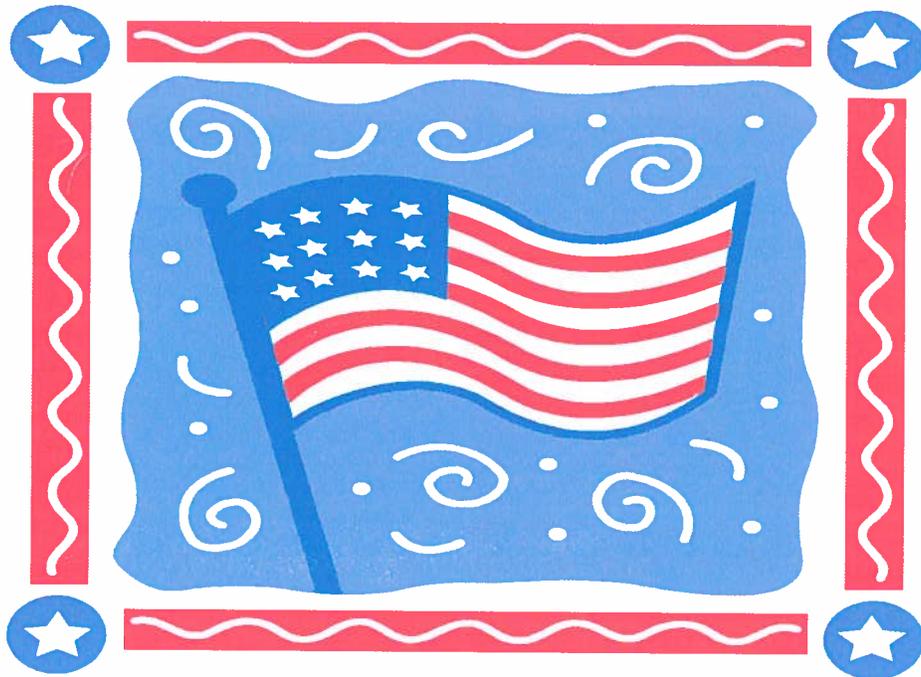


Flag Day—June 14th



City of Oak Harbor
City Council Meeting

Agenda

Tuesday, June 1, 2010

6:00 p.m.

Oak Harbor City Council
Tuesday, June 1, 2010, 6:00 p.m.

Welcome to the Oak Harbor City Council Meeting

*As a courtesy to Council and the audience, **PLEASE TURN YOUR CELL PHONES OFF** before the meeting begins. During the meeting's Public Comments section, Council will listen to your input regarding subjects of concern or interest that are not on the agenda. For scheduled public hearings, please sign your name to the sign up sheet, located in the Council Chambers if you wish to speak. The Council will take all information under advisement, but generally will not take any action during the meeting. To ensure your comments are recorded properly, state your name and address clearly into the microphone. Please limit your comments to three minutes in order that other citizens have sufficient time to speak.*

Thank you for participating in your City Government!

CALL TO ORDER

INVOCATION Ron Lawler – Family Bible Church

ROLL CALL

MINUTES 5/18/2010 Meeting

NON-ACTION COUNCIL ITEMS:

1. Employee Recognition - Jon Wollschlager, Parks Division, 10 years.
2. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

3. Consent Agenda:
 - a. Approval of Accounts Payable Vouchers (Pay Bills).
- Page 17
4. Final Consideration – Ordinance, Council Standing Committees and Council Meetings
- Page 23
5. Council Rules Revisions
- Page 37
6. Pioneer Way Improvements Professional Services Contract – EnviroIssues.
- Page 67
7. Sewer System Development Reimbursement – West Meadows.
- Page 105
8. Agreement – Multimodal Facility Design Services (Municipal Pier Uplands Facilities).
9. City Administrator's Comments.
10. Councilmembers' Comments.
 - Standing Committee Reports.
11. Mayor's Comments.

ADJOURN

*"Wisdom outweighs any wealth."
-Sophocles*

If you have a disability and are in need of assistance, please contact the City Clerk at (360) 279-4539 at least two days before the meeting.

City Council Meeting
Tuesday, May 18, 2010, 6:00 p.m.
City Hall – Council Chambers

CALL TO ORDER Mayor Slowik called the meeting to order at 6:00 p.m.

INVOCATION Tim Geist, Bible Baptist Church

ROLL CALL

Jim Slowik, Mayor

Five Members of the Council,

Rick Almberg

Jim Campbell

Scott Dudley

Jim Palmer

Bob Severns

Paul Schmidt, City Administrator

Margery Hite, City Attorney

Doug Merriman, Finance Director

Steve Powers, Development Services Director

Ethan Spoo, Senior Planner

Eric Johnston, City Engineer

Rick Wallace, Chief of Police

Mark Soptich, Fire Chief

Mike McIntyre, Senior Services Director

Mack Funk, Harbormaster

Renée Recker, Executive Assistant to the Mayor

Councilmembers Beth Munns and Danny Paggao were absent and formally excused from this meeting. Public Works Director Cathy Rosen was absent and formally excused from this meeting.

MINUTES

MOTION: Councilmember Palmer moved to approve the 5/4/10 meeting minutes. The motion was seconded by Councilmember Campbell and carried unanimously.

ADDITIONS TO THIS MEETING'S AGENDA

MOTION: Councilmember Palmer moved to amend this meeting's agenda by adding a proclamation recognizing the Oak Harbor High School Culinary Team and an agenda bill for emergency repair of the 18-inch RBC outfall pipe. The motion was seconded by Councilmember Almberg and carried unanimously.

NON-ACTION COUNCIL ITEMS

Proclamation – Oak Harbor High School Culinary Team Appreciation Day

Councilmember Almberg read and presented this proclamation. The Wildcat Culinary team of Oak Harbor High School has been the reigning state champion for four straight years and this year returned from the national competition in Overland Park, Kansas with the second place award among a field of competitors from 36 states. They cooked a three-course gourmet meal in one hour using nothing but two butane burners. Along with the accolades of being in the top tier of high school chefs, the four students on the team also received cash prizes, gifts, and scholarships to some of the nation's best culinary schools. The culinary crew is led by teacher Louise Reuble, with mentoring by Scott Fraser of Fraser's Gourmet Hideaway Restaurant. OHHS's Restaurant Management Team is also a state champion and competed at the national level for the first time. The Management Team created a detailed business plan for starting a chain

of eco-friendly restaurants which was presented to a panel of judges. Congratulations to the culinary team: Luke Felkner, (captain), Spencer Miller, Jeffrey Bradford, and Nick Merrick; and the management team: Ashley Kutzley (captain), Brooke Alhanati, and Sydney Coughlin. The Culinary Team will produce its award-winning meal one more time as a fundraiser for the Oak Harbor Educational Foundation. The meal will be served June 6, 2010, at Fraser's Gourmet Hideaway, beginning at 6:00 p.m. Tickets are \$75 and reservations can be made by calling 675-2226.

Team Captain Luke Felkner talked about the memorable experience of competing at the national level, the menu that was prepared, and thanked Mayor and Council for this recognition. Ms. Reuble also talked about the team's hard work and thanked the City for this recognition. Mayor Slowik noted that Scott Fraser had also won first place recognition in the 2010 Children's Hero Awards.

Employee Recognitions – Oak Harbor Fire Department

Steve McCalmont, 10 years; Dean Faris, 25 years

Fire Chief Mark Soptich introduced and talked about the many achievements of Firefighter McCalmont and Firefighter (POC) Faris. Mayor Slowik thanked both for their years of commitment to the safety of Oak Harbor.

Public Comments

There were no public comments this evening. Mayor Slowik noted that students from Mr. Chargualaf's Oak Harbor High School social studies class were also in attendance.

Consent Agenda

- A. Excused Absence – Scott Dudley, Wednesday, August 4, 2010 Council Meeting.
- B. Noise Permit – Kiwanis Club – Beachcomber's Bazaar.
- C. Noise Permit – Living Word.
- D. Noise Permit – Christ the King Community Church.
- E. Approval of Accounts Payable Vouchers.

Councilmember Campbell asked that Consent Agenda Items B and C be removed for discussion.

MOTION: Councilmember Campbell moved to approve items A, D, and E with item E paying Accounts Payable check number 141450 in the amount of \$352.00, accounts payable check numbers 141451 – 141465 in the amount of \$1,605.23, accounts payable check numbers 141466 – 141475 in the amount of \$16,997.95, accounts payable check numbers 141476 – 141667 in the amount of \$509,225.25, and payroll check numbers 93828 – 93835 in the amount of \$92,290.00. The motion was seconded by Councilmember Severns and carried unanimously.

Items B and C – Noise Permits

Councilmember Campbell suggested that "facing speakers away from the campground" be standard text for all noise permits in Windjammer Park.

MOTION: Councilmember Campbell moved to approve Item B – Noise Permit for Kiwanis Club, and Item C – Noise Permit for Living Word. The motion was seconded by Councilmember Palmer and carried unanimously.

Public Hearing – North Whidbey Enterprise Area Annexation Ordinance

Development Services Director Steve Powers presented this agenda bill accompanied by a PowerPoint presentation. The proposed ordinance offers incentives for properties located in the North Whidbey Enterprise Area to annex. These incentives are contained in a new chapter (18.25) of the Municipal Code. Additionally, the ordinance adds a new Chapter 14.03 restricting sewer service outside of City limits to emergency situations (septic failure) and repeals Chapter 14.25. In 1995, the City and the County jointly adopted the "North Whidbey Community Diversification Action Plan" ("The Action Plan"). The Action Plan was an economic development strategy which designated the North Whidbey Enterprise Area for future employment growth. In addition, the Action Plan also recommended extending City services (sewer, roads, etc.) to areas outside of the City boundary but within the UGA for economic development purposes.

Subsequently, the Action Plan became the foundation for the Economic Development Goals and Policies of the City's Comprehensive Plan. In 2002, the City and the County jointly adopted the Interlocal Agreement which established development/zoning standards for the unincorporated portions of the UGA including standards for the North Whidbey Enterprise Area. The Interlocal Agreement put policies in place encouraging "timely and orderly" annexation of the UGA. The City has already taken the first step toward eliminating barriers to economic development in the North Whidbey Enterprise Area by extending services outside the City boundary in the form of a sewer main and pump station in Goldie Road. The proposed "North Whidbey Enterprise Area Annexation Incentives" ordinance takes the next step by establishing incentives for annexation. The proposed ordinance sets up two main incentives for annexation:

- A waiver of annexation application fees. The standard fee to file an annexation application is \$2,137 plus \$142 per acre. Waiver of this fee for non-residential properties within North Whidbey Enterprise Area represents a substantial incentive for property owners.
- Cost recovery for Goldie Road sewer. Typically, the City uses what are called "special connection fees" to recover the cost of capital projects from benefiting properties. The incentives ordinance will not pursue cost recovery from properties within the annexation area.

Now that the sewer main and pump station in Goldie Road are complete, Chapter 14.25 OHMC pertaining to extension of sewer outside City limits for economic development purposes is no longer necessary. Thus, the proposed ordinance repeals that chapter of the code. Recognizing that emergency connections to the sewer are sometimes necessary, new language is added to Chapter 14.03 allowing sewer extensions outside of the City limits and prior to annexation *only* when septic system failure occurs. Even when sewer has been extended for septic failure, property owners will be required to sign a waiver of protest agreement to facilitate eventual annexation. A Fiscal Impact Analysis looked at the revenues and costs the City is projected to incur from annexation and/or development of the Goldie Road Annexation Area under two scenarios:

1. No new development after annexation. The first scenario looked at the revenues and costs to the City if annexation occurs, but no new development happens after annexation. This can be considered the "worst-case" scenario. However, even in this scenario the Fiscal Impact Analysis projects that the City will experience net revenues (positive fiscal impacts) from annexation.
2. A "reasonable" level of development occurs after annexation. The second scenario looked at the likely fiscal impacts if a "reasonable" level of development occurs after annexation. A "reasonable" level of development was defined to be development consistent with what has already occurred on developed parcels within the North Whidbey Enterprise Area. The Fiscal Impact Analysis predicted net revenues in this scenario, as well.

The Fiscal Impact Analysis predicts that the City is likely (but not certain) to experience increased revenues from annexation of the Goldie Road Annexation Area. The conclusions of the Fiscal Impact Analysis are limited to the Goldie Road Annexation Area. Nevertheless, the subject fiscal analysis is a positive indicator of what the City may encounter with future properties to be annexed in the North Whidbey Enterprise Area. Additionally, the City can require all future annexations within the North Whidbey Enterprise Area to complete a fiscal impact analysis to assess the level of risk associated with specific properties.

Mayor Slowik opened the public hearing at 6:30 p.m.

Kristi Jensen, 1380 SE 8th. Ms. Jensen asked about enterprise area map and asked if the properties indicated within the pink line would be grouped as a whole or if the enterprise area would skip around within the lined area.

There were no other comments so Mayor Slowik closed the public hearing at 6:35 p.m.

Council Discussion

Mr. Powers responded to Ms. Jensen's question noting that the area still has to be contiguous. Discussion followed about worst case scenarios, sewer hook-up and the waiver of protest agreement, that this proposal and ordinance was staff's idea and not driven by an annexation request, waiver of annexation fees, residential properties in the area (the majority are industrial or planned industrial park), and how annexations are initiated. Discussion continued about the annexation process and timeline, and criteria used to create the Fiscal Impact Analysis. The incentive and North Whidbey Enterprise Area annexation ordinance is meant to encourage development in the community rather than elsewhere.

MOTION: Councilmember Alberg moved to adopt the North Whidbey Enterprise Areas Annexation Incentives ordinance. The motion was seconded by Councilmember Dudley and carried unanimously.

Pioneer Way Improvements Professional Services Contract – EnviroIssues
Development Services Director Steve Powers presented this agenda bill and introduced Erin Taylor from EnviroIssues. The agenda bill requested approval of a professional services contract with EnviroIssues Inc, for assistance with the SE Pioneer Way Street

Improvements Project. The contract, which has a not-to-exceed limit of \$60,098.86 would provide for communication and public outreach support for the project. The Pioneer Way Improvements Project will completely reconstruct an existing street and utilities within the heart of the community's downtown. As such it is one of the more significant and complicated public works projects undertaken by the City in recent years. Given the complexity of the project, it is critical that effective lines of communication are in place between the City, the downtown merchants, and the overall community. This communication is essential in gaining input from business and property owners on project design decisions yet to be made, on suggestions for construction sequencing, and on co-developing a downtown marketing strategy for the construction phase of the project. Recognizing the project dynamics to date and the demands on existing staff resources, staff proposes that the public involvement firm of EnviroIssues, Inc. be retained to assist with these tasks. The use of EnviroIssues is the most cost-effective way to provide the enhanced level of public involvement and coordination that has been part of recent City Council discussions. On January 19, 2010, the City Council reaffirmed the decision to proceed with the final design and construction contract preparation associated with the SE Pioneer Way Street Improvements Project. With the decision on the basic street configuration, the project moves into a more intense and detailed level of work that will require a greater level of coordination with business and property owners. City staff approached the firm of EnviroIssues, Inc., seeking their assistance with the communication and coordination tasks associated with the next phase of the project. EnviroIssues is a firm that specializes in project-related public involvement, community outreach, and facilitation. The proposed contract with EnviroIssues was originally scheduled for the April 6, 2010 meeting but staff requested it be removed from the agenda to allow time for additional discussion and scope refinement. To maintain the project's schedule, a contract under the Mayor's authority was signed with EnviroIssues on April 7, 2010 in the amount of \$29,986.04. The contract scope of work provides for the development of a community involvement plan and undertaking a business survey. The contract deliverables include the community involvement plan, a database with survey results, and a summary of outreach activities with recommendations for the future. These products provide the springboard for the activities in the contract proposed with this agenda bill. EnviroIssues would be responsible for a number of activities intended to foster and improve communication and outreach. In addition to the tasks from the first contract, some of the specific activities EnviroIssues would be responsible for are:

- Organize and facilitate meetings with merchants and property owners and the community for input on the aesthetic features of the project.
- Gathering input on options for construction signage and economic development techniques during construction.
- Assistance to the City of Oak Harbor in pre-construction marketing and economic sustainability efforts.
- Development of community wide project newsletter prior to construction.
- Develop a project logo.
- Development of fact sheets/flyers during final design.

The products from this contract will help direct what the final street design will look like, how construction of the street may take place and what public communication and marketing activities occur during construction. This contract is only for services during final design and leading up to the start of construction. Pending City Council approval, EnviroIssues could be retained for additional community outreach assistance during the

construction project. A scope of work for construction-related activities has not yet been defined. Information gathered during the pre-construction efforts will help establish the scope of work for any construction-related work. In other words, it is premature to determine what the scope of work would be for the construction-related activities without first completing most of the pre-construction tasks. During the construction of public works projects, the City typically interacts with the affected property owners, businesses and the community through its contractor, design engineers (staff and/or outside engineers) and inspectors. The amount of direct staff involvement in this process is determined by the scale of the project and staff workload. This process is sufficient for most public works projects. The scope of work proposed under this contract by EnviroIssues includes 644 hours of effort between now and the start of construction. At current levels and workloads, City staff has neither the availability nor the expertise necessary to provide the same level of effort needed for this project.

It was noted that a majority vote of Council (not a majority vote of this evening's quorum) would be needed to approve this contract; 4 approving votes.

Mayor Slowik called for public comments.

Frank Scelzi, P.O. Box 2249. Mr. Scelzi spoke with concern about this contract. A (City) letter was sent out at the last minute and only a few tenants were able to make comments. There has not been a letter to property owners. This shows a continuing disregard for taxpayers and money is being spent that isn't necessary. Why are we having to spend these funds? How is this public relations company going to help us with deliveries and delivery trucks stopping traffic? Council listens to a third party about downtown, but will not listen to the outcry from downtown. I have been disappointed at the way this has been handled from day one.

There were no other public comments.

Council Discussion

Discussion followed about the number of staff/project manager meetings in relation to Council presentations and that Council should be more involved. Council was concerned with this wording (bolded) in the Scope of Services and Design Public Involvement and Communications Plan, respectively:

*Support development of up to two presentations for **City Council and/or the Public Works Committee** at key points in the project.*

*At key milestones during the project, the **City Council and/or the Public Works Committee** will be briefed on project progress and to receive input and decisions on the path forward.*

Council discussion preferred that the phrase "**and/or Public Works Committee**" be removed and presentations and briefings be given to the entire Council. Mr. Powers clarified that Everett meetings are team meetings with staff traveling to Everett to control costs and that this is a common technique to control costs. Staff intends to regularly brief Council with no intention of keeping Council on the sidelines. Discussion continued about the scope of work and that it is flexible and presentations to Council are presently called out in the scope of work for June and October. Council asked if notes are taken during the team meetings and if Council could be provided a meeting summary. It was noted that these are typically "nuts and bolts" meetings meant to move

the City toward plans and specifications. Discussion followed with Ms. Taylor about the number of merchants who have been met/interviewed (50 businesses have been contacted with a return to some businesses and interviews with the remaining businesses), how delivery trucks will be tracked, and business hours of operation. Council asked about the construction period since this contract is only for services during final design and leading up to the start of construction. At this point, it is difficult to determine the level of assistance needed during construction. Discussion followed about the contract's cost and necessity and, with their current workload, that it would be difficult for City staff to provide this level of communication and public outreach support considering the complexity of the project. Ms. Taylor talked about the stakeholder input process, potential hours that may be needed during construction, and public involvement and communications plan. Discussion continued about the City's use of a firm to do this level of public interface and if it had been done on past projects. City Attorney Hite clarified the difference between a majority vote and quorum vote, tabling this item, and if this item could be reintroduced. Discussion continued about the timeline beginning with the \$29,986.04 contract signed by the Mayor on April 7th, removal of this \$60,098.86 contract from the April 6th meeting to allow time for additional scope refinement, and how the needed hours were determined. Discussion returned to the business surveys, the survey questions, and the introductory letter. EnviroIssues plans to reach all of the Pioneer Way businesses before completing a survey report. It was again noted that, at this stage of the project, a construction plan would not be developed. Council talked about phase 1 and phase 2 and Mr. Powers clarified that this is essentially phase 1a and 1b, that this was originally presented as a single \$90,000 contract but EnviroIssues was asked to split the contract without jeopardizing the overall project timeline. Details of City costs (printing, mailing, project logo) were also discussed. This is a not-to-exceed contract; not a lump sum contract. At the Mayor's request, Ms. Taylor also talked about a typical marketing scenario. Mr. Powers also noted that, during the October briefing, Council will be updated on community outreach achievements and Council will have that information before awarding a construction contract for the project. Council is not being asked to wait until the construction project is awarded. Discussion then returned to scheduling questions and how success would be measured.

MOTION: Councilmember Severns made a motion to table this agenda item (Professional Services Contract – EnviroIssues) to the June 1, 2010 City Council meeting. The motion was seconded by Councilmember Dudley.

City Attorney Hite noted that a motion to table is not debatable.

Councilmember Severns and Councilmember Dudley recalled the motion and second to allow for continued discussion.

Break

Mayor Slowik called for a break at 8:30 p.m. and the meeting reconvened at 8:40 p.m.

Council Discussion

Discussion followed about Ms. Taylor's credentials and the necessity to hire Envirolssues, why this outreach process was not started earlier, the contract amount which includes overhead, and that the first contract is two-thirds complete with half of that budget expended. This second contract (phase 1b) is not dependent on the results of the first phase (phase 1a). Approval of this second contract is needed to continue the process. Council discussed the impact of a two-week delay on the timeline and Ms. Taylor and Mr. Powers noted that the survey results would be scheduled at the soonest possible time.

MOTION: Councilmember Severns made a motion to table this agenda item (Professional Services Contract – Envirolssues) to the June 1, 2010 City Council meeting. The motion was seconded by Councilmember Dudley.

VOTE ON THE MOTION:

Councilmembers Severns and Dudley voted in favor of the motion. Councilmembers Almberg, Campbell, and Palmer opposed. The motion to table died.

Discussion continued about delays on this contract and the difference between this delay and the quiet title action for Right-of-Way, and that the City is criticized for spending too much money on consultants and studies without listening to the downtown merchants.

MOTION: Councilmember Almberg moved to authorize the Mayor to sign a professional services contract with Envirolssues, Inc., for assistance on the Pioneer Way Street Improvements Project with a not-to-exceed limit of \$60,098.86. The motion was seconded by Councilmember Palmer.

VOTE ON THE MOTION:

Councilmembers Almberg, Campbell, and Palmer voted in favor of the motion. Councilmembers Dudley and Severns opposed. The motion did not receive the majority vote of Council (four votes).

This agenda bill will come back before City Council on June 1, 2010.

City Administrator Paul Schmidt distributed a past agenda bill (November 4, 2009) that discussed this project's sequencing and noted that he would be happy to speak to individual Council Members about this contract; this is not an issue of "making do" with existing staff.

Guest Moorage Rates and Hoist Rates for the Marina

Development Services Director Steve Powers presented this agenda bill and resolution to increase guest moorage and boat hoist rates at the Oak Harbor Marina.

Harbormaster Mack Funk was also present for Council questions. On December 15, 2009, the City Council approved an increase for several of the Oak Harbor Marina rate categories. The adopted resolution increased rates for permanent and guest moorage, storage units, parking and electricity use by five percent (5%) in 2010, 2011 and 2012. During this rate increase process, some marina customers, Marina Advisory Committee members and City Council members inquired about the proposed rate increases and if they were sufficient for the guest moorage category. Staff committed to reviewing guest rates and returning to the City Council with a report and/or proposal. There was also some concern expressed that the Marina does not presently charge a separate fee for electricity use by guests. Although not specifically requested by City Council, staff also further studied the Marina's boat hoist rates.

Guest Moorage Rates

Oak Harbor Marina guest moorage rates are on average approximately 84% of nearby marinas. Port Townsend's guest moorage rates are slightly less than Oak Harbor, but they and most other marinas charge extra for electricity.

Table 1: Guest Moorage Rates

Marina	May 1 – Sept 15	Sept 16 – April 30	Electricity
Port Townsend	\$0.65 per foot	\$0.65 per foot	\$4 per night
Everett	\$0.75 per foot	\$0.55 per foot	Included
Kingston	\$0.85 per foot	\$0.75 per foot	\$3 per night
La Conner	\$1.00 per foot	\$0.80 per foot	Included
Cap Sante	\$1.05 per foot	\$0.70 per foot	\$4 per night
Average	\$0.86 per foot	\$0.69 per foot	n/a
Oak Harbor existing	\$0.722 per foot	\$0.722 per foot	Included

Staff proposes that the Oak Harbor Marina institute an in-season rate (from May 1 – September 15), an off-season rate (from September 16 – April 30) and a separate charge for electricity as follows:

- May 1 – September 15 \$0.80 per foot
- September 16 – April 1 \$0.60 per foot
- Electricity \$3.00 per night

The proposed in-season guest rates are approximately 93% of the average of nearby marinas, while the proposed off-season rates are approximately 90% of the average. To be consistent with the manner in which permanent moorage rates are applied, the new guest moorage rates would be charged by actual boat length rather than by boat-length groupings. Finally, it is proposed that the new guest rates would increase by approximately 6% in 2011 and 2012.

Boat Hoist Rates

Although each hoist operation requires a different amount of time, the average time involved is approximately 45 minutes per hoist. The Marina staff operators that perform the hoist work are paid between \$18.92 and \$23.97 per hour plus benefits (ranging from \$7.86 per hour to \$9.42 per hour). Even without including the cost of maintaining the equipment, the current rate of \$15.75 per operation does not cover the Marina's labor costs for providing this service to customers. The proposed new rates are \$25 per

operation (when performed by the Marina) and \$40 for a monthly hoist contract (labor provided by the customer). Rates would increase approximately 6% in 2011 and 2012.

Council Discussion

Discussion followed about in-season footage for guest moorage and if it could be changed to 85 cents and off-season to 69 cents (Oak Harbor has always been under the average and the committee agreed with the proposed rates). If rates are changed, a new resolution would need to be presented to Council.

MOTION: Councilmember Campbell moved to adopt the resolution increasing guest moorage rates and boat hoist rates and establishing a nightly charge for guest electricity use. The motion was seconded by Councilmember Palmer and carried unanimously.

Contract Award – Regatta Water Main Extension

Councilmember Dudley had a conflict of interest with the contract and asked to be excused from this discussion and contract consideration. City Engineer Eric Johnston presented the agenda bill which recommended awarding a contract for construction of the Regatta Water Main Extension to C. Johnson Construction, Inc., in the amount of \$443, 211.21. This contract will construct a 12-inch diameter water line along Regatta Drive and SR-20 from NE 16th Avenue north to Fakkema Road. As a property owner, the project will meet the City's obligation to comply with the annexation agreement requiring the extension of the water main. In addition, the project is consistent with the City of Oak Harbor Comprehensive Water Plan. The project was advertised for bidding in the Daily Journal of Commerce and Whidbey News Times. Staff received and opened 12 sealed bids on May 6, 2010. The bid totals are tabulated below (amounts include Washington State Sales Tax in the amount of 8.7%):

Contractor	Location	Bid Total
C. Johnson Const. Inc	Oak Harbor, WA	\$443,211.21
Premium Const.	Oak Harbor, WA	\$488,430.93
Colacurcio Bros. Const., Inc.	Blaine, WA	\$497,175.32
D & G Backhoe	Lake Stevens, WA	\$505,671.20
SRV Construction	Oak Harbor, WA	\$531,551.15
B & B Utilities	Bothell, WA	\$542,385.83
G & G Excavation	Anacortes, WA	\$581,421.90
Kar-Vel construction.	Renton, WA	\$590,669.93
Buno Construction	Lake Stevens, WA	\$597,714.13
Krieg Construction	Oak Harbor, WA	\$628,687.37
Seton Construction	Port Townsend	\$691,655.49
B & L Utility Inc	Snohomish, WA	\$698,068.14
<i>Engineer's Estimate</i>	<i>Oak Harbor, WA</i>	<i>\$859,179.54</i>

Staff reviewed the bid prices and is knowledgeable of the qualifications and experience of the low bidder. Most construction projects involve change orders and modifications to the contract plans. Delays in processing change order requests can result in costly

delay claims against the City. To minimize the possibility of delays and the resulting claims, staff requested that the City Engineer be authorized to administratively approve up to \$45,000.00, approximately 10% of the contract amount, for change orders. The Engineering Division will be performing the construction inspection and construction management activities for the project. The assistance of a licensed surveyor and a materials testing company will be needed as part of the construction management and the costs for these professional services are approximately \$6,000 and \$15,000, respectively. Contracts for these services will be made under the Mayor's authority for contracts less than \$30,000 as allowed for in OHMC 2.390. The funding for the project is available in the City of Oak Harbor Water Division budget. Funding is a combination of system development charges and water rate revenues.

MOTION: Councilmember Severns made a motion to:

1. Authorize the Mayor to sign a contract with C. Johnson Construction, Inc. in the amount of \$443,211.21 for the Regatta Water Main Extension.
2. Authorize the City Engineer to administratively approve changes to the construction contract totaling not more than \$45,000.00.

The motion was seconded by Councilmember Campbell.

