

*City of Oak Harbor
City Council
Meeting Agenda*

*September 1, 2009
7:00 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. The City Council values your ideas, and sets aside time at the beginning of each meeting, from 6:45 p.m. to 7:00 p.m., to talk to citizens. 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

PLEDGE OF ALLEGIANCE

INVOCATION Dave Templin – Whidbey Presbyterian

ROLL CALL

MINUTES 7/16/09 Special Meeting, 8/5/09 Regular Meeting

NON-ACTION COUNCIL ITEMS:

1. Introduction of New Employees – None.
2. Employee Recognition – Kim Perrine, Law Department – 20 years.
3. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

4. Consent Agenda.

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a. Excused Absence Request – Councilmember Beth Munns for 9/15/09 meeting.

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b. Application for Taxi License – Kelly Cab.

Page 68

c. Dance Hall License – Public Dancing at Dan's Classic Ballroom Studio.

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d. Noise Permit – Birthday Party for Steve Potter.

Page 78

e. Resolution – Identity Theft Prevention Program (Red Flag Initiative).

Page 116

f. Approval of Grant Submittal – for submittal to the Washington State Public Works Board, Regatta Water Main Extension.

Page 134

g. Authorization to Solicit Bids – RBC Diversion Pump Station Upgrades.

h. Pay Bills.

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5. Public Hearing – Application for Nightclub License – China Harbor.

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6. Public Hearing – Annexation – Brian Gentry.

Page 200

7. Public Hearing – Ordinance – Mid-Year Budget Amendment.

Page 206

8. Memorandum of Agreement – Maylor Point Trail.

Page 216

9. Construction Administrative Services Agreement – Phase I, Marina Project.

10. City Administrator's Comments

11. Councilmembers' Comments

a. Standing Committee Reports

12. Mayor's Comments

ADJOURN

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
• **Whidbey Island Marathon**

Tuesday, July 16, 2009, 6:00 p.m.
City Hall Council Chambers

CHAMBER OF COMMERCE AWARDS

Mayor Slowik presented the four Chamber of Commerce Best of Whidbey Awards to Public Works Director, Cathy Rosen:

- Best Beach – Windjammer Park
- Best Place to take Kids – Windjammer Park
- Best Park – Windjammer Park
- Best Jogging Route – Oak Harbor Waterfront Trail

Ms. Rosen thanked Hank Nydam, Parks Supervisor and his staff and felt the awards belong to them in recognition of their hard work.

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

ROLL CALL

Jim Slowik, Mayor
Five Members of the Council,
James M. Campbell
Danny Paggao, Mayor Pro Tem
Jim Palmer
Beth Munns
Bob Severns

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Doug Merriman, Finance Director
Cathy Rosen, Public Works Director
Rick Wallace, Chief of Police
Renée Recker, Executive Assistant to the Mayor

Brian Oster, Pro-Motion Events was also in attendance

Councilmember Eric Gerber and Councilmember Rick Almberg were absent.

City Administrator Paul Schmidt gave the meeting's opening remarks.

This evening's meeting proposes whether or not the City should purchase the Whidbey Island Marathon. With only one regular Council meeting in both July and August, there are some timing considerations and this special meeting was called. The Marathon's current owner approached the City about this purchase and we feel this is a unique opportunity which suits both Oak Harbor and Whidbey Island. The Marathon is a significant and established event which matches the criteria for two percent fund use. In 2009 with 2,000 participants, a large amount of City effort helped ensure the Marathon's success. Mr. Schmidt introduced Brian Oster.

Brian Oster, Pro-Motion Events, Inc., in Seattle.

Mr. Oster talked about Pro-Motion which is an event and management company founded in 1998 that produces a large number of events with its foundation being running and walking events. Pro-Motion has been involved with the Whidbey Island Marathon since its inception with the exception of 2008's Marathon. Beginning with 254 participants, growing to 2,400 participants in 2008 and 2,000 participants in 2009, Mr. Oster and Pro-Motion bring a deep connection to this event. Current ownership cannot grow the event and the next logical step is for an entity, such as the City, to take it over and make it what it could become. Pro-Motion has a strong interest in remaining involved with the Marathon.

Council Questions and Discussion with Mr. Oster.

Council reconfirmed Pro-Motion's long-term involvement with the Marathon and asked about the drop in 2009's participants.

Mr. Oster felt this was an anomaly possibly linked with today's economy and the loss of Nature's Path sponsorship and marketing. Marathoners travel to events as a destination, gas and travel have been impacted by the economy, but some marathons have seen a participant increase. The Rock and Roll Marathon sold out at 25,000 participants this year. The Seattle Marathon grew in 2009. A drop in Whidbey Island Marathon participation does not signal a trend here.

Are other cities involved in marathon ownership?

Mr. Oster thought that ownership is unique but not unprecedented. Seafair has a financial partnership with Bellevue. Bloomsday is a non-profit organization but has developed a financial partnership with the City of Spokane. Spokane's Hoopfest is the largest three-on-three basketball event in the world and the City has a financial interest.

What does Pro-Motion do as opposed to the Marathon's owner?

John Kaiser is the founder and owner of the Whidbey Island Marathon. He has a big heart, developed a love of marathons late in life, was stationed at NASWI, and thought that this area was the perfect venue for a marathon. Mr. Kaiser did not have experience with producing an event so Pro-Motion was contracted. Pro-Motion handled sponsorship, marketing, permitting with all agencies, finances, and vendors. An individual owner cannot do this alone.

How is the revenue shared between an event management company and an event owner?

Mr. Oster talked about Pro-Motion's relationship with Mr. Kaiser which has changed over the years. In the beginning, it was a 50/50 partnership; during the last few years Pro-Motion was a paid contractor.

Since the Whidbey Island Marathon is a qualifying race, are accurate time computer chips furnished (was not noticed as a listed item)?

Mr. Oster noted that it is also a half marathon which is the larger component of the two. With the Rock and Roll Marathon, only 7,500 participants ran the full marathon with the remaining 17,500 participants running in the half marathon. Chip timing is an outside vendor that Pro-Motion would provide; it would not be owned by the event.

What was meant by saying that the current owner does not have the expertise to run this event? Who does the event's footwork?

Mr. Kaiser is a single individual who needs a support mechanism; a company like Pro-Motion marketing the event and product. The City's involvement would be the event planning itself and the departments who have helped staff this event. The event is a partnership; planning meetings with City departments and other agencies. This event used to pass through Oak Harbor but now begins and ends in Oak Harbor. 2009's event had major City involvement.

Why wasn't Pro-Motion involved with the 2008 Marathon?

Mr. Oster responded that Pro-Motion's contract had run out and Pro-Motion had other commitments.

What is Pro-Motion's sole responsibility: revenue sources, participant fees, sponsorship? Are other organizations, such as the Chamber of Commerce, involved?

Pro-Motion's has been involved with the Marathon from the beginning and has sought outside sponsorship. Nature's Path was a major sponsor and committed \$10,000 a year. That contract has ended and Nature's Path is no longer involved. We have had help from the Greater Oak Harbor Chamber of Commerce and from Coupeville. Fiscally, the main revenue source is the entry fee which is calculated on a graded scale; earlier registrations cost less. Registration occurs year-round for the Marathon. Other revenue sources would include sponsorships but the Marathon has not tapped into local business sponsorships. Local sponsorship could include sponsoring a water or aid station; involve community leaders. The Expo is popular and is in place the day before the event. Since marathons are destination events, participants arrive early and enjoy the Expo and its vendors. The Whidbey Island Marathon has seen participant representation from 48 states and 8 countries. Pro-Motion would like to continue its involvement with the Marathon.

Finance Director, Doug Merriman gave a PowerPoint presentation which highlighted the goals for acquiring the event.

That presentation is attached to these minutes as Exhibit A.

The four goals:

1. Retain the event
2. Provide a quality event
3. Recoup our costs
4. Hand off the event

As referenced in his presentation (and Exhibit A), Mr. Merriman talked about the history of Whidbey Island Marathon revenues from 2002 through 2009, the number of participants in that same span of years, where participants come from via percentage figures showing inside and outside of Oak Harbor, the estimated financial summary, and possible purchase details. He discussed intangible benefits to the hotel, retail, and restaurant industries in Oak Harbor, and the Expo's benefit and draw of participants to Oak Harbor prior to the event. His presentation concluded with legal considerations concerning the required action, purchase and ownership, and legal feasibility. Mr. Merriman noted that estimated expense figures were pulled from Mr. Kaiser's past 2% grant funding application. The estimated purchase amount is \$50,000 and would include a non-compete clause. The key to increasing net income is sponsorship and an increase in participants.

City Attorney Margery Hite addressed legal questions.

The City has the authority to acquire the Marathon and the necessary property. What would be acquired with this purchase is the Marathon's name, existing registrants and assets, good will, reputation, and a non-compete clause. The question of value has been presented by Mr. Merriman as a rough estimate and assignment of value. This would need to be negotiated with Mr. Kaiser; we do not have a contract now. The resolution would grant the Mayor the authority to move forward with the purchase of the Whidbey Island Marathon and Half Marathon.

Public Comments

Mayor Slowik talked about the Marathon committee which was formed this past year and included Scott Dudley, Mayor Slowik, Lt. John Dyer – OHPD, Jill Johnson – Executive Director of the Greater Oak Harbor Chamber of Commerce, and others.

Scott Dudley

Mr. Dudley spoke about his eye-opening and educational involvement with the Marathon committee. He has personally completed thirteen marathons and feels that the Whidbey Island Marathon is a great opportunity for the City and that economic benefit to the City will increase as the Marathon grows. Successful marathons give back to local non-profits. Mr. Dudley had spoken with Jill Johnson, and on behalf of the Chamber of Commerce, noted that the Chamber would endorse the City's purchase of the Marathon and its positive economic impact for Oak Harbor. Mayor Slowik talked about discussions with the Chamber of Commerce along with Sunrise Rotary's involvement (Mr. Dudley was the past president), and involvement of Kiwanis, Lion's Club, and noon Rotary. All of these organizations sponsor different fund-raising events where funds support good works. Mayor Slowik noted that Tesoro sponsors the March Point Run each year and gives back to United Way. The Run for Water in Abbotsford gave out \$30,000 for water wells in Africa. Mr. Dudley noted that the Whidbey Island Marathon has always relied on volunteers and in the past, has used a track club from Federal Way that was bussed to Oak Harbor. Oak Harbor has local individuals who would like to help. Dina Royal has been the volunteer coordinator for the Marathon and has been instrumental in assembling volunteers to assist with the water and aid stations. More local support will help keep dollars local.

Mel Vance

Mr. Vance has worked as a Marathon volunteer for the last four or five years and noted that a number of the water stations are manned by local groups. He talked about past problems in supplying the water and aid stations, but this has not been an issue in recent years. Mr. Vance was concerned about the registration fees currently being collected for the 2010 Marathon and if a joint ownership would remain so Mr. Kaiser could receive some benefit. He noted that the estimates are two years old and these figures need to be updated before signing a final agreement. Mr. Vance felt that local groups and businesses would be very willing to help if they are contacted. Sponsorship could include advertising banners at water/aid station tables.

Paul Schmidt, City Administrator talked about this opportunity and timing.

Timing is critical right now in order to continue and grow the Whidbey Island Marathon. Registrations are coming in now for 2010. If this opportunity is passed up for a year, we would not have access to registration funds that are coming in now. We feel the participant level would drop and would be more difficult to recoup if we do not take advantage of this opportunity. We are sensitive to the workload of City staff and will need to work out these details with Mr. Oster. This is a significant economic opportunity that could be assisted with two percent funding and we are comfortable that this can work. Two years ago, Nature's Path offered Mr. Kaiser \$40,000 for the Marathon which he turned down. When Mr. Kaiser realized how much work the 2009 Marathon took without Nature Path's sponsorship or the assistance of Pro-Motion as a consultant, we offered \$40,000 and Mr. Kaiser countered with \$50,000.

The Rock and Roll Marathon had a participant cap. Is a cap foreseen for the Whidbey Island Marathon?

Mr. Oster noted that, as the Marathon exists now, there would be a cap but was not certain what that number would be. A lot would depend on the roads/course and impact on the City. With its current course and if nothing changed, the cap might be 4,000 participants. With some changes and Department of Transportation input, the number could grow to 7,000 to 9,000 participants which is substantially larger than 2009's participant count.

Is there a reason the City does not have 2009 figures for the Marathon?

Mr. Merriman responded that the City has not received 2009 figures from Mr. Kaiser although these figures have been requested. Mayor Slowik added that Mr. Kaiser has run this event with a bank account and debit card and it is difficult to go through his bank statements and garner an entirely accurate accounting. Mr. Merriman added that his figures have included mail-in registrations; 15 percent comes from mailed in registrations.

What impact will the City's ownership of the Marathon have on staff?

In 2009, City staff put a lot of effort toward helping Mr. Kaiser and there was some frustration. It could not be any more difficult than 2009's event. Eric Johnston was responsible for the Department of Transportation permit along with Lt. Dyer. WSDOT said that, without City staff's involvement, they would not have participated solely with Mr. Kaiser.

This sounds like a good deal, but there seems to be no discussion of negatives. Staff cannot do this alone. Should the City find another organization to run the Marathon as part of the hand off?

Mayor Slowik talked about past faux pas. Two years ago, the Marathon took a wrong route. In 2009, Mr. Kaiser published the wrong route and Lt. Dyer corrected the route just before the Marathon began. Our debriefing with Mr. Dudley and Ms. Johnson noted that the committee and City staff were frustrated with the Marathon's planning. WSDOT would prefer that Mr. Kaiser not be involved with the planning and would prefer that planning be left to the City. It is Council's decision on how long the City should produce the event.

From a legal standpoint, this is not a regular purchase but instead purchases a good will intangible that will benefit the City. The transition management figure of \$25,540, is that the goodwill purchase?

Mr. Merriman felt this figure represents more of a premium. Transition management is time being spent by Mr. Kaiser, website ownership, and a tangible return on those dollars. That is what is still being researched.

This is the first time the City would participate in a private enterprise. Is that legally o.k.? What about liability?

Ms. Hite noted that the City can privatize recreational services and property to enter into this type of purchase. The City's liability coverage is through its insurance pool: Washington Cities Insurance Authority (WCIA). USA Track and Field certification includes an insurance premium for this event. Mr. Oster added that certification brings insurance and certificates for sponsors up to \$5 million per occurrence.

April is a rainy month. Is there a reason that month was chosen for the Marathon?

Consideration has always been given to other events and holidays in April: Holland Happening and Easter. If you are too close to other celebrations, people will not volunteer. The dates are consistent and known in the running community and this event is a qualifying event.

There is a 25 percent drop between 2008 and 2009 and the participant numbers do not correspond. We need 2009's numbers.

Mr. Merriman agreed that 2009 figures are needed, but the City does not want to consider only the highest and best year. 2008 was the last year of Nature Path's sponsorship and 2009's drop would correspond to that lack of sponsorship.

Will a City committee continue beyond Pro-Motion's involvement?

Mr. Schmidt felt that the City's involvement would not necessarily increase beyond its present involvement. Mayor Slowik added that the planning stage will be intense but the use of City staff should not vary from the standpoint of OHPD, Public Works, and others who have made this event possible.

Council discussion continued that the City has been involved with the Marathon for a long time and knows the Marathon and its needs. The Marathon brings good people to Oak Harbor along with economic revenue, it is a growing event that may be able to use two percent funding, and a partnership of some sort can be formed. Initial concern was with general fund use, but two percent funds will supplement this funding.

MOTION: COUNCILMEMBER SEVERNS MOVE TO AUTHORIZE THE MAYOR TO BUY THE MARATHON. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER.

VOTE ON THE

MOTION: COUNCILMEMBERS PAGGAO PALMER, MUNNS AND SEVERNS VOTED IN FAVOR OF THE MOTION. COUNCILMEMBER CAMPBELL ABSTAINED FROM THE VOTE. THE MOTION CARRIED.

MOTION: COUNCILMEMBER SEVERNS MOVED TO APPROVE THE RESOLUTION AUTHORIZING THE MAYOR TO PURCHASE THE WHDIBEY ISLAND MARATHON AND HALF MARATHON. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL. THE MOTION CARRIED UNANIMOUSLY.

ADJOURN

With no other business coming before Council, the special meeting adjourned at 7:30 p.m.

Connie T. Wheeler
City Clerk

Whidbey Marathon

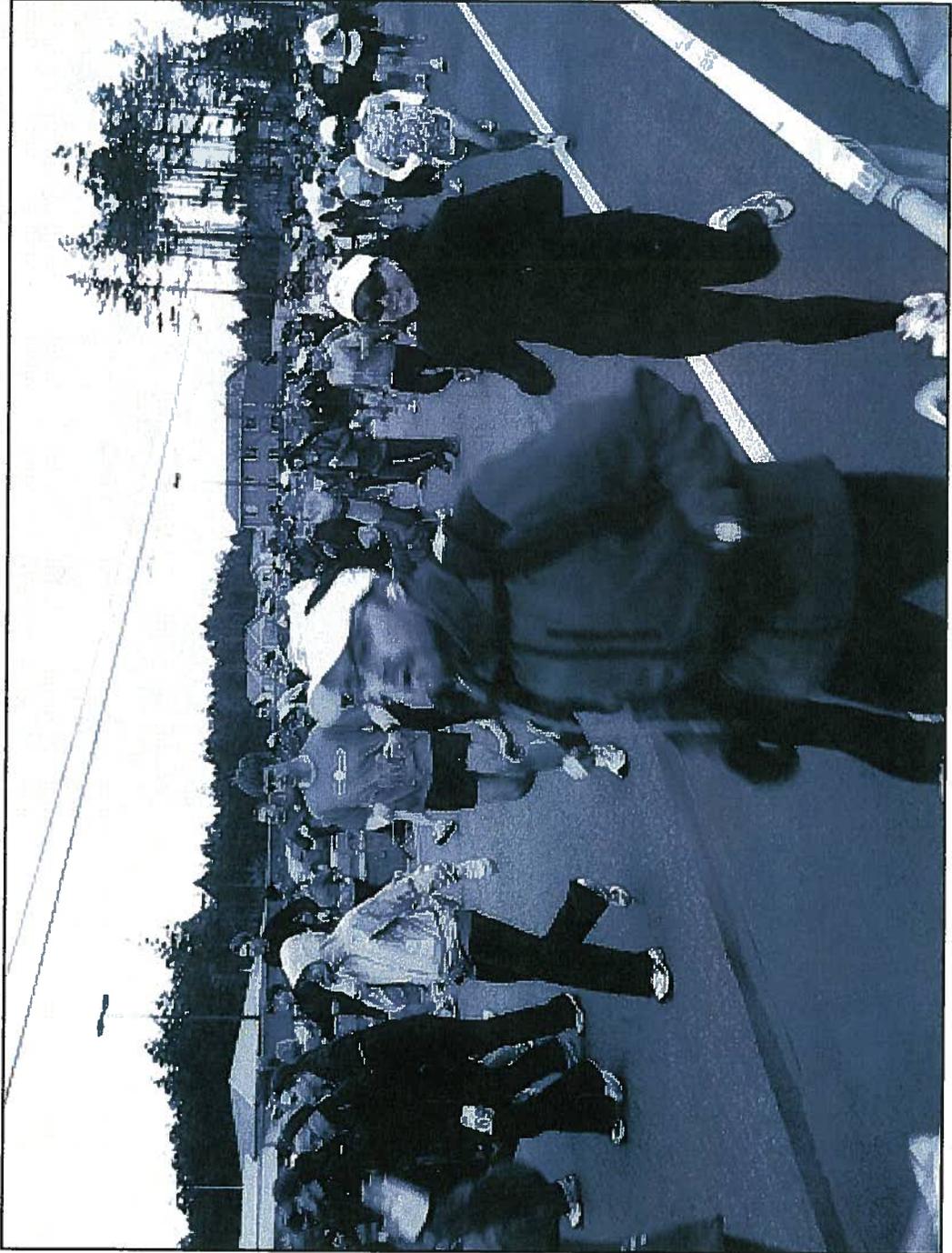
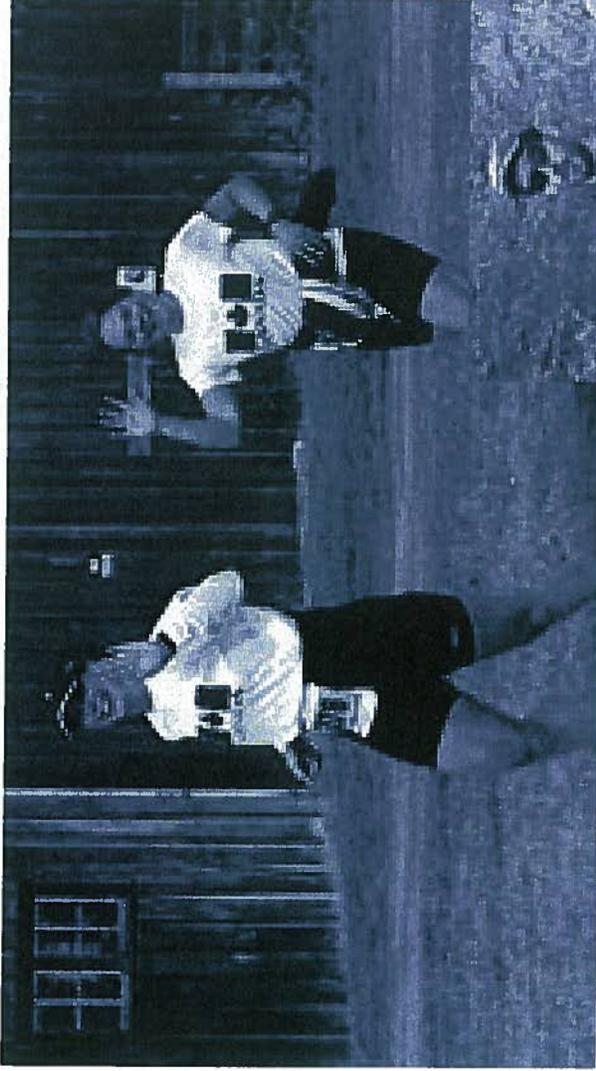
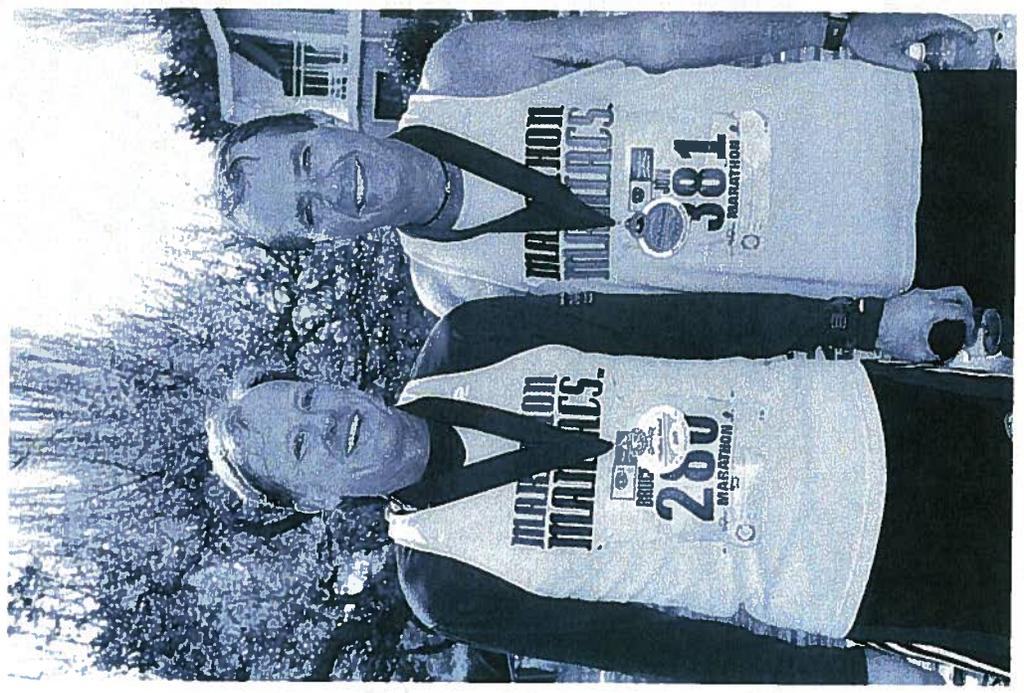
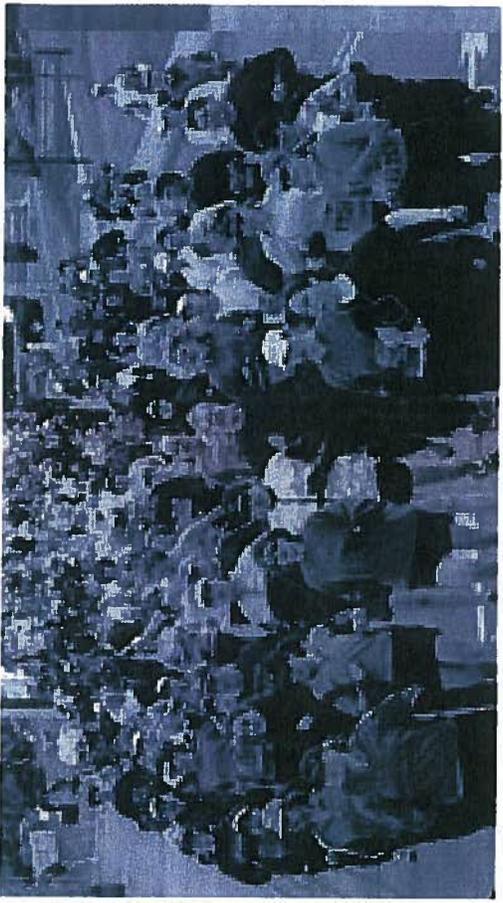


