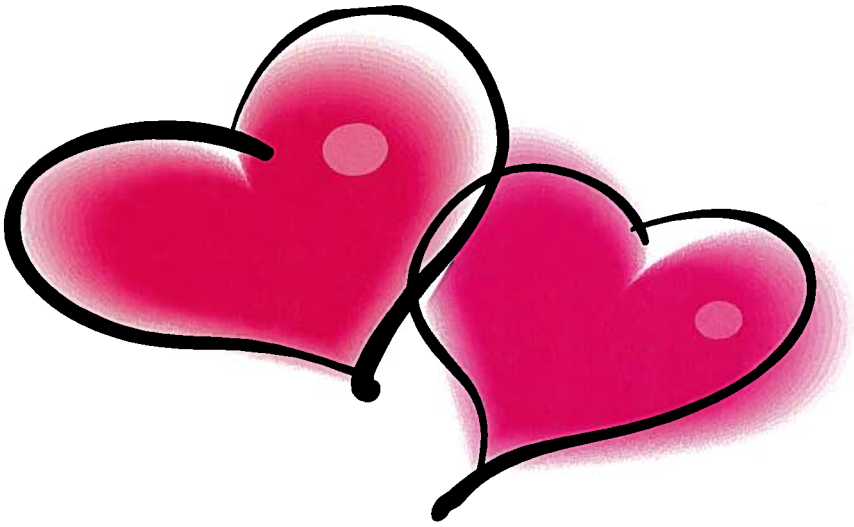
City of Oak Harbor
City Council Meeting
Agenda
for



February 14, 2011
6:00 p.m.

Oak Harbor City Council
CITY COUNCIL SPECIAL MEETING
Monday, February 14, 2011, 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

ROLL CALL

MINUTES 1/27/11 Workshop, 2/1/11 Regular Meeting

NON-ACTION COUNCIL ITEMS:

1. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

2. Consent Agenda:
   Page 22
   a. Noise Permit – Click Music.
   Page 25
   b. Noise Permit – Kiwanis Club.
   Page 28
   c. Excused Absence – Jim Campbell from the 5/3/11 and 5/17/11 City Council Meetings.
   Page 29
   d. Introduction – Draft Ordinance, LTGO Bond for Marina Project Redevelopment, Phase 2/Dredging.
   e. Approval of Accounts Payable Vouchers (Pay Bills).
   Page 53
3. Public Hearing – Report on Element Nightclub.
   Page 57
4. Construction Surveying Agreement – Fakkema and Kingma, for SE Pioneer Way Reconstruction Project.
   Page 100
5. Construction Management Agreement – KBA, Inc., for Pioneer Way Reconstruction Project.
   Page 147
6. Resolution – Marina Interfund Loan.
   Page 152
7. Agreement – OHFD Collective Bargaining Unit.
8. City Administrator's Comments.
9. Council Members' Comments.
   - Standing Committee Reports
10. Mayor's Comments.

ADJOURN

"Discovery consists of seeing what everybody has seen and thinking what nobody else has thought."
~ Jonathan Swift

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 Special Meeting
Tuesday, January 27, 2011, 6:00 p.m.
City Hall – Council Chambers

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

ROLL CALL

Mayor Jim Slowik
Five Members of the Council,
- Rick Almberg
- Jim Campbell
- Scott Dudley
- Beth Munns
- Jim Palmer

Paul Schmidt, City Administrator
Doug Merriman, Finance Director
Steve Powers, Development Services Director
Cathy Rosen, Public Works Director
Rick Wallace, Chief of Police
Mack Funk, Harbormaster
Mike McIntyre, Senior Services Director
Renée Recker, Executive Assistant to the Mayor

Absent:
- Danny Paggao, Mayor Pro Tem
- Bob Severns

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Continuation of Public Hearing from the January 18, 2011 City Council Meeting
Bond Ordinance – Marina Project Redevelopment, Phase Two / Dredging

Councilmember Dudley asked to be recused from this discussion. Finance Director Doug Merriman led the discussion with a PowerPoint (Exhibit A) titled *Marina Re-Development Financing.* Mr. Merriman is still working on bonding for this project in light of changes in the bond market. The PowerPoint illustrates where Mr. Merriman is to date and was organized into four sections:

1. **Ingredients of Marina Bond Issue**
   The overall bond issue is approximately $2,750,000 and is not a single bond; actual issue is 550 bonds at $5,000 each.
2. **Status of Revenue Bond Issue**
   Interest rates are the same as last week, the Marina is considered a "non-essential" function (more risk, more tendency for economic variations), and there is a weak buy pressure in the market for BAA_2 bonds. The issue could be deferred until rates settle with consideration toward choices 3 or 4.
3. **Alternative LTGO Bond Issue**
   With the existing bond market, LTGO bonds may be another opportunity. This type of bond would be backed by the full-faith of City revenues. Advantages include interest rates that are 1% to 1.5% lower, a higher demand bond, no 10% reserve requirement, and $200,000 savings over the bond's life.

Restrictions: these bonds are a formal pledge of City revenues and a reduction from non-voted debt capacity.

4. **Interim Financing**
   (Bond proceeds would move out to mid-March and a pending $760,000± invoice would require interim financing.) This would be an interfund loan from the Equipment Replacement Fund No. 502 in the amount of $2,550,000 with an interest rate of 1.0% to 1.5%. A resolution for an interfund loan would come before Council for the February 14, 2011 meeting.

As outlined in the PowerPoint attachment, revenue versus LTGO bonds, bond debt capacity, and interim financing, these were the recommendations:

1. Take no action on the Marina Revenue Bond,
2. Leave the Public Hearing open,
3. Staff will bring back this topic for the February 14, 2011 Council meeting.

Mayor Slowik reopened the Public Hearing at 6:20 p.m. but there were no comments.

Council Discussion

Discussion followed about the amount of funds in the Equipment Rental Fund ($6.1 million which includes the refuse trucks' purchase funds), the maturity date for an interfund loan (one to seven years), discussion about LTGO Bond rates (floating), and that bonds have a fixed rate at issue. An interfund loan would be for eleven months since this type of loan can only be created for a year or less. Going beyond a year risks permanent impairment of funds. If bond proceeds are obtained in March, the interfund loan would be immediately paid off. The City is still on the same timeframe; an interfund loan will get the City into March. Discussion continued regarding the different funding sources and the amount that would be requested for an interfund loan: If $1,000,000 is needed, why request $2,550,000 (Mr. Merriman is requesting a not-to-exceed amount of $2,550,000). Discussion followed about the timing for bonding/funding choices and that this timing is on track and not late. It is necessary to wait for construction numbers and the exact dollar amount. The City's BAA_2 rating and present interest rate climate also played into this timing. Discussion continued about the reduction from a non-voted debt capacity for LTGO Bonds and the difference between Revenue and LTGO Bonds.

MOTION: **Councilmember Munns moved to continue the public hearing and return this topic to the February 14, 2011 City Council meeting. The motion was seconded by Councilmember Almberg and carried unanimously.**

Councilmember Dudley returned to the meeting.

Standing Committee Format
City Administrator Paul Schmidt gave a PowerPoint presentation which illustrated the Revised Code of Washington language and AGO 2010 No. 9 language as presented in the agenda bill for review this evening. The City is in compliance as standing committees are set today, but the agenda bill, which proposes an amendment to the City Council Rules to assure compliance with the Open Public Meeting Act and City of Oak Harbor Standing Committee procedures, will make this clear and concise. The recommended action for this agenda bill's presentation during Council's March 1, 2011 meeting will be to amend Resolution No. 04-02, "Administration and Personnel Council Rules," to amend Rule No. 28 to provide notice of a Council quorum planning to attend a standing committee meeting.

Mr. Schmidt talked about the expansive definition of the term "action" which, as stated on Page 4 of AGO 2010 No. 9 said: *Would include deliberation or discussion of a decision they might eventually make.* Other cities using standing committee formats have taken final action in these committees but Oak Harbor's standing committees have never taken final action. Page 5 of AGO 2010 No. 9 stated: *This is not to suggest that Council members cannot attend committee meetings. We do not conclude that Council members who are not members of the committee are disqualified from attending what is otherwise an open public meeting; we merely conclude that if such a meeting is one at which the Council takes "action," then compliance with the Open Public Meetings Act is required. Moreover, even where the Council members' attendance constitutes a meeting of the Council under the Act, they are not prohibited from attending the standing committee meetings by the Act. Rather, as long as the Council follows the requirements for a special meeting under RCW 42.30.080, the members may attend and take action at the standing committee meeting.*

Mr. Schmidt noted that there have been thoughts on other options, and that past workshops were held 45 minutes prior to a regular Council meeting along with infrequent workshops on non-Council meeting nights. Mr. Schmidt also mentioned the substantial number of ad hoc committees that existed to address particular subjects. With the number of issues that came before Council and repetition of issues, the standing committee format seemed a better way for Council to stay informed. Oak Harbor's format is less formal than other cities' regularly-scheduled committees.

Council Discussion
Positive discussion followed about standing committees' usefulness and that this less formal approach allows team consideration. Formal presentations then come before the whole Council in regular business meetings. Council's workshops are also very useful and are videotaped. Discussion continued about the new paragraphs of the motion to amend Resolution No. 04-02 and a recommendation to extend notification hours in paragraph two from 48 to 72 hours. Council also talked about attending outside functions without creating a quorum – do not discuss City business and be self-policing in conduct. Discussion followed about the broad definition of "action" and that this amendment will define and clarify attendance. Discussion continued about the use of substitute Council members if a member will be absent and who calls for the

substitution – the need for protocol. It was noted that a standing committee meeting can run with two members if there is an absence. Everyone has the right to attend, but if a quorum exists then the meeting would be adjourned and subsequently noticed as a special meeting (two notices).

Discussion followed that it appears the City was wrong with a counter remark that the City was not in the wrong since this is a new opinion from the Attorney General's office and the City did not take the viewpoint of this opinion. Mr. Schmidt added that the standing meeting in question was attended without members knowingly trying to violate the Open Public Meetings Act. The City is in good stead and needs to move on with the business of running the City. Discussion continued about the City Attorney's absence from this meeting and that this evening's meeting presented the Attorney General's opinion which is not the same as our City Attorney's opinion. Attorneys can and do have differing opinions. This presentation was meant for Council to address the operation of City Council, the business of Council, and the standing committee format.

Discussion continued regarding the locations of standing committee meetings, the early hour of two of these meetings, and the recommendation that they all be moved into Council Chambers and videotaped to keep the meetings accessible for the public. Reserve funds could pay for televised taping. Mayor Slowik noted that this evening's meeting is the fourth of eight televised meetings and Muni Issues this month and the City is not working behind a shroud of secrecy. The standing committees' locations lend access to deeper discussion when more department staff can attend them in their respective department locations. These have always been open public meetings. Council discussion returned to an absent Council member finding a replacement. Even if it is not necessary, it is a good thing to do.

Mayor Slowik stated for the record: One of the commitments to Councilmember Campbell is that the City would put this issue before the Attorney General and then would comply with the Attorney General and that is what we have tried to do tonight. The City Attorney was absent so Council could discuss the Attorney General's opinion.

ADJOURN

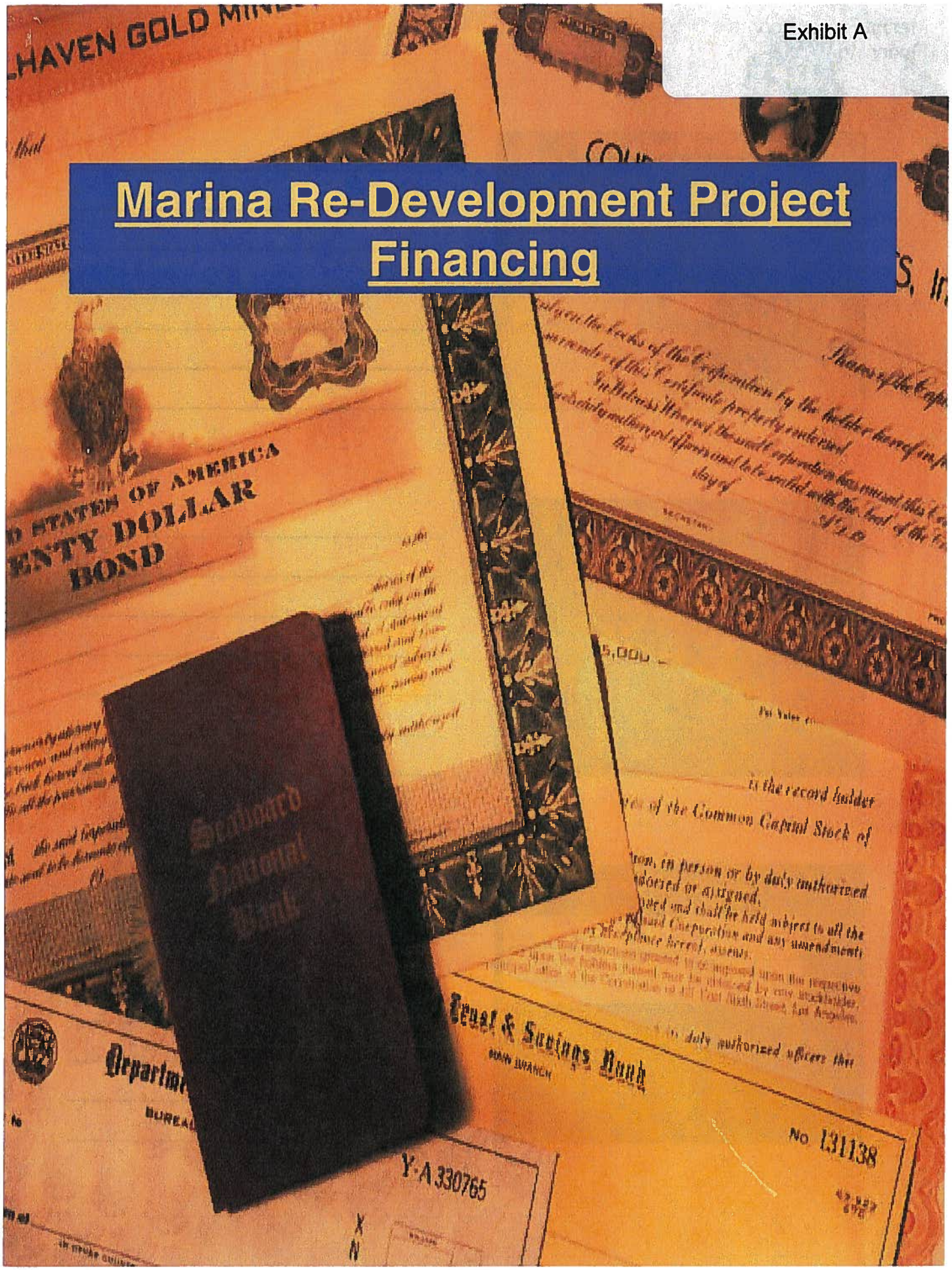
With no other discussion coming before Council, Mayor Slowik adjourned the meeting at 7:20 p.m.

_____

Connie T. Wheeler
City Clerk

Exhibit A

Marina Re-Development Project Financing



Marina Redevelopment/Dredge Project Financing

Marina Re-Development Project Financing

1) Ingredients of Marina Bond Issue

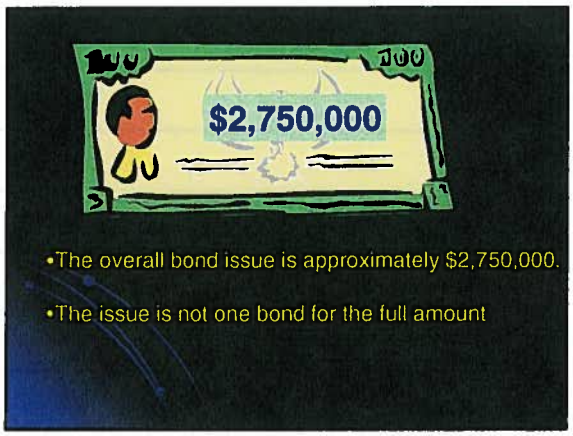
2) Status of Revenue Bond Issue

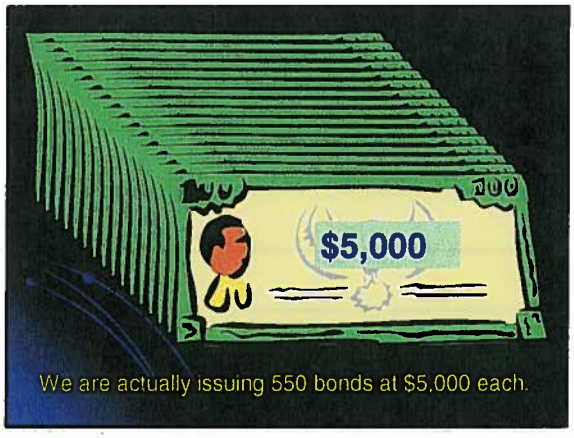
3) Alternative LTGO Bond Issue

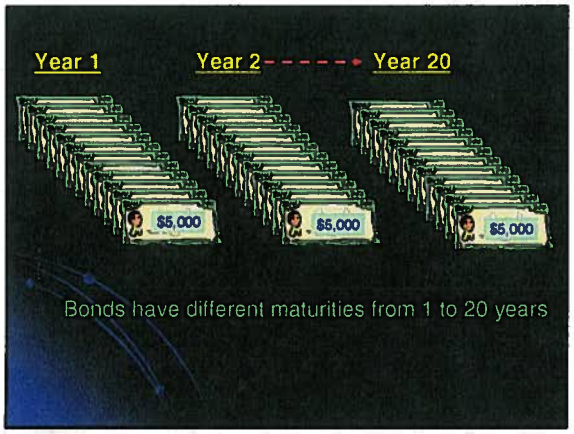
4) Interim Financing

- With a typical yield curve, rates tend to increase over time
- Current bond spans 1.7% at 1 year to 6.0% at 20 years
- Average rate is approximately 5.7%

Marina Redevelopment/Dredge Project
Financing

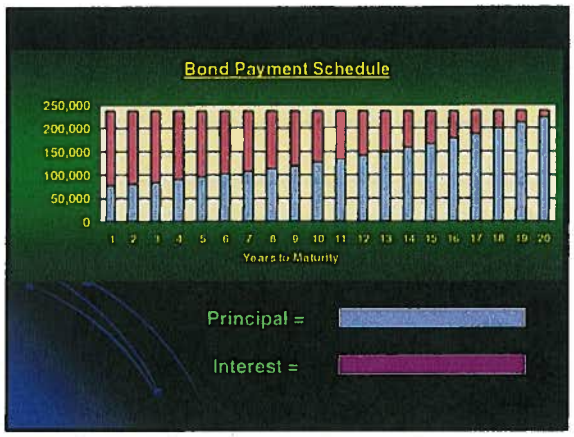


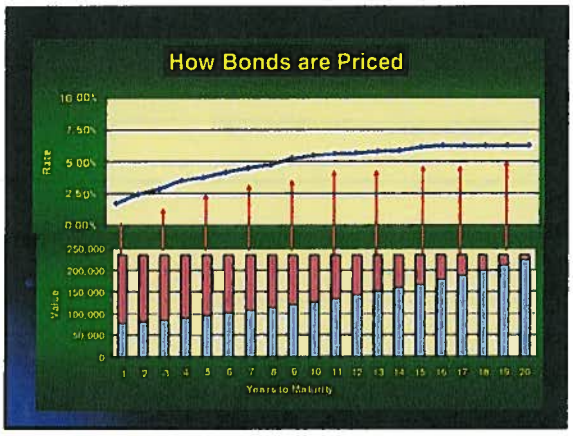


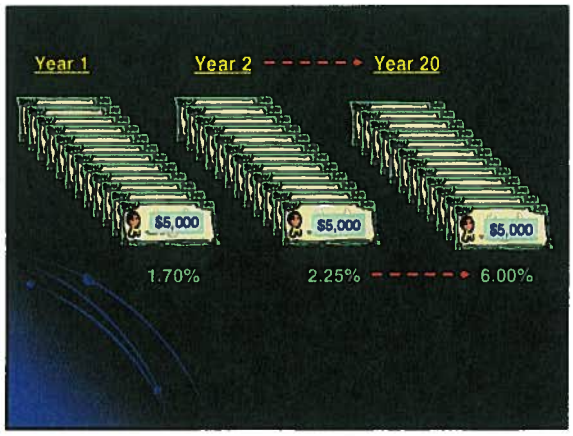


9

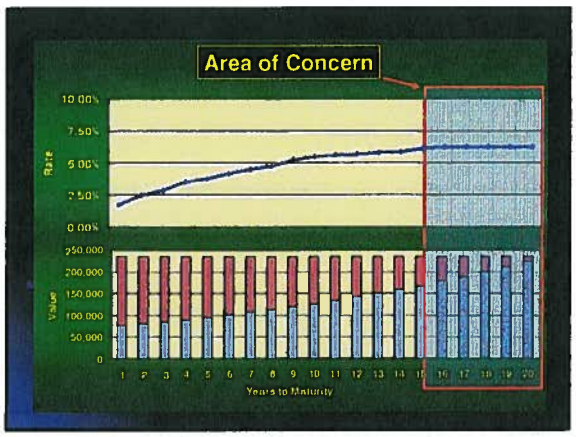
Marina Redevelopment/Dredge Project
Financing







10



Current Status of Revenue Bond Issue

- Interest Rates Are the Same as Last Week
- Weak Buy Pressure in Market for BAA_2 Bonds
- "Non-Essential" Function

Choices to Consider at this point:

1) Defer issue to see if rates settle.
   - issue interim financing (interfund loan)
   - No guarantee that rates will improve.
   - No guarantee that demand will improve

2) Consider issuing LTGO Bonds
   - Market makes this an opportunity.
   - Backed by full-faith of City revenues
   - Issue interim financing (interfund loan)

11

LTGO Bonds:

- Advantages:
  - Interest rates 1% to 1.5% lower.
  - Higher demand for LTGO bonds
  - No 10% reserve requirement.
- Restrictions:
  - "Formally" pledges City revenues.
  - Reduction from non-voted debt capacity.

Revenue vs. LTGO: Two areas of analysis:

- Financial:
  - LTGO will save @ $200,000 over bond life.
  - No 10% reserve requirement.
- Pledging of City revenues:
  - The "Perfect Storm" scenario – Default.
  - Pledge of City revenues.
    - Revenue Bond Default - informal
    - LTGO Bond Default - formal

Bond Debt Capacity:

- Legal limit on outstanding bonds
  - Based as a percent of property tax valuation
  - Does not mean how much we can afford.
  - Does not apply to enterprise funds.
- Will the Marina bond affect future borrowing?
  - Most likely no:
    - Future projects would likely be "voted".
    - Current revenue environment is the primary restrictor for non-voted.

12

Interim Financing:

- Interfund Loan
  - Equipment Replacement Fund #502
  - In the amount of $2,550,000
  - Interest rate: 1.0 to 1.5%
- Process:
  - Resolution for Interfund loan will be brought forward at the February 14, 2011 meeting.

Recommendation:

- Take no action on the Marina Revenue Bond.
- Leave Public Hearing Open.
- Staff will bring back topic at the February 14 Council Meeting

13

City Council Meeting
Tuesday, February 1, 2011, 6:00 p.m.
City Hall – Council Chambers

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

INVOCATION Bishop Mark Soptich, Church of Jesus Christ of Latter Day Saints

Mayor Slowik advised members of the Council that Item #5, Construction Management Agreement – KBA, Inc., for Pioneer Way Reconstruction Project was not ready for Council consideration and asked for a motion that this item be moved to a later date. **On motion of Councilmember Munns and second by Councilmember Campbell, Item #5 was moved to a later date.**

Mayor Slowik advised that Councilmember Palmer is ill and asked for a motion to excuse his absence. **On motion of Councilmember Severns and second by Councilmember Munns, Councilmember Palmer's absence was excused.**

ROLL CALL

Mayor Jim Slowik
Six Members of the Council,
- Rick Almberg
- Jim Campbell
- Scott Dudley
- Beth Munns
- Danny Paggao
- Bob Severns

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Doug Merriman, Finance Director
Steve Powers, Development Services Director
Mike McIntyre, Senior Services Director
Cathy Rosen, Public Works Director
Eric Johnston, City Engineer
Rick Wallace, Chief of Police
Mark Soptich, Fire Chief

Absent:
Councilmember Jim Palmer

MINUTES

MOTION: Councilmember Almberg moved to approve the 1/13/11 Workshop Minutes and the 1/18/11 Regular Meeting minutes. The motion carried unanimously. Mayor ProTem Paggao abstained as he was not in attendance at either meeting [excused absences].

