MEMORANDUM

TO: Rob Fix
FROM: Mike Hogan
DATE: December 4, 2018

SUBJECT: Memorandum of Understanding with Corix to Develop a District Energy Implementation Strategy for the Waterfront District

ACTION REQUESTED
A motion authorizing the Executive Director to execute a Memorandum of Understanding (MOU) with Corix Utilities Systems Inc. (Corix) to develop a District Energy implementation strategy for the Waterfront District.

BACKGROUND
The revitalization of Bellingham’s downtown waterfront involves several forward thinking elements such as dedicated bike lanes, walkable community features, and the development of a District Energy System. In November 2017, the Port authorized installation of a “four-pipe heating and cooling distribution system” under Laurel Street which will ultimately connect to a centralized heating and cooling source to supply hot and chilled water to multiple buildings for the purpose of space heating, air conditioning, and domestic hot water. This type of system can efficiently heat and cool buildings using less energy than if the individual buildings were to each have their own boilers and chillers. In addition to offering more efficient thermal service, the development of a District Energy System within the Waterfront District provides additional opportunities to optimize the system utilizing low-carbon renewable energy sources such as waste heat from Puget Sound Energy’s Encogen Plant, waste heat from the City of Bellingham’s sewer mains, seawater heat pump technology, biomass, etc.

In April 2018, the Port issued a Request for Qualifications to identify a company with the capability to assist the Port in further developing District Energy System strategy including the utilization of the four-pipe heating and cooling distribution system in the Waterfront District. The selection committee included representatives from the Port, City of Bellingham, Puget Sound Energy, Western Washington University and Sustainable Connections. This committee recommended Corix Utilities as the most highly qualified private sector utility company to work with the Port to develop a District Energy implementation strategy inclusive of the completion of conceptual system design, renewable technology screening, detailed technical and financial due diligence, working with the Port to identify the most suitable ownership model, and regulatory/policy frameworks that maximize and balance economic and environmental outcomes.
The attached MOU details the District Energy implementation strategy the Port has negotiated with Corix. After completing the due diligence phase outlined in the MOU, the Port and Corix will work together to select the most advantageous model for the project in terms of design, delivery, infrastructure ownership and governance, and mutually beneficial business terms for carrying out the project. The term sheet for this model will be subject to approval by the Port Commission and Corix Board. Anticipated future steps include negotiating one or more definitive Business Agreements such as an Infrastructure Agreement and Energy Services Agreement to deliver innovative, proven, cost-effective and environmentally sound energy solutions for the Waterfront District.

**FISCAL IMPACT**
If the MOU is terminated for any reason prior to execution of Business Agreements, the Port will pay Corix up to $178,250 for documented external costs to develop the District Energy implementation strategy and up to an additional $10,000 in travel costs. If the Port and Corix enter into Business Agreements, Corix will recover through rates all costs reasonably incurred in connection with due diligence activities and negotiation of this project. This funding will come from BWAS account (1-215-031-7308-0000).

**STRATEGIC PURPOSE**
This action supports the Corporate Goals of the 2018 Budget as follows:
- Goal 1: Ongoing Development in the Waterfront District.
- Goal 6: Stimulate Economic Development and Job Creation

**RECOMMENDATION**
Approve Action Requested.

Attachment: *MOU with Corix Utilities Systems, Inc.*
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is dated as of the 4th day of December, 2018 (the "Effective Date") by and between the Port of Bellingham, a Washington municipal corporation (the "Port") and Corix Utilities Systems (US) Inc., a Delaware corporation ("Corix"). The Port and Corix are collectively the "Parties".

WHEREAS, the Port owns the former Georgia-Pacific industrial site south of Roeder Avenue and east of the Whatcom Waterway which includes approximately 18.8 acres of property designated for mixed-use development (the "Downtown Waterfront District" or the "District"). A map outlining the Downtown Waterfront District is attached hereto as Exhibit "A".

WHEREAS, pursuant to that certain Master Developer Agreement dated May 17, 2015 between the Port and Harcourt Bellingham LLC it is anticipated that Harcourt will purchase various parcels and then over time develop approximately 2.8 million square feet of mixed-use development.