EXHIBIT A

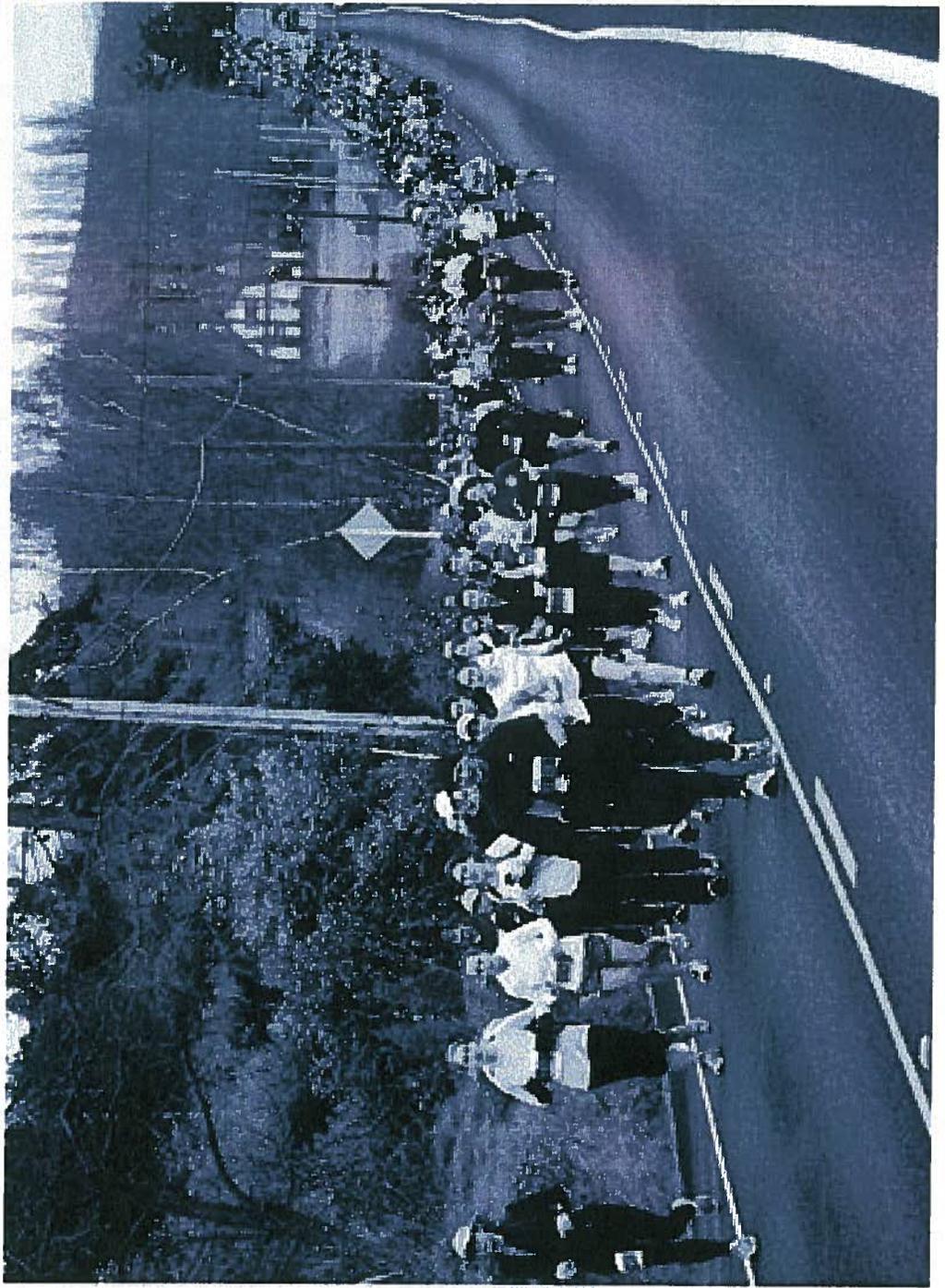
Whidbey Marathon



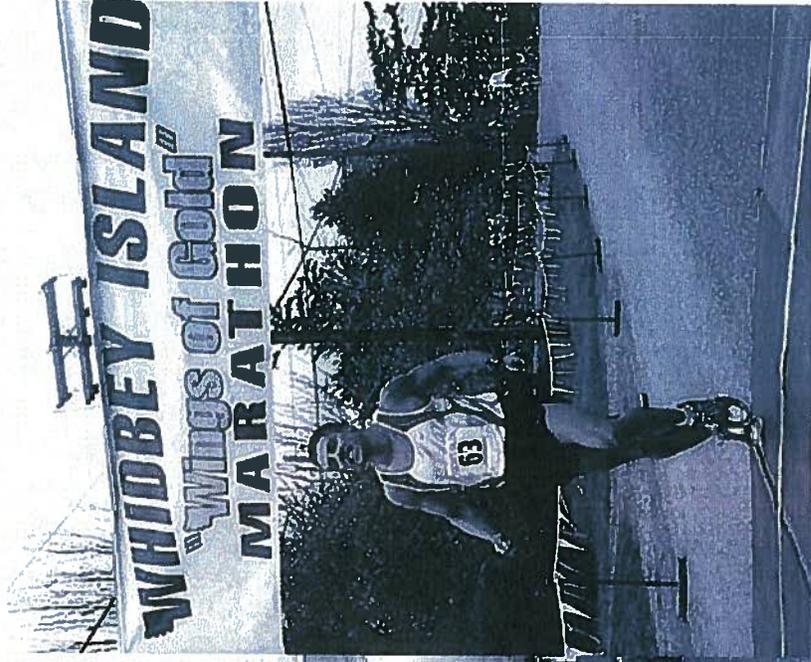
Whidbey Marathon



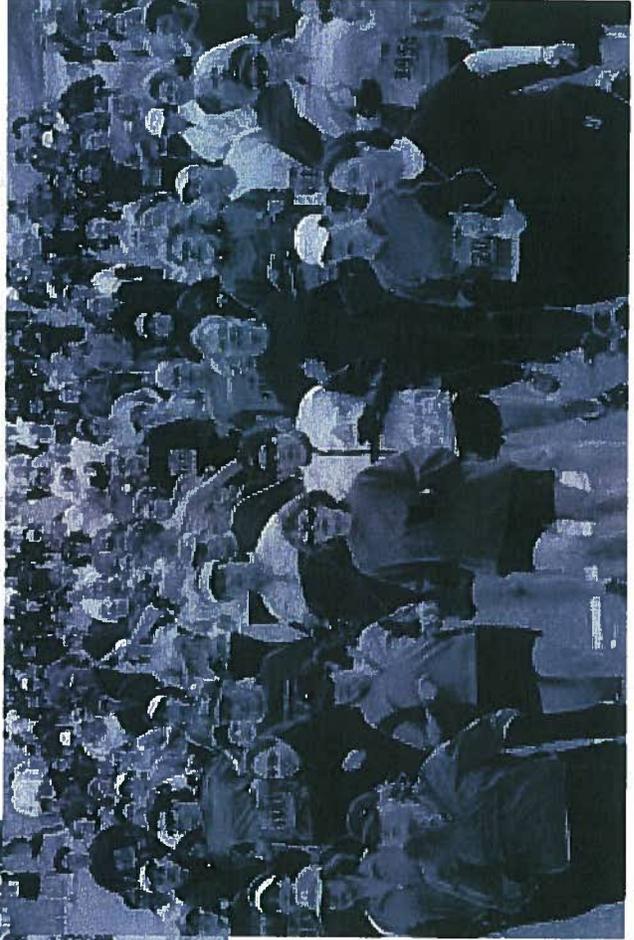
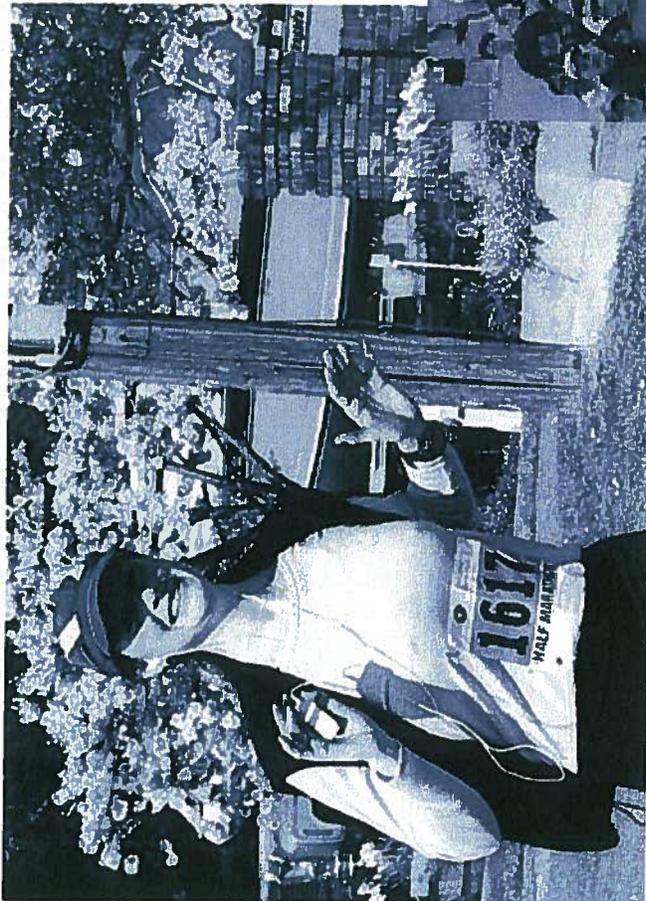
Whidbey Marathon



Whidbey Marathon



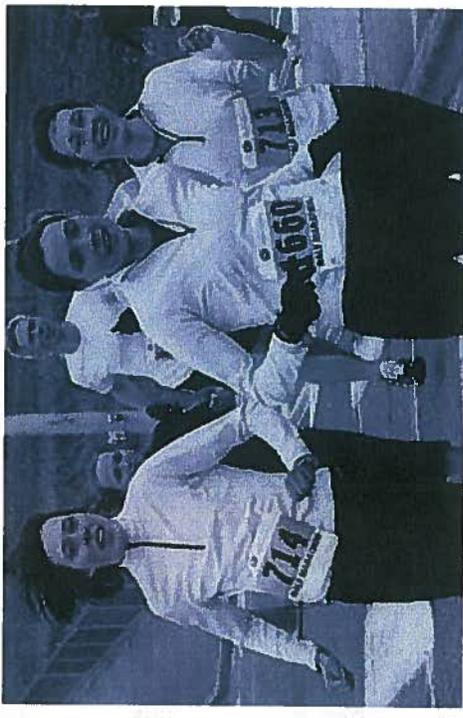
Whidbey Marathon



Goals for acquiring the event:

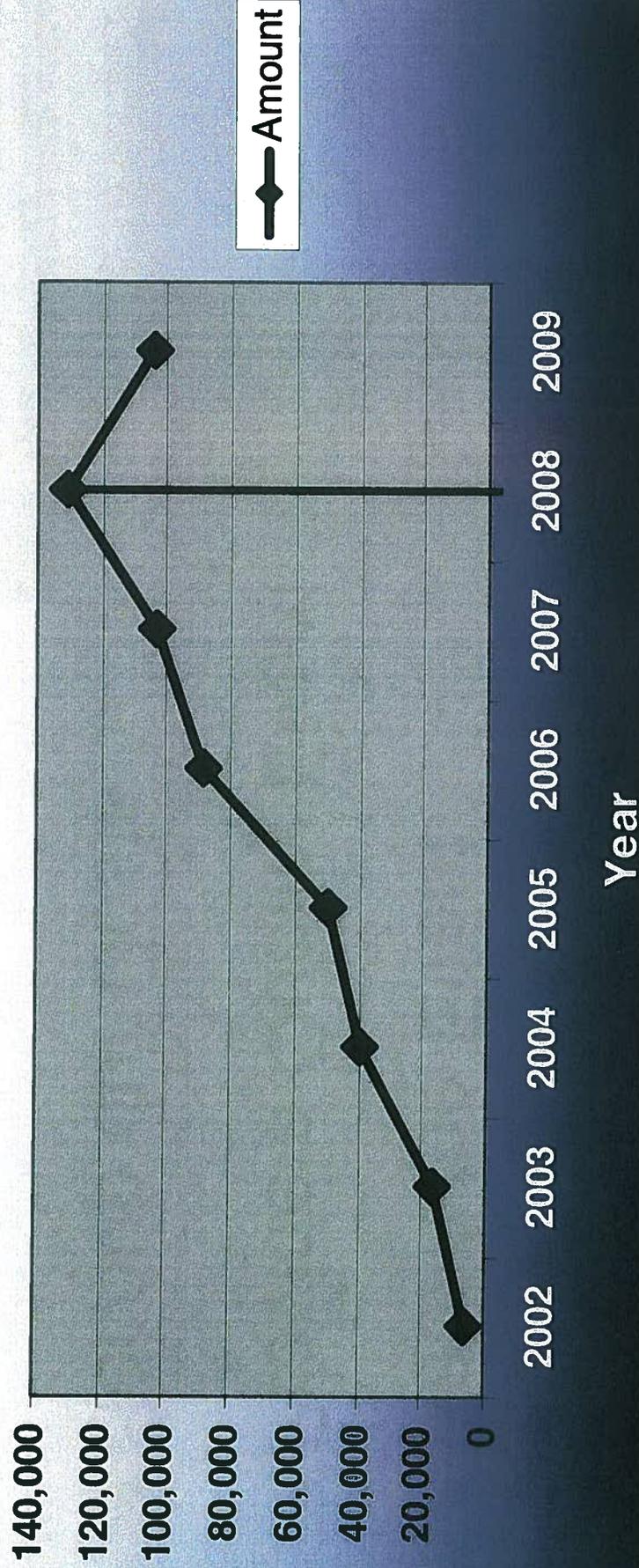
- Retain the Event
- Provide a Quality Event
- Recoup our Costs
- Hand-Off the Event

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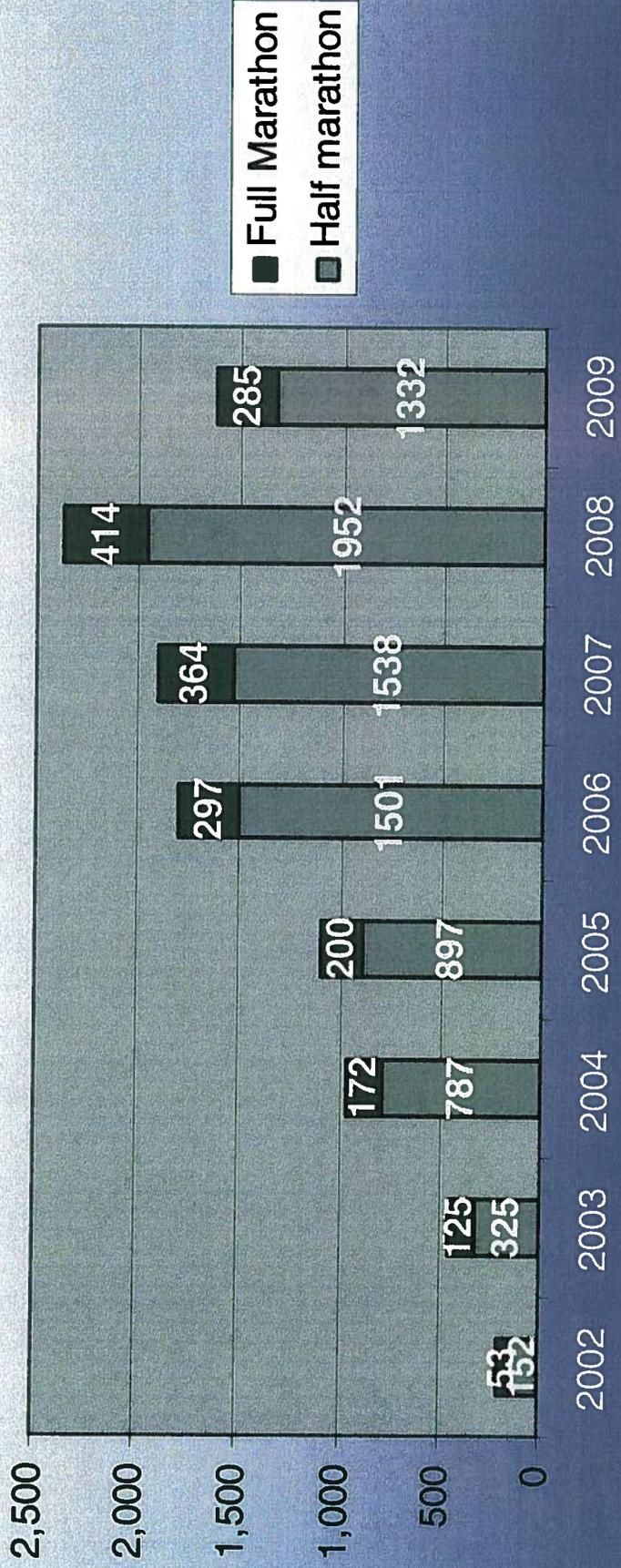
History of Revenues:

Whidbey Marathon Online Revenues

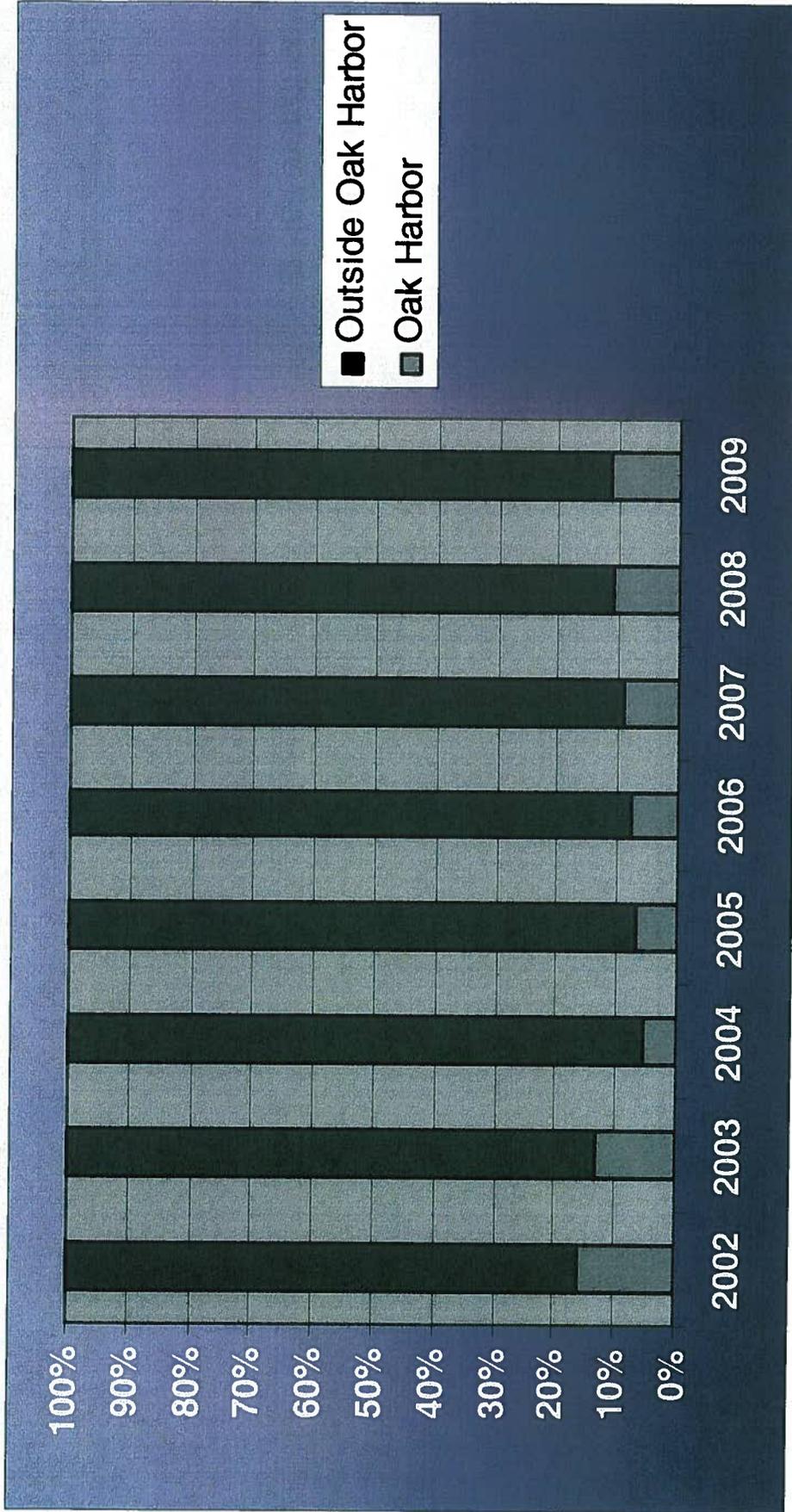


How many participate?

Whidbey Marathon Participants



Where do they come from?



Average of 89.8% come from OUTSIDE Oak Harbor

Estimated Financial Summary:

<u>Revenues</u>		<u>2008</u>
Registrations		\$158,237
Sponsorships		10,000
		168,237
<u>Expenses</u>		
Facilities		22,328
Artwork & Registration		10,050
Marketing		22,925
Officials & Staffing		44,000
Hospitality		55,941
		155,244
Event Net Income		\$12,993

Note: balances have been provided by current Owner and have not been confirmed by audit.



Possible purchase details

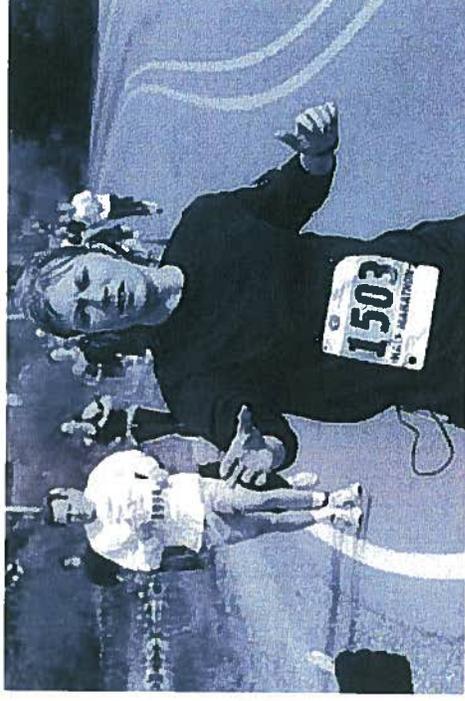
<u>Purchase Price</u>			
	Equipment & Materials		\$16,460
	Non-compete Consideration		8,000
	Transition Management		25,540
	Total Purchase Price		\$50,000
2009 Payment			\$13,000
2010 Payment			13,000
2011 Payment			12,000
2012 Payment			12,000
			\$50,000

Legal Considerations:

- Explanation of required action.
- Purchase and ownership.

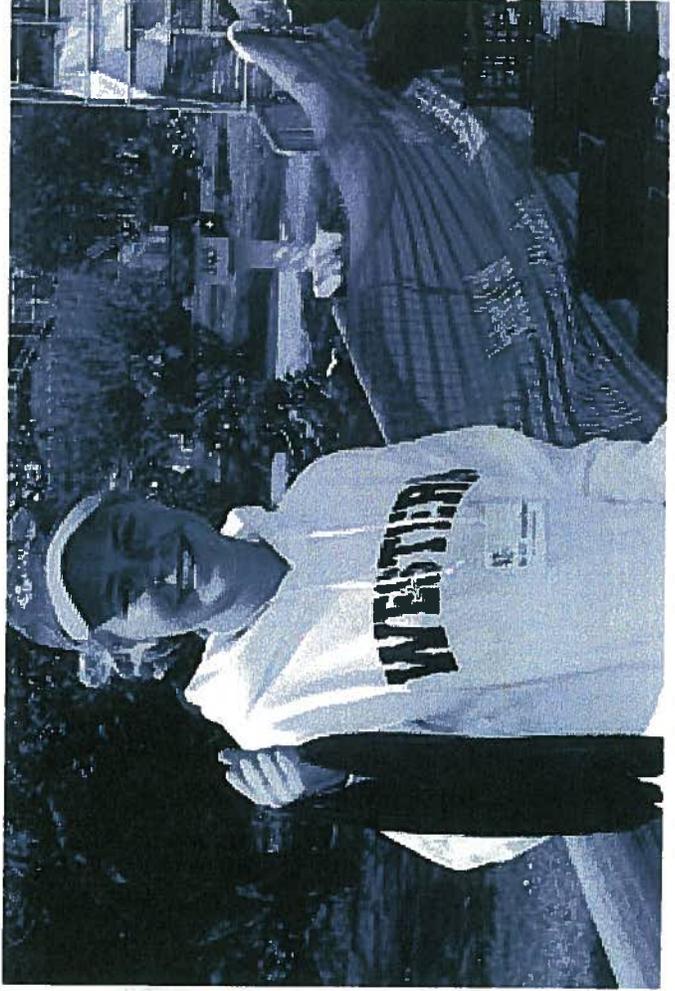
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- Legal feasibility.



Whidbey Marathon

- Council Discussions



**Regular City Council Meeting
Wednesday, August 5, 2009, 7:00 p.m.
City Hall Council Chambers**

CALL TO ORDER

INVOCATION

ROLL CALL

Jim Slowik, Mayor
Five Members of the Council,
Rick Almbert
James M. Campbell
Danny Paggao, Mayor Pro Tem
Beth Munns
Bob Severns

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Steve Powers, Development Services Director
Cathy Rosen, Public Works Director
Eric Johnston, City Engineer
Arnie Peterschmidt, Engineer
Rich Tyhuis, Public Works Operations Manager
Steve Bebee, Public Works Operations Manager
Rick Wallace, Chief of Police
Ray Merrill, Battalion Chief, Fire Department
Mike McIntyre, Senior Services Director
Mack Funk, Harbormaster
Renée Recker, Executive Assistant to the Mayor

Councilmembers Eric Gerber and Jim Palmer were formally excused from this meeting.

MINUTES

MOTION: COUNCILMEMBER PAGGAO MOVED TO APPROVE THE MINUTES OF THE 7/7/09 REGULAR MEETING, THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL. COUNCILMEMBER CAMPBELL, PAGGAO, MUNNS, AND SEVERNS VOTED IN FAVOR OF THE MOTION. COUNCILMEMBER ALMBERG ABSTAINED FROM THE VOTE. THE MOTION CARRIED.

NON-ACTION COUNCIL ITEMS

Association of Washington Cities (AWC) Recognition – Waterfront Trail Boardwalk
AWC annually presents this award to cities that demonstrate outstanding achievements in promoting community excellence. This year, the City entered the Waterfront Trail Boardwalk in the Community Services category and received a Certificate of Distinction. The Certificate was presented by Mayor Pro Tem Paggao to City Engineer Eric Johnston and Councilmember Rick Almbert who were the driving forces for the combined community and staff effort on this project. Mr. Johnston and Mr. Almbert thanked the volunteers whose collaboration of time and materials made this project a true community partnership. It's anticipated the Trail will continue out to Mayor Point. Mayor Slowik also thanked staff and the community and recognized Mayor Cohen for her sixteen years of work on this project.

Proclamation – Summer Reading Program

Mayor Pro Tem Paggao presented this proclamation to Theresa McElhiney, Children's Librarian at Sno-Isle/Oak Harbor Library. Ms. McElhiney thanked the Mayor and Council for this proclamation, thanked the program's sponsors, and noted that 800 children signed up for the Summer Reading Program this year. There will be a celebration at the Library on August 13, 2009 which is designated as Summer Reading Program Day.

Council Candidates

Mayor Slowik introduced and thanked the three Council candidates attending this meeting – Mel Vance, Scott Dudley, and Gerry Oliver.

Public Comments

Herb Strandberg, 3700 S. Westport Avenue - #3704, Sioux Falls, SD 57106. Also Site 16 at the City's Staysail RV Park. Mr. Strandberg spoke with concern about the electrical service at the RV Park: I enjoy the park and community, great views, paths, and a variety of nearby shopping. Last week we had 5 power outages at the RV Park on a single day. I unplugged from the park's service and ran my generator for 10 hours. Another coach did likewise. Sites 1-17 tripped. Sites 18 - 31 also tripped. This park does not meet the National Electrical Code. The breaker for sites 1 – 17 at the park is only 125A and should be 92% larger or split into two main feeds. This electrical system is out of date, could bring lawsuits, and needs to be brought up to appropriate standards. Mr. Strandberg presented information which is attached to these minutes as Exhibit A.

Larry Rebich, 3700 S. Westport Avenue - #2633, Sioux Falls, SD 57106. Also the owner of Premier RV Resorts. Mr. Rebich spoke with concern about the electrical service at Staysail RV Park and agreed with Mr. Strandberg's comments: I am a full-time RVer. Premier RV Resorts, see Exhibit B attached to these minutes, has parks in Salem, Eugene, Lincoln City, Redding, and Clarkston. We have had electrical issues in some of Premier's parks and have always upgraded them. I congratulate the City for having an RV park. This park allows visitors to become familiar with your town, spend money, and help the local economy. There are three great parks owned by government agencies: Winchester Bay in Douglas County, Oregon which combines with their marina; Chula Vista RV Park in San Diego County, California which is also combined with a marina; and Boardman, Oregon near the Tri-Cities area which also includes a marina. Shoreline RV Park in Crescent City, California is a municipal RV park that is not well-managed in spite of its great location. Premier RV Resorts approached Crescent City and suggested a management partnership for their park, but we were turned down. Shoreline RV Park may be redeveloped and moved and Premier would like to be involved with Crescent City as an investor. Mr. Rebich returned to Oak Harbor's Staysail RV Park discussion: The park doesn't take reservations; guests must go to pay station. One of the things that is missing is the ability to promote Oak Harbor's local merchants. Mr. Rebich presented a site map and brochure example produced by a company that solicits local business advertisements to create these handouts at no cost to an RV park's owners. This information is useful, easy to distribute, and helps promote a city.

Mayor Slowik noted that RV rates were last raised five years ago and the City will look into these repairs/upgrades.

KC Pohtilla, Chairman, Oak Harbor Arts Commission. Ms. Pohtilla talked about Driftwood Day which will be held on the beach at Windjammer Park, September 19, 2009. It is a free event and everyone is invited to build driftwood and other beach material into art; a great family day at Windjammer Park.

With no other public comments coming forth, Mayor Slowik closed comments at 7:20 p.m.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

- a. Excused Absence – Councilmember Jim Palmer for 9/15/09
- b. Noise Permit – Naval Ocean Processing Facility
- c. Park Board Re-appointment – Jeff Wallin
- d. Community Police Advisory Board Re-appointment – Joeshua Johnson
- e. Pay Bills

MOTION: COUNCILMEMBER CAMPBELL MOVED TO APPROVE CONSENT AGENDA ITEMS A, B, C, D, AND E WITH ITEM E PAYING ACCOUNTS PAYABLE CHECK NUMBERS 137778 – 137951 IN THE AMOUNT OF \$493,948.20, ACCOUNTS PAYABLE CHECK NUMBERS 137952 – 137963 IN THE AMOUNT OF \$1,754.12, ACCOUNTS PAYABLE CHECK NUMBER 137964 IN THE AMOUNT OF \$43,838.95, ACCOUNTS PAYABLE CHECK NUMBERS 137965 – 138116 IN THE AMOUNT OF \$239,770.60, PAYROLL CHECK NUMBERS 93065 – 93072 IN THE AMOUNT OF \$87,390.00, AND PAYROLL CHECK NUMBERS 93073 – 93140 IN THE AMOUNT OF \$930,275.62. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

Heron Ridge Development – Preliminary Four Lot Short Plat

MOTION: COUNCILMEMBER CAMPBELL MADE A MOTION TO MOVE AGENDA ITEM NO. 17 – HERON RIDGE DEVELOPMENT, PRELIMINARY FOUR LOT SHORT PLAT UP TO NUMBER 6 ON THE AGENDA. THE MOTION WAS SECONDED BY COUNCILMEMBER SEVERNS AND CARRIED UNANIMOUSLY.

Heron Ridge followed the public hearing on Element since both are quasi-judicial procedures.

Public Hearing – Report on Element

Because this was a quasi-judicial hearing, City Attorney Hite explained the appearance of fairness and quasi-judicial procedure beginning with ex parte communication. As stated in RCW 42.36.060:

“During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

- Places on the record the substance of any written or oral ex parte communication concerning the decision of the action; and
- Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding."

Ms. Hite then asked each Council Member to state, for the record, what ex parte contacts they have had, whether written or oral, concerning the matter to be decided.

Each Council Member stated they had no ex parte contacts.

City Attorney Hite continued to these appearance of fairness questions which were individually asked of each Council Member:

1. Do you have knowledge of having conducted business with either the proponents or opponents of this project?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Severns
	No	No	No	No	No
2. Do you have either a pecuniary or a non-pecuniary interest in the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Severns
	No	No	No	No	No
3. Do you know whether or not your employer has a financial interest in the land or area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Severns
	No	No	No	No	No
4. Do you live or own property within 300 feet of the area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Severns
	No	No	No	No	Mr. Severns has a commercial interest in a building that is close, but Element would not have an impact on that building.

5. Do you have any special knowledge about the substance of the merits of this proceeding which would or could cause you to prejudge the outcome of this proceeding?	Mr. AlMBERG	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Seaverns
	No	No	No	No	No
6. Do you believe that you cannot sit and hear this matter fairly and impartially, both as to the respective positions of the proponents and the opponents in this proceeding?	Mr. AlMBERG	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Seaverns
	I can sit and hear this matter fairly and impartially.	I can sit and hear this matter fairly and impartially.	I can sit and hear this matter fairly and impartially.	I can sit and hear this matter fairly and impartially.	I can sit and hear this matter fairly and impartially.
7. Is there any member of the audience who because of the "Appearance of Fairness Doctrine" wishes to disqualify any member of the Council from hearing this matter? If so, please state the name of the Council Member and the reason or reasons why you believe that Council Member should be disqualified.					
No audience members came forward.					

Ms. Hite noted that nothing had been presented for the record.

