

The City formally began the facility planning effort in October 2010 and received Ecology approval of the facilities plan (engineering report) on November 18, 2013. Through the Facilities Planning effort, the City considered several treatment methods and potential locations for the new treatment plant. The 3 year public involvement Facilities Plan effort resulted in a Membrane Bioreactor facility in the Windjammer Vicinity of Oak Harbor. The site location was further refined to a +/- 2.5 acre site adjacent to the existing RBC plant after exploring environmental, cultural, technical and cost factors.

Is this project included in:

Capital Facilities Plan	<u> X </u> Yes	<u> </u> No
Comprehensive Plan	<u> X </u> Yes	<u> </u> No

Have engineering reports and feasibility studies been prepared and if so, when:

The City's wastewater system currently serves approximately 25,000 people within the City and the U.S. Navy Seaplane Base. Wastewater is currently treated at two facilities: a rotating biological contactor (RBC) facility near Windjammer Park, and the Navy's Seaplane Base Lagoon Plant (Lagoon Plant). Wastewater flows and loads treated at the City's two plants are approaching permitted limits, triggering the need for a Facilities Plan and increasing treatment capabilities.

The project schedule has been developed around the 2008 Sewer Comprehensive Plan, the NPDES Permit WA-0020567 and the City's desire to construct the new plant in an efficient manner. To that end, the City has pursued alternative delivery methods to construct the new plant.

- *November 2013:* City Staff presented an alternatives project delivery report from Carollo to City Council. Upon review, City Council authorized staff to pursue GC/CM to deliver the project. The City believes GC/CM provides the greatest opportunity to reduce risk, reduce cost and increase overall value to the project.
- *March 2014:* Staff was approved by the Project Review Committee of the Capital Project Advisory Review Board to use GC/CM on our project. In July 2014, Hoffman Construction was selected as the GC/CM for our project.
- *October 2014:* The City received funding approval from Ecology to use GC/CM. This will allow the City to meet the goal of having an operational treatment plant by the end of 2017 with full start-up commenced by mid-2018. The completion dates in the application reflect the time that will likely be necessary to provide final completion of the project.

Given the unique nature of the GC/CM the design and construction elements of the project will likely move along in parallel paths. The project is being split into Guaranteed Maximum Price (GMP) components in accordance with our GC/CM contract to help maintain schedule, reduce cost and reduce project risk. The wastewater treatment plant (WWTP) design will accommodate an initial treatment capacity of 2.7 million gallons per day (mgd). The estimated project cost for the initial phase of the WWTP is \$115 million. The initial components of the 90% design phase are expected in July 2016 with an estimate of projected total cost to follow shortly after.

The proposed MBR treatment plant will significantly improve the effluent quality over the existing RBC and Lagoon facilities and provide long-term reliability and protection of the waters in and around Oak Harbor.

Have you secured funds for this project from state or federal programs or foundations?

The City has put considerable effort into obtaining funding for this project from a variety of sources. To date, the City has obtained the following \$103,175,003 in federal, state, and own-source funding (2016 Revenue Bond issue):

	2015 SRF Loans	2016 SRF Loans	2017 SRF Loans	2016 Centennial Grant/FP	2015 Legislative Capital Grant	2016 Revenue Bond Issue
Obtained	\$11,460,000	\$15,832,311	\$42,632,742	\$5,050,000	\$2,500,000	\$25,700,000
Interest Rate	2.70%	1.90%	1.60%			3.43%
Years	20	20	20			20-30

In addition to the funding sources list above, the City anticipates the additional contribution of approximately \$10 million in cash reserves as the investment of our existing utility customers in the new facility.

Are there other efforts you have made that are unique to this project?

The efforts that are unique and innovative to the Clean Water Facility Project, all of which relate to community coordination are:

a. Selection and Location of Site

The City project team used a comprehensive process to develop project objectives and evaluation criteria; and to identify and screen alternatives. Community input was a critically important factor in the development, evaluation and selection of alternatives. The City began proactively working with stakeholders in November 2010 and continues to integrate a high level of community input to implement the proposed alternative. The Facilities Plan documents 31 independent public meetings or outreach activities that were completed during the planning process.