WHEREAS, on April 6, 2018, Port issued a Request for Qualifications (the "RFQ") to identify a potential proponent with capability to work with the Port to assist the Port in developing, a District-wide energy system (the "DES") to serve the District (the "Project").

WHEREAS, on July 16, 2018 the Port selected Corix as its preferred proponent to work with the Port to jointly evaluate technical and financial viability, to determine optimal structure, and to implement the Project, all subject to the terms and conditions set forth in this MOU.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Project Overview. The Project, as described in the RFQ, includes the development of a DES that will provide the capacity to provide buildings with efficient and affordable clean (low-carbon) energy for space heating, domestic hot water and in some cases, cooling. The goal is to produce a cost-effective way to achieve deep Greenhouse Gas (GHG) reductions in high density, mixed-use neighbourhoods. It is anticipated that the potential sources of energy for the DES may include waste heat recovered from the adjacent Puget Sound Energy's Encogen facility ("Encogen"), sewer heat recovery through the Waterfront Inceptor sewer main, combined heat and power, seawater heat pump technology, biomass, integration with the adjacent Western Washington University DES, and may include other supplemental or alternative sources of energy as agreed by the Parties.

2. MOU Scope. The scope of this MOU includes evaluation of the development in the District, including all parcels that could and/or should be connected to the DES, as well as expansion opportunities in adjacent zones that may be part of the DES in the future. In addition, the possible utilization of the former Georgia Pacific industrial water pipeline owned by the City of Bellingham for potential micro-hydro opportunities will be assessed.

3. Anticipated Project Infrastructure. The infrastructure associated with the Project is expected to include (i) all equipment and facilities required to recover waste heat, or to produce energy from other supplemental or alternative energy sources as agreed by the Parties; (ii) all requisite energy transfer stations and associated equipment, including stations and metering equipment servicing connected
buildings; (iii) all distribution pipeline infrastructure; and (iv) other infrastructure as may be agreed upon
the Parties (collectively, the "DES Infrastructure").

4. Project Phasing. The Parties anticipate that the Project will be developed in phases and that
each phase will require agreement, in each Parties sole discretion, before preceding to the next phase.
The anticipated phases are as follows:
   a. Due Diligence Phase
   b. Term Sheet Phase
   c. Business Agreements Phase
   d. Implementation Phase

5. Due Diligence Phase – Corix Activities. Corix, in consultation with the Port, will conduct such
further and other financial, legal and technical investigations as it considers necessary or advisable in the
circumstances to complete a preliminary design of the Project, to determine the technical and financial
viability of the Project, and to identify the most suitable ownership models, delivery models and policy
frameworks for maximizing economic and environmental outcomes for the Project (the "Due Diligence
Phase"). The Due Diligence is expected to include, among other things, the following activities by Corix:
   a. Develop and evaluate five district energy system options, including (i)
calculation of energy demand, including peak energy demands by building, energy use intensity, and
heating and cooling end-use assumptions for each buildings type, and (ii) calculation of carbon baseline
and carbon footprint for each option;
   b. Potential evaluation of micro-hydro energy generation;
   c. Review and confirmation of estimated average cost of energy transfer stations
for utility rate calculations to connect to the DES;
   d. Development of a preliminary distribution network layout, sizing, costing and
phasing in light of forecasted load estimates, building design assumptions, location of expected energy
sources and other important routing considerations (such as impact on green space and potential
conflicts with other utilities) system costs, system efficiencies, fuel price forecasts and grants;
   e. Confirmation of and update to capital cost assumptions for the distribution
network for utility rate calculations;
   f. Determination, in light of expected loads, preliminary distribution network
design, layout and phasing, of the optimal strategy (interim and permanent) for providing peaking and
back-up energy for the DES;
   g. Identification of any other optimization opportunities that could have a
significant positive impact on rates, timing, environmental performance or risk;
   h. Consideration of potential system expansion opportunities to new customers;
   i. Consideration of financing and potential business and ownership arrangements
between the Port and Corix in respect of the assets comprising the DES Infrastructure;
   j. Completion of a full business assessment, including a full financial model, to
evaluate quantitative financial and environmental outcomes of the proposed concept over a 30-year
equipment life-cycle, to project upfront capital requirements and return on capital, an updated Business
As Usual (BAU) cost comparison, and to complete a rate design;
   k. Conduct by Corix, with support, coordination and cooperation with the Port, of
further outreach to and consultation with potential stakeholders, including the City of Bellingham,
Western Washington University, Developer, Puget Sound Energy, and other potential Customers;
   l. Establish an appropriate benchmark for pricing and price increases for the DES.
m. Such other due diligence activities as may be agreed upon by the Parties, which are not contemplated in the scope or fees set forth herein, such additional scope to be approved and recovered in accordance with Section 11.2.