Rick Wallace, Chief of Police gave an investigative report regarding activities at Element Nightclub during the second quarter of 2009 as required in *OHMC 5.22.045(3) License Conditions: 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.* Chief Wallace's report for the period of April – June 2009 included information on all calls for police service to Element but paid specific attention to the calls for service that pertained to conditions of the Element Nightclub license as set by the City Council. During the second quarter 2009, there were a total of 45 calls for police service. 10 of these calls had no significant bearing on this issue and should not be viewed as having a negative connotation toward Element since these types of calls could occur at any business or private residence. The remaining calls for service did pertain to the license conditions and were described as:

Assault Complaints	(8: 1, off the property; 2, in the parking lot; 5, inside the building)
Disorderly Conduct Complaints	(2, parking lot)
Harassment Complaint	(1, inside the building)
Kidnapping Complaint	(1, and unfounded)
Malicious Mischief	(1, referred for charges, picking flowers in the park next door)
Indecent Exposure	(1, off the property, closer to Pioneer Way)
Suspicious Activity	(1, parking lot)
Theft	(2, inside the building)
DUI	(2, in the area of the Element)

Trespass (1, parking lot)
Noise (18, all in the parking lot with 16 at closing time and 2 at or near midnight). Of these 18 noise complaints, 11 were settled by contact or information only, 2 were gone on arrival, and 5 were unfounded.

Chief Wallace noted that, while there is room for improvement, on the whole it appears that the management and staff of Element are doing an effective job of adhering to the nightclub license conditions. While this is a fairly large number of complaints and improvement in preventing these types of complaints does need to occur, there was not a single case reported where the officers felt they could have taken action as a violation of the license conditions. Additionally, the officers reported that Element had between 5 and 8 designated security personnel working during the required times but especially near closing time.

Mayor Slowik opened the public hearing at 7:35 p.m. With no public comments coming forth, the public hearing was closed. Mike Kummerfeldt, Element's owner was not present.

Council Discussion

Discussion followed about activity prior to the second quarter, the effectiveness of Element's security, and that there are more security personnel on-premises than Council had required. Since Mr. Kummerfeldt was not present, the number of security would remain the same without a specific request to change this requirement. Discussion continued about noise and how many noise complaints had originated from the condominiums across from Element. Chief Wallace noted that all 18 noise complaints had come from the condominiums with 17 of those calls coming from one individual. Chief Wallace also talked about and explained the license suspension as published in a recent Whidbey News Times article. City Attorney Hite noted that liquor violations are not subject to this evening's revision hearing.

Since there would be no changes to the existing nightclub license conditions for Element, a motion was not necessary.

Heron Ridge Development – Preliminary Four-Lot Short Plat

City Attorney Hite explained that this would be a quasi-judicial procedure and a closed record appeal. This matter came before Council with a recommendation from Oak Harbor's Planning Commission. It is a Type IV review process with a public hearing held by the Planning Commission and a public meeting held by City Council this evening. As stated in RCW 42.36.060:

"During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

- Places on the record the substance of any written or oral ex parte communication concerning the decision of the action; and
- Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from

seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.”

Ms. Hite then asked each Council Member to state, for the record, what ex parte contacts they have had, whether written or oral, concerning the matter to be decided.

Each Council Member stated they had no ex parte contacts.

City Attorney Hite continued to these appearance of fairness questions which were individually asked of each Council Member:

1. Do you have knowledge of having conducted business with either the proponents or opponents of this project?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Severns
	No	No	No	No	No
2. Do you have either a pecuniary or a non-pecuniary interest in the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Severns
	No	No	No	No	No
3. Do you know whether or not your employer has a financial interest in the land or area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Severns
	No	No	No	No	No
4. Do you live or own property within 300 feet of the area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Severns
	No	No	No	No	No
5. Do you have any special knowledge about the substance of the merits of this proceeding which would or could cause you to prejudge the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Severns
	No	No	No	No	No

6. Do you believe that you cannot sit and hear this matter fairly and impartially, both as to the respective positions of the proponents and the opponents in this proceeding?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Severns
	I can sit and hear this matter fairly and impartially.	I can sit and hear this matter fairly and impartially.	I can sit and hear this matter fairly and impartially.	I can sit and hear this matter fairly and impartially.	I can sit and hear this matter fairly and impartially.
7. Is there any member of the audience who because of the "Appearance of Fairness Doctrine" wishes to disqualify any member of the Council from hearing this matter? If so, please state the name of the Council Member and the reason or reasons why you believe that Council Member should be disqualified. No audience members came forward.					

Ms. Hite noted that nothing had been presented for the record.

Steve Powers, Development Services Director presented a PowerPoint about the Heron Ridge project and noted that Council is being asked to consider only the resolution granting the requested waivers and associated conditions for Heron Ridge. The Type IV review process and public hearing was held by the Planning Commission on July 28, 2009 and Council's August 5, 2009 public meeting was advertised in the Whidbey News Times on July 25, 2009. Letters were mailed to property owners within 300 feet of the subject property informing them about the hearing. Mr. Powers noted that the applicants and Jason Fields from Fakkema and Kingma were attending this evening's meeting. In addition to the Type IV review process for the requested waivers, a Type II review process addresses the plat application for a short subdivision.

Public Comments

Mayor Slowik asked if public comments could be taken, and City Attorney Hite said comments could be taken but not as new evidence. Mayor Slowik called for public comments but there were none.

Council Discussion

Council discussion followed about street width, the lack of onstreet parking and street narrowness, the turnaround, that these are conditions associated with the plat, how lots will be accessed, and access for emergency vehicles. Mr. Powers noted that, as part of the review process, Public Works, Fire, Police, Planning, and Engineering departments evaluate the applications. This access meets requirements but no parking signs will be posted to maintain street access. Discussion continued about the single sidewalk, stormwater treatment, retention, Freund Marsh, the location of these properties, access and dedicated frontage, and the boundary line adjustment between the applicant and the Christian Science Society property.

MOTION: COUNCILMEMBER MUNNS MOVED TO APPROVE THE RESOLUTION GRANTING THE REQUESTED WAIVERS AND ASSOCIATED CONDITIONS FOR HERON RIDGE DEVELOPMENT – PRELIMINARY FOUR LOT SHORT PLAT. THE MOTION WAS SECONDED BY COUNCILMEMBER ALMBERG AND CARRIED UNANIMOUSLY.

Public Hearing – Six-Year TIP

In order to accommodate the Gentry SR-20 Annexation next, the Six Year TIP became number 16 on this evening's agenda.

MOTION: COUNCILMEMBER CAMPBELL MADE A MOTION TO MOVE THE SIX-YEAR TIP TO NUMBER 16 ON THE AGENDA. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

Gentry SR-20 Annexation – Schedule for Public Hearing

Mr. Powers presented this agenda bill which requested that the Gentry SR-20 Annexation be scheduled for a public hearing during Council's September 1, 2009 regular business meeting.

Public Comments

Mayor Slowik called for public comments.

Brian Gentry, Landed Gentry, 504 E. Fairhaven, Burlington, WA. Mr. Gentry thanked City staff for working with him on this annexation and also thanked the Mayor and Council for consideration of this project for public hearing on September 1, 2009. There were no other public comments.

Council Discussion

Discussion followed about current indebtedness and what that means for the proponent, and if figure one in the agenda packet represents the reduced acreage (yes).

MOTION: COUNCILMEMBER ALMBERG MOVED TO APPROVE THE RESOLUTION SETTING SEPTEMBER 1, 2009 AS THE PUBLIC HEARING DATE FOR THE GENTRY – SR-20 ANNEXATION. THE MOTION WAS SECONDED BY COUNCILMEMBER SEVERNS AND CARRIED UNANIMOUSLY.

Construction Contract Bid Award - Marina Redevelopment, Phase I

Steve Powers, Development Services Director presented this agenda bill and introduced Mack Funk, Oak Harbor's Harbormaster and Dave French, Chair of the Marina Committee. Mr. Powers also noted that members of the boating community were attending this evening's meeting. The proposed construction contract will include the replacement of the main gangway at the marina with a new, accessible gangway that is both longer and wider than the existing ramp. At the bottom of the gangway, a replacement set of landing floats will feature grating to allow light penetration for fishery enhancement. In addition, the marina's electrical capacity will be upgraded with a larger transformer, distribution switch,

and primary feeders. The potable water system will be upgraded with new cross connection prevention hardware and a main supply pipeline constructed of high density polyethylene (HDPE). The fire protection line will be repaired and upgraded. The contract also features re-wiring the electrical system on C Dock to meet current codes. Phase I funding is available from the marina's cash reserves. Mr. Powers also presented a tentative schedule for Phase II – Dredging and Funding Decisions which is attached to these minutes as Exhibit C.

Public Comments

Mayor Slowik called for public comments at 8:30 p.m.

Byron Skubi, 1279 W Penn Cove Road. Dr. Skubi, having been a Oak Harbor Marina tenant for the last twenty-eight years, spoke to the issue of expending more than one million dollars of City funds to upgrade utility service to the slips at the marina and to upgrade the gangway. Dr. Skubi continued that, while these are important and badly needed projects, they should not be funded and carried out until a plan for funding and accomplishing an even more critically needed marina maintenance project, namely adequate dredging, is addressed. Dr. Skubi's complete comments are attached to these minutes as Exhibit D.

Hugh Johnson, 6818 Gibraltar Place, Anacortes. Mr. Johnson did not agree with Dr. Skubi. Mr. Johnson owns the largest boat in the marina and said that depth had not gone under four feet. He praised the harbor's beauty and felt the utility upgrades are necessary as are the ramp and landing area improvements. Lowtide is difficult on the existing ramp. City staff has worked hard to move toward the dredging program but seriously needed items to maintain the marina should not be given up for dredging only.

Janet Schlaper, 560 6th Street. Ms. Schlaper would like to see dredging but this plan is better than nothing. Please do something.

Robert Nelson, 1415 SE 9th. Mr. Nelson felt this is not the time to change priorities. Get moving on these things. If we wallow around with what should be done first, we won't get anything done. This represents two years worth of profits from the marina. We have the money to do this; this funding is coming out of marina fees not the general fund.

Dave French, Chair of the Marina Committee. Mr. French spoke about the amount of time the committee has worked on this project. We've been working on this project for five years and have given a lot of thought toward this. I agree with Byron that dredging is extremely critical but I think that Phase I is something that we have to do. I am concerned about the potential for shorts and fires. We need to figure out a way to dredge more than we are talking about right now.

Gary McIntyre, 705 LaConner, Commodore of the Whidbey Island Navy Sailing Association. Dredging is critical, but we need to go forward with Phase I. It is damaging for boats to sit on the bottom. Go forward with Phase I but find money for dredging.

With no other public comments coming forth, Mayor Slowik closed comments at 8:45 p.m.

Council Discussion

Discussion followed about the tentative schedule for dredging and the need to do all-inclusive dredging, sounding data still to be provided by NOAA, and the need to move forward with Phase I without losing site of Phase II. Mr. Powers clarified that existing permits are for dredging within the marina and the channel lies outside of existing permits. Three dredging priority areas are: the near-shore, A Dock, the landing float, breakwater, and the sides and internal portions of the marina itself. Discussion continued about the complete marina improvement costs (19 million), where the sales tax from Bellingham Marine will go (Mr. Schmidt will check with Mr. Merriman), whether Phase II will be isolated dredging or cover the entire marina, and that Council will need to make decisions on the amount of dredging to be undertaken. The expiration date for dredging is four more years per Harbormaster Funk. Discussion followed about Phase I potentially jeopardizing Phase II and Mr. Powers responded that staff does not believe this would occur. The City has always understood that dredging is expensive, significant, and could be supported by the sale of revenue bonds that are supported by rates and a financing policy. The accumulated reserve is dedicated to the rest of the hardscape improvements. Moving forward tonight does not jeopardize dredging. Hugh Johnson was asked if he would support a rate increase to have first-rate amenities and he responded that he would. Mr. Johnson went on to say that the reason he slips his boat in Oak Harbor is because of this marina's friendliness, support, and positive attitude. He did not think that other marina tenants would resist a rate increase when they see what is needed. Discussion continued about the scope of dredging, how to approach a \$19 million plan and break it into fundable-sized pieces and manageably prioritize it, and the history of Bellingham Marine's involvement with Oak Harbor's Marina. Final discussion points included possible provisions for time extensions on the permits, and contract amounts and changes outside of the formal change order process.

- MOTION: COUNCILMEMBER CAMPBELL MOVED TO:**
- 1. AUTHORIZE THE MAYOR TO SIGN A CONTRACT WITH BELLINGHAM MARINE INDUSTRIES IN THE AMOUNT OF \$715,900.00 INCLUDING SALES TAX.**
 - 2. AUTHORIZE THE CITY ENGINEER TO ADMINISTRATIVELY APPROVE CHANGES TO THE CONSTRUCTION CONTRACT TOTALING NOT MORE THAN \$71,000.**
- THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.**

Mayor Slowik thanked the marina tenants and Marina Committee members for their patience.

Break

Mayor Slowik called for a break at 9:00 p.m. and the meeting reconvened at 9:15 p.m.

Ordinance Introduction – Illicit Discharge Prohibition for NPDES Permit

Eric Johnston, City Engineer presented this agenda bill which is an ordinance introduction adding a new chapter to Title 12 of the Oak Harbor Municipal Code related to stormwater management in the City of Oak Harbor. The proposed code change is required by the

National Pollutant Discharge Elimination System (NPDES) Phase II Municipal Stormwater Permit issued to the City by the Washington State Department of Ecology.

Public Comments

Mayor Slowik called for public comments.

Mel Vance, P.O. 2882, Oak Harbor. Irrigation that hits impervious surfaces is not allowed. Along SR-20 there is quite a bit of irrigation hitting the highway along with larger businesses who have irrigation running onto their parking lots. Since this ordinance is mandated, the City might want to notify people now.

Scott Dudley, 184 NW Delta Court. Mr. Dudley was concerned about the timing of this ordinance since the process began in 2007 and will have more comments during the public hearing in October.

Council Discussion

Discussion followed about heated water as discharge (actually industrial water which can impact streams), if there is flexibility in the ordinance's language, and that the ordinance's list is based on Department of Ecology's recommendations. Mr. Johnston noted, in response to Mr. Dudley's comments, that there were a number of challenges placed this year, and the City did not want to put this ordinance in place if it was going to be changed. There are specific things that will be banned per the Department of Ecology's guidance. The detail of this ordinance clarifies illicit discharge examples. Discussion continued about petroleum pollutants and stormwater run-off, if the specific jurisdiction agency is responsible (yes, but SR-20 is the state's jurisdiction), and how the City complies (compliance is with the permit itself). The ordinance will give us enforcement action and the Department of Ecology is asking the City to prevent pollutants at their source. Public education will be key and the level of enforcement action will vary with the type of problem.

MOTION: COUNCILMEMBER MUNNS MOVED THAT THE ORDINANCE BE SET FOR A PUBLIC HEARING ON OCTOBER 6, 2009 FOR ADDITIONAL CONSIDERATION AND ACTION. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.

Interim Prosecution Services – Law Department

City Administrator Paul Schmidt presented this agenda bill seeking approval for a professional services agreement for attorney services to handle the City's prosecution caseload on an interim basis until a new employee can be hired by the Law Department. Mayor Slowik called for public comments but there were none.

Council Discussion

Discussion followed about backdating the agreement to June 22, 2009, budget carryover and allocation, and reallocation through a budget amendment.

MOTION: COUNCILMEMBER MUNNS MOVED TO AUTHORIZE THE MAYOR TO SIGN THE ATTACHED PROFESSIONAL SERVICES AGREEMENT WITH WILLIAM H. HAWKINS. THE MOTION WAS SECONDED BY COUNCILMEMBER ALMBERG AND CARRIED UNANIMOUSLY.

New Position – Law Department

Margery Hite, City Attorney presented this agenda bill seeking authorization to create a new position in the City Attorney's Office. This position will replace the existing Assistant City Attorney position with a position which will handle the criminal prosecutions, assist the City Attorney, and coordinate law and justice issues for the City. Ms. Hite also discussed the workload for this position and the four component parts of the City's justice system:

1. Municipal Court
2. Jail Medical Costs
3. Jail Custody Options
4. Police Training

Due to a sudden unanticipated absence in the Law Department, the City contracted with private attorney, William Hawkins, to handle criminal prosecutions on a short-term basis. Because of Mr. Hawkins' extensive experience in criminal justice in Island County, he has already been able to identify improvements in the City's prosecution processes which are anticipated to create financial savings. Mr. Hawkins understands the requirements for a municipal court and has the ability to lay out the policy choices for City Council in a timely fashion. The City has a unique opportunity to hire the right person at the right time and Mr. Hawkins' skills and abilities will help make the justice system in the City more efficient without reducing service. He can effectively handle the City's prosecution caseload in a professional manner and still retain time to accomplish other tasks. Ms. Hite gave City Council a funding sheet for Law Department upgrades which is attached to these minutes as Exhibit E.

Mayor Slowik called for public comments but there were none.

Rick Wallace, OHPD Chief of Police spoke in support of this position and Mr. Hawkins in particular. OHPD has offered to commit funds from its own budget to assist in the pay scale difference since this new position is at a higher pay grade than the previous Assistant City Attorney/Prosecutor position.

Council Discussion

Discussion followed about this position's budget and if it is full-time, if the position is cost-neutral for the 2009/2010 budget, and why Council needs to approve this position. Ms. Hite noted that it is a full-time position, there will be a budget amendment but there are carryover funds and cost savings, and Council's approval is needed since a new job description has been created. Discussion continued on indigent medical liability and if the court system incurs exposure. It was noted that exposure used to be directed to the charging agency, then reverted to the county, and now has shifted to the arresting agency, regardless of the court.

Blp

MOTION: COUNCILMEMBER MUNNS MOVED TO APPROVE THE CREATION OF THE POSITION OF LAW AND JUSTICE COORDINATOR/PROSECUTOR AS SET OUT IN THE RESOLUTION FOR THE NEW POSITION OF LAW AND JUSTICE COORDINATOR/PROSECUTOR. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.

Consultant Agreement – Oak Harbor Street Improvements

Eric Johnston, City Engineer presented this agenda bill for approval of a consultant agreement with Reid Middleton, Inc. to provide engineering design services for the Oak Harbor Street Improvements Project. The City has worked with Reid Middleton, Inc. for street improvements on Oak Harbor Street since 2006. The project has federal aid funding and is required to use and follow the procedures and contract forms mandated by the Federal Highway Administration (FHWA) and outlined in the Washington State Department of Transportation Local Agency Guidelines (LAG) Manual. The street improvements consist of the addition of sidewalks, curbs, gutters, street lighting, drainage and associated improvements from Whidbey Avenue to Crosby Road. With the length of time needed to complete the right-of-way acquisition process, the original agreement has passed its expiration date and a new agreement is needed to continue the work. In addition, after completing the right-of-way negotiations, changes to the design are necessary to proceed with construction. Since the City could not acquire the necessary property for the roundabout's construction at NE 7th, a change to the current design for the intersection is necessary. In lieu of the roundabout, the intersection will be converted to a three-way stop intersection.

Mayor Slowik called for public comments but there were none.

MOTION: COUNCILMEMBER SEVERNS MOVED TO AUTHORIZE THE MAYOR TO SIGN THE CONSULTANT AGREEMENT WITH REID MIDDLETON, INC. FOR THE COMPLETION OF THE DESIGN OF THE OAK HARBOR STREET IMPROVEMENTS. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

Interlocal Agreement – Rural County Economic Development Funds for Goldie Road Sewer Project

Eric Johnston, City Engineer presented this agenda bill and interlocal agreement with Island County related to the economic development grant awarded to the City for the extension of sanitary sewers to the Goldie Road Enterprise Area. This interlocal agreement confirms the grant award, specifies and limits the use of the funds to the Goldie Road Sewer Project (also known as the North Whidbey Enterprise Area Sanitary Sewer Project), outlines the procedures for reimbursement requests and defines the responsibilities of the City and County in completing the project.

Mayor Slowik called for public comments but there were none.

Council Discussion

Discussion followed about the specific reporting requirements of the agreement, concern if this will be a benefit to the City or only the County, and that there is a proposed project that is waiting for sewer in this area and could entail annexation into the City. Mayor Slowik noted his concern, as well, and hoped that ideas will come before Council in the next six months on how to encourage businesses in this area to become part of the City. Discussion continued about the Goldie Road sewer and lift station project and its progress.

MOTION: COUNCILMEMBER MUNNS MOVED TO AUTHORIZE THE MAYOR TO SIGN THE INTERLOCAL AGREEMENT WITH ISLAND COUNTY FOR UP TO \$1,000,000 IN REIMBURSEMENTS FOR THE GOLDIE ROAD SEWER PROJECT. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.

Contract Acceptance as Complete – Contract No. ENG 09-02 with Western Industrial Coatings, Inc. for Reservoir Tank Exterior Painting

This contract was for base coating on the west reservoir tanks, not the mural. City staff has inspected the completed work and determined that it is in compliance with the terms of the contract.

Mayor Slowik called for public comments but there were none.

MOTION: COUNCILMEMBER MUNNS MOVED TO ACCEPT CONTRACT NO. ENG 09-02 WITH WASHINGTON INDUSTRIAL COATINGS, INC. IN THE AMOUNT OF \$81,833.33 AS COMPLETE UNDER OHMC 2.330.010, IN ORDER TO AUTHORIZE CONTRACT CLOSEOUT INCLUDING THE STANDARD 45-DAY CLAIMS AND LIEN PERIOD AND FINAL PAYMENTS. THE MOTION WAS SECONDED BY COUNCILMEMBER SEVERNS AND CARRIED UNANIMOUSLY.

Contract Acceptance as Complete – Contract No. ENG 08-02 with Marshbank Construction, Inc. for Waterline Interties at Miller Road

Construction costs exceeded the amount authorized by Council because the quantities of road repair materials required for completion of the project were substantially higher than pre-construction estimates. A detailed review of the project indicated that the engineer's estimate did not accurately reflect the size of the excavations necessary to install the intertie assemblies. Material calculations based on measurements in the field indicate that the quantities billed by the contractor are consistent with the work completed. Staff concludes that the project could not have been properly constructed without materials and work exceeding the pre-construction estimates and that additional funding should be authorized. Additional funds are available from the current Public Works Trust Fund loan used to finance the Quiet Cove projects.

Mayor Slowik called for public comments but there were none.

Council Discussion

Discussion followed about the quantities and who had prepared the quantities, the engineer's estimate and amount difference, and the drawings' cross sections.

MOTION: COUNCILMEMBER ALMBERG MOVED TO ACCEPT AS COMPLETE CONTRACT NO. ENG 08-02 WITH MARSHBANK CONSTRUCTION, INC. AS AMENDED IN THE AMOUNT OF \$325,583.70 AND BEGIN THE 45-DAY CLAIMS AND LIEN PERIOD. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.

Contract Acceptance as Complete – Contract No. 09-000403 with Hytech Roofing, Inc. for Police Department Re-Roof

Cathy Rosen, Public Works Director presented this agenda bill asking for authorization to accept as complete the contract with Hytech Roofing, Inc. for the Police Department re-roof. City staff has inspected the completed work and determined that it is in compliance with the terms of the contract.

Mayor Slowik called for public comments but there were none.

MOTION: COUNCILMEMBER SEVERNS MOVED TO ACCEPT CONTRACT NO. 09-000403 WITH HYTECH ROOFING, INC. IN THE AMOUNT OF \$99,066.76 AS COMPLETE UNDER OHMC 2.330.010 IN ORDER TO AUTHORIZE CONTRACT CLOSEOUT INCLUDING THE STANDARD 45-DAY CLAIMS AND LIEN PERIOD. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

Heron Ridge Development – Preliminary 4 Lot Short Plat

This agenda bill was considered earlier in the meeting.

Public Hearing - Six-Year Transportation Improvement Program (TIP) for 2010 – 2015

Arnie Peterschmidt, Engineer presented this agenda bill and the draft 2010 - 2015 Six-Year TIP. The main purpose of the TIP is to facilitate use of federal transportation funds awarded to the City. Projects that have federal funding must appear in the six-year TIP at the local and state level so that the City can obligate and eventually use the federal funds. The projects listed on the TIP are coordinated with those listed in the Transportation Element of the Comprehensive Plan.

Mayor Slowik opened the public hearing at 10:30 p.m., but there were no public comments so the hearing was closed.

Council Discussion

Discussion followed regarding items 1 and 2 of the TIP not matching the TIP Map; this will be corrected. Discussion continued about the new projects which have been added to the TIP: Reconstruction of NE 7th Avenue between Oak Harbor Street and SR-20, and the extension of Eagle Vista Avenue west from SR-20. Specifically, why is the City initiating the

improvement of Eagle Vista? Mr. Powers noted that it is an emerging area and near the location of the proposed affordable housing project. If we become the property owner, it would then be eligible for RTPO funds and would help the City if we have to initiate that project.

MOTION: COUNCILMEMBER CAMPBELL MOVED TO APPROVE RESOLUTION 09-19 ADOPTING THE 2010 – 2015 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

City Administrator's Comments

Mr. Schmidt talked about upcoming meetings and mentioned that 1033 initiative paperwork had been placed in Council Members' boxes.

Council Members' Comments

Standing Committee reports were given. Councilmember Severns talked about the light bulb distribution and cost savings, and wished his mother "happy birthday." Councilmember Campbell talked about 7th Avenue and lack of improvements on the south side of Midway past Smith Park where pedestrians are forced close to traffic. Mr. Campbell asked again that Pioneer Way be considered for a speed limit drop to 20 mph and requested a status report on this possibility. Councilmember Munns asked that everyone take the time to read 1033 which would devastate the City's budget.

Mayor's Comments

Mayor Slowik talked about the success of National Night Out and thanked Officer Niuro and Chief Wallace along with everyone involved in this annual event. Mayor Slowik noted the Rotary Car Show and Fidalgo Block Party and Pig Roast were coming up on August 8th and 9th respectively.

ADJOURN

Councilmember Munns moved to adjourn (there was no second to the motion) and the meeting adjourned at 11:00 p.m.

Connie T. Wheeler
City Clerk

Herb Strandberg

Exhibit A

From: Herb Strandberg [herb@where-rv-now.us]
Sent: Sunday, August 02, 2009 9:24 AM
To: 'Larry Rebich'
Subject: RE: Emailing: Oak Harbor Agenda for August 5 20091.doc
Follow Up Flag: Follow up
Flag Status: Green

Thank you for the research on the power in your Premiere RV Resorts (in Washington and Oregon) and Oak Harbor agenda. Glad you found out that it is really 6:45 p.m. for public comment, not 7:00 p.m.

I GOOGLED electrical code calculations for RV Parks.
 Check out http://ecmweb.com/nec/code_calc_092304/

Other findings below:

340 CHAPTER 19 Recreational Vehicles, Recreational Vehicle Parks, and Park Trailers

Basis of calculations for recreational vehicle park site feeders and electric service are:

- Sites equipped with 50-ampere, 120/240-volt service 9600 volt-amperes per site
- Sites equipped with 20 and 30-ampere, 120-volt service 3600 volt-amperes per site
- Sites equipped with 20-ampere, 120-volt service 2400 volt-amperes per site
- Tent sites equipped with 20-ampere, 120-volt service 600 volt-amperes per site

Where the site supply has more than one receptacle, the load calculation is based on the highest rated receptacle.

To determine the demand factors for site feeders, see Figure 19-9. The demand applies to all sites. For example, 20 sites calculated at 45% of 3600 volt-amperes results in a permissible demand of 1620 volt-amperes per site or a total of 32,400 volt-amperes for 20 sites.

All electrical equipment in recreational vehicle parks must be grounded according to *Article 250 of the NEC*. Exposed noncurrent-carrying metal parts of fixed equipment, metal boxes, cabinets, and fittings that are not electrically connected to grounded

equipment must be grounded by a continuous equipment grounding conductor run with circuit-conductors from a service transformer of a secondary distribution system. The disconnect or removal of the receptacle or other devices will not interfere with or interrupt the grounding continuity. The neutral conductor must *not* be used as an equipment ground for recreational vehicles or equipment in the recreational vehicle park. The recreational vehicle site supply equipment (see Figure 19-10) is required to be accessible, located not less than 2 ft (600 mm) and not more than 6½ ft (2.0 m) above the ground, and for the 125/250-volt receptacle, the equipment must be marked as follows: *Turn disconnecting switch or circuit breaker off before inserting or removing plug. Plug must be fully inserted or removed.* The marking is required to be placed on the equipment adjacent to the receptacle outlet (Figure 19-10).

Outdoor equipment must be rainproof equipment. Overhead conductors, not over 600 volts, must have a vertical clearance of 18 ft (5.5 m) and a horizontal clearance not less than 3 ft (900 mm) in areas subject to vehicle movement.

Table 551.73 Demand Factors for Site Feeders and Service-Entrance Conductors for Park Sites

Number of Recreational Vehicle Sites	Demand Factor (percent)
1	100
2	90
3	80
4	75
5	65
6	60
7 - 9	55
10 -12	50
13 -15	48
16 -18	47
19 -21	45
22 -24	43
25 -35	42
36 plus	41

Figure 19-9 NEC Table 551.73 (Reprinted with permission from NFPA 70-2002)

Therefore, the feeder for sites 1-17 is $3600va * 17 = 61,200 va * 47\% = 28764va / 120v = 240A$. The breaker for sites 1-17 at Oak Harbor Staysail RV Park is only 125A. No wonder the main breaker for this string of sites is popping -- it should be 92% larger.

I also found that RV parks are now required in most recent electrical code to provide 20% of their (new) sites with 50/30/20A (vs 30/20A), therefore additional load.

Recreational Vehicle (RV) Parks

1. Review definitions and determine the applicability of Article 551 and Part VI.

The definitions of terms applicable to RV parks appear in the Key Terms section below. This checklist is not meant to cover the RVs themselves. It is meant to cover the RV sites and distribution systems in RV parks only.

2. Verify that all sites with power have 20-ampere, 125-volt receptacles, at least 20 percent have 50-ampere, 125/250-volt receptacles, and at least 70 percent have 30-ampere, 125-volt receptacles.