NON-ACTION COUNCIL ITEMS

Proclamation – National African American History Month

Councilmember Severns read the Proclamation which was received by City Administrator Schmidt.

Proclamation – Human Trafficking Awareness Day

Councilmember Almberg read the Proclamation which was received by Soroptimist President Sarah Konopik. Ms. Konopik introduced the following Soroptimists who were also in attendance: Connie Steadman, Sara Russell, Nora O'Connell-Balda, Stephanie Smith, Nancy

Fey, Wendy Rue, Barbara Berry Jacobs, Christine Dudley, Patty Cohen, Barbara Thelan, Geri Morgan and Jim Riney. Ms. Konopik thanked the Mayor and City Council members for recognizing the continued commitment to end human trafficking.

Public Comments

Chairman of the Board of Island County Commissioners Angie Homola spoke regarding a letter from the Board of Commissioners to Admiral Gary Roughhead, Chief of Naval Operations, supporting the continued location of future P-8A Squadrons at Naval Air Station Whidbey Island.

Ms. Homola discussed current legislative issues regarding legal noticing, public records, GMA requirements, Real Estate Excise Tax and the ferry system. She discussed the possibility of a joint work session between the Commissioners and the Council regarding Veteran's Property Tax.

David Harrington, 1524 N. E. Narrow, Oak Harbor – expressed concern regarding the cost of the Pioneer Way Improvement project and suggested marketing funding should be spent on all businesses – not just those located on Pioneer Way. He suggested the Council commence a budget program plan to repair and rehabilitate the City's streets.

Corey Johnson, 2080 Boulder Meadow Lane, Oak Harbor - discussed the proposed Goldie Road annexation. He expressed concern regarding associated taxes and fees. He also suggested the Council consider structuring stormwater fees similar to the fees in Island County.

Wayne Locke, 1962 NE Sumner Drive, Oak Harbor – discussed the need for more information regarding the proposed Goldie Road annexation. Mayor Slowik noted there would be a meeting in the near future with the interested parties to address concerns and respond to questions regarding the proposal.

Gordon Koetje, 930 Ocean Bluff Lane, Coupeville – expressed concern regarding the annexation process and public notification.

Bill Massey, 41 NE Midway Boulevard, Oak Harbor - expressed concern regarding the annexation process, public notification and property tax.

Mayor Slowik advised the interested parties he will follow up on comments and questions expressed regarding the Goldie Road annexation.

There being no further comment the public comment period was closed.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

A. Excused Absences – Mayor and Councilmembers from 2/15/11 Regular Meeting and meeting date change to 2/14/11.
B. Excused Absence – Beth Munns from the 2/14/11 meeting.
C. Approval of Accounts Payable Vouchers

MOTION: Councilmember Campbell moved to approve Consent Agenda Items A through C with Item C paying Accounts Payable check numbers 144549-144556 in the amount of $716.59, Accounts Payable check number 144557 in the amount of $233.01, Accounts Payable check numbers 144558-144701 in the amount of $416,780.80, Payroll check numbers 94423-94453 in the amount of $634,180.42 and Payroll check numbers 94454-94483 in the amount of $40,145.81. The motion was seconded by Councilmember Munns and carried unanimously.

Contract Award – Strider, Inc. Pioneer Way Reconstruction Project.
City Engineer Johnston presented this agenda bill to award a contract for construction of the SE Pioneer Way Reconstruction project to Strider Construction in the amount of $3,864,363.27. He advised Council Strider Inc. recently successfully completed a similar project for the City of Arlington and will use the same construction team for the Pioneer Way project. Mr. Johnston discussed bidder comparisons and the difference between the Engineer's estimate and the bids received. He reviewed project costs and the construction contingency fund. Mr. Johnston advised Council there will be a open house for the City's Pioneer Way office on February 22, 2011 between the hours of 5:30 p.m. and 7:30 p.m. The project ground breaking will be held March 1, 2011 at a time and location to be determined. He added every Tuesday morning at 8:30 a.m. at the Pioneer Way office staff will be available to meet with interested parties to provide information and address questions.

Mayor Slowik opened the meeting to public comment.

David Harrington, 1524 N. E. Narrow, Oak Harbor – discussed the construction contingency fund.

Chairman of the Board of Island County Commissioners Angie Homola – discussed the procedure involved with addressing mathematical errors.

City Engineer Johnston addressed questions of the public and Council regarding the contingency fund and adjustments made to address mathematical errors. He added all of the bids contained math errors which is not uncommon. He noted the order of the bidders did not change due to the math errors.

There being no further comment the public comment period was closed.

Council discussion followed regarding traffic flow, the possibility of working at night, the WSDOT resurfacing project, additional parking on the south side of Pioneer, public art, incentives to the contractor to finish early, the definition of substantial completion, procedural steps in processing change orders, possible uses for the savings realized from the projected project cost to the bid amount and the need to provide regular progress reports to the City Council.

City Engineer Johnston responded to questions raised during Council discussion. With regard to night work, he advised Council that staff left construction hours flexibility to the contractor as project needs become apparent. He added staff can instruct the contractor to work at night if that is what the Council deems appropriate. With regard to alternative parking, Mr. Johnston advised the City has acquired the necessary property rights on the south side of Pioneer as discussed during the project planning phase and additional parking is included in the project. Mr. Johnston explained the incentive/penalty portion of the contract. With regard to project status reports, Mr. Johnston advised he will provide monthly reports to the Council.

MOTION: Councilmember Munns moved to authorize the Mayor to sign a contract with Strider Construction in the amount of $3,864,364.27 and authorize the City Engineer to approve changes to the contract up to $350,000. The motion was seconded by Councilmember Almberg. The motion carried 5:1 - Councilmember Dudley opposed.

Councilmember Dudley suggested the Council be fiscally conservative with the project savings and the City should plan for street improvements throughout the City.

Mayor Slowik noted this contract award is a historic moment for the City. He discussed the 35 years of planning and studying this project has undergone and expressed his appreciation to the staff members involved with putting this project together. He added he is proud to get this project started.

Contribution to Whidbey-Camano Island Tourism Board

Finance Director Doug Merriman advised the Council the purpose of the agenda bill is to provide the City Council an opportunity to discuss the current level of financial contribution from the City of Oak Harbor to the Island County Joint Tourism Board. He added this item had been placed on the agenda at the request of Councilmember Campbell.

Councilmember Campbell noted he is the Council representative for the Whidbey Camano Island Tourism Board. Mr. Campbell discussed the funding changes made to the Tourism Board partially as a result of the feeling that Oak Harbor was not being promoted to a level that reflected the amount of funding given. He added he has seen a terrific improvement in the way the Board is now operating and feels that Oak Harbor is not being left out of the current marketing efforts. He introduced Island County Tourism Marketing Manager Sherrye Wyatt.

Ms. Wyatt gave a power point presentation for Council and members of the audience. During her presentation she discussed the tourism industry in general on a national, state and county level, Island County travel spending and annual revenue for Oak Harbor hotels. She discussed the Island County Joint 2% Tourism Committee which consists of eighteen committee members representing stakeholders and representatives from Oak Harbor, Langley, Coupeville and unincorporated areas including Camano Island. She added lodging tax collections are up 3.1%. Ms. Wyatt discussed advertising methods which include a website, radio and television, the Washington State travel planner and reviewed public relations highlights for 2010. She added the Board hosts travel writers throughout the year and more will be coming in 2011. She noted

she works closely with Washington State Tourism and the Greater Oak Harbor Chamber of Commerce.

Mayor Slowik opened the meeting to public comment. There being none, the comment period was closed.

Councilmember Munns advised Ms. Wyatt she was the Oak Harbor City Council representative on the Board prior to Ms. Wyatt's employment. She relayed past concerns with the Board and the feeling that Oak Harbor was not getting its money's worth in the marketing efforts undertaken at that time. She added it appears Ms. Wyatt is off to a wonderful start in improving the marketing efforts and she is not opposed to the idea of increasing Oak Harbor's contribution but she would like to wait and see how things go. Ms. Munns added it appeared from the Tourism Board's budget, they are adequately funded for 2011 and 2012 and she would be willing to review the matter again prior to the 2013 budget.

Councilmember Paggao asked for information on the contributions by the other municipalities. He discussed the reason the contribution was reduced by the City. He noted he would be in favor of an increase in funding commensurate with other municipalities.

Councilmember Almberg asked how tourism information is separated between the municipalities and how the Greater Oak Harbor Chamber of Commerce marketing efforts are included in the statistics. He asked how many hotel rooms are available in each of the municipalities. He would like to see where funds are spent relative to where the funding comes from and how the Board measures what is spent in each specific jurisdiction.

Councilmember Severns noted the City's current budget is set. He expressed appreciation for Ms. Wyatt's presentation.

Councilmember Dudley discussed the ramifications to the City budget of changing the funding to 2% as opposed to a contribution of $20,000. He asked what process would have to be followed should the Council choose to increase their contribution.

Finance Director Merriman advised a budget amendment would be required to increase the current adopted budget amount and it would also require a review by the City's Lodging Tax Advisory Committee.

Councilmember Dudley advised the Council to keep advertising/marketing dollars close to home and the local chamber has a better idea of where the dollars could be spent.

Mayor Slowik discussed state park attendance and the fact there is a direct relationship with advertising that all of the agencies do. He noted as ferry service improves, tourism will increase.

Councilmember Campbell discussed contributions from other municipalities and asked about the 2% grant funding that is given to local organizations.

Councilmember Munns advised that funding goes toward off-island advertising for events such as the Rotary Car Show and Driftwood Days. She noted funding is also given to the Greater Oak Harbor Chamber of Commerce.

Mayor Slowik suggested this matter be referred to staff for further review and Council consideration at a future date. He asked staff to prepare an agenda bill to include detailed information on what effect the funding has on the Oak Harbor budget and includes information on the local chamber of commerce and comparable cities such as Langley, Coupeville and Island County.

City Administrator's Comments
Mr. Schmidt discussed the upcoming Special Arts Commission meeting on February 7th, 2011. He noted the purpose of the meeting is to receive presentations from artists who have submitted proposals for the Pioneer Way Improvement Project. He noted the images on the flyer advertising the meeting are an example of what has been submitted and are not in any type of preference order. He added the meeting would be taped for broadcast on Channel 10.

Mr. Schmidt discussed the upcoming City Legislative Action Conference (CLAC) that will be held February 15-17 in Olympia. He noted the Conference is the reason the February 15, 2011 City Council meeting date was moved to February 14, 2011. Mr. Schmidt advised that February 21, 2011 is President's Day and City offices will be closed. Mr. Schmidt noted the Legislature is now in session and there are several bills and proposals he is following. Mr. Schmidt concluded by noting the flags are at half staff in honor of a Monroe Correctional Facility Officer who was recently murdered by an inmate.

Council Members' Comments
Council Members gave their respective standing committee reports and announced upcoming standing committee meeting dates.

Councilmember Munns discussed the upcoming AWC City Legislative Action Conference and noted the AWC President will sign a Washington Armed Forces Community Covenant on behalf of Washington Cities. She added the Covenant is intended to relay Washington State's commitment to building partnerships with the military that support the strength, resilience and readiness of services member and their families and recognizes the positive impact the 66,000 active duty and reserve military have on our state, economy and communities. Ms. Munns discussed current Legislative bills and encouraged members of the public to access the information on the AWC website and contact their local Representatives with their ideas and comments.

Councilmember Almberg expressed concern regarding the lack of trash receptacles in the WalMart, Albertsons shopping center area and the problem it has caused. He added he is waiting to hear back from some of the managers and strongly encouraged the businesses in the area to provide trash receptacles near cart corrals.

Councilmember Dudley noted the work done by Boy Scout Troop 4063 to replace the Welcome to Oak Harbor sign located on SR 20 between the 7-11 and Whidbey Island Bank and

surrounding area and congratulated them for their efforts. He discussed a recent food drive held by an Interfaith Coalition which collected 3,000 pounds of food.

Mayor's Comments
Mayor Slowik advised he had a meeting scheduled on February 2, 2011 with Naval officials regarding numerous topics including the wastewater plant, animal control and mutual aid. Mr. Slowik discussed a recent Regional Mayor's meeting, hosted by the City for local Mayors which was followed by a tour of Naval Air Station. He added Captain Johnston gave a State of the Station presentation and the meeting was very positive. He noted the Regional Mayor's meetings are held quarterly and each Mayor takes a turn. He thanked the naval officials for their efforts in the meeting.

ADJOURN
With no other business coming before Council, Mayor Slowik adjourned the meeting at 8:20 p.m.

_____
Karen Crouch
Deputy City Clerk

City of Oak Harbor
City Council Agenda Bill

Bill No. 1

Date: FEBRUARY 14, 2011

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

Agenda Bill No. NA 2A
Date: February 14, 2011
Subject: Noise Permit – Click Music

FROM: Paul Schmidt, City Administrator PM

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from Click Music for amplified sound associated with an outdoor music event.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) will not disregard the rights of others, or; 2) is temporary, or: 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

Click Music has submitted a Noise Permit request for amplified sound associated with an outdoor music event scheduled for March 25, 2011 between the hours of 2:00 p.m. – 8:00 p.m. The amplified sound will consist of a PA system and speakers for singing and music.

The Application was reviewed by Fire, Police, and Public Works Departments. A condition of approval for the permit will be to face the speakers away from the campground area.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Grant a noise permit for amplified sound to Click Music.

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization:	Click Music
Location of Event:	Windjammer Park Gazebo and surrounding area.
Dates of Event:	March 25, 2011
Hours of Operation:	2:00 p.m. to 8:00 p.m.
Permitted Noise:	PA system and speakers for live band and microphones for singing
Approval Conditions:	Face speakers away from the campground area.
Date of City Council Approval:	

Issued this day of

_____

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. NA 2B
Date: February 14, 2011
Subject: Noise Permit – Kiwanis Club

FROM: Paul Schmidt, City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from the Oak Harbor Kiwanis Club for amplified sound associated with a Community Easter Sunrise Service event.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) will not disregard the rights of others, or; 2) is temporary, or: 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

The Oak Harbor Kiwanis Club has submitted a Noise Permit request for amplified sound associated with the Community Easter Sunrise Service event scheduled for April 24, 2011. The request states a small keyboard and microphone will be connected to an amplifier for use during the service.

The Application was reviewed by Fire, Police, and Public Works Departments. A condition of approval for the permit will be to face the speakers away from the campground area.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Grant a noise permit for amplified sound to the Oak Harbor Kiwanis Club for the Community Easter Sunrise Service.

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization:	Oak Harbor Kiwanis Club
Location of Event:	Near the Windmill at Windjammer Park – north side of the lagoon
Date of Event:	April 24, 2011
Hours of Operation:	6:00 a.m. to 8:00 a.m.
Permitted Noise:	Amplified sound associated with a keyboard and microphone
Approval Conditions:	Face speakers away from the campground
Date of City Council Approval:	

Issued this day of

_____

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

City of Oak Harbor
City Council Agenda Bill

Bill No. 4A 2d
Date: February 14, 2011
Subject: Excused Absence Request
Councilmember Jim Campbell

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

The purpose of this agenda bill is to present and approve Councilmember Jim Campbell's excused absence request from the May 3, 2011 and May 17, 2011 City Council meetings.

AUTHORITY

Per RCW 35A.12.060: *...A council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council.*

SUMMARY STATEMENT

Councilmember Campbell has submitted an excused absence request since he will not be able to attend the May 3 and May 17, 2011 City Council meetings.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve Councilmember Jim Campbell's excused absence from the May 3 and May 17, 2011 City Council meetings.

ATTACHMENTS

None

MAYOR'S COMMENTS

City of Oak Harbor
City Council Agenda Bill – Introduction Only

Bill No. CHA 2D
Date: February 14, 2011
Subject: Bond Ordinance: Marina Project Redevelopment Phase 2/Dredge

FROM: Doug Merriman, Finance Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Jim Slowik, Mayor
Paul Schmidt, City Administrator
Approved to form by bond counsel, Foster Pepper PLLC

PURPOSE

An ordinance of the City of Oak Harbor, Washington, relating to the City's small boat harbor and marina; providing for the issuance of approximately $2,560,000 par value of Limited Tax General Obligation (LTGO), 2011, of the City to provide part of the funds with which to pay the cost of making redevelopment improvements and dredging work to the Oak Harbor Marina; to fund a debt service reserve for the bonds herein authorized and to pay the costs of issuance and sale of such bonds; fixing the date, form, maturities, interest rates, terms and covenants of such bonds; establishing a bond redemption account and a construction account; and approving the sale and providing for the delivery of the bonds to Martin Nelson & Company of Seattle, Washington.

AUTHORITY

The City has authority under RCW 35A.11.020 to regulate its internal affairs and to provide for the improvement of public ways in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns and authority under RCW 35A.40.080 to issue bonds, coupons and warrants and other forms of debt.

SUMMARY STATEMENT:

This ordinance is the guiding document authorizing the sale of the LTGO bonds required to finance the Oak Harbor Marina Redevelopment Phase 2/Dredge Project. The ordinance specifies all of the financial terms and agreements pertaining to the bond issue, including the proposed use of the bond proceeds and the proposed repayment schedule.

STANDING COMMITTEE REVIEW:

This item was reviewed by the Finance Standing Committee on February 9, 2011.

RECOMMENDED ACTION;

1. Set a public hearing date for March 1, 2011.

ATTACHMENTS:

Proposed bond ordinance.

DRAFT DATED 02/09/2011

CITY OF OAK HARBOR, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE of the City of Oak Harbor, Washington, relating to contracting indebtedness; providing for the issuance of $2,560,000.00 par value of Limited Tax General Obligation Bonds, 2011, of the City for general City purposes to provide funds with which to pay a part of the cost of improvements to the City's Marina; fixing the date, form, maturities, interest rates, terms and covenants of the bonds; establishing a bond redemption fund and a construction account; and approving the sale and providing for the delivery of the bonds to Martin Nelson & Company of Seattle, Washington.

Passed March 1, 2011

This document prepared by:

Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 447-4400

TABLE OF CONTENTS

CITY OF OAK HARBOR, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE of the City of Oak Harbor, Washington, relating to contracting indebtedness; providing for the issuance of $2,560,000.00 par value of Limited Tax General Obligation Bonds, 2011, of the City for general City purposes to provide funds with which to pay a part of the cost of improvements to the City's Marina; fixing the date, form, maturities, interest rates, terms and covenants of the bonds; establishing a bond redemption fund and a construction account; and approving the sale and providing for the delivery of the bonds to Martin Nelson & Company of Seattle, Washington.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Recitals and Findings. The City of Oak Harbor, Washington (the "City") makes the findings and determinations set fort below.

(a) Background. The City now owns, operates and maintains a small boat harbor and marina (the "Marina") constructed pursuant to Ordinance No. 372, as the Marina has been added to, bettered and extended.

(b) The City's Marina requires various improvements and additions, described in Exhibit A, the estimated cost of which is $_____, and the City does not have available sufficient funds to pay the cost.

(c) The City Council specifies, adopts and orders the carrying out of the improvements to the Marina, comprising the Project described in Exhibit A, which is incorporated by this reference. The life of the improvements comprising the Project is declared to be at least equal to the term of the Bonds. The cost of carrying out the improvements shall be paid from the proceeds of the Bonds and from other money available to the City for such purpose.

(d) Martin Nelson & Company has presented a Bond Purchase Agreement offering to purchase the Bonds under the terms and conditions as set forth in this ordinance.

(e) Based on the foregoing, the City Council therefore determines that it is necessary and in the best interest of the City to issue and sell the Bonds to pay the cost of constructing such improvements to the Marina and to pay the costs of issuance and sale of the Bonds.

Section 2. Debt Capacity. The assessed valuation of the taxable property within the City as ascertained by the last preceding assessment for City purposes for the calendar year 2011 is $[1,640,900,593], and the City has no outstanding general indebtedness evidenced by either limited tax general obligation bonds incurred within the limit of up to 1-1/2% of the value of the taxable property within the City permitted for general municipal purposes without a vote of the qualified voters therein or unlimited tax general obligation bonds incurred within the limit of up to 2 1/2% of the value of the taxable property within the City for capital purposes only, and the amount of indebtedness for which bonds are authorized herein to be issued is $2,560,000.00.

Section 3. Authorization of Bonds. The City shall borrow money on the credit of the City and issue negotiable limited tax general obligation bonds evidencing that indebtedness in the amount of $2,560,000.00 for general City purposes to provide the funds to pay part of the cost of making improvements to the Marina as provided in the City's Oak Harbor Marina Redevelopment Phase 2 – Dredging, more particular described in Exhibit A to this ordinance (the "Project") and to pay the costs of issuance and sale of the bonds (the "costs of issuance"). The general indebtedness to be incurred shall be within the limit of up to 1-1/2% of the value of the taxable property within the City permitted for general municipal purposes without a vote of the qualified voters therein.

Section 4. Description of Bonds. The bonds shall be called Limited Tax General Obligation Bonds, 2011, of the City (the "Bonds"); shall be in the aggregate principal amount of $2,560,000.00; shall be dated their date of initial delivery; shall be in the denomination of $5,000 or any integral multiple thereof within a single maturity; shall be numbered separately in the manner and with any additional designation as the fiscal agent of the State of Washington (as the same may be designated by the State of Washington from time to time) (the "Bond Registrar") deems necessary for purposes of identification; shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) payable semiannually on each June 1 and December 1, commencing December 1, 2011, to the maturity or earlier redemption of the Bonds; and shall mature on December 1 in years and amounts and bear interest at the rates per annum as follows:

Maturities	Principal Amounts	Interest Rates	Maturities	Principal Amounts	Interest Rates

The life of the capital facilities to be financed with the proceeds of the Bonds exceeds the term of the Bonds.

Section 5. Registration and Transfer of Bonds. The Bonds shall be issued only in registered form as to both principal and interest and shall be recorded on books or records maintained by the Bond Registrar (the "Bond Register"). The Bond Register shall contain the name and mailing address of the owner of each Bond and the principal amount and number of each of the Bonds held by each owner. Bonds surrendered to the Bond Registrar may be exchanged for Bonds in any authorized denomination of an equal aggregate principal amount and of the same interest rate and maturity. Bonds may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall

be without cost to the owner or transferee. The Bond Registrar shall not be obligated to exchange or transfer any Bond during the 15 days preceding any principal payment or redemption date.

The Bonds initially shall be registered in the name of Cede & Co., as the nominee of The Depository Trust Company, New York, New York ("DTC"). The Bonds so registered shall be held in fully immobilized form by DTC as depository in accordance with the provisions of a Blanket Issuer Letter of Representations dated December 8, 1997 between the City and DTC (as it may be amended from time to time, the "Letter of Representations"). Neither the City nor the Bond Registrar shall have any responsibility or obligation to DTC participants or the persons for whom they act as nominees with respect to the Bonds regarding accuracy of any records maintained by DTC or DTC participants of any amount in respect of principal of or interest on the Bonds, or any notice which is permitted or required to be given to registered owners hereunder (except such notice as is required to be given by the Bond Registrar to DTC).

For as long as any Bonds are held in fully immobilized form, DTC, its nominee or its successor depository shall be deemed to be the registered owner for all purposes hereunder and all references to registered owners, bondowners, bondholders or the like shall mean DTC or its nominee and, except for the purpose of the City's undertaking herein to provide continuing disclosure, shall not mean the owners of any beneficial interests in the Bonds. Registered ownership of such Bonds, or any portions thereof, may not thereafter be transferred except: (i) to any successor of DTC or its nominee, if that successor shall be qualified under any applicable laws to provide the services proposed to be provided by it; (ii) to any substitute depository appointed by the City or such substitute depository's successor; or (iii) to any person if the Bonds are no longer held in immobilized form.

Upon the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository, or a determination by the City that it no longer wishes to continue the system of book entry transfers through DTC or its successor (or any substitute depository or its successor), the City may appoint a substitute depository. Any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it.

If (i) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (ii) the City determines that the Bonds are to be in certificated form, the ownership of Bonds may be transferred to any person as provided herein and the Bonds no longer shall be held in fully immobilized form.