6. **Due Diligence Phase – Port Activities.** The Port will cooperate with Corix during due diligence. Without limiting the generality of the foregoing, the Port will:

a. Make available to Corix in a timely manner all relevant and necessary materials and information in the possession of or otherwise reasonably accessible to the Port.

b. Assist Corix in the development of a proposed preliminary distribution network layout, sizing and phasing in light of updated load estimates, building design assumptions, location of expected energy sources and other important routing considerations (such as impact on green space and potential conflicts with other utilities) system costs, system efficiencies, fuel price forecasts and grant.

c. Review district energy system concept design including technology selection, distribution piping routing and costing completed by third parties during the due diligence period.

d. Reasonably support and fully cooperate with Corix in the organization and conduct of public outreach and consultation programs as required by the Project.

e. The Port and Corix will assess long-term revenue opportunities, such as lease fees, licenses fees, franchise fees and land use or building or resource access charges in connection with the installation and operation of the DES Infrastructure. The intent of the Parties is to arrive at a revenue model that provides a fair return to Corix and the Port.

7. **Term Sheet Phase.** Upon completion of the Due Diligence contemplated in Section 4 and Section 5 and based on the results thereof, the Parties will work together on an open and inclusive basis to select the most advantageous model for the Project in terms of design, delivery, infrastructure ownership and governance, develop mutually beneficial business terms for the carrying out of the Project.

7.1. **Term Sheet.** The Parties will work to develop business terms that will be set out in a term sheet (the "Term Sheet"). The Term Sheet will form the basis for negotiation of one or more definitive business agreements which may include an infrastructure agreement and energy services agreement, whereby the Parties will set out their respective roles and responsibilities in respect of the Project and, specifically, allocate responsibility for the design, construction, finance and ongoing ownership, operation, management and maintenance of the DES, according to the Parties’ respective interests and agreed allocation of risk. It is anticipated that the terms will include:

a. An exclusive licenses or lease to Corix to provide district heating and cooling system utility services for the Project.

b. The Parties anticipate that Corix will design, construct, finance and own (to the extent agreed upon by the Parties), operate, manage and maintain all or part of the DES Infrastructure, in each case in accordance with industry standards.

c. Subject to applicable law, affiliates or contractors of Corix approved by Port may perform design, construction, operation, management, maintenance or other work in respect of the DES Infrastructure on behalf of Corix.

d. Corix will apply for and diligently pursue industry and government grants in respect of its participation in the Project. Port will use all reasonable efforts to assist Corix to identify and secure any grants to which Port may have access.
e. Port will make all reasonable efforts to assist Corix in ensuring that all customers and relevant parties execute contracts with Corix and grant all rights and make all registrations necessary to secure Corix's interest in the DES Infrastructure and operating fees and charges and to allow Corix access to land as required.

f. Upon execution of the Business Agreements the Parties will apply for, diligently pursue and fully cooperate in the obtaining of, all necessary agreements, permits and approvals required for the Project's successful implementation.

g. To the extent Corix designs, constructs, finances, owns, operates, manages and/or maintains the DES Infrastructure, Corix will charge its DES customers competitive rates that are in accordance with applicable laws, industry standards and subject to an appropriate benchmark established for use during the Due Diligence Phase.

h. The opportunity of Corix to provide DES services to new customers, with the support of Port.

