

Contract No. 035-16
PROFESSIONAL SERVICES AGREEMENT FOR
TOURISM PROMOTION (LODGING TAX) SERVICES

This Professional Services Agreement ("Agreement") is made by and between the City of Port Orchard, a Washington municipal corporation ("City"), and **Visit Kitsap Peninsula**, a **601(c)6 corporation** organized under the laws of the State of Washington, doing business at: **9841 Silverdale Way NW, Silverdale, WA 98383** (hereinafter the "Organization").

A. The City collects a lodging tax for the purpose of contracting through **Visit Kitsap Peninsula** for tourism marketing, as allowed by RCW 67.28.1816, and **Visit Kitsap Peninsula** has applied for the use of the revenues, also as allowed by the same statute.

B. The Organization proposes to market, operate a special event, events, festival, festivals, or otherwise market and promote Port Orchard as a destination for visitors as described in this Agreement; and

C. In an effort to implement the City's wayfinding system to assure tourists are at the correct community, the organization is authorized and encourage to use the City's wayfinding logos in accordance with the City's graphic standards attached as exhibit D; and

D. The City agrees to contract with the Organization for this purpose under the terms and conditions set forth below; NOW, THEREFORE, the Parties agree as follows:

1. Services.

The Organization agrees to promote tourism as defined in RCW 67.28.080(6) and as allowed by RCW 67.28.1816 in the manner set out in the Lodging Tax Application, attached as Exhibit "A," attached hereto and incorporated by this reference ("Services").

2. Term.

The term of this Agreement shall commence as of the date of the last authorizing signature affixed hereto, and shall continue until the completion of the Services as described in Exhibit A, but in any event no later than December 31, 2016.

3. Termination.

A. Either party may terminate this Agreement for any reason whatsoever upon giving the other party at least 90 days' prior written notice thereof. Any expenses incurred prior to the date of termination but not submitted by the Organization may be submitted for

reimbursement by the Organization and reimbursed by the City of Port Orchard.

B. In situations other than as described in Subsection A above, the City of Port Orchard shall have the right to terminate this Agreement or reduce the amount which it has agreed to pay hereunder in the following circumstances: (1) In the event the City determines, in its sole and absolute discretion, that tax revenues from the tax authorized by RCW 67.28.180 are insufficient to generate sufficient revenues for the City of Port Orchard to make said payment, considering that other commitments for a portion of said funds have also been made; (2) if the tax itself is repealed by appropriate authority; (3) in the event the funds paid by the City to the Organization are not used in compliance with the provisions of this agreement and/or Chapter 67.28 RCW, as determined by the City of Port Orchard or the State of Washington; The City of Port Orchard shall have the discretion to determine the appropriate allocation of such funds among those entities to which such commitments have been made for the funds subject to Chapter 67.28 RCW.

C. Notice of Termination. Either party may terminate this agreement for the reasons set forth above, by written notice thereof to the other party. If termination is based on the reasons in Section B(1) through (3), the termination may be effective immediately. Upon such termination, the City of Port Orchard shall be under no further obligation to make payments hereunder, except any expenses incurred prior to the date of termination, but not yet submitted may be submitted by the Organization and shall be reimbursed by the City of Port Orchard.

D. Non-Appropriation of Funds.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to continue the Agreement after the end of the current fiscal period, and this Agreement will automatically terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

4. Payment.

A. Total Payment. In consideration of the Organization's performance of the Services identified in the Lodging Tax Application, attached as Exhibit A, the City agrees to grant the Organization an amount not to exceed **Six Thousand Two Hundred and Twenty Five Dollars and No/100 (\$6,225.00)**.

B. Method of Payment. Payment by the City for the Services will only be made after the Services have been performed, and after the Organization has submitted a voucher or invoice to the City using the form attached as Exhibit "B" and only after the same has been approved by the appropriate City representative. The City shall pay invoices within thirty (30) days after receipt of such voucher or invoice. Final invoices, along with any required reports, must be submitted to the City by January 4, 2017, to avoid loss of funding.

C. Organization Responsible for Taxes. The Organization shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the payment by the City for any Services under this Agreement.

5. Compliance with Laws.

The Organization shall comply with and perform the Services in accordance with applicable federal, state, and City laws including, without limitation, City codes, ordinances, resolutions, standards and policies, as now existing or as the same are hereafter adopted or amended.