The Project is consistent with the City's 2009 Comprehensive Plan. After a preliminary evaluation, the City selected two wastewater treatment processes as the basis for alternatives development: an MBR process and an Activated Sludge (AS) process with tertiary treatment. Analysis of outfall locations was also completed early in the Project, and Oak Harbor was determined to be the most appropriate location.

In December 2010, stakeholder and community input were used to identify 22 potential location sites. Two additional sites were added based on public input received later in the process. Over the next several months, the Project team considered public input and technical criteria to develop 13 preliminary alternatives on eight potential sites, which were subsequently reduced to six sites, and then three sites. Based on this analysis, the City elected to complete a more detailed comparison of three final alternatives: Windjammer Vicinity MBR; Crescent Harbor North MBR; and Crescent Harbor North AS.

The two final sites selected by the City for further evaluation provide diversity with respect to location and non-cost challenges and opportunities. Additional technical analysis was completed to refine and update costs, focusing on differences between sites. Additional community input was also solicited to assist in refining alternative layouts and to better determine community perceptions related to non-cost factors, including a two day charrette attended by 15 Oak Harbor community members. Following the charrette process, the Project team further refined technical assumptions and associated costs associated with the three final alternatives. The Windjammer Vicinity MBR Project was selected based on this final evaluation.

b. Being a Progressive City Model

The Clean Water Facility Project represents an upgrade from multiple cell lagoons to Membrane Bioreactor (MBR) Treatment Process for municipal wastewater treatment in Island County. Therefore, the Clean Water Facility Project will provide information which will be helpful to other communities seeking a possible alternative approach to wastewater treatment needs.

c. Unique and Innovative Treatment System

In summary, the Clean Water Facility Project represents the results of a long term effort to meet the wastewater treatment needs of the City. The facility combines both treatment and environmental concepts that make it a unique, innovative treatment system the emphasizes the use of low energy, low maintenance treatment technologies to reduce costs to its citizens and also provides great flexibility to meet the varying flow and waste load conditions experienced by the City of Oak Harbor.

How many full-time permanent jobs will be created or retained?

Created in 1-3 Years	Approximately 20- 30 labor workers (will vary depending on phase of construction)
Created in 3-5 Years	Approximately 3 new positions created to support operation of the new facility
Jobs Retained	4 positions retained

The Clean Water Facility Project is a prevailing wage project. Contractors are encouraged to visit community drop-in hours every 2nd and 4th Monday, 2 – 4 p.m., at the Old Whidbey Island Bank Building located at 321 SE Pioneer Way.

What is the size of the population that will benefit by this project?

City of Oak Harbor Population:	Approximately 25,000 residents
Island County Population:	Approximately 80,000 people

It is difficult to quantify the population that will benefit from the project since this project will be a benefit to all economic development activities will be affected by this growth opportunity.

How will this project improve infrastructure capacity?

The new Clean Water Facility Project will provide the opportunity to design processes with improved redundancy and reliability, to consider processes that will help meet the future regulatory requirements, to replace aging infrastructure at the existing facility, and to serve as a foundation for phasing of capacity increases.

How many businesses do you plan on serving with this project?

The development of additional wastewater capacity connections can serve not only local businesses and residents, but will also attract new economic development opportunities from all over the country as a community that can meet their specific capacity of wastewater needs.

It is difficult to quantify how many businesses that will benefit from the project since this project will be a benefit to all economic development activities will be affected by this growth opportunity.