i. The Port will support the Project and Corix's efforts to acquire new DES Customers;

j. Subject to applicable law, Corix will undertake the construction of Corix owned DES Infrastructure;

k. The appropriate allocation of the risk and reward related to the DES Infrastructure and the district energy utility services will be addressed. The Parties recognize that appropriately allocated risk and reward ultimately protects ongoing, reliable services to DES Customers by mitigating development risk to the utility provider, and the rate of return charged by Corix and the Port should be appropriate in light of the risk and reward so allocated to Corix;

l. The Parties will cooperate in respect of the content and strategy for any applicable regulatory submission and establishing a framework for determining whether the terms on which any applicable regulatory issues any approval are acceptable

m. Corix and Port will work to secure the necessary agreements and regulatory approvals from municipal and state government authorities and other entities, agencies and authorities as necessary.

n. The Parties acknowledge that successful implementation of the Project will require Corix and/or Port to negotiate and enter into contractual arrangements with certain third parties. Such contractual arrangements will be appropriately informed by and consistent with the Business Agreements and may include agreements for the recovery of waste heat from third parties, the installation of peaking and back-up boilers, access rights to lands for the DES Infrastructure and service agreements with customers and suppliers.

7.2. Public Outreach. The Parties agree to support and fully cooperate with each other regarding any necessary public outreach or consultation programs that may be necessary to the development of either the Term Sheet or Business Agreements.
8. **Business Agreements Phase.** Based upon the MOU, the Parties anticipate negotiating the definitive business agreements (the "Business Agreements") based on the Term Sheet and the terms of reference set out below in this Section. In addition, the Business Agreements will also address matters such as the scope of DES services, commitments to connect and serve, building design considerations, review and coordination of infrastructure development; fees (including any lease, license, infrastructure service, royalty or other fees) payable by Corix to Port, abandonment of DES Infrastructure by Corix, inclusion of options for Port to buy back all or part(s) of the DES Infrastructure upon abandonment by Corix or on termination of the Business Agreements, shared services, purchase and/or sale agreements in respect of power generation and supply, collection of data and reporting to Port on the DES and the DES Infrastructure, allocation of emission and/or environmental credits or other attributes associated with the DES, access to land and other resources for DES facilities, regulatory requirements (as applicable), development timelines, DES pricing principles, environmental commitments, governance issues (including the establishment of management or other committees as appropriate depending on the agreed ownership structure) and DES performance targets.

8.1. **Collaborative Process.** The Parties anticipate collaborating to deliver innovative, proven, cost-effective, and environmentally sound energy solutions for the Project, and to ensure the satisfaction, as far as reasonably practical, of Port's objectives regarding the DES.

8.2. **Corix's Decisions on Business Agreements.** Corix's development and operation of the DES Infrastructure, including executing the Business Agreements, will be subject to (i) Corix being satisfied in its sole discretion with the results of the Corix Due Diligence; (ii) the approval of Corix's Board of Directors; (iii) any necessary regulatory approvals and permits being obtained; and (iv) contemporaneous, or reasonable expectation of, execution of the Third Party Agreements (as hereinafter defined) by the other respective parties thereto.

8.3. **Port's Decisions on Business Agreements.** The Port's execution of the Business Agreements, and any other related contracts, will be subject to (i) Port being satisfied in its sole discretion with the results of the Corix Due Diligence and its own investigations as it deems necessary, (ii) approval of the Port commission in an open public meeting, (iii) any necessary regulatory approvals and permits being obtained, and (iv) contemporaneous, or reasonable expectation of, execution of all requisite Third Party Agreements by the parties thereto.

8.4. **Business Agreements Supersede MOU.** The mutually executed Business Agreements shall supersede this MOU and include a mutual release of any claims under this MOU.

9. **Timeline for Phases.** The estimated time to complete the Due Diligence, develop and complete the Term Sheet and Business Agreements for the purposes of applying to the regulatory agencies, if applicable, is one year from the Effective Date, as further described in the table below. Corix will work with the Port to manage and refine this timeline and the associated milestones as the Project progresses.
10. Exclusivity. During the term of this MOU, Port will work exclusively with Corix to develop a DES implementation strategy for the Project. Upon expiration or earlier termination of this MOU the Port shall have no further exclusivity obligation.

11. Corix Expenses. Significant effort and expense will be required on the part of Corix to the Due Diligence Phase, the Term Sheet Phase and the Business Agreements Phase. These costs will include the following and are collectively the “Corix Costs”:

   a. all internal costs without markup ("Corix Internal Costs"); and,
   b. fees, costs and other expenses, including travel costs, without markup paid to third party consultants and other service providers as reasonably agreed to in advance by the Port and as set forth in Exhibit “B” ("Corix External Costs").