Part VII of Article 551 specifies the receptacle ratings and configurations that must be used in an RV park. It also specifies the distribution of certain ratings of receptacles. The percentages listed are minimum percentages of sites that must have specific receptacle types where power is provided. Higher percentages are permitted, and some sites may have both 50- and 30-ampere receptacles. All sites with power must have at least one of the listed types. This section does not require all sites in a campground to be provided with electric power, only that all sites with electric power have a 20-ampere, 125-volt, GFCI-protected receptacle. Any 15- or 20-ampere, 125-volt receptacle installed must be GFCI protected. These rules do not require power at all RV parks or sites; they govern only parks and sites that do have electric power. The percentages also do not apply to sites dedicated to tents even if receptacles are provided to the tent sites. The Code percentages are based on the percentage of each RV type manufactured by the RV industry. There are

Table 9-1 Receptacle Configurations at RV Sites

Receptacle Configurations	Requirements at Sites with Power
20-ampere, 125-volt grounding 	Required at every site
30-ampere, 125-volt grounding 	Required at a minimum of 70% of sites, excluding tent sites
50-ampere, 125/250-volt grounding 	Required at a minimum of 20% of sites, excluding tent sites

more larger-ampacity manufactured RVs in recent years; therefore the requirement for 50-ampere power sources increased from 10 percent to 20 percent of all new sites installed in an RV park.

The standardization of receptacle configurations and distribution of those configurations ensure that RVs will be compatible with the power distribution at various RV parks and that a reasonable number of the higher-powered receptacles will be available for larger RVs. This uniformity will reduce the likelihood of tampering or bypassing of devices to adapt vehicles to power sources. TABLE 9-1 summarizes the requirements for the use of various receptacle configurations at RV sites with electric power.

Also pointed out in the code:

5. Verify that grounded feeder conductors have the same ampacity as ungrounded conductors.

The grounded feeder conductors may not be reduced in size from the size of the ungrounded conductors. Most loads in RVs are 120 volts, and because reduced loading of a grounded conductor due to 240-volt loads cannot be reliably predicted, grounded conductors are required to be sized for the full load on the ungrounded conductors. Therefore, the calculated load used to size the ungrounded conductors also determines the size of the grounded conductors.

I'll will leave a copy of this e-mail with the City Council. I hope they can fund an electrical system upgrade for the RV Park to bring it up to the National Electric Code, thereby protecting their visitor's RV equipment from low voltage and/or frequent outages, and possible lawsuits. It is a very nice park whose electrical system is out of date.

Herb Strandberg
3700 S Westport Ave
Sioux Falls, SD 57106
916-759-8000
herb@where-rv-now.us

From: Larry Rebich [mailto:larry@larryrebich.com]
Sent: Sunday, August 02, 2009 5:18 AM
To: Herb Strandberg
Subject: Emailing: Oak Harbor Agenda for August 5 20091.doc

Herb:

I found the attached agenda on the City Council's web site.

We should probably plan to get there about 6:30.

Larry

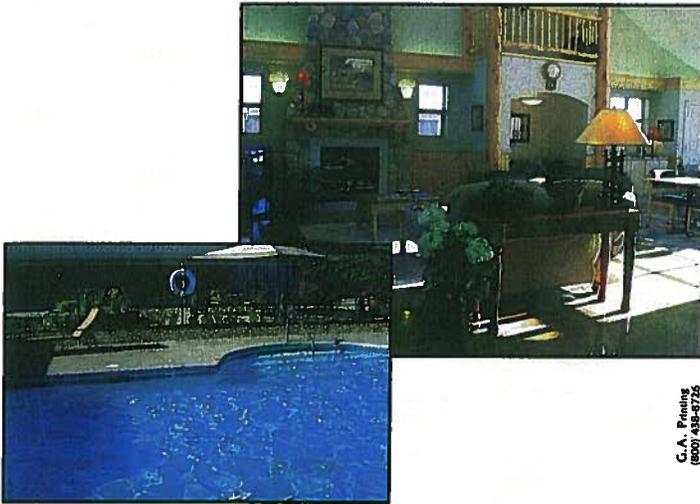
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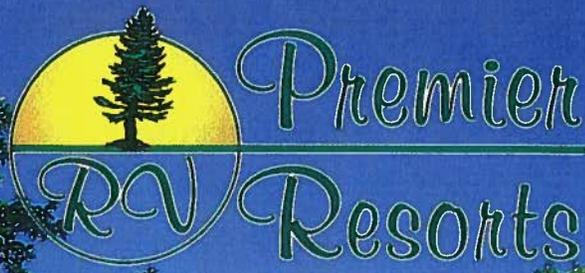


Exhibit B



Larry Rebich
Owner
760-831-1711

3700 S Westport #2633
Sioux Falls, SD 57106
larry@larryrebich.com
www.buygold.net

Salem – Eugene – Lincoln City
Redding – Clarkston
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**Marina Redevelopment Project
Phase II - Dredging & Funding Decisions
Tentative Schedule**

Exhibit C

Month	Dredging		Funding
August 2009	Discuss final design contract with Government Services Comm.		Study rates and their ability to fund planned dredging
September 2009	Discuss final design contract with Marina and Government Services Committees		
October 2009	City Council considers awarding final design contract		
November 2009	Preparation of plans and specifications for dredging		
December 2009	Dredging scope decision		Council considers rates/dredging scope decision
January 2010			Revenue bond process
February 2010			
March 2010			
April 2010	<i>Option 1</i> Advertise for bids		
May 2010			
June 2010	Council awards contract	<i>Option 2</i> Advertise for bids	
July 2010	Dredging starts		
August 2010		Council awards contract	
September 2010		Dredging starts	
October 2010	Dredging done		
November 2010			
December 2010		Dredging done	

Notes:

1. Schedule is tentative. Timeframes for completing various steps are approximate and may change based on a variety of circumstances.
2. Mitigation for dredging work will also require design and funding.

Good evening. My name is Byron Skubi and I have been a tenant at the Oak Harbor Marina continuously for the last 28 years. I wish to speak to the issue of expending more than one million dollars of City funds to upgrade utility service to the slips at the Marina and to upgrade the gangway. While these are important and badly needed projects, in my opinion, they should not be funded and carried out until a plan for funding and actually accomplishing an even more critically needed Marina maintenance project, namely adequate dredging.

While I am not a member of the Marina committee, I have attended most of the committee meetings over the last two years. The Marina Committee has expressed its opinion on several occasions over that time that adequate dredging of the Marina should be given the highest priority and should be placed above all other marina projects. The spot dredging that has been proposed, i.e. dredging the area of the fuel dock, the head of the main walkway and F dock, in my opinion – and I think in the opinion of the Marina Committee does not constitute adequate dredging.

I have looked at the chart of sounding data taken at the Marina, and this shows that between 40 and 50 percent of the slips at our marina have a water depth of 6 feet or less above datum. This means that at a minus 3 foot tide, which occurs about 6 or 7 months of the year, these boats are sitting in three feet or less of water. Virtually all sailboats and most powerboats of any size draw at least 3.5 feet of water. This means that at midday (when the lowest tides occur in summer, and when most people like to use their boats), half of the boats in our marina are unable to enter or exit their slip for five days in April, seven days in May, eleven days in June, six days in July, and three days in August. Many of these same boatowners are paying \$200 or more per month for their moorage.

Parts of our Marina are silting up at the rate of 1.5 inches a year. This has been shown on surveys and I am aware of it from over 20 years of tenancy on C dock where I watched the water depth in my slip decrease by about two feet over that time. The limited dredging plan that to date has been proposed would do nothing to improve the water depth for something like 30-40% of the boats in the marina. If limited dredging is carried out now, I find it hard to believe that we would see the dredges back in anything less than 10 years, and in that time a slip that has only 3 feet of water in it now would lose at least another foot of water.

I realize that dredging is expensive, and as we all know city funds are in short supply. On the other hand the permitting, which has an expiration date, has already been paid for, and a substantial portion of costs associated with dredging are the mobilization cost. I therefore feel that it would be prudent for the city to pull out all the stops to somehow find the funds, whether it be through bonding authority or other means to adequately dredge our marina. Otherwise I am certain that we will soon see a mass exodus of

tenants from the Marina as no one wants to see their expensive boat sitting on the bottom for a good portion of the time. The money spent on utility upgrades, etc. will be squandered along with money spent on spot dredging if we don't find a way to adequately dredge our marina. I am convinced that doing the limited dredging talked about would be counterproductive as it would only delay (perhaps indefinitely) the real dredging that needs to be done. What we need now is a comprehensive plan for funding and scheduling all of the marina improvements which need to be done, rather than doing the work piecemeal as funds become available.

Thank you.

Byron Skubi

Oak Harbor Marina tenant since 1980

Exhibit E

**City of Oak Harbor
Funding for Legal Department Upgrades**

Contracted Position:

	2009	2010	2011
Salary	\$107,000.00	\$110,745.00	\$114,621.08
Benefits	29,960.00	31,008.60	32,093.90
Annual Cost	136,960.00	141,753.60	146,714.98
Monthly Cost	\$11,413.33	\$11,812.80	\$12,226.25

Projected Costs

	2009 3 Months	2010 Annual	2011 Annual
Costs of contract	\$34,240.00	\$141,753.60	\$146,714.98

2009 Funding Sources

Allocation of 2008 Police/Legal Carryover ¹	\$0.00	\$16,376.66	\$20,528.04
Adjustments to Police Department	2,266.75	26,000.00	26,910.00
Currently Budgeted for Prosecution	31,973.25	99,276.94	99,276.94
	\$34,240.00	\$141,653.60	\$146,714.98

¹ Police and Legal Carryover total from 2008: \$275,951.70

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

Bill No. 2
Date: September 1, 2009
Subject: Employee Recognition

FROM: Jim Slowik, Mayor



INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



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

PURPOSE

To recognize a City employee for 20 years of service.

AUTHORITY

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

SUMMARY STATEMENT

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

- Kim Perrine/ Legal – 20 years

STANDING COMMITTEE REPORT

None

RECOMMENDED ACTION

Congratulate Ms. Perrine for completing 20 years of service.

ATTACHMENTS

None

MAYOR'S COMMENTS

None

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

Bill No. 3

Date: SEPTEMBER 1, 2009

Subject: PUBLIC COMMENTS

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



Jim Slowik, Mayor

Paul Schmidt, City Administrator

Doug Merriman, Finance Director

Margery Hite, City Attorney

SUMMARY STATEMENT

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

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

Bill No.

CJA 4A

Date:

September 1, 2009

Subject:

Excused Absence Request
Councilmember Beth Munns

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 Beth Munns' excused absence request for September 15, 2009.

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 Beth Munns has submitted an excused absence request since she will not be able to attend the September 15, 2009 City Council meeting.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve Councilmember Beth Munns' excused absence from the September 15, 2009 City Council meeting.

ATTACHMENTS

None

MAYOR'S COMMENTS

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

Bill No. CJA 48
Date: September 1, 2009
Subject: Application for Taxi License
Kelly Cab

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

Consider the application for a taxi company license as submitted by Kelly Sweet – Kelly Cab.

AUTHORITY

Oak Harbor Municipal Code Chapter 5.30, For Hire Vehicles.

- 5.30.050 Compliance with state law required.**
No vehicle shall be used that does not fully comply with all requirements of the State Department of Licenses and with the state law for the protection and safety of its passengers. Each vehicle shall be maintained in a condition of continued fitness for public use, and shall be subject to inspection, at all reasonable times by the chief of police.
- 5.30.060 Application for license - issuance.**
In order to obtain the license, an applicant shall make written request to the city clerk for a license to do so. Such request shall be made upon blanks furnished by the city clerk. Such request shall be filed with the city clerk and the chief of police. The police chief shall make an investigation and report and on approval of the city council the applicant shall be issued a license upon payment of the license fee herein provided.
- 5.30.070 Items which may be considered.**
In making the decision to grant or deny a license the council may consider the following:
- (1) Whether the applicant will provide safe and reasonable service;
 - (2) Whether the proposed rate structure is reasonable and other personnel are licensed and qualified;
 - (3) Whether the licensee will operate within the law; and

- (4) Whether additional taxi service will cause unreliability and instability in the taxi service business for Oak Harbor.

5.30.110 Disqualification of licensing for criminal conviction.

- (1) No person shall receive a taxi license or a taxi driver license who has been convicted of assault within the last ten years, a felony in the last seven years, a gross misdemeanor in the last five years, or who has ever been convicted of sexual offenses as defined under state law or an offense which is similar to those as defined in Chapter 9A.44 RCW.
- (2) A license granted under this chapter shall be revoked when license holder is convicted of a felony, gross misdemeanor, assault or sexual offense as defined under state law or an offense which is similar to those defined in Chapter 9A.44 RCW.

5.30.120 Cancellation of license.

The city council may cancel a license if such license is used in violation of this chapter or state laws or is a taxi business operated without licensed drivers, fares are charged in excess of the approved schedule, or the business is operated in an unsafe or fraudulent manner.

SUMMARY STATEMENT

Mr. Sweet has completed the appropriate paperwork as shown in the list of attachments, the Chief of Police in compliance with OHMC 5.30.060 has finished an investigation, and the taxi driver application/background check was approved pursuant to OHMC 5.30.110. All applicable fees have been paid.

With respect to OHMC 5.30.070(4), the City currently has four operating taxi companies: Ault Field Taxi, Roadrunner Taxi, Triangle Taxi, and Whidbey Taxi.

STANDING COMMITTEE REPORT

This agenda bill and its attachments came before the August 20, 2009 Public Safety Standing Committee.

RECOMMENDED ACTION

Consider the application for a taxi license and approve the license for Kelly Cab.

ATTACHMENTS (Personal Information has been redacted.)

1. Full text of Oak Harbor Municipal Code Chapter 5.30, For Hire Vehicles
2. Application for City Business License
3. Application for Taxi License and Rate Sheet
4. Application for Taxi Driver Background Check
5. Certificate of Insurance

MAYOR'S COMMENTS

Chapter 5.30

FOR HIRE VEHICLES

Sections:

- 5.30.010 Purpose.
- 5.30.020 License required.
- 5.30.030 State and county license fee payment required.
- 5.30.040 Driver's license required – Parking stall charge.
- 5.30.050 Compliance with state law required.
- 5.30.060 Application for license – Issuance.
- 5.30.070 Items which may be considered.
- 5.30.080 Filing schedule of charges required.
- 5.30.090 Approval of filed schedule by council.
- 5.30.100 Additional information.
- 5.30.110 Disqualification of licensing for criminal conviction.
- 5.30.120 Cancellation of license.
- 5.30.130 Carrying passengers for hire without license unlawful.
- 5.30.140 Renewal.
- 5.30.150 Appeals from decisions of the police chief.

5.30.010 Purpose.

In order to protect public health, safety and welfare, the city finds that it must regulate privately operated taxicab transportation services operating within the city limits. These concerns include safety, reliability and stability of privately operated taxicab transportation. (Ord. 677 § 1, 1984).

5.30.020 License required.

Every person, firm or corporation who shall by means of any vehicle, motor-driven or otherwise, carry passengers for hire from any point within the corporate limits of the city shall first obtain a license to do as hereinafter provided. The license fee for the first two taxicabs owned and operated by any person, firm or corporation, shall be \$50.00 per year and for each additional taxicab to the same owner, it shall be \$25.00 per year. All licenses expire on December 31st of each year and shall not be transferable from owner to owner or car to car. The license must be carried by the driver or be attached to the vehicle at all times that the vehicle is used as a taxi and shall be displayed to the police when requested. (Ord. 708, 1985; Ord. 677 § 2, 1984).

5.30.030 State and county license fee payment required.

No automobiles or vehicles are to be used unless the state and county license fees have been paid, if any such license is required. (Ord. 677 § 3, 1984).

5.30.040 Driver's license required - Parking stall charge.

No person shall operate any such vehicle unless he is the holder of a state driver's license and shall have been interviewed and approved by the chief of police. The holder of a license may petition the city council at the time of application for the license or at any time thereafter for the right to use and designate certain parking stalls as taxi parking. The council may permit or designate certain stalls as taxi parking and a charge shall be made therefor at the rate of \$5.00 per month per parking stall. The charge shall be paid in advance on or before the anniversary date of the taxi license. (Ord. 677 § 4, 1984).

5.30.050 Compliance with state law required.

No vehicle shall be used that does not fully comply with all requirements of the State Department of Licenses and with the state law for the protection and safety of its passengers. Each vehicle shall be maintained in a condition of continued fitness for public use, and shall be subject to inspection, at all reasonable times by the chief of police. (Ord. 677 § 5, 1984).

5.30.060 Application for license - Issuance.

In order to obtain the license, an applicant shall make written request to the city clerk for a license to do so. Such request shall be made upon blanks furnished by the city clerk. Such request shall be filed with the city clerk and the chief of police. The police chief shall make an investigation and report and on approval of the city council the applicant shall be issued a license upon payment of the license fee herein provided. (Ord. 677 § 6, 1984).

5.30.070 Items which may be considered.

In making the decision to grant or deny a license the council may consider the following:

- (1) Whether the applicant will provide safe and reasonable service;
- (2) Whether the proposed rate structure is reasonable and other personnel are licensed and qualified;
- (3) Whether the licensee will operate within the law; and

(4) Whether additional taxi service will cause unreliability and instability in the taxi service business for Oak Harbor. (Ord. 677 § 7, 1984).

5.30.080 Filing schedule of charges required.

Every person, firm or corporation holding a license for the operation of a taxicab within the city shall file his schedule of rates and charges, and all amendments thereto, with the city clerk. (Ord. 677 § 8, 1984).

5.30.090 Approval of filed schedule by council.

The city council may approve or disapprove the rate schedule as proposed within 30 days after filing. If no action is taken the rate schedule is approved. No charge shall be collected in excess of the rate filed and approved. A copy of the rates, filed and approved, shall be posted in each vehicle used as a taxi. (Ord. 677 § 9, 1984).

5.30.100 Additional information.

Every person, firm or corporation holding a license for the operation of a taxicab shall file with the city clerk the names, addresses and other identifying information required by the clerk of each driver. (Ord. 677 § 10, 1984).

5.30.110 Disqualification of licensing for criminal conviction.

(1) No person shall receive a taxi license or a taxi driver license who has been convicted of assault within the last 10 years, a felony in the last seven years, a gross misdemeanor in the last five years, or who has ever been convicted of sexual offenses as defined under state law or an offense which is similar to those as defined in Chapter 9A.44 RCW.

(2) A license granted under this chapter shall be revoked when license holder is convicted of a felony, gross misdemeanor, assault or sexual offense as defined under state law or an offense which is similar to those defined in Chapter 9A.44 RCW. (Ord. 1390 § 1, 2004; Ord. 677 § 11, 1984).

5.30.120 Cancellation of license.

The city council may cancel a license if such license is used in violation of this chapter or state laws or is a taxi business operated without licensed drivers, fares are charged in excess of the approved schedule, or the business is operated in an unsafe or fraudulent manner. (Ord. 677 § 12, 1984).

5.30.130

5.30.130 Carrying passengers for hire without license unlawful.

It is unlawful for any person, firm or corporation to carry passengers for hire as set forth in OHMC 5.30.020 without having a license therefor from the city as herein provided. (Ord. 677 § 13, 1984).

5.30.140 Renewal.

A license granted under this chapter may be renewed after application to the city clerk-treasurer unless objected to in writing by the mayor giving reasons for such objection. In such case, the matter shall be set before the city council for hearing after due notice to the applicant. The council may renew or cancel the license on the basis of the factors listed in OHMC 5.30.070. (Ord. 677 § 15, 1984).

5.30.150 Appeals from decisions of the police chief.

Appeals from decisions of the police chief concerning for hire vehicle driver licenses shall be to the city administrator or his/her designee. (Ord. 1331 § 1, 2002).

CITY OF OAK HARBOR
865 SE BARRINGTON DR
OAK HARBOR, WA 98277-4092
360-279-4530

Reg# #/Rcpt#: 001-00173970 [SV]
Accounting Date: Thu, Jul 23, 2009
Date/Time: Thu, Jul 23, 2009 4:20 PM

0191/BUSINESS LICENSE FEE 2009
REF#:KELLY CAB

FEE AMOUNT:\$12.50

0154/TAXI LICENSE
REF#:KELLY CAB

FEE AMOUNT:\$50.00

0048/BACKGROUND CK - WSP WATCH
REF#:KELLY CAB

FEE AMOUNT:\$10.00

0904/POLICE-FEES-FINGERPRINTS/PHOTO
REF#:KELLY CAB

FEE AMOUNT:\$10.00

RECEIPT TOTAL = \$82.50

Payment Data:

Pmt# :1

Payer: KELLY SWEET
Method: CASH

AMOUNT = \$100.00

RECEIPT SUMMARY

TOTAL TENDERED = \$100.00
RECEIPT TOTAL = \$82.50

CHANGE DUE = \$17.50

THANK YOU!!



CITY OF OAK HARBOR
 865 S.E. BARRINGTON DRIVE
 OAK HARBOR, WA 98277-4092
 (360) 279-4500

APPLICATION FOR YEAR ENDING
 DATE BUSINESS OPENED / /

APPLICATION FOR CITY BUSINESS LICENSE

FILL OUT FORM COMPLETELY - INCOMPLETE APPLICATIONS CANNOT BE PROCESSED

BUSINESS NAME Kelly Cab	BUSINESS LOCATION 1
DBA Kelly cab	BUSINESS PHONE # 2 3
MAILING ADDRESS P.O. Box 2478	UBI NUMBER 601-763-074
	STATE LIC #
	CONTRACTOR LICENSE #

CIRCLE KIND OF BUSINESS WHOLESALE FINANCIAL INST. OTHER BUSINESS IN A RESIDENCE? YES NO TOTAL NUMBER OF EMPLOYEES 0
 RETAIL SERVICES MANUFACTURING REAL ESTATE SOLICITING

DESCRIPTION OF BUSINESS (give details)
 Taxi Company

CIRCLE OWNER STATUS INDIVIDUAL PARTNERSHIP LLP LLC CORPORATION NON-PROFIT (*ATTACH LATEST COPY OF IRS 501 (C) EXEMPTION CERTIFICATE)

LIST OWNERS, PARTNERS OR OFFICERS	TITLE	RESIDENCE ADDRESS	CITY	ZIP	RESIDENCE PHONE
1. Kelly Sweet	owner		Oak Harbor	98277	

AMUSEMENT DEVICES ON PREMISES? YES NO NUMBER _____ IN CASE OF EMERGENCY NOTIFY: PHONE _____
 DO YOU STORE FLAMMABLE OR HAZADOUS MATERIALS? YES NO
 IF YES, TYPE AND QUANTITY: 1. _____ 2. _____

FEES DUE	MAKE CHECKS PAYABLE TO : CITY OF OAK HARBOR
CIRCLE CLASSIFICATION	1 - \$100.00 2 - \$ 50.00 3 - \$ 25.00
POOL AND BILLIARDS	\$ 50.00
CARD TABLES	\$ 50.00 FOR ONE TABLE + \$5.00 FOR EACH ADDITIONAL TABLE
PINBALL AND SIMILAR COIN OP- DEVICES	\$ 25.00 PER DEVICE
CABARET LICENSE	\$150.00
PAWNBROKER	\$ 30.00
<u>FOR HIRE VEHICLES</u>	\$ 50.00 FOR 1st TWO VEHICLES, \$25.00 EACH ADDITIONAL
AMUSEMENT ARCADE	\$ 100.00
TOTAL DUE	\$ _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE INFORMATION AND STATEMENT CERTIFIED HEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I AM AWARE THAT ANY VIOLATION OF THE OAK HARBOR MUNICIPAL CODE WILL TERMINATE THE BUSINESS LICENSE.

SIGNED BY Kelly Sweet
 OFFICE/TITLE Kelly Cab Owner
 APPLICATE DATE 07-23-09

THE CITY OF OAK HARBOR SALES TAX LOCATION CODE IS 1503.
 ALL BUSINESS SIGNS WITHIN THE CITY LIMITS MUST BE APPROVED BY THE BUILDING DEPARTMENT
 NOTE: ADDITIONAL CITY PERMITS MAY BE NECESSARY BEFORE THE OWNER CAN COMMENCE BUSINESS.

AMOUNT PAID	DATE ISSUED	BY	SIC#	DATE BUSINESS DISCONTINUED	LICENSE NUMBER
\$					

CITY OF OAK HARBOR

APPLICATION FOR TAXI LICENSE

Fee: \$50.00 first two taxi's
\$25.00 each additional
Due January 1 each year
Stalls: \$5.00 per month per stall

* * * * *

Name of Applicant Kelly Lee Sweet

Address _____ Phone Number _____

Fax Number N/A Date of Birth _____

Name and address of Taxi Company _____
1 Oak Harbor Way 98277

OPERATORS OF VEHICLES:

1.	Name <u>Kelly L. Sweet</u>	Driver's Lic. # _____	(police approval)
2.	Name _____	Driver's Lic. # _____	YES NO
3.	Name _____	Driver's Lic. # _____	YES NO
			YES NO

Name of Insurance Company Markel Insurance Co.
Policy Number _____

VEHICLES

	Make	Year	License Number
1.	<u>Mazda MPV</u>	<u>1995</u>	_____
2.	_____	_____	_____
3.	_____	_____	_____

Vehicles inspected by Police. YES NO

Kelly Sweet 07-23-09
Signature of Applicant Date

(Rate charges and schedule must be attached to application. All amendments to the rate schedule must be filed with the City Clerk.)

\$ 2.25 Drop Rate

2.25 a mile

\$.50 a minute waiting time

Flat rates From:

\$ 3.00 to 9.00 in town rates
city limits

N, A, S, to and From Base to town

Depends on mileage



UBI: 601 763 074 001 0001
Expiration Date: 07 31 2010

NOTE: VALID ONLY FOR THE FOR HIRE VEHICLE DESCRIBED ON THIS CERTIFICATE.

PROOF OF INSURANCE MUST BE CARRIED IN THE VEHICLE AT ALL TIMES.

Cab#

Vehicle I.D.:
Model Year: 1995
Make: MAZDA
License Plate No.:

KELLY L SWEET
WEST V CAR

OAK HARBOR WA 98277 9234

Elizabeth A. Luce
Director, Department of Licensing

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KELLY L SWEET
KELLY CAB
PO BOX 2478
OAK HARBOR WA 98277-6478

DETACH BEFORE POSTING



STATE OF
WASHINGTON

MASTER LICENSE SERVICE
PO Box 9034 • Olympia, WA 98507-9034 • (360) 864-1400
REGISTRATIONS AND LICENSES

Sole Proprietorship

Unified Business ID #: 601 763 074
Business ID #: 1
Location: 1
Expires: 07-31-2010

KELLY L SWEET
KELLY CAB

OAK HARBOR WA 98277

TAXI METER (1)
FOR HIRE

FOR HIRE VEHICLE (1)
TAX REGISTRATION

REGISTERED TRADE NAMES:
KELLY CAB



The licensee named above has been issued the business registrations of licenses listed. By accepting this document the licensee certifies the information provided on the application for these licenses was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Elizabeth A. Luce
Director, Department of Licensing

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**OAK HARBOR POLICE DEPARTMENT
TAXI DRIVER APPLICATION/BACKGROUND CHECK**

CITY CLERK - Please attach one of these forms to each application for a license to operate a taxi.

Applicant Fees – Payable at City Hall, per name, prior to records checks being performed: JUL 23 2009
 \$10.00 WSP WATCH Check
 10.00 Oak Harbor Police Department local records check
 \$20.00 Total fee

Applicant Name (Print) Kelly L. Sweet Date of Birth _____

Applicant Phone Number: _____

Alias/Maiden Names N/A

States resided in since age 18 Wa. Ca. NV,

Applicant Social Security Number _____ Taxi Company Kelly Cab

OHPD RECORDS USE ONLY																	
DRIVER'S CHECK - Run each state listed above and enter state name below.																	
ST	<u>WA</u>	ST	<u>CA</u>	ST	<u>NV</u>	ST	_____	ST	_____	ST	_____	ST	_____	ST	_____	ST	_____
After running each of the following, write "Attached" or "None" in the space provided.																	
LOCAL RECORDS	_____	WATCH	_____														
CHECKS RUN BY	<u>Bmay</u>					DATE	<u>7-24-09</u>										

APPLICATION is: Approved Disapproved

If disapproved, give reason:

Officer Signature BMay 9046 Date 7-24-09

WASHINGTON INSURANCE IDENTIFICATION CARD

(STATE)

COMPANY NUMBER COMPANY
COMMERCIAL AUTO MARKEL INSURANCE COMPANY

POLICY NUMBER EFFECTIVE DATE EXPIRATION DATE
09CAB-1849 07/20/2009 07/20/2010

YEAR MAKE/MODEL VEHICLE IDENTIFICATION NUMBER
1995 MAZDA JM3LV5221S0700890

AGENCY/COMPANY ISSUING CARD

WHIDBEY ISLAND INSURANCE
285 NE MIDWAY BLVD., SUITE 7
OAK HARBOR, WASHINGTON 98277 (360) 240-8407

INSURED

┌ KELLY SWEET DBA: KELLY CAB
 PO BOX 2478
 OAK HARBOR, WASHINGTON 98277

SEE IMPORTANT NOTICE ON REVERSE SIDE

**THIS CARD MUST BE KEPT IN THE INSURED
VEHICLE AND PRESENTED UPON DEMAND**

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible. Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

THE FRONT OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

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PO Box 19150 | Spokane, WA 99219 | www.cochraneco.com



1.800.441.4535

T.509.838.0655

INSURANCE BINDER

In accordance with your instructions, and in reliance upon the statements made by the Retail Broker in the Insured's application/submission, we have obtained insurance at your request as follows:

Date Issued: July 20, 2009

Insured: Kelly Cab
DBA: Kelly Sweet
PO Box 2478
Oak Harbor, WA 98277

Producer: Whidbey Island Insurance (AGT698)
Fax: (360) 240-0327
Reference Number: 2317272
Commission: 10%

***Policy Number:** 09CAB-1849
Insurer: Markel Insurance Company
Coverage: Commercial Auto Liability

→ **Term:** 7/20/2009 to 7/20/2010
AM Best Rating: A*

Limits
100,000 Bodily Injury Each Person
300,000 Bodily Injury Each Accident
50,000 Property Damage Each Accident
25,000 Uninsured Motorist BI Each Person
50,000 Uninsured Motorist BI Each Accident
10,000 Uninsured Motorist PD Each Accident

Deductible **MEP**
%

Premium: \$3,283.00
Fee Schedule: Broker Fee \$250.00
Terrorism Coverage: NOT APPLICABLE
Taxes:
Total: \$3,533.00

Policy Form:
Retroactive Date:
Exposure:
See Company Quote Attached

Coinsurance:
Valuation:

Please see the following page for applicable Terms/Conditions and Endorsements.