VOTE ON THE MOTION:

Councilmembers AlMBERG, Campbell, Palmer, and Severns voted in favor of the motion. Councilmember Dudley had been excused from this agenda presentation and vote. The motion carried.

Resolution – Emergency Repair – 18-inch RBC Outfall Pipe

City Engineer Eric Johnston presented this agenda bill which requested authorization to expend up to \$75,000 from the Sewer Fund for the emergency repair of the 18-inch RBC outfall pipe. On Friday May 14, 2010, plant operators at the RBC wastewater treatment plant became aware of a break in the outfall pipe. The outfall pipe is used to discharge treated wastewater from the treatment plant to Oak Harbor Bay. The following are a few facts related to the outfall:

- The outfall was constructed in 1956 for \$16,498.75.
- The outfall is an 18-inch diameter 16-gauge asbestos bonded bituminous protected corrugated metal pipe (CMP).
- The total length of the outfall is 1,160 feet measured from the manhole on shore.
- The break is approximately 200 feet from the shore.
- The outfall at the break is approximately 4.5 feet deep below the sediment line.

The extent of the break is unknown at this point. While the cause of the break will remain unknown until crews are able to excavate down to the pipe, corrosion is the most probable cause of the failure. There are several options for repairing the break including:

- Slip lining of the entire outfall.
- Slip lining of the near shore portion of the outfall.
- Installation of a repair band.
- Removal of damaged section of pipe and installation of a new pipe section at the break.

The first step will be to try and excavate around the area of the break to assess the extent of the damage and possible repairs. Due to the difficulty of working in this environment and the complications of dewatering an excavation on the beach with an open sewer line, the assistance of an outside contractor is needed. A final solution for repair of the outfall will be determined once the area of the break has been excavated and engineers are able to see the pipe. The proposed resolution declared the repairs to the sewer line to be an emergency and authorized the Mayor to both award and execute a contract for repairs up to \$75,000.

MOTION: Councilmember Campbell moved to adopt the resolution exempting repairs to the RBC outfall from competitive bidding requirements. The motion was seconded by Councilmember Dudley.

Council Discussion

Council asked about the emergency nature of this agenda bill and if a special meeting should have been called on Friday. Mr. Johnston noted that waiving the public bidding requirements which can take several months, constituted the emergency. Council also asked about marking the outfall's low area and potentially soft sand, but the area is within the tidal change zone and marking would not be visible; there are other low areas on the beach, as well.

VOTE ON THE MOTION:

The motion carried unanimously.

City Administrator's Comments

Mr. Schmidt reviewed upcoming meeting dates noting the AWC conference in the latter part of June. The City received notice on May 13, 2010 that we were not successful in garnering \$1 million in block grant funds for Pioneer Way.

Council Members' Comments

Standing committee reports were presented. Councilmember Palmer asked about the Scenic Heights Trailhead (should be coming before Council on June 15th).

Mayor's Comments

Mayor Slowik talked about the artwork on display which was created by Helen Brown Ryder and invited the community to see her mixed media and other work in City Council Chambers.

ADJOURN

With no other business coming before the City Council, Mayor Slowik adjourned the meeting at 9:45 p.m.

Connie T. Wheeler
City Clerk

City of Oak Harbor
City Council Agenda Bill

Bill No. 1
Date: June 1, 2010
Subject: Employee Recognitions

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



Paul Schmidt, City Administrator

Doug Merriman, Finance Director

Margery Hite, City Attorney, as to form

PURPOSE

To recognize City employees for 10 years of service or more.

AUTHORITY

It is the practice of the City to recognize dedicated employees who have completed 10 years or more of service.

SUMMARY STATEMENT

The Mayor and City Council will recognize the following employee for his 10 years of service with the City:

- Jon Wollschlager / Public Works Department Parks Division

STANDING COMMITTEE REPORT

None

RECOMMENDED ACTION

Congratulate Mr. Wollschlager for his 10 years of service.

ATTACHMENTS

None

MAYOR'S COMMENTS

None

**City of Oak Harbor
City Council Agenda Bill**

Bill No. 2

Date: JUNE 1, 2010

Subject: PUBLIC COMMENTS

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

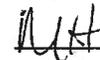


Jim Slowik, Mayor

Paul Schmidt, City Administrator



Doug Merriman, Finance Director



Margery Hite, City Attorney

SUMMARY STATEMENT

City Council will accept public comments for items not otherwise on the agenda for the first 15 minutes of the Council meeting. You may also speak to any of the consent agenda items.

City of Oak Harbor
City Council Agenda Bill

Bill No. 4
Date: June 1, 2010
Subject: Council Standing Committees and Council Meetings

FROM: Margery Hite, City Attorney

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

PURPOSE

This agenda bill is for the second reading of an ordinance amending Ch. 1.04 OHMC to formalize the rules relating to standing committees and to establish regular public meeting dates. The rules relating to standing committees were discussed at the Council Retreat on February 27, 2010, but no action was taken at that time. Since that time, additional questions have been raised concerning the status of standing committee meetings. This agenda bill proposes changes to Ch. 1.04, "Council Meetings", which will clarify the nature of standing committee meetings and establish regular meeting dates, times and locations. This ordinance also clarifies that agenda items added by council members shall be in the form of an action item. Since staff does not present council-initiated agenda items, it is important for the council member(s) to give notice of the action sought to be taken when the item is reached on the agenda. The proposed ordinance also updates the notice requirements in OHMC 1.04.020 to address electronic mail and use of the City's web-site.

AUTHORITY

The Council has the authority to determine its own rules and order of business, and establish rules for the conduct of Council meetings and the maintenance of order pursuant to RCW 35A.12.120.

SUMMARY STATEMENT

Standing committees are organized to help the Council perform its legislative functions. They allow each council member to develop in-depth knowledge of some aspects of city government which, in turn, allows the Council to use its resources more effectively. The standing committees also allow City staff to prepare for full Council meetings more thoroughly and to focus on expressed council member concerns.

Under the Open Public Meetings Act, meetings of "any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment" are meetings of the "governing body", in this case, the city council. RCW 42.30.020(2). For that reason, standing committee meetings are noticed and held as open public meetings.

However, there has been some confusion about the nature of standing committees. The proposed amendment would clarify important points about standing committees:

- There are four standing committees – Finance, General Government, Public Safety and Public Works.
- Standing committees are not separate from the council but are established to facilitate the legislative functions of the council. (Standing committees are distinguished from the “full council”.)
- Three council members are assigned to each committee.
- While there are assigned members of each committee, any council member may attend any standing committee meeting.
- Standing committees are acting on behalf of the city council and thus their meetings must comply with the Open Public Meetings Act. This also permits the standing committees to take public comment.
- No final action may be taken in a standing committee meeting.
- Attendance at committee meetings is voluntary. Council member absences from standing committee meetings are excused and committee members are requested but not required to attend them.
- Regular meeting dates, times and locations are established for standing committee meetings.
- Standing committee meetings are directed to have a prepared agenda, made available on the City’s web-site at least two days before the meeting.

The ordinance also proposes two other areas for change in Ch. 1.04 OHMC:

- It provides that council member-initiated agenda items should be stated in the form of a final action, such as a motion, resolution or ordinance adoption.
- It updates the notice provisions of OHMC 1.04.020 to allow for electronic notice, and deletes the requirement for newspaper publication of the list of agenda items, which are available in electronic form instead.

STANDING COMMITTEE REPORT

This item was discussed by the Council as a whole on February 27, 2010, at the open, public Council Retreat. After introduction of the proposed ordinance on May 4, the item was discussed at the Government Services Standing Committee on May 11, 2010; the Public Safety Standing Committee on May 20, 2010; the Finance Standing Committee on May 12, 2010; and the Public Works Standing Committee on May 6, 2010.

RECOMMENDED ACTION

This ordinance was introduced on May 4, 2010. The recommended action is adoption of the attached ordinance amending Oak Harbor Municipal Code Chapter 1.04 entitled “Council Meetings”.

ATTACHMENTS

Ordinance Amending Chapter 1.04 of the Oak Harbor Municipal Code “Council Meetings”.

MAYOR'S COMMENTS

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 1.04 ENTITLED "COUNCIL MEETINGS" TO ESTABLISH STANDING COMMITTEES OF THE COUNCIL, TO SET OUT PROCEDURES FOR STANDING COMMITTEE MEETINGS, TO AMEND THE NOTICE PROVISIONS AND TO PROVIDE THAT COUNCIL-INITIATED AGENDA ITEMS SHALL BE STATED IN THE FORM OF A PROPOSED FINAL ACTION

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. Oak Harbor Municipal Code Chapter 1.04 entitled "Council Meetings", last amended by Ord. 1559 in 2009, is hereby amended to read as follows:

**CHAPTER 1.04
COUNCIL MEETINGS**

Sections:

- 1.04.010 Time and place of full council meetings.
- 1.04.015 Standing Committees.
- 1.04.020 Public notice for full council agenda - Introduction of action.
- 1.04.030 Sale or exchange of real property.

1.04.010 Time and place of full council meetings.

- (1) The full council of the city of Oak Harbor shall meet on the first Tuesday of each month. There shall be a second regular full council meeting each month, except in the months of July and August, on the second Tuesday following the first monthly council meeting.
- (2) If the date of any of the full council meetings above scheduled falls on an official holiday, as set forth in the statutes of the state of Washington, or on a day on which a general election or a primary for a general election is to be conducted or on National Night Out, the regular full council meeting shall be held at the same time on the following day.
- (3) Regular full council meetings will be held at City Hall in the city of Oak Harbor and shall start at 6:00 p.m.

1.04.015 Standing Committees.

- (1) To facilitate the legislative functions of the city council, there shall be four standing committees of the Oak Harbor City Council:
 - (a) Finance;
 - (b) General Government;
 - (c) Public Safety; and

- (d) Public Works.
- (2) Each standing committee shall meet in a regular open public meeting of the city council pursuant to the Open Public Meetings Act. The standing committees shall meet on the following dates and times and at the following locations:
- (a) Finance -- On the second Wednesday of the month at City Hall at 3:30 p.m.;
- (b) General Government -- On the second Tuesday of the month at City Hall at 8:00 a.m.;
- (c) Public Safety -- On the third Thursday of the month at the Fire Department at 7:00 a.m.; and
- (d) Public Works -- On the first Tuesday of the month at the Public Works Department at 7:00 a.m.
- (3) Upon recommendation of the Mayor, the city council shall assign a chair and two members of the city council to have primary responsibility for each committee annually.
- (4) Any city councilmember may attend any standing committee meeting and there shall be no quorum requirement for standing committee meetings.
- (5) Councilmembers assigned to standing committees are requested but not required to attend standing committee meetings. All councilmember absences from standing committee meetings are excused.
- (6) The purpose of the standing committees is to receive information for educational purposes or for preparation of matters to come before the city council. No final action shall be taken at a standing committee meeting
- (7) Meetings of standing committees should be conducted with a prepared agenda which should be posted on the City's website at least two (2) business days prior to the meeting.
- (8) The committee chair may cancel a standing committee meeting at any time. In the event that a regular meeting of a standing committee is cancelled, cancellation shall be posted on the door of the location set by this section prior to the regular time of the meeting.

1.04.020 Public notice for full council agenda – Introduction of action.

- (1) It is directed that:
- (a) The list of agenda items with abbreviated descriptions shall be completed and available by Thursday at 12:00 noon the week preceding a regular full council meeting. Additionally, this list shall be mailed by U.S. mail or electronic mail or

faxed to newspapers, radio stations and television stations which request notice of public meetings. ~~In addition, the list shall be published in the city's official newspaper at least five days before the council meeting.~~

- (b) The full agenda shall be available by noon on the Thursday before a regular full council meeting.

Nothing in this subsection shall be construed as requiring that only the items identified on the lists described in this subsection may be heard at the full council meeting or that agenda items cannot be deleted from the list. Thus, for example, but not as limitation, emergency matters, parade permit applications, amendments to the budget, and approval of contracts may be added to the agenda after preparation of the agenda is complete.

- (2) An ordinance other than an emergency ordinance, budget amendment, moratorium ordinance or ordinance to be passed after a public hearing shall be introduced at least one full council meeting prior to the one it is considered for passage. After introduction and consideration, the ordinance shall then be continued to a scheduled subsequent full council meeting for additional consideration and for action such as passage, rejection or continuance to another hearing date.

The ordinance may be amended at any time prior to passage including at the time of introduction before the council. Amendment of a proposed ordinance shall not mandate delay of passage of the ordinance.

- (3) Matters introduced by a councilmember which are seconded by another councilmember and not on the agenda shall be set over to another full council meeting for consideration and action, if any. Every councilmember-initiated agenda item shall be stated by the initiating councilmember for the agenda in the form of a proposed final action such as a motion, resolution or ordinance. As an exception to the provision of this subsection, the following matters after motion and second may be considered and acted upon during the same meeting they are introduced:

- (a) Matters declared an emergency;
- (b) Directions to staff to prepare documents or reports or both for consideration; or
- (c) Scheduling of meetings.

1.04.030 Sale or exchange of real property.

- (1) No real property of the city shall be sold, released, leased, demised, traded, exchanged or otherwise disposed of unless the same is authorized by the city council after public hearing. Notice of such public hearing shall be given by publication of the notice in the city's official newspaper at least 10 days prior to the hearing. Developed city park property shall not be disposed of in any manner without citizen approval in an election.

- (2) The preferred timing for such a hearing is before the property is listed for sale, release, lease, demise, trade, exchange or other disposition. It is, however, recognized that this may not be possible especially in the case were there is litigation pending on the property in question.
- (3) A SEPA analysis shall be done on such proposed action and available for public review at least 10 days prior to the hearing.
- (4) The mayor shall forward to the city council a report on alternatives to the proposed action with the agenda.
- (5) Nothing herein shall be construed as preventing the city from holding an executive session in accordance with Chapter 42.17 RCW as now in effect or hereafter amended.
- (6) This section shall not apply to rental of property on a month-to-month basis or the rental of space at the marina done in the normal course of business for storage.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force and effect five days after publication.

PASSED by the City Council this ____ day of _____, 2010.
 APPROVED by its Mayor this ____ day of _____, 2010.

THE CITY OF OAK HARBOR

Attest:

 Mayor

 City Clerk

Approved as to Form:

 City Attorney

Published: _____

City of Oak Harbor
City Council Agenda Bill

Bill No. 5
Date: June 1, 2010
Subject: Council Rules Revisions

FROM: Margery Hite, City Attorney

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

PURPOSE

This agenda bill brings before the Council five motions for changes to the City Council's "Administrative and Personnel Council Rules" ("the Council rules" hereafter). Potential rule revisions were discussed at the Council Retreat on February 27, 2010, but no action was taken at that time. These changes are proposed as written motions to amend the Council rules so that each rule change is considered on its own merits.

AUTHORITY

The Council has the authority to determine its own rules and order of business, and establish rules for the conduct of Council meetings and the maintenance of order pursuant to RCW 35A.12.120.

SUMMARY STATEMENT

The Council adopted its present rules by Resolution No. 04-02 on March 2, 2004. At the Council Retreat on February 27, 2010, three areas for rules revisions were discussed¹:

1. **Council Rule No. 6(1) – Preparation of Agenda**. This was a request by the City Attorney to provide that a matter on the agenda be treated as a motion for purposes of discussion, secondary motions and amendments. The reason for this is to clarify how any motions before the Council should be handled. The new language would be added to Council Rule 6(1):

"For purposes of discussion, secondary motions and amendments, the placement of an action item on the agenda shall be deemed a motion to adopt the presented agenda item. However, any action on the main agenda item, including adoption as presented, shall require a motion, a second and an affirmative vote of the council."

¹ A fourth area – standing committees – was also discussed but that subject has been submitted to the Council as an ordinance change rather than as an amendment to the Council rules.

2. Council Rule No. 9 – Public Discussion. There were two proposals presented for changes to this rule. The first was to provide that “no speaker shall be allowed to cede his or her time to another speaker” when a time limit per speaker is set. The other was to restrict public speakers from use of electronic devices (other than accommodations for disability) without prior approval.

Councilmember Dudley proposed two additional changes: that public comment be allowed on all “agenda items” (Paragraph 2) in addition to the presently listed “ordinances, resolutions and matters concerning budget related items”; and requiring the Mayor to ask for questions or comments by citizens in the audience on each agenda item after a description of the matter has been made (it is presently a recommendation but not mandatory).

3. Rules on Quasi-Judicial Procedures. Two rules are proposed to streamline the procedures for addressing potential conflict of interest issues on the part of councilmembers at the outset of the proceedings: appearance of fairness and ex parte contacts. The third and fourth rules address the procedures for a court-like context – testimony and advocacy.

STANDING COMMITTEE REPORT

This item was discussed by the Council as a whole on February 27, 2010, at the open, public Council Retreat.

RECOMMENDED ACTION

1. Adoption of the motion amending Council Rule No. 6(1) – procedural effect of an item placed on the agenda.
2. Adoption of the motion amending Council Rule No. 9(2) – public discussion – time limits and electronic presentations.
3. Adoption of the motion adding a new paragraph (4) to Rule 9.
4. Adoption of the motion amending, consolidating related issues and adding new parts to Council Rule No. 19 – quasi-judicial proceedings.
5. Council member rule proposal: Attached motion amending Council Rule No. 9(2) and 9(3) – public comment opportunity required for all agenda items; mandatory order for addressing public comment on agenda items.

ATTACHMENTS

1. Motion Amending Council Rule 6(1)
2. Motion Amending Council Rule 9(2)
3. Motion Amending Council Rule 9(2) and 9(3)
4. Motion Amending Council Rules to Add Rule 9(4)
5. Motion to Amend Council Rule 19

MAYOR'S COMMENTS

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MOTION AMENDING COUNCIL RULE 6(1)

MOTION AMENDING RULE NO. 6(1) OF THE "ADMINISTRATION AND PERSONNEL COUNCIL RULES" (ADOPTED BY RESOLUTION NO. 04-02)

WHEREAS, it will facilitate discussion, and clarify procedures for council action;

NOW, THEREFORE, UPON MOTION, the city council hereby amends Rule No. 6(1) of the "Administration and Personnel Council Rules" to add the following language:

For purposes of discussion, secondary motions and amendments, the placement of an action item on the agenda shall be deemed a motion to adopt the presented agenda item. However, any action on the main agenda item, including adoption as presented, shall require a motion, a second and an affirmative vote of the council.

PASSED by the City Council this _____ day of _____, 2010.

THE CITY OF OAK HARBOR

Jim Slowik, Mayor

ATTEST:

Connie Wheeler, City Clerk

APPROVED AS TO FORM:

Margery Hite, City Attorney

MOTION AMENDING COUNCIL RULE 9(2)

MOTION AMENDING RULE NO. 9(2) OF THE "ADMINISTRATION AND PERSONNEL COUNCIL RULES" (ADOPTED BY RESOLUTION NO. 04-02)

WHEREAS, members of the public are encouraged to participate in council proceedings; and

WHEREAS, time limits for public comments allow more participants to comment without allowing any one person to dominate the comment period; and

WHEREAS, time limits for public comments also allow the council time to deliberate and take action;

NOW, THEREFORE, UPON MOTION, the city council hereby amends Rule No. 9(2) of the "Administration and Personnel Council Rules" to add the following language:

No speaker shall be allowed to cede his or her time to another speaker.

PASSED by the City Council this _____ day of _____, 2010.

THE CITY OF OAK HARBOR

Jim Slowik, Mayor

ATTEST:

Connie Wheeler, City Clerk

APPROVED AS TO FORM:

Margery Hite, City Attorney

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MOTION AMENDING RULE NO. 9(2) OF "ADMINISTRATION AND PERSONNEL COUNCIL RULES" ADOPTED MARCH 2, 2004

MOTION AMENDING COUNCIL RULE 9(2) AND 9(3)

MOTION AMENDING RULE NO. 9 OF THE "ADMINISTRATION AND PERSONNEL COUNCIL RULES" (ADOPTED BY RESOLUTION NO. 04-02) TO REQUIRE AN OPPORTUNITY FOR PUBLIC COMMENT ON ALL AGENDA ITEMS AND TO FIX THE TIME FOR PUBLIC COMMENT ON ALL AGENDA ITEMS

WHEREAS, the "Administration and Personnel Council Rules" ("Council Rules" hereafter) currently allow for public comment on all ordinances, resolutions and budget-related matters; and

WHEREAS, this rule already exceeds the requirements of state law; and

WHEREAS, public comment is customarily allowed on all matters on the council's agenda but the current rules do not require that; and

WHEREAS, it is also customary for the Mayor to allow public comment on an agenda item at the time that the agenda item is presented for council consideration but the Mayor is currently granted flexibility to determine when public comment should be allowed; and

WHEREAS, the city council wishes to establish mandatory rules for the timing of public comment; and

WHEREAS, the city council wishes to mandate an opportunity for public comment on every agenda item;

NOW, THEREFORE, UPON MOTION, the city council hereby amends Rule No. 9(2) and 9(3) of the "Administration and Personnel Council Rules" to read as follows:

- (2) Council shall provide opportunity to be heard on all agenda items, ordinances, resolutions and matters concerning budget related items. When allowed, audience participation shall usually be limited to a maximum of three minutes per speaker. No speaker shall be allowed to cede his or her time to another speaker.
- (3) On each agenda item after a description of the matter has been made, the Mayor shall ask if there are any questions or comments by citizens in the audience. After discussion by the Council commences, citizen comment should not be permitted except by permission of the Council. See Rule 11.

MOTION AMENDING RULE NO. 9 OF "ADMINISTRATION AND PERSONNEL COUNCIL RULES" ADOPTED MARCH 2, 2004 TO REQUIRE AN OPPORTUNITY FOR PUBLIC COMMENT ON ALL AGENDA ITEMS AND TO FIX THE TIME FOR PUBLIC COMMENT ON ALL AGENDA ITEMS

PASSED by the City Council this _____ day of _____, 2010.

THE CITY OF OAK HARBOR

Jim Slowik, Mayor

ATTEST:

Connie Wheeler, City Clerk

APPROVED AS TO FORM:

Margery Hite, City Attorney

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MOTION AMENDING RULE NO. 9 OF "ADMINSTRATION AND PERSONNEL COUNCIL RULES" ADOPTED MARCH 2, 2004 TO REQUIRE AN OPPORTUNITY FOR PUBLIC COMMENT ON ALL AGENDA ITEMS AND TO FIX THE TIME FOR PUBLIC COMMENT ON ALL AGENDA ITEMS

MOTION AMENDING COUNCIL RULES TO ADD RULE 9(4)

MOTION AMENDING RULE NO. 9 OF THE "ADMINISTRATION AND PERSONNEL COUNCIL RULES" (ADOPTED BY RESOLUTION NO. 04-02), TO ADD A NEW PARAGRAPH NO. 9(4) ON ELECTRONIC PRESENTATIONS

WHEREAS, council proceedings of the City of Oak Harbor include and encourage public participation; and

WHEREAS, use of electronic devices by members of the public for demonstrative purposes often extends the comment period; and

WHEREAS, the Mayor should be allowed to review electronic presentations prior to the comment period to determine whether such presentations are likely to unreasonably extend the speaker's time limit within the comment period;

NOW, THEREFORE, UPON MOTION, the city council hereby amends Rule No. 9 of the "Administration and Personnel Council Rules" to add a new paragraph (4) to Rule No. 9 on public discussion:

- (4) Unless approved by the Mayor prior to the speaker beginning to address the council, no member of the public may utilize an electronic or video device for purposes of his or her presentation to the council. This restriction shall not apply to any device which is an accommodation for the speaker's disability.

PASSED by the City Council this _____ day of _____, 2010.

THE CITY OF OAK HARBOR

Jim Slowik, Mayor

ATTEST:

Connie Wheeler, City Clerk

APPROVED AS TO FORM:

Margery Hite, City Attorney

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MOTION AMENDING RULE NO. 9 OF "ADMINISTRATION AND PERSONNEL COUNCIL RULES" ADOPTED MARCH 2, 2004 TO ADD A NEW PARAGRAPH NO. 9(4) ON ELECTRONIC PRESENTATIONS

MOTION TO AMEND COUNCIL RULE 19

MOTION AMENDING RULE NO. 19 OF THE "ADMINISTRATION AND PERSONNEL COUNCIL RULES" (ADOPTED BY RESOLUTION NO. 04-02), TO CLARIFY THE PROCEDURES TO BE FOLLOWED IN QUASI-JUDICIAL PROCEEDINGS, AND TO STREAMLINE THE PROCEDURES FOR DISCLOSING EX PARTE CONTACTS AND APPEARANCE OF FAIRNESS CONCERNS ALL AS SET OUT IN EXHIBIT A HERETO

WHEREAS, the city council of the City of Oak Harbor sits in a quasi-judicial capacity on some matters that come before it; and

WHEREAS, such quasi-judicial proceedings are adversarial in nature and should follow the same types of procedures that are utilized in courts; and

WHEREAS, testimony taken in such proceedings should be taken under oath; and

WHEREAS, it is important to determine at the outset of such proceedings whether any council member has had any *ex parte* contacts concerning the subject of the quasi-judicial proceedings so that such contacts may be placed on the record and an opportunity to respond or rebut them is provided; and

WHEREAS, the Appearance of Fairness Doctrine requires not only that a quasi-judicial proceeding be fair but also that it appear to be fair to a reasonable person; and

WHEREAS, it is also a requirement that councilmembers disclose any appearance of fairness concerns that could raise a public concern; and

WHEREAS, the city council wishes to streamline the process for setting out appearance of fairness concerns;

NOW, THEREFORE, UPON MOTION, the city council hereby amends Rule No. 19 of the "Administration and Personnel Council Rules" and adds language to Rule No. 19, both as set out in Exhibit "A" hereto and incorporated by reference in this Motion.

PASSED by the City Council this _____ day of _____, 2010.

THE CITY OF OAK HARBOR

Jim Slowik, Mayor

MOTION AMENDING RULE NO. 19 OF "ADMINISTRATION AND PERSONNEL COUNCIL RULES" ADOPTED MARCH 2, 2004 BY ADDING PROVISIONS TO CLARIFY QUASI-JUDICIAL PROCEDURES AND TO STREAMLINE EX PARTE CONTACT AND APPEARANCE OF FAIRNESS DISCLOSURES ALL AS SET OUT IN EXHIBIT A

ATTEST:

Connie Wheeler, City Clerk

APPROVED AS TO FORM:

Margery Hite, City Attorney

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MOTION AMENDING RULE NO. 19 OF "ADMINISTRATION AND PERSONNEL COUNCIL RULES" ADOPTED MARCH 2, 2004 BY ADDING PROVISIONS TO CLARIFY QUASI-JUDICIAL PROCEDURES AND TO STREAMLINE EX PARTE CONTACT AND APPEARANCE OF FAIRNESS DISCLOSURES ALL AS SET OUT IN EXHIBIT A

Rule No. 19: Quasi-judicial matters - *Site Visits*.

(1) — Whenever a quasi-judicial matter pending before the City Council involves a specific site, each member of the Council may visit the site prior to the making of a final decision in order to better understand the evidence to be presented. At the public hearing, Councilmembers shall disclose what information was observed.

(2) — ~~Whenever the Council holds a public hearing on a quasi-judicial matter, whether an initial hearing or an additional hearing pursuant to Rule 19, each speaker testifying before the Council shall be allowed to speak for a maximum of three minutes; provided, that the Council may, in its discretion, allow additional time where the complexity of issues involved requires more time in order to give the speaker a reasonable opportunity to be heard on the matter.~~

Rule No. 19A: Quasi-Judicial Procedure - Appearance of Fairness.

- (1) Prior to staff presentation of a quasi-judicial matter, council members shall each determine whether the appearance of fairness doctrine requires that the council member recuse himself or herself from sitting on the quasi-judicial matter.
- (2) If the matter is a land-use decision, the council members shall identify:
 - If they have any interest in the property or application
 - If they own property within 300 feet of the subject property
 - If they stand to gain or lose any financial benefit as a result of the outcome of the hearing;
 - If they have any personal, family or other connection to any party such that their ability to be impartial might be called into question;
 - Whether they can hear and consider the application in a fair and objective manner.
- (3) In non-land use quasi-judicial matters, the council member shall identify:
 - If they stand to gain or lose any financial benefit as a result of the outcome of the hearing;
 - If they have any personal, family or other connection to any party such that their ability to be impartial might be called into question;
 - If there is any reason why they could not be fair and impartial in deciding this matter.
- (4) Upon disclosure of any of the above potential appearance of fairness concerns, the parties and the public shall be given an opportunity to object to any council member sitting on the quasi-judicial matter based on the appearance of fairness doctrine. Failure to object to a council member sitting on the quasi-judicial matter when offered the opportunity shall constitute a waiver of that objection.
- (5) Council members are encouraged to recuse themselves if they feel there may be an appearance of fairness issue. If an individual council member has determined not to recuse him or herself, the City Council as a whole may, by majority vote, decide that the Council member has an appearance of fairness concern which may taint the Council's decision in the pending case and may recuse the Council member on those grounds.
- (6) Any council member who recuses him or herself or who is recused ~~upon the objection of a party or a member of the public~~ shall leave the council hearing room prior to any testimony or consideration of the quasi-judicial matter.