Section 6. Payment of Bonds. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be paid by checks or drafts of the Bond Registrar mailed on the interest payment date to the registered owners at the addresses appearing on the Bond Register on the 15th day of the month preceding the interest payment date or, if requested in writing by a registered owner of Bonds prior to the applicable record date, by wire transfer on the interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the registered owners to the Bond Registrar. Notwithstanding the foregoing, for as long as the Bonds are registered in the name of DTC or its nominee, payment of principal of and interest on the Bonds shall be made in the manner set forth in the Letter of Representations.

Section 7. Redemption Provisions and Open Market Purchase of Bonds. Bonds maturing in the years 2011 through 20__, inclusive, shall be issued without the right or option of the City to redeem those Bonds prior to their stated maturity dates. The City reserves the right

and option to redeem the Bonds maturing on or after December, 20__, prior to their stated maturity dates at any time on or after December 1, 20__, as a whole or in part (within one or more maturities selected by the City and randomly within a maturity in such manner as the Bond Registrar shall determine), at par plus accrued interest to the date fixed for redemption.

Bonds maturing in 20__ are Term Bonds and, if not redeemed under the optional redemption provisions set forth above or purchased in the open market under the provisions set forth below, shall be called for redemption randomly (in such manner as the Bond Registrar shall determine) at par plus accrued interest on December 1 in years and amounts as follows:

Mandatory Redemption Years	Mandatory Redemption Amounts
*	

*Maturity

If the City redeems under the optional redemption provisions, purchases in the open market or defeases Term Bonds, the par amount of the Term Bonds so redeemed, purchased or defeased (irrespective of their actual redemption or purchase prices) shall be credited against one or more scheduled mandatory redemption amounts for those Term Bonds. The City shall determine the manner in which the credit is to be allocated and shall notify the Bond Registrar in writing of its allocation at least 60 days prior to the earliest mandatory redemption date for that maturity of Term Bonds for which notice of redemption has not already been given.

Portions of the principal amount of any Bond, in installments of $5,000 or any integral multiple thereof, may be redeemed. If less than all of the principal amount of any Bond is redeemed, upon surrender of that Bond to the Bond Registrar, there shall be issued to the registered owner, without charge therefor, a new Bond (or Bonds, at the option of the registered

owner) of the same maturity and interest rate in any of the denominations authorized by this ordinance in the aggregate principal amount remaining unredeemed.

Notwithstanding the foregoing, for as long as the Bonds are registered in the name of DTC or its nominee, selection of Bonds for redemption shall be in accordance with the Letter of Representations.

The City further reserves the right and option to purchase any or all of the Bonds in the open market at any time at any price acceptable to the City plus accrued interest to the date of purchase.

All Bonds purchased or redeemed under this section shall be canceled.

Section 8. Notice of Redemption. While the Bonds are held by DTC in book-entry only form, any notice of redemption shall be given at the time, to the entity and in the manner required by DTC in accordance with the Letter of Representations, and the Bond Registrar shall not be required to give any other notice of redemption. If the Bonds cease to be in book-entry only form, the City shall cause notice of any intended redemption of Bonds to be given by the Bond Registrar not less than 20 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the registered owner of any Bond to be redeemed at the address appearing on the Bond Register at the time the Bond Registrar prepares the notice, and the requirements of this sentence shall be deemed to have been fulfilled when notice has been mailed as so provided, whether or not it is actually received by the owner of any Bond.

In the case of an optional redemption, the notice may state that the City retains the right to rescind the redemption notice and the related optional redemption of Bonds by giving a notice of rescission to the affected registered owners at any time prior to the scheduled optional redemption date. Any notice of optional redemption that is so rescinded shall be of no effect,

and the Bonds for which the notice of optional redemption has been rescinded shall remain outstanding.

Interest on Bonds called for redemption shall cease to accrue on the date fixed for redemption unless the Bond or Bonds called are not redeemed when presented pursuant to the call. In addition, the redemption notice shall be mailed within the same period, postage prepaid, to the MSRB, to any nationally recognized rating agency which at the time maintains a rating on the Bonds at the request of the City, and to such other persons and with such additional information as the City [Finance Director] shall determine, but these additional mailings shall not be a condition precedent to the redemption of Bonds.

Section 9. Failure To Redeem Bonds. If any Bond is not redeemed when properly presented at its maturity or call date, the City shall be obligated to pay interest on that Bond at the same rate provided in the Bond from and after its maturity or call date until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the bond redemption fund hereinafter created and the Bond has been called for payment by giving notice of that call to the registered owner thereof.

Section 10. Pledge of Taxes. For as long as any of the Bonds are outstanding, the City irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of the electors of the City on all of the taxable property within the City in an amount sufficient, together with other money legally available and to be used therefor, to pay when due the principal of and interest on the Bonds, and the full faith, credit and resources of the City are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.. Form and Execution of Bonds. The Bonds shall be prepared in a form consistent with the provisions of this

ordinance and state law and shall be signed by the Mayor and City Clerk, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon.Only Bonds bearing a Certificate of Authentication in the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance:

CERTIFICATE OF AUTHENTICATION

This Bond is one of the fully registered City of Oak Harbor, Washington, Limited Tax General Obligation Bonds, 2011, described in the Bond Ordinance.

WASHINGTON STATE FISCAL AGENT
Bond Registrar

By _____
Authorized Signer

The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

If any officer whose facsimile signature appears on the Bonds ceases to be an officer of the City authorized to sign bonds before the Bonds bearing his or her facsimile signature are authenticated or delivered by the Bond Registrar or issued by the City, those Bonds nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. Any Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bonds.

Section 12. Duties of Bond Registrar. The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bonds, which shall be open to

inspection by the City at all times. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's paying agent for the Bonds and to carry out all of the Bond Registrar's powers and duties under this ordinance and City Ordinance No. 789 establishing a system of registration for the City's bonds and obligations.

The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on the Bonds. The Bond Registrar may become the owner of Bonds with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Bond owners.

Section 13. Preservation of Tax Exemption for Interest on Bonds. The City covenants that it will take all actions necessary to prevent interest on the Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bonds or other funds of the City treated as proceeds of the Bonds at any time during the term of the Bonds which will cause interest on the Bonds to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirement of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), is applicable to the Bonds, take all actions necessary to comply (or to be treated as having complied) with that requirement in connection with the Bonds, including the calculation and payment of any penalties that the City has elected to pay as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section

148 of the Code to prevent interest on the Bonds from being included in gross income for federal income tax purposes.

Section 14. Small Governmental Issuer Arbitrage Rebate Exception and Designation of Bonds as "Qualified Tax-Exempt Obligations." The City finds and declares that (a) it is a duly organized and existing governmental unit of the State of Washington and has general taxing power; (b) no Bond which is part of this issue of Bonds is a "private activity bond" within the meaning of Section 141 of the United States Internal Revenue Code of 1986, as amended (the "Code"); (c) at least 95% of the net proceeds of the Bonds will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City); (d) the aggregate face amount of all tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) issued by the City and all entities subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) during the calendar year in which the Bonds are issued is not reasonably expected to exceed $5,000,000; and (e) the amount of tax-exempt obligations, including the Bonds, designated by the City as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Bonds are issued does not exceed $10,000,000. The City therefore certifies that the Bonds are eligible for the arbitrage rebate exception under Section 148(f)(4)(D) of the Code and designates the Bonds as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code.

Section 15. Refunding or Defeasance of the Bonds. The City may issue refunding bonds pursuant to the laws of the State of Washington or use money available from any other lawful source to pay when due the principal of and interest on the Bonds, or any portion thereof

included in a refunding or defeasance plan, and to redeem and retire, refund or defease all such then-outstanding Bonds (hereinafter collectively called the "defeased Bonds") and to pay the costs of the refunding or defeasance. If money and/or "government obligations" (as defined in chapter 39.53 RCW, as now or hereafter amended) maturing at a time or times and bearing interest in amounts (together with money, if necessary) sufficient to redeem and retire, refund or defease the defeased Bonds in accordance with their terms are set aside in a special trust fund or escrow account irrevocably pledged to that redemption, retirement or defeasance of defeased Bonds (hereinafter called the "trust account"), then all right and interest of the owners of the defeased Bonds in the covenants of this ordinance and in the funds and accounts obligated to the payment of the defeased Bonds shall cease and become void. The owners of defeased Bonds shall have the right to receive payment of the principal of and interest on the defeased Bonds from the trust account. The City shall include in the refunding or defeasance plan such provisions as the City deems necessary for the random selection of any defeased Bonds that constitute less than all of a particular maturity of the Bonds, for notice of the defeasance to be given to the owners of the defeased Bonds and to such other persons as the City shall determine, and for any required replacement of Bond certificates for defeased Bonds. The defeased Bonds shall be deemed no longer outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the defeased Bonds to any lawful purposes as it shall determine.

If the Bonds are registered in the name of DTC or its nominee, notice of any defeasance of Bonds shall be given to DTC in the manner prescribed in the Letter of Representations for notices of redemption of Bonds.

Section 16. Bond Account and Deposit of Bond Proceeds. By Ordinance No. 1540 there previously has been created and established, and the City shall continue to maintain, in the office of the City Finance Director a Marina Fund (the "Operating Fund"). There shall be created and established within the Operating Fund special principal and interest accounts together designated as the Limited Tax General Obligation Bond Account, 2011 (the "Bond Account"), for the purpose of paying principal of and interest on the Bonds. All taxes and other money legally available and allocated to the payment of the principal of and interest on the Bonds shall be deposited in the Bond Account.

There also is created and established within the Operating Fund a special account designated as the Marina Construction Account, 2011 (the "Construction Account"). The principal proceeds received from the sale and delivery of the Bonds shall be paid into the Construction Account and used for the purposes specified in Section 2 of this ordinance. Until needed to pay the costs of the Project and costs of issuance of the Bonds, the City may invest principal proceeds temporarily in any legal investment, and the investment earnings may be retained in the Construction Account and be spent for the purposes of that fund except that earnings subject to a federal tax or rebate requirement may be withdrawn from the Construction Account and used for those tax or rebate purposes.

Section 17. Approval of Bond Purchase Contract. Martin Nelson & Company of Seattle, Washington, has presented a purchase contract (the "Bond Purchase Contract") to the City offering to purchase the Bonds under the terms and conditions provided in the Bond Purchase Contract, which written Bond Purchase Contract is on file with the City Clerk and is incorporated herein by this reference. The City Council finds that entering into the Bond

Purchase Contract is in the City's best interest and therefore accepts the offer contained therein and authorizes its execution by City officials.

The Bonds will be printed at City expense and will be delivered to the purchaser in accordance with the Bond Purchase Contract, with the approving legal opinion of Foster Pepper PLLC, municipal bond counsel of Seattle, Washington, regarding the Bonds.

The proper City officials are authorized and directed to do everything necessary for the prompt delivery of the Bonds to the purchaser and for the proper application and use of the proceeds of the sale thereof.]

Section 18. Preliminary Official Statement Deemed Final. The City Council has been provided with copies of a preliminary official statement dated February ___, 2011 (the "Preliminary Official Statement"), prepared in connection with the sale of the Bonds. For the sole purpose of the Bond purchaser's compliance with Securities and Exchange Commission Rule 15c2-12(b)(1), the City "deems final" that Preliminary Official Statement as of its date, except for the omission of information as to offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, maturity dates, options of redemption, delivery dates, ratings and other terms of the Bonds dependent on such matters.

Section 19. Undertaking to Provide Continuing Disclosure. To meet the requirements of SEC Rule 15c2-12(b)(5) (the "Rule"), as applicable to a participating underwriter for the Bonds, the City makes the following written undertaking (the "Undertaking") for the benefit of holders of the Bonds:

(a) Undertaking to Provide Annual Financial Information and Notice of Material Events. The City undertakes to provide or cause to be provided, either directly or

through a designated agent, to the MSRB, in electronic format as prescribed by the MSRB, accompanied by identifying information as prescribed by the MSRB:

(i) Annual financial information and operating data of the type included in the final official statement for the Bonds and described in subsection (b) of this section ("annual financial information");

(ii) Timely notice (not in excess of ten business days after the occurrence of the event) of the occurrence of any of the following events with respect to the Bonds:

1. principal and interest payment delinquencies;
2. non-payment-related defaults, if material;
3. unscheduled draws on debt service reserves reflecting financial difficulties;
4. unscheduled draws on credit enhancements reflecting financial difficulties;
5. substitution of credit or liquidity providers, or their failure to perform;
6. adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701 – TEB) or other material notices or determinations with respect to the tax status of the Bonds;
7. modifications to rights of holders of the Bonds, if material;
8. Bond calls (other than scheduled mandatory redemptions of Term Bonds), if material, and tender offers;
9. defeasances;
10. release, substitution, or sale of property securing repayment of the Bonds, if material;
11. rating changes;

12. bankruptcy, insolvency, receivership or similar event of the City (a "Bankruptcy Event"), which is considered to occur when any of the following occur: (A) the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or (i) in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or (ii) if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or (B) the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person;

13. the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

14. appointment of a successor or additional trustee or the change of name of a trustee, if material.

(iii) Timely notice of a failure by the City to provide required annual financial information on or before the date specified in subsection (b) of this section.

(b) Type of Annual Financial Information Undertaken to be Provided. The annual financial information that the City undertakes to provide in subsection (a) of this section:

(i) Shall consist of (1) annual financial statements prepared (except as noted in the financial statements) in accordance with applicable generally accepted accounting principles promulgated by the Government Accounting Standards Board and made applicable to Washington State local governmental units such as the City, as such principles may be changed from time to time, which statements shall not be audited, except, however, that if and when audited financial statements are otherwise prepared and available to the City they will be

provided; (2) authorized, issued and outstanding balance of general obligation bonds; (3) assessed valuation for the fiscal year; and (4) regular property tax levy rate and regular property tax levy rate limit for the fiscal year;

(ii) Shall be provided not later than the last day of the ninth month after the end of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the City's fiscal year ending December 31, 2011; and

(iii) May be provided in a single or multiple documents, and may be incorporated by specific reference to documents available to the public on the Internet website of the MSRB or filed with the SEC.

(c) Amendment of Undertaking. The Undertaking is subject to amendment after the primary offering of the Bonds without the consent of any holder of any Bond, or of any broker, dealer, municipal securities dealer, participating underwriter, rating agency or the MSRB, under the circumstances and in the manner permitted by the Rule. The City will give notice to the MSRB of the substance (or provide a copy) of any amendment to the Undertaking and a brief statement of the reasons for the amendment. If the amendment changes the type of annual financial information to be provided, the annual financial information containing the amended financial information will include a narrative explanation of the effect of that change on the type of information to be provided.

(d) Beneficiaries. The Undertaking evidenced by this section shall inure to the benefit of the City and any holder of Bonds, and shall not inure to the benefit of or create any rights in any other person.

(e) Termination of Undertaking. The City's obligations under this Undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the City's obligations under this Undertaking shall terminate if those provisions of the Rule which require the City to comply with this Undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of Bond Counsel, or other counsel familiar with federal securities laws, delivered to the City, and the City provides timely notice of such termination to the MSRB.

(f) Remedy for Failure to Comply with Undertaking. As soon as practicable after the City learns of any failure to comply with the Undertaking, the City will proceed with due diligence to cause such noncompliance to be corrected. No failure by the City or other obligated person to comply with the Undertaking shall constitute a default in respect of the Bonds. The sole remedy of any holder of a Bond shall be to take such actions as that holder deems necessary, including seeking an order of specific performance from an appropriate court, to compel the City or other obligated person to comply with the Undertaking.

(g) Designation of Official Responsible to Administer Undertaking. The Finance Director of the City (or such other officer of the City who may in the future perform the duties of that office) or his or her designee is authorized and directed in his or her discretion to take such further actions as may be necessary, appropriate or convenient to carry out the Undertaking of the City in respect of the Bonds set forth in this section and in accordance with the Rule, including, without limitation, the following actions:

(i) Preparing and filing the annual financial information undertaken to be provided;

(ii) Determining whether any event specified in subsection (a) has occurred, assessing its materiality, where necessary, with respect to the Bonds, and, if material, preparing and disseminating any required notice of its occurrence;

(iii) Determining whether any person other than the City is an "obligated person" within the meaning of the Rule with respect to the Bonds, and obtaining from such person an undertaking to provide any annual financial information and notice of listed events for that person in accordance with the Rule;

(iv) Selecting, engaging and compensating designated agents and consultants, including but not limited to financial advisors and legal counsel, to assist and advise the City in carrying out the Undertaking; and

(v) Effecting any necessary amendment of the Undertaking.

Section 20. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Oak Harbor, Washington, at a regular open public meeting thereof, this _____ day of March, 2011.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CERTIFICATION

I, the undersigned, City Clerk of the City of Oak Harbor, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. ____ (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on March ___, 2011, as that ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after publication in the City's official newspaper; and

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of March, 2011.

CITY OF OAK HARBOR, WASHINGTON

_____

Connie Wheeler, City Clerk

EXHIBIT A

Project Description

The proceeds of the Bonds will be used to finance the City's Oak Harbor Marina Redevelopment Phase 2 – Dredging, including maintenance dredging of the Marina, both in open fairways and under and around existing dock structures, disposal of dredge material, near-shore environmental mitigation, including planting of native vegetation and placement of habitat mix fill and beach sand material to support aquatic life, removal of unused in-water structures, and dredge surveys and water quality monitoring, together with such other capital improvements to the Marina as may be determined by the City.

City of Oak Harbor
City Council Agenda Bill

Bill No. 3
Date: February 14, 2011
Subject: Public Hearing – Report to City Council on Elements Nightclub

FROM: Rick Wallace – Chief of Police

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 is an informational report to the City Council regarding activities at Elements Nightclub during 2010.

AUTHORITY

5.22.045 License conditions.

(3) The chief of police shall report to the city council the result of his investigation and make recommendations concerning any conditions that should be placed upon the nightclub license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the premises to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the nightclub license.

5.22.090 Revision of license conditions.

The city council also reserves to itself the power to revise the conditions of the nightclub license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the nightclub business location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.

In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least 10 days' notice of a hearing to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final.

SUMMARY STATEMENT

On March 2, 2010, the Oak Harbor City Council approved the issuance of the 2010 Nightclub License for Elements Nightclub. In addition to the conditions attached to the license, (including some changes to the conditions from the previous year's license), the Council also directed the Chief of Police to present a report on any calls for police service occurring at Elements during 2010 upon the issuance of Elements Nightclub License for 2011.

This report includes information on all calls for police service to that business but pays specific attention to the calls for service that may pertain to the conditions of the Elements Nightclub License as set by the Council.

STANDING COMMITTEE REPORT

This report was brought before the Public Safety Standing Committee on January 20, 2011.

RECOMMENDED ACTION

1. Conduct a public hearing.
2. This report is for purposes of the scheduled revision hearing pursuant to OHMC 5.22.090. However, the recommendation is to maintain the existing license conditions, as they are "sufficient to mitigate the noise, traffic and public health and safety impacts associated with the Element Nightclub."

ATTACHMENTS

2010 Investigative Report

MAYOR'S COMMENTS

Report to the City Council
Elements Nightclub
License - 2010

On March 2, 2010, the Oak Harbor City Council approved the special conditions attached to the 2010 Nightclub License for Elements Nightclub. In addition to those conditions, (which included some changes from the previous year's license), the Council also directed the Chief of Police to present a report on all calls for police service occurring at Elements during 2010.

The following report includes those calls for service to or from the Elements Nightclub during 2010:

There were a total of seventy (70) calls for police service. Twenty (20) of those calls had no significant bearing on this issue and should not be viewed as having a negative connotation towards the nightclub as these types of calls for police service could occur at any business or private residence. The remaining fifty (50) calls for service do pertain to the license conditions and are described as follows:

16 Assault Complaints –
Four (4) were closed as Settled by Contact
Six (6) were closed as unfounded
Six (6) were closed by arrest

3 Disorderly Conduct Complaints –
Two (2) were closed as all were gone when the officer arrived
One (1) was settled with a trespass from the property

1 Domestic Violence Complaint –
Unfounded

1 Fireworks Complaint –
Settled by Contact

15 Noise Complaints –(In 7 of the 15 complaints Officers were present prior to the call)
Six (6) were settled by contact
Six (6) were closed as unfounded
Three (3) were closed as they were gone when the officers arrived

1 Theft Complaint -
Report taken on a stolen cell phone.

4 DUI Complaints – (All four called in by the Elements security staff)
Two (2) The officers were unable to locate the vehicle(s)
Two (2) Resulted in arrest(s)

1 Trespass Complaint –
Arrest – Subject previously trespassed by security staff returned to club

4 Liquor Violation Complaint -
One (1) Referred to Liquor Control Board
Two (2) Unfounded (Medical responses)
One (1) Settled by Contact – (Intoxicated female)

3 Narcotics Complaints -
Three (3) Information Only – (Not enough information to take action)

1 Weapons Complaint –
Arrest – (One of the parties arrested for assault also had brass knuckles)

SUMMARY

While fifty calls for service in a one-year period is a somewhat significant number of responses, it should be noted that the total number of calls in 2010 was still less that the total number of calls for service which occurred during only the last nine months of 2009.

Respectfully Submitted,

Richard W. Wallace
Chief of Police
Oak Harbor Police Department
Tuesday, January 25, 2011

City of Oak Harbor
City Council Agenda Bill

Bill No. 4
Date: February 14, 2011
Subject: SE Pioneer Way Reconstruction
Construction Surveying Agreement

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, approved as to form

PURPOSE:
This agenda bill requests approval of a consultant agreement in the amount of $91,403.22 with Fakkema and Kingma, a Harmsen Company, for surveying services on the SE Pioneer Way Reconstruction project.

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
Reconstruction of SE Pioneer Way will result in the replacement of 2,400 linear feet of roadway from SE Pioneer Way between City Beach Street and Midway Boulevard. The reconstruction will replace pavement, sidewalks and appurtenances from building face to building face. The work includes the underground conversion of overhead power and telecommunications facilities, the installation of approximately 500 linear feet of 12-inch sanitary sewer and pipe bursting of approximately 1,200 feet of 12-inch sanitary sewer.

A professional surveyor is needed to stake lines and grades, replace property corners, set survey monuments and determine quantities for contractor payments. City staff has determined that Fakkema and Kingma is the most qualified applicant for the work.

A smaller contract with Fakkema and Kingma in the amount of $14,207.16 was approved by the Mayor in January 2011. Under this contract, the surveyor provided rough survey of the proposed improvements for review. Contractors were encouraged to use this information to help

understand the scope of the construction project. The information was also used to double check elevations at business thresholds and intersections.

Amount of contract: The contract has a maximum not to exceed limit of $91,403.22. A management reserve for work not included in the defined scope of work of $8,309.38 (10%) is reflected in the contract sum above. If this contract is approved by the City Council, the total not to exceed amount of both contracts is $105,610.38.

Funding: The funding for the project was established by Resolution 10-16, passed and approved by the City Council at their June 15, 2010 meeting. The following table details the funding sources for this project.

Source	Amount
Wastewater	$ 1,000,000.00
Stormwater	$ 650,000.00
REET 1	$ 2,500,000.00
REET 2	$ 3,000,000.00
Island County Economic Development Grant	$ 1,000,000.00
Water	$ 200,000.00
Total	***$ 8,350,000.00***

	90% Opinion of Cost	Final Engineer's Estimate	Contract Prices	
Right of Way (approximate)	$ 150,000		$ 150,000	
Community Outreach Preconstruction (enviroissues)	$ 94,000		$ 94,000	
Design Fee (Perteet)	$ 760,592		$ 760,592	
subtotal	*$1,004,592*		*$1,004,592*	
Roadway and City Utilities Reconstruction	$4,143,900	$ 4,009,146	$ 2,980,899	
Parking Alternate	$ 135,622	$ 138,772	$ 117,357	
Overhead Utility Undergrounding	$1,063,298	$ 1,443,408	$ 1,443,408	1
Inspection/Testing	$ 75,000		$ 23,012	
Surveyor	$ 128,000		$ 105,610	2
Construction Management (KBA)	$ 511,000		$ 398,975	3
Other	$ 185,000		$ 185,000	4
Public Art (1% of project)	$ 80,000		$ 80,000	
Contingency @ 9%	$ 575,000		$ 400,000	5
subtotal	*$6,896,820*		*$5,734,261*	
Extended Outreach				
Enviroissues	$ 150,000		$ 0	6
other (COC or other, approximate)	$ 170,000		$ 170,000	7
direct costs (approximate)	$ 74,500		$ 0	8
subtotal	*$394,500*		*$170,000*	
total project cost	***$8,295,912***		***$6,908,853***	

NOTES:
1) includes conduit trenching performed by contractor PLUS costs paid to PSE under separate SCH 74 agreement
2) includes both contracts for pre-construction and construction survey work
3) includes revised NTE limit on KBA Contract
4) includes city costs for the project, ie office space, equipment, permit fees, city direct cost
5) includes 10% of construction cost as contingency and approximately $50k for engineering design services during construction
6) public outreach by Enviroissues as subcontractor in KBA contract has been eliminated
7) work and value is to be determined
8) eliminated to reflect reduction in outreach effort

Selection process: In accordance with Oak Harbor Municipal Code 2.350, requests for Qualifications (RFQs) were sent to three construction surveying companies listed on the MRSC roster. Fakkema and Kingma was selected as the most qualified applicant for this project based on their available resources and indication of a prompt response for survey needs during construction.