6. Reporting Obligations.

Pursuant to RCW 67.28.1816 (2)(c)(i), the Organization must provide the City of Port Orchard a report in a form labeled JLARC Municipality Report, attached as Exhibit "C, no later than January 31, 2017.

7. Independent Contractor

It is the intention and understanding of the Parties that the Organization shall be an independent contractor in the performance of this Agreement and that the City shall be neither liable nor obligated to pay the Organization sick leave, vacation pay, or any other benefit of City employment, nor to pay any social security or other tax which may arise as an incident of City employment. The Organization shall pay all income and other taxes due. Industrial or any other insurance that is purchased for the benefit of the City, regardless of, whether such may provide a secondary or incidental benefit to the Organization, and the same shall not be deemed to convert this Agreement to an employment contract.

8 Indemnification.

The Organization shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is Subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Organization and the City, its officers, officials, employees, agents and volunteers, the Organization's liability hereunder shall be only to the extent of the Organization's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE ORGANIZATION'S

WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE ORGANIZATION'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO. ANY CLAIMS BY THE ORGANIZATION'S EMPLOYEES DIRECTLY AGAINST THE ORGANIZATION.

9 Insurance.

The Organization shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Organization, its agents, representatives, volunteers, or employees.

A. Minimum Scope of Insurance. Contractor The Organization shall obtain insurance of the types described below:

1. Automobile Liability insurance as required covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01, or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance. The Organization shall maintain the following insurance limits

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, and Commercial General Liability insurance:

1. The Organization's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Organization's insurance and shall not contribute with it.

2. The Organization's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

3. The City will not waive its right to subrogation against the Organization. The Organization's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Contractor's Organization's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.

4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage. The Organization shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor Organization before commencement of the work.

10. Equal Opportunity Employer.

A. In all of the Organization's services, programs or activities, and all of the Organization's hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by the Organization or by the Organization's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, veteran status, sexual orientation or the presence of any disability, including sensory, mental or physical handicaps; provided, however, that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the performance of the essential functions required of the position. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Organization shall not violate any of the terms of Chapter 49.60 RCW Title VU of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the Organization's breach, may result in ineligibility for further City agreements.

B. In the event of the Organization's noncompliance or refusal to comply with the above nondiscrimination plan, this Agreement may be rescinded, canceled, or terminated in whole or in part, and the Organization may be declared ineligible for further contracts with the City. The Organization, shall, however, be given a reasonable time in which to correct this noncompliance.

11. Work Product. The Organization shall perform and produce any work product consistent with the Services described in the Lodging Tax Application, attached as Exhibit "A".

12. Books and Records.

The Organization agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of the Services and maintain such accounting procedures and practices to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times during normal business hours, to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

13. General Provisions.

A. Assignment or Subcontracting. The Organization shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City.

B. Notice. Any notices required to be given by the City to the Organization or by the Organization to the City shall be in writing and delivered to the parties at the following addresses:

Robert Putaansuu

Patricia Graf-Hoke

Mayor

Attn: **Director**

216 Prospect Street

9481 Silverdale Way NW

Port Orchard, WA 98366

Silverdale, WA 98383

Phone: 360-876-4407

Phone: **360-908-0088**

Fax: 360 895-9029

C. Resolution of Disputes and Governing Law.

1. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor, who shall determine the term or provision's true intent or meaning. The Mayor shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

2. If any dispute arises between the City and the Organization under any of the provisions of this Agreement which cannot be resolved by the Mayor's determination in a reasonable time, or if the Organization does not agree with the Mayor's decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in Kitsap County Superior Court, Kitsap County, Washington.

3. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

D. Non-waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

E. Modification. No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Organization.

F. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

G. Entire Agreement. The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

H. Authority. Each individual executing this Agreement, on behalf of the City and the Organization, represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Organization or the City.

I. Performance. Time is of the essence in performance of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in

the Lodging Tax Application, attached as Exhibit A is essential to the Organization's performance of this Agreement.

J. Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, inequity or by statute.