11.1 Reimbursement for Corix External Expenses. If at any time prior to the execution of the Business Agreements, the MOU is terminated for any reason, then upon receipt of an invoice and reasonable supporting documentation from Corix reasonably acceptable to the Port, the Port shall pay to Corix with thirty (30) days from the Invoice date, the Corix External Costs to the date of termination. The Port’s obligation to pay the Corix External Costs are limited to the following:

   a. If termination occurs on or before the execution of the Business Agreements, except as modified pursuant to Section 11.2, recovery of Corix External Costs shall be capped at $178,250 plus any in-budget travel expenses incurred by Corix’s third party consultants in connection with the Project.

   b. If the Parties enter Into Business Agreements and the Project proceeds, then subject to any necessary regulatory approval, and pursuant to the Business Agreements, Corix will recover through rates under the Project all Corix Costs reasonably incurred in connection with the Corix Due Diligence and negotiation of the Project.

11.2. Modification of Corix External Costs. Recognizing that the Corix External Costs set forth in the budget attached hereto as Exhibit “B” is an estimate based partly on projected expenditures, and therefore the Corix External Costs may be modified from time to time, as agreed by the Parties in writing and in each Party’s sole discretion, to reflect actual expenditures required. Cap modification may be justified in respect of various factors, including changes to the scope of the Due Diligence Phase, revisions
to consultant estimates, or changes to the scale of the system or its ownership structure, and will be the subject of agreement between the Parties.

11.4. **Additional Services and Support.** To the extent Corix provides services and other support to Port in connection with the Project outside of the scope of the Corix Due Diligence and the Port agrees in writing prior to providing services or support, the Port will pay to Corix a fee established by the Parties in writing in advance of the provision of such services or support. Port will pay such fee(s), within 30 days after the issuance by Corix of an invoice therefor reasonably acceptable to the Port. Recovery by Corix of costs relating to the anticipated Due Diligence shall not be included in the calculation of reimbursement set forth in this section 11.4.

12. **Term and Termination of this MOU.** The term of this MOU will be for an initial period of 18 months commencing on the Effective Date, unless extended by written agreement of the Parties. The Port and Corix each reserve the right to terminate this MOU at any time prior to the execution of the Business Agreements by providing the other Party with ten (10) calendar days’ notice.

13. **Work Product and Confidential Information.** The term “Work Product” means all data and information, as well as final studies and reports prepared, produced or developed by the consultants for Corix in connection with the Corix Due Diligence and related directly and exclusively to the Project, whether in written or electronic form and all copies of same. For clarity, “Work Product” does not include any calculation, proprietary information, model (financial, engineering or otherwise) or methodology which may be of a proprietary or commercially valuable nature or otherwise used in the generation of data or information comprising Work Product (the “Corix Proprietary Information”). Corix will own and hold title to all Work Product prepared, produced or developed by Corix pursuant to this MOU except as provided herein.

13.1. **Work Product Provided to the Port.** To the extent Corix, in its sole discretion, considers any Work Product or other information provided to the Port to be confidential or proprietary information (the “Confidential Information”), Corix will inform the Port prior to disclosure to the Port and note “Work Product – Confidential” on each such document.

13.2. **Washington Law Concerning Public Record and Open Meetings.** It is recognized that records in the owned, used or in the possession of the Port are subject to disclosure under Chapter 42.56 RCW, the Washington Public Records Act (the “PRA”). It is further recognized that the Port is subject to Chapter 42.30, the Washington Open Public Meetings Act (the “OPMA”).

13.3. **Disclosure of Confidential Information to the Port.** From time to time Corix may disclose to the Port Confidential Information provided that nothing in this Agreement shall create an obligation of Corix to disclose any Confidential Information. The Port agrees and covenants except as required by the PRA and the OPMA (as solely determined by the Port in good faith):

(a) to receive, review, regard, preserve, and hold in strict confidence, treat all Confidential Information as confidential and prevent disclosure of any and all Confidential Information;

(b) not to use any Confidential Information except for the sole and limited purpose of evaluating or furthering the Project;

(c) provide notice to Corix prior to any release of Confidential Information

(c) with regard to the requirements of the PRA and/or the OPMA, the Port in its sole discretion will determine its obligations and not be liable Corix for these determinations or resultant
disclosures, provided that such determinations are made in good faith and that the Port is in compliance with their notice obligations contained in Section 7 herein.