Justification: Construction surveying expertise is not available with existing City staff. Use of a contract surveyor is typical for this work.

STANDING COMMITTEE REPORT

This project was presented to the Public Works Standing Committee at the January 6, 2011, meeting.

RECOMMENDED ACTION:

Authorize the Mayor to sign a consultant contract with Fakkema and Kingma in the amount of $91,403.22.

ATTACHMENTS:

Contract

MAYOR'S COMMENTS:

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

CITY OF OAK HARBOR
CONSULTANT AGREEMENT
WITH FAKKEMA & KINGMA, A HARMSEN COMPANY

PROJECT TITLE: SE PIONEER WAY RECONSTRUCTION – CONS. SURVEY

PROJECT COMPLETION DATE: 12/31/11

MAXIMUM AMOUNT PAYABLE: $91,403.22

TABLE OF CONTENTS

CONSULTANT CONTRACT

GENERAL REQUIREMENTS

EXHIBITS

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: FAKKEMA & KINGMA, & HARMSEN COMPANY

Address: 840 SE 8TH AVE, #102

Telephone/Fax No.: 360-675-5973

Federal ID No.: 91-1262958

Do you require a 1099 for the IRS? NO

III. PROJECT INFORMATION

Protect Title: PIONEER WAY

Project Description: CONSTRUCTION SURVEY

Project Completion Date: 12/31/11
Maximum Amount Payable: $91,403.22
Progress Payments: MONTHLY

IV. ADDITIONAL DOCUMENTS ADDED TO THIS CONTRACT

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.

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

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."

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_____ By_____
Consultant: FRI Agency:_____
Principal

I, DOUGLAS R. SLAGER, 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: 12/16/10

By PRES.

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 detai~~l 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

No Subcontracts ~~are~~ will be allowed with this Agreement

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

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

~~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 applic~~able ~~provisions of this AG~~REEMENT.

~~The CONSULTANT shall not subcontract for the performance of any work un~~der 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 SURVEYING 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 CONSULTNAT 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.

EXHIBIT A-1
CERTIFICATION OF CONSULTANT

Project No. _____

I hereby certify that I am DOUGLAS R. SLAGER a duly authorized representative of the firm of FARRERA & KINGMA/HEAT whose address is 840 SE 8TH AVE, 98277 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.

12/16/2010
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): FAKKEMA & KINGMA/HEALE

12/16/10
Date

President or Authorized Official or Consultant Signature

Exhibit B
SCOPE OF WORK

Fakkema & Kingma
SE Pioneer Way Reconstruction Project
Construction Staking

DESCRIPTION:

Fakkema and Kingma, (the Consultant), will perform on-call construction staking and related surveying services for the SE Pioneer Way Reconstruction Project (the Project) based the approved construction documents including both plans and specifications (both hard copy and electronic versions) delivered to the Consultant by the City and in conformance with the attached preliminary construction schedule prepared by Perteet Inc dated December 6, 2010. Changes to the project design are likely to occur during prosecution of the construction work. To the extent that the approved drawings or construction schedule are changed, modified or adjusted by City during the course of this project, the Consultant will modify its construction staking services accordingly as per City direction. The City will provide copies of all changes, modifications or adjustments to the Consultant.

Consultant shall not enter into any contract for work on the Project with any general contractor or subcontractor retained by the City of Oak Harbor for the Project without the written consent and approval of the City.

Total fees for the work included with this scope shall not exceed the fee listed in Exhibit D-1 of this agreement. Extra work, including any work compensated by the established management reserve, will be evaluated as provided for by the general and miscellaneous conditions of this agreement.

SCHEDULE:

The consultant will perform on-call construction staking services for the SE Pioneer Way Reconstruction Project on a minimum of 24 hours notice to meet the City and Contractor schedules. The consultant agrees to provide up to three survey crews if necessary to meet project deadlines. Recognizing that the schedule for the prosecution of the construction contract is largely controlled by the General Contractor, all work performed by the Consultant shall be performed in such manner as to support the General Contractor's effort to meet the September 2, 2011 date for substantial completion as required by the Project contract documents.

All work covered by this agreement must be completed by December 31, 2011 and shall provide intermediate deliverables as provided for in this scope of work or as may otherwise be required by the City. Any delays or costs to the City to the Project directly resulting from the Consultants failure to respond within 24 hours notice for any element of this scope of work shall be solely attributed to and be the responsibility of the Consultant. Failure to respond may also be cause for termination of this agreement.

Failure to respond may include but is not limited to delay to the contractor due to a lack of construction staking, errors in staking or failure to provide deliverables within the schedule established as part of this scope of work.

City will provide updates of the project schedule to the Consultant not less than every 2 weeks for the purpose of apprising the Consultant of the projected times for Consultant services. However, Consultant's obligation to respond and provide construction staking services on no less than 24 hours notice shall not be affected by any project schedule provided or not provided by the City.

SCOPE OF SERVICES:

I. Project Management

Consultant will perform survey project management responsibilities according professional standards of the surveying industry in Washington State and as may be requested by the City during the SE Pioneer Way Reconstruction Project. Contractor shall maintain records, and make available said records, as may be required by law. Such responsibilities include attendance at project meetings when construction staking and scheduling is being discussed, invoicing based on work performed consistent with this agreement and overall compliance with the terms of this agreement. When directed by the City the Consultant shall coordinate directly with the City's general contractor.

Deliverables:

1. Attendance at weekly or other construction coordination meetings when requested by the City.
2. Monthly invoices detailing work completed, hours worked, balance of work to be completed as a percentage of the total authorized amount minus the management reserve.
3. Surveyors field records upon demand of the City

Schedule:

1. Attendance at meetings shall be on demand by the City of Oak Harbor
2. Invoicing shall occur monthly
3. Field records shall be provided within 7 days of demands

II. Construction Staking

Consultant will perform construction staking services to a performance level consistent with industry standards or as may otherwise be required by law. In the absence of other readily available and commonly accepted standard, construction staking shall be in general conformance with WSDOT standards. Consultant shall provide both lathe and hubs as appropriate. In providing construction staking, consultant shall consider the potential for vandalism, inadvertent or accidental damage by the contractor or removal of construction staking by the public. The City will not be responsible for any unauthorized removal or vandalism of construction staking.

Services provided by the Consultant include but are not limited to the following field deliverables:

A. Establishing and verifying control and secondary work points on site;
B. Painting sawcut lines;
C. Marking stations for centerline subgrade at 50-ft stations, cuts and fills with nails and paint;
D. Setting offset stakes for approximately 78 storm drain structures with cut/fill information for rim and inverts;
E. Setting offsets for all face of curb at 25-ft stations with cut/fill information;
F. Setting offsets for centerline finish grade at 25-ft stations from STA 18+60 to STA 20+64 as shown on the project plans:
G. Setting offset face of all walls at 25' stations and angle points;
H. Setting offset stakes for tees and angle points for approximately 56 water meters;
I. Setting offset stakes for approximately 2 sanitary sewer structures with cut/fill information for rim and inverts;
J. Setting offset stakes for all utility trenching (including water, sewer, storm drainage, power, telephone, cable and common utility trenching) with cut/fill information at 50-ft stations, offset approximately 85 utility vaults;
K. Setting offset stakes for approximately 42 luminaires with cut/fill information to finish grade;
L. Providing pins and paint for crosswalks and road centerline channelization at 25-ft stations.

Any and all costs, including removal and replacement of completed work, incurred by the City or its construction contractors resulting from staking errors by the Consultant shall be the sole responsibility of the Consultant.

Deliverables:

1. Field staking through hubs, lathe, flagging, paint marking, temporary control points, tacks, PK nails or other typical construction staking means.

Schedule:

1. Consultant shall be prepared to complete the work as proposed in the attached preliminary schedule which may be modified by the City to be consistent with the schedule submitted by its General Contractor.
2. Contractor shall be on site within 24 hours notice for construction staking.

III. Monument Setting

Consultant will reset all disturbed property corner monuments, ROW centerline monuments and all other survey monuments in original locations as required by law. Consultant shall reference existing monuments for replacement if disturbed during construction. Consultant shall prepare and file all necessary documentation

with the Department of Natural Resources for all monuments to be removed and replaced during the project as required and provided for by law.

The City shall be responsible for all direct application costs or fees to the Department of Natural Resources. The City will require the Contractor to provide the concrete pedestal and metal case for monument relocations for the Consultant to replace.

Deliverables:

1. Centerline monuments, at least 10
2. Record of survey if necessary and legally required or as requested by the City
3. Restoration of all disturbed monuments and property corners as required by the City

Schedule:

1. All monuments shall be placed within 45 days of notice from the City that the roadway work has been completed

IV. Post-Construction

Consultant will provide record drawings consistent with actual constructed street and utility improvements. Consultant shall note on record drawings all drainage as wastewater structure rim elevations and pipe inverts, locations of all water meters, valves, fire hydrants, horizontal locations of all underground utilities as located by a locating service of the Consultants choice, luminaries, traffic control devices and other signage,

Deliverables:

1. Draft half size record drawings (11x17)
2. Final AutoCAD Civil 3d Version 2009, electronic PDF image files and 22 x 34 reproducible mylar hard copies with stamps of as constructed improvements.

Schedule:

1. Draft Record Drawing shall be provided to the City for review not later than November 15, 2011. The City shall be allowed 14 days for review and comment. Final record drawings shall be delivered not later than December 20, 2011.

V. Items to be Provided by the City

The City will provide the following documents and information for use by the Consultant:

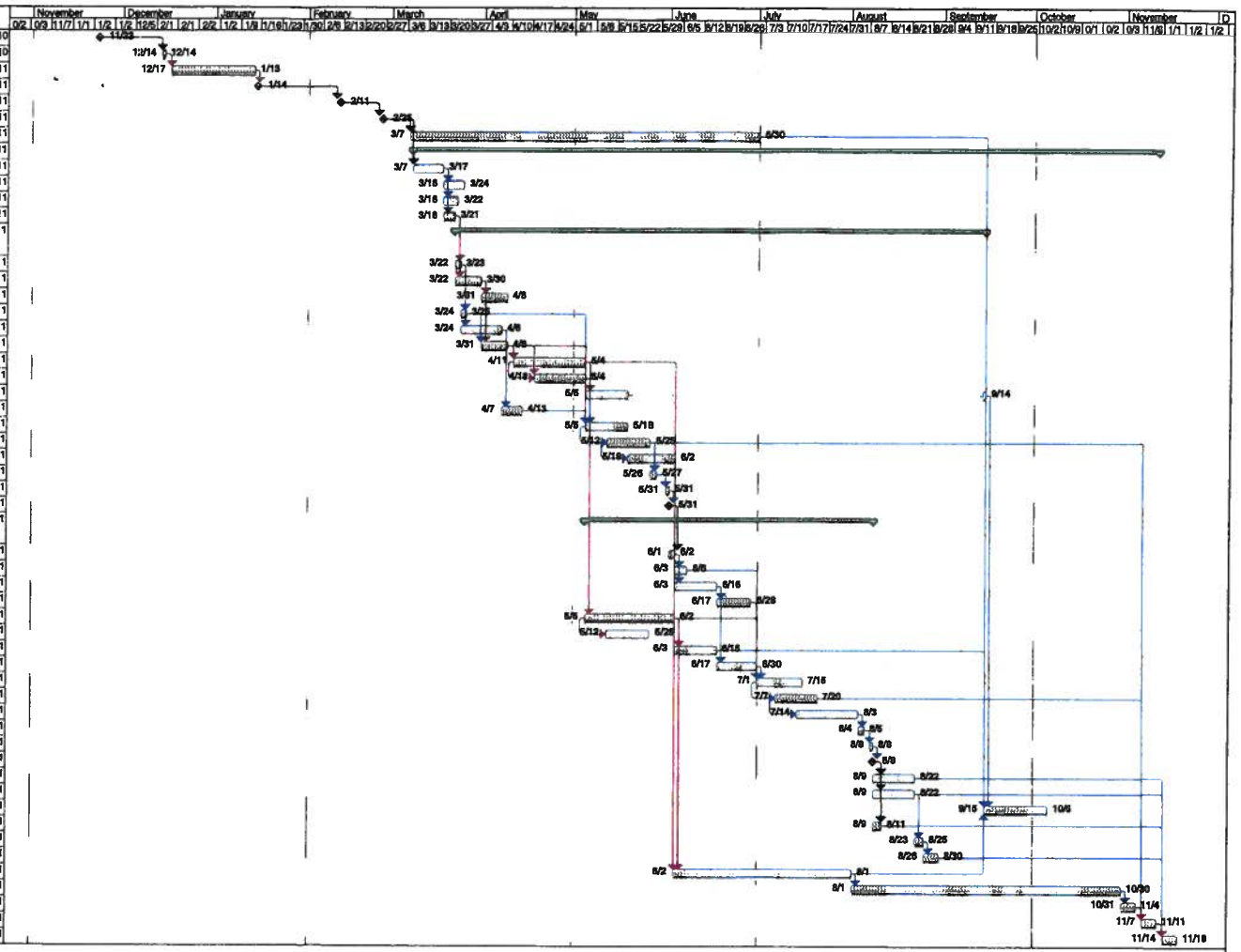
1. 1 hard copy half size (11x 17) sealed engineering plans
2. 1 hard copy contract documents

3. Electronic files (AutoCAD) of project design by the design engineer of record
4. Progress schedule updates not less than twice a month
5. Copy of accepted contractor schedule
6. Copies of all changes, design modifications or responses to contractor inquiries related to construction surveying

Project schedule

{replace this page}

ID	Task Name	Duration	Start	Finish
1	90% Plans	0 days	Tue 11/23/10	Tue 11/23/10
2	Council Approval for Ad	1 day	Tue 12/14/10	Tue 12/14/10
3	Advertise Project	4 wks	Fri 12/17/10	Thu 1/13/11
4	Bid Opening	0 days	Fri 1/14/11	Fri 1/14/11
5	Award Project	0 days	Fri 2/11/11	Fri 2/11/11
6	Contractor Notice to Proceed	0 days	Fri 2/25/11	Fri 2/25/11
7	Illumination System Order Period	4 mons	Mon 3/7/11	Thu 6/30/11
8	Project Construction	173 days	Mon 3/7/11	Fri 11/11/11
9	Mobilize on site	10 edays	Mon 3/7/11	Thu 3/17/11
10	Installation of erosion & sediment control	5 days	Fri 3/18/11	Thu 3/24/11
11	Site preparation and removal of obstructions.	3 days	Fri 3/18/11	Tue 3/22/11
12	Installation of detour signs	2 days	Fri 3/18/11	Mon 3/21/11
13	Pioneer limited to one-way traffic from Beach St. to Dock St. Contractor primary work limited west of Dock Street.	121 days	Tue 3/22/11	Wed 9/14/11
14	Install traffic control devices to shift traffic north	2 days	Tue 3/22/11	Wed 3/23/11
15	Open trench installation of sanitary sewer between Ely and Dock Stre	7 days	Tue 3/22/11	Wed 3/30/11
16	Slip lining of the sanitary sewer from Dock street to Midway	7 days	Thu 3/31/11	Fri 4/8/11
17	Rubblizing pavment	2 days	Thu 3/24/11	Fri 3/25/11
18	Remove Sidewalks	10 days	Thu 3/24/11	Wed 4/6/11
19	Installation of storm drainage and Filterra units.	7 days	Thu 3/31/11	Fri 4/8/11
20	Installation of underground franchise utility trunk system.	15 days	Mon 4/11/11	Wed 5/4/11
21	Installation of hydrants and water service connections.	10 days	Mon 4/18/11	Wed 5/4/11
22	Install Underground Illumination System	11 days	Thu 5/5/11	Wed 5/14/11
23	Construct retaining walls.	5 days	Thu 4/7/11	Wed 4/13/11
24	Subgrade prepared	10 days	Thu 5/5/11	Wed 5/18/11
25	Curb & gutter constructed	10 days	Thu 5/12/11	Wed 5/25/11
26	Sidewalk constructed	10 days	Thu 5/19/11	Thu 6/2/11
27	First lift of paving	2 days	Thu 5/26/11	Fri 5/27/11
28	Temporary Channelization	1 day	Tue 5/31/11	Tue 5/31/11
29	Open to traffic and limited parking.	0 days	Tue 5/31/11	Tue 5/31/11
30	Pioneer limited to one-way traffic for project length. Contractor primary work limited from Dock Street to Midway	68 days	Thu 5/6/11	Mon 8/8/11
31	Install Temp Traffic Control Devices	2 days	Wed 6/1/11	Thu 6/2/11
32	Rubblize Roadway	2 days	Fri 6/3/11	Mon 6/6/11
33	Remove Sidewalks	10 days	Fri 6/3/11	Thu 6/16/11
34	Installation of storm drainage and Filterra units.	6 days	Fri 6/17/11	Tue 6/28/11
35	Installation of underground franchise utility trunk conduit system.	20 days	Thu 5/5/11	Thu 6/2/11
36	Installation of hydrants and water service connections.	10 days	Thu 5/12/11	Wed 5/25/11
37	Install Underground Illumination System	10 days	Fri 6/3/11	Thu 6/16/11
38	Construct Retaining Walls	10 days	Fri 6/17/11	Thu 6/30/11
39	Subgrade prepared	10 days	Fri 7/1/11	Fri 7/15/11
40	Curb & gutter constructed	10 days	Thu 7/7/11	Wed 7/20/11
41	Sidewalk constructed	15 days	Thu 7/14/11	Wed 8/3/11
42	First lift of paving	2 days	Thu 8/4/11	Fri 8/5/11
43	Temporary Channelization	1 day	Mon 8/8/11	Mon 8/8/11
44	Open to traffic and limited parking	0 days	Mon 8/8/11	Mon 8/8/11
45	Installation of handrails	10 days	Tue 8/9/11	Mon 8/22/11
46	Installation of landscaping/trees	10 days	Tue 8/9/11	Mon 8/22/11
47	Installation of Luminaires and Wiring	15 days	Thu 8/15/11	Wed 10/5/11
48	Installation of signing	3 days	Tue 8/9/11	Thu 8/11/11
49	Final Paving	3 days	Tue 8/23/11	Thu 8/25/11
50	Final Striping and Channelization	3 days	Fri 8/26/11	Tue 8/30/11
51	Franchise Utility System installation	60 edays	Thu 6/2/11	Mon 8/1/11
52	Property owners property utility conversions	90 edays	Mon 8/1/11	Sun 10/30/11
53	Remove Remaining Franchise Utility Systems	5 days	Mon 10/31/11	Fri 11/4/11
54	Finalize sidewalk	5 days	Mon 11/7/11	Fri 11/11/11
55	Punchlist and Cleanup	5 days	Mon 11/14/11	Fri 11/18/11



Preliminary Construction Schedule

Exhibit B page 5 of 6

Project: Construction Schedule - PC
Date: Mon 12/6/10

Task | Critical Task | Progress | Milestone | Summary | Rolled Up Task | Rolled Up Critical Task | Rolled Up Milestone | Rolled Up Progress | Split | External Tasks | Project Summary | Group By Summary | Deadline

Page 1

91

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**

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 $8,309.38 ~~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
SUBCONSULTANT FEE DETERMINATION -- SUMMARY SHEET
Project: S.E. Pioneer Way Reconstruction - Construction Staking & Surveying

Direct Salary Cost (DSC):

Classification	Hours	X	Rate	=	Cost
Principal Surveyor	30		$ 35.00		$1,050.00
Senior Project Surveyor	42		$ 33.00		$1,386.00
Survey Tech	72		$ 29.00		$2,088.00
Survey Crew	356		$ 55.00		$19,580.00
Administrative	20		$ 24.00		$480.00
Total Labor Budget	520		Total DSC	=	$24,584.00

Overhead:					
	OH Rate x DSC of	196%	x	$24,584.00	$48,184.64
Fixed Fee:					
	OH Rate x DSC of	30%	x	$24,584.00	$7,375.20
Reimbursables					
	Stakes, mileage, supplies (to be Itemized on invoices)				$600.00
	Utility locates for post-construction record drawings (to be Itemized on invoices)				$2,350.00
Grand Total					$83,093.84

Prepared by: Doug Slager Date: December 16, 2010

EXHIBIT D-2
CONSULTANT FEE DETERMINATION - SUMMARY SHEET
(Specific Rates of Pay)

Fee Schedule

Discipline or Job Title	Hourly Rate	Overhead @____%	Profit @____%	Rate Per Hour

Not USED

VOID

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~~ worked at the time of termination of this AGREEMENT plus any direct non-salary costs incurred at the time of termination of this AGREEMENT.

EXHIBIT G-1
SUBCONSULTANT FEE DETERMINATION -- SUMMARY SHEET

Project: _____

Direct Salary Cost (DSC):

Classification	Man Hours	x	Rate	=	Cost
_____	_____		_____		$_____
_____	_____		_____		$_____
_____	_____		_____		$_____
_____	_____		_____		$_____
_____	_____		_____		$_____
_____	_____		_____		$_____
_____	_____		_____		$_____
_____	_____		_____		$_____
_____	_____		_____		$_____
_____	_____		_____		$_____
_____	_____		_____		$_____
_____	_____		_____		$_____
_____	_____		_____		$_____
			Total DSC =		$_____

Overhead (OH Cost -- including Salary Additives):
OH Rate x DSC of _____ % x $_____ $_____

Fixed Fee (FF):
FF Rate x DSC of _____ % x $_____ $_____

Reimbursables:
Itemized $_____

Grand Total $_____

Prepared by_____ Date_____

NOT USED

EXHIBIT G-2
BREAKDOWN OF SUBCONSULTANT'S OVERHEAD COST

(Sample only -- Actual line item and cost categories and percentages for your firm should be submitted.)

Fringe Benefits

FICA ..... _____
Unemployment ..... _____
Medical Aid and Industrial Insurance ..... _____
Company Insurance and Medical ..... _____
Vacation, Holiday, and Sick Leave ..... _____
Commission, Bonuses/Pension Plan ..... _____

Total Fringe Benefits ..... _____

General Overhead

State B&O Taxes ..... _____
Insurance ..... _____
Administration and Time Not Assignable ..... _____
Printing, Stationary, and Supplies ..... _____
Professional Services ..... _____
Travel Not Assignable ..... _____
Telephone and Telegraph Not Assignable ..... _____
Fees, Dues, Professional Meetings ..... _____
Utilities and Maintenance ..... _____
Professional Development ..... _____
Rent ..... _____
Equipment Support ..... _____
Office Miscellaneous, Postage ..... _____

Total Generated Overhead ..... _____

TOTAL ..... _____

NOT USED

L:\LGLA\FORMS\CONTRACTS\Consultant Contract - Hourly.doc

City of Oak Harbor
City Council Agenda Bill

Bill No. 5
Date: February 14, 2011
Subject: SE Pioneer Way Reconstruction
Construction Management Agreement

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, approved as to form

PURPOSE:
This agenda bill requests approval of an agreement with KBA Construction Management for construction management services on the SE Pioneer Way Reconstruction project in the amount of ~~$634,100~~$398,975.[1]

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
Reconstruction of SE Pioneer Way will result in the replacement of 2,400 linear feet of roadway from SE Pioneer Way between City Beach Street and Midway Boulevard. The reconstruction will replace pavement, sidewalks and appurtenances from building face to building face. The work includes the underground conversion of overhead power and telecommunications facilities, the installation of approximately 500 linear feet of 12-inch sanitary sewer and pipe bursting of approximately 1,200 feet of 12-inch sanitary sewer.