K. Counterparts. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

City of Port Orchard

By: [Signature]

Robert Putaansuu
Mayor
216 Prospect Street
Port Orchard, WA 98366
Telephone: (360) 876-4407
Fax: (360) 895-9029

Visit Kitsap Peninsula
[Signature]
By: Patricia Graf-Hoke
Print Name:

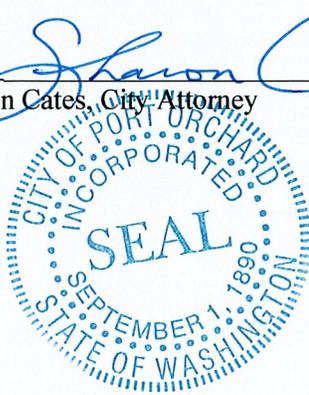
Title: Director
9841 Silverdale Way NW
Silverdale, WA 98383
Telephone: (360) 908-0088
Fax: N/A

ATTEST:

By: [Signature]
Brandy Rinearson, CMC, City Clerk

APPROVED AS TO FORM:

By: [Signature]
Sharon Cates, City Attorney





City of Port Orchard
STATEMENT OF WORK & DELIVERABLES
Based on 2016 Annual Allocation of \$6,225

Based on an annual budget of \$6,225.00 for the 2016, approximately \$500 per month, Visit Kitsap Peninsula (VKP) agrees to provide the City of Port Orchard with the following marketing services and support:

- The City of Port Orchard will have a dedicated page on the VKP website with photos, content, and links to the City of Port Orchard, PO Chamber of Commerce, PO Bay St. Association and local lodging establishments and key attractions.
- Port Orchard tourism organization will have free 24/7 access to **self-post** their tourism related events events, attractions and activities on VKP's *Calendar* using the VPS's free-self-posting event tool. Port Orchard event organizing who are welcome to use the VKP Calendar self-posting tool include the City of Port Orchard, Fathoms of Fun, Concerts on the Bay, 4th of July Fireworks, Cruz & Street Fair, Chimes of Lights, Jingle Bell Run, Sea Gull Calling & Wings Contest, Classic Yacht Show, PO Farmer's Market, Taste of Port Orchard, Western WA Theater, Sidney Museum, PO Public Market, Kitsap Transit Foot Ferry, and others events and attractions.
- The City of Port Orchard will be included on the new VPK 2016 Visitor Guide/Bike Map (which was paid for with Lodging tax funds from Kitsap County and funds from Kitsap County Public Works). 35-40,000 copies of the new VKP Visitor Guide/Bike map will be distributed via Certified Folder on WA State Ferries and throughout visitor centers on the Kitsap & Olympic Peninsulas, at trade shows and events, and in visitor and travel writer packets.
- Port Orchard businesses, attractions and events may be including in the following: the VKP website on various pages; in the monthly VKP eNewsletter distributed to 13,000 subscribers; in VKP Blog; in VK P social media program (Facebook, Twitter, etc.); and in online promotions on the VKP website.
- Port Orchard lodging establishments will be listed on the VKP website and featured in some VKP print advertising (depending on membership level).
- The City of Port Orchard and tourism partner literature and information will be distributed as requested to event planners, visitors, travel writers and others as requested.

Billing will occur 2x per year: June 30, and December 31.

**Exhibit B
Claim For Reimbursement
City of Port Orchard Lodging Tax**

Organization Name: _____ Date: _____

Address: _____

City/State/Zip: _____ Federal Tax Identification No. _____

- Instructions:
1. Submit the signed claim for reimbursement with supporting documentation attached to: City Clerk, City of Port Orchard, 216 Prospect Street, Port Orchard, WA 98366.
 2. All claims will be verified by the City Clerk's Office and submitted to the City Treasurer's Office for payment through the City's regular claims approval process.
 3. Incomplete or inadequate submissions will likely cause delays.

Payee or Vendor Name	Reference		Description <small>*Please use attached explanation sheet if necessary</small>	Project Name	Amount
	Date	Number			
Amount Requested for this Reimbursement					
For City Use ONLY					
AGREEMENT MAXIMUM	\$				
Less: PRIOR PAYMENT(S)	\$				
= (2) BALANCE AVAILABLE	\$				
					(1) TOTAL ABOVE ELIGIBLE EXPENSES
					Amount Claimed This Request – Lessor of (1) or (2)

I, the undersigned, do hereby certify under penalty of perjury that the above-described materials have been furnished, services rendered and/or labor performed, and that this claim is a just, due and unpaid obligation against the City of Port Orchard Lodging Tax Fund.