Rule No. 19B: Quasi-Judicial Procedure - Ex Parte Contacts

- (1) *Ex parte* contacts are contacts about the quasi-judicial matter occurring outside of the open public hearing at which it is decided.
- (2) Every council member shall disclose any *ex parte* contacts he or she had and describe them on the record prior to the quasi-judicial hearing.
- (3) Unless the council member feels that the *ex parte* contact(s) have affected his or her ability to be fair, the fact that the council member has had *ex parte* contacts shall not disqualify a council member PROVIDED that the council member discloses those contacts on the record prior to the quasi-judicial hearing.
- (4) In any case in which a council member has disclosed *ex parte* contacts, any party to the quasi-judicial hearing shall be allowed to rebut the substance of the *ex parte* contact(s) either prior to or during the quasi-judicial hearing.

Rule 19C: Quasi-Judicial Procedure - Testimony

- (1) Testimony may not be taken in closed record land use appeals. The council's decision must be based on the evidence in the record created by the Planning Commission or Hearing Examiner (as applicable). If the council determines that additional evidence is needed in such cases, the council may send the matter back to the Planning Commission or Hearing Examiner (as applicable) to add evidence to the record.
- (2) In other quasi-judicial matters, the council may take limited additional evidence but is encouraged to rely upon the record already created.
- (3) Prior to giving testimony, all witnesses shall be sworn on oath to testify fully and truthfully:

"I hereby swear or affirm that the testimony I am about to give shall be the truth and the whole truth."

Rule No. 19D: Quasi-Judicial Procedure - Advocacy

- (1) Quasi-judicial hearings are intended to be adversarial, that is, to allow competing points of view to be argued by the proponent(s) and any opponent(s). The City Council shall sit as an impartial decision-maker rather than as an advocate for either position.
- (2) The proponent(s) shall speak first and make any arguments in favor of his or her position as "opening argument". Normally, the proponent(s) shall be limited to ten minutes of opening argument.
- (3) The opponent(s) shall speak after the proponent(s). Normally, the opponent(s) shall be limited to ten minutes of responsive argument.
- (4) Because the proponent(s) has the burden of persuasion, the proponent(s) shall be allowed three minutes of rebuttal to the opponent(s)' argument. Rebuttal shall not introduce any new arguments but shall only reply to the arguments of opponent(s).
- (5) The Mayor or the City Council may allow additional time for argument if either determines that the case would be better understood with additional argument.
- (6) After arguments have concluded, the City Council shall ask any questions council members have of the parties.
- (7) After testimony, argument and council questioning has concluded, the council shall deliberate and make its decision in an open public meeting. If an Executive Session is authorized by state law, the council may adjourn to an Executive Session to the extent authorized by state law but shall make its decision in an open public meeting.

**City of Oak Harbor
City Council Agenda Bill**

Bill No. 6
Date: June 1, 2010
Subject: Pioneer Way Improvements
Professional Services – EnviroIssues, Inc.

FROM: Steve Powers *SP*
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

[Handwritten initials] Jim Slowik, Mayor
[Handwritten initials] Paul Schmidt, City Administrator
[Handwritten initials] Doug Merriman, Finance Director
[Handwritten initials] Margery Hite, City Attorney, as to form

SUMMARY STATEMENT

This agenda bill requests approval of a professional services contract with EnviroIssues Inc, for assistance with the SE Pioneer Way Street Improvements Project. The contract, which has a not to exceed limit of \$60,098.86 will provide for communication and public outreach support for the project.

This agenda item was considered by the City Council on May 18, 2010; it was not approved at that time. The item has been placed on the June 1st meeting agenda so that the entire City Council can deliberate and vote on its approval or non-approval.

AUTHORITY

The authority to enter into agreements for improvements or use of real property is granted to the City of Oak Harbor under RCW 35A.11.020.

SUMMARY STATEMENT

The Pioneer Way Improvements project will completely reconstruct an existing street and utilities within the heart of the community's downtown. As such it is one of the more significant and complicated public works projects undertaken by the City in recent years. Given the complexity of the project it is critical that effective lines of communication are in place between the City, the downtown merchants and the overall community. This communication is essential in gaining input from business and property owners on project design decisions yet to be made, on suggestions for construction sequencing and on co-developing a downtown marketing strategy for the construction phase of the project.

Recognizing the project dynamics to date and the demands on existing staff resources, staff proposes that the public involvement firm of EnviroIssues, Inc. be retained to assist with these

tasks. The use of EnviroIssues is the most cost-effective way to provide the enhanced level of public involvement and coordination that has been part of recent City Council discussions.

BACKGROUND

On January 19, 2010, the City Council reaffirmed the decision to proceed with the final design and construction contract preparation associated with the SE Pioneer Way Street improvements project. With the decision on the basic street configuration the project moves into a more intense and detailed level of work that will require a greater level of coordination with business and property owners.

City staff approached the firm of EnviroIssues Inc., seeking their assistance with the communication and coordination tasks associated the next phase of the project. EnviroIssues is a firm that specializes in project-related public involvement, community outreach and facilitation. The proposed contract with EnviroIssues was originally scheduled for the April 6, 2010 meeting but staff requested it be removed from the agenda to allow time for additional discussion and scope refinement.

With an eye towards maintaining the project schedule, a contract under the Mayor's authority was signed with EnviroIssues on April 7, 2010 in the amount of \$29,986.04. The contract scope of work provides for the development of a community involvement plan and undertaking a business survey (please see Attachment A). The contract deliverables include the community involvement plan, a database with survey results and a summary of outreach activities with recommendations for the future. These products provide the springboard for the activities in the contract proposed with this agenda bill.

DISCUSSION

Contract Scope of Work

As described in the attached scope of work, EnviroIssues will be responsible for a number of activities intended to foster and improve communication and outreach. In addition to the tasks from the first contract, some of the specific activities EnviroIssues will be responsible for are shown below:

- Organize and facilitate meetings with merchants and property owners and the community for input on the aesthetic features of the project.
- Gathering input on options for construction signage and economic development techniques during construction.
- Assistance to the City of Oak Harbor in preconstruction marketing and economic sustainability efforts
- Development of community wide project newsletter prior to construction
- Develop a project logo
- Development of fact sheets/flyers during final design.

The detailed scope of work is included in the attached contract (Attachment B). The fee for this service is \$60,098.86. The 'SE Pioneer Way Stakeholder Input Process' handout (Attachment C) provides a single sheet summary of the intended process. The 'Design Public Involvement and Communications Plan' (Attachment D) details the communication efforts to be undertaken. City Council action is not requested or required for Attachments C and D; these are for informational purposes only. The products from this contract will help direct what the final street design will look like, how construction of the street may take place and what public communication and marketing activities occur during construction. Please note this contract is only for services during final design and leading up to the start of construction.

Future Activities

Pending City Council approval, EnviroIssues could be retained for additional community outreach assistance during the construction project. Please note that a scope of work for construction-related activities has not yet been defined. Information gathered during the preconstruction efforts will help establish the scope of work for any construction-related work. In other words, it is premature to determine what the scope of work would be for the construction-related activities without first completing most of the pre-construction tasks.

Policy Consideration

During the construction of public works projects the City typically interacts with the affected property owners, businesses and the community through its contractor, design engineers (staff and/or outside engineers) and inspectors. The amount of direct staff involvement in this process is determined by the scale of the project and staff workload. This process is sufficient for most public works projects.

If the City Council decides a greater degree of public coordination than the norm is required for the Pioneer Way Improvements project, there are not sufficient staff resources to meet this desire. Approval of this contract acknowledges that the level of desired public communication and interaction is greater than the available staff resource.

Justification

The scope of work proposed under this contract by EnviroIssues includes 641 hours of effort between now and the start of construction. At current levels and workloads, City staff has neither the availability nor the expertise necessary to provide the same level of effort needed for this project.

Amount of contract

The contract is based on an hourly not to exceed limit of \$60,098.86.

Funding

Funding for the project is included in the Arterial Streets, Fund 104, 2007-2008 budget. Specifically, the budget includes \$4,500,000 which is a combination of \$3,500,000 in real estate excise taxes (REET) and a \$1,000,000 Island County economic development project as

reaffirmed by City Council on November 17, 2009. City administration and staff intend to pursue additional economic development funding through Island County. It is also expected that staff will develop a supplemental budget proposal to include wastewater utility funds (and possible other fund sources) to pay for rehabilitation or replacement of the sewer lines.

STANDING COMMITTEE REPORT

This item was presented to the Public Works and Utilities Standing Committee on March 4, April 1 and May 6, 2010. It was also presented to the Governmental Services Standing Committee on April 13 and May 11, 2010

RECOMMENDED ACTION:

Authorize the Mayor to sign a professional services contract with EnviroIssues, Inc. for assistance on the Pioneer Way Street Improvements project with a not to exceed limit of \$60,098.86.

ATTACHMENTS:

- Attachment A: Existing contract scope of work and compensation schedule
- Attachment B: Proposed contract, scope of work and compensation schedule
- Attachment C: SE Pioneer Way Stakeholder Input Process
- Attachment D: Design Public Involvement and Communications Plan

MAYOR'S COMMENTS:

Scope of Services for City of Oak Harbor**Submitted by EnviroIssues****Pioneer Way Improvements Business and Community Outreach Planning and Support****INTRODUCTION AND PROJECT APPROACH**

The City of Oak Harbor Public Works Department (CLIENT) is working to ready Pioneer Way for conversion from a two-way street to a one-way street as part of a broader downtown streetscape improvement and revitalization effort. Design of the corridor has been underway since early 2009; the project has been met with some concern by the business community.

“Doing this project right” means that businesses and the community understand the reason for the project, have input into the final outcome, and are able to survive and thrive during roadway construction. EnviroIssues (CONSULTANT) has been asked to provide planning/construction community outreach support to support this process. This scope of services includes targeted outreach activities to make information available to the broader community, as well as engage merchants along Pioneer Way in a dialogue about the project. It also includes support services to assist the City of Oak Harbor in construction planning from a community outreach perspective.

GENERAL PROJECT ASSUMPTIONS

- Activities outlined within this scope of services are assumed to be implemented between April 2010 and December 31, 2010, for total contract duration of eight months. In December 2010, the project is expected to have been bid and will be readying for active construction, set to begin in January 2011. If desired by CLIENT, additional outreach services related specifically to construction planning and outreach would be under an amendment to this contract, with a to be determined level of effort.
- The CONSULTANT will work collaboratively with City of Oak Harbor staff/project manager, in addition to other Consultants, to complete the scope of work. To create work products, especially those being disseminated to the public, CONSULTANT will work with Project Manager and other team members to ensure accuracy of information prior to distribution.
- Each work product will go through one review via one conference call to resolve comments.
- Invoices will be submitted to CLIENT on a monthly basis, and will be documented within the task structure outlined below.
- Related to direct costs: no direct-buy display or online advertising is included in this scope of work or associated budget.

SCOPE OF SERVICES

Task 1: Task Management

The CONSULTANT will:

- Prepare and submit monthly invoices related to this scope of services, with progress report of work completed during invoice period.
- Prepare for and participate in up to monthly coordination meetings with CLIENT. For budgetary purposes, it is assumed that one meeting is held in Oak Harbor, five meetings are held at the design consultant's office in Everett, and two additional meetings are held via teleconference. Action items will be tracked at these meetings for follow up.

Deliverables under Task 1:

- 8 progress reports and invoices

Task 2: Community Involvement Plan(s) and Construction Preparation

Specific tasks outlined below are intended to guide outreach and communications during design, and later plan for construction outreach from a communications and community outreach perspective.

The CONSULTANT will:

- Coordinate with CLIENT to finalize an outreach and communications plan for the duration of this project.

Deliverables under Task 2:

- One design-related outreach/community relations plan

Task 3: Business Survey and Tracking

This task includes an independent outreach effort to understand current business practices, hours of operations, deliveries, and patrons along Pioneer Way, in addition to assessment of current attitudes toward the project. This business survey is intended to assist in design efforts and construction planning. Specifically, the CONSULTANT will:

- Craft a standardized interview script.
- Coordinate and conduct in person business surveys with property managers, owners and/or business purveyors. Assumed to be up to 55 business surveys. This effort is assumed to require four days for two staff to complete in the field.
- Build and maintain an online database to track all data collected related to individual business attributes. The database will be searchable by the design team for construction and design purposes and password protected. At the conclusion of EnviroIssues' involvement with this project, all data will be exported into format compatible with Microsoft Office products, and provided in spreadsheet format to CLIENT. This database tool is a proprietary product of EnviroIssues; data contained is owned by CLIENT. One-time set up and ongoing maintenance of this system is considered a direct cost to the project on a monthly basis, with customization requiring labor hours. For purposes of this

direct cost, it is assumed that the monthly maintenance fee is for two months, pending further direction on scope of work. A service and use agreement for this tool will be provided for signature to the City of Oak Harbor.

- Produce a summary of themes, outcomes and outreach recommendations from the business survey.

Deliverables under Task 3:

- One survey script
- One active, online database
- One summary of outreach activity

Compensation Schedule

**City of Oak Harbor - SE Pioneer Way Improvements - EnviroIssues
Business and Community Outreach Planning and Support**

LABOR COSTS By Task

Task 1: Task Management	
<i>Total Hours this Task</i>	<i>Total Cost this Task</i>
85	\$ 7,060.00
Task 2: Community Involvement Plans and Construction Prep	
<i>Total Hours this Task</i>	<i>Total Cost this Task</i>
10	\$ 760.00
Task 3: Business Survey and Tracking	
<i>Total Hours this Task</i>	<i>Total Cost this Task</i>
221	\$ 18,198.00

LABOR COSTS By Staff & Rates***

Staff Name	Position	2010 Rate	Total Hours	Total
Erin Taylor	Project Manager/Associate 2	\$ 108.00	67	\$ 7,236.00
Katie Fredlund	Associate 1	\$ 73.00	141	\$ 10,293.00
Brian Feldman	Project Coordinator	\$ 53.00	73	\$ 3,869.00
Lisa Roeser / Katherine Andrews	Graphic Designer	\$ 95.00	0	\$ -
Stephen Enloe	Information Systems Associate II	\$ 132.00	35	\$ 4,620.00
Total			316	\$ 26,018.00

Summary

Total Labor Cost	\$ 26,018.00
Direct Costs (includes copies, database administration, mileage, ferry)	\$ 3,968.04
Total Project Cost	\$ 29,986.04

***EnviroIssues revises salary and overhead rates on January 1 each year. These rates reflect 2010 rates; 2011 rates would be adjusted if project were to be extended.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this 1st day of June, 2010, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and EnviroIssues, hereinafter referred to as the "SERVICE PROVIDER".

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the SERVICE PROVIDER represents the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, the parties hereto agree as follows:

1. Scope of Services.

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit "A" attached hereto and incorporated herein (the "Project").

2. Term.

The Project shall begin on June 2, 2010, and shall be completed no later than January 1, 2011, unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

- 3.1 Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.
- 3.2 No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.
- 3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement as follows: Not more than monthly for services provided in the preceding month not to exceed a total of \$60,098.86.

4. Reports and Inspections.

- 4.1 The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.
- 4.2 The SERVICE PROVIDER shall at any time during normal business hours and as often as the CITY or State Auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the SERVICE PROVIDER'S activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the SERVICE PROVIDER'S activities that relate, directly or indirectly, to this Agreement.

5. Independent Contractor Relationship.

- 5.1 The parties intend that an independent contractor relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.
- 5.2 In the performance of the services herein contemplated, the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

6. Service Provider Employees/agents.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee(s), agent(s) or servant(s) from employment on this Project. The SERVICE PROVIDER may, however, employ that (those) individual(s) on other non-CITY related projects.

7. Hold Harmless/Indemnification.

- 7.1 SERVICE PROVIDER shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the SERVICE PROVIDER in performance of this Agreement, except for injuries and damages caused by the sole negligence of the CITY.
- 7.2 For purposes of this indemnification and hold harmless agreement, the SERVICE PROVIDER waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.
- 7.3 No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

8. Insurance.

The SERVICE PROVIDER 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 SERVICE PROVIDER, its agents, representatives, or employees.

- 8.1 Minimum Scope of Insurance. SERVICE PROVIDER shall obtain insurance of the types described below:
- a. Automobile Liability insurance 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.
 - b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an insured under the SERVICE PROVIDER'S Commercial General Liability insurance policy with respect to the work performed for the CITY.
 - c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

- d. Professional Liability Insurance appropriate to the SERVICE PROVIDER'S profession.

8.2 Minimum Amounts of Insurance. SERVICE PROVIDER shall maintain the following insurance limits:

- a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per accident.
- b. Commercial General Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate.
- c. Professional Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) policy aggregate limit.

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

- a. The SERVICE PROVIDER'S insurance coverage shall be primary insurance with respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be excess of the SERVICE PROVIDER'S insurance and shall not contribute with it.
- b. The SERVICE PROVIDER'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.

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

8.5 Verification of Coverage. SERVICE PROVIDER 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 SERVICE PROVIDER before commencement of the work.

9. Treatment of Assets.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

10. Compliance with Laws.

10.1 The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

10.2 The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.

11. Nondiscrimination.

11.1 The CITY is an equal opportunity employer.

11.2 Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The SERVICE PROVIDER shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

11.3 Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

11.4 If any assignment and/or subcontracting has been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. Assignment/subcontracting.

12.1 The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

12.2 Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

12.3 Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. Changes.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

14. Maintenance and Inspection of Records.

14.1 The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times 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.

14.2 The SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. Other Provisions.

The following additional terms shall apply: It is agreed between the parties that pursuant to changes in state law necessitating that services hereunder be expanded, the parties shall negotiate an appropriate amendment. If after thirty (30) days of negotiation, agreement cannot be reached, the CITY may terminate this Agreement no sooner than sixty (60) days thereafter.

16. Termination.

16.1 Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time, by giving thirty (30) days' written notice to the SERVICE PROVIDER. Upon such termination for convenience, the CITY shall pay the SERVICE PROVIDER for all services provided under this Agreement through the date of termination.

16.2 Termination for Cause. If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days' written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement through the date of termination.

17. Notice.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

18. Attorneys Fees and Costs.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

19. Jurisdiction and Venue.

19.1 This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto

that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

19.2 Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Island County, Washington.

20. Severability.

20.1 If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

20.2 If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision that may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

21. Entire Agreement.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute a material breach of contract and be cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:

SERVICE PROVIDER:

CITY OF OAK HARBOR
865 SE Barrington Drive
Oak Harbor, WA 98277

[Name and address]

Jim Slowik, Mayor

Attest:

Connie Wheeler, City Clerk

Scope of Services for City of Oak Harbor

Submitted by EnviroIssues

Pioneer Way Improvements Business and Community Outreach Planning and Support

INTRODUCTION AND PROJECT APPROACH

The City of Oak Harbor (CLIENT) is working to ready Pioneer Way for conversion from a two-way street to a one-way street as part of a broader downtown streetscape improvement and revitalization effort. Design of the corridor has been underway since early 2009; the project has been met with some concern by the business community.

“Doing this project right” means that businesses and the community understand the reason for the project, have input into the final outcome, and are able to survive and thrive during roadway construction. EnviroIssues (CONSULTANT) has been asked to provide planning/construction community outreach support to support this process. This scope of services includes targeted outreach activities to make information available to the broader community, as well as engage merchants along Pioneer Way in a dialogue about the project. It also includes support services to assist the City of Oak Harbor in construction planning from a community outreach perspective.

GENERAL PROJECT ASSUMPTIONS

- Activities outlined within this scope of services are assumed to be implemented between June 2010 and December 31, 2010, for total contract duration of seven months. In December 2010, the project is expected to have been bid and will be readying for active construction, set to begin in January 2011. If desired by CLIENT, outreach services related specifically to construction would be under a separate contract, with a level of effort to be determined following preparation of construction community relations plan.
- The CONSULTANT will work collaboratively with City of Oak Harbor staff/project manager, in addition to other Consultants, to complete the scope of work. To create work products, especially those being disseminated to the public, CONSULTANT will work with Project Manager and other team members to ensure accuracy of information prior to distribution.
- Each work product will go through one review via one conference call to resolve comments.
- Invoices will be submitted to CLIENT on a monthly basis, and will be documented within the task structure outlined below.
- Related to direct costs: no direct-buy display or online advertising is included in this scope of work or associated budget; all direct costs related to mailings, including printing and postage required are assumed to be billed directly to CLIENT; any direct costs for construction outreach/marketing mechanisms are assumed to be billed directly to CLIENT, with CONSULTANT coordination assistance.

SCOPE OF SERVICES

Task 1: Task Management

The CONSULTANT will:

- Prepare and submit monthly invoices related to this scope of services, with progress report of work completed during invoice period.
- Attend up to one additional management meeting in Oak Harbor.
- Coordinate direct costs for a previously-established comment database.

Deliverables under Task 1:

- N/A

Task 2: Community Involvement Plan(s) and Construction Preparation

Specific tasks outlined below are intended to guide outreach and communications during design, and later plan for construction outreach from a communications and community outreach perspective.

The CONSULTANT will:

- Using information learned via consultation with businesses during the design process, develop a construction community relations plan for implementation during construction. Review of this document is anticipated to include one meeting in person to discuss recommendations related to community outreach for construction for possible incorporation into contractor bid documents.

Deliverables under Task 2:

- One construction community relations plan

Task 3: Public Sessions: Drop-in Sessions, Design Workshop and City Council/Committee Meetings

The following activities are anticipated readied and open to the public for engagement related to final designs. They include:

- Conduct two business “Drop-In Sessions” to provide additional information related to project designs. Both sessions are assumed similar format/information and be held within one week of each other. This task includes preparation of logistics, venue coordination and materials related to the event, in addition to on-site event staffing. A postcard will be developed to use as advertisement. Time to coordinate printing is included in this task; direct costs for postage and printing are not. A summary of these events and input received will be produced.
- Conduct one design workshop to gather input into development of (to be determined) corridor aesthetic improvements. A postcard will be developed to use as advertisement and distribution. This is intended to be a facilitated workshop. This task includes preparation of logistics, venue and materials related to the event, in addition to facilitation

and staffing. Time to coordinate printing is included in this task; direct costs for postage and printing are not. A summary of the workshop and input received will be produced.

- Support development of up to two presentations for City Council and/or Public Works Committee at key points of the project.

Deliverables under Task 3:

- Drop-in Session postcard
- Drop-in Session coordination and staffing
- Drop-in Session summary
- Design workshop postcard
- Design workshop coordination, staffing and facilitation
- Design workshop summary
- Two PowerPoint presentations

Task 4: Materials Development and Support of City Proceedings

Deliverables and support under this task are intended to provide materials for community outreach tools, as described above. Specifically, the CONSULTANT will:

- Develop a project logo and “look and feel.” The CONSULTANT will develop three options for presentation to CLIENT for dialogue related to development of this consistent look and feel for all subsequent materials, including signage materials during construction.
- Coordination and attendance at up to two organizational briefings (with groups such as Greater Oak Harbor Chamber of Commerce) to gather input on options for construction signage and possible economic development/marketing techniques during construction.
- Following consultation with City staff and organizations, support marketing endeavors of the City to ready for construction. This will include consultation to produce graphical materials as follows:
 - Graphical preparation of up to four different sign formats for use during construction to indicate that “businesses are open.” Time to coordinate printing is included in this task; direct costs for signage creation are not.
 - Create up to three additional printed one-page pieces (such as postcards), and one “Flash” online advertisement for use in economic development activities of the city during construction to help maintain foot traffic along Pioneer Way. Time to coordinate printing is included in this task; direct costs for signage creation are not.
- Creation of up to one newsletter at the conclusion of project design to let the broader community know the status of the project and final design. Time to coordinate printing is included in this task; direct costs for postage and printing are not.
- Creation of up to three fact sheets and/or flyers for the duration of the project.

Deliverables under Task 4:

- “Look and feel” for project
- Up to four sign formats (anticipated to be created later in construction process)
- Up to three printed pieces
- One “Flash” online display advertisement
- One newsletter
- Three fact sheets or flyers

Compensation Schedule

**City of Oak Harbor - SE Pioneer Way Improvements - EnviroIssues
Business and Community Outreach Planning and Support - May 2010**

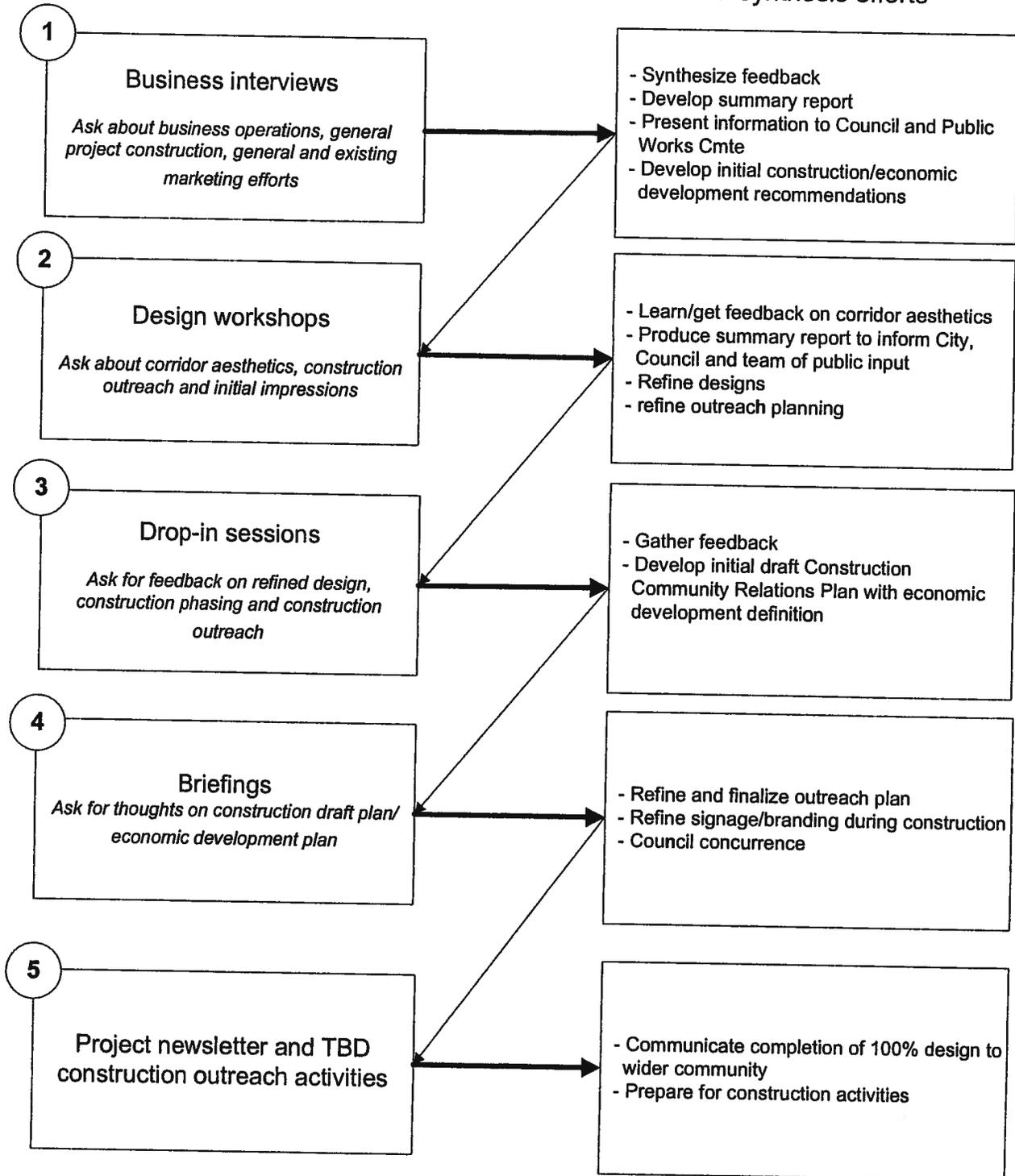
LABOR COSTS By Task				
Task 1: Task Management				
<i>Total Hours this Task</i>		<i>Total Cost this Task</i>		
20		\$ 1,810.00		
Task 2: Community Involvement Plans and Construction Prep				
<i>Total Hours this Task</i>		<i>Total Cost this Task</i>		
45		\$ 3,610.00		
Task 3: Public Sessions: Drop-In Sessions/Workshop and City Council/Committee Meetings				
<i>Total Hours this Task</i>		<i>Total Cost this Task</i>		
234		\$ 18,982.00		
Task 4: Materials Development and Support				
<i>Total Hours this Task</i>		<i>Total Cost this Task</i>		
342		\$ 30,358.00		
LABOR COSTS By Staff & Rates***				
Staff Name	Position	2010 Rate	Total Hours	Total
Erin Taylor	Project Manager/Associate 2	\$ 108.00	134	\$ 14,472.00
Katie Fredlund	Associate 1	\$ 73.00	211	\$ 15,403.00
Brian Feldman	Project Coordinator	\$ 53.00	92	\$ 4,876.00
Lisa Roeser / Katherine Andrews	Graphic Designer	\$ 95.00	187	\$ 17,765.00
Stepen Enloe	Information Systems Associate II	\$ 132.00	17	\$ 2,244.00
Total			641	\$ 54,760.00
Summary				
Total Labor Cost				\$ 54,760.00
Direct Costs (includes copies, web & database administration, mileage, ferry)				\$ 5,338.86
Total Project Cost				\$ 60,098.86

***EnviroIssues revises salary and overhead rates on January 1 each year. These rates reflect 2010 rates; 2011 rates would be adjusted if project were to be extended.