City staff is recommending that a construction management company be used on this project because of the scope of the work to be completed and the limited amount of time to get it accomplished. A construction management company can support the City through their experience on similar projects. In particular, the selected construction management company, KBA, has proposed to prepare a written construction management plan for the SE Pioneer Way

[1] For clarity, the differences between this amended Agenda Bill and the earlier version dated February 1, 2011 have been highlighted by retaining the strikethrough (deletions)/underline (additions) editing format. A mark-up version of Exhibit B, the Scope of Services, is also attached which notes deletions, additions and alterations.

Reconstruction project. The plan will outline the rolls and responsibilities of all parties, indicate a chain of communications and outline a proposed schedule of work to be completed.

Further, KBA will assist the City by providing an inspector and administrative ~~assistant~~ support specifically for this project. The inspection staff will provide day to day assurance that all materials and workmanship are installed in compliance with the plans, project manual and WSDOT standards. The administrative ~~assistant~~ support will provide record keeping on all change orders, requests for information, payments and payroll monitoring. The paperwork will be organized in both hard copy and electronic formats.

KBA will also provide a Construction Manager for the project that will assist with technical aspects of construction ranging from approval of materials to resolving problems with accessibility. The Construction Manager will also review contractor scheduling, prepare pay estimates, and support inspection staff when needed.

The construction management team will be comprised of members of both KBA (who and the City. The structure will be as follows:

Larry Cort – Project Specialist – will provide overall project management and direct communications and information. Mr. Cort will review pay requests and track the financial progress of the project. Mr. Cort will be the primary contact for public information on the project and will direct efforts of extended outreach.

Joe Stowell – Project Engineer – will provide field support for the construction management team. Day to day decisions regarding construction will be processed by Joe to keep the project on schedule.

David Mohler – Construction Manager, KBA – will provide engineering support in the form of submittal review, processing of requests for information and change orders and review of the contractors schedule. Mr. Mohler will also host a weekly construction meeting with the contractor.

Nathan Monroe – Office Engineer, KBA – will provide ongoing document management, backup engineering support in the absence of the Construction Manager, and field inspection and reporting when multiple crews are working.

Daniel Leftwich – Inspector, KBA – will provide daily inspection of construction. Mr. Leftwich will provide daily field reports indicating the progression and acceptance of work.

Jennifer Smiley – Administrative Assistant, KBA – will set up document management for the entire construction project. This will include systems for processing pay requests by the contractor, document control, maintain meeting agendas and notes, and help distribute monthly progress reports.

~~EnviroIssues – KBA will be subcontracting with EnviroIssues to provide extended communication outreach in support of the City's communication efforts. The extended outreach is intended to go beyond what would be normally be undertaken by the city as part of a public works project. This concept of extended outreach is shown in the attached project communication and management structure figure. The extended outreach portion of the communication strategy is intended to provide the greater Oak Harbor community with information about to the SE Pioneer Way Reconstruction project. Efforts directly supported with the assistance of the EnviroIssues staff includes updates to the project blog, newsletters, pamphlets and design of construction signage that will help the community navigate through the construction area. EnviroIssues will be attending weekly project meetings to obtain current, relevant information on construction to relay on to the public.~~

Amount of contract: The contract has a maximum not to exceed limit of $~~634,100~~398,975. ~~The hourly not to exceed limit on the EnviroIssues scope is $80,000. Included in the total hourly not to exceed fee structure is a management reserve of $50,000. As stipulated in the contract the management reserve is for work not included in the defined scope of work and is intended as a convenience to the City.~~ From the project funding plan noted below, $511,000 was slated for Construction Management and the proposed contract amount is approximately $236,000 less than was proposed with the February 1, 2011 Agenda Bill. A mark-up copy of the new scope of services is attached for details on what has been removed or altered since that prior version. ~~and with $150,000 as the target for extended outreach. The management reserve is included in the contingency fund line item~~.

Funding: The funding for the project was established by Resolution 10-16, passed and approved by the City Council at their June 15, 2010 meeting. The following tables detail the funding sources for this project and the comparison of the actual versus estimated project costs.

Source	Amount
Wastewater	$ 1,000,000.00
Stormwater	$ 650,000.00
REET 1	$ 2,500,000.00
REET 2	$ 3,000,000.00
Island County Economic Development Grant	$ 1,000,000.00
Water	$ 200,000.00
Total	***$ 8,350,000.00***

	90% Opinion of Cost	Final Engineer's Estimate	Contract Prices	
Right of Way (approximate)	$ 150,000		$ 150,000	
Community Outreach Preconstruction (enviroissues)	$ 94,000		$ 94,000	
Design Fee (Perteet)	$ 760,592		$ 760,592	
subtotal	*$1,004,592*		*$1,004,592*	
Roadway and City Utilities Reconstruction	$4,143,900	$ 4,009,146	$ 2,980,899	
Parking Alternate	$ 135,622	$ 138,772	$ 117,357	
Overhead Utility Undergrounding	$1,063,298	$ 1,443,408	$ 1,443,408	1
Inspection/Testing	$ 75,000		$ 23,012	
Surveyor	$ 128,000		$ 105,610	2
Construction Management (KBA)	$ 511,000		$ 398,975	3
Other	$ 185,000		$ 185,000	4
Public Art (1% of project)	$ 80,000		$ 80,000	
Contingency @ 9%	$ 575,000		$ 400,000	5
subtotal	*$6,896,820*		*$5,734,261*	
Extended Outreach				
Enviroissues	$ 150,000		$ 0	6
other (COC or other, approximate)	$ 170,000		$ 170,000	7
direct costs (approximate)	$ 74,500		$ 0	8
subtotal	*$394,500*		*$170,000*	
total project cost	***$8,295,912***		***$6,908,853***	

NOTES:
1) includes conduit trenching performed by contractor PLUS costs paid to PSE under separate SCH 74 agreement
2) includes both contracts for pre-construction and construction survey work
3) includes revised NTE limit on KBA Contract
4) includes city costs for the project, ie office space, equipment, permit fees, city direct cost
5) includes 10% of construction cost as contingency and approximately $50k for engineering design services during construction
6) public outreach by Enviroissues as subcontractor in KBA contract has been eliminated
7) work and value is to be determined
8) eliminated to reflect reduction in outreach effort

Selection process: In accordance with Oak Harbor Municipal Code 2.350, requests for Qualifications (RFQs) were sent to four construction management companies listed on the Municipal Research Services Center of Washington (MRSC) roster. Applicants were asked to submit their qualifications by December 14, 2010 and encouraged to highlight their experience on similar projects. KBA, Inc, has been selected by City staff as the most qualified applicant for this project based on their history and experience on similar projects and their specific approach to this project.

Justification: Current City staffing levels do not support the level of attention needed for the reconstruction of SE Pioneer Way. Due to the limited duration of the project, City staff recommends hiring a temporary construction management company to support city staff in the management of the project.

STANDING COMMITTEE REPORT

This project was presented to the Public Works Standing Committee at the January 6, 2011 and February 3, 2011 meetings.

RECOMMENDED ACTION:

Authorize the Mayor to sign the Contract with KBA Construction Management for services with a not to exceed limit of $398,975.

ATTACHMENTS:

Contract

Mark-up Version of Exhibit B, Scope of Services

MAYOR'S COMMENTS:

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

CITY OF OAK HARBOR
CONSULTANT AGREEMENT
WITH KBA, Inc.

PROJECT TITLE: SE Pioneer Way Reconstruction

PROJECT COMPLETION DATE: December 31, 2011

MAXIMUM AMOUNT PAYABLE: $398,975

105

TABLE OF CONTENTS

CONSULTANT CONTRACT

GENERAL REQUIREMENTS

EXHIBITS

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: KBA, Inc.

Address: 11000 Main Street, Bellevue, WA 98004

Telephone/Fax No.: 425-455-9720 / 425-455-9732

Federal ID No.: 91-1581416

Do you require a 1099 for the IRS? No

III. PROJECT INFORMATION

Protect Title: SE Pioneer Way Reconstruction

Project Description: Reconstruction of approximately 2,400 linear feet of roadway within seven downtown business district blocks, replacing pavement, sidewalks, and appurtenances from building face to building face. Please see Scope for expanded project description.

Project Completion Date: 12/31/11
Maximum Amount Payable: $398,975
Progress Payments: Monthly

IV. ADDITIONAL DOCUMENTS ADDED TO THIS CONTRACT

Exhibit D-3 - KBA Budget Spreadsheet; Exhibit D-4 - Breakdown of Overhead Cost

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.

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

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.
Item 2 of Section 12.D is revised to read: "The CONSULTANT shall provide the CITY with a copy of the insurer's cancellation notice via facsimile, within two business days of receipt."

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

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_____ By_____
Consultant: KBA, Inc. Agency:_____
Principal

I, Kristen A. Betty, 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: Feb 4, 2011

By Kristen A. Betty

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.~~ 1-24-2011

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 Construction Management 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. 1-24-2011

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. <u>Compliance with 41 CFR 60-741.5 -- Equal Opportunity Clause (Workers with Disabilities)</u>.

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 CONSULTNAT 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.

EXHIBIT A-1
CERTIFICATION OF CONSULTANT

Project No. ENG-08-07

I hereby certify that I am Kristen A. Betty a duly authorized representative of the firm of KBA, Inc. whose address is 11000 Main St, Bellevue, WA 98004 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.

Feb 4, 2011
Date

Signature

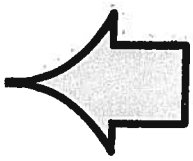
CERTIFICATION OF CITY OFFICIAL

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): KBA, Inc.

Feb 4, 2011
Date

President or Authorized Official or Consultant Signature

EXHIBIT B
SCOPE OF WORK (ADD ON)

Project No. ENG-08-07

See attached documents furnished by the Consultant

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**

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
CONSULTANT FEE DETERMINATION - SUMMARY SHEET

Project: SE Pioneer Way Reconstruction

Direct Salary Cost (DSC):

Classification	Man Hours	x	Rate	=	Cost
K. Adams	144		$69.50		$ 10,008
Dave Mohler	888		$45.50		$ 40,404
Dan Leftwich	1,193		$36.00		$ 42,948
Jennifer Smiley	104		$26.00		$ 2,704
Kelly Clark	20		$31.75		$ 635
Nathan Monroe	1,458		$33.00		$ 48,114
Sean Mabin	8		$33.65		$ 269
					$
					$
					$
					$
					$
			Total DSC =		$ 145,082

Overhead (OH Cost -- including Salary Additives):
OH Rate x DSC of 127.84 % x $ 145,082 $ 185,473

Fixed Fee (FF):
FF Rate x DSC of 35.00 % x $ 145,082 $ 50,778

Reimbursables:
Itemized $ 17,642

Subconsultant Costs (See Exhibit "G"): $ 0

Grand Total $ 398,975

Prepared by [signature] Date 2-4-11

EXHIBIT D-2
CONSULTANT FEE DETERMINATION - SUMMARY SHEET
(Specific Rates of Pay)

Fee Schedule

Discipline or Job Title	Hourly Rate	Overhead @127.84%	Profit @35.00 %	Rate Per Hour
Project Manager (M2)	$69.50	$88.85	$93.83	$182.68
Resident Engineer (E5)	$45.50	$58.17	$61.43	$119.59
Inspector (P4)	$36.00	$46.02	$48.60	$94.62
Project Admin. (P3)	$26.00	$33.24	$35.10	$68.34
Project Specialist (P4)	$31.75	$40.59	$42.86	$83.45
Office Engineer (P3)	$33.00	$42.19	$44.55	$86.74
Projects Specialist (A5)	$33.65	$43.02	$45.43	$88.45

Exhibit D-3

KBA CONSTRUCTION MANAGEMENT

Project Name: **SE Pioneer Way Recon.**

Client Project No.: TBD
KBA Project No.: BP 10-114
Contract Type: Cost + Net Fee (on DSC only)
Date Prepared: 2/3/2011
Prepared by: K. Adams
Salary Escallation 5%

Determination of Hours	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
Days/Mo	20	20	23	21	21	22	20	23	21	21	20	21
Hr/Mo	160	160	184	168	168	176	160	184	168	168	160	168
Extra Wok	6%	8%	10%	11%	12%	12%	12%	12%	12%	11%	10%	4%
Adj Hr/Mo	170	173	203	187	189	198	180	207	189	187	176	175

Schedule: PRE-CON | CONSTRUCTION | CLOSEOUT

KBA Labor Hours

Employee	Title	2011 Rate	2012 Rate	Total Hours	2011 Total	2012 Total	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
K. Adams	Project Manager (M2)	$69.50	$73.00	144	144	-	-	12	20	20	14	14	14	14	14	14	4	4
Dave Mohler	Resident Engineer (E5)	$45.50	$47.80	888	888	-	-	80	130	84	84	88	80	92	84	84	40	42
Nathan Monroe	Office Engineer (P3)	$33.00	$34.70	1,458	1,458	-	-	-	184	168	168	176	160	184	168	168	40	42
Dan Leftwich	Inspector (P4)	$36.00	$37.80	1,193	1,193	-	-	16	184	168	168	176	160	184	137	-	-	-
Jennifer Smiley	Project Admin. (P3)	$26.00	$27.30	104	104	-	-	80	24	-	-	-	-	-	-	-	-	-
Kelly Clark	Project Specialist (P4)	$31.75	$33.30	20	20	-	-	20	-	-	-	-	-	-	-	-	-	-
Sean Mabin	Project Specialist (A5)	$33.65	$35.30	6	8	-	-	8	-	-	-	-	-	-	-	-	-	-
Subtotal - KBA Labor Hours				3,815	3,815	-	-	216	542	440	434	454	414	474	403	266	84	88

Direct Expenses

Item	Total Costs	2011 Total	2012 Total	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
Vehicles / $900/day (pro-rated)	11,025	11,025	-	-	450	1,575	1,350	1,350	1,350	1,350	1,350	1,350	450	225	225
Mileage @ $0.51/mile	1,465	1,465	-	-	135	200	200	135	135	135	135	135	135	60	60
Misc: Supplies, Equipment, Postage	202	202	-	-	22	20	20	20	20	20	20	20	20	20	-
Copier/Scanner/Printer	4,950	4,950	-	-	450	450	450	450	450	450	450	450	450	450	450
Subtotal - Direct Expenses	17,642	17,642	-	-	1,057	2,245	2,020	1,955	1,955	1,955	1,955	1,955	1,055	755	735

Combined Costs

Employee	Title	2011 Rate	2012 Rate	Total DSC	2011 Total	2012 Total	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
K. Adams	Project Manager (M2)	$69.50	$73.00	10,008	10,008	-	-	834	1,390	1,390	973	973	973	973	973	973	278	278
Dave Mohler	Resident Engineer (E5)	$45.50	$47.80	40,404	40,404	-	-	3,640	5,915	3,822	3,822	4,004	3,640	4,186	3,822	3,822	1,820	1,911
Nathan Monroe	Office Engineer (P3)	$33.00	$34.70	48,114	48,114	-	-	-	6,072	5,544	5,544	5,808	5,280	6,072	5,544	5,544	1,320	1,386
Dan Leftwich	Inspector (P4)	$36.00	$37.80	42,948	42,948	-	-	576	6,624	6,048	6,048	6,336	5,760	6,624	4,932	-	-	-
Jennifer Smiley	Project Admin. (P3)	$26.00	$27.30	2,704	2,704	-	-	2,080	624	-	-	-	-	-	-	-	-	-
Kelly Clark	Project Specialist (P4)	$31.75	$33.30	635	635	-	-	635	-	-	-	-	-	-	-	-	-	-
Sean Mabin	Project Specialist (A5)	$33.65	$35.30	269	269	-	-	269	-	-	-	-	-	-	-	-	-	-
Direct Salary Costs				$ 145,082	145,082	-	-	8,034	20,625	16,804	16,387	17,121	15,653	17,855	15,271	10,339	3,418	3,575
Overhead @	127.84%			$ 185,473	185,473	-	-	10,271	26,367	21,482	20,949	21,887	20,011	22,826	19,522	13,217	4,370	4,570
Fee (on DSC only) @	35.00%			$ 50,778	50,778	-	-	2,812	7,219	5,881	5,735	5,992	5,479	6,249	5,345	3,619	1,196	1,251
Subtotal (DSC + OH + Fee)				$ 381,333	381,333	-	-	21,117	54,211	44,167	43,071	45,000	41,143	46,930	40,138	27,175	8,984	9,396
Direct Expenses (No Markup)				$ 17,642	17,642	-	-	1,057	2,245	2,020	1,955	1,955	1,955	1,955	1,955	1,055	755	735
Subconsultant(s)				$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Management Reserve				$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL ESTIMATED COSTS				$ 398,975	398,975	-	-	22,174	56,456	46,187	45,026	46,955	43,098	48,885	42,093	28,230	9,739	10,131

Exhibit D-4

Breakdown of Overhead Cost

Account Title	$ Beginning Total	% of Direct Labor
Direct Labor	3,458,188.00	100.00%
Overhead Expenses:		
FICA	417,121.00	12.06%
Unemployment	46,960.00	1.36%
Health/Accident Insurance	398,699.00	11.53%
Medical Aid & Industrial Insurance	14,061.00	0.41%
Holiday/Vacation/Sick Leave	542,740.00	
Commission/Bonus/Pension	377,993.00	10.93%
Total Fringe Benefits	**1,797,574.00**	**51.98%**
General Overhead:		
State B&O Taxes	175,127.00	5.06%
Insurance	91,091.00	2.63%
Administration & Time Not Assignable	1,680,991.00	48.61%
Printing, Stationery & Supplies	26,808.00	0.78%
Professional Services	20,776.00	0.60%
Travel Not Assignable	63,495.00	1.84%
Telephone & Telegraph Not Assignable	40,291.00	1.17%
Fees, Dues & Professional Meetings	23,706.00	0.69%
Utilities & Maintenance	13,445.00	0.39%
Professional Development	79,241.00	2.29%
Rent	137,678.00	3.98%
Equipment Support	105,468.00	3.05%
Office, Miscellaneous & Postage	165,220.00	4.78%
Total General Overhead	**2,623,337.00**	**75.86%**
Total Overhead (General + Fringe)	**4,420,911.00**	**127.84%**
Overhead Rate (Total Overhead / Direct Labor)	**127.84%**	

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.

EXHIBIT G-1
SUBCONSULTANT FEE DETERMINATION -- SUMMARY SHEET

Project: N/A

Direct Salary Cost (DSC):

Classification	Man Hours	x	Rate	=	Cost
					$
					$
					$
					$
					$
					$
					$
					$
					$
					$
					$
					$
			Total DSC =		$

Overhead (OH Cost -- including Salary Additives):
OH Rate x DSC of _____ % x $_____ $_____

Fixed Fee (FF):
FF Rate x DSC of _____ % x $_____ $_____

Reimbursables:
Itemized $_____

Grand Total $_____

Prepared by_____ Date_____

EXHIBIT G-2
BREAKDOWN OF SUBCONSULTANT'S OVERHEAD COST

(Sample only -- Actual line item and cost categories and percentages for your firm should be submitted.)

Fringe Benefits

FICA ..... _____
Unemployment ..... _____
Medical Aid and Industrial Insurance ..... _____
Company Insurance and Medical ..... _____
Vacation, Holiday, and Sick Leave ..... _____
Commission, Bonuses/Pension Plan ..... _____

Total Fringe Benefits ..... _____

General Overhead

State B&O Taxes ..... _____
Insurance ..... _____
Administration and Time Not Assignable ..... _____
Printing, Stationary, and Supplies ..... _____
Professional Services ..... _____
Travel Not Assignable ..... _____
Telephone and Telegraph Not Assignable ..... _____
Fees, Dues, Professional Meetings ..... _____
Utilities and Maintenance ..... _____
Professional Development ..... _____
Rent ..... _____
Equipment Support ..... _____
Office Miscellaneous, Postage ..... _____

Total Generated Overhead ..... _____

TOTAL ..... _____

EXHIBIT B
SCOPE OF SERVICES
Construction Management Services for SE Pioneer Way Reconstruction

KBA (Consultant) will provide Construction Management (CM) services to the City of Oak Harbor (Client), for the Project known as ***SE Pioneer Way Reconstruction***. These services will include consultation, contract administration, field observation, and documentation, ~~and public outreach,~~ as required during the construction of the Project, as detailed below.

Project Description: Reconstruction of approximately 2,400 linear feet of roadway within seven downtown business district blocks, replacing pavement, sidewalks, and appurtenances from building face to building face. The work includes the underground conversion of overhead power and telecommunications facilities, the installation of approximately 500 linear feet of 12-inch sanitary sewer, and pipe bursting of approximately 1,200 feet of 12-inch sanitary sewer. Additional work includes, but is not limited to, warm mix asphalt paving, concrete curb gutter and sidewalks, traffic control, fire hydrants installation, water service line installation, storm drainage water quality facilities, illumination and signal modifications, temporary erosion and sediment control, property restoration, and landscaping. This project is a GreenRoads Pilot Project that will require extra documentation.

I. CONSTRUCTION MANAGEMENT SERVICES

A. Project Management

1. Provide overall project management, coordination with the Client, monthly progress reports, and invoicing. This effort will include the following elements.
   a. Day-to-day project management: liaison with Client on a regular basis to discus Project issues and status. Decide on best modes and frequency of communication with the Client and Designer, and use them.
   b. Manage CM Team, comprised of Consultant's staff and subconsultants. Organize and layout work for Project staff. Prepare project instructions on contract administration procedures to be used during construction.
   c. Review monthly expenditures and CM team scope activities. Prepare and submit to Client, invoices and progress report describing CM services.

Deliverables

- Monthly invoices and progress reports delivered by the 15th of each month

B. Preconstruction Services

1. Review Contract Documents to familiarize team with project requirements.
2. Prepare a Construction Management Plan (CM Plan) for the project. The CM Plan will be developed based on the Consultant's boilerplate document, and modified to adapt to and include Client practices and funding agency requirements, including forms to be used on the project. Submit to Client for review and comment, and finalize based on those comments. The CM Plan will cover at least the following:
   a. Communication and coordination between the CM Team, Designer, and Client ~~and other stakeholders~~
   b. Project procedures and forms
   c. Document control system

140

3. Organize and lead preconstruction conference
   a. Prepare and distribute notices.
   b. Prepare agenda
   c. Conduct the meeting
   d. Prepare and distribute meeting notes to attendees and affected agencies
4. Provide one set of preconstruction photographs.

Deliverables

- Construction Management Plan, draft will be delivered by ~~February 1~~March 15, 2011, and the final by ~~February 15~~March 31, 2011
- Preconstruction Conference Notice, Agenda will be delivered by the week of ~~February 7~~February 21, 2011, and Notes by the week of ~~February 14~~ February 28, 2011 ~~, 2011~~
- Preconstruction photos, digital files on CD/DVD will be delivered by March 15, 2011

C. Construction Services – Contract Administration

1. Liaison with the Client, construction contractor, designer, appropriate agencies, property owners, and utilities.
2. Provide the Client with brief monthly construction progress reports, highlighting progress and advising of issues which are likely to impact cost, schedule, or quality/scope.
3. Schedule Review.
   a. Review construction contractor's schedules for compliance with Contract Documents.
   b. Monitor the construction contractor's conformance to schedule and require revised schedules when needed. Advise Client of schedule changes.
   c. Prepare as-built schedule, using information from daily construction reports and other information.
4. Progress meetings. Lead regular (usually weekly) progress meetings with the construction contractor, including Client pre-briefing, and preparing weekly meeting agenda and meeting notes, and distributing copies to attendees. Track outstanding issues on a weekly basis.
5. Update CM Plan as needed to reflect changes in policy and/or procedure that occur during the Project, and orient CM Team to the changes.
6. Manage Submittal Process. Track and review, or cause to be reviewed by other appropriate party, work plans, shop drawings, samples, test reports, and other data submitted by the construction contractor, for general conformance to the Contract Documents.
7. Record of Materials. Provide Record of Materials indicating anticipated material approvals, material compliance documentation, and materials testing requirements. Maintain records of material compliance documentation received, and advise of any known deficiencies.
8. Manage RFI (request for information) process. Track and review/evaluate, or cause to be reviewed/evaluated by other appropriate party, RFIs. Manage responses to RFIs.
9. Change management. Evaluate entitlement, and prepare scope, impact, and independent estimate for change orders. Facilitate resolution of change orders.
10. Monthly Pay Requests. Prepare monthly requests for payment and/or review payment requests submitted by the construction contractor. Review with Client and construction contractor, and recommend approval, as appropriate.
11. Evaluate construction contractors' Schedule of Values for lump sum items. Review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents.