13.4. Use of Confidential Information by the Port. The Port may disclose Confidential Information to its employees, consultants, its attorneys and/or accountants who have a substantive need to know the Confidential Information solely in connection with the Project, it being understood that the employees, consultant, attorneys and accountants to whom such disclosure is made must be informed in writing by Port of the confidential nature of the Confidential Information and instructed to keep the Confidential Information confidential as provided in this Agreement.

13.5. Payment of Corix External Expenses. In the event the Port, pursuant to Section 11.2, reimburses Corix for the Corix External Expenses the Work Product prepared using the Corix External Costs shall become the property of the Port and Corix jointly and may be used by either party for any purpose, however neither party will be liable to the other for use of such Work Product. For greater certainty, nothing in this provision requires Corix to transfer any rights to the Corix Proprietary Information contained in the Work Product, unless Corix is in receipt of reimbursement from the Port of the Corix Internal Cost, at which time Corix will grant the Port an irrevocable, non-exclusive, royalty-free and perpetual license to use the Corix Proprietary Information contained in the Work Product for the Port's internal use only.

14. Insurance. Prior to entering onto the District, Corix will obtain and maintain a comprehensive general liability policy covering all claims for personal injury (including death) and property damage (including all real and personal property located on the District or the Port’s property) arising on the District or the Port’s property as a result of, or arising out of, Corix’s activities under this MOU. The limits of liability shall be not less than Two Million Dollars ($2,000,000.00) for each occurrence and in the annual aggregate. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Corix and the Port. The foregoing insurance policy shall add the Port as an additional named insured by way of a policy endorsement. Corix shall provide certificates of insurance, if requested, to the Port. Receipt of such certificate by Port does not constitute approval by the Port of the terms of such policy.

15. Limited Waiver of Immunity under Washington State Industrial Insurance Act, Title 51 RCW. Corix specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW for claims brought by employees of Corix brought against the Port.

16. Environmental Conditions. The Parties recognize that the District has been the subject of a consent decree (the “Consent Decree”) issued by the Washington State Department of Ecology to address existing environmental conditions. In any action involving land disturbance, Corix will first consult with the Port and comply with any requirements or restrictions contained in the Consent Decree.

17. Assignment Neither Party may assign any rights or obligations of this MOU without the written permission of the other Party.

18. Survivability. All covenants, promises and performance which are not fully performed as of the date of termination shall survive termination as binding obligations.
19. **Notices.** All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

- **Port:** Port of Bellingham  
  ATTN: Director of Facilities  
  1801 Roeder Avenue  
  Bellingham, WA 98229

- **Corix:** Corix Utility Systems (US) Inc.  
  Suite 1160, 1188 West Georgia Street  
  Vancouver, B.C, V6# 4A2  
  Attention: Ken Morrison and Ann Tuck  
  Fax: 604-697-6703

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

20. **Amendment.** No modification or amendment of this MOU may be made except by written agreement signed by both Parties, except as provided herein.

21. **Waiver.** No failure by either party to insist upon the strict performance of any covenant, duty, or condition of this MOU or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition.

22. **Captions.** The captions of this MOU are for convenience and reference only and in no way, define, limit, or describe the scope or intent of this MOU.

23. **Neutral Authorship.** Each of the provisions of this MOU has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this MOU in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this MOU.

24. **Attorney Fees.** The prevailing party in any action concerning this MOU shall be awarded their reasonable attorney fees and costs.

25. **Governing Law, Jurisdiction and Venue.** This MOU, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, venue shall lie exclusively in Whatcom County, Washington and not in the federal courts of any jurisdiction.
26. **Time of Performance.** Time is specifically declared to be of the essence of this MOU and of all acts required to be done and performed by the parties hereto.

27. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this MOU.

28. **Counterparts and Authority.** This MOU may be signed in counterparts. Each person signing below represents and warrants that they have complete authority to execute this MOU.