SE Pioneer Way Stakeholder Input Process

External/Public activities to gather public/merchant comment

Internal planning/public comment synthesis efforts



Assumptions for community outreach during design:

- Project materials will be updated as necessary
- All community comments will be tracked

Design Public Involvement and Communications Plan

City of Oak Harbor – Pioneer Way Improvements Project

May 2010

DRAFT – UPDATED 5/24/10

Communications Plan Purpose

The following plan is intended to provide City of Oak Harbor staff, consultants and decision-makers with a strategic approach for communicating with and gathering input from the public during design of improvement plans for SE Pioneer Way. This plan identifies public engagement and communications objectives, key messages, outreach activities and tools that will be used to inform design and prepare the community for project construction activities. This plan is a living document, updated as necessary to accurately portray the communications approach being followed through project design. These activities are intended for the entirety of the project team to promote consistent communications with the community. Some activities will be completed by public involvement consultant staff; in other cases, Oak Harbor staff and/or technical consultants may develop materials or implement activities.

Project Overview and Schedule

The City of Oak Harbor is currently planning streetscape improvements for SE Pioneer Way. The revitalization work will turn SE Pioneer Way into a one-way street, connecting the City with the waterfront, improving pedestrian and vehicular safety, increasing parking, improving water and power utilities and providing upgraded streetscape amenities. Plans for revitalizing downtown Oak Harbor are currently in design, contractor procurement is expected in late 2010, and construction is currently planned for early 2011.

Communications Objectives during Design

The communications plan provides a guide for keeping the public informed of this project during design. The activities and tools listed in this plan are intended to help meet the following communications objectives:

- Facilitate communication between business and property owners, residents, the traveling public and City of Oak Harbor officials, staff and engineering consultants.
- Clearly identify the areas in which the community can have influence on the project design, and where possible ensure input influences the final plans.
- Identify concerns of affected businesses prior to reaching final project design and construction plans.
- Ensure the community is aware of the project need and benefits, to in turn, minimize misinformation about the project.
- Keep project stakeholders apprised of progress; provide consistent information early and often to business owners, community members, drivers, bicyclists and pedestrians using SE Pioneer Way.

Key Messages

- **Revitalization improvements as part of the City's larger Windjammer Plan:** The streetscape improvements are part of the City of Oak Harbor's larger Windjammer Plan to revitalize downtown Oak Harbor.
- **Some decisions – but not all- have been made on this project.** Some decisions have been made on this project, including the decision in December and January to become a one-way street. There is still a lot of room for input into the final design aesthetics and construction phasing of the project.

- **Communications during project:** The City of Oak Harbor is committed to keeping the public informed and engaged during project design. As the project moves forward, affected community will be regularly updated of project progress and will be asked to provide input where possible.
- **Economic development and reinvestment:** Improvements to SE Pioneer Way are being undertaken with the long-term economic vitality of the City of Oak Harbor in mind.
- **Project benefits:**
 - **Safety:** New designs for SE Pioneer Way will include wider sidewalks and include appropriate lane width for vehicles; this improves safety for all roadway users-- pedestrians, bicyclists and drivers.
 - **Increased parking:** Changing SE Pioneer Way to a one-way street will increase the total number of parking spots.
 - **Environmental benefits:** Upgrades to utilities within the SE Pioneer Way corridor, including capturing stormwater, undergrounding of utilities and using LED lighting for overhead lights are all part of an overarching “green streets” or “complete streets” program. Making our community more walkable, using less electricity and treating stormwater are all techniques that promote environmental stewardship of Oak Harbor that keeps all users of the roadway in mind.
 - **Corridor aesthetics:** Aesthetic improvements made to SE Pioneer Way will include new landscaping, extended sidewalks, benches, trash receptacles, street lighting and underground utilities.
 - **Additional business potential:** With wider sidewalks, the potential for businesses to enhance their “front porch” is realized. Cafes may be able to better utilize outdoor seating, and signage can encourage patrons.
- **Increased community use and tourism:** By setting the stage for an improved downtown Oak Harbor and waterfront, SE Pioneer Way improvements will be one project that helps promote community use of the corridor as well as potential future economic development through tourism.

Outreach Activities

Outreach activities planned during design will help the City continue to build relationships with the community, create public understanding about project and establish the City of Oak Harbor as an accurate and credible source of information. These activities will help to effectively engage and inform local businesses of the streetscape improvement plans and offer opportunities to provide input on various design elements. Project milestone and approximate implementation date are shown adjacent each activity.

Business interviews (30% Design, May 2010)

Public involvement staff will meet in-person with business owners and property managers along SE Pioneer Way to gather contact information, learn about specific interests and concerns and seek community input and comments about the project designs. The results of these meetings will help identify themes and outreach recommendations and will be used in planning outreach efforts throughout design and during project construction.

Design workshop (60% Design, June 2010)

A design workshop will be planned to provide the community an opportunity to give input on proposed corridor aesthetic improvements along SE Pioneer Way. Meeting participants will be asked to comment on different design plans and aesthetic elements including benches, sidewalk surface patterns, tree location and planters, and signage. This workshop will be participatory and will be led by a facilitator.

Drop-in sessions (June/July 2010)

Affected businesses will be invited to attend "Drop-In Sessions" to learn more about project designs. Two sessions will be held (with duplicate information) at times that are useful for businesses. The sessions will be informal in format and held at convenient locations on or near SE Pioneer Way. The purpose of the sessions is to offer a chance for businesses to review street improvement designs as a whole, as well as specific plans in front of their property, meet members of the project team and ask questions about the project.

City Council/Committee Meetings (June and October 2010)

At key milestones during the project, the City Council will be briefed on project progress and to receive input and decisions on path forward. Upcoming presentations may include the following topics: what was learned from business interviews and next steps for public involvement, and the design workshop and be planned for June or July 2010 and the second presentation be given in fall 2010 and will detail the community outreach approach during construction.

Organizational briefings: (Pre-construction, August/September 2010)

The project team may use briefings as a way to inform stakeholder groups about design plans and gather input about options for construction signage and possible marketing techniques and economic development strategies during project construction. For instance, briefings may be given to the Greater Oak Harbor Chamber of Commerce.

Outreach Tools

Outreach tools used during design will help the City effectively engage and inform the community about the project and offer opportunities for the public to provide input on various design elements. Project milestone and approximate implementation date are shown adjacent each tool.

Contact and comment database (developed April 2010, used throughout project)

A contact and comment database will be developed and maintained that tracks all data collected related to individual businesses. Information will be gathered through the business survey, in-person meetings, at drop-in sessions and briefings. The database will contain all comments from each business owner, property owner or project stakeholder and will be used throughout design and also during project construction.

Project logo (developed June 2010, used throughout project)

Public involvement staff will work with City of Oak Harbor staff to develop a project logo. Three options will be created and once a final logo is agreed upon, all developed materials, including signage material during construction, will have a consistent "look and feel".

Construction preparation materials: (Pre-construction, August/September 2010)

- **Postcards and Flyers:** As part of the economic development, printed materials such as postcards or flyers as well as an online advertisement will be developed to help maintain foot traffic along SE Pioneer Way. Community relations staff will consider input provided by the community through business interviews, meetings and briefings to develop appropriate materials.
- **Project signage:** Up to four different sign formats for use during construction to indicate that "businesses are open" will be developed during project design. City of Oak Harbor staff as well as local stakeholder groups will work together to determine which project signage will be used during construction.

Project newsletter (Final design/pre-construction, October 2010)

Once the project has reached final design, public involvement staff will work with technical staff to create a project newsletter to let the broader community know the status of the project, final design, and plans for construction.

Project fact sheets and flyers (throughout project)

A project fact sheet as well as project flyers will be developed for use during in-person outreach and community events throughout design.

Project web page (throughout project)

The Web page/blog will be a reliable place where the public can find up-to-date project information. Content will include the project plans, project benefits, links to preliminary designs, the proposed project schedule and announcements of project milestones and upcoming events. The site will be updated as necessary throughout project design.

Key Stakeholder Groups

This communications plan is intended to reach a number of audiences:

- **Businesses on SE Pioneer Way:** Businesses along SE Pioneer Way will be most intimately impacted by a changing streetscape and construction. Public involvement staff will meet with business and property owners one-on-one to involve them in the process and these contacts will be invited to participate in a design workshop as well as drop-in sessions. A relationship will be established with each business early on in design to ensure there is the opportunity for communication and dialogue throughout the project.
- **Residents/Businesses on adjacent Streets to Pioneer Way:** Residents and businesses on streets near Pioneer Way will also be kept informed of the project during design, as detour routes during construction as well as final designs may affect future traffic patterns in and around SE Pioneer Way. Public involvement staff may meet with these residents and business owners in-person and these stakeholders will be invited to project events and meetings and encouraged to provide input.
- **Organizations:** Organizational and community groups, such as the Chamber of Commerce will be invited to participate in the design process primarily through briefings to organizations. Representatives from these organizations may meet in-person with public involvement staff and they will be encouraged to attend the design workshop and drop-in sessions.
- **Community at Large:** Efforts will be made to ensure the community of Oak Harbor is informed of the project and is updated at specific project milestones. Representatives from organizational and community groups can help spread important project information and the project Web page will be a source for the community to learn about the design plans. All community members will receive a project newsletter in fall 2010 once the project reaches 100% design.

Opportunities for Public Input

The City of Oak Harbor will work together with the community during design and will look for opportunities to engage the public where possible. Affected businesses and residents will be regularly updated of project progress and will be asked to provide input during design. The business interviews will offer an opportunity for the City to learn about community interests and concerns and help determine the areas where the public can become more engaged. The City of Oak Harbor will specifically seek out public input at planned project meetings and events including the design workshop, drop in sessions and organizational briefings.

Next Steps

The City of Oak Harbor and project team will use this plan as a guide for communicating with the public during design phase of the SE Pioneer Way improvements. This plan is a living document that will be updated and adjusted as necessary to ensure public outreach strategies continue to help accomplish outreach objectives. The outreach approach outlined in this plan will help the City of Oak Harbor successfully communicate and engage the affected businesses and prepare for construction. A full schedule of activities has been developed and included with this document as an appendix.

Appendix

Design Communications and Outreach Activities (April – December 2010)

	Activity	Tasks	Tentative Execution Timeline
	Design outreach and communications plan for design phase	<ul style="list-style-type: none"> • Develop outreach and communications plan to guide outreach activities during design 	Draft plan - April 2010 Final plan – May 2010
Concurrent	Business survey	<ul style="list-style-type: none"> • Surveying plan • Interview script • Surveying of all businesses • Compiling report • Business survey summary 	April/May 2010
	Project database	<ul style="list-style-type: none"> • Develop database plan/what is included • Track all comments and communications • Provide team with regular communications reports 	April/May 2010
	City Council presentation	<ul style="list-style-type: none"> • Present business survey findings to City Council; recommend next steps 	June 2010
	Project logo	<ul style="list-style-type: none"> • Design project logo and work with City to finalize 	June 2010
	Fact sheet (begins)	<ul style="list-style-type: none"> • Develop fact sheet for project Topic: Status of project designs/schedule/purpose Topic: How Pioneer Way fits into Windjammer Plan and other downtown revitalization efforts • Develop up to 3 project flyers 	June 2010 (thru Nov)
	Web update	<ul style="list-style-type: none"> • Suggest a Web plan; coordinate for comprehensive information available on Web page 	June 2010
	Design workshop	<ul style="list-style-type: none"> • Develop plan, including in coordination with design team - facilitation techniques and content • Draft notification text/handle notification of event • Develop materials for workshop • Coordinate, staff and facilitate workshop • Write summary of workshop 	June (planning/notification) /June-July 2010 (implementation - dependent on design plans)
	Drop-in sessions	<ul style="list-style-type: none"> • Develop plan for 2 drop-in sessions • Draft postcard notification /handle notification of sessions • Identify drop-in session materials • Coordinate and staff sessions • Write drop-in session summaries 	June 2010 and July 2010 (dependent on design plans)

	Activity	Tasks	Tentative Execution Timeline
	Construction community relations plan	<ul style="list-style-type: none"> • DRAFT construction community relations plan (ideas generated to gather feedback at design workshop) 	June 2010
	Assist with economic sustainability efforts	<ul style="list-style-type: none"> • (Planning meeting) Develop project branding/economic development plan as part of construction outreach plan 	June 2010
	Organizational briefing (1 st phase)	<ul style="list-style-type: none"> • Gather input on options for construction signage and possible economic development techniques during construction 	August 2010
	"Businesses are open" signage/advertising	<ul style="list-style-type: none"> • Plan and drafts of signage developed 	August 2010
	Organizational briefing (2 nd phase)	<ul style="list-style-type: none"> • Gather input on options for construction signage and possible economic development techniques during construction 	August 2010
	Construction community relations plan	<ul style="list-style-type: none"> • FINAL construction community relations plan ideas 	September 2010
	City Council presentation	<ul style="list-style-type: none"> • Develop PPT – expected community outreach during construction 	October 2010
	"Businesses are open" signage/advertising	<ul style="list-style-type: none"> • Develop 4 options for signage • Develop 1 flash-ad and up to 3 print advertisements for use in economic development activities 	September/October 2010
	Newsletter	<ul style="list-style-type: none"> • Draft text for community-wide project newsletter Topic: Final designs; what you can expect during construction 	September/October 2010

**City of Oak Harbor
City Council Agenda Bill**

Bill No. 7
Date: June 1, 2010
Subject: Sewer System Development
Reimbursement

**FROM: Cathy Rosen, Public Works Director
Eric Johnston, City Engineer**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

PURPOSE

This agenda bill requests approval of an over sizing reimbursement agreement with West Meadows Partners Inc. for wastewater collection system improvements and the associated payment in the amount of \$437,576.60. Payment by the City for the over sizing is required under the terms of the annexation agreement for the property.

AUTHORITY

The City of Oak Harbor with authorization by the City Council has the authority to provide credits for system development for sewer improvements based on OHMC 18.60.060 which states the following:

18.60.060 Credits.

(1) Credit for system development charges may be authorized by the city council for system development charges or part thereof for improvements made to the Oak Harbor sewer or water system which meet the following criteria:

- (a) The project is identified as a project in the Oak Harbor capital facilities plan;*
 - (b) The use of credits for the project has been approved by the city council prior to construction;*
 - (c) The project was completed to city standards; and*
 - (d) The amount and apportionment formula has been approved by the city council.*
- The council retains full discretionary authority to authorize use of credits and such exercise of authority is a legislative decision and is not subject to appeal.*

(2) No credit or waiver shall be provided for line extensions of eight inches in size to sewer or water lines or for pump or pressure stations which do not meet capital facilities plan. Waivers or credits shall not be provided if reimbursement may be provided by use of latecomer agreements.

(3) The amount of credit shall in no event be more than an equitable proportional share of the total cost of the improvements. (Ord. 1386 § 7, 2004).

SUMMARY STATEMENT

As approved by the City Council through an annexation agreement, as well as the conditions of plat approval, the proponents of the Plat of West Meadows were required to construct an offsite waste water pump station that would provide for the needs of not only the plat but also for the larger drainage basin. The lift station was required to be built near the intersection of Crosby Road and Airline Way and was to be sized to accommodate the anticipated growth needs within the planned service area as identified in the Comprehensive Sewer plan. The proponents were also required as part of the annexation agreement to extend a gravity line from an existing lift station within the Meadow Park plat down to the new lift station near Airline Way.

As the completed lift station serves the needs of the plat of West Meadows but also provides benefit to the larger service area, the project becomes eligible for credit, or reimbursement, of the system development charges for sewer service collected at the time of connection for those lots within the plat of West Meadows.

Annexation Agreement

The annexation agreement covering the property required the developer to:

- 1) Install the lift station at a location selected by the City Engineer
- 2) Extend 8-inch gravity sewer service from the Plat of Meadow Ridge
- 3) Size the lift station for the Plat of West meadows and 10 years of forecasted growth in the neighborhood
- 4) Install a 4-inch minimum size force main

These conditions go beyond the minimum requirements of the Oak Harbor Municipal Code for subdivision improvements. In particular, the requirements to size the lift station for 10 years of growth and install the lift station at a location selected by the City Engineer go beyond the minimum code requirements for connection to City sewer. In recognition of this the annexation agreement states,

“Cost of over sizing of the pump station **SHALL** be reimbursed to the OWNER through reduction of sewer impact fees on the Property or as agreed to by both parties.” (emphasis added, complete annexation agreement is attached)

With sewer pumping stations, over sizing refers to the size of the actual pumps, the location of the station, the depth of the wet well, the diameter and length of the force main as well as the size of all the appurtenant structures and facilities associated with the pump station.

With the plat of West Meadows, the basic code requirements would have allowed for a small pump station to be installed within the plat to serve only the needs of the Plat. Had this been done the cost to the developer would have been significantly less. However, doing so would have not been in the best interest of the City as future extensions and connections to the City sewer system would have been difficult and not systematic

The annexation agreement states that the credit would be either through a reduction of fees or as agreed to by both parties. Given the complications in tracking permit fees, record keeping and consistency with City auditing procedures, a reimbursement to the developer of system development fees paid is the most practical approach.

Code analysis and eligibility:

While the annexation agreement is explicit in indicating that the project is entitled to an oversizing reimbursement from the City a brief analysis of the relevant codes section (OHMC 18.60.060) is appropriate.

OHMC 18.60.060

1) Credit for system development charges may be authorized by the city council for system development charges or part thereof for improvements made to the Oak Harbor sewer or water system which meet the following criteria:

(a) The project is identified as a project in the Oak Harbor capital facilities plan;

The project was included in the 2007-2012 Oak Harbor Capital facilities plan and the 2007 Comprehensive Sewer Plan.

(b) The use of credits for the project has been approved by the city council prior to construction;

Council approved the use of credits on December 4, 2007, however this approval did not cover the full costs of oversizing the pump station.

(c) The project was completed to city standards; and

Based on inspections conducted by the Public Works staff, the City Engineer has determined that the project was completed to City standards. The improvements as approved and required by the City have been installed and completed to the satisfaction of the City Engineer. The proponents have submitted sufficient documentation, in the form of material invoices and notarized statements to justify the cost of the improvements.

(d) The amount and apportionment formula has been approved by the city council. The council retains full discretionary authority to authorize use of credits and such exercise of authority is a legislative decision and is not subject to appeal.

The City Council has legislative discretion on the approval of credit, however the annexation agreement stipulates that the City shall reimburse the owner for oversizing costs.

(2) No credit or waiver shall be provided for line extensions of eight inches in size to sewer or water lines or for pump or pressure stations which do not meet capital facilities plan. Waivers or credits shall not be provided if reimbursement may be provided by use of latecomer agreements.

The pump station and all necessary appurtenances meet the capital facilities plan. Latecomer agreements provide a mechanism where the council can choose, but are not required, to enter into an agreement with a developer where the City will reimburse the developer when properties

subject to the latecomers agreement connect to facilities covered under the agreement. In principle, sewer lift stations are eligible for establishing area wide latecomers agreements.

Since the lift station, as required by the annexation agreement, replaces an existing lift station in the plat of Meadow Ridge there is only a limited possibility of the developer recovering costs from future connections. The properties in Meadow Ridge are already connected to City sewer, have paid all the necessary connection charges and cannot be assessed for additional sewer connection charges. Therefore approval of a latecomer's for the lift station assessing properties in Meadow Ridge would be unrealistic as the applicant would not likely have a possibility of recovery.

Properties on the north side of NW Crosby Avenue and West of Airline Way are not currently in the current UGA and cannot be connected to the sewer improvements being installed by the proponent. (Note that as part of the 2005 Comprehensive Plan Amendments the City approved inclusion of properties west of Airline Way for inclusion in the UGA however, Island County has failed to act on these amendments). In addition, there are number of properties in the Hillcrest subdivision which are currently outside of City limits and do not have access to a sewer main. While these properties are in the area that can be served by the lift station, the likelihood of annexation and extension of significant sewer lines is very low in the foreseeable future.

Since a latecomer's agreement for reimbursement requires an actual connection, the developer's options for collection are limited. In addition, the annexation agreement is explicit in indicating that the City shall reimburse the developer for oversizing costs. Recognizing that the City will be providing the overizing reimbursement, the applicant has agreed to waive his right to file or collect latecomer's payments from these areas (i.e. Meadow Ridge, Hillcrest and properties outside the UGA) as a condition of the oversizing reimbursement.

The improvements as approved and required by the City have been installed and completed to the satisfaction of the City Engineer. The proponents have submitted sufficient documentation to justify the cost of the improvements. An oversizing reimbursement of \$437,536.60 has been requested.

Staff have reviewed the requested reimbursement amounts and the supporting documentation and concur that it is reasonable, that the costs are justified and supported with sufficient documentation and that reimbursement is consistent with City Codes, specifically the requirements of OHMC 18.60.060.

The applicant has provided documentation indicating that the costs associated with the lift station meeting the City requirements totaled \$638,221.71. The cost of the minimum improvements necessary to serve the plat is estimated to have been approximately \$200,645.10. The difference between the cost to meet the minimum code requirements and the cost of complying with the terms of the annexation agreement is the oversizing difference, or \$437,576.60. In order to be clear that the City has met its obligation and that the developer will not be seeking any further reimbursement or cost recovery from the City an agreement between the City and the West Meadows Partners is needed. A copy of the draft agreement is attached.

Funding for the reimbursement comes from system development charges collected at the time of all new connections. System development fees are used to provide for expansion of the sewer utility in the form of large diameter mains and pumping stations. Sufficient funding is available through the wastewater division budget to pay for this reimbursement request.

It is worth noting that the approved City of Oak Harbor Capital Improvement plan in 2007 listed the project as a \$2.3 million dollar project.

The staff recommendation is to approve the reimbursement agreement as proposed.

STANDING COMMITTEE REPORT

This item was presented to the Public Works Standing committee in January and February of 2010.

RECOMMENDED ACTION

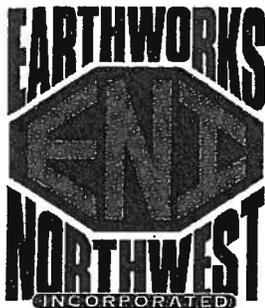
A motion by the City Council authorizing the Mayor to sign the attached reimbursement agreement in the amount of \$437,576.60 for over sizing reimbursement payment for the Crosby Road wastewater pump station improvements.

ATTACHMENTS

- Exhibit A – Improvement Costs and Affidavit
- Exhibit B – Easement for Pump Station Location
- Exhibit C – 1999 Annexation Agreement
- Exhibit D – Reimbursement Agreement

MAYOR'S COMMENTS

EXHIBIT A



2807A Norman Rd.
Stanwood, WA 98292
Office: (360) 629-4999
Fax: (360) 629-3560
www.earthworksnorthwest.com

February 8, 2010

Eric Johnson
City of Oak Harbor

RE: West Meadows

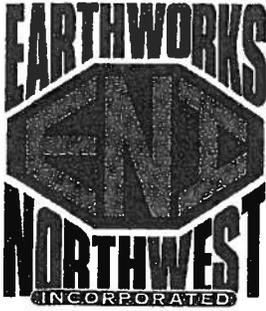
Per our meeting on 2/1/10, we discussed the reimbursement costs between the constructions of the new lift station meeting the 10 year growth requirements verses the construction only necessary to serve the 61 lot plat of West Meadows.

Please find the attached bid from Earthworks Northwest, Inc. for your review and comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Verbarendse", written in a cursive style.

Mark Verbarendse
President
Earthworks Northwest, Inc.



2807A Norman Rd.
Stanwood, WA 98292
Office: (360) 629-4999
Fax: (360) 629-3560
www.earthworksnorthwest.com

West Meadows Partners

Re: Pump Station

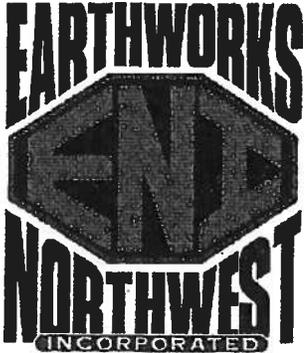
Please find enclosed for your review as requested our estimated cost to provide and install a Sewer Pump Station. Pump Station is complete to City of Oak Harbor standards with 2200lf of 4" pressure line as well as the connecting 48" manhole structures where the forcemain is to be connected to the existing city gravity sewer. This estimate was prepared using the same means and methods we typically employ.

I attest the following to be true and accurate. Prepared in accordance with the City of Oak Harbor standards to the best of our ability in absence of final plans and specifications.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Verbarendse", written in a cursive style.

Mark Verbarendse
President
Earthworks Northwest, Inc.



Earthworks Northwest, Inc.