141

12. Assist the Client in the investigation of malfunctions or failures during construction.

13. ~~Public Information. Provide information for Client to prepare media communications and public notices on Project status. Provide information for Client's inclusion into a Project website and/or newsletters, as needed for public outreach. See Scope of Services for Subconsultant EnviroIssues in Exhibit G-3 of this Agreement.~~

14. Record drawings. Review not less than monthly, the construction contractor's redline set of contract plans. Maintain a CM Team set of conformed drawings tracking plan changes, location of discovered anomalies, and other items, as encountered by the CM team. Use these markups to check the progress of the Contractor-prepared Record Drawings.

15. Document Control. Establish and maintain document filing and tracking systems, following Client guidelines and meeting funding agency requirements. Collect, organize, and prepare documentation on the Project.
    a. One hard copy of files will be kept in the project field office.
    b. Electronic documentation will be stored in a Project Website, using SharePoint software, managed and hosted by the Consultant. The Client will be provided with up to 2 licenses for using the SharePoint website during the Project. KBA will provide one training session each for client and construction contractor users of the SharePoint system.

16. Project Closeout. Prepare Certificates of Substantial (including punch list), Physical, and Final Completion. Prepare final pay estimate.

17. Final Records. Compile and convey final project records, transferring to the Client for archiving at final acceptance of the Project. Records will consist of hard copy originals, and electronic records on CD/DVD.

Deliverables

- Monthly Construction Progress Reports to be delivered by the 15th of each following month
- Schedule review comments - delivery to be ongoing as needed
- As-built schedule at project completion to be delivered at project completion
- Final Meeting agendas and notes to be delivered within 7 days of each meeting
- Submittal log – updates to be sent weekly. Final Submittal log sent at completion of the project.
- Record of Materials to be submitted as part of Submittal log
- RFI log delivery to be ongoing as submitted
- Change Order(s) delivered as needed
- Progress pay requests delivered monthly as coordinated with the Contractor
- Certificates of Completion and punch list(s) – Substantial Completion associated with punch list, then final Certificate of Occupancy will be issued upon Completion
- Final records – electronic and hard copies to be delivered 30 days after final Certificate of Occupancy

D. Construction Services – Field

1. Observe the technical conduct of the construction, including providing day-to-day contact with the construction contractor, Client, utilities, and other stakeholders, and monitor for adherence to the Contract Documents. The Consultant's personnel will act in accordance with Sections 1-05.1 and 1-05.2 of the Standard Specifications.

2. Observe material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes, and notify construction contractor of noncompliance. Advise the Client of any non-conforming work observed during site visits.

3. Prepare daily construction reports, recording the construction contractors' operations as actually observed by the Consultant; includes quantities of work placed that day, contractor's equipment and crews, and other pertinent information.

142

4. Interpret Contract Documents, in coordination with Designer and City Engineer.
5. Decide questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the construction contractor.
6. Establish communications with adjacent property owners. ~~Respond to questions from property owners and the general public.~~
7. Coordinate with permit holders on the Project to monitor compliance with approved permits, if applicable.
8. Prepare field records and documents to help assure the Project is administered in accordance with funding agency requirements.
9. Attend and actively participate in regular on-site meetings.
10. Take periodic digital photographs during the course of construction. Photographs to be labeled and organized as detailed in the CM Plan.
11. Punch list. Upon substantial completion of work, coordinate with the Client and affected agencies, to prepare a 'punch list' of items to be completed or corrected. Coordinate final inspection with those agencies.
12. Testing. Coordinate the testing lab retained by the Client to perform materials and laboratory tests. Coordinate the work of the Field Representative(s) and testing laboratories in the observation and testing of materials used in the construction; document and evaluate results of testing; and inform Client and construction contractor of deficiencies.

Deliverables

- Daily Construction Reports with project photos – submitted on a weekly basis with direct Client access via the Sharepoint site
- Punch List, Certificate of Substantial Completion - Substantial Completion associated with punch list, then final Certificate of Occupancy will be issued upon Completion
- Test reports to be delivered 30 days after the Certificate of Completion

E. Assumptions

1. Budget

   a. Staffing levels are anticipated in accordance with the attached budget estimate. ~~A certain amount of~~ No overtime has been figured into the budget ~~to use, if needed, during peak construction activities~~. If ~~Supplemental~~ supplemental assistance ~~may~~ is ~~be~~ needed depending upon construction contractor's activities (number of crews and shifts), the Client and Consultant will negotiate a supplement to this Agreement.

   b. The level of effort in accomplishing the scope items is limited to the pre-approved budget. Consultant will not exceed the approved budget without prior approval by the Client. ~~A Management Reserve has been established for this project and will only be used after receiving authorization from the Client.~~ Consultant services are budgeted from February ~~15~~415, 2011 through December 23, 2011, including minimal time allotted for project setup and closeout. Should further services be required, or should the construction contract run longer than September 2, 2011, the Client and Consultant will negotiate a supplement to this Agreement.

   c. The Client will provide a construction office, and will reimburse Consultant for all incidental office costs, including lease and/or rental of equipment, utilities, and insurance. Costs are based on a 10-month lease, with a subsequent option for a month to month rental. If the office is actually occupied for a shorter period than stated in the lease/rental agreement, Client will nevertheless reimburse Consultant for all fixed costs based on a specified agreement period.

143

d. The budget allocations shown on Exhibit D are itemized to aid in project tracking purposes only. The budget may be transferred between tasks or people, or between labor and expenses, provided the total contracted amount is not exceeded without prior authorization.

e. The budget assumes that KBA's standard forms, logs, and processes will be used on the project SharePoint site. Any customization to meet specialized client requirements will be Extra Work.

2. Items and Services Client will provide

a. Meeting arrangements and facilities for pre-bid and preconstruction meetings.

b. Field office, including:

i. workstations (desk, chair, and storage) for 3 person staff

ii. conference table and chairs

~~iii. landline telephone for each full-time assigned staff [or IP phone system]~~

~~iv. combination printer/copier/scanner machine with these capabilities: 11x17 size, color~~

~~v.~~iii. hi-speed data connection (minimum 2-GB upload speed)

~~vi.~~iv. miscellaneous office supplies

~~vii.~~v. utilities and sanitary facilities

c. Retain Engineer of Record for shop drawing review, RFI's, design changes, and final record drawings.

d. Coordination with and enforcement of utility franchise agreements and/or contracts and schedules for services related to this Project.

e. Construction survey. Provide survey and staking that is not already assigned to the construction contractor. Specifically: project control, one time; and construction staking.

3. Scope

a. The SharePoint tool being used on this project is proprietary to KBA, Inc., and may not be used by any other party, or on any other project, without the written permission and involvement of KBA.

~~b. If Consultant's Scope of Services includes Constructability Review of design documents, such review will be for constructability, for general conformance with the design concept, and for contradictions and inconsistencies between the various parts of the design documents. This review will not include review of the accuracy or completeness of details, such as quantities, dimensions, weights, or gauges, fabrication processes; and will not include quantity takeoffs.~~

~~c.~~b. Consultant will provide observation services for the days/hours that their Inspector(s) personnel is/are on-site. The Inspector(s) will not be able to observe or report construction activities, or collect documentation, during the time they are not on-site.

~~d.~~c. The Consultant's monitoring of the construction contractor's activities is to ascertain whether or not they are performing the work in accordance with the Contract Documents; in case of noncompliance, Consultant will reject non-conforming work, and pursue the other remedies in the interests of the Client, as detailed in the Contract Documents. The Consultant cannot guarantee the construction contractors' performance, and it is understood that Consultant shall assume no responsibility for: proper construction means, methods, techniques; project site safety, safety precautions or programs; or for the failure of any other entity to perform its work in accordance with laws, contracts, regulations, or Client's expectations.

~~e.~~d. Definitions and Roles. The use of the term "inspect" in relation to KBA services is synonymous with "construction observation:, and reference to the "Inspector" role is

144

synonymous with "Field Representative", and means: performing on-site observations of the progress and quality of the Work and determining, in general, if the Work is being performed in conformance with the Contract Documents; and notifying the Client if Work does not conform to the Contract Documents or requires special inspection or testing. Where "Specialty Inspector" or "specialty inspection" is used, it refers to inspection by a Building Official or independent agent of the Building Official, or other licensed/certified inspector, who provides a certified inspection report in accordance with an established standard.

~~f.~~e. Because of the prior use of the project site, there is a possibility of the presence of toxic or hazardous materials. Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of toxic or hazardous materials, or for exposure of persons to toxic or hazardous materials, in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Consultant suspects the presence of hazardous materials, they will notify the Client immediately for resolution.

~~g. Review of Shop Drawings and other construction contractor submittals is not intended as an approval of the submittals if they deviate from the Contract Documents or contain errors, omissions and inconsistencies, nor is it intended to relieve the construction contractor of their full responsibility for Contract performance, nor is the review intended to ensure or guarantee lack of inconsistencies, errors, and/or omissions between the submittals and the Contract requirements. This review will not include review of the accuracy or completeness of details, such as quantities, dimensions, weights, or gauges, fabrication processes, construction means or methods, or coordination of the work with other trades, all of which are the sole responsibility of the construction contractor. Review of a specific item will not indicate that the Consultant has reviewed the entire assembly of which the item is a component.~~

~~h.~~f. Any opinions of probable construction cost provided by the Consultant will be on the basis of experience and professional judgment. However, since Consultant has no control over competitive bidding or market conditions, the Consultant cannot and does not warrant that bids or ultimate construction costs will not vary from these opinions of probable construction costs.

~~i.~~g. Development of construction schedules and/or sequencing, and/or reviewing and commenting on contractors' schedules, is for the purpose of estimating number of days to complete a project, and for identifying potential schedule and coordination challenges and determining compliance with the construction contract. It is not a guarantee that a construction contractor will complete the project in that sequence or timeline, as means and methods are the responsibility of the construction contractor.

~~j.~~h. Consultant is not responsible for any costs, claims, or judgments arising from or in any way connected with errors, omissions, conflicts or ambiguities in the Contract Documents prepared by others. The Consultant does not have responsibility for the professional quality or technical adequacy or accuracy of the design plans or specifications, nor for their timely completion by others.

~~k.~~i. Services provided by the Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances, in the same geographical area and time period.

~~l.~~j. Because data stored on electronic media can deteriorate undetected or can be modified without KBA's knowledge, Client agrees that KBA will not be held liable for the completeness, correctness, readability, or compatibility of any electronic media submitted to Client, after an acceptance period of 30 days after delivery of the electronic files.

II. OPTIONAL SERVICES

145

All services not detailed above, are considered Optional Services, which, along with any other Extra Work requested by the Client, will be performed only when a mutually negotiated Supplement to this Agreement is executed, specifying scope of services and budget. Potential Optional Services include:

A. Restaking and/or changes to the one-time control and construction staking, as design changes or stakes or monuments are interfered with by construction contractor.

B. Provide administrative and support services during construction which are not included in the above scope of services, which may include:

1. Investigations, meetings, and negotiations with the construction contractor involving claims and legal complaints, or a significant amount of defective or rejected work. A "significant amount" would be an item that might represent more than 2.5 percent of the total contract bid amount.

2. Additional work resulting from delinquency or insolvency of the construction contractor; or as a result of damage to the construction Project caused by fire, flood, earthquake or other acts of God, all exclusive of additional work resulting from litigation.

3. Additional work resulting from strikes, walkouts, or other acts of trade or labor unions or work required to resolve disputes or goals involving minorities. Additional work resulting from significant delays or acceleration of the work by the construction contractor.

4. Assistance to legal, financial, or other consultants engaged by the Client beyond the services previously described.

5. Additional services resulting from changes in scope or design of the Project due to circumstances beyond the Consultant's control. Changes include, but are not limited to, changes in size, complexity, the schedule, character of construction, or method of financing.

C. Prepare additional copies of approved drawings, specifications, and other contract documents, either for bidding purposes, or as requested by the Client.

D. Provide record drawings.

~~D.~~ E. Public Outreach.

~~E.~~ F. Drafting of Procedures, or Operations and Maintenance Manual(s).

146

City of Oak Harbor
City Council Agenda Bill

Bill No. 6
Date: February 14, 2011
Subject: Marina Interfund Loan

FROM: Doug Merriman
Finance Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Jim Slowik, Mayor
Paul Schmidt, City Administrator
Margery Hite, City Attorney, as to form

PURPOSE

To authorize an interfund loan from the Equipment Replacement Fund #502 to the Marina Fund #410 to provide short-term financing for the Marina Redevelopment Project.

AUTHORITY

RCW 43.09.2851 states that amounts charged by one municipal fund for providing services or furnishing materials to another fund within the same city shall be repaid and credited to the fund or appropriation against which the expenditure originally was charged. Amounts representing a return of expenditures from an appropriation shall be considered as returned loans of services or goods, supplies, or other materials furnished and may be expended as part of the original appropriation to which they belong, without further or additional appropriation.

RCW 35A.34.200(c) allows cities to make transfers within a specific fund by order of the chief administration officer.

Cities are required under RCW 43.09.200 to utilize the State's Budgeting, Accounting, and Reporting System (BARS) to show the receipt, use, and disposition of all public property, all sources of public income, and the amounts due and received from each source; all receipts, vouchers, and other documents kept, or required to be kept, necessary to isolate and prove the validity of every transaction.

BARS Chapter 4, Section A. Interfund transactions and balances: Establishes the minimum acceptable procedures for making and accounting for interfund loans.

SUMMARY STATEMENT

The City desires to obtain available financing for Oak Harbor Marina Redevelopment Phase 2-Dredging project. The work involves maintenance dredging of the Oak Harbor Marina, both in open fairways and under and around existing dock structures, together with such other capital improvements to the Marina as may be determined by the City. The form of financing will be the issuance of municipal bonds in an amount sufficient to fund the construction project and the related costs of the bond issue.

The bond closing date is anticipated to occur in March 1, 2011, with the receipt of funds scheduled for March 15th. Accordingly, the Marina Fund #410 desires to obtain a temporary interfund loan from the Equipment Replacement Fund #502 to allow for the payment of interim billing costs of the construction project as they

come due. Draws for the exact amount of the invoices will be made, with the aggregate limit set at $2,560,000. The interfund loan will be paid off, along with any accrued interest, at the time the final bond proceeds are received.

The interfund loan will mature on December 31, 2011 with payment required in full with any accrued interest on the outstanding balances during the loan period. It is anticipated that the interfund loan will be paid off on March 16, 2011, however it is wise to provide an overlapping maturity date. The interest rate will be at 1.0%, which closely approximates the City's current external marginal investment rate for a one-year investment.

STANDING COMMITTEE REPORT

This issue was been presented to the Finance Standing Committee on February 9, 2011.

RECOMMENDED ACTION

1. Pass Resolution 11-02 authorizing an interfund loan from the Equipment Replacement Fund #502 to the Marina Fund #410 based on the terms of the interfund loan agreement.

ATTACHMENTS

1. Resolution 11-02
2. BARS Chapter 4, Section A

MAYOR'S COMMENTS

Resolution No. 11-02

A RESOLUTION PROVIDING FOR AN INTERFUND LOAN IN THE AMOUNT NOT TO EXCEED TWO MILLION FIVE HUNDRED SIXTY THOUSAND DOLLARS ($2,560,000.00) FROM THE EQUIPMENT REPLACEMENT FUND #502 TO THE MARINA FUND #410.

WHEREAS, the City desires to obtain available financing for Oak Harbor Marina Redevelopment Phase 2-Dredging project. The work involves maintenance dredging of the Oak Harbor Marina, both in open fairways and under and around existing dock structures, together with such other capital improvements to the Marina as may be determined by the City. The resulting dredge materials will be disposed in open water Puget Sound permitted dredge disposal site. The project also includes required near-shore geographical mitigation, including the planting and placement of fill material emergency capital improvement projects as needed.

WHEREAS, the City will be issuing municipal bonds to fund the capital improvements, dredging, and other project and financing costs with the expected closing date and receipt of funds scheduled to occur in March of 2011.

WHEREAS, in order to ensure that the Marina maintains an adequate cash flow level to meet project obligations prior to the receipt of proceeds from the anticipated issuance and sale of bond financing, the City desires to obtain an interim financing option for the Marina.

WHEREAS, the Marina desires to obtain interim, short-term financing by the use of an interfund loan from the Equipment Replacement Fund #502 to the Marina Fund #410 in an amount not to exceed $2,560,000.00. Loan proceeds will be disbursed at the time invoices are received from the project contractor. Interest will begin to accrue at the time of disbursement.

WHEREAS, the proceeds of the bond issuance and sale will immediately be used to payoff any outstanding interfund loan balance and accrued interest thereon.

WHEREAS, at such a future date the entire principal balance drawn from the interfund loan will become due and payable, along with interest accrued to that date, with an option to refinance the combined principal balance plus accrued interest at the option of City Council.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do hereby resolve as follows:

SECTION ONE: An investment not to exceed $2,560,000.00 in Equipment Replacement Fund #502 funds as an interfund loan to the Marina Fund #410 is hereby authorized.

SECTION TWO: The interfund loan will mature on December 31, 2011. At that date, the principal balance plus accrued interest thereon shall become due and payable in full, with the option of refinancing the combined principal and accrued interest at the option of City Council. Prepayment of the entire outstanding loan balance, plus accrued interest, is permitted at any time prior to the established maturity date.

SECTION THREE: The rate of interest on the interfund loan shall be established at the rate of 1.0% per annum. The rate of interest shall be assessed against the outstanding balance drawn against the interfund loan at maturity on December 31, 2011, or at an earlier date if the interfund loan is paid in advance of the interfund loan maturity date.

SECTION FOUR: Upon receipt of the proceeds from the sale of municipal bonds, the Marina will utilize such proceeds to immediately pay off any outstanding interfund loan balance, plus any related accrued interest.

SECTION FIVE: The Finance Director shall make necessary transfers as per this resolution. A note covering this transaction shall be issued to the Equipment Replacement Fund #502 from the Marina Fund #410 as evidence of this obligation.

PASSED by the City Council and approved by its Mayor this 14th day of February, 2011.

CITY OF OAK HARBOR

_____

Mayor

Attest:

_____

City Clerk

Approved as to form:

_____

City Attorney

Published: _____

Chapter 4. Interfund Transactions and Balances
Section A. Interfund Loans

This section does not attempt to determine which moneys of a municipality may or may not be available for interfund lending, since the special character of some moneys involves commitments and restrictions which would require individual consideration. As a rule of thumb, however, it may be considered permissible to make interfund loans of those municipal moneys which are clearly inactive or in excess of anticipated cash needs throughout the duration of the loan **and** legally available for investment.

The minimum acceptable procedures for making and accounting for interfund loans are as follows:

1. The legislative body of a municipality must, by ordinance or resolution, approve all interfund loans, indicating the lending fund, and provide in the authorization a planned schedule of repayment of the loan principal as well as setting a reasonable rate of interest (based on the external rate available to the municipality) to be paid to the lending fund.

2. Interest should be charged in all cases, unless:

   a. The borrowing fund has no other source of revenue other than the lending fund; or

   b. The borrowing fund is normally funded by the lending fund.

3. The borrowing fund must anticipate sufficient revenues to be in a position over the period of the loan to make the specified principal and interest payments as required in the authorizing ordinance or resolution.

4. The term of the loan may continue over a period of more than one year, but must be "temporary" in the sense that no permanent diversion of the lending fund results from the failure to repay by the borrowing fund. A loan that continues longer than three years will be scrutinized for a permanent diversion of moneys. (Note: these restrictions and limitations do not apply to those funds which are legally permitted to support one another through appropriations, transfers, advances, etc.)

5. Appropriate accounting records should be maintained to reflect the balances of loans in every fund affected by such transactions.

City of Oak Harbor
City Council Agenda Bill

Bill No. 7
Date: February 14, 2011
Subject: Oak Harbor Firefighters Local 4504 IAFF Labor Agreement

FROM: Mark Soptich, Fire Chief

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 presents the proposed labor agreement by and between the City of Oak Harbor and the Oak Harbor Firefighters Local 4504 IAFF for City Council consideration and approval.

AUTHORITY

Pursuant to 41.56.100 RCW, authority and duty of employer to engage in collective bargaining – limitations – mediation, grievance procedures upon failure to agree:
A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative…

SUMMARY STATEMENT

On January 27, 2010 the City of Oak Harbor Mayor's Administration, the Oak Harbor Firefighters Local 4504 IAFF tentatively agreed to a two (2) year collective bargaining agreement. This agreement is considered tentative until approved by City Council.

Those significant contract items negotiated are as follows:

- Cost of Living Adjustment – 0% for 2011, with a wage reopener to begin no later than October 1, 2011 to address wages in 2012

Contract items changed or amended for clarification with no significant impact

- Updated language to reflect bi-monthly pay periods
- Updated leave law language by removing specific law references and replacing with broader language that encompasses all federal, state and local leave laws
- Reconciled conflicting agreement sections regarding advance notice for schedule changes and training
- Clarified medical certification may be required for compliance with federal, state or local leave laws
- Clarified unused compensatory time must be paid to the employee
- Updated Wellness fitness form to ensure compliance with the Genetic Information Non-discrimination Act (GINA)

STANDING COMMITTEE REPORT

These agreements did not come before the Public Safety Standing Committee since collective bargaining issues are exempt from public meetings and as such came before the entire City Council in a non-public meeting setting.

RECOMMENDED ACTION

1. Recommend approval and authorization for the Mayor to sign the agreement by and between the City of Oak Harbor and the Oak Harbor Firefighters Local 4504 IAFF for the term of January 1, 2011 through December 31, 2012.

ATTACHMENTS

1. Agreement – Oak Harbor Firefighters Local 4504 IAFF

MAYOR'S COMMENTS

LABOR AGREEMENT

BY AND BETWEEN

CITY OF OAK HARBOR

AND

OAK HARBOR FIREFIGHTERS LOCAL 4504 IAFF

Contract Ending December 31, 2012

Table of Contents

Article 1 - Recognition

1.1 The City hereby recognizes that the Union is the sole and exclusive bargaining representative of all regular full-time uniformed personnel as defined in RCW 41.56. PERC has specified a unit for this bargaining unit, which is defined as:

"All uniformed personnel of the City of Oak Harbor Fire Department as defined in RCW 41.56.030(7), excluding supervisors, confidential employees and all other employees."

1.2 This unit covers all firefighters and lieutenants in the Oak Harbor Fire Department. There are no captains at this time.

Article 2 - Union Membership

2.1 All employees of the City covered by this Agreement shall become and remain members in good standing in the Union or pay a service fee as a condition of employment to the Union not exceeding the amount of regular Union dues and initiation fees and not exceeding the maximum agency service fee that may be assessed as a matter of law; provided: objections to joining the Union which are based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member will be observed. Any such employee shall pay an amount of money equivalent to regular Union dues and initiation fees to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and initiation fees. The employee shall furnish written proof to the Union that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the Public Employment Relations Commission shall designate the charitable organization.

2.2 The Union may notify the City to terminate the employment of any employee not in compliance with the provisions of Section 2.1 above. The City shall terminate the employment of any such employee within seven (7) days of receiving notice from the Union and verification that the employee is not in compliance with Section 2.1 above.

2.3 The Union shall indemnify and defend the City and hold it harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of, any action taken by the City for the purposes of complying with the provisions of this Article.

Article 3 - Union Business

3.1 Grievance Committee - One member designated by the Union shall be granted leave from duty with full pay and benefits for all meetings between the City and the Union for the purpose of processing grievances, when such meetings take place at a time during which such members are scheduled to be on duty. The designee shall remain available to respond to emergency calls based upon the City's staffing needs.

Upon notification to the Fire Chief, the Union and its representatives shall be allowed permission to meet at the Oak Harbor Fire Station, during pre-arranged "non-structured" time, with employees covered by this Agreement to investigate possible grievances and ascertain that this agreement is being adhered to. Such permission is conditional on no disruption of Department business activities, normal work duties, and adherence to the safety standards. In the event that a meeting was interrupted due to emergency activities, the meeting shall be continued to a time mutually agreed upon between the Union and the Fire Chief or his/her designee.

3.2 Other Union Business - The City shall provide a bulletin board, located conspicuously at each fire station, for the posting of notices relating to local Union business and local Union activities, which are approved by the Union President or designee.