Page 1 of 2

AGENCY

Whidbey Island Insurance

A Safe Place To Be

"For All Your Insurance Needs"

Office: 360.240.8407
Fax: 360.240.0327
Cell: 360.672.8139

Tony Read - Agent
whidbeyislandinsurance@msn.com
www.safeplacetobe.com

285 NE Midway Blvd #7
Oak Harbor, WA 98277

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/18/2009

PRODUCER Whidbey Island Insurance 285 NE Midway Blvd., Suite 7 Oak Harbor, Washington 98277 (360) 240-8407	THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Kelly Cab Oak Harbor, Washington 98277	INSURER A: Markel Insurance Company	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

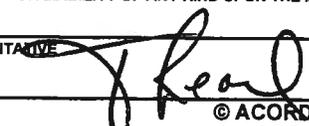
COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR/ADD'L LTR/INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Commercial Auto Liability	09CAB-1849	07/20/2009	07/20/2010	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ 100,000 BODILY INJURY (Per accident) \$ 300,000 PROPERTY DAMAGE (Per accident) \$ 50,000
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Taxi Service
 1995 Mazda MPV (5 Passenger) VIN#: JM3LV5221S0700890

CERTIFICATE HOLDER STATE OF WASHINGTON MASTER LICENSING DEPARTMENT PO BOX 9034 OLYMPIA, WA 98507	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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**City of Oak Harbor
City Council Agenda Bill**

Bill No. CJA 4C
Date: September 1, 2009
Subject: License – Public Dances
in Dance Studio Space

FROM: Paul Schmidt *PS*
City Administrator

**INITIALED AS APPROVED FOR
SUBMITTAL TO THE COUNCIL BY:**

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

PURPOSE

Request for approval of a Public Dance/Dancehall License as requested by Dan Branscum, Dan's Classic Ballroom, 210 SE Pioneer Way, Suite 3, Oak Harbor, Washington.

AUTHORITY

Oak Harbor Municipal Code Chapter 5.16.020 states:

5.16.020 License Required – Exceptions.

No person, association, partnership or corporation shall conduct or hold a public dance or maintain a public dancehall within the corporate limits of the City of Oak Harbor unless a license is obtained and displayed on the premises.

5.16.030 Approval of License – Council Authority

The council may condition approval of such license on conditions that such dances are conducted at such places and at such time and in such manner that the dances will not interfere with the health, welfare and safety of the locality in which the dance or dances are located and the persons who attend the dance or dancehall.

5.16.040 Granting of License - Fee

A license may be obtained by approval of the city council only.

SUMMARY STATEMENT

In addition to opening Dan's Classic Ballroom Studio for dance instruction at 210 Pioneer Way, Mr. Branscum will also hold public dances in his studio space. Mr. Branscum has received his general business license. Payment of a \$20.00 fee shall be charged for a public dance/dancehall

license not to exceed one year in duration. Mr. Branscum has also applied for an occupancy permit for the studio's space.

STANDING COMMITTEE REPORT

RECOMMENDED ACTION

Approve this request for a public dance/dancehall license and issue it to Dan Branscum upon payment of the \$20.00 fee.

ATTACHMENTS

OHMC Chapter 5.16

Dan's Classic Ballroom Studio Business License

MAYOR'S COMMENTS

»Chapter «»5.16 «
PUBLIC DANCES AND DANCEHALLS

Sections:

- 5.16.010 Definitions.**
5.16.020 License required – Exceptions.
5.16.030 Approval of license – Council authority.
5.16.040 Granting of license – Fee.
5.16.050 License – Suspension and revocation conditions.
5.16.060 Adequate lighting required – Prohibited dances.

5.16.010 Definitions.

As used herein the term “public dance” shall be construed to mean any dance or ball to which the public may generally gain admission with or without the payment of an admission fee. The term “dancehall” shall be construed to mean a room, hall or pavilion, building, or other structure kept for the purpose of conducting therein dances or dancing. (Ord. 716 § 1, 1985).

5.16.020 License required – Exceptions.

No person, association, partnership or corporation shall conduct or hold a public dance or maintain a public dancehall within the corporate limits of the city of Oak Harbor unless a license is obtained and displayed on the premises; provided, a civic, religious or fraternal organization may hold dances without the license required herein so long as they are held in a facility regularly used by that organization for meetings and the dances are for members and guests of members only. (Ord. 716 § 2, 1985).

5.16.030 Approval of license – Council authority.

The council may condition approval of such license on conditions that such dances are conducted at such places and at such time and in such manner that the dances will not interfere with the health, welfare and safety of the locality in which the dance or dances are located and the persons who attend the dance or dancehall. General provisions concerning licensing shall apply to dance and dancehall licenses. (Ord. 716 § 4, 1985).

5.16.040 Granting of license – Fee.

A license may be obtained by approval of the city council only. No license shall be granted unless the applicant or applicants are of good moral character. No license shall be granted to a corporation, but may be granted to the managing head or directing head thereof. A \$20.00 fee shall be charged for a license not to exceed one year in duration. The council may waive the fee for a one-day license. (Ord. 716 § 3, 1985).

5.16.050 License – Suspension and revocation conditions.

(1) Any license granted hereunder to conduct dances or a dancehall may be revoked by the city council. A hearing may be held upon not less than 10 days’ written notice to the licensee. The action of the council in revoking any such license shall be final and conclusive.

(2) The mayor may suspend a license with notice if he finds an immediate danger to public health, safety or welfare from the continued operation of a dancehall. If requested by the license holder, the council shall convene as soon as possible to review the suspension order at a hearing. (Ord. 716 § 5, 1985).

5.16.060 Adequate lighting required – Prohibited dances.

(1) No immoral, indecent or obscene dance shall be given or carried on in any dancehall or at any dance licensed hereunder.

(2) All buildings, halls, rooms, pavilions or other places in which public dances are carried on, as well as all halls, corridors and rooms leading thereto or connected therewith, shall at all times while open to the public, be well lighted. (Ord. 716 § 6, 1985).



BUSINESS LICENSE
865 S.E. BARRINGTON DRIVE
OAK HARBOR, WA 98277
(360) 279-4500

EXPIRATION DATE: 12/31/2009
ISSUED DATE: 08/03/2009
LICENSE NUMBER: BL-004744

BUSINESS CLASSIFICATIONS:
GENERAL BUSINESS

LOCATION OF BUSINESS
601 MAPLEWOOD LOOP
OAK HARBOR, WA 98277
THIS CERTIFIES that the business or individual listed below is hereby licensed to do business within the CITY OF OAK HARBOR

DAN'S CLASSIC BALLROOM
DBA: DCB ENTERPRISES LTD
601 MAPLEWOOD LOOP
OAK HARBOR, WA 98277

owner DAN BRANSCUM


FINANCE DIRECTOR

This license is to be displayed conspicuously at the location of business, and is not transferable or assignable.

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

Agenda Bill No. C/A 40

Date: September 1, 2009

Subject: Noise Permit – Steve Potter’s Birthday Party

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 Jim Slowik for amplified sound associated with a birthday party.

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:

Jim Slowik has submitted a Noise Permit request for amplified sound associated with a birthday party scheduled for September 13, 2009 at Windjammer Park. The event will be held from 11:00 a.m. – 3:00 pm. The amplified sound will consist of a sound system for event-related music.

The Application was reviewed by Fire, Police, and Public Works Departments and no conditions of approval were requested.

STANDING COMMITTEE REVIEW:

Not required.



RECOMMENDED ACTION:

Grant a noise permit for amplified sound to Jim Slowik.

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:



SPECIAL EVENT PERMIT/NOISE PERMIT

APPLICATION INFORMATION:

Please check the event type:

- | | |
|---|--|
| <input type="checkbox"/> Athletic Event | <input type="checkbox"/> Marina Event |
| <input type="checkbox"/> Noise Permit | <input checked="" type="checkbox"/> Park Event |
| <input type="checkbox"/> Car Show | <input type="checkbox"/> Parade |
| <input type="checkbox"/> Other | |

Name of Applicant/Organization: Jim Slowik

Person in Charge: - same - Address: _____

Phone Number: Daytime: _____ Work: _____ Email: _____

Additional Authorized Individuals: 6

Phone Number: Daytime: _____ Work: _____ Email: _____

Emergency Contact: _____

Phone Number: Daytime: _____ Work: _____ Email: _____

Type of Activity Planned (describe event): Birthday Party

Is this an event involving political or religious activity intended primarily for the communication or expression of ideas? (Please circle) YES **NO**

Will Participants Pay a Fee or Make a Donation? (Please circle) YES **NO**

Will City Services/Street Closures/Equipment be required? If so, please describe: No

Date(s) of Proposed Event: 9-13-09

Hours of Operation: 12-3

Set-up Date/Time: 9-13-09 @ 11am

Dismantling Date/Time: 9-13-09 @ 3pm

Number of Staff/Volunteers: 0

Estimated Number of Participants: 100

LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan):
Between Kitchen C and Smokehouse

Special Considerations – Will there be:

Amplified sound? YES NO
(Requires a noise permit, which is granted by the City Council)*

Alcohol? (Please circle) YES NO

Animals? (Please circle) YES NO number _____ species _____

Booths/Commercial Vendors: (Please circle) YES NO

Cooking/Food Service: (Please circle) YES NO

Fire/Fireworks/Pyrotechnics: (Please circle) YES NO

Mechanical Rides: (Please circle) YES NO (If yes, requires additional permit)

Portable Restrooms: (Please circle) YES NO How Many ? _____ Some restrooms must meet ADA requirements.

Signs: (Please circle) YES NO

Stage: (Please circle) YES NO

Other special considerations: _____

List any special signs/barricades/cones requested to be supplied by City. _____

***NOISE PERMIT INFORMATION**

Oak Harbor Municipal Code Section 6.56.030 contains provisions which restrict or prohibit certain unnecessary noises, such as sound systems, loudspeakers and amplified music on any street or public place of the City.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 under the following circumstances if it is determined the activity and associated noise will: 1) 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.

To obtain a Noise Permit, please provide the activities you wish to carry out and the noise requirements of your event. Entertainment with amplified sound

A copy of OHMC Section 6.56.030 may be obtained upon request.

Public Relations: Please state what efforts, if any, have occurred, or you intend to make, to notify residents or businesses that will likely be affected by your event. Please attach any letters of support. If permit is granted it will be the responsibility of event organizers to alert those likely to be impacted. (i.e. street closures, no parking zones, noise, etc.)

ATTACH COPIES OF BROCHURES, POSTERS, FLYERS, OR MAILINGS ADVERTISING THIS EVENT

INSURANCE – The City does not maintain insurance that will respond to claims against the applicant arising out of the use of facilities by the applicant, its members, or those attending the event. Depending on the type of event you are planning, and the activity and risk level of your group, you may be required to obtain bodily injury and property damages liability insurance in accordance with City policy, name the City as an **additional insured** on the policy, and be responsible for obtaining said insurance. After reviewing this application, the City will determine whether you must obtain liability insurance.

HOLD HARMLESS – Applicant/Permittee/User shall defend, indemnify and hold harmless the City of Oak Harbor, its agents, employees and officials, while acting within the scope of their duties, from all causes of action, demands and claims, including the cost of their defense, arising in favor of the organization, the organization's employees or third parties on account of personal injuries, bodily injuries, death, or damage to property arising out of the acts or omissions of the organization, its employees or representatives, concessionaires of the event or any other person or entity, except for liability caused due to the sole negligence of the City.

Date: 8-19-09

Signature of Applicant: [Signature]

Organization/Title: FRIENDS of STEVE POTTER

CITY OF OAK HARBOR

NOISE PERMIT

Name of Applicant: Jim Slowik

Location of Event: Windjammer Park – Smokehouse,
Kitchen C and surrounding area

Date of Event: September 13, 2009

Hours of Operation: 11:00 a.m. to 3:00 p.m.

Permitted Noise: Amplified sound system for event-
related music.

Approval Conditions: None

Date of City Council
Approval:

Issued this day of , 2009

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. CJA 4E
Date: September 1, 2009
Subject: Resolution: Identity Theft
Prevention Program

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

SUMMARY STATEMENT

The Federal Trade Commission's new rules on identity theft, known as "Red Flags Rules," require financial institutions, *utilities*, and other creditors to set up programs aimed at preventing identity theft. Because of the definition of "creditor" in these rules, many municipalities may be affected, including the City of Oak Harbor.

The rules implementing section 114 require each financial institution or creditor to develop and implement a written Identity Theft Prevention Program to detect, prevent, and mitigate identity theft in connection with the opening of certain accounts or certain existing accounts. In addition, the Agencies are issuing guidelines to assist financial institutions and creditors in the formulation and maintenance of a Program that satisfies the requirements of the rules. The rules implementing section 114 also require credit and debit card issuers to assess the validity of notifications of changes of address under certain circumstances. Additionally, the Agencies are issuing joint rules under section 315 that provide guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a consumer reporting agency sends the user a notice of address discrepancy.

AUTHORITY

The City Council is granted the authority under RCW 35A.11.020 to organize and regulate its internal affairs within the provisions of this title and its charter, to define functions, powers, and duties of officers and employees, and to adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs.

In addition, joint rules and guidelines were issued by the Department of the Treasury's Office of the Comptroller of the Currency (OCC) and Office of Thrift Supervision (OTS), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Federal Trade Commission (FTC or Commission). They implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The joint final rules and guidelines were effective January 1, 2008.

RECOMMENDED ACTION

1) Approve the Resolution adopting the City of Oak Harbor's Identity Theft Prevention Program.

ATTACHED

Resolution

Identity Theft Prevention Program

FTC Business Update

STANDING COMMITTEE REVIEW:

The Finance Standing Committee discussed and reviewed this agenda bill during their August 12, 2009 meeting.

MAYOR'S COMMENTS:

RESOLUTION NO. _____

A RESOLUTION OF THE OAK HARBOR CITY COUNCIL, ADOPTING AN IDENTITY THEFT PREVENTION PROGRAM PURSUANT TO THE FAIR AND ACCURATE CREDIT TRANSACTION ACT OF 2003.

WHEREAS, the municipal utilities of the City of Oak Harbor are considered "creditors" under the Fair and Accurate Credit Transaction Act of 2003 (Act);

WHEREAS, the municipal utilities of the City of Oak Harbor extend "credit" as defined in the Act by deferring payment for services rendered;

WHEREAS, the municipal utilities of the City of Oak Harbor maintain "covered accounts" as defined in the Act; and

WHEREAS, the City of Oak Harbor desires to adopt a policy establishing an Identity Theft Prevention Program pursuant to the Act;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR DOES RESOLVE AS FOLLOWS:

Section 1. Adoption of the Identity Theft Prevention Program. The City of Oak Harbor's procedures for identifying, detecting, and responding to identity theft, attached hereto as Attachment A and adopted by this reference as if set forth in full, are hereby adopted for use by the City of Oak Harbor municipal utilities to the full extent consistent with state law.

PASSED by the City Council this 1st day of September , 2009.

APPROVED:

ATTEST:

Jim Slowik, Mayor

Connie Wheeler, City Clerk

APPROVED AS TO FORM:

BY: _____
Office of the City Attorney

CITY OF OAK HARBOR

Identity Theft Prevention Program

Effective beginning August 2009

I. PROGRAM ADOPTION

The City of Oak Harbor (“Utility”) developed this Identity Theft Prevention Program (“Program”) pursuant to the Federal Trade Commission's Red Flag Rule (“Rule”), which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003. 16 C. F. R. § 681.2. This Program was developed and approved by the City Council. After consideration of the size and complexity of the Utility's operations and account systems, and the nature and scope of the Utility's activities, the City Council determined that this Program was appropriate for the City of Oak Harbor, and therefore adopted this Program on September 8, 2009.

II. PROGRAM PURPOSE AND DEFINITION

A. Fulfilling requirements of the Red Flags Rule.

Under the Red Flag Rule, every financial institution and creditor is required to establish an “Identity Theft Prevention Program” tailored to the size, complexity and nature of its operation. Each program must contain reasonable policies and procedures to:

1. Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the Program;
2. Detect Red Flags that have been incorporated into the Program;
3. Respond appropriately to any Red Flags that are detected to prevent and mitigate Identity Theft; and
4. Ensure the Program is updated periodically, to reflect changes in risks to customers or to the safety and soundness of the creditor from Identity Theft.

B. Red Flags Rule definitions used in this Program

The Red Flag Rule defines “Identity Theft” as “fraud committed using the identifying information of another person” and a “Red Flag” as “a pattern, practice, or specific activity that indicates the possible existence of Identity Theft.”

According to the Rule, a municipal utility is a creditor subject to the Rule requirements. The Rule defines creditors “to include finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies.” Where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors.

All the Utility's accounts that are individual utility service accounts held by customers of the utility whether residential, commercial or industrial are covered by the Rule. Under the Rule, a “covered account” is:

1. Any account the Utility offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and
2. Any other account the Utility offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the Utility from Identity Theft.

“Identifying information” is defined under the Rule as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific person,” including: name, social security number, date of birth, government-issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number, unique electronic identification number, computer’s Internet Protocol address, or routing code.

III. IDENTIFICATION OF RED FLAGS.

In order to identify relevant Red Flags, the Utility considers the types of accounts that it offers and maintains, the methods it provides to open its accounts, the methods it provides to access its accounts, and its previous experiences with Identity Theft. The Utility identifies the following Red Flags and will train appropriate staff to recognize these Red Flags as they are encountered in the ordinary course of Utility business:

A. Alerts, Notifications and Warnings From Credit Reporting Agencies.

Red Flags

1. Report of fraud accompanying a credit report;
2. Notice or report from a credit agency of a credit freeze on a customer or applicant;
3. Notice or report from a credit agency of an active duty alert for an applicant;
4. Notice or report from a credit agency of an address discrepancy; and
5. Indication from a credit report of activity that is inconsistent with a customer’s usual pattern or activity, such as an unusual increase in the volume of credit inquiries, unusual increase in the number of established credit relationships, or a material change in the use of credit.

B. Suspicious Documents

Red Flags.

1. Identification document or card that appears to be forged, altered or inauthentic;
2. Identification document or card on which a person’s photograph or physical description is not consistent with the person presenting the document;
3. Other information on identification document is not consistent with information provided by the person opening a new covered account, by the customer presenting the identification, or with existing customer information on file with the creditor (such as a signature card or recent check); and
4. Application for service that appears to have been altered or forged.

C. Suspicious Personal Identifying Information

Red Flags

1. Identifying information presented that is inconsistent with other information the customer provides, for instance, where there is a lack of correlation between the social security number range and the date of birth;
2. Identifying information presented that is inconsistent with external sources of information, for instance, an address does not match a consumer report or a social security number is listed in the Social Security Administration's Death Master File;
3. Identifying information presented is associated with common types of fraudulent activity, such as use of a fictitious billing address or phone number;
4. Identifying information presented that is consistent with known fraudulent activity, such as presentation of an invalid phone number or fictitious billing address used in previous fraudulent activity;
5. Social security number presented that is the same as one given by another customer;
6. An address or phone number presented that is the same as that of another person;
7. A person fails to provide complete personal identifying information on an application when reminded to do so (however, by law, social security numbers must not be required); and
8. A person's identifying information is not consistent with the information that is on file for the customer.

D. Suspicious Account Activity or Unusual Use of Account

Red Flags

1. Change of address for an account followed by a request to change the account holder's name;
2. Payments stop on an otherwise consistently up-to-date account;
3. Account used in a way that is not consistent with prior use (example: very high activity);
4. Mail sent to the account holder is repeatedly returned as undeliverable;
5. Notice to the Utility that a customer is not receiving mail sent by the Utility;
6. Notice to the Utility that an account has unauthorized activity;
7. Breach in the Utility's computer system security; and
8. Unauthorized access to or use of customer account information.

E. Alerts from Others

Red Flag

1. Notice to the Utility from a customer, identity theft victim, law enforcement or other person that it has opened or is maintaining a fraudulent account for a person engaged in Identity Theft.

IV. PREVENTING AND MITIGATING IDENTITY THEFT

In the event Utility personnel detect any identified Red Flags, such personnel must contact the Finance Director of the City. The Finance Director will then decide which of the following steps should be taken:

1. Continue to monitor an account for evidence of Identity Theft;
2. Contact the customer;
3. Change any passwords or other security devices that permit access to accounts;
4. Not open a new account;
5. Close an existing account;
6. Reopen an account with a new number;
7. Notify law enforcement; or
8. Determine that no response is warranted under the particular circumstances.

V. PROGRAM UPDATES

The City's Risk Management Officer shall serve as Program Administrator. The Program Administrator will periodically review and update this Program to reflect changes in risks to customers and the soundness of the Utility from Identity Theft. In doing so, the Program Administrator will consider the Utility's experiences with Identity Theft situations, changes in Identity Theft methods, changes in Identity Theft detection and prevention methods, and changes in the Utility's business arrangements with other entities. After considering these factors, the Program Administrator will determine whether changes to the Program, including the listing of Red Flags, are warranted. If warranted, the Program Administrator will update the Program or present the City Council with his or her recommended changes and the City Council will make a determination of whether to accept, modify or reject those changes to the Program.

VII. PROGRAM ADMINISTRATION.

A. Oversight

Responsibility for developing, implementing and updating this Program lies with the Program Administrator. The Program Administrator will be responsible for the Program's administration, for ensuring appropriate training of Utility staff, for reviewing any staff reports regarding the detection of Red Flags and the steps for preventing and mitigating Identity Theft, for determining which steps of prevention and mitigation should be taken in particular circumstances, and for considering periodic changes to the Program.

B. Staff Training and Reports

Utility staff responsible for implementing the Program shall be trained either by or under the direction of the Program Administrator in the detection of Red Flags and the responsive steps to be taken when a Red Flag is detected. Staff should prepare a report at least annually for the Program Administrator, including an evaluation of the effectiveness of the Program with respect to opening accounts, existing covered accounts, service provider arrangements,

significant incidents involving identity theft and responses, and recommendations for changes to the Program.

C. Service Provider Arrangements

In the event the Utility engages a service provider to perform an activity in connection with one or more accounts, the Utility will take the following steps to ensure the service provider performs its activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft.

1. Require, by contract, that service providers have such policies and procedures in place; and
2. Require, by contract, that service providers review the Utility's Program and report any Red Flags to the Program Administrator.

PART 603—DEFINITIONS

AUTHORITY: Pub. L. 108-159, sec. 111; 15 U.S.C. 1681a.

§ 603.1 Terms defined in the Fair Credit Reporting Act.

Any term used in any part in this subchapter, if defined in the Fair Credit Reporting Act (FCRA) and not otherwise defined in that rule, has the same meaning provided by the FCRA.

[69 FR 29063, May 20, 2004]

EDITORIAL NOTE: At 69 FR 63933, November 3, 2004, part 603 was added to title 16. However, part 603 already existed, therefore this amendment could not be incorporated. For the convenience of the user, the added text is set forth as follows:

PART 603—DEFINITIONS

Sec.

603.1 [Reserved]

603.2 Identity theft.

603.3 Identity theft report.

AUTHORITY: Pub. L. 108-159, sec 111; 15 U.S.C. 1681a.

§ 603.1 [Reserved]

§ 603.2 Identity theft.

(a) The term "identity theft" means a fraud committed or attempted using the identifying information of another person without authority.

(b) The term "identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any—

(1) Name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(3) Unique electronic identification number, address, or routing code; or

(4) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

§ 603.3 Identity theft report.

(a) The term "identity theft report" means a report—

(1) That alleges identity theft with as much specificity as the consumer can provide;

(2) That is a copy of an official, valid report filed by the consumer with a Federal,

State, or local law enforcement agency, including the United States Postal Inspection Service, the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information, if, in fact, the information in the report is false; and

(3) That may include additional information or documentation that an information furnisher or consumer reporting agency reasonably requests for the purpose of determining the validity of the alleged identity theft, provided that the information furnisher or consumer reporting agency:

(i) Makes such request not later than fifteen days after the date of receipt of the copy of the report form identified in paragraph (a)(2) of this section or the request by the consumer for the particular service, whichever shall be the later;

(ii) Makes any supplemental requests for information or documentation and final determination on the acceptance of the identity theft report within another fifteen days after its initial request for information or documentation; and

(iii) Shall have five days to make a final determination on the acceptance of the identity theft report, in the event that the consumer reporting agency or information furnisher receives any such additional information or documentation on the eleventh day or later within the fifteen day period set forth in paragraph (a)(3)(ii) of this section.

(b) Examples of the specificity referenced in paragraph (a)(i) of this section are provided for illustrative purposes only, as follows:

(1) Specific dates relating to the identity theft such as when the loss or theft of personal information occurred or when the fraud(s) using the personal information occurred, and how the consumer discovered or otherwise learned of the theft.

(2) Identification information or any other information about the perpetrator, if known.

(3) Name(s) of information furnisher(s), account numbers, or other relevant account information related to the identity theft.

(4) Any other information known to the consumer about the identity theft.

(c) Examples of when it would or would not be reasonable to request additional information or documentation referenced in paragraph (a)(3) of this section are provided for illustrative purposes only, as follows:

(1) A law enforcement report containing detailed information about the identity theft and the signature, badge number or other identification information of the individual law enforcement official taking the report should be sufficient on its face to support a victim's request. In this case, without an identifiable concern, such as an indication that the report was fraudulent, it would not be reasonable for an information furnisher or

policies and procedures and for the purpose of assessing the validity of the change of address, the card issuer:

(1)(i) Notifies the cardholder of the request:

(A) At the cardholder's former address; or

(B) By any other means of communication that the card issuer and the cardholder have previously agreed to use; and

(ii) Provides to the cardholder a reasonable means of promptly reporting incorrect address changes; or

(2) Otherwise assesses the validity of the change of address in accordance with the policies and procedures the card issuer has established pursuant to §334.90 of this part.

(d) Alternative timing of address validation. A card issuer may satisfy the requirements of paragraph (c) of this section if it validates an address pursuant to the methods in paragraph (c)(1) or (c)(2) of this section when it receives an address change notification, before it receives a request for an additional or replacement card.

(e) Form of notice. Any written or electronic notice that the card issuer provides under this paragraph must be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

6. Reserve appendices A through I to part 334.

7. Add Appendix J to part 334 to read as follows:

**APPENDIX J TO PART 334 – INTERAGENCY GUIDELINES ON
IDENTITY THEFT DETECTION, PREVENTION, AND MITIGATION**

Guidelines



Section 334.90 of this part requires each financial institution and creditor that offers or maintains one or more covered accounts, as defined in § 334.90(b)(3) of this part, to develop and provide for the continued administration of a written Program to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. These guidelines are intended to assist financial institutions and creditors in the formulation and maintenance of a Program that satisfies the requirements of § 334.90 of this part.

I. The Program

In designing its Program, a financial institution or creditor may incorporate, as appropriate, its existing policies, procedures, and other arrangements that control reasonably foreseeable risks to customers or to the safety and soundness of the financial institution or creditor from identity theft.

II. Identifying Relevant Red Flags

(a) **Risk Factors**. A financial institution or creditor should consider the following factors in identifying relevant Red Flags for covered accounts, as appropriate:

- (1) The types of covered accounts it offers or maintains;
- (2) The methods it provides to open its covered accounts;
- (3) The methods it provides to access its covered accounts; and
- (4) Its previous experiences with identity theft.

(b) **Sources of Red Flags**. Financial institutions and creditors should incorporate relevant Red Flags from sources such as:

- (1) Incidents of identity theft that the financial institution or creditor has experienced;

(2) Methods of identity theft that the financial institution or creditor has

identified that reflect changes in identity theft risks; and

(3) Applicable supervisory guidance.

(c) Categories of Red Flags. The Program should include relevant Red Flags from the following categories, as appropriate. Examples of Red Flags from each of these categories are appended as Supplement A to this Appendix J.

(1) Alerts, notifications, or other warnings received from consumer reporting agencies or service providers, such as fraud detection services;

(2) The presentation of suspicious documents;

(3) The presentation of suspicious personal identifying information, such as a suspicious address change;

(4) The unusual use of, or other suspicious activity related to, a covered account; and

(5) Notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with covered accounts held by the financial institution or creditor.

III. Detecting Red Flags. The Program's policies and procedures should address the detection of Red Flags in connection with the opening of covered accounts and existing covered accounts, such as by:

(a) Obtaining identifying information about, and verifying the identity of, a person opening a covered account, for example, using the policies and procedures regarding identification and verification set forth in the Customer Identification Program rules implementing 31 U.S.C. 5318(I) (31 CFR 103.121), and

(b) Authenticating customers, monitoring transactions, and verifying the validity of change of address requests, in the case of existing covered accounts.

IV. Preventing and Mitigating Identity Theft. The Program's policies and procedures should provide for appropriate responses to the Red Flags the financial institution or creditor has detected that are commensurate with the degree of risk posed. In determining an appropriate response, a financial institution or creditor should consider aggravating factors that may heighten the risk of identity theft, such as a data security incident that results in unauthorized access to a customer's account records held by the financial institution, creditor, or third party, or notice that a customer has provided information related to a covered account held by the financial institution or creditor to someone fraudulently claiming to represent the financial institution or creditor or to a fraudulent website. Appropriate responses may include the following:

- (a) Monitoring a covered account for evidence of identity theft;
- (b) Contacting the customer;
- (c) Changing any passwords, security codes, or other security devices that permit access to a covered account;
- (d) Reopening a covered account with a new account number;
- (e) Not opening a new covered account;
- (f) Closing an existing covered account;
- (g) Not attempting to collect on a covered account or not selling a covered account to a debt collector;
- (h) Notifying law enforcement; or
- (i) Determining that no response is warranted under the particular circumstances.