Signed _____ Title _____ Date _____

Reviewed and Confirmed/Adjusted By: _____ (City Clerk's Office) Date _____



EXHIBIT C

JLARC Municipality Reporting - 2016 Port Orchard

Activity		Attendee Estimates			
Total projected and estimated actual attendance recorded for event, facility, or resulting from marketing activity					
Activity Name:	<input type="text"/>	Projected	Actual	Methodology	<input type="text"/>
Organization:	<input type="text"/>	Overall attendance:			
Activity Type:	Select One	Attendees who traveled 50 miles or more to attend:			
Activity Date:	Start Date: <input type="text"/> End Date: <input type="text"/>	Total:	<input type="text"/>	<input type="text"/>	<input type="text"/>
Funds	Requested: <input type="text"/>	of total, attendees who traveled from another state or country:			
	Awarded: <input type="text"/>	Attendees who stayed overnight:	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Total Cost of Activity: <input type="text"/>	Paid accommodations:	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Unpaid accommodations:	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Paid lodging nights:	<input type="text"/>	<input type="text"/>	<input type="text"/>

Activity Notes:

EXHIBIT D



Standards
Guidelines
City of Port Orchard
Washington
Contract No. 034-14

Submitted by
Ambrosini Design
February 2015



**PORT ORCHARD:
SCENIC LIFE BY THE SEA
IN A SMALL TOWN
COMMUNITY**

The logo expresses this unique spirit. The interplay between the water, the sky and the land is represented in the relationships of graphic elements.

Contrasting yet harmonious use of color and typography are employed for the words "port" and "orchard".

The lower edges of the letterforms of the word "Orchard" suggesting the shoreline underscore the important relationship of the town to the water and accentuate the rhythm of the waving lines.

The two waving forms create the sense of water movement, tide lapping, and boat wakes as well as offer a suggestion of celebration like streamers in the wind. Their woven relationship refers to the community interchange.

**CORRECT USE OF THE
PORT ORCHARD LOGO**

The spacing, colors, fonts and size relationships shown must be maintained. Please use the digital file provided only. Do not attempt to recreate the logotype. The logo is created with custom-crafted type forms which can never be replaced by a font.

The wave forms can also be used as accent design elements. See page six for details.