Stanwood Washington 98292
 Ph. 360 629 4999 Fx 360 629 3560

Estimate

Project: West Meadows
 Owner: West Meadows Partners

	DESCRIPTION	QTY	UNIT	UNIT PRICE	MATERIAL	LABOR/ EQUIP
	Pump Station					
	Sweeper	1	mth	\$ 1,600.00		\$ 1,600.00
	Excavator	1	mth	\$ 4,800.00		\$ 4,800.00
	Backhoe	1	mth	\$ 2,300.00		\$ 2,300.00
	Solo Dump Truck	120	hrs	\$ 90.00		\$ 10,800.00
	Flaggers	120	hrs	\$ 35.00		\$ 4,200.00
	Operator	400	hrs	\$ 45.00		\$ 18,000.00
	Laborer/Pipelayer	400	hrs	\$ 35.00		\$ 14,000.00
	60" Wetwell 12' Deep	1	ls	\$ 2,800.00	\$ 2,800.00	
	Epoxy Lining	1	ls	\$ 3,500.00	\$ 3,500.00	
	Grout	6	ea	\$ 12.00	\$ 72.00	
	5/8 Crushed	15	tn	\$ 8.00	\$ 120.00	
	3" Pig Port	1	ls	\$ 1,600.00	\$ 1,600.00	
	Smith & Loveless Well Mount Pump					
	Station with controls	1	ls	\$ 38,500.00	\$ 38,500.00	
	Generator 25 KW	1	ls	\$ 16,000.00	\$ 16,000.00	
	Fence and Gate	1	ls	\$ 3,500.00	\$ 3,500.00	
	Power Feed / Telephone	1	ls	\$ 2,800.00	\$ 2,800.00	
	Pipe bedding	403	tn	\$ 8.00	\$ 3,224.00	
	Sawcutting	1	ls	\$ 4,400.00	\$ 4,400.00	
	Paving	1	ls	\$ 14,055.00	\$ 14,055.00	
	Test and Flush	1	ea	\$ 1,500.00	\$ 1,500.00	
	Engineering	1	ls	\$ 14,000.00	\$ 14,000.00	

	Survey	1	ls	\$ 1,500.00	\$ 1,500.00	
	4" Forcemain Materials	2200	ft	\$ 4.00	\$ 8,800.00	
	48" Manhole w/ Ring and Cover	1	ea	\$ 1,635.00	\$ 1,635.00	
	Grout	4	ea	\$ 12.00	\$ 48.00	
	Asphalt Demo Dump Fees	120	tns	\$ 6.00	\$ 720.00	
					\$ 118,774.00	\$ 55,700.00

Subtotal \$ 174,474.00

15% Overhead \$ 26,171.10

TOTAL \$ 200,645.10



Mark Verbarendse

West Meadows Sanitary Sewer Cost

Date 4-Feb-10

Gravity Sewer from Intersection of Airline & Crosby to Pump Station

Description	Quantity	Units	Price/Unit	Cost
8" Gravity Sewer Includes Gravel Back Fill	275	LF	\$8.45	\$2,323.75
Trench Excavation (Trench Yards & Disposal)	464	CY	\$16.00	\$577.30
48" Manole 8- 10 feet deep	2	EACH	\$1,296.88	\$2,593.76
Grading and RePave/Patch Half Crosby Ave				
Asphalt (Assume 3") (275x12x3/12)/27x2.05tn/cy	63	Tons	\$115.00	\$6,606.81
Crushed (Assume 2") (275x14x2/12)/27x1.85tn/cy	44	Tons	\$38.00	\$4,614.28
Traffic Control				
Flagging 2 x 8hr x 2 Days	32	Hour	\$40.25	\$1,288.00
Equipment and Labor	1	LS	\$39,333.60	\$39,333.60
Mobilization and Bonds	1	LS	\$4,043.99	\$4,043.99
Subtotal				\$61,381.49
Overhead 12%				\$7,365.78

Gravity Sewer Total

\$68,747.27

Forcemain from Pump Station to Connection Point

Description	Quantity	Units	Price/Unit	Cost
Forcemain within Gravity Sewer Trench				
6" C-900 Force Main	1655	LF	\$21.80	\$6,407.17
Forcemain Not within Gravity Sewer Trench				
6" C-900 Forcemain	940	LF	\$48.00	\$3,758.23
Trench Excavation (Trench Yards & Disposal)	1586	CY	\$16.00	\$2,350.08
Grading and RePave/Patch Half Crosby Ave - Outside of Gravity Sewer Trench				
Asphalt (Assume 3") (940x6x3/12)/27x2.05tn/cy	107	Tons	\$115.00	\$7,258.88
Crushed (Assume 2") (940x8x2/12)/27x1.85tn/cy	86	Tons	\$38.00	\$5,836.12
Traffic Control				
Flagging 2 x 8hr x 5 Days	80	Hour	\$35.00	\$784.88
6" Fittings	8	EACH	\$750.00	\$2,006.03
Class B asphalt	1	LS	\$262.88	\$262.88
Saw Cutting	1	LS	\$1,463.75	\$1,463.75
8" Gravity Sewer to ext MH w/ gravel backfill/trench exc. Dispos	1	LS	\$574.60	\$574.60
Trucking	1	LS	\$2,805.00	\$2,805.00
Traffic Loop	1	LS	\$1,800.00	\$1,800.00
Equipment and Labor	1	LS	\$135,079.50	\$135,079.50
Subtotal				\$170,387.12
Overhead 12%				\$20,446.45

Forcemain Sewer Total

\$190,833.57

Pump Station Costs

Description	Quantity	Units	Price/Unit	Cost
8' Dia Wetwell with Excavation and Backfill	1	LS	\$12,098.14	\$12,098.14
Smith and Loveless Well Mounted Pump Station 1.09cfs/125h	1	LF	\$65,967.00	\$65,967.00
Telemetry Works / Programing	1	LS	\$1,911.29	\$1,911.29
Emergency Transfer Switch	1	LS	\$0.00	\$0.00
Power and External All Weather Control Panel	1	LS	\$0.00	\$0.00
6" Pig Port External	1	LS	\$4,481.93	\$4,481.93
Emergency Backup Generator	1	LS	\$61,865.00	\$61,865.00
Crushed Surfacing Top Course 6" Pad	50	Tons	\$18.20	\$910.00
Gravel Base Fill	600	Tons	\$13.41	\$8,046.00
Wall - 85 lf x 2' High Average	170	Hour	\$0.00	\$0.00
Fencing w/ Gates	1	LS	\$5,468.79	\$5,468.79
Kodiak Kutter	1	LS	\$850.00	\$850.00
PSE Fees/Potelco, Inc.	1	LS	\$54,733.14	\$54,733.14
Verizon	1	LS	\$147.25	\$147.25
Cuz Concrete	1	LS	\$4,098.14	\$4,098.14
Molecular, Inc.	1	LS	\$8,000.00	\$8,000.00
Skagit Striping	1	LS	\$1,025.36	\$1,025.36
Cemex	1	LS	\$1,247.22	\$1,247.22
Diamond Rentals	1	LS	\$383.37	\$383.37
Equipment and Labor	1	LS	\$50,018.50	\$50,018.50
Flagger	1	LS	\$805.00	\$805.00

Subtotal \$282,056.13
Overhead 12% \$33,846.74

Pump Station Total \$315,902.87

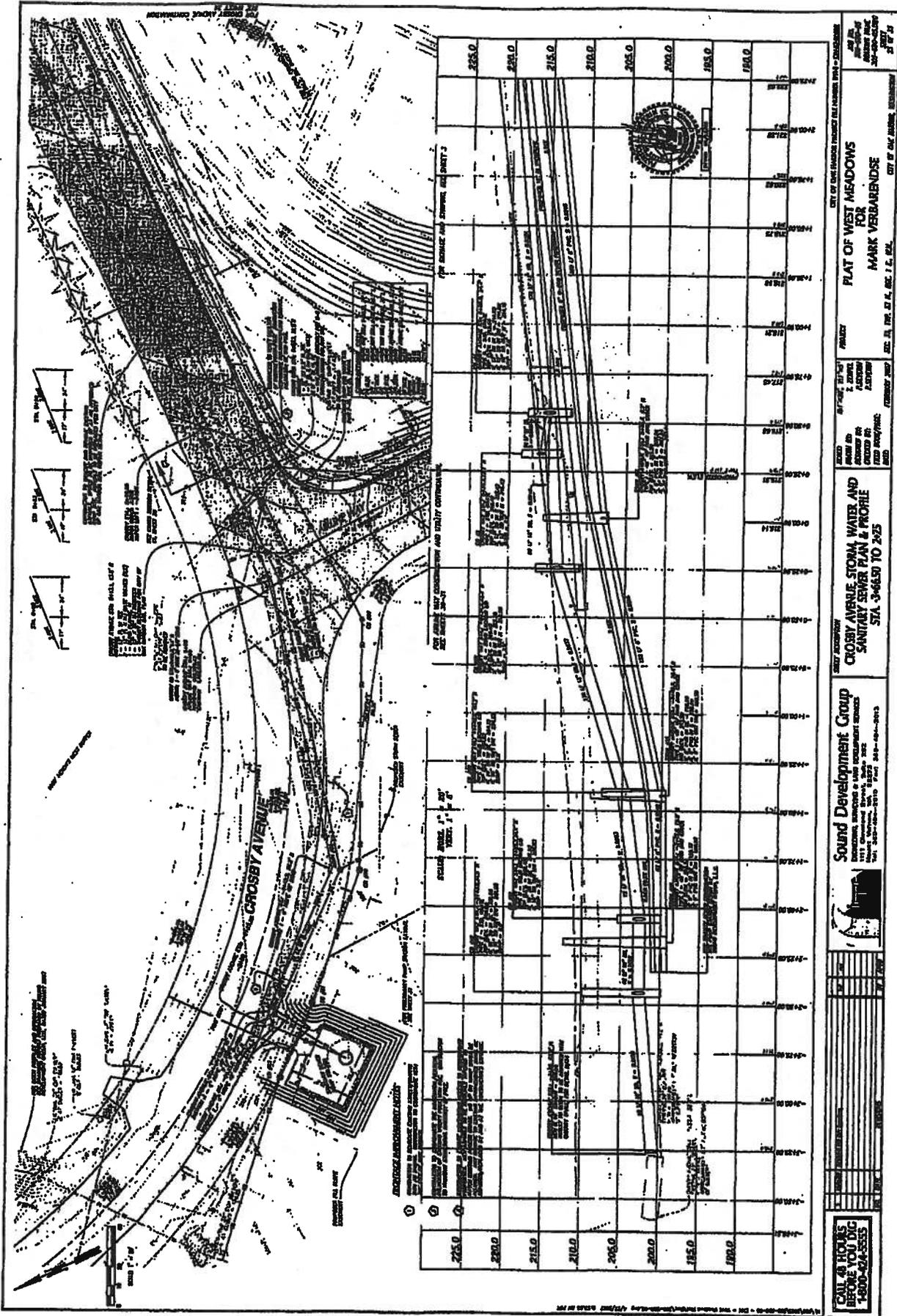
Forcemain Sewer and Pump Station Total \$506,736.44

Surveying/Engineering Costs

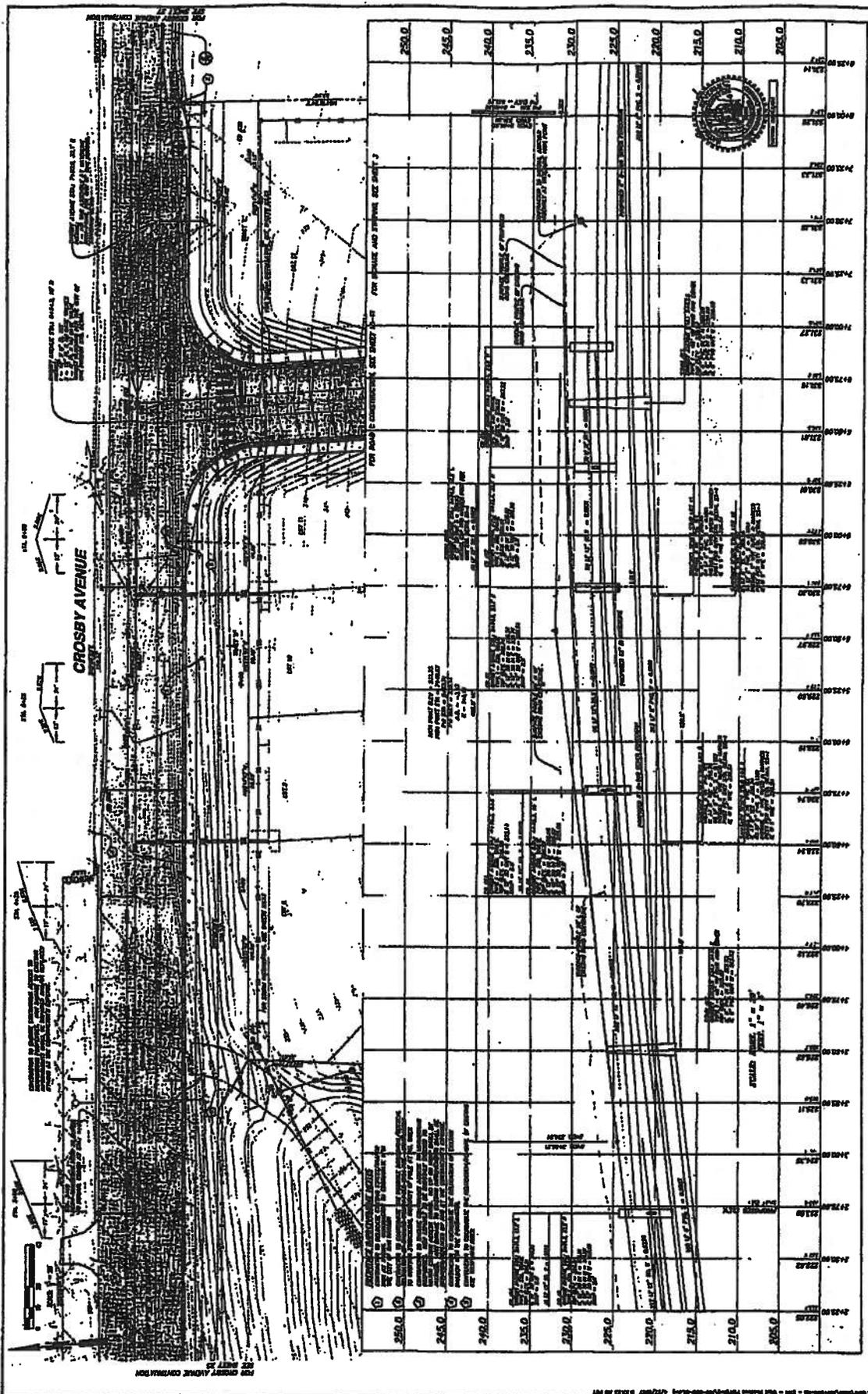
Description	Quantity	Units	Price/Unit	Cost
Existing Conditions/Topography	1	LS	\$4,000.00	\$4,000.00
Gravity & Forcemain Sewer Design	1	LS	\$15,000.00	\$15,000.00
Pump Station Design	1	LS	\$12,150.00	\$12,150.00
Construction Staking	1	LS	\$3,200.00	\$3,200.00
Gravity Sewer & Forcemain Staking	1	LS	\$3,200.00	\$3,200.00
Asbuilt Survey/CAD Drafting	1	LS	\$4,200.00	\$4,200.00
Construction Management	1	LS	\$6,000.00	\$6,000.00
Legal Descriptions	1	LS	\$2,500.00	\$2,500.00
Coordination with Property Owners	1	LS	\$750.00	\$750.00
Electrical Engineering Pump Station	1	LS	\$11,738.00	\$11,738.00

Surveying/Engineering Cost Total: \$62,738.00

Utility Improvement Total \$638,221.71



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CALL 48 HOURS BEFORE YOU DIG 1-800-24-3885

Sound Development Group
 1111 Green Valley Road, Suite 100
 Westborough, MA 01581
 Tel: 508-865-1234 Fax: 508-865-1235

CROSBY AVENUE STORM WATER AND SANITARY SEWER PLAN & PROFILE STA. 2+25 TO 8+25

PLAT OF WEST MEADOWS FOR MARK VERBANDSE
 CITY OF WEST MEADOWS, I. C. 24

DATE: 01/25/07

PROJECT: PLAT OF WEST MEADOWS FOR MARK VERBANDSE

SCALE: 1" = 20' (PLAN) 1" = 2' (PROFILE)

DESIGNED BY: J. VERBANDSE

CHECKED BY: J. VERBANDSE

APPROVED BY: J. VERBANDSE

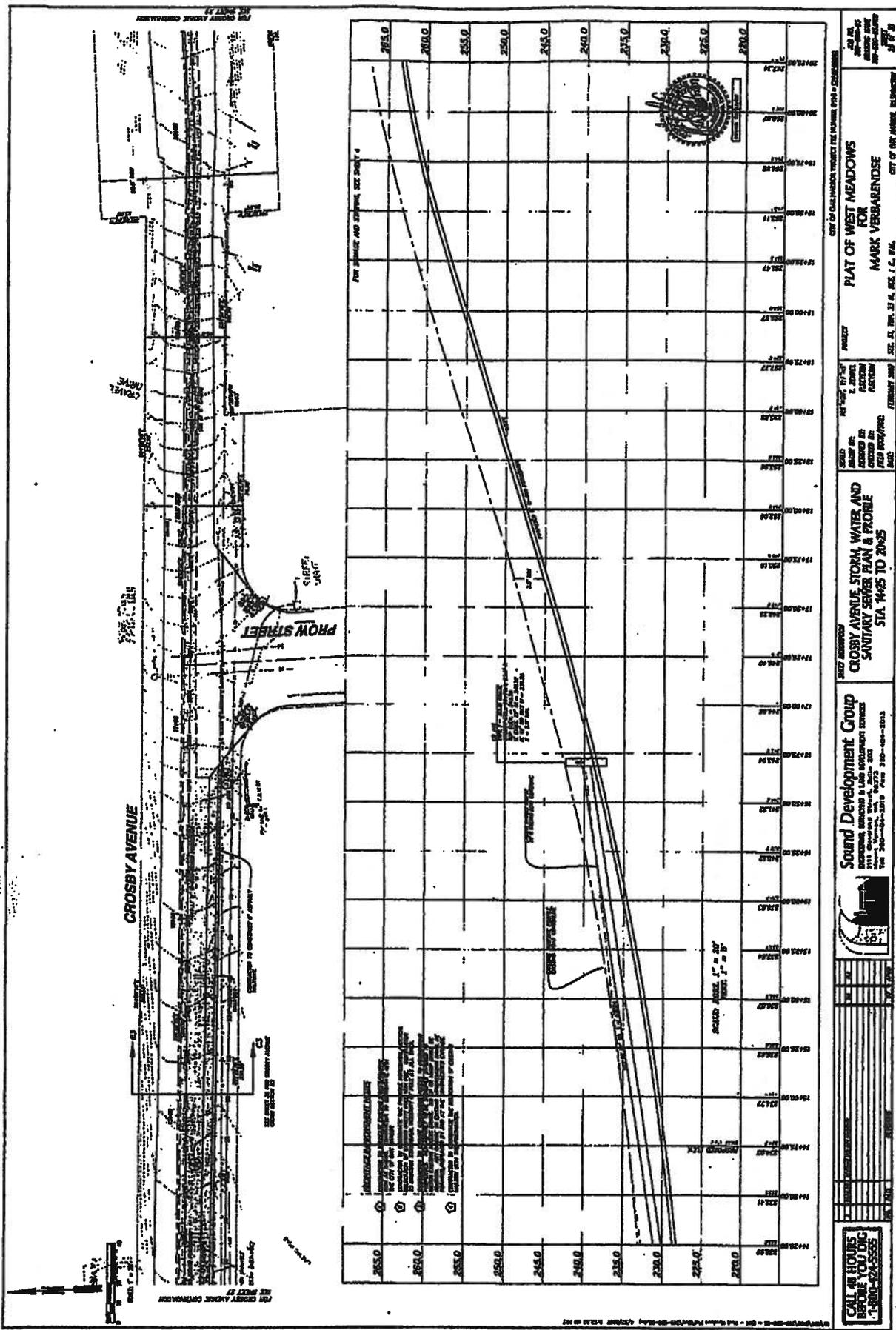
DATE: 01/25/07

PROJECT NO: 07-001

DATE: 01/25/07

00

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CALL AN HOUR BEFORE YOU DIG
 1-800-424-5555

Sound Development Group
 ENGINEERING, ARCHITECTURE & LANDSCAPE ARCHITECTURE
 10000 14th Avenue, Suite 100, Westborough, MA 01581
 TEL: 508-853-8811 FAX: 508-853-8812

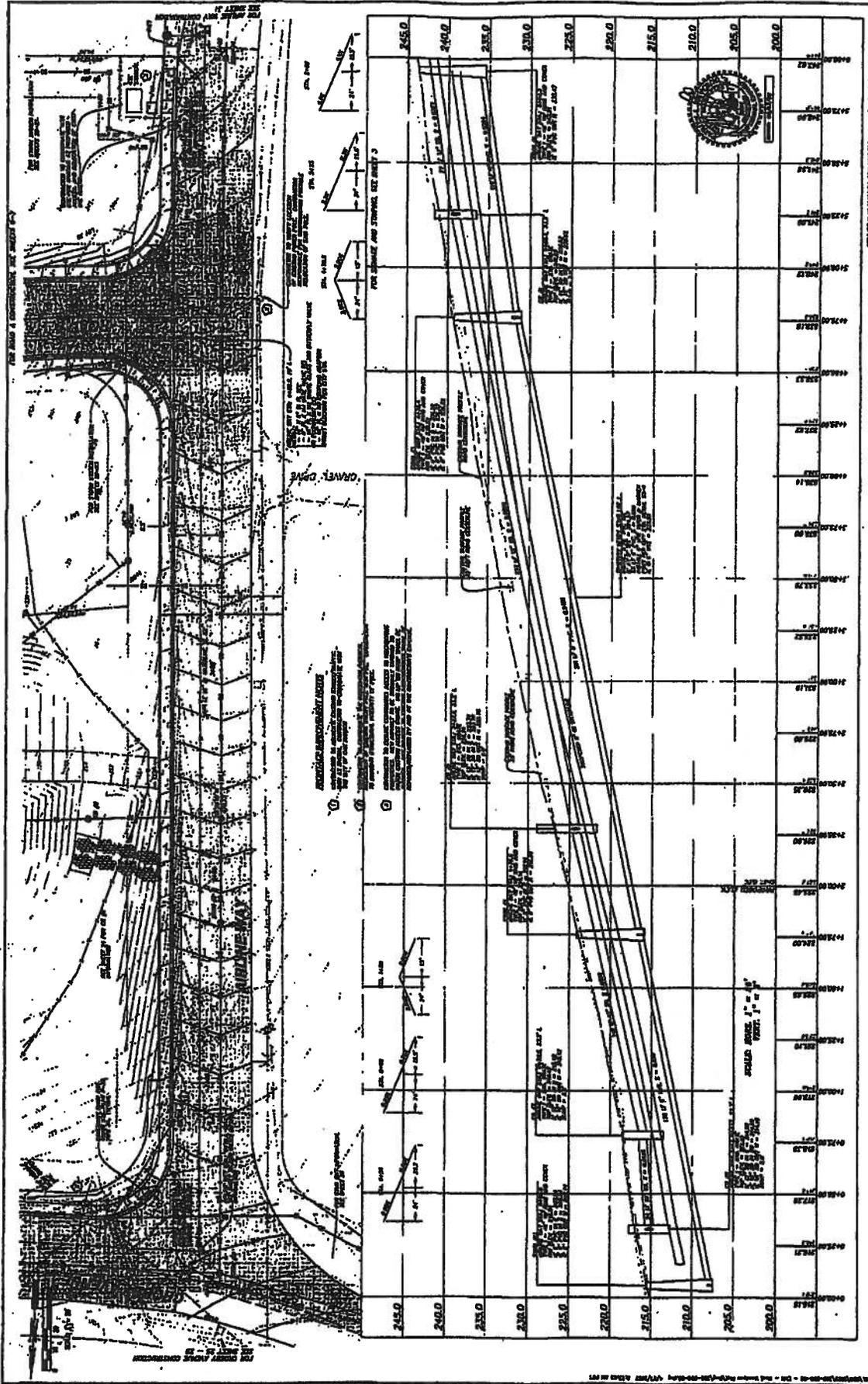
SEAL
 FEBRUARY 2007
 SEE ST. 100.33 & 100.34, P.L.C.

PROJECT
 CROSBY AVENUE STORM WATER AND SANITARY SEWER PLAN & PROFILE STA. 14+25 TO 20+25

CLIENT
 CITY OF WEST MEADOWS FOR MARK VERBANDSE

DATE
 2/27/07

SCALE
 1" = 20'



CALL 48 HOURS BEFORE YOU DIG 1-800-424-5555

Sound Development Group
 CONSULTANTS, ENGINEERS & ARCHITECTS
 1000 W. 10th Street, Suite 200
 Tacoma, WA 98402
 Tel: 252-424-5555 Fax: 252-424-5553

ARJUNE WAY STORM WATER AND SANITARY SEWER PLAN & PROFILE STA. 0+00 TO 6+00

PLAT OF WEST MEADOWS FOR MARK VERBARENSE

CITY OF OAK HARBOR COUNTY FILE NUMBER 19-04-0000000

CITY OF OAK HARBOR, WASHINGTON

07

EXHIBIT B

WHEN RECORDED RETURN TO:

**CITY OF OAK HARBOR
865 SE BARRINGTON DRIVE
OAK HARBOR, WA 98277**

ATTN: Eric Johnston

**SEWER EASEMENT AND AGREEMENT
(Individual)**

Grantors: Jim Forbes and Mary Forbes

Grantee: City of Oak Harbor, a Washington municipal corporation

Tax Parcel No.: R13333-323-4000, R13333-329-3290 and R13333-341-4110

For and in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ("Grantors") grant, convey and warrant to the City of Oak Harbor, a Washington municipal corporation ("Grantee"), in lieu of condemnation, a perpetual public utility facility/pipeline easement (the "Easement") under, across, and over real property located in Island County, Washington, further described as follows and on the terms and conditions hereafter set forth:

Legal Description of Grantor's Property: Attached hereto as Exhibit "A"

Description of Permanent Easement Area: Attached hereto as Exhibit "B"

1. *Purpose of Easement.* Grantee shall have the right to construct, operate, maintain, repair, and replace a public utility wastewater collection and/or conveyance system/facilities in the Easement Area, together with all necessary or convenient appurtenances therefore, including, without limitation, sewer mains, manholes, cleanouts, side sewers, laterals, and/or a pump station and related equipment and facilities.

2. *Pump Station Construction.* The pump station shall consist of the following major features: A duplex pumping station, electrical control and telemetry panels, on site emergency generator, facilities for odor control, a site obscuring enclosure not to exceed 6-ft in height, perimeter landscaping, an access gate, service lighting, audible alarms and other appurtenant facilities commonly associated with public utility wastewater pumping stations.

3. **Access.** Grantee shall have the right to enter upon the Property, by foot or vehicle, for the purposes set forth above. No notice shall be required by identifiable employees, agents or contractors of Grantee.
4. **Obstructions.** Grantee may from time to time remove structures, trees, bushes, or other obstructions within the Easement Area and may level and grade the Easement Area to the extent reasonably necessary to carry out the purposes set forth herein.
5. **Grantors' Use of Easement Area.** Grantors reserve the right to use the Easement Area for any purpose not inconsistent with the rights herein granted; provided that, within the Easement Area, Grantors shall not (i) erect any structure or fixture; (ii) plant trees; (iii) maintain any other obstruction that would interfere with Grantee's use of the Easement Area. Grantors shall not excavate or blast within twenty (20) feet of the Easement Area and shall not undertake any activity on the Property that would disturb the compaction or unearth the Easement Improvements or endanger the lateral support to the Easement Improvements. Grantors shall not alter the surface level or elevation of the ground within the Easement Area or slopes or other grades. If Grantors violate this paragraph, Grantee shall have the right to remove, or require removal of, any obstruction, or to restore, or require restoration of, the Easement Area to the condition which existed before violation of this paragraph; either of which shall be accomplished within a reasonable period of time and at Grantors' expense.
6. **Title.** Grantors covenant that they are the lawful owners of the Property and that they have the right to execute the instrument.
7. **Zoning Issues.** The Grantee agrees that the Easement Property shall be considered a part of the Grantor's property for purposes of calculating density and lot frontage under applicable zoning codes and other development codes of the City. Nothing in this agreement shall be construed to guarantee, imply or vest any development rights or approvals for land subdivision or other land use action. Furthermore nothing in this agreement shall relieve either party from the obligations to comply with development regulations that apply at the time of application for development permits.
8. **No Duty to Perform City Obligations.** The Grantee, covenants and agrees that the Grantor and Grantor's heirs, successors and assigns shall have no personal liability for the observance or performance of the City's obligations under this agreement.
9. **Indemnification and Hold Harmless Against Third Parties.** The Grantee shall hold harmless and indemnify and defend the Grantor and Grantor's heirs, personal representatives, successors and assigns against any and all liability, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments from other persons or entities, including without limitation reasonable attorney's fees arising from or in any way connected with the City's use of the Easement Property resulting in injury to or the death of any person, or physical damage to personal property, resulting from any act, omission conditions, or other matter relating to or occurring on or about the Easement Property, regardless of cause, unless due solely to the gross negligence or willful misconduct of Grantor or Grantor's heirs, personal representatives, successors or assigns.

10. *Binding Effect; Successors and Assigns.* Grantee shall have the right to assign, apportion, or otherwise transfer any or all of its rights, benefits, privileges, and interests arising herein. Without limiting the generality of the foregoing, the rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors and assigns and shall be deemed to run with the land. This instrument may be amended or modified only by written instrument, executed and acknowledged by the parties hereto or their successors or assigns, recorded with the Island County Auditor.

DATED this 25th day of March, 2010.

GRANTORS:

Jimmy L Forbes
SIGNATURE

Jimmy L. FORBES
NAME

Mary L Forbes
SIGNATURE

MARY L. FORBES
NAME

GRANTEES:

Eric Johnson
SIGNATURE

ERIC JOHNSON
NAME

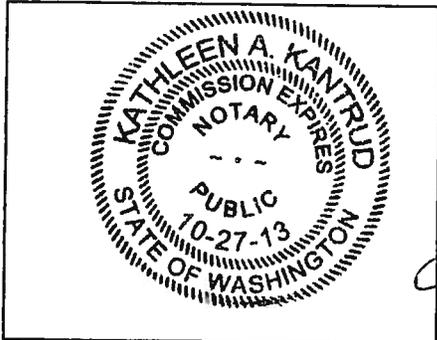
City Engineer
TITLE

SIGNATURE

NAME

TITLE

STATE OF WASHINGTON)
COUNTY OF San Juan) ss

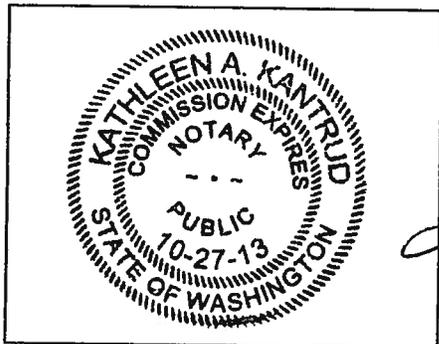


I certify that I know or have satisfactory evidence that Mary L Forbes is the person who appeared before me, and said person acknowledged that he/she signed this instrument, and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 3-25-2010
Kathleen A Kantrud
Notary Public
Print Name Kathleen A. Kantrud
My commission expires 10-27-2013

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON)
COUNTY OF San Juan) ss



I certify that I know or have satisfactory evidence that Jimmy L Forbes is the person who appeared before me, and said person acknowledged that he/she signed this instrument, and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 3-25-2010
Kathleen A Kantrud
Notary Public
Print Name Kathleen A. Kantrud
My commission expires 10-27-2013

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON)
) ss
COUNTY OF Island)

Notary Public
State of Washington
LISA K. BEBEE
My Appointment Expires Jan. 19, 2012

I certify that I know or have satisfactory evidence that Eric Johnston is the person who appeared before me, and said person acknowledged that he/she signed this instrument, and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: March 29, 2010

Lisa K Bebee

Notary Public
Print Name Lisa K Bebee

My commission expires Jan 19, 2012

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

(Empty box for notarial stamp/seal)

DATED: _____

Notary Public _____

Print Name _____

My commission expires _____

(Use this space for notarial stamp/seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

Page 1

PARCEL A:

That portion of the South Half of the Northeast Quarter of Section 33, Township 33 North, Range 1 East of the Willamette Meridian; described as follows:

Beginning 75 feet East of the Southeast corner of the Southwest Quarter of the Northeast Quarter;
thence West to the center of Section 33, Township 33 North, Range 1 East of the Willamette Meridian;
thence North along the centerline to a point which is South 605 feet from the Northwest corner of the Southwest Quarter of the Northeast Quarter;
thence Northeasterly to a point on the North line of said Southwest Quarter of the Northeast Quarter a distance of 357.5 feet East of the Northwest corner of said subdivision;
thence East along the North line of the South Half of the Northeast Quarter to the County Road;
thence along the County Road in a Southeasterly direction to a point North of the point of beginning;
thence South to the point of beginning;

EXCEPT those portions deeded to Island County for Crosby Road by instruments recorded June 16, 1986, under Auditor's File Nos. 86006931 and 86006933, records of Island County, Washington.