V. Updating the Program. Financial institutions and creditors should update the Program (including the Red Flags determined to be relevant) periodically to reflect changes in risks to customers or to the safety and soundness of the financial institution or creditor from identity theft, based on factors such as:

- (a) The experiences of the financial institution or creditor with identity theft;
- (b) Changes in methods of identity theft;
- (c) Changes in methods to detect, prevent, and mitigate identity theft;
- (d) Changes in the types of accounts that the financial institution or creditor offers or maintains; and
- (e) Changes in the business arrangements of the financial institution or creditor, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

VI. Methods for Administering the Program.

(a) Oversight of Program. Oversight by the board of directors, an appropriate committee of the board, or a designated employee at the level of senior management should include:

- (1) Assigning specific responsibility for the Program's implementation;
- (2) Reviewing annual reports prepared by staff regarding compliance by the financial institution or creditor with § 334.90 of this part; and
- (3) Approving material changes to the Program as necessary to address changing identity theft risks.

(b) Reports. (1) In general. Staff of the financial institution or creditor responsible for development, implementation, and administration of its Program should

report to the board of directors, an appropriate committee of the board, or a designated employee at the level of senior management, at least annually, on compliance by the financial institution or creditor with § 334.90 of this part.

(2) Contents of report. The report should address material matters related to the Program and evaluate issues such as: the effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts; service provider arrangements; significant incidents involving identity theft and management’s response; and recommendations for material changes to the Program.

(c) Oversight of service provider arrangements. Whenever a financial institution or creditor engages a service provider to perform an activity in connection with one or more covered accounts the financial institution or creditor should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft. For example, a financial institution or creditor could require the service provider by contract to have policies and procedures to detect relevant Red Flags that may arise in the performance of the service provider’s activities, and either report the Red Flags to the financial institution or creditor, or to take appropriate steps to prevent or mitigate identity theft.

VII. Other Applicable Legal Requirements. Financial institutions and creditors should be mindful of other related legal requirements that may be applicable, such as:

(a) For financial institutions and creditors that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;

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(b) Implementing any requirements under 15 U.S.C. 1681c-1(h) regarding the circumstances under which credit may be extended when the financial institution or creditor detects a fraud or active duty alert;

(c) Implementing any requirements for furnishers of information to consumer reporting agencies under 15 U.S.C. 1681s-2, for example, to correct or update inaccurate or incomplete information, and to not report information that the furnisher has reasonable cause to believe is inaccurate; and

(d) Complying with the prohibitions in 15 U.S.C. 1681m on the sale, transfer, and placement for collection of certain debts resulting from identity theft.

Supplement A to Appendix J

In addition to incorporating Red Flags from the sources recommended in section II.b of the Guidelines in Appendix J of this part, each financial institution or creditor may consider incorporating into its Program Red Flags, whether singly or in combination, from the following illustrative examples in connection with covered accounts:

Alerts, Notifications or Warnings from a Consumer Reporting Agency

1. A fraud or active duty alert is included with a consumer report.
2. A consumer reporting agency provides a notice of credit freeze in response to a request for a consumer report.
3. A consumer reporting agency provides a notice of address discrepancy, as defined in § 334.82(b) of this part.
4. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as:
 - a. A recent and significant increase in the volume of inquiries;
 - b. An unusual number of recently established credit relationships;
 - c. A material change in the use of credit, especially with respect to recently established credit relationships; or

- d. An account that was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

Suspicious Documents

- 5. Documents provided for identification appear to have been altered or forged.
- 6. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.
- 7. Other information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification.
- 8. Other information on the identification is not consistent with readily accessible information that is on file with the financial institution or creditor, such as a signature card or a recent check.
- 9. An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.

Suspicious Personal Identifying Information

- 10. Personal identifying information provided is inconsistent when compared against external information sources used by the financial institution or creditor. For example:
 - a. The address does not match any address in the consumer report; or
 - b. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.
- 11. Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer. For example, there is a lack of correlation between the SSN range and date of birth.
- 12. Personal identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the financial institution or creditor. For example:
 - a. The address on an application is the same as the address provided on a fraudulent application; or
 - b. The phone number on an application is the same as the number provided on a fraudulent application.

13. Personal identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the financial institution or creditor. For example:

- a. The address on an application is fictitious, a mail drop, or prison; or
- b. The phone number is invalid, or is associated with a pager or answering service.

14. The SSN provided is the same as that submitted by other persons opening an account or other customers.

15. The address or telephone number provided is the same as or similar to the account number or telephone number submitted by an unusually large number of other persons opening accounts or other customers.

16. The person opening the covered account or the customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.

17. Personal identifying information provided is not consistent with personal identifying information that is on file with the financial institution or creditor.

18. For financial institutions and creditors that use challenge questions, the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Unusual Use of, or Suspicious Activity Related to, the Covered Account

19. Shortly following the notice of a change of address for a covered account, the institution or creditor receives a request for new, additional, or replacement cards or a cell phone, or for the addition of authorized users on the account.

20. A new revolving credit account is used in a manner commonly associated with known patterns of fraud patterns. For example:

- a. The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (e.g., electronics equipment or jewelry); or
- b. The customer fails to make the first payment or makes an initial payment but no subsequent payments.

21. A covered account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example

- a. Nonpayment when there is no history of late or missed payments;

- b. A material increase in the use of available credit;
- c. A material change in purchasing or spending patterns;
- d. A material change in electronic fund transfer patterns in connection with a deposit account; or
- e. A material change in telephone call patterns in connection with a cellular phone account.

22. A covered account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

23. Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's covered account.

24. The financial institution or creditor is notified that the customer is not receiving paper account statements.

25. The financial institution or creditor is notified of unauthorized charges or transactions in connection with a customer's covered account.

Notice from Customers, Victims of Identity Theft, Law Enforcement Authorities, or Other Persons Regarding Possible Identity Theft in Connection with Covered Accounts Held by the Financial Institution or Creditor

26. The financial institution or creditor is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

PART 364--STANDARDS FOR SAFETY AND SOUNDNESS

8. The authority citation for part 364 continues to read as follows:

Authority: 12 U.S.C. 1819(Tenth), 1831p-1; 15 U.S.C. 1681s, 1681w, 6801(b), 6805(b)(1).

9. Add the following sentence at the end of Sec. 364.101(b):

Sec. 364.101 Standards for safety and soundness.

(b) * * * The interagency regulations and guidelines on identity theft detection, prevention, and mitigation prescribed pursuant to section 114 of the Fair and Accurate Credit Transactions Act of 2003, 15 U.S.C. 1681m(e), are set forth in §§ 334.90, 334.91, and Appendix J of part 334.



Federal Trade Commission Protecting America's Consumers

For Your Information: October 31, 2007

Agencies Issue Final Rules on Identity Theft Red Flags and Notices of Address Discrepancy

The Federal Trade Commission and the federal financial institution regulatory agencies have sent to the Federal Register for publication final rules on identity theft "red flags" and address discrepancies. The final rules implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003.

According to a report of the President's Identity Theft Task Force, identity theft (a fraud attempted or committed using identifying information of another person without authority), results in billions of dollars in losses each year to individuals and businesses.

The final rules require each financial institution and creditor that holds any consumer account, or other account for which there is a reasonably foreseeable risk of identity theft, to develop and implement an Identity Theft Prevention Program (Program) for combating identity theft in connection with new and existing accounts. The Program must include reasonable policies and procedures for detecting, preventing, and mitigating identity theft and enable a financial institution or creditor to:

1. Identify relevant patterns, practices, and specific forms of activity that are "red flags" signaling possible identity theft and incorporate those red flags into the Program;
2. Detect red flags that have been incorporated into the Program;
3. Respond appropriately to any red flags that are detected to prevent and mitigate identity theft; and
4. Ensure the Program is updated periodically to reflect changes in risks from identity theft.

The agencies also issued guidelines to assist financial institutions and creditors in developing and implementing a Program, including a supplement that provides examples of red flags.

The final rules also require credit and debit card issuers to develop policies and procedures to assess the validity of a request for a change of address that is followed closely by a request for an additional or replacement card. In addition, the final rules require users of consumer reports to develop reasonable policies and procedures to apply when they receive a notice of address discrepancy from a consumer reporting agency.

The attached final rulemaking is issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. The final rules are effective on January 1, 2008. Covered financial institutions and creditors must comply with the rules by November 1, 2008.

The final rule will be published soon and can be found on the Commission's Web site as a link to this press release. The Commission vote authorizing the publication of the final rule and Federal Register notice was 5-0. (FTC File No. R611019). The staff contacts are Naomi Lefkowitz or Pavneet Singh, Bureau of Consumer Protection, 202-326-2252; see press release dated July 18, 2006.

Copies of the document mentioned in this release are available from the FTC's Web site at <http://www.ftc.gov> and from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Call toll-free: 1-877-FTC-HELP.

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Related Documents:

Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003: 16 C.F.R. Part 681 (Federal Trade Commission Rule): Joint Final Rules and Guidelines of the Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the Office of Thrift Supervision, Treasury; the National Credit Union Administration; and the Federal Trade Commission

- Text of the Federal Register Notice

Last Modified: Thursday, 01-May-2008 09:40:00 EDT

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AWWA Red Flag Template



Introduction

On November 9, 2007, the Federal Trade Commission (FTC) and several other Federal agencies published the Identity Theft Red Flag Rule (FR 72:217:63717). All utilities that provide water/wastewater service on credit, i.e., send a bill for past service, are required to develop a program to comply with this rule by November 1, 2008.

The Identity Theft Red Flag Rule requires any creditor to develop a program to detect, prevent, and mitigate identity theft. Utility companies are specifically mentioned in the definition of a creditor, so this Rule clearly applies to water and wastewater utilities.

A Red Flag is “a pattern, practice, or specific activity that indicates the possible existence of identity theft”. Identity Theft is “a fraud committed or attempted using the identifying information of another person without authority”.

This template should be used as a starting point for compliance with this Rule. Utilities may need to adjust this template according to match existing business practices, and additional Red Flags may be found beyond the ones listed in the Red Flag Guidelines in the *Federal Register* notice (Page 63774). The utility program does not necessarily have to be extremely complex, and many existing utility business practices will help in complying with this rule. Nothing has to be sent in to Federal Trade Commission (FTC) or any other federal agency, but the program information and documentation needs to be kept on file.

For more information, this rule can be found online at <http://www.ftc.gov/os/fedreg/2007/november/071109redflags.pdf>

At first glance, the *Federal Register* notice is rather lengthy (over 60 pages), but most of this Rule is directed towards banks and financial institutions as this is a multi-agency Rule. The only relevant regulatory language for utilities is the FTC portion of the Rule on last six pages (pages 63771-63775) of the *Federal Register* notice. The FTC Rule is three pages and the last three pages are the interagency guidance that gives more details on what to consider when designing your program.

IDENTITY THEFT PREVENTION PROGRAM

Developed By and For:

(Utility Name)

Approval of the Initial Program Received From:

(Utility's Governing Body)

On the Following Date:

Program Reviewed, Updated and Approved on:

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Part I. Assessment of Existing Business Practices

Part I of the Identity Theft Prevention Program is used to identify areas of potential risk within the Utility's standard Customer Service business practices. The Utility has selected specific business processes associated with offering or maintaining accounts, or engaging in other activities, that could raise "red flags" indicating the potential for identity theft. It should be noted that the business practices listed below are typical for most utilities that operate as retailers or wholesalers of drinking water.

- A. Utility provides Customer Service personnel with the ability to request and review a customer's personal identifying information when engaging in any of the following activities:
- Open new accounts;
 - Access existing accounts;
 - Modify existing accounts; and/or
 - Close existing accounts.
- B. Utility provides customers with the ability to do one or more of the following actions independent of Customer Service personnel (either through an automated phone system or online), and a customer's personal identifying information is required to complete any of these activities:
- Open a new account;
 - Access an existing account;
 - Modify an existing account; and/or
 - Close an existing account.

Also, if the Utility has identified a past occurrence of identity theft that was linked to a customer's utility account (an unauthorized opening, modifying or closing of an account), then they must perform the actions set forth in the following Program.

Part II. Identification of Red Flags

Part II of the Identity Theft Prevention Program assists the Utility in identifying Red Flags that may arise during routine handling of new and/or existing accounts. The Utility has identified the following items as potential Red Flag sources or categories that might indicate an instance of identity theft.

- Consumer report includes a fraud or active duty alert, a notice of credit freeze and/or a notice of address discrepancy.
- Documents provided for identification appear to have been altered or forged.
- Photograph, physical description and/or other information on the identification is not consistent with the appearance of the person presenting the identification.
- Information on the identification is not consistent with readily accessible information that is on file with the Utility, such as property tax records.
- Information provided is inconsistent when compared against external information sources (address does not match any address in the consumer report and/or social security number has not been issued or is associated with a deceased person).
- Information provided by the customer is inconsistent with other information provided by the customer (no correlation between SSN range and date of birth).
- Information provided is associated with known fraudulent activity (address and/or phone number on an application is the same as the address provided on a previous fraudulent application).
- Information provided is of a type commonly associated with fraudulent activity (address on an application is fictitious and/or phone number is invalid).
- Social security number, address and/or telephone number provided is the same as or similar to ones provided by another customer.
- Customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.
- Customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.
- Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's account
- Utility is notified that the customer is not receiving paper account statements.
- Utility is notified that it has opened a fraudulent account for a person engaged in identity theft.

Part III. Detection of Red Flags

Part III of the Identity Theft Prevention Program addresses the process of detecting Red Flags as related to possible identity theft during the Utility's routine handling of new and/or existing accounts. The following is a list of detection methods that the Utility uses to prevent identity theft.

- Require customers to present government-issued identification information to open a new account. Types of necessary information include:
 - Name
 - Date of birth
 - Social security number
 - Address
 - Phone number
 - Photo identification
- Verify personal identification information using records on file with the Utility or through a third-party source such as a consumer reporting agency.
- Independently contact the customer (in the case of phone or internet setup of new utility accounts).
- When fielding a request to access and/or modify an existing account (such as a change of billing address), verify identity of customer by requesting specific pieces of personal identifying information (identification with the new billing address and/or documentation proving shift of financial liability)
- If new banking information is provided for electronic payment of accounts, cross-check ownership of the new banking account with the customer name on the utility account by contacting the appropriate financial institution.
- For online or automated phone system access of utility account, require the establishment of security questions during the initial set-up of the account.

Part IV. Prevention and Mitigation

Part IV of the Identity Theft Prevention Program details response actions for Utility personnel if the personnel have observed a Red Flag associated with a new or existing utility account. One of more of the following actions will be taken by the Utility to rectify the situation.

- Utility will not open a new account (after review of the presented identifying information and discussion with department supervisor)
- For an existing account, the Utility may discontinue the services associated with that account and/or:
 - Continue to monitor the account for evidence of identity theft and contact the customer to discuss possible actions.
 - Change the passwords, security codes, or other security devices that permit access to an existing account.
 - Reopen an existing account with a new account number.
 - Close an existing account.
- If the Utility has identified an instance of identity theft associated with an unpaid account, the Utility will not attempt to collect on the account or sell the account to a debt collector.
- If applicable, the Utility will provide the consumer reporting agencies with a description of the identity theft event.
- For all instances of suspected or confirmed identity theft, the Utility will notify local law enforcement and will provide them with all the relevant details associated with the identity theft event.

Part V. Program Administration

Program administration is an important part of the Identity Theft Prevention Program. This section details the training requirements, annual program review, approval and adoption process and annual reporting requirements that are associated with this Program.

A. Staff Training

Any employee with the ability to open a new account, or access/manage/close an existing account will receive training on identifying and detecting Red Flags. They will also be trained in the appropriate response actions in the event that an instance of identity theft is suspected. Key management personnel in appropriate departments will also receive training on the contents of this Program. As necessary, employees will be re-trained annually if the Program is updated to include new methods of identifying and detecting Red Flags, or if new response actions are implemented.

B. Program Review and Update

The Utility will review and update the Program annually to reflect changes in risks to customers from identity theft based on factors such as:

- Experiences of the Utility with identity theft.
- Changes in methods of identity theft.
- Changes in methods to detect, prevent, and mitigate identity theft.
- Changes in the types of accounts that the Utility offers or maintains.
- Changes in the business arrangements of the Utility, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

C. Program Approval and Adoption

This Program has been reviewed and approved by the Utility's appropriate governing body (examples include the Board of Directors, a City/Town/County Council, or the Commissioners).

The Utility's governing body has assigned the following Utility staff member, _____, to be responsible for the oversight, development, implementation and administration of the Program. Annually, the designated staff member will develop the annual report as described in Section D that will address compliance of the Utility with this Program. The Utility's governing body is responsible for reviewing this reports and approving material changes to the Program as necessary to address changing identity theft risks.

D. Annual Reporting

The Utility will provide an annual report to the appropriate governing body of the Utility that details the Utility's compliance with the Federal Trade Commission's Red Flags Rule. The report will address matters related to the Program and address several topic areas including:

- Effectiveness of the policies and procedures of the Utility in addressing the risk of identity theft in connection with the opening of new accounts and with respect to the management of existing accounts;
- Service provider arrangements;
- Significant incidents involving identity theft and management's response; and,
- Recommendations for material changes to the Program.

E. Service Provider Oversight

Whenever the Utility engages a service provider to perform an activity in connection with one or more of the customer accounts, the Utility will verify that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft. To accomplish this, the Utility will require the service provider by contract to have policies and procedures to detect relevant Red Flags that may arise in the performance of the service provider's activities, and either report the Red Flags to the Utility, or to take appropriate steps to prevent or mitigate identity theft.

Part VI. Additional Security Information

While utilities are not required by the Federal Trade Commission to implement the following business practices, they are provided as suggestions to assist utilities in the prevention of identity theft. Utilities should consider:

1. Checking references or doing background checks before hiring employees who will have access to customer information.
2. Asking every new employee to sign an agreement to follow the Utility's confidentiality and security standards for handling customer information.
3. Limiting access to customer information to employees who have a business reason to see it. For example, give employees who respond to customer inquiries access to customer files, but only to the extent they need it to do their jobs.
4. Controlling access to sensitive information by requiring employees to use "strong" passwords that must be changed on a regular basis. Using password-activated screen savers to lock employee computers after a period of inactivity.
5. Developing policies for appropriate use and protection of laptops, PDAs, cell phones, or other mobile devices. For example, make sure employees store these devices in a secure place when not in use. Also, consider that customer information in encrypted files will be better protected in case of theft of such a device.
6. Training employees to take basic steps to maintain the security, confidentiality, and integrity of customer information, including:
 - a. Locking rooms and file cabinets where records are kept;
 - b. Not sharing or openly posting employee passwords in work areas;
 - c. Encrypting sensitive customer information when it is transmitted electronically via public networks;
 - d. Referring calls or other requests for customer information to designated individuals who have been trained in how the Utility safeguards personal data;
 - e. Reporting suspicious attempts to obtain customer information to designated personnel.
7. Regularly reminding all employees of the Utility's policy — and the legal requirement — to keep customer information secure and confidential. For example, consider posting reminders about their responsibility for security in areas where customer information is stored, like file rooms.
8. Developing policies for employees who telecommute. For example, consider whether or how employees should be allowed to keep or access customer data at home. Also, require employees who use personal computers to store or access customer data to use protections against viruses, spyware, and other unauthorized intrusions.
9. Imposing disciplinary measures for security policy violations.
10. Preventing terminated employees from accessing customer information by immediately deactivating their passwords and user names and taking other appropriate measures.
11. Know where sensitive customer information is stored and store it securely. Make sure only authorized employees have access. For example:
 - a. Ensure that storage areas are protected against destruction or damage from physical hazards, like fire or floods.

- b. Store records in a room or cabinet that is locked when unattended.
 - c. When customer information is stored on a server or other computer, ensure that the computer is accessible only with a "strong" password and is kept in a physically-secure area.
 - d. Where possible, avoid storing sensitive customer data on a computer with an Internet connection.
 - e. Maintain secure backup records and keep archived data secure by storing it off-line and in a physically-secure area.
 - f. Maintain a careful inventory of the Utility's computers and any other equipment on which customer information may be stored.
12. Take steps to ensure the secure transmission of customer information. For example:
- a. When transmitting credit card information or other sensitive financial data, use a Secure Sockets Layer (SSL) or other secure connection, so that the information is protected in transit.
 - b. If the Utility collects information online directly from customers, make secure transmission automatic. Caution customers against transmitting sensitive data, like account numbers, via email or in response to an unsolicited email or pop-up message.
 - c. If the Utility must transmit sensitive data by email over the Internet, be sure to encrypt the data.
13. Dispose of customer information in a secure way and, where applicable, consistent with the FTC's Disposal Rule, www.ftc.gov/os/2004/11/041118disposalfrn.pdf. For example:
- a. Consider designating or hiring a records retention manager to supervise the disposal of records containing customer information. If hiring an outside disposal company, conduct due diligence beforehand by checking references or requiring that the company be certified by a recognized industry group.
 - b. Burn, pulverize, or shred papers containing customer information so that the information cannot be read or reconstructed.
 - c. Destroy or erase data when disposing of computers, disks, CDs, magnetic tapes, hard drives, laptops, PDAs, cell phones, or any other electronic media or hardware containing customer information.
14. Monitoring the websites of the Utility's software vendors and reading relevant industry publications for news about emerging threats and available defenses.
15. Maintaining up-to-date and appropriate programs and controls to prevent unauthorized access to customer information. Be sure to:
- a. Check with software vendors regularly to get and install patches that resolve software vulnerabilities;
 - b. Use anti-virus and anti-spyware software that updates automatically;
 - c. Maintain up-to-date firewalls, particularly if using a broadband Internet connection or allow employees to connect to the network from home or other off-site locations;
 - d. Regularly ensure that ports not used for Utility business are closed; and
 - e. Promptly pass along information and instructions to employees regarding any new security risks or possible breaches.

16. Using appropriate oversight or audit procedures to detect the improper disclosure or theft of customer information. It's wise to:
 - a. Keep logs of activity on the network and monitor them for signs of unauthorized access to customer information;
 - b. Use an up-to-date intrusion detection system to alert the Utility of attacks;
 - c. Monitor both in- and out-bound transfers of information for indications of a compromise, such as unexpectedly large amounts of data being transmitted from the system to an unknown user; and
 - d. Insert a dummy account into each of the customer lists and monitor the account to detect any unauthorized contacts or charges.
17. Taking steps to preserve the security, confidentiality, and integrity of customer information in the event of a breach. If a breach occurs:
 - a. Take immediate action to secure any information that has or may have been compromised. For example, if a computer connected to the Internet is compromised, disconnect the computer from the Internet;
 - b. Preserve and review files or programs that may reveal how the breach occurred;
 - c. If feasible and appropriate, bring in security professionals to help assess the breach as soon as possible.
18. Considering notifying consumers, law enforcement, and/or businesses in the event of a security breach. For example:
 - a. Notify consumers if their personal information is subject to a breach that poses a significant risk of identity theft or related harm;
 - b. Notify law enforcement if the breach may involve criminal activity or there is evidence that the breach has resulted in identity theft or related harm;
 - c. Notify the credit bureaus and other businesses that may be affected by the breach. See Information Compromise and the Risk of Identity Theft: Guidance for Your Business at www.ftc.gov/bcp/edu/pubs/business/idtheft/bus59.htm; and
 - d. Check to see if breach notification is required under applicable state law.

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Title 16: Commercial Practices

PART 681—IDENTITY THEFT RULES

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§ 681.1 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Scope.* This section applies to financial institutions and creditors that are subject to administrative enforcement of the FCRA by the Federal Trade Commission pursuant to 15 U.S.C. 1681s(a)(1).

(b) *Definitions.* For purposes of this section, and Appendix A, the following definitions apply:

(1) *Account* means a continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household or business purposes. Account includes:

(i) An extension of credit, such as the purchase of property or services involving a deferred payment; and

(ii) A deposit account.

(2) The term *board of directors* includes:

(i) In the case of a branch or agency of a foreign bank, the managing official in charge of the branch or agency; and

(ii) In the case of any other creditor that does not have a board of directors, a designated employee at the level of senior management.

(3) *Covered account* means:

(i) An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account; and

(ii) Any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks.

(4) *Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(5) *Creditor* has the same meaning as in 15 U.S.C. 1681a(r)(5), and includes lenders such as banks, finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications

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companies.

(6) *Customer* means a person that has a covered account with a financial institution or creditor.

(7) *Financial institution* has the same meaning as in 15 U.S.C. 1681a(t).

(8) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(9) *Red Flag* means a pattern, practice, or specific activity that indicates the possible existence of identity theft.

(10) *Service provider* means a person that provides a service directly to the financial institution or creditor.

(c) *Periodic Identification of Covered Accounts.* Each financial institution or creditor must periodically determine whether it offers or maintains covered accounts. As a part of this determination, a financial institution or creditor must conduct a risk assessment to determine whether it offers or maintains covered accounts described in paragraph (b)(3)(ii) of this section, taking into consideration:

(1) The methods it provides to open its accounts;

(2) The methods it provides to access its accounts; and

(3) Its previous experiences with identity theft.

(d) *Establishment of an Identity Theft Prevention Program —(1) Program requirement.* Each financial institution or creditor that offers or maintains one or more covered accounts must develop and implement a written Identity Theft Prevention Program (Program) that is designed to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. The Program must be appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities.

(2) *Elements of the Program.* The Program must include reasonable policies and procedures to:

(i) Identify relevant Red Flags for the covered accounts that the financial institution or creditor offers or maintains, and incorporate those Red Flags into its Program;

(ii) Detect Red Flags that have been incorporated into the Program of the financial institution or creditor;

(iii) Respond appropriately to any Red Flags that are detected pursuant to paragraph (d)(2)(ii) of this section to prevent and mitigate identity theft; and

(iv) Ensure the Program (including the Red Flags determined to be relevant) is updated periodically, to reflect changes in risks to customers and to the safety and soundness of the financial institution or creditor from identity theft.

(e) *Administration of the Program.* Each financial institution or creditor that is required to implement a Program must provide for the continued administration of the Program and must:

(1) Obtain approval of the initial written Program from either its board of directors or an appropriate committee of the board of directors;

(2) Involve the board of directors, an appropriate committee thereof, or a designated employee at the level of senior management in the oversight, development, implementation and administration of the Program;

(3) Train staff, as necessary, to effectively implement the Program; and

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(4) Exercise appropriate and effective oversight of service provider arrangements.

(f) *Guidelines.* Each financial institution or creditor that is required to implement a Program must consider the guidelines in appendix A of this part and include in its Program those guidelines that are appropriate.

[74 FR 22645, May 14, 2009]

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

Bill No. 01A 4F
Date: September 1, 2009
Subject: Grant Application - Regatta
Water Main Extension

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill requests authorization to apply to the Washington State Public Works Board for a funding grant for the Regatta water main extension.

AUTHORITY

The City has had a standing policy requiring City Council authorization for all grant applications. Grant contracts in excess of \$30,000 shall require Council approval. OHMC 2.310.040(3). The City has authority under RCW 35A.11.020 to apply for the grant.

SUMMARY STATEMENT

The legislature authorized a one-time grant program through the Public Works Board for Small Communities in Rural Counties to assist in funding public works projects that create jobs. The program is targeted for projects in small communities in rural counties. Grants will be awarded based on the unemployment rate of the county; the impact on unemployment based on the number of jobs created/retained as a result of the project; the ability of the applicant to complete the project promptly; and the value the project presents to the community in lasting improvements to public safety, environmental quality, recreation and community life, or economic development. The grant requirements state that projects must include a construction component.

Island County is one of 32 eligible counties for the program. Only one application may be submitted by each jurisdiction. The total amount of funding available statewide for the program is \$9,531,000. Applications are due on September 8th. Project selection will occur in late October of 2009, however if selected, the City can be reimbursed for any expenses incurred on the project after July of 2009.

After reviewing the application criteria, the staff recommendation is to apply for \$300,000 in funding for the Regatta water main extension project. The project will extend a 12-inch diameter

water main from NE 16th Avenue to Fakkema Road and will provide critical infrastructure for several large undeveloped commercially zoned properties inside City limits. The extension of the water main will help promote economic development by providing infrastructure to these properties.

Funding for the entire project was included in the 2009 budget. If the grant application is successful, the offset in utility funds will be used for future necessary water projects such as the construction of the new reservoir.

A draft version of the grant application is attached.

STANDING COMMITTEE REPORT

The Public Works Standing Committee reviewed this item at their meeting on August 6, 2009.

RECOMMENDED ACTION

A motion authorizing staff to submit a grant application to the Public Works Board Small Communities in Rural Counties in the amount of \$300,000 for the Regatta water main extension project.

ATTACHMENTS

Draft grant application

MAYOR'S COMMENTS

DRAFT

Washington State
Public Works Board
www.pwb.wa.gov

Small Communities in Rural Counties Grant Program Application 2009

Eligible Jurisdictions	Small Communities Located in Rural-Designated Counties Local governments serving communities in the following rural counties as defined in RCW 43.160.20: Adams, Asotin, Benton, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whatcom, Whitman, Yakima.
Eligible Projects	Public works projects that create jobs for small communities in rural counties based on the unemployment rate of the county; the impact on unemployment based on the number of jobs created/retained as a result of the project; the ability of the applicant to complete the project promptly; and the value the project presents to the community in lasting improvements to public safety, environmental quality, recreation and community life, or economic development. Projects must include a construction component.
Requested Amount per Jurisdiction	Total Available Grant Resources for Statewide Competition is \$9,531,000 <ul style="list-style-type: none">No maximum limit on the amount a jurisdiction may requestMinimum limit for grant award is \$100,000
Application Submittal Requirements	Jurisdictions may submit only ONE application per jurisdiction for this program. <ul style="list-style-type: none">Mail/ship/hand-deliver ONE SIGNED ORIGINAL HARDCOPY and three additional copies to the address below*; <u>and</u>Email the completed Word file to Christina.Gagnon@commerce.wa.gov. <p style="text-align: center;">Public Works Board 906 Columbia St SW PO Box 48319 Olympia, WA 98504-8319</p> *IMPORTANT: Your submittal is not valid until the <u>original signed application</u> is received by the Public Works Board office.
Application Due Date	One signed original hardcopy and three additional copies must be postmarked or delivered to the Public Works Board on or before September 8, 2009.
Selection Process	Two-phased approach: <ul style="list-style-type: none">Phase I—preliminary project list based on scored selection criteriaPhase II—Board deliberation based on legislative intent, statewide, and system-wide spread.
Questions?	Please refer to the Client Service Representative (CSR) list at the end of this application to find the contact information of the CSR assigned to your area. They will be happy to answer your questions.