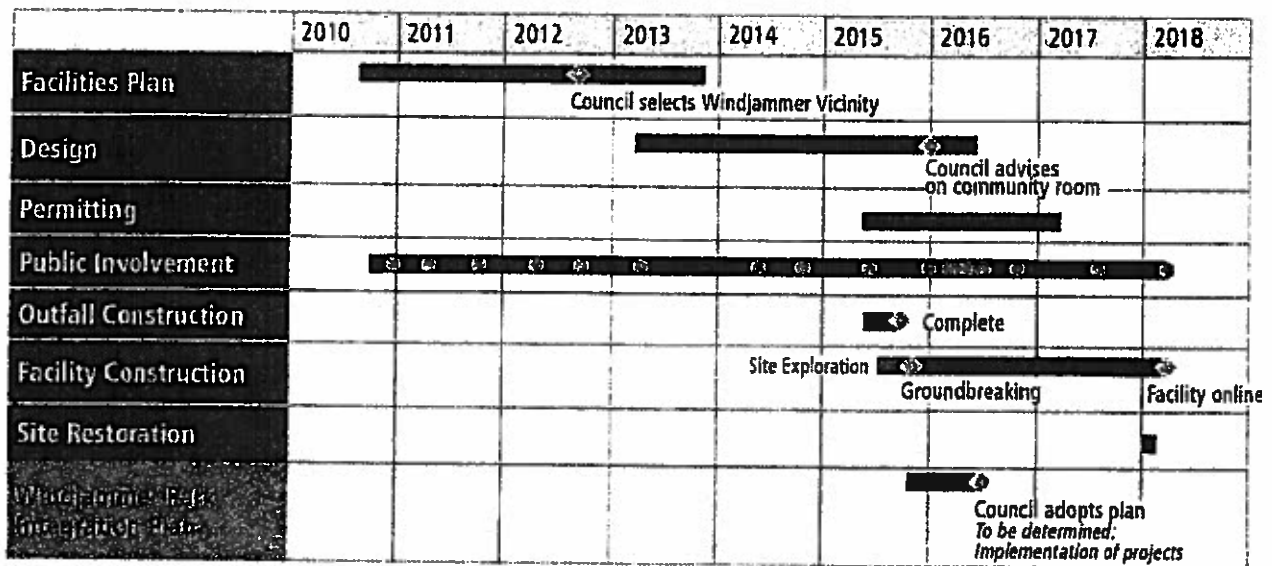
How many jurisdictions do you plan on serving with this project?

The local jurisdictions that will be served by this project include the City of Oak Harbor, Island County, and Naval Air Station Whidbey Island. The possibilities for jurisdictions outside of Whidbey Island are endless. This opportunity could attract other cities, counties, State agencies, committees, and various other entities looking for the perfect location to have their businesses thrive with our growing local economy.

How many months will this project take to complete?



**Clean Water Facility Project
Proposed schedule for project completion**



Updated Fall 2015

◆ milestone ● workshops and public open houses

Are there other factors significant to this project that we should be aware of, such as emergency declarations, volunteer efforts, links to other priority projects, etc.?

Working with the community on the design of the new facility is important to the City of Oak Harbor. Throughout the process, the City has worked with the community through public meetings, open houses, and design workshops.

While not a direct component of the Clean Water Facility Project, the City is simultaneously undertaking the Windjammer Park Improvement Plan (WPIP) as a community-oriented approach to developing a vision, scope, and community-driven aesthetic appeal while redesigning this major park to be an even greater asset to Island County as a whole. The City desires to add additional park facilities and enhanced recreational components through this effort to provide both a higher standard of living to our citizens as well as a venue to support greater tourism-type activities.

What quantifiable outcomes are you going to track to measure the success of this project?

In order to measure and track the success of the Clean Water Facility Project, preparation and planning is an integral part of the outcome measurement process and successful outcome measurement hinges on a cohesive plan. The City of Oak Harbor is dedicated to this process of accomplishing these goals for its residents. The capacity and quality of public facilities and services that serve the City of Oak Harbor affect the quality of life enjoyed by those who live, work, and visit the entire County. These services are a major factor in determining the amount, location, and type of growth a community can anticipate. The City of Oak Harbor, together with its service providers, operates and facilitates the needs of the community.

While the City's request for funding in a general sense represents the construction of the Clean Water Facility as a whole, the City is seeking financial support for the portion of the project which centers on the provision of future expansion components. The City of Oak Harbor anticipates that this approach will be the most cost-effective way to expand the use of the plant's existing technology and add to the infrastructure footprint. The new infrastructure enhancements are oriented towards improvements that are growth related and are necessary to expand the City's ability to take the capacity of wastewater to our economic community.

For the current application cycle, original applications (plus ten copies) will be accepted through 4:00 p.m., May 2, 2016 at the Commissioners' Office, P. O. Box 5000 mailing or Room 214, Second Floor, County Administration Building, 1 NE 7th Street, Coupeville, WA. For questions or additional information, call (360) 679-7354 or toll free from South Whidbey Island at (360) 321-5111, Ext. 7354 or Camano Island at (360) 629-4522, Ext. 7354.