PARCEL B:

That portion of the Southeast Quarter of the Northeast Quarter of Section 33, Township 33 North, Range 1 East of the Willamette Meridian, described as follows:

Beginning at the Southwest corner of said Southeast Quarter of the Northeast Quarter;
thence South $89^{\circ}22'17''$ East a distance of 75.00 feet along the South line of said Southeast Quarter of the Northeast Quarter;
thence Northerly, parallel with the West line of said Southeast Quarter of the Northeast Quarter a distance of 400.00 feet to the true point of beginning of this description;
thence continue Northerly parallel with said West line to the South line of County Road No. 11;
thence Easterly along said South line to the West line of the County Road conveyed to Island County by Deed recorded under Auditor's File No. 129773, records of Island County, Washington;

thence Southerly along said West line to a point which lies South $89^{\circ}22'17''$ East from the true point of beginning;
thence North $89^{\circ}22'17''$ West to the true point of beginning;

EXCEPT that portion deeded to Island County for Crosby Road by instrument recorded June 6, 1986, under Auditor's File No. 86006932, records of Island County, Washington.

EXHIBIT "A"

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

Page 2

PARCEL C:

The South 400 feet of that portion of the Southeast Quarter of the Northeast Quarter of Section 33, Township 33 North, Range 1 East of the Willamette Meridian lying West of the County Road known as Airline Way, as deeded to Island County by instrument recorded under Auditor's File No. 129773, records of Island County, Washington;

EXCEPT the West 75 feet thereof.

Situated in Island County, Washington.

EXHIBIT "B"

Description of Permanent Easement Area

7-27-07

Easement for Sewer Pump Station

Tax Parcels: R13333-329-3290

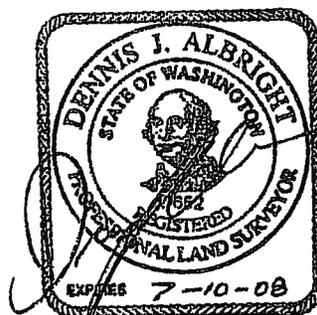
R13333-323-4000

R13333-341-4110

That portion of the Northeast Quarter of Section 33, Township 33 North, Range 1 East, WM, described as follows:

Commencing at the North Quarter corner of said Section 33; Thence South $88^{\circ} 11' 22''$ East 1324.92 feet to a found concrete monument in case; Thence South $1^{\circ} 32' 55''$ West 1405.56 feet to a point hereinafter referred to as point "A"; Thence North $54^{\circ} 52' 00''$ East 28.69 feet to the Southwesterly margin of Crosby road and the **TRUE POINT OF BEGINNING**; Thence South $54^{\circ} 52' 00''$ West 28.69 feet to the aforementioned point "A"; Thence continue South $54^{\circ} 52' 00''$ West 23.68 feet; Thence South $35^{\circ} 08' 00''$ East 65.69 feet; Thence North $53^{\circ} 19' 05''$ East 53.05 feet to the Southwesterly margin of Crosby road; Thence Northwesterly along said margin on a non-tangent curve concave to the Northeast whose radius point bears North $49^{\circ} 21' 11''$ East a distance of 374.01 feet through a central angle of $9^{\circ} 51' 20''$ an arc distance of 64.33 feet to the **TRUE POINT OF BEGINNING**.

Situate in the county of Island, State of Washington



7-27-07

EXHIBIT C

#20 000964 TYPE: AGR \$15.00
BK 806 PG 1177 1/14/2000 9:20:28 AM
ISLAND COUNTY AUDITOR
DEPUTY: GDW REQUESTED BY:
CITY OF OAK HARBOR

*Ordinance 1197
December 7th 1999*

ANNEXATION AGREEMENT

GRANTOR: West Meadows Partners

GRANTEE: City of Oak Harbor

LEGAL DESCRIPTIONS:

Parcel A: That portion of the Southeast Quarter of the Northeast Quarter of Section 33, Township 33 North, Range 1 East of the Willamette Meridian (See Exhibit "A" for full legal description)

Parcel B: That portion of the Southeast Quarter of the Northeast Quarter of Section 33, Township 33 North, Range 1 East of the Willamette Meridian (See Exhibit "A" for full legal description)

ASSESSORS TAX PARCEL # R-13333-290-4810 and R-13333-339-4510

THIS AGREEMENT, made and entered into this 7th day of December, 1999, by and between the CITY OF OAK HARBOR, a non-charter city, organized and existing under the laws of the State of Washington (sometimes hereinafter referred to as the "CITY"), and WEST MEADOWS PARTNERS, a Washington general partnership (hereinafter referred to as the "OWNER").

WITNESSETH:

WHEREAS, the OWNER wishes to annex to the City of Oak Harbor; and

*94
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WHEREAS, the OWNER wishes to annex the property to the City of Oak Harbor and develop and is willing to provide certain capital improvements not currently budgeted by the City in order to proceed with development; and

WHEREAS, the OWNER voluntarily offers to make the improvements; and

WHEREAS, the OWNER owns that certain real property situated in unincorporated Island County, Washington (hereinafter referred to as the "Property"), which is more particularly described as follows:

See Exhibit "A" attached hereto and by reference made a part hereof.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and mutual benefits, the receipt and adequacy of which are hereby acknowledged, the parties hereby covenant and agree as follows:

The OWNERS, agree to complete or bond for the following projects:

1. Water line. The OWNER shall construct a 12" water line from western end of the existing water line on Crosby Road servicing the Meadow Ridge development to the west end of the Property along Crosby Road, and an 8" water line along Property frontage on Airline Road. Waterline construction shall be in accordance with City standards. This line will be constructed prior to issuance of residential building permits in the first phase of the development. Nothing herein shall be construed as preventing the owner from filing for latecomers agreement with the City if otherwise appropriate and authorized by City Ordinance.
2. Sewer lines, force main and pump station. The OWNER shall construct an 8" gravity sewer main line and a 4" force sewer main line from the western end of the sewer main lines servicing the Meadow Ridge development to west end of the Property along Crosby Road, subject to engineering design analysis and approval by the City Engineer. Sewer line construction shall be in accordance with City standards. This line will be constructed prior to issuance of residential building permits in the first phase of the development. Nothing herein shall be construed as preventing the owner from filing for latecomers agreement with the City if otherwise appropriate and authorized by City Ordinance.

A pump station shall be constructed by the OWNER prior to issuance of residential building permits in the first phase of the development. The pump station shall be sized to service West Meadows and approximately 10 years of forecasted growth for the

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neighborhood. Cost of oversizing of the pump station shall be reimbursed to the OWNER through reduction of sewer impact fees on the Property or as agreed to by both parties. The OWNER shall be permitted to relocate the existing pumps from the pump station located on Crosby Road to the new pump station if the existing pumps are adequately sized, as determined by the City Engineer. The pump station shall be at a location designated by the City Engineer, either at a reasonable distance from the Property or located on the Property as a temporary location if no alternative is found within a reasonable time period. If the pump station is temporarily located on the property, the City Engineer shall select the temporary location in consultation with the OWNER and shall make a good faith effort to accommodate the development needs of the property.

3. Sidewalk. The OWNER shall construct a six-foot wide asphalt walkway along Crosby Road from Prow Street to the east end of West Meadows prior to completion of the second phase of the development. If sufficient right-of-way or an easement is not available at the time of development, the OWNER will contribute to a construction fund for the walkway construction. The standards for the sidewalk shall be specified by the City Engineer.

The portion of the walkway outside of that adjacent to the West Meadows property may be constructed to temporary asphalt sidewalk standards.

The OWNER may apply for a waiver of subdivision street frontage improvements for the West Meadows development. If the waiver is approved, credit will be given to the OWNER for the walkway construction on Crosby Road adjacent to the Meadow Ridge subdivision against contribution the OWNER has made to the City toward frontage improvements waived.

4. Effect. Upon its approval by Council as part of an approved annexation of the Property, this agreement shall supersede any previous agreements of the parties.
5. Specific Performance. The parties hereto agree that it may be impossible to measure in money the damages, which will accrue to a party by reason of a failure to perform any of the obligations under this Agreement. Therefore, if either party hereto shall institute any action or proceeding to enforce the provisions hereof, any party against whom such action or proceeding is brought hereby waives the claim or defense therein that such party has an adequate remedy at law. PROVIDED, HOWEVER, that this Paragraph 5 shall be in addition to and not a limitation of any rights or remedies of such party hereunder.

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6. Benefits and Burdens to Run with the Land. All of the provisions of this Agreement, including the benefits and burdens thereof, shall attach to and run with the land, as they affect the Property, and shall be binding upon all persons and other parties having or acquiring any right, title or interest in the Property, or any portion thereof, and shall inure to the benefit of each present and future OWNER thereof. After this Agreement has been executed by the parties, it shall be recorded in the records of Island County Auditor.

7. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the transactions hereinabove set forth, and this Agreement may not be amended, modified, released or discharged, in whole or in part, except by an instrument in writing by all parties hereto.

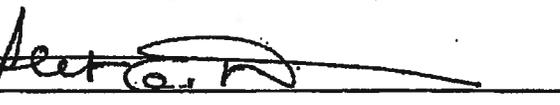
8. Effective Date. This agreement shall become effective only upon Council approval of the annexation of the Property.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate.

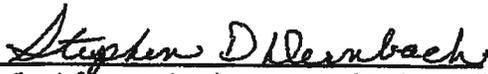
CITY OF OAK HARBOR

By 
Philip L. Bleyhl, City Attorney

By 
Rosemary Morrison, City Clerk

By 
Stephen D. Dernbach, Mayor

STATE OF WASHINGTON)
) ss
COUNTY OF ISLAND)

I certify that I know or have satisfactory evidence that  signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

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TH2

Dated Dec. 8, 1999

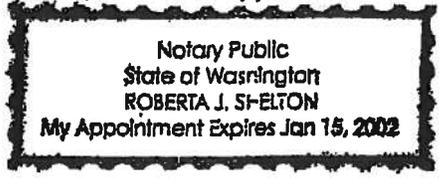
Roberta J. Shelton
Signature of Notary Public

Print: ROBERTA J. SHELTON

Notary Public in and for the State of
Washington

My appointment expires 1-15-02

(Seal or stamp)



OWNER: WEST MEADOWS PARTNERS

By Kristina Inn

Kristina Inn,
President of SB Corp. of Washington,
a Washington corporation, a general partner
in WEST MEADOWS PARTNERS

~~HAWAII~~)
STATE OF WASHINGTON)
~~HONOLULU~~) ss
COUNTY OF ISLAND)

I certify that I know or have satisfactory evidence that Kristina Inn
signed this instrument and acknowledged it to be (his/her) free and voluntary act for the
uses and purposes mentioned in the instrument.



Dated November 2nd, 1999

Jeremy B. Stauss
Signature of Notary Public

Print: JEREMY B. STAUSS

Notary Public in and for the State of Hawaii

My appointment expires 4-29-2003

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HB

EXHIBIT A

PARCEL A

That portion of the Southeast Quarter of the Northeast Quarter of Section 33, Township 33 North, Range 1 East of the Willamette Meridian, described as follows:

Commencing at the Southwest corner of said Southeast Quarter of the Northeast Quarter, said point also being the Northwest corner of the Plat of Patton's Hillcrest Village, Division No. 2, according to the plat thereof recorded in Volume 6 of Plats, page 30, records of Island County, Washington;

thence South 89°22'17" East, along the South line of said Southeast Quarter of the Northeast Quarter a distance of 550.00 feet;

thence North 0°37'43" East a distance of 400.00 feet to the Northeast corner of that certain tract conveyed to Harvey Allen Jansma by Deed dated March 11, 1963, and recorded March 15, 1963, under Auditor's File No. 151262, records of Island County, Washington, said point being the true point of beginning of this description;

thence South 89°22'17" East a distance of 230.23 feet;

thence North 6°18'38" East a distance of 657.00 feet, more or less, to the Southerly extension of road (known as Crosby Road and County Road No. 11) conveyed to Island County by Deed recorded under Auditor's File No. 22603, records of Island County, Washington;

thence Westerly along the Southerly boundary of said extension and of said road a distance of 562.00 feet, more or less, to the Easterly boundary of road (known as Airline Way) conveyed to Island County by Deed recorded under Auditor's File No. 129773, records of Island County, Washington;

thence Southerly along said Easterly boundary a distance of 688.00 feet, more or less, to a point which bears North 89°22'17" West from the true point of beginning;

thence South 89°22'17" East to the true point of beginning;

EXCEPT the following described tract:

Commencing at the Southwest corner of said Southeast Quarter of the Northeast Quarter, said point also being the Northwest corner of the Plat of Patton's Hillcrest Village, Division No. 2, according to the plat thereof recorded in Volume 6 of Plats, page 30, records of Island County, Washington;

thence South 89°22'17" East along the South line of said Southeast Quarter of the Northeast Quarter a distance of 550.00 feet;

thence North 0°37'43" East a distance of 400.00 feet to the Northeast corner of that certain tract of land conveyed to Harvey Allen Jansma by Deed dated March 11, 1963, and recorded March 15, 1963, under

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Auditor's File No. 151252, records of Island County, Washington;
thence North 89°22'17" West a distance of 124.98 feet to the true point of beginning of this description;
thence North 0°37'43" East a distance of 125.00 feet;
thence North 89°22'17" West a distance of 140.00 feet, more or less, to the Easterly margin of road (known as Airline Way) conveyed to Island County by Deed recorded under Auditor's File No. 129773, records of Island County, Washington;
thence Southerly along said Easterly margin to a point which bears North 89°22'17" West from the true point of beginning;
thence South 89°22'17" East a distance of 158.00 feet, more or less, to the true point of beginning;

ALSO EXCEPT that portion deeded to Island County for Crosby Road recorded May 20, 1986, under Auditor's File No. 86005745, records of Island County, Washington.

PARCEL B

That portion of the Southeast Quarter of the Northeast Quarter of Section 33, Township 33 North, Range 1 East of the Willamette Meridian, described as follows:

Beginning at the Northwest corner of the Plat of Patton's Hillcrest Village, Div. No. 2, according to the plat thereof recorded in Volume 6 of Plats, page 30, records of Island County, Washington;
thence South 89°22'17" East a distance of 550.00 feet along the North line of said plat to the true point of beginning of this description;
thence North 0°37'43" East a distance of 175 feet to the South line of a tract conveyed to Ralph E. Griffiths and Holly E. Griffiths, husband and wife, recorded April 21, 1975, under Auditor's File No. 283274, records of Island County, Washington;
thence Easterly along the South line of said Griffith Tract 30 feet to the Southeast corner of said Griffith Tract;
thence Northerly along the East line of said Griffith Tract 225 feet to the South line of that certain tract conveyed to J. O. Bloom by instrument recorded December 13, 1965, under Auditor's File No. 178528, records of Island County, Washington;
thence South 89°22'17" East along said South line 200.23 feet to the Southeast corner of said Bloom Tract;
thence North 6°18'38" East a distance of 417.78 feet along the East line of said Bloom Tract;
thence South 89°22'17" East a distance of 222.98 feet;
thence South 0°24'27" West a distance of 814.45 feet; thence South 89°13'59" West a distance of 52.63 feet to the Northeast corner of said Hillcrest Village, Div. No. 2;
thence North 89°22'17" West a distance of 445.10 feet to the true point of beginning.

All situated in Island County, Washington.

EXHIBIT D

REIMBURSEMENT AGREEMENT FOR PLAT OF WEST MEADOWS SEWER SYSTEM IMPROVEMENTS

WHEREAS, the City Council has previously annexed certain property into the City of Oak Harbor known as the "WEST MEADOWS ANNEXATION"; and

WHEREAS, the plat of West Meadows is located within that annexation area; and

WHEREAS, the annexation agreement requires the installation of offsite sewer improvements and the construction of a lift station at location selected by the City Engineer and that said lift station is to be sized to 10 years of additional developments; and

WHEREAS, the annexation agreement states that the City shall reimburse the Owner for the cost of over sizing the pump station; and

WHEREAS, the lift station was listed in the City of Oak Harbor Capital Facility Plan and that system development charges have regularly been collected to fund such improvements; and

WHEREAS, West Meadows Partners, Inc installed the improvements described in the attached Exhibit "A" and these improvements meet the annexation agreement requirements for a pump station, have area wide significance and benefit and are consistent with City standards and specifications for sewer pump stations; and

WHEREAS, the costs for such improvements as approved are reasonable; now, therefore,

IT IS AGREED by the City of Oak Harbor (hereafter referred to as "City") and West Meadows Partners, Inc (hereafter referred to as "Developer") as follows:

1. Reimbursement The developer shall be reimbursed \$437,576.60, through a single one time payment, for development costs associated with the required over sizing of sewer improvements listed and described in Exhibit "A", said reimbursement being the difference between the actual cost of the improvements required by the annexation agreement and the estimated cost of meeting the minimum code requirements necessary to provide sewer service to the plat of West Meadows.
2. Assurances. Developer represents that it has paid all debts and obligations owing to any and all subcontractors, mechanics and materialmen arising out of the construction of the improvements shown on Exhibit "A". Developer further represents that it has paid all obligations for wages, payroll taxes and compensation of any type whatsoever incurred to workers in the construction of the improvements shown on Exhibit "A". Developer has filed affidavits with the City Engineer indicating the wages paid for construction of the sewer improvements shown on Exhibit "A".

3. The payment described in paragraph 1 shall be deemed full and final payment due the developer for the costs associated with the construction and installation of the aforementioned sewer improvements and no further reimbursement for this improvement shall be permitted or authorized by the City. The developer does hereby release the City from any further obligation related to the costs of these sewer improvements, including but not limited to all credit and/or reimbursement obligations of any kind whatsoever arising under the Annexation Agreement with West Meadow's Partners dated December 7, 1999, and hereby waives all rights to request additional reimbursement through a developer reimbursement agreement or other instrument.
4. Transfer of ownership. The Developer shall transfer title, free and clear of all encumbrances, to the extension shown in Exhibit "A", to be executed and delivered by the Developer to the City within five (5) days of execution of this Agreement. Developer shall also transfer ownership of any easements and other real property identified in Exhibit "B". Furthermore the Developer shall provide reproducible mylars records drawings of all sewer improvements described in Exhibit "A."
5. City acceptance of facilities and easement. The City hereby accepts the facilities described in attached Exhibit "A" for ownership and maintenance by the City as part of the City's sewerage system.
6. Warranty. The Developer warrants that it is the owner in title absolute of the facilities described in Exhibit "A" and the real property identified in Exhibit "B".
7. Hold Harmless Agreement. The Developer expressly agrees to indemnify, defend, and hold the City, its officers, employees, representatives and agents harmless for any claim for bodily injury or property damage arising out of or incident to Developer's or any subcontractor's performance in the construction of the improvements described in Exhibit "A". Developer shall be required to indemnify and hold the City, its officials, employees, representatives and agents harmless only to the extent of the negligence of Developer, Developer's officers, employees, subcontractors, agents and representatives. For purposes of this indemnification and hold harmless agreement, Developer expressly waives Developer's immunity under Industrial Insurance, Title 51 RCW; and acknowledges that this waiver of industrial insurance immunity was mutually negotiated by the parties.
8. City shall be entitled to rely with acquittance on the provisions of this Agreement with respect to the ownership of the facilities and the Developer shall hold the City harmless from the claims or collection of payments of others claiming ownership or interest in the facilities.
9. No impairment of City authority. Nothing contained herein shall be construed to affect or impair in any manner the right of the City to regulate the use of its utility systems, of which the facilities described in Exhibit "A" shall become a part under the terms of this

Agreement, pursuant to the provisions of any ordinance, resolution, or policy now or hereafter in effect. The imposition by the City of any such requirement shall not be deemed an impairment of this Agreement though it may be imposed in such a manner as to refuse service to an owner or owners of a parcel in the benefited area in order to secure compliance with any such requirement of the City.

10. Amendments are to be in writing. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and assigned by a duly authorized representative of the City and Owner.
11. Waiver of term. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.
12. Address. All communications regarding this agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary.

City Engineer (City)
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

CITY OF OAK HARBOR

Dated: _____

Jim Slowik, Mayor

DEVELOPER

Dated: _____

West Meadows Partners.

Inc.

By: Mark Verbarendse
Title: President

City of Oak Harbor
City Council Agenda Bill

Bill No.:

8

Date:

June 1, 2010

Subject:

Multimodal Facility (Municipal Pier
Upland Facilities) Design Services
Agreement Approval

FROM: Cathy Rosen, Public Works Director
Eric Johnston, City Engineer

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



Jim Slowik, Mayor

Paul Schmidt, City Administrator

Doug Merriman, Finance Director

Margery Hite, City Attorney, as to form

PURPOSE:

This agenda bill requests approval of an engineering design and services agreement with Arai Jackson Ellison Murakami LLP, with a not to exceed maximum payment of \$122,487.88 for the Flintstone Park Multimodal Facility project.

AUTHORITY:

The City has authority under RCW 35A.11.020 to enter into contracts for common municipal operations such as the construction of capital improvements.

SUMMARY STATEMENT:

The Municipal Pier and its upland facilities have been the subject of multiple years of permitting and design effort. The upland facilities consist of improvements to the site as well as the construction of a multipurpose building that will provide support facilities for the nearby Island Transit hub. The Federal Transit Administration (FTA) has approved grant funding based on a Federal Fiscal Year (FFY) 2006 authorization for preliminary activities to support the construction of the upland improvements associated with the Municipal Pier Project in Flintstone Park. The grant documents refer to the project as the Oak Harbor Multi Modal Facility as the improvements help support transit in the region. Authorizations in FFY's 2006, 2007, 2008 and 2009 total \$836,000.00 for the planning, permitting, design and construction of the multi modal facility. A condition of the grant is that the City provide a 20% match for the federal funds. Both the grant funding from FTA and the required City match were included in the 2009-2010 City of Oak Harbor budget for this project.

The bulk of the project, in terms of cost, is associated with the new structure. Staff chose to retain an architectural firm as the prime consultant. The architectural design firm MAKERS, Inc was a member of the original Municipal Pier Project design team and was familiar with the requirements of the current project. Makers was selected by staff as the most qualified firm for the work based on their past history with the City and the Municipal Pier Project. However, Makers was unwilling to enter into an agreement using the City's standard Consultant Agreement form.

In accordance with City policy and State law regarding consultant selection, a Request for Qualifications was published in the *Whidbey News-Times* and the *Daily Journal of Commerce*. Statements of Qualifications were received from six firms. Three firms were determined to be qualified for the project and were subsequently invited to submit formal proposals. Two of the three firms submitted formal proposals.

Arai Jackson Ellison and Murakami LLP was selected as the most qualified of the two firms that submitted proposals. Following the process outlined in OHMC 2.350, negotiations of scope and fee have been completed resulting in the proposed agreement.

The attached agreement provides for the preparation of contract documents for the construction of the Multimodal project as detailed in the attached scope of work. Arai Jackson Ellison Murakami LLP will produce a set of contract documents that will comply with the current building codes and be compliant with the requirements of the federal grant. The final product will be a set of bid-ready documents. It is anticipated that the project will be ready for construction in the fall of 2010.

The contract is the standard City of Oak Harbor consultant agreement however there are several specific requirements of the FTA grant policies that were included as an addendum to the contract.

STANDING COMMITTEE REVIEW

This item was presented to the Public Works and Utilities Standing Committee on April 1, 2010.

RECOMMENDED ACTION:

Authorize the Mayor to sign the agreement with Arai Jackson Ellison Murakami LLP and authorize \$122,487.88 for the preparation of contract documents for the Oak Harbor Multimodal Facility.

ATTACHMENTS:

Agreement

MAYOR'S COMMENTS:



**CITY OF OAK HARBOR
CONSULTANT AGREEMENT
WITH ARAI JACKSON ELLISON MURAKAMI LLP**

PROJECT TITLE: OAK HARBOR MULTIMODAL FACILITY

PROJECT COMPLETION DATE: OCTOBER 1, 2010

MAXIMUM AMOUNT PAYABLE: \$122,487.88

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**CONSULTANT CONTRACT
HEADING**

I. INSTRUCTIONS

This contract must be completed in full, including all applicable exhibits. If an exhibit is not applicable, it should be marked "VOID".

Any changes or additions to this contract must be made in writing and set forth below. (The parties may attach appendices and exhibits to this contract but they **must** be listed in Section IV below.) Any exceptions or changes to the General Requirements must be listed in Section XI of the contract.

II. CONSULTANT INFORMATION

Name: Arai Jackson Ellison Murakami LLP

Address: 2300 Seventh Avenue, Seattle, WA 98121

Telephone/Fax No.: 206.323.8800/206.323.8518

Federal ID No.: 91-0959310

Do you require a 1099 for the IRS? _____

III. PROJECT INFORMATION

Project Title: City of Oak Harbor Multimodal Facility

Project Description: The project will construct a new multi-modal facility within the City of Oak Harbor that will provide additional amenities to augment the existing transfer station located at Dock Street and SE Bayshore Drive. The project involves construction of a new terminal building (including restrooms, a waiting area, and bicycle storage facilities). New pedestrian connections from the existing transfer facility to the municipal pier will be constructed, as well as a new crosswalk to the transfer station, benches, parking, and possibly street lighting.

Project Completion Date: October 1, 2010

Maximum Amount Payable: \$122,487.88

Progress Payments: Monthly as invoiced

IV. ADDITIONAL DOCUMENTS ADDED TO THIS CONTRACT

Arai Jackson Ellison Murakami LLP Scope of Work 2010-02-01 and Federal Transit Administration Addendum

AGREEMENT

V. INTRODUCTION

THIS AGREEMENT, made and entered into this _____ day of _____, _____, between the City of Oak Harbor, Washington, hereinafter called the "CITY", and the below identified organization hereinafter called the "CONSULTANT" consists of this agreement, the exhibits and the General Requirements attached hereto.

WITNESSETH THAT:

WHEREAS, the CITY desires to accomplish the above-referenced project, and

WHEREAS, the CITY does not have sufficient staff to meet the required commitment and, therefore, deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the CITY;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

VI. GENERAL DESCRIPTION OF WORK

The work under this AGREEMENT shall consist of the work and services described in Section III of this AGREEMENT and as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

VII. SCOPE OF WORK

The Scope of Work and project level of effort for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT. The CONSULTANT shall be responsible for performing the Scope of Work and project level of effort for the Project as detailed in Exhibit "B" and Paragraph III.

VIII. PAYMENT

The CONSULTANT shall be paid by the CITY for completed work and services rendered under this AGREEMENT on the basis of a negotiated hourly rate plus costs as provided in Exhibit "C" attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Exhibit "B" attached

hereto and by this reference made part of this AGREEMENT; except for out of pocket costs as identified in Exhibit "C".

IX. CERTIFICATION OF THE CONSULTANT AND THE CITY

Attached hereto as Exhibit "A-1" is the Certification of the Consultant and Certification of City Official. Exhibit "A-2" is the Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions.

X. COMPLETE AGREEMENT

This document and referenced attachments contain all covenants, stipulations and provisions agreed upon by the parties. No agent or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XI. GENERAL REQUIREMENTS & FEDERAL TRANSIT ADMINISTRATION ADDENDUM

The General Requirements for Consulting Contract, on file in the City Clerk's Office at Oak Harbor City Hall, a copy of which is attached hereto, shall apply to this AGREEMENT except as modified in this Section XI (General Requirements). The CONSULTANT has assured that the attached copy of the General Requirements conforms to the set filed in the City Clerk's Office.

General provisions are modified to provide that "CONSULTANT shall provide period reports as required and not necessarily on a monthly basis."

The Federal Transit Administration Addendum, included in this AGREEMENT pursuant to Paragraph IV, shall also apply to this AGREEMENT.

XII. EXECUTION AND ACCEPTANCE

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

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

By _____
Consultant: _____

By _____
Agency: _____
Principal

I, _____, Consultant, certify under penalty of perjury under the laws of the State of Washington that this copy of the General Requirements for Consultant Contract conform to the set filed in the Clerk's Office.

Dated: _____

By _____

GENERAL REQUIREMENTS

1. MISCELLANEOUS PROVISIONS

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the CITY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the CITY.

The CONSULTANT shall attend coordination, progress and presentation meetings with the CITY or such officials, groups or individuals as may be requested by the CITY. The CITY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT's participation. The minimum number of hours or days notice required shall be agreed to between the CITY and the CONSULTANT and shown in Exhibit "B" attached hereto and made part of this AGREEMENT. The CONSULTANT shall prepare a monthly progress report as needed by the CITY (but in no case shall it be more than once a month), in a form approved by the CITY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

All reports and other data, furnished to the CONSULTANT by the CITY shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the CITY. Reuse by the CITY or by others acting through or on behalf of the CITY of any such instruments of service, not occurring as part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

2. TIME FOR BEGINNING AND COMPLETION

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the CITY. All work under this AGREEMENT shall be completed by the date shown in Section III of this AGREEMENT under "Project Completion Date".

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays caused by an act of God, governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the CITY is required to extend the established completion date.