FULL COLOR
PREFERRED
VERSION



PORT ORCHARD
COLOR PALETTE



CMYK
Port:
76 C
20 Y



Orchard:
79 C
52 Y



Wave Green:
36 C
7 M
94 Y
1 K



Wave Aquar:
57 C

GRAY SCALE



RGB
Port:
0 R
160 G
219 B

Orchard:
61 B
117 G
186 B

Wave Green:
172 B
195 G
64 B

Wave Aquar:
82 B
205 G
245 B

PANTONE
Port:
PMS 2995U

Orchard:
PMS 300U

Wave Green:
PMS 397U

Wave Aquar:
PMS 305U

ONE COLOR LINE ART



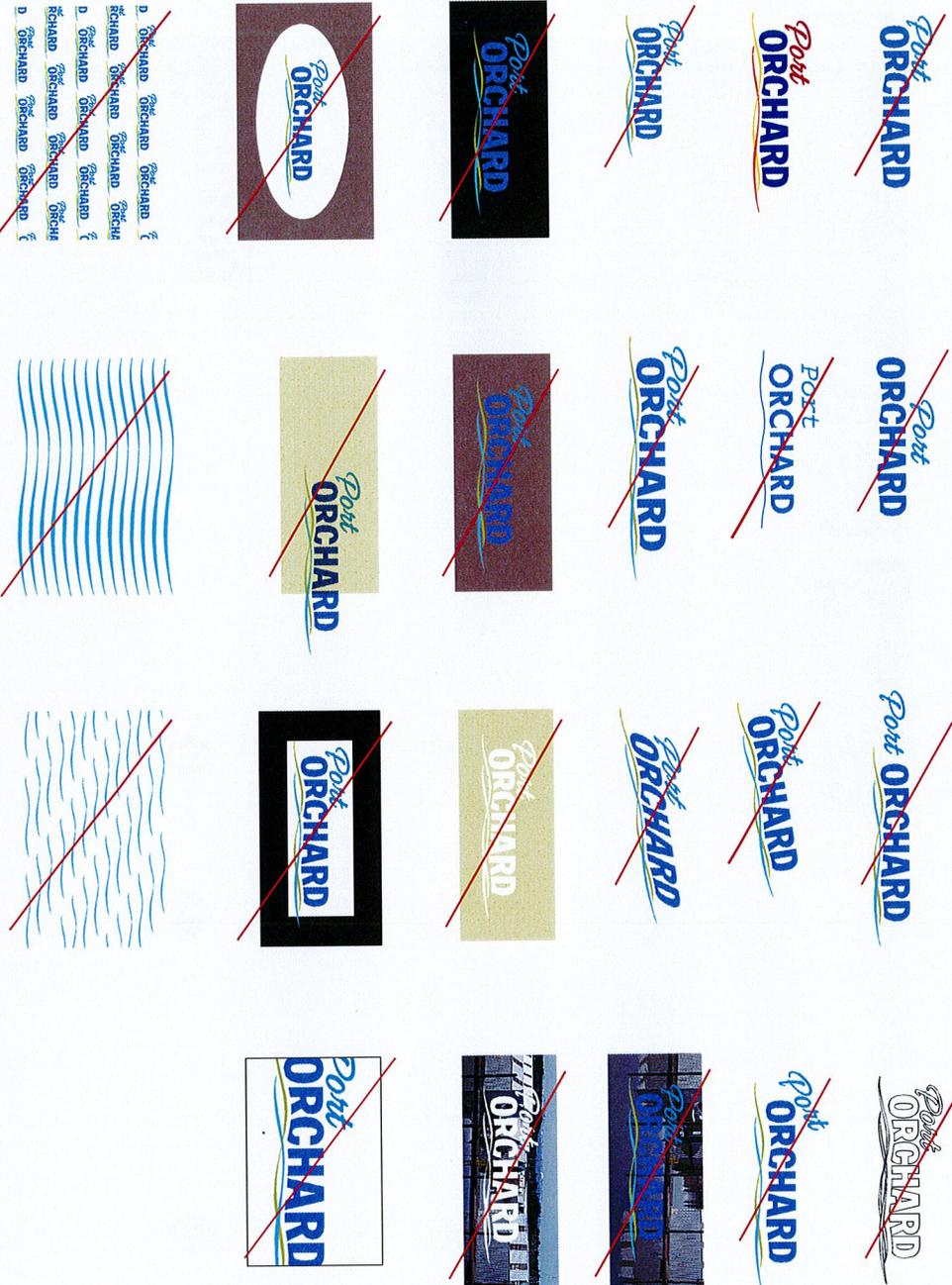
APPROVED VERSIONS AND
USAGE OF PORT ORCHARD
LOGO

- b. Use the full color version of the logo whenever possible. If color reproduction is not available, use either the grayscale option or line art options provided.
- c. Black is the preferred line art option. When using the white line art option follow these guidelines, maintaining the clear space specified on page five. The background can be black or one of the four palette colors. The white logo may be placed over a photo where there is sufficient contrast between the logo and the photo. See example. Only the white line art option can be used on a background other than white. The color, grayscale and black options must be placed on a white field using the clear space specified on page five.

PORT ORCHARD COLORS

- a. These four colors provide the palette for all printed applications. When used separately from the logo, these colors can be lightened or darkened if necessary. See examples on page six.

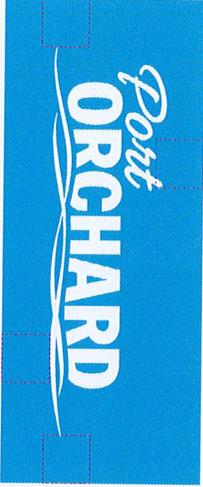
PROHIBITED



PROHIBITED USE OF THE PORT ORCHARD LOGO

- a. Do not attempt to recreate the logotype. The logo is created with custom-created type forms which can never be replaced by a font or reproduction.
- b. The Port Orchard logo is comprised of three distinct elements: the word "Port", the word "ORCHARD" and the wave forms. No alterations may be made to this configuration. The typography of the Port Orchard logo can never be used separately from the waves. Do not change the size relationship, location of the words or rotation of the type. In logo use, the waves must not be altered in any way.
- c. Do not add extraneous effects, crop, compress or stretch, distort, outline, skew or rotate the logo or any of its parts in any way.
- d. Do not use the logo or any of its parts as a repeating pattern.
- e. Never crop or place anything on, under, or in front of the logo mark. The logo is never transparent or translucent.
- f. The Port Orchard logo may only be used in the specified colors, grayscale, black or line art as shown on page three. Use only the official files provided.
- g. No shape other than a white rectangle should be used for the color version of the logo, when a container shape is necessary. If the logo is being used in white, follow the clear space guidelines on page five and the color background guidelines on page three.