Article 4 - Management Rights

4.1 Any and all rights concerned with the management and operations of the Department are vested exclusively in the City unless otherwise provided for by the terms of this Agreement. The City has the authority to adopt reasonable rules for the operation of the Department and the conduct of its employees, provided such rules are not in conflict with the provisions of this Agreement. The City has the right to (among other actions) discipline or discharge employees for just cause, to lay off employees due to financial reasons or other legitimate business reasons; to transfer and promote employees; to assign work and determine duties of employees consistent with the traditional duties of Firefighters; to schedule hours of work; to determine the number of personnel to be assigned to duty at any one time; to establish reasonable performance and productivity standards; to introduce and use new improved, or automated methods and equipment; to build, move, or modify its facilities; to take action on any matter in the event of an emergency; and to perform all other functions not expressly limited by this Agreement.

4.2 The Employer reserves the right to contract out for goods and services, provided said contracting out does not displace any members of the bargaining unit. In the event of the Employer's business or budgetary necessity results in a reduction or elimination of Fire service operations, the Employer and the Union shall negotiate the effects of such changes.

Article 5 - Prevailing Rights

5.1 The Union and Employer agree that the "wages, hours and working conditions" in effect at the time of signature of this Agreement and which are not addressed in this Agreement nor waived in the Management Rights clause herein will remain in effect unless the Employer wishes to change a mandatory subject of bargaining not addressed or waived. If so, the Employer agrees to bargain regarding such changes not addressed or waived pursuant to its obligation under Chapter 41.56 RCW.

Article 6 - Salary and Wages

6.1 Pay Period - Wages shall be payable bi- monthly, on the fifteenth (15th) and the last business day of the month, to the employees of the Union.

6.2 Monthly Salaries - Effective January 1, 2011, the base monthly wage for firefighter EMT - Defib. classification shall be:

Firefighter

A	B	C	D	E	F
4,386	4,586	4,795	5,014	5,243	5,483

There shall be six (6) months of service between steps A and B, thereafter there shall be one (1) year between each step.

Shift Lieutenant

A	B	C	D	E	F
4,944	5,169	5,405	5,652	5,909	6,179

There shall be (6) months of service between steps A and B, thereafter there shall be one (1) year between each step.

Support Services Lieutenants

A	B	C	D	E	F
4,944	5,169	5,405	6,562	5,909	6,179

There shall be six (6) months of service between steps A and B, thereafter there shall be one (1) year between each step.

The employee's hourly rate shall be calculated by dividing the employee's annual salary by the number of hours in the employees assigned annual work schedule. (For example, the employee's hourly rate on a 40-hour work week would be derived by taking the employee's annual salary and dividing that by (40 x 52) hours.) The salaries reflected on the schedule include a component intended to compensate for all incentive type payouts.

6.3 Deferred Compensation - The City shall maintain a City sponsored Deferred Compensation Plan.

6.4 On January 1 of each year, the wage rates contained in this Article shall be increased by ninety percent (90%) of the percentage change in the Seattle Area Consumer Price Index annual percentage change for the period July 1 through June 30 of the preceding year; however, said percentage adjustment shall not be less than two percent (2%), nor shall it exceed four percent (4%). The Index used shall be the Consumer Price Index For All Wage Earners and Clerical Workers (CPI-W) 1982-84 = 100 as published by the Bureau of Labor Statistics and normally released in June of each calendar year. **(The City and the Union mutually agree to the suspension of the application of this article for 2011. The City and Union mutually agree to a wage re-opener which will commence no later than October 1, 2011 to address wages in 2012)**

Article 7 - Probation

7.1 Probation Period - New employees shall be subject to a twelve (12) month probation period following successful completion of recruit training as determined by the Fire Chief or designee. Said probation period may be extended one (1) time only for up to an additional six (6) months. During this period, such employee shall be evaluated by the Employer and may be terminated at the sole discretion of the Employer.

7.2 Promoted employees shall serve a probationary period of twelve (12) months. If during that time the employee fails to perform the duties of the new position satisfactorily, he will be permitted to return to his previous position without loss of seniority. The Employer shall provide each probationary promoted employee with an objective written evaluation of his job performance and progress every ninety (90) days.

Article 8 - Work Out of Classification

8.1 An employee who works out of class as a Lieutenant, for a minimum of four (4) hours shall receive a 10% premium pay for the shift worked in the acting capacity.

8.2 The following criteria shall be used for assignments to acting in the capacity of Lieutenant:

Short-term vacancies (two (2) months or less) the senior firefighter on shift will be assigned. Department seniority will be used.

Long-term vacancies (more than two (2) months) will be filled by the employee at the top of the current Lieutenant's promotion list. Civil Service Rules shall apply to determine eligibility for such assignments. Where there is no current list for the position, the senior firefighter will be assigned.

Article 9 - Payroll Deduction

9.1 Pursuant to RCW 41.56.110, upon the written authorization of an employee within the bargaining unit, the City shall deduct from the pay of such employee the monthly amount of dues as certified by the secretary of the Union and shall transmit the same to the treasurer of the Union.

Article 10 - Hours of Duty

10.1 Day Shift - The normal working hours for employees assigned to the eight (8) hour day shift shall be from 0800 to 1700, Monday through Friday, not to exceed (40) hours per work week, and not to include a one (1) hour lunch period. Employees covered under this section of the Agreement may work a flexible work schedule, with mutual agreement of the employee and the Chief.

10.2 Twelve hour shift (0700 to 1900) - The normal hours of work for the employees assigned to the twelve (12) hour shift shall be from 0700 to 1900 for four (4) consecutive days followed by four (4) consecutive days off. Shift work falling on Mondays/drill days shall be fourteen (14) hour workdays.

10.3 Twenty-four (24) hour shift (0700 to 0700) - The normal working hours for employees assigned to the twenty-four (24) hour shift shall be from 0700 to 0700. The work schedule shall be illustrated in the following manner: 24 hours on duty, 24 hours off duty, 24 hours on duty, 24 hours off duty, 24 hours on duty, and 96 hours off duty with this cycle repeated. Refer to Section 10.4 for average work week.

10.4 Kelly Day - DEFINITION: A continuous twenty-four (24) hour period starting at 0700 and ending at 0700 the following day.

In order to reduce the average work week to an annual average total of 2,728 hours, each employee assigned to a twenty-four hour shift shall be granted (8) eight Kelly Days per year, to be scheduled by the Chief. Under the provisions of FSLA 7(k), the normal work week for employees assigned to the twenty-four (24) hour shift is 204 hours in a 27-day work period.

10.5 Notice of Shift Change - All Employees covered by this Agreement shall receive notice, when possible, fourteen (14) calendar days in advance of a change from one shift to another; such notice shall be in writing. This time limit may be waived at the discretion of the Chief in the case of permanent appointments to a promotional position within the bargaining unit and necessary shift adjustments caused by such appointments.

10.6 Change in Work Schedule for Training - For the purposes of training, an employee's work schedule may be changed, with fourteen (14) calendar days advance notice, in order to manage overtime costs and to take advantage of training programs.

10.7 Other Hours of Work - Other hours of work changes may be made by mutual agreement between the employee and the employee's supervisor with the final approval of the Chief or the Chief's designee.

10.8 Right to Assign - The employer retains the right to assign any member of the Union to any one of the above shifts set forth in Sections 10.1, 10.2, and 10.3.

10.9 The scheduling of employee days of work and days off shall be determined by the type of shift.

Article 11 - Overtime and Call Back

11.1 Overtime shall be defined as any hours or portions of hours worked beyond an employee's normally scheduled work hours.

11.2 Overtime shall be compensated at one and one-half (1 ½) times the employee's hourly rate calculated by dividing the employee's annual salary by the number of hours in the employees assigned annualized work schedule. For example, the employee's hourly rate on a 40-hour work week would be derived by taking the employee's annual salary and dividing that by (40 x 52) hours and multiplying the result by one point five (1.5).

11.3 In the event that overtime is the beginning of, or the extension of an employee's shift, overtime shall be computed to the next thirty minute increment (e.g. 1-30 minutes = ½ hour of overtime, 31-60 minutes = 1 hour of overtime).

11.4 In the event overtime is not the extension of or the beginning of an employee's shift, a minimum of one (1) hour of overtime shall be paid to the employee when the employee is requested to return to duty or involved in activities as defined in section 11.5. After the one (1) hour, overtime shall be paid in increments as defined in section 11.3.

11.5 An employee shall be entitled to overtime pay when off shift and required to attend a meeting or training. For training purposes, an employee shall be entitled to overtime if given less than fourteen (14) calendar days advance notice as specified in Section 10.6.

11.6 Overtime callback for night shift coverage - Minimum staffing for Night D-Shift will be determined by City administration (Mayor/Council) approved positions. POC personnel may request unfilled night shift position/s until noon each day for that night's shift. After that time, Command will fill positions with career personnel. Career personnel of like positions (i.e. Firefighter / Firefighter, Officer / Officer) shall be contacted on a rotating basis.

Article 12 - Vacation and Leave

12.1 Accruals

Eight (8) Hour Day shift employees:

Time Period	Regular Vacation per Year	In lieu of holidays	Combined per Year	Monthly Accrual	Maximum Accrual per Year
0 - 5 Years	96	N/A	96	8	192
6 - 10 years	120	N/A	120	10	240
11 - 15 years	160	N/A	160	13.33	320
16 - 20 years	180	N/A	180	15	360
21 - + years	200	N/A	200	16.66	400

Twelve (12) Hour Shift employees (Includes vacation in lieu of holidays and floating holiday):

Time Period	Regular Vacation per Year	In lieu of holidays per Year	Combined per Year	Monthly Accrual	Maximum Accrual per Year
0 - 5 Years	103	94	197	16.417	206
6 - 10 years	130	94	224	18.667	260
11 - 15 years	173	94	267	22.250	346
16 - 20 years	195	94	289	24.083	390
21 - + years	216	94	310	25.833	432

Twenty-four (24) hour shift employees (Includes vacation in lieu of holidays and floating holiday):

Time Period	Regular Vacation per Year	In lieu of holidays per Year	Combined per Year	Monthly Accrual	Maximum Accrual per Year
0 - 5 Years	200	94	294	24.500	256
6 - 10 years	246	94	340	28.333	348
11 - 15 years	292	94	386	32.167	440
16 - 20 years	314	94	408	34.000	482
21 - + years	330	94	424	35.333	516

12.1.1 Employees shall accrue 1/12th of their authorized vacation and holiday leave credit on the last pay period of each month. The payroll process will debit for the vacation leave used during each month during the last pay period of each month. (This is based on twenty four (24) pay periods per year.)

12.1.2 Vacation benefits shall be accrued from the date of hire and the rate change will be effective on the pay period of the employee's anniversary date, unless the anniversary date falls on the pay period, which shall then become the effective date. An employee shall not be eligible to take paid vacation until he or she has completed 6 months of service.

12.1.3 If employees are not authorized to take vacation leave due to circumstances beyond their control, the Mayor or designee shall authorize the employee an additional 120 calendar days to use accrued vacation leave in excess of maximum accrual limits without loss of benefit.

12.2 Leave Schedule - Employees shall schedule all annual vacation leave no later than January 1 of each year. The time which employees shall take their vacation shall be approved by the Fire Chief or his designee with regard for the needs of the Fire Department.

12.2.1 Annual vacation leave may be changed after all leave is scheduled with agreement by both the employee and the Chief.

12.3 Termination Payment - If permitted by State law, an employee's accrued vacation will be paid in one lump sum upon termination of employment. Payment shall be at the affected employee's current rate.

12.4 Transfer of Work Shifts - If an employee is transferred from one shift to another, the vacation leave bank and accrual rate shall be adjusted to meet the new schedule, either increased or decreased based on the change in the average hourly work week.

Article 13 - Sick Leave

13.1 Non-duty Sick Leave for LEOFF II - All employees whose retirement benefits are provided by State law under LEOFF II shall receive non-duty sick leave for sickness and injuries that are non-duty related pursuant to applicable State Law. Full-time employees shall accumulate sick leave at the rate listed below in Section 13.1.1.

13.1.1 First year bank	Annual	Monthly	Maximum accrual
Day Shift employee	96 hours	8	1440
12 hour employee	104 hours	8.66	1440
24 hour employee	144 hours	12	1440

13.2 Non-duty Sick Leave may be used for the following reasons.

13.2.1 Personal illness, injury, or incapacity of the employee to perform his/her duties.
13.2.2 Enforced quarantine of the employee by a public health official.
13.2.3 May be used for personal doctor or dental appointments, for an emergency, or as otherwise approved by the Chief.

13.3 The City will abide by federal, state and local laws with respect to leave and medical issues.

13.4 Duty Related Disability for LEOFF II employees qualifying for supplemental disability leave pursuant to RCW 41.04.500 - .550, shall be granted adequate on-duty injury sick leave to provide the full benefits provided by such RCW sections for up to six (6) months for each new and separate duty related disability.

In cases of prolonged illness or injury of six (6) months or longer, the Employee shall be placed on an inactive status and the employee's position shall no longer be held open. A new employee may be hired to replace the disabled employee and the disabled employee shall be moved to the first position on the hire list and shall fill the first vacancy as long as the employee is 1) released as rehabilitated by the Department of Labor and Industries, 2) passes a departmental physical examination and 3) is certified to perform the essential functions of the job by a qualified physician.

13.5 Notification When Unable to Report - An employee must notify the Command Officer as soon as possible prior to the beginning of a shift if they are not able to report for duty due to reasons listed in Section 13.2.

13.6 Verification - The employer may require that an employee produce a doctor's verification of the employee's need of absence from work if a pattern or practice of absence is noted or as required by federal, state or local laws for family medical leave

13.7 Transferring Vacation Leave - Employees shall have the ability to transfer vacation leave from their accrued vacation to another employee's sick leave bank by the agreement of the City and both employees. The level of sickness, injury, or other infirmary must be of a life threatening nature, and the donating employee must maintain a minimum of 48 hours of accrued vacation. When a transfer occurs between two different shift types, a conversion shall be made to convert the number of hours to the same basis as the accrual rate of the receiving employee.

13.8 Transfer of Work Shifts - If an employee is transferred from one shift to another, the sick leave bank and accrual rate shall be adjusted to meet the new schedule, either increased or decreased based on the change in the average hourly work week.

13.9 Cash out of sick leave - Regular employees hired before October 20, 1998, who retire or voluntarily separate from the City shall receive payment of any accumulated sick leave in accordance with the following schedule:

After 5 years of service ---- 10% of accumulated sick leave
After 10 years of service ---- 25 % of accumulated sick leave
After 15 years of service ---- 35% of accumulated sick leave
After 20 years of service ---- 45% of accumulated sick leave
After 25 years of service ---- 50% of accumulated sick leave
After 30 years of service ---- 60% of accumulated sick leave

Article 14 - Light Duty

14.1 Personnel who are injured or sick and therefore on leave for duty-related or non-duty related reasons, may be assigned to light duty if appropriate work is available and both the Chief and the employee agree in writing to the assignment. Employees assigned to light duty shall work their regular scheduled shifts unless otherwise agreed by both the Fire Chief and the employee.

Article 15 - Compensatory Time

15.1 Employees entitled to overtime pay may request compensatory time off instead of cash payment. This request may be approved by the Chief on a case-by-case basis as not to compromise coverage or disrupt normal Oak Harbor Fire Department operations. If compensatory time is exercised, the employee is credited with one and one-half times the hours worked as overtime. The maximum accrual of compensatory time to be held at any time shall be 240 hours. After maximum accrual, overtime compensation shall be paid.

15.2 Employees must use compensatory time within six months of the time it was authorized and earned. Compensatory time not used within six months of the time it was authorized shall be paid to the employee. Each department shall maintain records of overtime and compensatory time and ensure that the departmental budget is accurately reflecting such activity. A review should be conducted periodically as part of the City's budget process.

Article 16 - Separations

16.1 Separations - Only employees employed by the City on the effective date of this Agreement shall be compensated under the terms of this Agreement. Separated employees shall receive compensation in effect at the time of the employee's separation.

Article 17 - Clothing and Equipment

17.1 Clothing - The department shall provide clothing in the form of uniforms and station wear as specified by Department Policy. Items shall be replaced at no cost to the employee, subject to fair wear and tear.

17.2 Cleaning Allowance - The department shall provide an allotment of $20 per month of active on-duty employment for routine cleaning of uniforms.

17.3 Protective Clothing and Equipment - Protective clothing and equipment shall be provided by the City and maintained by the City at no cost to the employee. All Articles of protective clothing and equipment shall be as specified by the Department.

Article 18 - Holidays

18.1 Day Shift Employees - For those employees scheduled to work the eight (8) hour day shift, the holidays as described in Section 18.1.1 shall be recognized and observed:

18.1.1 New Year's Day
Martin Luther King Day
President's Day
Memorial Day
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving Day
Christmas

Any holiday falling on Saturday will be celebrated on the preceding Friday. Any holiday falling on Sunday will be celebrated on the following Monday.

18.1.2 In addition to Section 18.1, eight (8) hour shift employees shall receive one (1) floating holiday shift per year. An employee shall not be eligible to the paid floating holiday until he or she has completed 6 months of service.

18.2 In lieu of holidays and the floating holiday, employees assigned to twelve (12) or twenty-four (24) hour shifts shall accrue (94) hours of holiday leave as outlined in article twelve.

Twelve hour shift employees assigned to work on a City recognized holiday that occurs on a Monday (14 hour day) shall take two hours of vacation from 19:00 to 21:00. Shift shall end at 19:00.

Article 19 - Shift Trade

19.1 Personnel shall have the option to trade shifts or portions of shifts when it does not interfere with the operation of the Fire Department. Shift trades are an agreement between two employees of like rank and are done on a voluntary basis. Shift trades shall result in no additional cost to the City nor interfere with the operation of the Department as determined by the Fire Chief or designee. The City shall have no obligation to keep records of such trades nor to revise hours of work to reflect the substitutions, except as required by the Fair Labor Standards Act.

19.2 Personnel must obtain prior written approval from the duty command officer prior to trading shifts.

Article 20 - Bereavement Leave

20.1 Upon notification to the Fire Chief or designee an employee shall be allowed time off from work on scheduled workdays because of death in the employee's immediate family. The employee will be paid for such time up to a maximum of three days for 24-hour shifts, four days for 12-14 hour shift employees, and up to five days for 40-hour week employees. For the purpose of this section, immediate family is defined as: spouse, mother, father, sister, daughter, brother, son, mother-in-law, father-in-law, step-parent, step-child, grandparent, grandchildren, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or any other relative who is an actual member of the employee's household. Depending upon staffing levels, the Fire Chief or designee may approve the use of accumulated vacation and/or holiday leave to supplement the bereavement leave.

Article 21 - Insurance

21.1 The City will offer a health plan to employees in the bargaining unit. The City shall pay for the employee's premium.

21.2 The City shall also provide employee dental insurance, long term disability and life insurance, at no cost to the employee. The employee will have the option to purchase additional life insurance at the employee's cost.

21.3 The City shall pay 75% of the dependent medical and dental coverage.

21.4 The City shall also reimburse to bargaining unit members, employed as of January 1, 2001, 40% of employee medical/dental premiums, and spouse/dependent medical/dental premiums that the employee chooses not to use. For any change in benefit selections, or for persons hired after January 1, 2001, the reimbursements rate for the above unused premiums will be at 25%.

21.5 The City reserves the right to change or provide alternate insurance carriers, health maintenance organizations, or benefit levels or to self-insure as it deems appropriate for any form or portion of insurance coverage referred to in this Article, so long as the new coverage and benefits are substantially similar to the conventional insurance provided herein. The City will not be responsible for changes unilaterally imposed by an insurance provider in benefits, co-payment provisions or deductibles so long as the City uses its efforts to minimize changes in incumbent insurance providers from one plan year to another.

21.6 The City agrees to enroll, effective on the first day of the month following the execution by both parties of this agreement, in the Medical Reimbursement plan (MERP) that is made available by the Washington State Council of Firefighters. Payment of the monthly premiums related to MRP shall be paid by the employee through payroll deduction the sum of $75.00 per month.

Article 22 - Education Reimbursement/Training/Certification

22.1 Expenses of Special Training and Education - The expenses of special training and education required by the City shall be reimbursed by the City including:

Registration
Transportation
Food and lodging (per thresholds established by City policy)

The employee driving to/from and time spent in attendance at such training and education will be compensated at the appropriate rate of pay (either straight time or overtime).

22.2 Educational Reimbursement - The City may consider payment of up to two approved job related college courses per academic quarter (or semester) taken from accredited college when the following conditions are met:

22.2.1 The need for additional training is required by statute or law.
22.2.2 The required skills are not available in the local labor market.
22.2.3 The incumbent that is seeking training is considered to be the most qualified candidate for the training and will be able to provide training for other employees.
22.2.4 The request for reimbursement must be approved prior to the employee starting a course.

The employee's supervisor shall provide a written request to be routed through the Fire Chief and include a description of the course, how it relates to the employee position and the approximate cost of tuition. If approved, reimbursement is based on successful completion of the course. Letter grade of A or B, 100% reimbursement; letter grade of C, 85% reimbursement. Any grade lower than C will not qualify for tuition reimbursement. Employees that receive this benefit will complete a summary of their training and will design a training session based upon their course work. The employee will be available to train other employees in similar positions.

22.3 Required Certifications - Certifications may be required by the City. Lodging, travel expenses and tuition costs will be paid by the City, if applicable. Hours spent to complete City required certifications or re-certifications will be compensated at the appropriate rate of pay (either straight time or overtime).

22.4 Scheduling - The City retains the right to alter an employee's work schedule with fourteen calendar days' advance notice to manage the financial and operational impacts on the Fire Department (e.g. to avoid the necessity of having to pay overtime for the purposes of this Article).

Article 23 - Off-Duty Employment

23.1 No employee shall utilize their employment or position with the Oak Harbor Fire Department for personal financial gain.

Article 24 - Work Stoppage

24.1 The Union agrees there shall be no strikes, slowdowns, stoppage of work or any interference with the efficient management of the fire department, during the term of this Agreement.

Article 25 - Drug and Alcohol Testing

25.1 General Rule: The Employer and Union jointly recognize the need for a drug and alcohol free workplace and the appropriate use of drug and alcohol testing. Employees shall be subject to substance screening when the facts, circumstances, physical evidence, physical symptoms or a pattern of performance or behavior cause management to reasonably conclude that an employee has reported to work or is working impaired.

25.2 The following testing mechanisms shall be used for drug and alcohol testing performed on members of the Union:

25.2.1 Screening Test. Any screening test shall be performed for drug testing using the Immunoassay (IA) method and for alcohol using breathalyzer or blood test.

25.2.2 Positive Results. Any positive results on the initial screening test shall be confirmed through the use of Gas Chromatography/Mass Spectrometry (GC/MS).

25.3 Drug Testing Procedures - The testing procedure shall be used whenever an employee is required to give a urine sample.

25.3.1 Listing of Drugs Taken. Prior to testing, the employee will be requested to list all drugs currently being used by the employee on a form to be supplied by the testing facility.

25.3.2 Sampling. A urine sample will be taken of the employee. The test shall be given in such a manner as to protect the authenticity and reliability of the sample and the privacy of the individual.

25.3.3 Tests. The sample will first be tested using the screening procedure set forth in Section 25.2.1. If the sample tests are positive for any prohibited drug, the confirmatory test specified in Section 25.2.2 will be employed.

25.3.4 Procedure After Positive Results. If the confirmatory test is positive for the presence of an illegal drug, the employee will be notified of the positive result, and will be provided with copies of all documents pertinent to the test sent to or from the employer by the laboratory. The employee will then have the option of having the untested sample submitted to a NIDA Certified lab of the employee's own choosing, to be tested at the employee's cost. If the retest results in a negative, the employer will reimburse the employee for all costs. The employer and employee will be given a copy of the results.

25.3.5 Documentation. Each step in collecting and processing of the urine specimens shall be documented to establish procedural integrity and a chain of evidence.

25.3.6 Right of Access. The employer and any employee who tests positive shall be given access to all written documentation available from the testing laboratory which verifies the accuracy of the equipment used in the testing process, the chain of custody of the specimen and the accuracy rate of the laboratory.

25.4 First Offense - Limitation or Action "First Offense". Any action taken by the employer for a "first offense" shall be rehabilitative in nature (i.e., counseling referral, treatment.), except when the employee is involved in criminal activity.