3. SUBCONTRACTING

The CITY permits subcontracts for only those items of work designated for subcontracts in Exhibit "G-1" or "G-2" to this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless prior written approval has been issued by the CITY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section VIII. All subcontracts exceeding Ten Thousand Dollars (\$10,000.00) in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the CITY. No permission for subcontracting shall create, between the CITY and subcontractor, any contract or any other relationship.

4. EMPLOYMENT

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the CITY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the CITY, and any and all claims that may or might arise under any Workers' Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the CITY, except regularly retired employees, without written consent of the public employer of such person.

5. NONDISCRIMINATION

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sexual orientation, sex, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability; unless based upon a bona fide occupational qualification; with regard to, but not limited to, the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or termination, rate of pay or other forms of compensation, selection for training, or rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the CITY and further that

the CONSULTANT shall be barred from performing any services for the CITY now or in the future unless a showing is made satisfactory to the CITY that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this AGREEMENT, CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. **COMPLIANCE WITH REGULATIONS:** The CONSULTANT shall comply with the applicable federal law relative to nondiscrimination, Title 49, Code of Federal Regulations, which are herein incorporated by reference and made a part of this AGREEMENT. The CONSULTANT shall comply with the Americans with Disabilities Act of 1992, as amended.

- B. **INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the CITY and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such state or federal law. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.

- C. **SANCTIONS FOR NONCOMPLIANCE:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, the CITY shall impose such sanctions as it may determine to be appropriate, including, but not limited to:
 - (1) Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
 - (2) Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

- D. **INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (A) through (E) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY.

- E. **UNFAIR EMPLOYMENT PRACTICES:** The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O. 77-13 of the Governor of the State of Washington which prohibits unfair employment practices.

6. TERMINATION OF AGREEMENT

The right is reserved by the CITY to terminate this AGREEMENT at any time upon ten (10) days' written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the CITY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit "F".

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice to Terminate exceeds the total amount that would be due, computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the CITY for any excess paid.

If the services of the CONSULTANT are terminated by the CITY for default on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the CITY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the CITY at the time of termination; the cost to the CITY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the CITY of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reasons that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without it or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the CITY in accordance with the provision of this AGREEMENT.

In the event of death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the CITY. This subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the CITY, if the CITY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the CITY's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT, or for failure of the

CONSULTANT to perform work required of it by the CITY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

7. CHANGES OF WORK

The CONSULTANT shall make changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the CITY, without additional compensation thereof. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as herein provided under General Requirements, Section 13.

8. DISPUTES

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the CITY shall be referred for determination to the City Administrator or his/her designee, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided, however, that if an action is brought challenging the Public Works Superintendent or City Engineer's decision, that decision shall be subject to de novo judicial review.

9. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior Court of the State of Washington, situated in Island County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in Island County.

10. LEGAL RELATIONS AND INSURANCE

- A. The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of Washington.
- B. The CONSULTANT's relation to the CITY shall be at all times as an independent contractor and not as an employee.
- C. Unless otherwise specified in the AGREEMENT, the CITY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call

assistance to the CITY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

- D. The CITY will pay no payments under Section VIII "Payments" until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the CITY may take such other action as is available to them under other provisions of this AGREEMENT, or otherwise in law.

11. INDEMNIFICATION REQUIREMENTS

Indemnification/Hold Harmless. CONSULTANT shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the CONSULTANT in performance of this AGREEMENT, except for injuries and damages caused by the sole negligence of the CITY.

Notwithstanding the provisions of the preceding paragraph, it is understood and mutually agreed by the CONSULTANT and the CITY that neither party will attempt to enforce strict liability for any act, error or omission against either party and that the work covered under this AGREEMENT will be completed by the CONSULTANT with the standard of care of the Architecture profession in the State of Washington.

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 CONSULTANT and the CITY, its officers, officials, employees, and volunteers, the CONSULTANT's liability hereunder shall be only to the extent of the CONSULTANT's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the CONSULTANT's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this AGREEMENT.

12. INSURANCE.

The CONSULTANT shall procure and maintain for the duration of this AGREEMENT, insurance 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 CONSULTANT, its agents, representatives or employees.

- A. **No Limitation.** CONSULTANT's maintenance of insurance as required by the AGREEMENT shall not be construed to limit the liability of the CONSULTANT to the coverage provided by such insurance, or otherwise limit the CITY's recourse to any remedy available at law or in equity.

B. Minimum Scope of Insurance. CONSULTANT shall obtain insurance of the types described below:

1. Automobile Liability insurance 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 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an 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.
4. Professional Liability insurance appropriate to the CONSULTANT's profession.

C. Minimum Amounts of Insurance. CONSULTANT shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000.00) per accident.
2. Commercial General Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000.00) each occurrence, Two Million Dollars (\$2,000,000.00) general aggregate.
3. Professional Liability insurance shall be written with limits not less than One Million Dollars (\$1,000,000.00) per claim and One Million Dollars (\$1,000,000.00) policy aggregate limit.

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

1. The CONSULTANT's insurance coverage shall be primary insurance with respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be in excess of the CONSULTANT's insurance and shall not contribute with it.
2. The CONSULTANT'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.

- E. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- F. **Verification of Coverage.** CONSULTANT 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 CONSULTANT before commencement of the work.

13. EXTRA WORK

- A. The CITY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly. If the change causes an increase in the maximum amount payable, it shall not become a part of this AGREEMENT unless and until a written amendment to the AGREEMENT is executed by both the CITY and the CONSULTANT.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as "claim") under this clause within thirty (30) days from the date of receipt of the written order. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

14. ENDORSEMENT OF PLANS

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

15. EQUAL OPPORTUNITY

A. Compliance with 41 CFR 60-1.4 -- Equal Opportunity Clause. The CITY incorporates 41 CFR 60-1.4 -- Equal Opportunity Clause by reference.

B. Compliance with 41 CFR 60-250.5 -- Equal Opportunity Clause (Special Disabled Veterans).

1. The CONSULTANT will not discriminate against any employee or applicant for employment because he or she is a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran in all employment practices, including the following:
 - i. Recruitment, advertising, and job application procedures;
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - iii. Rates of pay or any other form of compensation and changes in compensation;
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - v. Leaves of absence, sick leave, or any other leave;
 - vi. Fringe benefits available by virtue of employment, whether or not administered by the CONSULTANT;
 - vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - viii. Activities sponsored by the CONSULTANT including social or recreational programs; and
 - ix. Any other term, condition, or privilege of employment.

2. The CONSULTANT agrees to immediately list all employment openings which exist at the time of the execution of this AGREEMENT and those which occur during the performance of this AGREEMENT, including those not generated by this AGREEMENT and including those occurring at an establishment of the CONSULTANT other than the one wherein the AGREEMENT is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local employment service office of the state employment security agency wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
3. Listing of employment openings with the local employment service office pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the CONSULTANT from any requirements in Executive orders or regulations regarding nondiscrimination in employment.
4. Whenever the CONSULTANT becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the state employment security agency in each state where it has establishments of the name and location of each hiring location in the state: Provided, That this requirement shall not apply to state and local governmental CONSULTANTS. As long as the CONSULTANT is contractually bound to these provisions and has so advised the state agency, there is no need to advise the state agency of subsequent AGREEMENTS. The CONSULTANT may advise the state agency when it is no longer bound by this AGREEMENT clause.
5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
6. As used in this clause:
 - i. All employment openings include all positions except executive and top management, those positions that will be filled from within the CONSULTANT's organization, and positions lasting three (3) days or less. This term includes full-time employment, temporary employment of more than (3) three days' duration, and part-time employment.

- ii. Executive and top management means any employee:
 - (a) whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and
 - (b) who customarily and regularly directs the work of two (2) or more other employees therein; and
 - (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
 - (d) who customarily and regularly exercises discretionary powers; and
 - (e) who does not devote more than twenty percent (20%), or, in the case of an employee of a retail or service establishment who does not devote as much as forty percent (40%), of his or her hours of work in the work week to activities which are not directly and closely related to the performance of the work described in (a) through (d) of this paragraph 6.ii.; Provided, that (e) of this paragraph 6.ii. shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a twenty percent (20%) interest in the enterprise in which he or she is employed.
 - iii. Positions that will be filled from within the CONSULTANT's organization means employment openings for which no consideration will be given to persons outside the CONSULTANT's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.
7. The CONSULTANT agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
8. In the event of the CONSULTANT's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

9. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the CONSULTANT's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans. The CONSULTANT must ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the CONSULTANT may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
10. The CONSULTANT will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONSULTANT is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and is committed to take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans.
11. The CONSULTANT will include the provisions of this clause in every subcontract or purchase order of Twenty-five Thousand Dollars (\$25,000.00) or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance may direct to enforce such provisions, including action for noncompliance.

C. Compliance with 41 CFR 60-741.5 -- Equal Opportunity Clause (Workers with Disabilities).

1. The CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
 - i. Recruitment, advertising, and job application procedures;

- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - iii. Rates of pay or any other form of compensation and changes in compensation;
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - v. Leaves of absence, sick leave, or any other leave;
 - vi. Fringe benefits available by virtue of employment, whether or not administered by the CONSULTANT;
 - vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - viii. Activities sponsored by the CONSULTANT including social or recreational programs; and
 - ix. Any other term, condition, or privilege of employment.
2. The CONSULTANT agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
 3. In the event of the CONSULTANT's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
 4. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the CONSULTANT's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The CONSULTANT must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
 5. The CONSULTANT will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative

action to employ and advance in employment individuals with physical or mental disabilities.

6. The CONSULTANT will include the provisions of this clause in every subcontract or purchase order in excess of Ten Thousand Dollars (\$10,000.00), unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

Federal Transit Administration Addendum

The City of Oak Harbor ("Recipient") has or will enter into a Master Agreement with the Federal Transit Administration for the purpose of securing Federal Grants for the construction of the project. The following paragraphs extracted from that Master Agreement are hereby incorporated into this agreement and incorporate the Consultant as the "third party".

Section 2. Project Implementation.

c. Application of Federal, State, and Local Laws, Regulations, and Directives.

(1) **Federal Laws, Regulations, and Directives.** The Recipient agrees that Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as defined in this Master Agreement, set forth Federal terms applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless FTA has provided express written approval of an alternative procedure or course of action differing from a procedure or course of action set forth in the applicable Federal directive, the Recipient may incur a violation of the terms of its Grant Agreement or Cooperative Agreement or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Applicant on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Recipient executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will govern the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or otherwise conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each subrecipient and each third party contract implementing the Project notice that Federal laws, regulations, and directives may change and that the changed requirements will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA.

f. No Federal Government Obligations to Third Parties. In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, or third party contract at any tier, the Federal Government has no obligations or liabilities to entity other than the Recipient, including any subrecipient, lessee, or third party contractor at any tier.

Section 3. Ethics.

d. Lobbying Restrictions. The Recipient agrees that:

(1) In compliance with 31 U.S.C. 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement;

(2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities, designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

(3) It will comply, and will assure the compliance of each subrecipient, lessee, or third party contractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

f. False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) **Criminal Fraud.** If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

Section 11. Right of the Federal Government to Terminate.

Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or violation of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, failing to make reasonable and appropriate use of Project property, or failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

Section 12. Civil Rights.

The Recipient agrees to comply with all applicable civil rights laws, regulations and directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a. **Nondiscrimination in Federal Public Transportation Programs.** The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to comply with any applicable implementing Federal directives that may be issued.

c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Recipient agrees as follows:

(a) The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) If the Recipient is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification to the Recipient of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal assistance in accordance with Section 11 of this Master Agreement, or other measures that may affect the Recipient's eligibility to obtain future Federal assistance for transportation Projects.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each third party contractor at any tier or subrecipient at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBE) in the Project and assures that each subrecipient, lessee, and third party contractor at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

(1) The Recipient agrees and assures that it will comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and will comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26 and approved by U.S. DOT, the Recipient's DBE program, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the Master Agreement. Upon notification by U.S. DOT to the Recipient of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on

the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625.

g. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the Recipient agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the

Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 *et seq.*, and any amendments to these laws.

i. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 *Fed. Reg.* 6733 *et seq.*, January 22, 2001.

j. Environmental Justice. The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

k. Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

Section 15. Procurement.

a. Federal Standards. The Recipient agrees to comply with the third party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal laws in effect now or

as subsequently enacted; with U.S. DOT third party procurement regulations of 49 C.F.R. § 18.36 or at 49 C.F.R. §§ 19.40 through 19.48, and other applicable Federal regulations pertaining to third party procurements and subsequent amendments thereto, to the extent those regulations are consistent with SAFETEA-LU provisions. The Recipient also agrees to comply with the provisions of FTA Circular 4220.1E, "Third Party Contracting Requirements," to the extent those provisions are consistent with SAFETEA-LU provisions and to comply with any subsequent amendments thereto, except to the extent FTA determines otherwise in writing. Although the FTA "Best Practices Procurement Manual" provides additional procurement guidance, the Recipient understands that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and may omit certain Federal requirements applicable to the third party contract work to be performed.

t. Access to Third Party Contract Records. The Recipient agrees to require its third party contractors and third party subcontractors, at as many tiers as required, to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records to the extent required by 49 U.S.C. § 5325(g). The Recipient further agrees to require its third party contractors and third party subcontractors, to provide sufficient access to third party procurement records as needed for compliance with Federal regulations or to assure proper Project management as determined by FTA.

Section 23. Construction.

e. Seismic Safety. The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and with U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

Section 25. Environmental Protections.

b. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws, regulations, and directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. In addition:

(1) The Recipient agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed,

Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Recipient agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

(3) The Recipient agrees to comply with the notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

c. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal regulations and directives issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

(1) The Recipient agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Recipient agrees to comply with the notice of violating facility provisions of Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

Section 26. Energy Conservation.

The Recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building

constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

Section 52. Disputes, Breaches, Defaults, or Other Litigation.

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

- a. **Notification to FTA.** The Recipient agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA in writing before doing so. Each notice to FTA under this Section shall be sent, at a minimum, to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.
- b. **Federal Interest in Recovery.** The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the Recipient may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.
- c. **Enforcement.** The Recipient agrees to pursue all legal rights provided within any third party contract.
- d. **FTA Concurrence.** FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.
- e. **Alternative Dispute Resolution.** FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

**EXHIBIT A-1
CERTIFICATION OF CONSULTANT**

Project No. _____

I hereby certify that I am _____ a duly authorized representative of the firm of _____ whose address is _____ and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract.
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract.
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation or consideration of any kind for, or in connection with procuring or carrying out the contract; except as here expressly stated (if any).

I further certify that the firm I here represent is authorized to do business in the State of Washington and that the firm is in full compliance with the requirements of the Board of Professional Registration.

I acknowledge that this certificate is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

CERTIFICATION OF CITY OFFICIAL

I hereby certify that I am the responsible City official for the City of Oak Harbor, Washington, for this AGREEMENT and that the above consulting firm or its representative has not been required directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) employ or retain, or agree to employ or retain, any firm or person; or
- (b) pay or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind, except as here expressly stated (if any).

I acknowledge that this certificate is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

**EXHIBIT A-2
CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS-
PRIMARY COVERED TRANSACTIONS**

1. The CONSULTANT, through the prospective primary participant, certifies to the best of its knowledge and belief, that it and its principals:
 - a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State or Federal department or city;
 - b. have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and
 - d. have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

2. Where the CONSULTANT, through the prospective primary participant, is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm): _____

Date

President or Authorized Official or
Consultant Signature

EXHIBIT B
SCOPE OF WORK (ADD ON)

Project No. EN 6-06-44

See attached documents furnished by the Consultant

2010-02-01

Arai Jackson Ellison Murakami LLP
Project Approach and Scope of Work

City of Oak Harbor Multimodal Facility
Architectural/Engineering Services

Project Approach

In addition to the Scope of Work (following pages), we have outlined a Project Approach that reflects the unique circumstances of this Multimodal Facility.

Goals

- Since the project has completed many design reviews, our goal is to work within that review framework so as to maintain an effective schedule going forward.
- We recognize that there has been a loss of management familiarity; so we have already visited to site and project manager to begin building effective communications.
- This project sits in a key location in the Oak Harbor community and park system. We have familiarized ourselves with the surroundings and inter-connections.

People

- Changing consultants can be a challenge to the budget and schedule. Our goal is to minimize the transition cost to the City of Oak Harbor. We have included consultants on the team who performed well in the earlier phase and added new consultants who are efficient and focused.

Project

- The current design successfully carries forward the character of the bus transfer station and ties it to the park and (future) ferry pier. Since the loss of the pier changes the program somewhat, we suggest a brief project quality control review to confirm that the building suits the new uses as effectively as possible.
- We would propose that the essential look, construction and detailing of the building be retained. Building systems will be reviewed for both cost effectiveness and sustainability features.

Schedule

- We believe the schedule should be targeted to take best advantage of the current positive bidding climate and the upcoming construction season.

Site

- The current site plan and landscaping plan should be maintained

Budget

- With the 95% set of documents we will provide an up-dated cost estimate, incorporating current bidding experience. At the same time we will identify from our quality control review any potential cost / benefit opportunities that might be captured in the 100% phase.

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Scope of Work

The scope of work includes the work necessary to provide architectural and engineering services for the preparation of construction contract documents and assistance during bidding and construction for the Multimodal Transit Facility at the City of Oak Harbor's Flintstone Park.

The project involves construction of a new terminal building (including restrooms, a waiting area, and bicycle storage facilities), new utilities infrastructure, new landscaping, new pedestrian connections from the existing bus transfer facility to the new multi-modal facility, and eventually to a future municipal pier. The project will require the review and confirmation of a prior consultant team's 95% documents that were completed as part of the larger City Municipal Pier project. These documents are available only in hardcopy format; and one of the initial tasks will be to provide an integrated set of 95% drawings in an electronic format as a basis for the final construction documents.

This project does not include the pier or any shoreline work or disturbance, only the upland portion of the work.

All tasks are described in more detail on the following pages.

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TASK 1 Project Management (AJEM)

Objective

Provide project management for project.

Consultant Subtasks

1. 1 Project Management and Correspondence
1. 2 Monthly Progress Reports and Invoices
1. 3 Work Plan
1. 4 Schedule and Update
1. 5 Coordination

Variables

We have assumed weekly meetings in Oak Harbor. The nature and scope of the project are such that fewer meetings may be more appropriate which would reduce the level of effort.

Deliverables

1. 6 Monthly Progress Reports / Invoices
1. 7 Monthly Schedule Updates
1. 8 Monthly Work Plan Update

City Responsibilities

1. 9 Review correspondence
1. 10 Review and approve progress reports and invoices
1. 11 Review and approve monthly schedule and updates

Meetings

1. 12 Meetings are included in separate Tasks.

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TASK 2 Background Information Review

Objective

To obtain background information, electronic files, specifications, cost estimate and facility information, tour and photo document existing site.

Consultant Subtasks

2. 1 Obtain project information from the City including in-progress plans, specifications, current cost information, and applicable City codes and regulatory requirements.
2. 2 Obtain electronic copy of survey.
2. 3 Consultant tour and photo documentation of existing site with City staff.
2. 4 Quality assurance review of the existing design and documentation by the AJEM consultant team.
2. 5 Meet with the City to confirm or suggest modifications to completed design.

Variables

The City has indicated that it is happy with the current design. A brief review of the drawings by the team (to be confirmed in 2.4 QA above) indicates that simplifications and/or quality improvements may be worthwhile. These would affect the level of effort.

Deliverables

2. 6 Quality Assurance documentation and Summary.
2. 7 Documentation of any agreed modifications to the previous design.
2. 8 Survey

City Responsibilities

2. 10 Collect and distribute previous project files and documentation.
2. 11 Respond to consultant Quality Assurance review with direction.

Meetings

2. 12 Data Collection Coordination Meeting (1)
2. 13 QA Meeting

TASK 3 Electronic Documentation
Confirmation of 95% documentation provided by the City of Oak Harbor

Objective

Compile and/or generate electronic documentation (plans and specifications) in general conformance with the 95% multi-modal design documents prepared by others and incorporating any modifications agreed upon by the City.

Consultant Subtasks

3. 1 Civil Documentation
3. 2 Landscape Architectural Documentation
3. 3 Architectural Documentation
3. 4 Structural Engineering Documentation
3. 5 Mechanical Engineering Documentation
3. 6 Electrical Engineering Documentation
3. 7 Survey Documentation
3. 8 Specification Documentation per Discipline.
3. 9 Revise Cost Estimate.

Variables

Each of the consultants' drawings will be at different levels because some of them were on the previous team and have electronic drawings and others must develop their drawings from scratch. We have tried to take this into account; but we will need to evaluate the level of coordination required when the status of the drawings is clear.

Deliverables

3. 10 95% Plans, Specifications, Cost Estimate in electronic format such as PDF, AutoCAD etc.

City Responsibilities

3. 11 Review and Approve 95% Documentation

Meetings

3. 12 Kickoff Meeting (1)
3. 13 Council Update (1)
3. 14 Steering Committee Meeting (1)

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TASK 4 100% Plans, Specifications and Estimate

Objective

Update 95% documents provided in TASK 3 and incorporate review comments for 100% submittal.

Consultant Subtasks

4. 1 Civil Documentation
4. 2 Landscape Architectural Documentation
4. 3 Architectural Documentation
4. 4 Structural Engineering Documentation
4. 5 Mechanical Engineering Documentation
4. 6 Electrical Engineering Documentation
4. 7 Survey Documentation
4. 8 Specification Documentation per Discipline.
4. 9 Revise Cost Estimate.

Variables

Once the 95% drawings have been completed, advancing them to 100% should be a straightforward process. Changes to the project assumptions during this period will need to be accommodated.

Deliverables

5. 1 100% Plans, Specifications and Estimate

City Responsibilities

5. 2 Review 100% submittal for completeness.

Meetings

5. 3 Steering Committee (1)
5. 4 Council (1)

EXHIBIT C
PAYMENT (NEGOTIATED HOURLY RATE PLUS COSTS)

The CONSULTANT shall be paid by the CITY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. If a federal highway project, the CONSULTANT shall conform with all applicable portions of 48 CFR 31.

1. Hourly Rates

The CONSULTANT shall be paid by the CITY for work done, based upon the negotiated hourly rates shown in Exhibits "D-1" and "D-2" attached hereto and by this reference made part of this AGREEMENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the CITY. If negotiations are not conducted for the second or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT or subsequent written authorization(s) from the CITY shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead and fees.

In the event renegotiation of the hourly rates is conducted, the CITY reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in CONSULTANT's fixed hourly rates may include salary or overhead adjustments.

2. Direct Non-salary Costs

Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the CITY. Automobile mileage for travel will be reimbursed as the current rate approved for CITY employees and shall be supported by the date and time of each trip with origin and designation of such trips. Subsistence and lodging expenses will be reimbursed at the same rate as for CITY employees. The billing for non-salary cost, directly identifiable with the PROJECT, shall be an itemized listing of the charges supported by the original bills, invoices, expense accounts, and miscellaneous supporting data retained by the CONSULTANT. Copies of the original supporting documents shall be supplied to the CITY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

3. Management Reserve Fund

~~NOT USED~~
The CITY may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplement agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section 11, "Extra Work".

4. Maximum Amount Payable

The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section 11, "Extra Work" of the General Requirements. No minimum amount payable is guaranteed under this AGREEMENT.

5. Monthly Progress Payments

Progress payments may be claimed on a monthly basis for all costs authorized in (1) and (2) above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibits "D-1" and "D-2", including names and classifications of all employees, and invoices for all direct non-salary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the CITY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the project at the time of the interview.

6. Inspection of Cost Records

The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the CITY, State, and the United States, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit is started before the three (3) year period, the records shall be retained until all litigation, claims, or audit filings involving the records have been resolved. The three (3) year retention period begins when the CONSULTANT receives final payment.

7. Final Payment

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the CITY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the CITY unless such claims are specifically reserved in writing and transmitted to the CITY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the CITY may have against the CONSULTANT or to any remedies the CITY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the CITY within ninety (90) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT of any claims relating to the validity of a finding by the CITY of overpayment.

Exhibit D-1

PROJECT COMPENSATION Summary by Task and Consultant	TEAM Totals	AJEM Architecture	HBB Landscape	DCI Civil	DCI Structural	SAZAN Mech Elec	HARMSEN Survey	ROBINSON Cost Est
Task 1 Project Management	\$ 25,687.79	\$ 24,001.43	\$ -	\$ -	\$ -	\$ 1,686.36	\$ -	\$ -
Task 2 Background Information Review	\$ 14,711.45	\$ 8,854.85	\$ 837.30	\$ 2,195.19	\$ 838.31	\$ 1,985.80	\$ -	\$ -
Task 3 Electronic Documentation - 95%	\$ 39,876.87	\$ 11,071.36	\$ 3,067.59	\$ 6,140.40	\$ 754.27	\$ 12,175.69	\$ 4,075.19	\$ 2,592.39
Task 4 Plans, Specs, Cost Est - 100%	\$ 42,211.77	\$ 11,016.36	\$ 1,712.10	\$ 13,874.89	\$ 2,520.12	\$ 11,547.17	\$ -	\$ 1,541.12
Task 5 Permit Submittal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Task 6 Bid Assistance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pre Construction Summary	\$ 122,487.88	\$ 54,944.00	\$ 5,616.98	\$ 22,210.48	\$ 4,112.71	\$ 27,395.02	\$ 4,075.19	\$ 4,133.51
Task 7 Post Award Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Task 8 Project Close-Out	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Post Award Summary	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Project Summary	\$ 122,487.88	\$ 54,944.00	\$ 5,616.98	\$ 22,210.48	\$ 4,112.71	\$ 27,395.02	\$ 4,075.19	\$ 4,133.51

- AJEM Arai Jackson Ellison Murakami
- HBB Hough Beck and Baird
- DCI D'Amato Conversano, Inc
- SAZAN
- HARMSEN Fakkema Kingma
- ROBINSON The Robinson Company

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City of Oak Harbor
Multi-Modal Facility

**EXHIBIT D-2
CONSULTANT OVERHEAD DETERMINATION**

	Base	Deductions	Net Amount
Direct Labor			
Principals	61,225	-	61,225
Employees	500,291	-	500,291
Total: Direct Labor	561,516		561,516
Direct Labor Overhead			
401(k) Retirement	8,602		8,602
Bonus/Employee Incentives	2,990		2,990
Medical, Dental, Disability	68,242		68,242
Payroll Taxes	77,158		77,158
Vacation, Sick Leave, Hol. - Employees	86,207.00		86,207
Vacation, Sick Leave, Hol. - Principals	17,280		17,280
Total: Direct Labor Overhead	260,478	-	260,478
Percent: Direct Labor Overhead	46.39%		46.39%
General and Administrative Overhead:			
Auto Expense	8,583		8,583
Business Dev./Bid/Proposal Expenses	1,152		1,152
Reimbursable Contract Costs			-
Bonus, Administrative			-
Administrative Salaries - Employees			-
Payroll Taxes			-
Medical, Dental, Disability			-
City Business License Tax	12,934		12,934
Computer Expenses	42,331		42,331
Depreciation and Amortization	6,526		6,526
Employee Fringe Benefits	1,358		1,358
Equipment/Car Lease/Computer Lease	57,992		57,992
Finance Charges	4,210	4,210	-
Miscellaneous	1,400		1,400
Non-Chargeable Labor - Employees	338,113		338,113
Non-Chargeable Labor- Principals	76,532		76,532
Office and Architectural Supplies	5,710		5,710
Office Printing and Reproduction	832		832
Other Insurance	13,492	3,499	9,993

City of Oak Harbor
Multi-Modal Facility

**EXHIBIT D-2
CONSULTANT OVERHEAD DETERMINATION**

Other Taxes and Licenses	1,652		1,652
Postage, Shipping, Delivery	1,673		1,673
Professional Fees	17,903		17,903
Professional Liability Insurance	26,128		26,128
Project Related Expenses	25,678	25,678	-
Property Tax - Clise	40,114		
Rent and Utilities	203,056	-	203,056
Repairs and Maintenance	9,358		9,358
Seminars, Dues, Subscription	8,907		8,907
State Combined Excise Tax	34,856		34,856
Telephone	13,429		13,429
Travel, Meals and Lodging	43		43
Total: General and Administrative Overhead	953,961	33,386	880,460
Percent: Gen. and Adm. Overhead	169.89%		156.80%
Total Overhead:	1,214,439	33,386	1,140,938
Total Overhead Percent:	216.28%		203.19%

EXHIBIT F
PAYMENT UPON TERMINATION OF AGREEMENT BY CITY
OTHER THAN FOR FAULT OF THE CONSULTANT
(Refer to General Requirements, Section 3)

Specific Rates of Pay Contracts

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus any direct non-salary costs incurred at the time of termination of this AGREEMENT.