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SECTION 1: GENERAL APPLICANT INFORMATION

GENERAL APPLICANT INFORMATION

1.1	Applicant's Legal Name	City of Oak Harbor										
1.2	Municipal Corporation Agency # (MCAG)	0	3	6	1	http://www.pwb.wa.gov/macg_listing.asp						
1.3	Federal Tax ID #	9	1	-	6	0	0	1	4	7	6	
1.4	Project Street Address	34264 SR-20, Oak Harbor, WA 98277										
	Mailing Address	865 SE Barrington Dr.										
	City	Oak Harbor										
	State	WA	Zip	9	8	2	7	7	-			
1.5	County											
1.6	Project GPS Coordinates ¹ (attach project map)	Project Location					Water Body Location					
		Latitude (e.g., 45.3530)		Longitude (e.g., 120.4510)			Latitude (e.g., 45.3530)		Longitude (e.g., 120.4510)			
		48.3196 N		122.6295 W			48.2920 N		122.6163 W			
1.7	Current population within jurisdiction	23,360					Population affected by this project:					
							Number		%			
							20 (estimated)					
1.8	Legislative District http://apps.leg.wa.gov/DistrictFinder/Default.aspx	10 th					Congressional District http://apps.leg.wa.gov/DistrictFinder/Default.aspx	2nd				
	1.9	Authorized Person to Sign Contract	Mayor Jim Slowik									
	Telephone	(360) 279-4502										
	Fax	(360) 279-4507										
	Email	mayor@oakharbor.org										
1.10	Project Manager	Eric Johnston, P.E.										
	Telephone	(360) 279-4522										
	Fax	(360) 679-3902										
	Email	bgluth@oakharbor.org										
1.11	Project Title	Regatta Drive 2009 Water Main Extension										
1.12	Grant Amount Requested	\$300,000										
1.13	Total Project Cost	\$1,200,000										

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¹ Provide the GPS coordinates representative of your project location and the water body affected. The project location is the approximate center of where you will be working. The water body location should be within the water body affected by the project. GPS information can be found on Google Earth (download free software at <http://earth.google.com>).

SECTION 2: PROJECT INFORMATION

PROJECT CATEGORY & TYPE

2.1 Project Category - check one box only (Not scored)

- Public Safety Environmental Quality Recreation & Community Life Economic Development

Project Type - sewer, water, road, community center, park, etc. (Not scored)

Water

PROJECT NEED AND DESCRIPTION

2.2 In 300 words or less, please describe the project to be completed. (Not scored)

The proposed water main extension provides city water service to 11 properties that do not currently have adequate water service. These properties total 47 acres, 17.7 acres is city property, the remainder is private. Most properties have highway frontage and all are zoned "auto/industrial commercial. A 6-acre property and another 8-acre property are partially developed with future improvements pending availability of water service. Extending city water service into this area will immediately and significantly increase the development potential of all these properties by providing potable water and fire protection.

PROJECT SCOPE OF WORK

2.3 Describe in detail all the activities that will accomplish this project. This should include only the contract deliverables, e.g., number of feet and size of pipe to be laid, etc. Please do not use this section to explain the problem. The activities in your scope of work must be completed **within 24 months** of contract execution. The scope of work needs to correspond with the project budget and schedule and it will be part of your contract, should your project be approved for funding. (Not scored)

Installation of approximately 5330 feet of 12-inch diameter PVC water pipe and associated fittings, hydrants and service connections. Connection of the new pipe to the water distribution system. Road repairs including paving and shoulder restoration. Installation and maintenance of temporary erosion control measures. Landscape restoration.

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PROJECT SCHEDULE

2.4 Indicate the month and year when the activities were or will be completed. Schedule should clearly correspond to Question 3.3. Readiness-to-Proceed. The applicant will be contractually obligated to complete the project within 24 months of contract execution. (Project Schedule is not scored but will be checked for accuracy and cross-referenced with Readiness-to-Proceed.)

Activity	Current Status	% Complete	Completion Date (Mo/Yr)
Engineering Report	Complete	100	5/2004
Cultural and Historical Resources Review (Section 106 or Executive Order 05-05) ²	In Progress	50	9/2009
Environmental Review	Complete	100	
Land/Right-of-Way Acquisition	Complete	100	8/2009
Permits	In Progress	90	9/2009
Public Involvement/Information	Complete	100	8/2009
Bid Documents	In Progress	90	9/2009
Award Construction Contract	Not Started	0	11/2009
Start Construction	Not Started	0	11/2009
Complete Construction	Not Started	0	12/2009
Construction Inspection	Not Started	0	12/2009
Other:			

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² The EO 05-05 requires recipients of state funds to consult with interested parties (i.e., Department of Archaeology and Historic Preservation, and Indian Tribes) prior to starting project construction. This consultation should take place as early as possible, in order to avoid delays in starting the project construction. If you have questions regarding this process, please contact Stephen Dunk at (360) 725-3157 or email him at Stephen.Dunk@commerce.wa.gov.

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REQUIRED PERMITS (LOCAL, STATE, AND FEDERAL)

2.5 List the permits required for the proposed project and indicate status of each permit (e.g., applied for, pending, issued, etc.). If no permits are required, explain why not. This list needs to correspond with Question 3.3. Readiness-to-Proceed. For assistance with your permitting requirements, contact the Office of Regulatory Assistance or go to <http://www.ora.wa.gov>. (Not scored)

Permit	Expected Date Submitted	Expected Date Issued or Received
1. Island County Right of Way	8/2009	9/2009
2.		
3.		
4.		
5.		
6.		
If no permits are required, please explain why not.		



PROJECT COSTS

2.6 The Total Estimated Project Cost must equal the Total Project Funding in Question 2.7. The Project Costs table will become a part of your contract, should this project be approved for funding. (Project Costs is not scored but will be checked for accuracy.)

Cost Category	Amount
Engineering Report	
Cultural and Historical Resources Review (Section 106 or Executive Order 05-05) ³	\$500
Environmental Review	
Land/Right-of-Way Acquisition	\$1,000
Permits	\$2,000
Public Involvement/Information	
Bid Documents	
Construction	
Other Fees (Sales or Use Taxes)	
Contingency (%)	
Other:	
Other:	
TOTAL ESTIMATED PROJECT COST	\$ _____

³ The EO 05-05 requires recipients of state funds to consult with interested parties (i.e., Department of Archaeology and Historic Preservation, and Indian Tribes) prior to starting project construction. This consultation should take place as early as possible, in order to avoid delays in starting the project construction. If you have questions regarding this process, please contact Stephen Dunk at (360) 725-3157 or email him at Stephen.Dunk@commerce.wa.gov.

PROJECT FUNDING

2.7 The Total Project Funding must equal the Total Estimated Project Cost in Question 2.6.

Please state the status of your funding sources as follows:

- Funds are **Planned** if they are found in a formally adopted Capital Facilities Plan.
- Funds are **Applied for** if a formal application has been submitted to a funding source, and the funding source confirms that application or funding request has been received (attach notification from funder that application has been received).
- Funds are considered **Secured** if a formal notice of approval for the funds is in place from the funding source (attach letter from funder or contract number). Local revenue must be in an approved budget to be considered secured.

(Project Funding is not scored but will be checked for accuracy and cross-referenced with Readiness-to-Proceed.)

Type of Funding	Identify Source ⁴	Amount	Status (Planned, Applied for, Secured)	Contract/Reference Number
Local Revenue (Rates, General Fund, Levies, Reserves, Assessments, ULID, LID, etc.)				
Local Revenue #1	Utility Rates	1,200,000	Secured	
Local Revenue #2				
Local Revenue #3				
Total Local Revenue				
Other Non-Match Loans				
Non-Match Loan #1				
Non-Match Loan #2				
Total Other Non-Match Loans				
Loans (State/Federal, Private Agency or Organization)				
Other Loan #1				
Other Loan #2				
Other Loan #3				
Total Loans				
Grants (State/Federal Agency or Organization)				
Grant #1				
Grant #2				
Grant #3				
Total Grants				
Small Communities in Rural Counties Grant Request				
This Grant Request		\$300,000		
TOTAL PROJECT FUNDING		\$1,500,000		



⁴ If federal funds are included in the project funding package, the project is subject to the federal Section 106 Cultural Historic Requirements. If you have questions regarding this process, please contact Stephen Dunk at (360) 725-3157 or email him at Stephen.Dunk@commerce.wa.gov.

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SECTION 3: PROJECT PRIORITIZATION

Projects will be prioritized based on the following criteria:

- (a) The county's unemployment rate;
- (b) The impact on unemployment based on the number of jobs created/retained as a result of the project;
- (c) The ability of the applicant to complete the project promptly; and
- (d) The value the project presents to the community in lasting improvements to public safety, environmental quality, recreation and community life, or economic development.

SCORED PROJECT QUESTIONS

UNEMPLOYMENT RATE

- 3.1** The Washington State Employment Security Department table (TABLE 1) on the following page will be used for purposes of determining county unemployment rates. Points will be awarded for projects whose jurisdictions are located in counties with unemployment rates listed in the following categories:
(Max 16 points)

Unemployment Rates	Points
Less than 5.4	0
5.4 - 6.2	2
6.3 - 7.6	4
7.7 - 8	6
8.1 - 8.4	8
8.5 - 9.7	10
9.8 - 12	12
12.1 - 12.7	14
Above 12.7	16



JOB CREATION / RETENTION

- 3.2** The Washington State Employment Security Department table (TABLE 1) on the following page will be used for purposes of measuring the impact on unemployment based on the number of jobs created/retained as a result of the project.
 Please provide estimates on job creation/retention resulting from this project, and explain your method for estimating the numbers. **(Max 12 points)**

A. Number of construction jobs that will be created as part of this project: 12

B. Number of public and/or private sector jobs that will be created or retained upon project completion: Less than one full time equivalent

Please describe how you arrived at this estimate:

The Oak Harbor Water Dept. employs 8 staff to maintain 99 miles of water main pipe.

TABLE 1

Washington State Employment Security Department
Labor Market and Economic Analysis

June 2009 Preliminary

Not Seasonally Adjusted	Unemployment	Unemployment Rate
Washington State Total	329,980	9.2
Adams	630	7.1
Asotin	970	8.5
Benton County (Kennewick-Pasco-Richland MSA)	6,350	6.5
Chelan County (Wenatchee MSA)	3,260	7.6
Clallam (Port Angeles MSA)	3,040	9.8
Columbia	160	9.7
Cowlitz (Longview MSA)	5,690	12.7
Douglas County (Wenatchee MSA)	1,760	7.9
Ferry	390	12.1
Franklin County (Kennewick-Pasco-Richland MSA)	2,780	7.6
Garfield	70	6.2
Grant (Moses Lake MSA)	3,710	8.2
Grays Harbor (Aberdeen MSA)	4,130	12.4
Island (Oak Harbor MSA)	2,960	8.7
Jefferson	1,130	8
Kittitas (Ellensburg MSA)	1,840	8.1
Klickitat	1,080	9.4
Lewis (Centralia MSA)	4,220	12.8
Lincoln	410	8.1
Mason (Shelton MSA)	2,610	10.1
Okanogan	1,860	7.9
Pacific	1,150	12
Pend Oreille	750	13.4
San Juan	530	5.4
Skagit (Mt. Vernon-Anacortes MSA)	5,950	9.9
Skamania	710	13.5
Stevens	2,450	12.4
Wahkiakum	220	12.7
Walla Walla MSA (Walla Walla)	1,990	6.2
Whatcom (Bellingham MSA)	9,370	8.4
Whitman (Pullman MSA)	1,200	6.2
Yakima (Yakima MSA)	10,770	8.2

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READINESS-TO-PROCEED

3.3	All responses are based on "at the time of application." If you are not required to do a particular task, identify N/A in "Completed at time of application" box and explain below why this activity is not applicable to your project. (Max 40 points)	Completed at time of application (or N/A)
	Applicant certifies that by securing this grant funding, the entire funding for this project has been secured * (15 points) (attach letters from funders or contract numbers)	Yes
	Applicant certifies that engineering and design are 100% complete* (5 points)	Yes
	Applicant certifies that all applicable permits are in hand* (5 points)	No
	Applicant certifies that bid documents are ready* (5 points)	No
	Applicant certifies that right-of-way/easement for project is acquired* (5 points)	Yes
	Applicant certifies that cultural and historic and/or environmental reviews are complete. Please attach verification that consultation with both Department of Archaeological and Historic Preservation (DAHP) and concerned tribe(s) has been completed.* (5 points)	No
If marked N/A, in order to receive points, please explain why activity is not required.		

* These items must match the project's Scope of Work as well as the Project Schedule and Funding Budget.

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PROJECT VALUE

3.4 What value does the project present to the community in lasting improvements to public safety, environmental quality, recreation and community life, or economic development? Check one box below.
(Max 10 points)
 Please attach relevant documentation to support your project (please do not attach entire plans or reports).*

EXISTING (Max 10 points)	NEAR-TERM (Max 7 points)	LONG-TERM (Max 4 points)
<ul style="list-style-type: none"> • The problem to be resolved, or the opportunity to take advantage of, exists at this time • Severe situation that requires immediate attention 	<ul style="list-style-type: none"> • The problem to be resolved, or the opportunity to take advantage of, will emerge within the next 2 years • Documented trend toward potential system failure • External agency driving project • Maintaining compliance with regulations & requirements • Repairing & replacement • Maintaining industry standards 	<ul style="list-style-type: none"> • The problem to be resolved, or the opportunity to take advantage of, will emerge in 3-5 years • System component redundancy • System enhancement • Enhancing growth & development

Please indicate whether the problem, or opportunity to take advantage of, is considered existing, near-term, or long-term (check one box only).
 Your selection must match the selection in Question 2.1.

Project Category	EXISTING problem/opportunity	NEAR-TERM problem/opportunity	LONG-TERM problem/opportunity
Public Safety	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Environmental Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recreation & Community Life	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Economic Development	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* Examples of documentation include regulatory order, adopted comprehensive plan, study, report, capital facilities plan, economic development plan, internal monitoring, insurance statement, external agency driving need, adopted resolution.

3.5 Is project considered a community priority? Please answer the following questions. (Max 22 points)			
A	Has community involvement occurred for this project? (Max 7 points) If Yes, please select at least one type of community involvement and indicate most recent date.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
		Most recent date of public involvement:	
<input checked="" type="checkbox"/> The need for the project was discussed at an open city/town council or county board meeting. <input type="checkbox"/> The need for the project was stated at a local public hearing. <input type="checkbox"/> The project was identified as a priority by a public input process, such as a needs survey or community forum. <input type="checkbox"/> Other (please specify): _____			
B	Is project included in an approved plan or completed study? (Max 7 points) If Yes, please select at least one type of plan, or indicate study, and reference section/chapter.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
		Section: Chapter 3 of the City of Oak Harbor Water System Plan	
<input type="checkbox"/> Comprehensive land use plan <input type="checkbox"/> Economic development plan <input checked="" type="checkbox"/> Capital facilities plan <input checked="" type="checkbox"/> Water, sewer, street, or other system plan <input type="checkbox"/> Community strategic plan <input type="checkbox"/> Other (please specify): _____			
C Please indicate the life expectancy of the project. (Max 7 points)			
100 Years			
D	Has the jurisdiction undertaken any other measures/activities to address the problem/situation? (Max 1 point) If Yes, please describe.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

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PROJECT SCHEDULE INFORMATION:

If offered funding, the following deadlines will be imposed:

- Final scope of work must be submitted to the Board within 30 days of award offer.
- Signed contract must be returned to the Board within 90 days of award offer.
- Project must be completed and closed out within 24 months of contract execution.
- Reimbursement may be requested for eligible project costs incurred back to July 1, 2009.

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APPLICANT CERTIFICATION

WHEREAS, Oak Harbor (name of local government) is applying to the Public Works Board Small Communities in Rural Counties Grant Program for an eligible project; and

WHEREAS, RCW 43.155.070 requires that applicants planning under RCW 36.70A.040 must have adopted comprehensive plans in conformance with the requirements of chapter 36.70A RCW, and must have adopted development regulations in conformance with the requirements of chapter 36.70A RCW; and

WHEREAS, the local governing body of the applicant has approved submission of this application for a Small Communities in Rural Counties Grant; and

WHEREAS the applicant certifies that, there is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the applicant from repaying the Small Communities in Rural Counties Grant extended by the Public Works Board with respect to such project, should such repayment be required. The applicant is not a party to litigation, which will materially affect its ability to repay such grant on the terms contained in the grant contract.

WHEREAS, the applicant recognizes and acknowledges that the information in the application form is the only information, which will be considered in the evaluation and/or rating process. Incomplete responses will result in a reduced chance of funding. In order to ensure fairness to all, the Public Works Board does not accept any additional written materials or permit applicants to make presentations before the Public Works Board; and

WHEREAS, it is necessary that certain conditions be met as part of the application process; and

WHEREAS, the grant will not exceed the maximum amount allowed by the Public Works Board of eligible costs incurred for the project; and

WHEREAS, the information provided in this application is true and correct to the best of the applicant's belief and knowledge and it is understood that the Public Works Board may verify information, and that untruthful or misleading information may be cause for rejection of this application or termination of any subsequent grant contract(s); and

NOW THEREFORE, Oak Harbor (name of local government) certifies that it meets these requirements, and further that it intends to enter into a grant contract with the Public Works Board, provided that the terms and conditions for a Small Communities in Rural Counties Grant are satisfactory to both parties.

Signed:

Name:

Title:

Phone Number:

Date:

Attest:

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CERTIFICATION BY PREPARER OF APPLICATION

To Be Completed by Staff Member or Consultant

WHEREAS, Arnold Peterschmidt (name of staff member or consultant) has prepared this application for a Public Works Board Small Communities in Rural Counties Grant; and

WHEREAS, the preparer recognizes and acknowledges that the information in this application is the only information that will be considered in the evaluation and/or rating process. Incomplete responses will result in a reduced chance of funding, and that in order to ensure fairness for all, the Public Works Board does not accept any additional written materials or permit applicants to make presentations before the Public Works Board; and

WHEREAS, the information provided in this application is true and correct to the best of the preparer's belief and knowledge; and

NOW THEREFORE, Arnold Peterschmidt (name of staff member or consultant) recognizes and acknowledges the above declarations and certifies that this application meets the above requirements.

Signed:

Name:

Title:

Phone Number:

Date:

Attest:

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CLIENT SERVICE REPRESENTATIVES

County	CSR	
Adams	Chris Gagnon	Terry Dale
Asotin	Chris Gagnon	360-725-3155
Benton	Terry Dale	Terry.Dale@commerce.wa.gov
Chelan	Stephen Dunk	
Clallam	Chris Gagnon	
Columbia	Chris Gagnon	Stephen Dunk
Cowlitz	Bruce Lund	360-725-3157
Douglas	Chris Gagnon	Stephen.Dunk@commerce.wa.gov
Ferry	Bruce Lund	
Franklin	Terry Dale	
Garfield	Chris Gagnon	Chris Gagnon
Grant	Chris Gagnon	360-725-3158
Grays Harbor	Isaac Huang	Christina.Gagnon@commerce.wa.gov
Island	Terry Dale	
Jefferson	Isaac Huang	
Kittitas	Stephen Dunk	Isaac Huang
Klickitat	Bruce Lund	360-725-3162
Lewis	Stephen Dunk	Isaac.Huang@commerce.wa.gov
Lincoln	Bruce Lund	
Mason	Stephen Dunk	
Okanogan	Isaac Huang	Bruce Lund
Pacific	Bruce Lund	360-725-3163
Pend Oreille	Bruce Lund	Bruce.Lund@commerce.wa.gov
San Juan	Terry Dale	
Skagit	Terry Dale	
Skamania	Bruce Lund	
Stevens	Bruce Lund	
Wahkiakum	Bruce Lund	
Walla Walla	Terry Dale	
Whatcom	Terry Dale	
Whitman	Stephen Dunk	
Yakima	Stephen Dunk	

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

Bill No. C/A 4G
Date: September 1, 2009
Subject: RBC Diversion Pump Station
Upgrades – Authorization to
Advertise for Bids

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill seeks authorization to advertise the RBC diversion pump station upgrade project for competitive bidding.

AUTHORITY

The City has authority under RCW 35A.11.020 to enter into contracts for common municipal operations such as the construction of capital improvements. Competitive bids are required for all public works and improvements in excess of \$30,000 if more than one trade or craft is involved or \$20,000 if only one trade or craft is involved. OHMC 2.330.010.

SUMMARY STATEMENT:

In 2008, the Wastewater Division budget included funds to upgrade the diversion pump station. The upgrade includes adding a third pump and a new generator. This project was previously advertised, however the bids were rejected due to the large discrepancies between the two bids received and that both bids exceeded the engineer's estimate.

The diversion pump station has relied on two pumps to run simultaneously to keep up with peak flows. This current system is inadequate during peak flows and power outages. The system requires an upgrade to be efficient and to provide for future demand. Without the redundancy and reliance of a double pump system, the City could be liable for potential damages and permit violations.

Currently, there are two generators at the RBC Wastewater Treatment Plant and Diversion Pump Station. One generator is on loan from the Department of Natural Resources (DNR) and the other is stationary at the plant. These two generators are marginally adequate to operate the plant and the diversion pump station in its current configuration. The two generators will not be able to handle the electrical load once the third pump is installed. In addition, the trailer-mounted DNR generator is not equipped with an automatic transfer switch. A manual start by on-call duty

personnel is required in the event of an interruption of power.

Using a separate procurement process, the third pump was purchased earlier this year and installed by City staff. The 750kw generator was also purchased by the City and is in the process of being delivered to the City. This project will install new controls, install the generator, and make all the necessary electrical and motor control connections to allow the diversion pump station and RBC treatment to operate with three pumps, one generator, and automated motor controls and transfer switching. The improvements will help bring the plant and pump station to a higher state of reliability and redundancy.

The engineer's estimate for the improvements is \$140,000. Due in large part to the low cost of the Goldie Road sewer project, adequate funds are available in the current wastewater division budget for the project.

As defined in the draft contract documents, the scope of work for the project is as follows:

“The project consists of installing a City provided 750 KW Emergency Generator with associated automatic transfer switches, controls and electrical work as well as electrical connection and controls for a new 125 HP diversion pump in accordance with the plans and specifications. The generator and transfer switches will be provided by the City. It will be the contractor's responsibility to unload and set the generator into place.

The work shall be completed within 25 working days after the commencement date stated in the Notice to Proceed.”

Staff's recommendation is to authorize staff to advertise the project for competitive bid. Prior to advertising of the project, it is recommended that the City Attorney review and approve in writing the contract documents for conformity with relevant City codes, policies and state law. If so authorized, it is anticipated that the award of a construction contract to the lowest responsible bidder will be scheduled for Council's consideration in October.

STANDING COMMITTEE REVIEW:

The Public Works Standing Committee reviewed this item at their meeting on August 6, 2009.

RECOMMENDED ACTION:

Approval of the following motion:

“Staff is authorized to proceed with advertisement of the RBC Diversion Pump Station Upgrade, Contract NO. ENG-08-08, for competitive bidding upon written approval by the City Attorney as to the form of the project contract documents.”

ATTACHMENTS:

None.

MAYOR'S COMMENTS:

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

Bill No. 5
Date: September 1, 2009
Subject: Nightclub License
China Harbor

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

PURPOSE:

This is an application for a Nightclub License pursuant to Ch. 5.22 OHMC. The applicant is Mr. Xin D. Zhao. Since no disqualifying restrictions prevent the issuance of a nightclub license to the applicant, the City Council will hold a public hearing to determine what conditions should be imposed to mitigate noise, traffic and other similar public health and safety impacts on operation of the China Harbor Restaurant.

AUTHORITY:

OHMC 5.22.045(4) states:

"The city council shall hold a public hearing with respect to the issuance of the nightclub license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the nightclub license. Unless the applicant is restricted from holding a nightclub license pursuant to OHMC 5.22.030, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the nightclub require mitigation through specified conditions and, if so, shall impose such conditions on the license. 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."

DESCRIPTION:

On January 5, 2009, Mr. Xin D. Zhao owner of China Harbor Restaurant, located at 630 SE Pioneer Way, applied for a nightclub license. A temporary license was issued at the time of application as provided for in OHMC 5.22.040.

As required in OHMC 5.22.045 (2), an investigation was conducted by the Oak Harbor Police Department. The business is located in a single-story building located in the central business district.

City of Oak Harbor City Council Agenda Bill

China Harbor is made up of a large restaurant area with a smaller but separate area closed to those under the age of 21 that is designated for alcohol sales and includes an area for social dancing. This area has an access doorway inside the main entryway where their security can check the identification of their customers.

From June 1, 2008 through June 30, 2009, there were 18 calls for service at that address. 13 of those calls have 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 5 remaining calls:

- (1) Disorderly Complaint – Gone On Arrival.
- (1) DUI Report – Gone On Arrival.
- (2) Trespass Complaints - Settled By Contact (assisted staff in trespassing two unruly customers).
- (1) Weapons Complaint - Arrest – customer showed a knife to employee when confronted about trying to leave without paying.

As a result of my investigation, which included a review of the police responses to China Harbor from June 2008 through June 2009 and an interview of the manager Kimberly Bonilla, there are no circumstances that would lead me to believe that any of the public health and safety issues described in OHMC 5.22.045(4) were a concern at this time and that their staff is operating with the appropriate levels of security staffing to handle or prevent issues relating to security, traffic, noise and litter.

In a review with the Director of Development Services and the Oak Harbor Fire Chief regarding this business, it was determined there were no issues about the building that were of concern as related to the issuance of the nightclub license.

PUBLIC SAFETY STANDING COMMITTEE RECOMMENDATIONS:

This agenda item was reviewed by the Public Safety Standing Committee on July 30, 2009.

City of Oak Harbor City Council Agenda Bill

RECOMMENDED ACTION:

- (1) Hold a public hearing pursuant to OHMC 5.22.045(4).
- (2) Consider approval and issuance of the nightclub license to China Harbor Restaurant with the following conditions:
 1. Adhere to all existing laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 630 SE Pioneer Way, Oak Harbor, Washington.
 2. Ensure that the current practice consisting of at least one designated security person, either from existing on duty employees or in addition to, will be on duty on Fridays and Saturdays, between the hours of 10:00PM and 2:00AM.

Any violation of the above conditions shall subject the license-holder to the penalties of Oak Harbor Municipal Code 5.22.065 and may subject the license-holder to license revocation per Oak Harbor Municipal Code Section 5.22.070 or revision of license conditions pursuant to OHMC 5.22.090.

ATTACHMENTS:

1. Temporary License and License Application.
2. Investigative Report.
3. Oak Harbor Municipal Code Chapter 5.22.

MAYOR'S COMMENTS:

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CITY OF OAK HARBOR
865 S.E. BARRINGTON DR.
OAK HARBOR, WA 98277
(360) 679-5551

BUSINESS LICENSE

Sam's Kitchen Asian Cuisine
DBA China Harbor
630 SE Pioneer Way, Oak Harbor,
LOCATION OF BUSINESS

WA 98277

THIS CERTIFIES that the business or individual listed below is hereby licensed
to do business within the **CITY OF OAK HARBOR**

Xin D. Zhao (Sam)
For China Harbor
630 SE Pioneer Way
Oak Harbor, WA 98277

This license is to be displayed conspicuously at the location of business, and is not transferable or assignable.

Temporary License

EXPIRATION DATE

Upon final Council action
on pending application.

DATE ISSUED	6/4/09	LICENSE NUMBER	NC-0006
SIC NUMBER		SALES TAX CODE	Nightclub 1503

Dan DeMunn
FINANCE DIRECTOR



City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277
Phone: (360)279-4500
Fax: (360)279-4507

Application for Nightclub License
Oak Harbor Municipal Code Chapter 5.22
Ordinance No.: 1544

Application Fee: \$200 plus \$10 for WATCH background check = \$210

Personal Information

Name of Business:

SAM'S KITCHEN ASIAN CUISINE INC DBA CHINA HARBOR

Address of Business:

Where nightclub will be conducted.

630 SE Pioneer Way
Oak Harbor, WA 98277

Owner of Business:

XIN D ZHAO (SAM)

Owner's Address:

SEATTLE, WA 98108

Owner's Phone/Cell Number:

Date of Birth:

Social Security No.:

Driver's License No.:

Please answer the following questions:

1. Are you a citizen of the United States of America? Yes
2. Have you been convicted of a felony within the last five years? No
3. Have you been convicted of a violation of any federal or state law or city ordinance concerning the manufacture, possession, or sale of liquor subsequent to the passage of the Washington State Liquor Act? No
4. Have you ever been convicted of a violation of any federal or state law, or city ordinance concerning the manufacture, possession, or sale of narcotics? No
5. Have you ever forfeited a bond to appear in court to answer charges of any violations as stated above? No
6. Are you the owner Yes manager _____ or agent _____ of this business?

NOTE: Per OHMC Chapter 5.22.030 (2):

No license shall be issued to a person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.

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7. Are you a co-partner of this business?

No

NOTE: Per OHMC Chapter 5.22.030 (3):

No license shall be issued to a co-partnership unless all the members thereof shall be qualified to obtain a license as provided herein.

8. Is this business a corporation?

No

NOTE: Per OHMC Chapter 5.22.030 (4):

No license shall be issued to a corporation, unless all of the officers, directors and stockholders thereof shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head thereof.

9. If this is a partnership or corporation, please include names, addresses, and phone numbers of same. If more space is needed, please attach an additional sheet.

N/A

10. Indicate the type of musical entertainment you will provide.

Karaoke, Live Band, Hip Hop, Rock

11. Describe the hours of operation, expected attendance figures, and activities that will take place on the premises. If more space is needed, please attach an additional sheet.

10:00 PM - 2:00 AM

12. Describe the floor plan, parking areas, fire exits, and other physical features of the nightclub. If more space is needed, please attach an additional sheet.

22 Parking & Street parking 3 fire exits.

I do solemnly swear that I have read the City of Oak Harbor's Ordinance No. 1544 regulating nightclub licensing and that I will abide by the rules set forth therein and I furthermore swear that the facts I have stated in this application are true.