29. **Facsimile or Electronic PDF File Transmission.** This MOU and all subsequent notices or modifications may be executed by the parties and transmitted by facsimile or electronic transmission of a PDF file and, if so executed and transmitted this and all subsequent notices or modifications will be for all purposes as effective as if the parties had delivered an executed original.

30. **Entire Agreement.** The entire MOU between the parties hereto is contained in this MOU (including the predicate clauses), and this MOU supersedes all their previous understandings and MOUs, written and oral, with respect to this transaction. This MOU may be amended only by written instrument executed by the parties after the date hereof.

**IN WITNESS, WHEREOF,** the parties have executed this MOU as of the day and year first above written.

**CORIX UTILITY SYSTEMS (US) INC.**

By: Ken Morrison  
Its: Chief Operating Officer  
(Contract Utilities & Energy Services)

**PORT OF BELLINGHAM**

By: Rob Fix  
Its: Executive Director
Figure 1-1: Waterfront District Boundaries

The Planned Action Ordinance (PAO) also covers in-water projects described and analyzed in The Waterfront District FEIS and Whatcom Waterway Final SEIS.

- Waterfront District Boundary
- PAO Boundary
- Planning Area Boundaries
- Separate SEPA Review
- Arterials
- Parks
- Park Development Area To be identified
- Shoreline Access Area
- Trail
- Interim Trail
- Interim Bicycle Bypass Route
- Rail
- Relocated Rail

Figure 1-1
Waterfront District Boundaries

The Waterfront District Sub-Area Plan
The approved budget for Corix External Costs is:

1. The fee set out in the Consultant's Proposal attached to the MOU as Exhibit "C", being $178,250 net any and all taxes; plus
2. An upset limit of $10,000 for travel expenses.
EXHIBIT “C”
CONSULTANT’S PROPOSAL
(as attached)
Corix
Port of Bellingham District Energy System Due Diligence Study
Energy Engineering Proposal

Rev4 | September 17, 2018

This report takes into account the particular instructions and requirements of our client. It is not intended for and should not be relied upon by any third party and no responsibility is undertaken to any third party.

Job number 602220-22
# Contents

<table>
<thead>
<tr>
<th></th>
<th>Introduction</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td><strong>Scope of Work</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.1 Tasks</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2.2 Deliverables</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>2.3 Clarifications</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>2.4 Additional Services</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td><strong>Schedule</strong></td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td><strong>Fees</strong></td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>4.1 Expenses</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td><strong>Authorization</strong></td>
<td>5</td>
</tr>
</tbody>
</table>
1 Introduction

Arup North America Ltd (Arup) is pleased to provide Corix with the following proposal for district energy consulting work for the Port of Bellingham District Energy System Due Diligence Study.

The owner and ultimate client is the Port of Bellingham who is funding this study via Corix to evaluate the feasibility of district energy systems serving the Waterfront District.

We assume that, in addition to the Port of Bellingham, the following key stakeholders will be involved:

- City of Bellingham
- Harcourt Bellingham, LLC
- Western Washington University (WWU)
- Puget Sound Energy (PSE)

The Due Diligence effort is in anticipation of an initial buildout of 2,830,000 sf by Harcourt as described in the RFQ document dated April 6, 2018. (This is the described in Figure 5 on p. 4 of Attachment B of the RFQ.) This buildout is Phase 1 of development, which will be followed by subsequent phases to build out up to 5,300,000 sf of mixed use space. Arup’s Due Diligence effort will concentrate on the Phase 1 buildout, but will include consideration of the buildout of subsequent phases.

2 Scope of Work

Arup’s scope of work is based on our understanding of the Due Diligence phase of work.

2.1 Tasks

- Calculate energy demand, including:
  - Based on input from others, calculate peak energy demands on a monthly basis, by building.
  - Determine EUI and heating and cooling end-use assumptions to be used for each building type.
- Develop and evaluate a Business as Usual case plus five energy system options
- Calculate carbon baseline and carbon footprint for five energy system options. Carbon baseline includes source and site energy associated with
the identified options, but does not include imbedded carbon of building components, construction activities, etc.

- Evaluate micro-hydro energy generation
- Develop Capital and Operating costs (CapEx and OpEx, respectively) for system options
- Support life cycle costing analysis by Corix
- Peer review for district energy connection compatibility of the three residential buildings Harcourt currently has going for development permit.