L:\GLA\WORK\Civ2010\Multimodal Consultant Contract.doc

City of Oak Harbor
Multi-Modal Facility

CONSULTA **Harmsen & Associates, Inc.**

PROJECT: **City of Oak Harbor / Multi Modal Facility**

DATE: 1/28/2010

PREPARED By: Dea Wheir

Direct Salary Name	Hours	Raw Labor rate	Direct Salary Cost
Survey Tech/Drafter	10	\$26.00	\$260.00
Professional Surveyor	20	\$34.00	\$680.00
Instrument Person	8	\$24.25	\$194.00
Rod Techn	8	\$17.50	\$140.00
	0	\$0.00	\$0.00
		\$0.00	\$0.00
Totals:	<u>46</u>		\$1,274.00
Overhead @	187.71% of Direct Salary Cost		\$2,391.43
Fixed Fee @	24% of Direct Salary Cost		\$305.76
Total OH and FF:			<u>\$2,697.19</u>
TOTAL DSC + OH + FF:			\$3,971.19
Direct Expenses		Cost	
Mileage	0 Miles @	\$0.585	\$ -
Postage / Courier	(at cost)		\$ -
CAD/COP	10 @	\$4.00	\$ 40.00
Survey E	8 @	\$8.00	\$ 64.00
Outside Printing	(at cost)		\$ -
	Direct Expenses total		\$ 104.00
Subconsultants		Cost	
APS - Utility Location Services			
Title Report			
	Subconsultant Total		\$ -
TOTAL EXPENSES:			<u>\$ 104.00</u>
TOTAL ESTIMATE FOR PROJECT:			<u><u>\$ 4,075.19</u></u>

Harmsen & Associates Inc

2007 Overhead Schedule

Description	2007 Harmsen Expense	Harmsen Adjustments	Adjusted Totals	FAR Unallowable	Ref	FAR Allowable Expense	% of Direct Labor
Direct Labor							
6100	Direct Wages	<u>1,103,274.65</u>	<u>1,103,274.65</u>			<u>1,103,274.65</u>	82.56%
6101	Direct Officers Salary	<u>232,989.86</u>	<u>232,989.86</u>			<u>232,989.86</u>	17.44%
		<u>1,336,264.51</u>	<u>1,336,264.51</u>			<u>1,336,264.51</u>	100.00%
Fringe Benefits							
7801	Payroll - 401K Company Cont.	<u>70,477.35</u>	<u>70,477.35</u>			<u>70,477.35</u>	5.27%
7802	Payroll - Company FICA	<u>184,849.00</u>	<u>184,849.00</u>			<u>184,849.00</u>	13.83%
7804	Payroll - Company FUTA	<u>3,028.73</u>	<u>3,028.73</u>			<u>3,028.73</u>	0.23%
7806	Payroll - Company SDI	<u>19,166.81</u>	<u>19,166.81</u>			<u>19,166.81</u>	1.43%
7808	Payroll - Company SUI	<u>38,211.10</u>	<u>38,211.10</u>			<u>38,211.10</u>	2.86%
7809	Payroll - Shareholder Benefit	<u>39,323.11</u>	<u>(39,323.11)</u>	<u>0.00</u>		<u>0.00</u>	0.00%
7901	Insurance - Employee Health	<u>247,209.94</u>	<u>247,209.94</u>			<u>247,209.94</u>	18.50%
7902	Insurance - Principal Health	<u>65,717.86</u>	<u>65,717.86</u>			<u>65,717.86</u>	4.92%
7903	Insurance - Vision	<u>2,907.81</u>	<u>2,907.81</u>			<u>2,907.81</u>	0.22%
7904	Payroll - Fringe Benefits	<u>179,821.51</u>	<u>179,821.51</u>			<u>179,821.51</u>	13.46%
7905	Corp Off -Fringe Benefits	<u>79,948.09</u>	<u>79,948.09</u>			<u>79,948.09</u>	5.98%
7906	Payroll - Bonus	<u>55,746.32</u>	<u>55,746.32</u>			<u>55,746.32</u>	4.17%
		<u>\$986,407.23</u>	<u>947,084.12</u>			<u>947,084.12</u>	70.88%
General Overhead							
7000	Building Maintenance & Repair	<u>\$4,101.01</u>	<u>4,101.01</u>			<u>4,101.01</u>	0.31%
7010	Advertising	<u>6,486.10</u>	<u>6,486.10</u>	<u>(6,486.10)</u>	A	<u>0.00</u>	0.00%
7015	Bankcard/fee Charges	<u>8,834.22</u>	<u>8,834.22</u>	<u>(1,920.00)</u>	B	<u>6,914.22</u>	0.52%
7020	Business Development	<u>6,495.96</u>	<u>6,495.96</u>			<u>6,495.96</u>	0.49%
7025	Computer Hardware Equipment	<u>1,705.63</u>	<u>1,705.63</u>			<u>1,705.63</u>	0.13%
7026	Computer - Software	<u>355.32</u>	<u>355.32</u>			<u>355.32</u>	0.03%
7027	Computer - Misc.	<u>1,040.76</u>	<u>1,040.76</u>			<u>1,040.76</u>	0.08%
7030	Contributions/Donations	<u>36,924.46</u>	<u>36,924.46</u>	<u>(36,924.46)</u>	C	<u>0.00</u>	0.00%
7040	Depreciation Expense	<u>127,489.32</u>	<u>127,489.32</u>			<u>127,489.32</u>	9.54%
7050	Dues/License/Memberships	<u>23,911.40</u>	<u>23,911.40</u>	<u>(1,698.00)</u>	D	<u>22,213.40</u>	1.66%
7060	Equipment Repairs/Maintenance	<u>14,474.47</u>	<u>14,474.47</u>			<u>14,474.47</u>	1.08%
7061	Maintenance and Technical Supp.	<u>24,636.94</u>	<u>24,636.94</u>			<u>24,636.94</u>	1.84%
7065	Entertainment	<u>2,215.75</u>	<u>2,215.75</u>	<u>(2,215.75)</u>	E	<u>0.00</u>	0.00%
7070	Field Supplies	<u>36,951.99</u>	<u>36,951.99</u>			<u>36,951.99</u>	2.77%
7080	Field Equipment	<u>328.86</u>	<u>328.86</u>			<u>328.86</u>	0.02%
7080	Internet Expense	<u>4,447.67</u>	<u>4,447.67</u>			<u>4,447.67</u>	0.33%
7100	Insurance - E&O	<u>39,848.64</u>	<u>39,848.64</u>			<u>39,848.64</u>	2.98%
7110	Insurance - General	<u>43,689.14</u>	<u>43,689.14</u>			<u>43,689.14</u>	3.27%
7115	IT Expense	<u>38,373.75</u>	<u>38,373.75</u>			<u>38,373.75</u>	2.87%

EXHIBITS-10

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7120	Interest Paid	<u>19,291.48</u>		<u>19,291.48</u>	<u>(19,291.48)</u>	B	<u>0.00</u>	0.00%
7125	L & I Wage Reporting	<u>750.00</u>		<u>750.00</u>			<u>750.00</u>	0.06%
7130	Maps & Survey	<u>5,126.32</u>		<u>5,126.32</u>			<u>5,126.32</u>	0.38%
7140	Meals	<u>1,086.75</u>		<u>1,086.75</u>	<u>(1,086.75)</u>	F	<u>0.00</u>	0.00%
7150	Misc. Office Expenses	<u>-80.52</u>		<u>-80.52</u>	<u>80.52</u>	F	<u>0.00</u>	0.00%
7170	Processing & Recording Fees	<u>710.00</u>		<u>710.00</u>	<u>(710.00)</u>	G	<u>0.00</u>	0.00%
7175	Non deductible expenses	<u>250.00</u>		<u>250.00</u>	<u>(250.00)</u>	F	<u>0.00</u>	0.00%
7180	Postage	<u>4,026.97</u>		<u>4,026.97</u>			<u>4,026.97</u>	0.30%
7200	Professional Services	<u>41,054.11</u>		<u>41,054.11</u>	<u>(12,710.25)</u>	G, H	<u>28,343.86</u>	2.12%
7210	Promotional Expenses	<u>15,915.97</u>		<u>15,915.97</u>	<u>(2,826.99)</u>	A	<u>13,088.98</u>	0.98%
7220	Rent - Building	<u>150,095.94</u>		<u>150,095.94</u>			<u>150,095.94</u>	11.23%
7230	Rental Equipment	<u>9,092.50</u>		<u>9,092.50</u>			<u>9,092.50</u>	0.68%
7250	Subcontractors	<u>8,183.75</u>		<u>8,183.75</u>	<u>(8,183.75)</u>	G	<u>0.00</u>	0.00%
7260	Supplies Office	<u>27,005.63</u>		<u>27,005.63</u>			<u>27,005.63</u>	2.02%
7300	Taxes - B&O /Excise	<u>65,286.58</u>		<u>65,286.58</u>			<u>65,286.58</u>	4.89%
7310	Taxes - Property/Sales Tax	<u>3,519.16</u>		<u>3,519.16</u>			<u>3,519.16</u>	0.26%
7340	Travel	<u>7,561.27</u>	<u>(7,561.27)</u>	<u>0.00</u>			<u>0.00</u>	0.00%
7350	Training & Education	<u>26,723.07</u>		<u>26,723.07</u>			<u>26,723.07</u>	2.00%
7400	Utilities -Gas/Elec waste recy	<u>9,204.80</u>		<u>9,204.80</u>			<u>9,204.80</u>	0.69%
7420	Telephones	<u>13,542.83</u>		<u>13,542.83</u>			<u>13,542.83</u>	1.01%
7430	Telephones - Cellphones	<u>15,651.82</u>		<u>15,651.82</u>			<u>15,651.82</u>	1.17%
7500	Uncollectibles Prior Years			<u>0.00</u>			<u>0.00</u>	0.00%
7600	Vehicle - Fuel	<u>33,529.52</u>		<u>33,529.52</u>			<u>33,529.52</u>	2.51%
7610	Vehicle - Licenses	<u>871.75</u>		<u>871.75</u>			<u>871.75</u>	0.07%
7615	Vehicle - Mileage	<u>1,957.12</u>		<u>1,957.12</u>			<u>1,957.12</u>	0.15%
7620	Vehicle - Repair & Maintenance	<u>14,800.46</u>		<u>14,800.46</u>			<u>14,800.46</u>	1.11%
7630	Vehicle Expense	<u>138.80</u>	<u>(138.80)</u>	<u>0.00</u>			<u>0.00</u>	0.00%
7700	Indirect Wages	<u>555,488.56</u>		<u>555,488.56</u>			<u>555,488.56</u>	41.57%
7701	Indirect - Officers Salary	<u>172,274.73</u>		<u>172,274.73</u>			<u>172,274.73</u>	12.89%
7750	Salaries - vacation	<u>29,521.78</u>		<u>29,521.78</u>			<u>29,521.78</u>	2.21%
7950	Acquisition costs in F & K	<u>58,492.68</u>	<u>(58,492.68)</u>	<u>0.00</u>			<u>0.00</u>	0.00%
7960	Interest Expense - F&K	<u>5,439.03</u>	<u>(5,439.03)</u>	<u>0.00</u>			<u>0.00</u>	0.00%
		<u>1,716,822.35</u>	<u>(69,629.78)</u>	<u>1,647,192.57</u>	<u>(94,223.01)</u>		<u>1,552,969.56</u>	<u>116.22%</u>
Facilities Capital Cost of Money			8,226.00				<u>8,226.00</u>	0.82%
Total General Overhead		<u>1,716,822.35</u>	<u>(81,403.78)</u>	<u>1,647,192.57</u>	<u>(94,223.01)</u>	0.00	<u>1,561,195.56</u>	<u>116.83%</u>
Total Overhead Expense		<u>4,039,484.09</u>	<u>-61,403.78</u>	<u>3,930,541.20</u>	<u>-94,223.01</u>	0.00	<u>3,844,544.19</u>	<u>187.71%</u>

EXHIBITS-11

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References

H&AI Adjustments

- A Advertising & public relations per 48 FAR 31.205-1(f).
- B Interest expense per 48 FAR 31.205-20.
- C Contributions per 48 FAR 31.205-8.
- D Lobbying and Political Activities Cost 48 FAR 31.205-22(a)
- E Entertainment 48 FAR 31.205-14
- F Insufficient documentation to determine allowable cost 48 FAR 31.201-2(d)
- G Direct associated cost 48 FAR 31.31.201-6(a).
- H Federal income tax 48 FAR 31205-41(b)

EXHIBITS-12

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City of Oak Harbor
Multi-Modal Facility

EXHIBIT G-1
SUBCONSULTANT FEE DETERMINATION - SUMMARY SHEET
HOUGH BECK & BAIRD INC.

Project: City of Oak Harbor Multimodal Facility

Direct Salary Cost (DSC)

<u>Classification</u>	<u>Man Hours</u>	x	<u>Rate</u>	=	<u>Cost</u>
<u>Principal</u>	6	x	\$ 60.60		\$ 363.60
<u>Project Manager</u>	43	x	\$ 38.00		\$ 1,634.00
<u>Designer</u>	6	x	\$ 29.70		\$ 178.20
<u>Computer/Tech</u>	26	x	\$ 23.00		\$ 598.00
<u>Business Dev.</u>	4	x	\$ 30.50		\$ 122.00
<u>Admin.</u>	8	x	\$ 18.00		\$ 144.00
Total DSC				=	\$ 3,039.80

Overhead (OH Cost - including Salary Additives):

OH Rate	x	DSC	=	
<u>194.5%</u>	x	<u>\$ 3,039.80</u>	=	<u>\$ 5,912.41</u>

Fixed Fee (FF)

FF Rate	x	DSC	=	
<u>30%</u>	x	<u>\$ 3,039.80</u>	=	<u>\$ 911.94</u>

Reimbursables

Itemize	
Mileage & Parking	\$ 300.00
Reproduction & Printing	\$ 75.00
Other Costs	\$ -
Total Reimbursables	\$ 375.00

Grand Total \$ 10,239.15

Prepared by Collie Hough-Beck/Jim Howard Date 27-Jan-10

City of Oak Harbor
Multi-Modal Facility

EXHIBIT G-2
BREAKDOWN OF SUBCONSULTANT'S OVERHEAD COST

Hough Beck & Baird Inc.
Overhead Schedule
Fiscal Year December 31, 2007

Description	Financial Statement Amount	HBB Adj.	WSDOT Adj.	Ref.	Accepted Amount	%
Total Direct Labor	<u>\$353,049</u>				<u>\$353,049</u>	100.00%
Fringe Benefits						
Bonuses	\$47,589				\$47,589	13.48%
Holiday Pay	15,474				15,474	4.38%
Vacation	46,172				46,172	13.08%
Sick Leave	10,310				10,310	2.92%
Payroll Taxes	63,119				63,119	17.88%
Corporate Taxes (1120)	5,813	(5,813)		A	0	0.00%
Pension Contributions	16,505				16,505	4.68%
Health Care Insurance	20,479				20,479	5.80%
Key Man Life Insurance	327	(327)		B	0	0.00%
Total Fringe Benefits	<u>\$225,788</u>	<u>(\$6,140)</u>	<u>\$0</u>		<u>\$219,648</u>	62.21%
General Overhead						
Indirect Salaries - Principals	\$79,035				\$79,035	22.39%
Indirect Salaries - Other	106,968				106,968	30.30%
Indirect Sal-prop (Emp)	17,919				17,919	5.08%
Indirect Sal-Prop (Pm)	59,622				59,622	16.89%
Consultants-Reimbursable	197,468	(197,468)		J	\$0	0.00%
Professional Development	672				672	0.19%
Professional Registration & Dues	1,450				1,450	0.41%
Rent	77,000				77,000	21.81%
Office Supplies/Periodicals	15,590	(12)		J	15,578	4.41%
Telephone/Communications	10,380				10,380	2.94%
Postage & Shipping	3,584	(1,200)		J	2,384	0.68%
Repairs & Maintenance	2,832				2,832	0.80%
Other Office Expense	7,727	(2,973)	(1,265)	J,L	3,489	0.99%
Legal	1,995		(249)	M	1,746	0.49%
Interest Expense	3,492	(3,492)		C	0	0.00%
Accounting/Audit/Tax Prep.	1,500	(1,250)		D	250	0.07%
Professional Liability Insurance	10,562			N	10,562	2.99%
Computer Consultants	29,141	(12,484)	(5,058)	E,O	11,599	3.29%
Other Ins. Premiums	3,342				3,342	0.95%
Misc. Taxes & Licenses	24,737		(1,215)	P	23,522	6.66%
Rainier Club Dues	2,249	(2,249)		F	0	0.00%
Automobile Expense	1,867				1,867	0.53%

EXHIBITS-14

Hough Beck Baird
Landscape Architects

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City of Oak Harbor
Multi-Modal Facility

EXHIBIT G-2
BREAKDOWN OF SUBCONSULTANT'S OVERHEAD COST

Hough Beck & Baird Inc. Overhead Schedule						
Automobile Licensing	145				145	0.04%
Travel & Lodging	8,602	(8,484)		J	118	0.03%
Meals: Staff Meeting	5,398		(3,925)	Q	1,473	0.42%
Meals: Staff Review Lunches/Business	3,290	(203)	(2,701)	J,R	386	0.11%
Mileage/Parking/Bus	6,869				6,869	1.95%
Reprints/Photos/Publications	6,635	(6,391)		J	244	0.07%
Public Relations/Contributions	250	(250)		G	0	0.00%
Office Functions/Events	1,480	(1,180)		H	300	0.08%
Advertising	739	(739)		I	0	0.00%
Depreciation	27,285				27,285	7.73%
Total General Overhead	\$719,823	(\$40,907)	(\$14,413)		\$467,036	132.29%
Total Overhead Expenses	\$945,611	(\$47,046)	(\$14,413)		\$686,684	194.50%
Overhead Rate	267.84%				194.50%	

*Hough Beck & Baird Inc. - Reviewed & Accepted 3/4/09 KW
Overhead Rate still subject to WSDOT Audit*

References

Hough Beck & Baird Adjustments:

- A Federal Income Tax unallowable per 48 CFR 31.205-41(b)(1)
- B Key Man Life Insurance unallowable per 48 CFR 31.205-19(a)(2)(vi)
- C Interest Expense unallowable per 48 CFR 31.250-20
- D Federal tax return preparation fees over \$250 unallowable per 48 CFR 31.205-41(b)(1), 48 CFR 31.201-
- E Computer Consultant's Direct costs billed to clients per 48 CFR 31.202(a)
- F Costs of memberships in civic and community organizations and not a membership in
- G Contributions or Donations unallowable per 48 CFR 31.205-8
- H Christmas party expenses in excess of \$25 per employee not allowed per 48 CFR 31.205-
- I Advertising unallowable per 48 CFR 31.205-1(f).
- J 48 CFR 31.202 (a) Direct project costs, 48 CFR 31.201-6 cost directly associated to unallowable cost is also unallowable

WSDOT Adjustments:

- K
- L Truffles, gifts to clients unallowable per 48 CFR 31.205-13 (b)
- M Agent fee for Alaska is not allocable per 48 CFR 31.201-4
- N Lobbying unallowable per 48 CFR 31.205-22 Lobbying
- O 48 CFR 31.201-6 cost directly associated to unallowable cost is also unallowable
- P Montana, Idaho, Alaska fees not allocable per 48 CFR 31.201-4
- Q Exceeded per diem 48 CFR 31.205-14 & WSDOT Accounting Manual M13-82, Chapter 10, Travel - Local meals
- R Office meeting lunches in excess, going away cake, flowers Per 48 CFR 31.201-3 Exceeds that which would be incurred by a prudent person in the conduct of competitive business.

EXHIBITS-15

Hough Beck Baird
Landscape Architects

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City of Oak Harbor
Multi-Modal Facility

**EXHIBIT G-1
SUBCONSULTANT FEE DETERMINATION - SUMMARY SHEET**

Project: City of Oak Harbor Multimodal Facility
DCI Civil Engineering

Direct Salary Cost (DSC)

<u>Classification</u>	<u>Man Hours</u>	x	<u>Rate</u>	=	<u>Cost</u>
Principal Engineer 10	0	x	\$ 62.95		\$ -
Senior Engineer 105	35	x	\$ 48.56		\$ 1,699.60
Project Manager 203	26	x	\$ 31.91		\$ 829.66
Senior PM 252	0	x	\$ 34.38		\$ -
Project Engineer 305	138	x	\$ 24.86		\$ 3,430.68
Project Engineer 306	0	x	\$ 26.44		\$ -
Tech Designer 407	96	x	\$ 23.17		\$ 2,224.32
Sr. Tech Designer 453	0	x	\$ 29.92		\$ -
Clerical & Admin 501	3	x	\$ 21.94		\$ 65.82
	0	x	\$ -		\$ -
	0	x	\$ -		\$ -
Total DSC				=	\$ 8,250.08

Overhead (OH Cost - including Salary Additives):

OH Rate	x	DSC	=	
208%	x	\$ 8,250.08	=	\$ 17,180.02

Fixed Fee (FF)

FF Rate	x	DSC	=	
10%	x	\$ 8,250.08	=	\$ 825.01

Reimbursables

Itemize		
Mileage	\$	558.00
Reprographics	\$	942.00
	\$	-

Total Reimbursables \$ 1,500.00

Grand Total \$ 27,755.11

Prepared by _____

Date _____

EXHIBITS-16

DCI Civil Engineers

162

2010 02 01

EXHIBIT G-1 - DCI Civil Engineer

City of Oak Harbor
Multi-Modal Facility

EXHIBIT G-2
BREAKDOWN OF SUBCONSULTANT'S OVERHEAD COST

Direct Labor	3,931,972.37	
Fringe Benefits		
1 FICA	588,475.08	7%
2 Unemployment	43,022.32	1%
3 Medical Aid and Industrial Insurance	27,043.59	0%
4 Company Insurance and Medical	488,477.90	6%
5 Vacation, Holiday, Sick Leave and Bereavement	732,760.76	9%
6 Commission, Bonuses / Pension Plan	378,573.87	5%
Total Fringe Benefits	2,258,353.52	28%
Overhead Rate on Fringes (Fringe/Direct Labor)	57.4%	
General Overhead		
7 State B&O Taxes	153,944.95	2%
8 Insurance	309,671.95	4%
9 Administration and Time Not Assignable	3,224,897.04	39%
10 Printing, Stationary, and Supplies	47,701.13	1%
11 Professional Services	167,027.85	2%
12 Travel Not Assignable	193,943.61	2%
13 Telephone and Telegraph Not Assignable	137,693.83	2%
14 Fees, Dues, Professional Meetings	48,259.72	1%
15 Utilities and Maintenance	6,040.48	0%
16 Professional Development	28,050.53	0%
17 Rent	1,217,837.34	15%
18 Equipment Support	310,930.57	4%
19 Office Miscellaneous, Postage	83,613.82	1%
Total Generated Overhead	5,929,612.82	72%
Overhead Rate on General Overhead (General/Direct Labor)	150.8%	
TOTAL	8,187,966.34	100%
Combined Overhead Rate	208.2%	

EXHIBITS-17

City of Oak Harbor
Multi-Modal Facility

EXHIBIT G-1
SUBCONSULTANT FEE DETERMINATION - SUMMARY SHEET

Project: City of Oak Harbor Multimodal Facility
Structural Engineering

Direct Salary Cost (DSC)

<u>Classification</u>	<u>Man Hours</u>	x	<u>Rate</u>	=	<u>Cost</u>
Principal Engineer 10	4	x	\$ 62.95		\$ 251.80
Senior Engineer 105	0	x	\$ 48.56		\$ -
Project Manager 203	0	x	\$ 31.91		\$ -
Senior PM 252	39	x	\$ 34.38		\$ 1,340.82
Project Engineer 305	0	x	\$ 24.86		\$ -
Project Engineer 306	22	x	\$ 26.44		\$ 581.68
Tech Designer 407	0	x	\$ 23.17		\$ -
Sr. Tech Designer 453	15	x	\$ 29.92		\$ 448.80
Clerical & Admin 501	0	x	\$ 21.94		\$ -
	0	x	\$ -		\$ -
	0	x	\$ -		\$ -
Total DSC				=	\$ 2,623.10

Overhead (OH Cost - including Salary Additives):

OH Rate	x	DSC	=	
208%	x	\$ 2,623.10	=	\$ 5,462.36

Fixed Fee (FF)

FF Rate	x	DSC	=	
10%	x	\$ 2,623.10	=	\$ 262.31

Reimbursables

Itemize	
Mileage	\$ 93.00
Reprographics	\$ 200.00
	\$ -

Total Reimbursables \$ 293.00

Grand Total \$ 8,640.77

Prepared by _____

Date _____

City of Oak Harbor
Multi-Modal Facility

EXHIBIT G-2
BREAKDOWN OF SUBCONSULTANT'S OVERHEAD COST

Direct Labor	3,931,972.37	
Fringe Benefits		
1 FICA	588,475.08	7.2%
2 Unemployment	43,022.32	0.5%
3 Medical Aid and Industrial Insurance	27,043.59	0.3%
4 Company Insurance and Medical	488,477.90	6.0%
5 Vacation, Holiday, Sick Leave and Bereavement	732,760.76	8.9%
6 Commission, Bonuses / Pension Plan	378,573.87	4.6%
Total Fringe Benefits	2,258,353.52	27.6%
Overhead Rate on Fringes (Fringe/Direct Labor)	57.4%	
General Overhead		
7 State B&O Taxes	153,944.95	1.9%
8 Insurance	309,671.95	3.8%
9 Administration and Time Not Assignable	3,224,897.04	39.4%
10 Printing, Stationary, and Supplies	47,701.13	0.6%
11 Professional Services	167,027.85	2.0%
12 Travel Not Assignable	193,943.61	2.4%
13 Telephone and Telegraph Not Assignable	137,693.83	1.7%
14 Fees, Dues, Professional Meetings	48,259.72	0.6%
15 Utilities and Maintenance	6,040.48	0.1%
16 Professional Development	28,050.53	0.3%
17 Rent	1,217,837.34	14.9%
18 Equipment Support	310,930.57	3.8%
19 Office Miscellaneous, Postage	83,613.82	1.0%
Total Generated Overhead	5,929,612.82	72.4%
Overhead Rate on General Overhead (General/Direct Labor)	150.8%	
TOTAL	8,187,966.34	100%
Combined Overhead Rate	208.2%	

EXHIBITS-19

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**EXHIBIT G-1
SUBCONSULTANT FEE DETERMINATION - SUMMARY SHEET**

Project: City of Oak Harbor Multimodal Facility

Direct Salary Cost (DSC)

<u>Classification</u>	<u>Man Hours</u>	x	<u>Rate</u>	=	<u>Cost</u>
Principal	6	x	\$ 55.33		\$ 331.98
Project Manager	73	x	\$ 47.00		\$ 3,431.00
Senior Engineer	137	x	\$ 49.21		\$ 6,741.77
Senior Designer	12	x	\$ 40.20		\$ 482.40
AutoCAD	106	x	\$ 25.57		\$ 2,710.42
Admin.	32	x	\$ 18.51		\$ 592.32
Total DSC				=	\$ 14,289.89

Overhead (OH Cost - including Salary Additives):

OH Rate	x	DSC		
161%	x	\$ 14,289.89	=	\$ 23,006.72

Fixed Fee (FF)

FF Rate	x	DSC		
15%	x	\$ 14,289.89	=	\$ 2,143.48

Reimbursables

Itemize				
Printing, Deliveries, Travel		\$ 1,400.00		
		<u>\$ 1,400.00</u>		
Total Reimbursables				\$ 1,400.00

Grand Total

\$ 40,840.10

Prepared by

Claudia Nelson

Date 1/29/2010

**EXHIBIT G-2
BREAKDOWN OF SUBCONSULTANT'S OVERHEAD COST**

Fringe Benefits

FICA	13%
Unemployment	1%
Medical Aid and Industrial Insurance	0%
Vacation, Holiday, and Sick Leave	14%
Benefit & Pension Plan	18%
Bonuses & Incentives	4%
Total Fringe Benefits	50%

General Overhead

Administration and Time Not Assignable	55%
Office Supplies	3%
Professional Services	5%
Business Insurance and Taxes	9%
Travel Not Assignable	1%
Telephone and Telegraph Not Assignable	2%
Fees, Dues, Professional Meetings	2%
Utilities and Maintenance	2%
Professional Development	2%
Rent	15%
Maintenance and Repairs	1%
Other Operating Expenses	14%
Total Generated Overhead	111%
TOTAL	161%

**EXHIBIT G-2
BREAKDOWN OF SUBCONSULTANT'S OVERHEAD COST**

Fringe Benefits

FICA	13.8%
Unemployment	2.8%
Medical Aid and Industrial Insurance	1.4%
Company Insurance and Medical	16.6%
Vacation, Holiday, and Sick Leave	17.6%
Commission, Bonuses / Pension Plan	9.2%
Total Fringe Benefits	61.4%

General Overhead

State B&O Taxes	5.8%
Insurance	2.2%
Administration and Time Not Assignable	59.6%
Printing, Stationary, and Supplies	1.8%
Professional Services	0.6%
Travel Not Assignable	1.7%
Telephone and Telegraph Not Assignable	2.0%
Fees, Dues, Professional Meetings	0.6%
utilities and Maintenance (w/Rent)	0.0%
Professional Development	0.2%
Rent	19.5%
Equipment Support	2.6%
Office Miscellaneous, Postage	0.5%

Total Generated Overhead 97.08%

TOTAL 158.45%