CLEAR SPACE SPECIFICATIONS



TYPOGRAPHY

ITC Century Light
Text, subheadings

ABCDEFGHIJKLM
 NOPQRSTUVWXYZ
 abcdefghijklmnopqrs
 tuvwxyz

Franklin Book Gothic
Headings and Captions

ABCDEFGHIJKLM
 NOPQRSTUVWXYZ

PLACEMENT

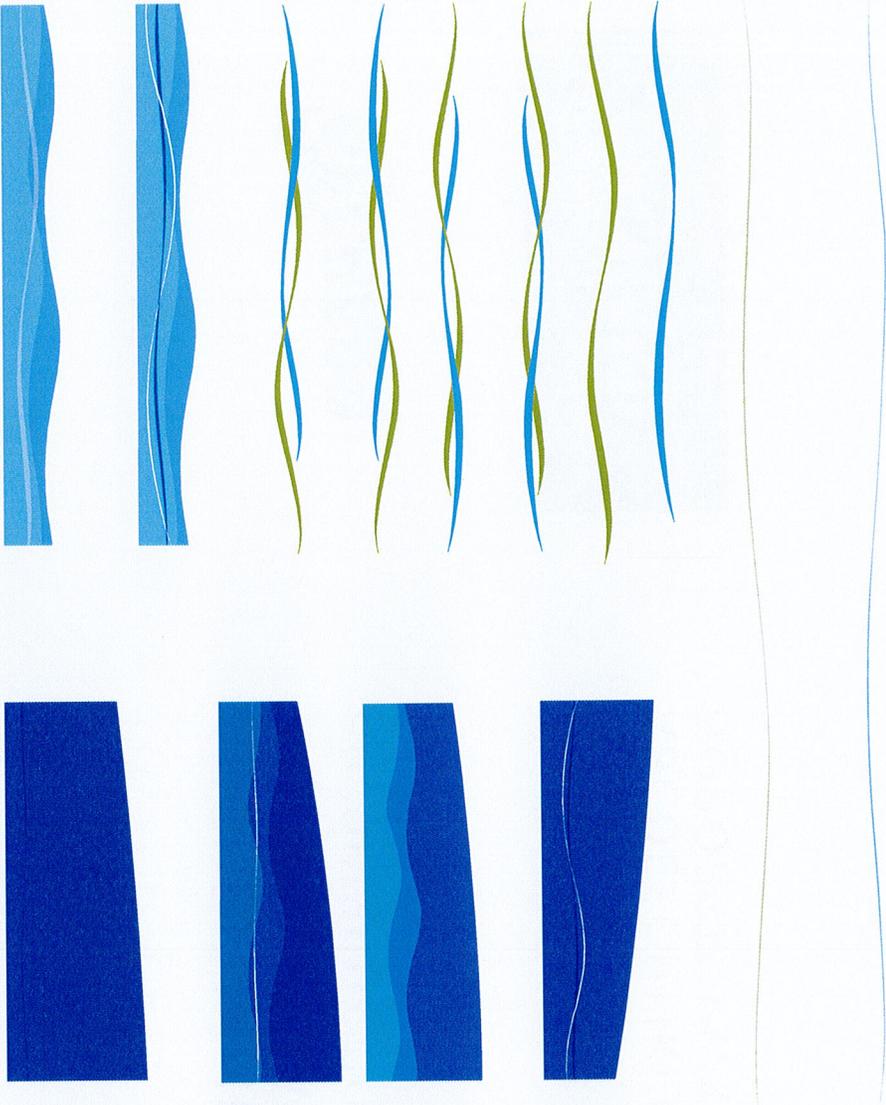
- a. Minimum clear space surrounding the logomark must be maintained as shown. Measurements are calculated using a square that is 12% the width of the logo in use.
- b. The logomark should be placed where there are no visual distractions interrupting it or its clear space. No text, graphic element, stitching, edge etc. should interfere with that clear space.

TYPOGRAPHY

ITC Century Light
Franklin Gothic Book

- a. In text usage apply the following preferences:
The primary font for text and subheadings is ITC Century Light. The primary font for headings and captions is upper case Franklin Book Gothic.
- b. Consistent and exclusive use of these fonts is critical in reinforcing the continuity of the Port Orchard look and feel.

WAVE ELEMENTS



DESIGN ELEMENTS

- a. The waving lines can be used separately from the logomark as design devices
- b. The value of the color can be darkened or lightened for optimum effect, remaining within the family of colors specified in the palette on page three.