2.2 Deliverables

- Upon establishment of the five energy options to be evaluated, Arup will deliver a brief description of the options in a memorandum format to Corix.
- Arup will deliver one draft and one final narrative to Corix, which will include the analysis of the energy system options and evaluation of micro-hydro energy generation.
- In support of Corix’s financial model and LCCA, Arup will provide updated CapEx and OpEx values associated with the scope of work herein into an Excel-based spreadsheet provided by Corix.
  - Attachment to narratives: Arup will provide the initial values as an attachment of the draft and final narratives described above.
  - Financial model revisions: Arup will provide revised values as Corix refines the financial model. We anticipate revising inputs to the model up to 8 times.
- Peer review comments of the connectivity of the three residential buildings in a memorandum format.

2.3 Clarifications

- We assume that formal presentations to stakeholders, public outreach, etc. will be led by Corix.
- Corix will be the point of contact for coordinating information from external parties. Arup will send requests for information (formal or informal) through Corix.
- Energy system options will include investigation of various opportunities that include integration and/or provision of energy by WWU and the adjacent PSE power plant.
- The fees are limited to five energy system options. The options to be evaluated will be agreed with Corix before proceeding.
• Cost modeling will be Level 5 as noted using rough order of magnitude pricing. The rough level of accuracy expected for the cost models is ± 25-30% accuracy.

• Life Cycle Costing work will be performed by Corix using the Arup cost inputs. Arup’s effort is limited to Cost Modeling (CapEx and OpEx) input and advice to support that work and clarify aspects of the cost model.

• Arup’s scope includes 8 visits from Seattle-based staff to Bellingham plus two other trips to Vancouver for coordination with Corix and other stakeholders. These visits can be used for field assessment, support of Corix’s formal presentations, coordination with external parties, in-person coordination with Corix, or any other reason that Arup and Corix agree are beneficial.

2.4 Additional Services

The following items are not included in our scope of services, but can be added if Corix desires:

• Additional options for evaluation, including sub-options that are similar but different than the agreed options
• Sensitivity analysis of options
• Calculation of water demand
• Development or evaluation of district water options
• Component-based bottom-up cost estimates
• Evaluation of imbedded carbon of building components, construction activities, etc.

3 Schedule

We understand that the Due Diligence phase of work will be executed in 6-8 months. Arup’s effort will begin upon written Notice to Proceed (NTP) from Corix.

We anticipate issuing the deliverables described above in the timeline below. We assume a two-week review timeframe between each of these activities.

• Options memo – 4 weeks after NTP
• Draft narrative – 6 weeks after approval of options described in memo
• Final narrative – 2 weeks after receipt of comments on draft narrative
• Financial model revisions – 16 week iterative process. We anticipate revising inputs to the model up to 8 times, with one week from the time when the request is made until we deliver the revised inputs.
4 Fees

Our fee for the above scope of work is a lump sum fee of $178,250 net any and all taxes. The currency is US dollars.

We will issue invoices for the work on a monthly basis based on percentage of work completed.

These fees, with approximate number of hours, correspond with the tasks described in paragraph 2.1 above as follows:

- Calculate energy demand: $15,000 (90 hours)
- Develop and evaluate energy options: $80,000 (450 hours)
- Calculate carbon baseline: $8,000 (48 hours)
- Evaluate micro-hydro energy generation: $35,000 (200 hours)
- Develop CapEx and OpEx for system options: $29,750 (170 hours),
- Support LCCA by Corix: $8,500 (50 hours)
- Peer review of 3 buildings: $2,000 (12 hours)

4.1 Expenses

Expenses will be reimbursed at cost plus 10%.

The following will be considered reimbursable expenses in incurred at the direction of Corix:

- Printing of formal submissions
- Courier/delivery charges for hard copy document transfer
- Travel to meetings outside the city limits of Seattle

We anticipate monthly visits from Seattle-based staff to Bellingham plus two other trips to Vancouver for coordination with Corix and other stakeholders. For budgetary purposes, we recommend Corix carry a $4,000 budget for these items.
5 Authorization

Please sign below as authorization for this scope of work.

Signature  

Date

Name

Title | Company