25.5 Second Offense - Second or more offenses by an employee shall be subject to disciplinary action, up to and including dismissal.

25.6 Informing Employees - All employees shall be fully informed of the Employer's drug and alcohol testing policy. Employees will be provided with information concerning the impact of the use of alcohol and drugs on job performance. In addition, the Employer shall inform the employees on how the tests are conducted, what the test can determine and the consequence of testing positive for drug use. All newly hired employees will be provided with this information on their initial date of hire. No employee shall be tested before this information is provided to him/her. Employees who voluntarily come forward and ask for assistance to deal with the drug or alcohol problem shall not be disciplined by the Employer for doing so. No disciplinary action will be taken against an employee unless he/she refuses the opportunity for rehabilitation, fails to complete a rehabilitation program successfully, or again tests positive for drugs or alcohol after completing an appropriate program.

25.7 Employee Testing - Employees shall not be subjected to random medical testing involving urine or blood analysis or other similar or related tests for the purpose of discovering possible drug or alcohol abuse. If, however, objective evidence exists establishing probable cause to believe an employee's work performance is impaired due to drug or alcohol abuse, the Employer will require the employee to undergo a medical test consistent with the conditions as set forth in the Policy.

25.7.1 In the event an employee is involved in an accident with serious injury requiring off-site medical treatment, the employee may be ordered to submit to drug testing where surrounding circumstances provide an articuable suspicion that the employee is impaired.

25.7.2 "For Cause" (also known as "Reasonable Cause") is defined as work-related performance, behaviors and actions that a reasonable and prudent person would believe constitute a potential hazard, either to oneself or others which could indicate that an employee may be under the influence of an illegal drug, or may be abusing a prescription or over the counter (OTC) drug, or alcohol.

25.8 Sample Collection. May allow for testing by a lab that may not be SAMSHA certified but whose procedures substantially comply.

25.8.1 The collection and testing of the samples shall be performed only by a laboratory and by a physician or health care professional qualified and authorized to administer and determine the meaning of any test results. The laboratory performing the test shall be one that is certified by the National Institute of Drug Abuse (NIDA). The laboratory chosen must be agreed to between the Union and the Employer. The laboratory used shall also be one whose procedures are periodically tested by NIDA where they analyze unknown samples sent to an independent party. The results of employee tests shall be made available to the Medical Review Physician.

25.8.2 Collection of blood or urine samples shall be conducted in a manner which provides the highest degree of security for the sample and freedom from adulteration. Recognized strict chain of custody procedures must be followed for all samples as set by NIDA. The Union and the Employer agree that security of the biological urine and blood samples is absolutely necessary; therefore, the Employer agrees that if the security of the sample is compromised in any way, any positive test shall be invalid and may not be used for any purpose.

25.8.3 Blood or urine sample will be submitted as per NIDA Standards. Employees have the right for Union or legal counsel representatives, whichever is more readily accessible, to be present during the submission of the sample. Employees shall not be witnessed while submitting a urine specimen. Prior to submitting a urine or blood sample, the employee will be required to sign a consent and release form (as attached to this Policy).

25.8.4 A portion of the original sample will be separated by the lab in all cases for an independent analysis in the event of a positive test result. All samples must be stored in a scientific acceptable preserved manner as established by NIDA. All positive confirmed samples and related paperwork must be retained by the laboratory for at least twelve (12) months or for the duration of any grievance disciplinary action or legal proceedings, whichever is longer. At the conclusion of this period, the paperwork and specimen shall be destroyed. Tests shall be conducted in a manner as to ensure that an employee's legal drug use and diet does not affect the test results.

25.9 Drug Testing - The laboratory shall test for only the substances and within the limits as follows for the initials and confirmation test as provided within NIDA standards. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for drugs or classes of drugs.

INITIAL TESTING

Marihuana metabolites	100 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites (1)	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml
<u>Barbiturates:</u>	
Secobarbital	300 ng/ml
Phenobarbital	1000-3000 ng/ml
Butalbital	1000 ng/ml
<u>Benzodiazepines</u>:	
Oxazepam	300 ng/ml
Chlordiazepoxide	3000 ng/ml
Diazepam	2000 ng/ml
Methadone	300 ng/ml
Methaqualone	300 ng/ml
Propoxyphene	300 ng/ml
Ethanol	0.03 g/dl

If immunoassay is specific for free morphine, the initial test level is 25 ng/ml. If initial testing results are negative, testing shall be discontinued, all samples destroyed and records of the testing expunged from the employee's file. Only specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the following listed cutoff values:

CONFIRMATORY TESTING

Marihuana metabolites (1)	15 ng/ml
Cocaine metabolites (2)	150 ng/ml
Opiates	
Morphine	300 ng/ml
Codeine	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	
Amphetamine	500 ng/ml
Methamphetamine	500 ng/ml
Barbiturates	200 ng/ml
Benzodiazepines	200 ng/ml
Methadone	100 ng/dl
Methaqualone	300 ng/ml
Propoxyphene	100 ng/ml
Ethanol	0.03 g/dl

(1) *Delta-9-tetrahydrocannabinol-9-carboxylic acid*
(2) *Benzoylecgonine*

If confirmatory testing results are negative, all samples shall be destroyed and record of the testing expunged from the employee's file.

25.10 Alcohol Testing - Alcohol Consumption Disclosure - An employee who has consumed any alcoholic beverage and who is called in on off-duty time will advise his/her supervisor of that consumption.

25.11 Medical Review Physician - The Medical Review Physician shall be chosen and agreed upon between the Union and the Employer and must be a licensed physician with a knowledge of substance abuse disorders. The Medical Review Physician shall be familiar with the characteristics of test (sensitivity, specificity and predictive value), the laboratories running the tests and the medical conditions and work exposures of the employee.

The role of the Medical Review Physician will be to review and interpret the positive test results. He must examine the alternate medical explanations for any positive test results. This action shall include conducting a medical review with the affected employee, review of the employee's medical history and review of any other relevant biomedical factors. The Medical Review Physician must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication.

25.12 Laboratory Results - The laboratory will advise only the employee and the Medical Review Physician of the positive results. The results of a positive drug or alcohol test can only be released to the Employer by the Medical Review Physician once he has completed his view and analysis of the laboratory's test. The Employer will be required to keep the results confidential and it shall not be released to the general public.

25.13 Testing Program Costs - The Employer shall pay for all costs involving drug and alcohol testing as well as the expenses involved with the Medical Review Physician. The Employer shall also reimburse each employee for their time and expenses including travel incurred involved in the testing procedure only, if outside normal shift schedule.

25.14 Union Held Harmless - This drug and alcohol testing program was initiated by the Employer. The Union and its members agree to the program. However, the Union shall be held harmless for the violation of any employee rights arising from the administration of the City's drug and alcohol testing program.

25.15 Changes in Testing Procedures - The parties recognize that during the life of this Agreement, there may be improvements in the technology of testing procedures which provide more accurate testing. In that event, the parties will bargain in good faith whether to amend this procedure to include such improvements. If the parties are unable to agree on the amendments they will be submitted to dispute resolution procedures as agreed upon in this contract.

25.16 No employee may refuse to take a drug or alcohol screen test when so ordered by a supervisor. No employee may contaminate, tamper with or alter in any way a urine drug/alcohol screen specimen or provide false information when responding to required questions for a drug or alcohol screen test.

25.17 Consent Forms - Drug and Alcohol Testing Consent Form (which will apply to all testing but alcohol breath test). A different form for breathalyzer testing will be provided by the Employer.

Article 26 - Military Leave

26.1 The City agrees to pay military leave of up to 21 days per year for military service pursuant to RCW 38.40.060.

Article 27 - Seniority Article

27.1 Seniority – An employee's seniority shall be defined as that period from the employee's most recent first day of uniformed full-time compensated work with the Oak Harbor Fire Department.

27.2 Employees with the same date of hire shall be assigned a seniority order, based on the individual's total score from the entire testing process of the Employer (i.e. Civil Service and the Department). The higher the total score, the higher the seniority ranking.

27.3 A seniority list shall be maintained by the Employer and shall be brought up to date prior to January 31st of each year. This list shall be forwarded to the Secretary of the Union. The list shall show date of hire and date promoted, if any.

27.4 Seniority shall prevail in lay-offs for all employees who have completed their initial probationary period, provided the senior employee is capable of performing the duties of the less senior employee. No new employee shall be hired until the laid off employees have been given the opportunity to return to work. Employees who are laid off shall be placed on a recall list for a period of three (3) years. Employees, if recalled, shall be recalled in inverse order of their layoff. Recalled employees returning from layoff in excess of one year will be subject to a physician's examination and must demonstrate within (90) ninety days of their recall that they are able to meet the physical demands associated with the work to be performed. Employees who are eligible for recall shall be given (30) thirty calendar days notice of recall sent by registered mail. The recalled employee must notify the City of their intention to return to work within fourteen (14) calendar days of their receipt of the recall notice. The City shall have fulfilled its obligations by mailing the recall notice by registered mail, return receipt requested, to the mailing address provided by the departing employee. It shall be the obligation and responsibility of the employee who was laid off to keep the City informed of their latest mailing address.

27.5 During the period that any employee is on an authorized leave of absence without pay, seniority shall accrue. If an employee is on layoff status, seniority shall not accrue. Upon returning to work after such leave or layoff, the employee shall be granted the level of seniority previously accrued.

Article 28 - Jury and Witness Duty

28.1 Jury Duty - Employees shall be granted up to 4 weeks leave with full pay while required to perform jury duty. In order to receive such leave, employees must surrender to the City all compensation except reimbursement for meals and mileage connected with their jury duty. Employees released from jury duty or while waiting to be impaneled shall report to the Chief or his designee for assignment. Any jury duty period beyond 4 weeks shall be without pay.

28.2 Witness Duty - Employees shall be released from duty without loss of pay to appear and testify in court when the matter arose out of the good faith performance of the employee's official duties.

Article 29 - Physical Fitness

29.1 The City and the Union recognize the physical and mental health of bargaining unit employees is of vital importance in fulfilling the responsibilities of the job of Firefighter.

29.2 The City and the Union define and establish a Physical Fitness Wellness program for the members of the bargaining unit utilizing the guidelines established in the "Fire Service Joint Labor Management Wellness-Fitness Initiative" which is a partnership between the International Association of Firefighters and the International Association of Fire Chiefs.

The Wellness portion of the program contains an annual medical exam which will include at a minimum:

A) Medical History Questionnaire
B) Physical examination by a medical doctor
   a. Vital signs
   b. Head, eyes, ears, nose, throat
   c. Neck
   d. Cardiovascular
   e. Pulmonary
   f. Gastrointestinal
   g. Genitourinary
   h. Rectal
   i. Lymph Nodes
   j. Neurological
   k. Musculoskeletal
   l. Skin
   m. Respirator screening

All information gathered as a result of the pre-screening and wellness testing process shall remain confidential between the medical or other service provider and the employee. All requests for medical history shall be in accordance with law. The physician shall be allowed to provide the City with information which relates to the employee's medical fitness for duty according to a mutually agreed upon standard set by the Union and the City. The standard is set at 11 METS (see form in Appendix A). This Physical Fitness Program shall be non-punitive.

The Physical Fitness portion of the program will include an annual fitness evaluation that measures at a minimum:

A) Aerobic Capacity
B) Muscular Strength
   a. Grip Strength
   b. Leg Strength
   c. Arm Strength
C) Muscular Endurance
D) Flexibility

29.3 Employees will be allowed sixty (60) minutes per shift for physical fitness and up to fifteen (15) minutes to shower and change of clothes, provided said physical fitness

conditioning periods shall not interfere with scheduled shift work such as drills, training, inspections or emergency responses. Work-outs will be scheduled by the Lieutenants, subject to the approval of the Chief. Employees not participating in scheduled physical fitness will use that time performing operational duties and projects.

Article 30 - Non-Discrimination

30.1 The parties agree to be silent on the issue of non-discrimination, unless otherwise agreed.

Article 31 - Grievance Procedure

31.1 It is understood and agreed between the parties to this agreement that this grievance procedure is the only grievance procedure applicable to members of the Union. This is the only procedure agreed to by the Union and Employer to settle their disputes or grievances under this agreement. For the purposes of this Article, days shall be Monday through Friday except for paid holidays.

31.2 A grievance is defined as an alleged misapplication or violation of the City rules and regulations, or the contract clauses of this agreement. An aggrieved person is the individual Employee who is making claim that his/her rights have been violated or believes that he/she has received inequitable treatment because of some condition of his/her employment in the areas indicated above, or the Union on behalf of its membership. Any aggrieved Employee may personally, or with the assistance of his/her Union representative, seek relief through this process.

31.3 In the presentation of grievances at all levels, Employees shall be safe from restraint, interference, discrimination, or reprisal.

31.4 Only individual Employees or groups of Employees, or the Union representatives shall have the right to file grievances under this Article, provided further that the grievance is filed in compliance with other criteria established under this Article.

31.5 Individual Employees or groups of Employees shall have the right to present grievance in person or with the assistance of the Union representative provided that any settlement reached is not inconsistent with the provisions of this agreement and that the grievance has been properly filed and adjudicated according to the established procedure as set forth in this Article.

31.6 When possible, all grievances shall be heard on City time.

31.7 If a grievance hearing extends beyond the Employee's normal shift, no overtime will be paid for the time beyond the Employee's normal hours of work. Extension of time for hearing a grievance beyond that indicated may be secured, provided that both parties are in agreement. This extension must be in writing and signed by the appropriate representatives of the City and personally by the Employee, or his/her representative.

31.8 If a grievance is pursued to arbitration, the arbitration board or arbitrator shall have no power to add to, subtract from, or modify any of the terms of this agreement, or any supplement thereof, or add to, subtract from, or modify any arbitration submission agreed to by the parties of this agreement.

31.9 Submission to arbitration: Upon receipt of a written request for arbitration, the City and the Union shall attempt to prepare a submission to be signed by the Union and the City setting forth the issues in dispute. If the City and the Union cannot agree upon the submission for arbitration, each party, at least two (2) days in advance of the hearing, shall submit to the other a statement of the issues it considers in dispute. The arbitrator or arbitrators shall determine, at or before the hearing, the issue or issues to be arbitrated. All issues in dispute must be arbitrable under the terms of this agreement. Such questions

of arbitrariness must be ruled on by the arbitrator or arbitrators prior to hearing the issues of the case provided they are found to be arbitrable.

31.10 The grievance procedure provided below shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this agreement.

31.11 Field or full-time Union business representatives who wish to investigate a grievance on City time must secure permission from the Chief prior to his/her investigation.

31.12 Prior to filing of a formal written grievance, an Employee must discuss the problem with his/her immediate supervisor. If the problem cannot be solved at this level, the Employee or his/her representative may submit his/her grievance to the Chief.

31.13 STEP 1 - FIRE CHIEF: If an Employee, or the Union, has not been satisfied during oral presentation of his/her grievance to the Chief, the Employee, or his/her representative, may present it to the Chief in writing. A grievance must be filed within ten (10) days of when the alleged grievance occurred. The grievant should state the reasons for his/her grievance, the time (date) that the grievance occurred, relief sought and the Article and clause of the contract, which has been misapplied. The grievance must be heard within ten (10) working days after it is received by the Chief. It is the responsibility of the Chief to attempt to resolve the grievance. He/She must make formal written answer to the Employee within (10) working days after the grievance hearing is completed. If the Employee feels the matter is not resolved, then the grievance may be filed into the second step.

31.14 STEP 2 - MAYOR OR HEARING OFFICER DESIGNEE: If the Employee wishes to pursue the grievance, the Employee must submit his/her request in writing within ten (10) working days after the receipt of the written answer. The grievance will be submitted to the Mayor, or his/her designee, with a copy to the Chief, after which a hearing will be held within (10) working days of its receipt.

31.15 The Mayor or his/her designee will provide a written answer within ten (10) working days after the hearing has been completed. If the Employee is not satisfied with the answer given by the Mayor, or his/her designee, and if he/she wishes to pursue the grievance, he/she may, within five (5) working days after receipt of the answer at step 2, request mediation of the grievance.

31.16 MEDIATION PROCEDURES: If the employee requests mediation, the Union or the City Administrator shall forward a request to the Public Employees Relations Commission (PERC) to assign a mediator from the PERC staff. Upon designation of the mediator, the parties will make every attempt to schedule a date for mediation within fifteen (15) days.

31.17 Proceedings before the mediator shall be confidential and informal in nature. No transcript or other official record of the mediation conference shall be made.

31.18 The mediator shall attempt to ensure that all necessary facts and considerations are revealed. The mediator shall have the authority to meet jointly and/or separately with the parties and gather such evidence as deemed necessary.

31.19 The mediator shall not have the authority to compel resolution of the grievance. If the mediator is successful in obtaining agreement between the parties, he/she shall reduce the grievance settlement in writing. Said settlement shall not constitute a precedent unless both parties so agree.

31.20 If the parties to the dispute mutually agree that the mediation is not producing a resolution or if the mediator concludes that further proceedings will not be productive, the mediation will be ended.

31.21 If mediation fails to settle the dispute, the mediator may not serve as arbitrator in the same matter nor appear as a witness for either party. None of the statements or offers of compromise made in mediation can be used in any future arbitration as evidence against the City or the Employee.

31.22 STEP 3 - ARBITRATION: If the employee does not choose to pursue mediation, he/she may, within (5) working days after receipt of the answer at step 2, file his/her grievance in writing to a board of arbitration of 2 members, 1 representing the employer and 1 representing the Union. If said board cannot agree within five (5) days, upon mutual consent of both parties, a third member, who must be a disinterested party, shall be selected from a list of arbitrators supplied by the Federal Mediation and Conciliation Service, or the State Public Employees Relation Commission (PERC) and the decision of the board of arbitration shall be binding. It is further agreed by both parties hereto that during such arbitration there shall be no suspension of work. It is further understood and agreed that said arbitration board is not vested with power to change this agreement in any of its parts, but only to interpret the same. All differences submitted by either party to arbitration shall be settled within fifteen (15) days following notice being served on the arbitration board.

31.23 Issues raised by the City or Union which are of general concern regarding application or interpretation of this agreement may be initiated in arbitration after the Mayor, or his/her designated representative, and the chief business agent of the Union, or his/her designee, have had an opportunity to discuss and investigate the issue. Decisions reached in this type of issue are not subject to retroactivity, but subject only to future application, or interpretation, of the specific Article or paragraph of this contract in question.

31.24 Grievances may be processed through either the Grievance Procedure or City of Oak Harbor Civil Service Rules and Regulations. The choice of the administrative process shall preclude the utilization of the other.

Article 32 - Savings Clause

32.1 If any provision of this agreement or any Addendum hereto is declared by legislative or judicial authority to be unlawful, unenforceable, or not in accordance with applicable statutes, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement and the City and Union will meet for renegotiation of such unlawful or unenforceable provisions for the purpose of a reasonable and lawful replacement.

Article 33 - Duration

33.1 This Agreement, and all of the terms and conditions herein, shall be the entire collective bargaining Agreement of the parties. It shall become effective and shall remain in full force and effect until December 31, 2012.

Dated this 14th day of February, 2011

_____	_____
Mayor	President
City of Oak Harbor	Oak Harbor Firefighters' Local 4504 IAFF

APPENDIX A

WELLNESS FITNESS FORM FOR MEETING THE STANDARD OF 11 METS
WASHINGTON INSTITUTE OF SPORTS MEDICINE & HEALTH

Fire Fighter: _____ Physical Exam Confirmation Date: _____

I authorize Washington Institute of Sports Medicine & Health to release this document to the Oak Harbor Fire Administration. Only information as it relates to Maximal Mets Achieved on the Treadmill Test will be releases to the department. Fitness for Duty, as defined by Oak Harbor Fire Department, is determined by the Fire Fighter achieving 11 METs. Information given to the department will note whether Fire Fighter Did Not Meet / Met / Exceeded 11 MET Standard. No other medical information or other personal information or findings of the Wellness/Physical Exam is to be shared with the department and remains confidential between Washington Institute of Sports Medicine & Health, and myself.

_____

Fire Fighter Signature

The physical Exam components include the following:

- Past Medical/Health History
- History of Surgeries / Accidents / Hospitalizations / Allergies / Medications / Vaccination Status / Social history / Family Health History
- General Physical Exam Components: skin / head / eyes / ears / nose / throat / neck / lymph nodes / lings / back / cardiac / pulses / abdomen / GI / GU / rectal / heme / neuro / musculoskeletal / endocrine / genital / extremities

As Part of the overall exam process the flowing components were assessed:

- Fasting Blood Chemistry profile
- Urinalysis
- Resting EKG
- Body Composition
- Functional Movement Screening or Strength Testing
- Flexibility Tests
- Pulmonary Function (including FEV1 & VC)
- Maximal Treadmill Exercise Stress Test with EKG and Hemodynamics (BP)
- Comprehensive Computerized Health Risk Appraisal

The patient will be given a comprehensive review of findings. Patient will be given a plan of action for lowering specific health risk findings, and improving overall health.

If referral for further evaluation and treatment was indicated by the findings, this was accomplished. The physical exam was performed by Thomas DePuydt, MD.

_____ Did Not Meet / Met / Exceeded the Oak Harbor Fire Department FITNESS FOR DUTY STANDARD of 11 METS Maximal Functional Capacity on the Maximal Treadmill Test.

Sincerely,

David L. Parker, Ph.D

APPENDIX B

Confidential Reinstatement Agreement
Oak Harbor Firefighters Union

I, _____, request reinstatement to my former position with the City of Oak Harbor. I understand that my reinstatement to employment is conditional, subject to the following terms:

1. I have successfully completed an approved rehabilitation program at a licensed, approved facility and will actively comply with any and all follow-up requirements as stated by the program mandates.

2. I understand that any future violation of the substance abuse policy, or failure to comply with and complete the follow-up terms of the approved treatment program will result in my immediate termination of employment.

3. I understand and recognize the importance of involving, (if applicable) my spouse, family or the significant other person in my life in the process of my recovery program.

4. I understand and agree that, as a condition to reinstatement, I am expected to meet all established requirements of the policies and procedures and that I will continue to be subject to established procedures for failure to comply with these standards.

5. I understand that my past conduct and my recovery program require that I comply with random drug screening requests during the period of this Agreement. My failure to comply with this section may result in my immediate termination.

6. I understand that I will be subject to the terms of this Reinstatement Agreement for a period of twelve (12) months from the date of my reinstatement. Upon completion of this twelve (12) month period, I will receive a formal, written review of my work performance and recovery progress during such period. This evaluation will determine if the terms of this Agreement have been met, require modification or, if special detailed circumstances warrant, should be extended.

ACKNOWLEDGMENT

I understand and agree that my reinstatement and continued employment are conditioned upon my satisfactory compliance with the terms listed above. I have discussed these terms with my supervisor(s) and understand that, should I fail to comply with the terms of those sections specifically cited or in all other sections not so noted, I will be subject to further disciplinary action, up to and including termination of employment with the City of Oak Harbor.

Date:_____ _____

Employee Signature

Copy received and acknowledged: _____

Print Name of Employee

Initials_____

APPENDIX C

DRUG TESTING
CONSENT / RELEASE

I consent to the collection of a urine sample by _____, and its analysis by _____, for those drugs specified in the Collective Bargaining Agreement.

The laboratory administering the tests will be allowed to release the results to my Employer only after the laboratory's results have been reviewed and interpreted by the Medical Review Physician. The information provided to the Employer shall be only whether the tests were confirmed positive or were negative and not any other results of the test without my written consent.

The laboratory is not authorized to release the results of this test to any other person without my written consent.

I understand that I have the right to my complete tests results and that the laboratory will preserve the sample for at least twelve months. I have the right to have this sample separated at the lab and a portion tested at my expense at a second NIDA Certified laboratory of my choice, in the event the test results are confirmed positive.

I understand that the Employer is requiring me to submit to this testing as a condition of my employment and that alteration of the sample or failure to reasonably cooperate with the collection of a urine sample may result in disciplinary action by the Employer.

I understand that a confirmed positive test may result in a requirement that I undergo rehabilitation.

By signing this consent form, I am not waiving any of my rights under any federal, state or local law, statute, constitution, ordinance, administrative rule or regulation or common law provision. I understand that I have the right to challenge any confirmed positive test result and any Employer action based thereon, by filing a grievance under the Collective Bargaining Agreement.

Date _____ Employee _____