[Signature]

Signature

6.1.09

Date

Upon application, you will immediately be issued a temporary license. OHMC 5.22.040. After investigation by City officials, you will be notified of their report and the date upon which the City Council will conduct a hearing for issuance of a regular license. OHMC 5.22.045 sets forth these procedures.

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Background Check Information

DRIVER'S CHECK – Run each state listed on the application and enter state name below.
STATE WA STATE _____ STATE _____ STATE _____ STATE _____
VEHICLE REGISTRATION/CHECK STOLEN
WATCH WACIC/NCIC LOCAL RECORDS
POLICE DEPT. APPROVAL QUESTO B Noys DATE 6-1-09

Received by City Clerk and forwarded to Chief of Police, Oak Harbor Police Department
on: 6/1/09 [Signature]
Date City Clerk's Signature

Oak Harbor Police Department

Date Received: 6-1-09

Attach investigation report and recommendations and any reports requested of other City departments.

City Council Action

Date: _____

Decision/Findings (show below or attach report):

License Conditions:

Review Date (if any scheduled):

**Background Report – China Harbor Restaurant
July 6, 2009**

On January 5, 2009, Mr. Xin D. Zhao, owner of China Harbor Restaurant, located at 630 SE Pioneer Way, applied for a nightclub license. A temporary license was issued at the time of application as provided for in OHMC 5.22.040.

As required in OHMC 5.22.045 (2), an investigation was conducted by the Oak Harbor Police Department. The business is located in a single-story building located in the central business district. China Harbor is made up of a large restaurant area with a smaller but separate area closed to those under the age of 21 that is designated for alcohol sales and includes an area for social dancing. This area has an access doorway inside the main entryway where their security can check the identification of their customers.

From June 1, 2008 through June 30, 2009, there were 18 calls for service at that address. 13 of those calls have 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 5 remaining calls are:

- (1) Disorderly Complaint – Gone On Arrival.
- (1) DUI Report – Gone On Arrival.
- (2) Trespass Complaints - Settled By Contact (assisted staff in trespassing two unruly customers).
- (1) Weapons Complaint - Arrest – Customer showed a knife to employee when confronted about trying to leave without paying.

As a result of my investigation, which included a review of the police responses to China Harbor from June 2008 through June 2009 and an interview of the business manager Kimberly Bonilla , I have determined that there are no circumstances that would lead me to believe that any of the public health and safety issues as described in OHMC 5.22.045(4) were a concern at this time and that their staff is operating with the appropriate levels of security staffing to handle or prevent issues relating to security, traffic, noise and litter.

Lastly, in a review with the Director of Development Services and the Oak Harbor Fire Chief regarding this business, it was determined there were no issues about the building that were of concern as related to the issuance of the nightclub license.

As a result of my investigation, I could find no disqualifying restrictions which would prevent the issuance of a Nightclub License to the applicant.

Respectfully Submitted,

Richard W. Wallace
Chief of Police
Oak Harbor Police Department

Chapter 5.22 NIGHTCLUBS

Sections:

- 5.22.010 Definitions.
- 5.22.020 License required.
- 5.22.030 Issuance restrictions.
- 5.22.040 Filing of application.
- 5.22.045 License conditions.
- 5.22.050 Annual license fee.
- 5.22.060 Proration of license fee.
- 5.22.065 Violation of license conditions.
- 5.22.070 Revocation of license.
- 5.22.080 License – Compliance required.
- 5.22.090 Revision of license conditions.
- 5.22.100 Appeal to court.

5.22.010 Definitions.

- (1) "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises.
- (2) "Premises" means any room, place, or space whatsoever in the city of Oak Harbor which is open to the general public in connection with any hotel, restaurant, cafe, club, tavern or eating place directly or indirectly selling, serving, or providing the public liquor, with or without food.
- (3) "Liquor" means all beverages defined in RCW 66.04.200.
- (4) "Person" means one or more natural persons of either sex, firms, copartnerships and corporations; whether acting by themselves or by servant, agent or employee. The provisions of this chapter shall not apply to temporary activities conducted pursuant to a city special event permit issued pursuant to Chapter 5.50 OHMC and lasting no longer than 48 hours. (Ord. 1544 § 1, 2008; Ord. 321 § 1, 1972).

5.22.020 License required.

It is declared to be unlawful for any person to conduct, manage or operate a nightclub unless such person is the holder of a valid license from the city of Oak Harbor to do so, obtained in the manner provided in this chapter. A first violation of the requirement to obtain a license shall be a civil infraction filed pursuant to Chapter 1.28 OHMC, punishable by a fine of \$250.00. A second violation shall be a civil infraction punishable by a fine of \$500.00. A first or second violation of the requirement to obtain a license shall be a civil offense subject to the procedures of Chapter 1.28 OHMC. Thereafter, further violation of the requirement to obtain a license of this chapter shall be a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time. (Ord. 1544 § 1, 2008; Ord. 321 § 2, 1972).

5.22.030 Issuance restrictions.

No license shall be issued to:

- (1) A person who has not resided in the state of Washington for at least one month prior to making application.
- (2) A person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.
- (3) A copartnership, unless all the members thereof shall be qualified to obtain a license as provided herein.
- (4) A corporation, unless all of the officers, directors and stockholders thereof shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head thereof. (Ord. 1544 § 1, 2008; Ord. 588 § 1, 1981; Ord. 321 § 3, 1972).

5.22.040 Filing of application.

Application for a nightclub license shall be made to the city clerk, together with a receipt from the city finance director or designee for the amount of the license in full. The license application shall include personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the business location upon which the nightclub will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall expire upon the city council determination set forth in OHMC 5.22.045, unless stayed by filing of a judicial appeal within 30 days of the city council decision appealed. (Ord. 1544 § 1, 2008; Ord. 321 § 4, 1972).

5.22.045 License conditions.

(1) Upon receipt of an application for a nightclub license, the city clerk shall transmit the application to the chief of police, who shall immediately conduct a WATCH criminal background check of the applicant(s).

(2) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of a nightclub. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as a nightclub.

(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.

(4) The city council shall hold a public hearing with respect to the issuance of the nightclub license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the nightclub license. Unless the applicant is restricted from holding a nightclub license pursuant to OHMC 5.22.030, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the nightclub require mitigation through specified conditions and, if so, shall impose such conditions on the license. 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.

(5) The decision of the city council shall be the final decision of the city. (Ord. 1544 § 1, 2008).

5.22.050 Annual license fee.

Any person desiring to operate a nightclub shall first procure a nightclub license. The annual fee for a nightclub license shall be \$200.00 plus \$10.00 for an annual WATCH criminal background check. (Ord. 1544 § 1, 2008; Ord. 321 § 5, 1972).

5.22.060 Proration of license fee.

There shall be no prorating of the fee mentioned in OHMC 5.22.050, and such license fee shall expire on December 31st of each year; except that in the event that the original application be made subsequent to June 30th, then one-half of the annual license fee may be accepted for the remainder of the year. The license shall not be assignable. (Ord. 1544 § 1, 2008; Ord. 321 § 6, 1972).

5.22.065 Violation of license conditions.

A license holder who violates any license condition of his/her nightclub license shall be subject to civil penalties as follows:

- (1) First violation of a license condition: \$500.00 fine per violation;
- (2) Second violation of same license condition: \$750.00 fine per violation;
- (3) Third violation of same license condition: \$1,000 fine per violation.

First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1.28 OHMC. The fourth or greater violation of the same license provision shall constitute a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time. (Ord. 1544 § 1, 2008).

5.22.070 Revocation of license.

The city council reserves unto itself the power to revoke any license issued under the provisions of this chapter at any time upon a finding that:

- (1) The license was procured by fraud or false representation of fact; or
- (2) The applicant is barred from holding a nightclub license due to violation of any of the restrictions of OHMC 5.22.030; or
- (3) The conditions imposed upon the license pursuant to OHMC 5.22.045 were knowingly and willfully violated by the person holding such license or at his/her direction; or

(4) A crime or offense involving moral turpitude is committed on the premises in which the nightclub is conducted with knowledge of the licensee. Before revoking any such license, the city council shall, upon at least 10 days' notice to the licensee, hold a public hearing concerning such revocation, at which time the licensee shall be entitled to be heard and introduce the testimony of witnesses. Members of the public may also be permitted to testify at such public hearing. The action of the city council after such hearing, relative to such revocation, shall be final. (Ord. 1544 § 1, 2008; Ord. 996 § 1, 1995; Ord. 321 § 7, 1972).

5.22.080 License – Compliance required.

In addition to the conditions imposed pursuant to OHMC 5.22.045, all nightclub licensees shall comply with the rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. A finding of violation by the Washington State Liquor Control Board shall also constitute a violation of license conditions pursuant to OHMC 5.22.065. (Ord. 1544 § 1, 2008; Ord. 321 § 8, 1972).

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. (Ord. 1544 § 1, 2008; Ord. 321 § 9, 1972).

5.22.100 Appeal to court.

Appeal of any final decision of the city under this chapter shall be to superior court. The city's decision shall be stayed upon appeal filed within 30 days of the city council decision appealed, pending judicial review. (Ord. 1544 § 1, 2008).

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

Bill No. 6
Date: September 1, 2009
Subject: Gentry – SR20 Annexation

FROM: Steve Powers *SP*
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill presents the proposed Gentry-SR-20 annexation. The proposed annexation consists of approximately 37 acres located at the southwest corner of SW 24th Avenue (Haga Road) and State Route 20.

AUTHORITY

The authority for annexation is established by RCW 35A.14.010.

SUMMARY STATEMENT

History

On March 12, 2007, Mr. Brian Gentry, President of Landed Gentry, submitted an intent to commence annexation proceedings for properties located on the southwest corner of SW 24th Avenue (Haga Road) and State Route 20 (see Figure 1). The Notice of Intent was undersigned by Homeplace at Burlington, LLC and Haga, LLC and covered an area that was approximately 77 acres. At their May 7, 2007 meeting the City Council authorized the annexation to proceed and directed staff to prepare an annexation agreement. The agenda bill and minutes from that meeting are attached as Exhibit 1. Since the Council's approval to circulate a petition, the annexation area has been reduced. The petitioner is currently requesting annexation of approximately 37 acres (approximately 41 acres including rights-of-ways). Please see Exhibit 2.

The properties are located within the City's Urban Growth Area (UGA) and are designated as Low Density Residential on the City's Comprehensive Plan Land Use Map. If annexed the properties will be zoned R-1, Single Family Residential. As directed by Council, an annexation agreement has been prepared in association with the annexation. The agreement addresses key development issues related to the annexation properties including traffic and stormwater studies; street and stormwater improvements; and park and multi-use trail dedications. The agreement also acknowledges the City's interest in developing an affordable housing project on a portion of the property.

Annexation Petition

The petitioner has chosen the Direct Petition Method and must meet the requirements of RCW 35A.14.120. The petition must be signed by owners of not less than sixty percent in value of the assessed valuation of the general taxation of the property for which annexation is petitioned. In this case, the annexation area is approximately 37 acres of which the petitioners own approximately 27 acres. The total valuation of the annexation area is approximately \$2,540,685 of which the petitioner's properties are valued at \$1,821,322 constituting almost 70% of the total valuation of the annexation area and thus meeting the requirements of the State Law.

The annexation petition was sent to the Island County Assessor as per the requirements of RCW 35A.14.040(4) for a Determination of Sufficiency. This process is used to check and assure that the petitioners do hold 60% of the value of the property proposed for annexation and provide a "Date of Sufficiency". The Island County Assessor has issued a determination of sufficiency.

The annexation area, as mentioned above, includes properties that are not owned by the petitioners. These properties bounded on the west and the south by properties owned by the petitioners (see Figure 2). The non-petitioner property owners have been notified (via letter) by City staff of the annexation public hearing date.

City's Proposed Affordable Housing Project

Several steps have been taken by the City (including the submittal of a grant application) that could lead to the development of an affordable housing project on a portion of the annexation property. The City has been notified that our affordable housing project was not recommended for funding by the Washington State Department of Community Trade and Economic Development (CTED) with either the Spring or Fall 2009 cycle of the Housing Trust Fund. The City administration and staff continue to pursue funding for the project.

The draft annexation agreement (Exhibit 3) includes reference to the City's proposed project. In light of the ongoing effort to determine if the project can be funded it is appropriate to leave those references, and the possible City actions, in the agreement. Please note that in the event the City's project is not funded the City is under no obligation to undertake any of the possible actions outlined in the annexation agreement.

Annexation Agreement

As directed by City Council, staff has drafted an annexation agreement for the proposed annexation. The agreement is between the petitioners and the City of Oak Harbor and establishes the conditions under which the properties can be developed. The agreement establishes the need and responsibility for certain infrastructure studies and improvements within or near the annexation area. It notes that the sole obligation assumed by the City under this agreement is the obligation to annex the annexation properties into the City if the City Council approves the annexation. The agreement, while acknowledging the proposed City affordable housing project and the development role the City might assume, is written in a fashion that establishes the petitioner's development responsibilities if the affordable housing project does not take place. The petitioner's responsibilities within the agreement transfer to any subsequent owner of the properties. Listed below are some of the points covered by the agreement:

- The time limit for performance on development/infrastructure requirements is established at 7 years for the petitioner's property.
- The agreement recognizes that the petitioner has granted the City an option to purchase approximately 5 acres of the petitioners' property on which the City intends to develop an affordable housing project.
- The petitioner will pay a proportional share of regional storm water and traffic studies if the City undertakes them in conjunction with the development of the affordable housing project. If the City does not undertake the affordable housing project the petitioner is solely responsible for the cost of the studies.
- The petitioner will extend SW Eagle Vista Drive westerly from its intersection with Highway 20 to the western edge of the property. The City is responsible for a portion of this street if it undertakes the affordable housing project.
- The petitioner acknowledges that downstream facilities are insufficient to meet the needs of the development of the annexation area and agree to be responsible for all costs associated with on-site and off-site drainage facilities.
- The petitioners agree to dedicate land for a public park and also provide for multi-use trail through the annexation area.

Consistency with Comprehensive Plan Goals and Policies

In general proposed annexations should be reviewed for consistency with the Comprehensive Plan's goals and policies. Goal 4 of the Urban Growth Area Element directly applies to annexations of property into the City. Listed below are the policies, and an assessment of the proposed annexations consistency with those policies:

Goal 4 Annexations to the City will occur in compliance with the Washington State Growth Management Act and the following policies.

- 4.a Land to be annexed should include only areas seen as logical extensions of the City, located adjacent to existing urban development.
The annexation area is in the City's Urban Growth Area, is contiguous to the City limits and can be considered as a logical extension.
- 4.b The City should avoid annexations that would result in unincorporated enclaves within the UGA.
If approved as proposed the annexation will not create any unincorporated enclaves.
- 4.b Annexations to the City should be based on evidence that public facilities and service capacities already exist or are planned for and can be efficiently, economically, and practically provided by either public or private sources.
Water and sewer utilities are available to the annexation area. The annexation area is served by SR-20 and SW 24th Avenue; additional street construction will be necessary to support development of the properties. A traffic study is required by the annexation agreement and will be used to determine the needed street improvements. Stormwater facilities to serve the annexation area are generally lacking. The annexation agreement assigns primary responsibility for studying and developing on and off-site storm water facilities to the annexation petitioner

- 4.c Annexations should not diminish the present LOS or create an excessive financial burden to existing and prospective property owners in the City.
It is not anticipated that annexation of the subject properties will diminish the present LOS for utilities (water and sanitary sewer), emergency services (police and fire), streets or parks. Nor is it anticipated that the annexation will create an excessive financial burden on existing or future property owners in the City. The petitioners (or subsequent owners) will be required to mitigate any impacts to these services caused by development of the site. This mitigation typically includes the construction of infrastructure aimed at maintaining adopted LOS and/or the payment of impact fees and system development charges.
- 4.d Ensure property owners within an annexing area are aware of foreseeable obligations or requirements that may be imposed upon them by the City at the time of annexation.
By signing the annexation petition the proponents note their willingness to assume their fair share of the existing City indebtedness. Future obligations or requirements for property owners within the annexation area are described in the annexation agreement, in the annexation ordinance and in the form of any City Council approval of the annexation. Letters describing foreseeable obligations were mailed to all property owners within the annexation area on August 17, 2009.
- 4.e Require existing buildings, within annexed areas, to meet the City's fire and safety requirements.
This policy is not applied to existing, single-family structures (of which there are some on-site). Development of the petitioner's property will most likely replace the existing structures. New development is required to meet current life safety codes and provide adequate fire flow to the property. Properties that are not part of the petition will remain in their current status until (or if) redevelopment plans are proposed.
- 4.f Assure that the City's fire rating is not reduced because of annexation.
Any development proposed on the property will be required to provide the necessary fire flow and suppression system and therefore will not act as a detriment to the City's fire rating system.
- 4.g Maintain the existing level of police service when annexing new areas.
Police service LOS is measured in terms of response time (both emergency and non-emergency). Annexation of the property will add to the patrol area for the police. Given the mobile nature of police service, the addition of the annexation area is not anticipated to negatively impact their ability to generally meet established response times.
- 4.h Annexation proposals should describe the method and level of funding for capital facilities needed to serve the annexed area.
As was noted above water and sewer facilities are available to the annexation area. Likewise the annexation area is bounded on two sides by existing streets. New water, sewer, streets and storm water facilities within the annexation area will be required at the time of development. The method of funding for this infrastructure will be through

developer contributions. The level of funding will be that necessary to construct the required infrastructure. The City may elect to construct regional stormwater improvements to serve both the annexation area and areas already within the existing City limits. If this occurs the City will most likely seek to recover those costs through connection charges or a specialized rate structure. If the City undertakes such a project the method and level of funding will be described in the Capital Improvement Plan.

- 4.i Proponents of annexation in developed or partially developed areas should pay their fair share of the costs of urban services and public improvements required to meet the City's LOS standards.

This policy is not applicable to this annexation.

- 4.j The City may require the preparation of a fiscal impact study which addresses long and short-term economic impacts to the City.

The City did not require a fiscal impact study at the time this annexation was initiated. The proposed annexation agreement addresses some issues associated with infrastructure construction costs.

- 4.k Annex, when possible, areas of sufficient size that square off City boundaries and enhance circulation.

The area proposed for annexation includes two properties for which property owners have not signed the petitions. Since these properties are bounded to the south and the west by the petitioners' property, it is recommended that the properties be annexed as proposed to further this goal.

- 4.l Proposed annexations shall not result in the long-term reduction of the City's established LOS standards.

The proposed annexation and its current use will not reduce any established LOS standards. Any development in the annexation area will be required to meet the code and address LOS deficiencies if any.

CONCLUSION

Based on the information outlined above, staff concludes that the proposed annexation is generally consistent with the Comprehensive Plan annexation policies. The proposed annexation, while adding to the service area, is not anticipated to negatively affect the City's existing LOS for services (water, sewer, parks, streets and stormwater) while the property remains essentially undeveloped. The development of the annexation property will add to the service demands of the City; this additional burden is addressed to some degree through the construction of public utilities at the developer's cost and through the payment of impact and system development fees.

The proposed annexation agreement requires the petitioner to begin development of the property within a specific timeframe (seven years). It also establishes the owner's responsibility for street and utility studies and improvements, including off-site stormwater improvements. The agreement, while acknowledging the proposed City affordable housing project and the development role the City might assume, is written in a fashion that establishes the petitioner's

development responsibilities if the affordable housing project does not take place. It notes that the sole obligation assumed by the City under this agreement is the obligation to annex the annexation properties into the City if the City Council approves the annexation.

The proposed ordinance (Exhibit 4) notes the annexation agreement runs with the land, requires the assumption of City indebtedness by the owners of the properties and establishes the R-1 zoning for the subject properties.

STANDING COMMITTEE REPORT

The Standing Committees reviewed the proposed annexation and associated agreement at its April 13th meeting. The committee had questions on the possible affordable housing project in the annexation area, the calculations for proportionality for cost share on the studies and infrastructure requirements. The minutes related to this discussion has been attached for reference (Exhibit 5). The annexation was also included on the July 20th agenda.

RECOMMENDED ACTION

- Conduct the public hearing.
- At the conclusion of the hearing it is recommended that the City Council:
 1. Approve the Gentry SR-20 annexation for approximately 37 acres (approx. 41 acres including rights-of-way) located at the southwest corner of SW 24th Avenue and SR-20;
 2. Adopt the ordinance (Exhibit 4); and
 3. Approve the annexation agreement (Exhibit 3).

ATTACHMENTS

- Figure 1: Annexation Area
- Figure 2: Annexation Area: Petitioner and Non-petitioner Properties
- Exhibit 1: May 1, 2007 City Council Agenda Bill and Minutes
- Exhibit 2: Annexation Petition
- Exhibit 3: Annexation Agreement
- Exhibit 4: Annexation Ordinance
- Exhibit 5: April 13, 2009 Government Services Standing Committee Minutes

MAYOR'S COMMENTS

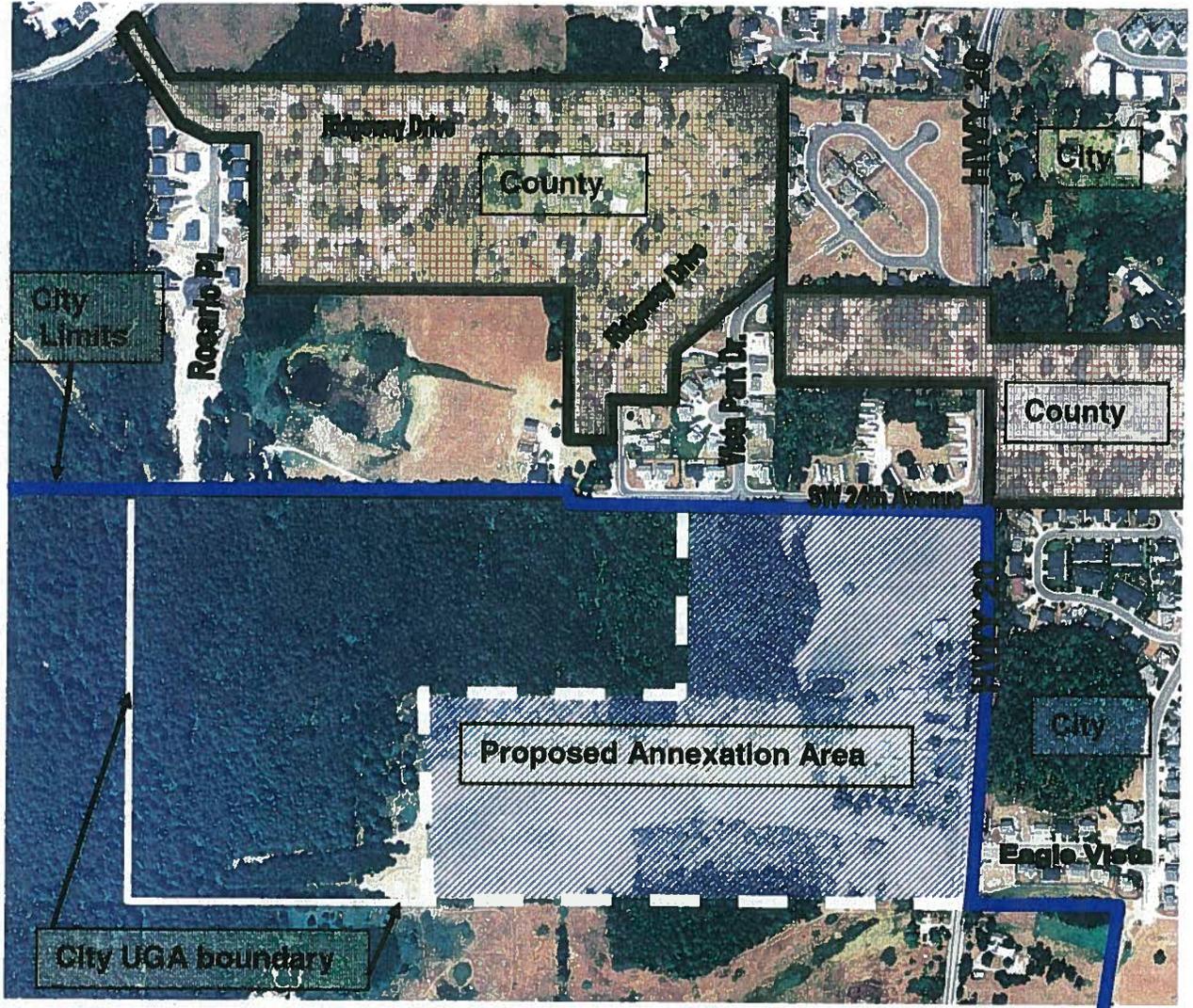


Figure 1 – Annexation Area



Figure 2 – Annexation Area: Petitioner and Non-petitioner Properties

City of Oak Harbor
City Council Agenda Bill

Bill No. 7
Date: May 1, 2007
Subject: South Oak Harbor Annexation

FROM: Steve Powers, Director of Development Services *RSP*

**INITIALED AS APPROVED FOR
SUBMITTAL TO THE COUNCIL BY:**

- [Signature]* Patty Cohen, Mayor
- [Signature]* Paul Schmidt, City Administrator
- [Signature]* Doug Merriman, Finance Director
 - Budgeted Item: Yes No N/A
 - Budget Adjustment Required: Yes No N/A
 - Funds Available for Appropriation: Yes No N/A
 - Budget Strategy Approved: Yes No N/A
- [Signature]* Phil Bleyhl, City Attorney

SUMMARY STATEMENT:

This agenda bill presents the proposed South Oak Harbor Annexation on the southwest corner of Highway 20 and SW 24th Street (Haga Rd) for authorization to circulate a formal petition to annex property into the City of Oak Harbor.

BACKGROUND AND ANALYSIS:

On March 12, 2007, Brian Gentry, President of Landed Gentry, submitted an intention to commence annexation proceedings for properties located on the southwest corner of Highway 20 and SW 24th Street (Haga Rd). The Notice of Intent is undersigned by Homeplace at Burlington, LLC and Haga, LLC and covers an area that is approximately 77 acres. The initiating parties represent approximately 28.6% of the owners, 42.3% of the total acreage and 63% of the assessed value. The property is located within the Urban Growth Area, is contiguous to the city limits and is designated for Low Density Residential on the Comprehensive Plan Land Use Map. Upon annexation the property would be zoned R-1, Single Family Residential.

Annexation Process

The proponent is seeking annexation under the petition method as authorized under RCW 35.13, as follows:

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EXHIBIT I

- Owners of not less than 10 percent of the acreage of the area proposed to be annexed must submit a letter to the City Council stating their intent to commence annexation proceedings (attached).
- The City Council must conduct a meeting with the initiating parties within 60 days after the filing of their notice. This meeting is scheduled for the May 1, 2007 City Council meeting.
- At the meeting the Council must determine if it will:
 - 1) Accept the annexation as proposed;
 - 2) Geographically modify the proposed annexation (and accept the proposed annexation as modified); or
 - 3) Reject the annexation.

The decision of the Council whether to “accept” the proposed annexation is entirely within the Council’s discretion. By accepting a proposed annexation, the Council is not committing itself to ultimately annexing the territory proposed when an actual petition is presented. The decision to accept at this stage merely allows the annexation to move forward procedurally. If the Council rejects the proposed annexation, the initiating parties have no right of appeal.

If the Council accepts the annexation, it must also decide:

- Whether it will require the simultaneous adoption of proposed zoning, and
- Whether it will require the assumption of all or any portion of existing city indebtedness by property owners within the area to be annexed.

If the Council accepts the annexation, then the proponents are authorized to circulate the petition. The petitioner has the choice of either submitting a petition based on valuation or acreage. If the petitioner chooses the valuation method, the petition must be signed by property owners of at least 60% of the property value. If the property owner chooses the acreage method, the petition must be signed by the owners of a majority of the acreage in the annexation area and the majority of registered voters (if any) residing within the proposed annexation area. After submittal of a valid petition, all appropriate fees and a metes and bounds legal description, the Council conducts a public hearing to decide whether to approve the annexation.

Discussion of proposed annexation

Comprehensive Plan Goals and Policies related to annexation

Annexation related policies in the City’s Comprehensive Plan are covered under the Urban Growth Area chapter of the Growth Management Elements. The adopted policies help guide the Council and Staff when considering annexation requests. A copy of this Chapter has been attached for reference. Under Goal 4 of the Urban Growth Area Element, policies address issues such as maintaining adopted levels of service, ensuring the annexation area can be served by public services and how those services will be funded, informing owners of their potential future obligations once annexed, confirming that the annexation serves to logically extend the municipal limits of Oak Harbor and avoiding unincorporated enclaves. Under Goal 5, policies address ensuring that appropriate urban design directions are incorporated in the annexation

agreement such as including preliminary plan for transportation network, connections of streets and pedestrian networks, traditional lot and block grid pattern, new public facilities such as trails, parks and open space and greenbelt designations. With these policies in mind, the staff has identified several issues that could come to bear on the Council's decision to accept or reject the annexation. These are discussed below.

Annexation Geography (see attached map)

The area for consideration is approximately 77 acres west of Highway 20 and south of SW 24th Street (Haga Road). It would be difficult to argue that there is a more "logical extension of the City" than this location, as advocated by the Comprehensive Plan Urban Growth Area Policy 4.a. The proposed annexation area is within the UGA and designated for Low Density Residential.



The aerial photo above was taken in 2000. Except for development along SW Rosario Drive, there have not been significant changes in this area. As seen in the above photo, approximately 50% of the proposed annexation area is covered by forest. A ridge line runs across the property

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creating two low points on the site. The eastern portion of the property flows toward the southeast corner of the area and the western portion flows toward the southwest corner of the area. The southwest portion may be adjacent to wetlands.

The annexation area includes ten parcels. The details of ownership and the approximate layout of the lots are provided along with Notice of Intention attached to this report.

Land Use and Development

The property is designated for Low Density Residential on the Comprehensive Plan Future Land Use Map. If annexed the property will be zoned R1, Single Family Residential. The densities for this district range between a minimum of 3 dwelling units per gross acre to 6 dwelling units per gross acre. This can result in a development of 231 to 462 units in the proposed annexation area. The development of this area can be done in a traditional subdivision layout or the development densities can be concentrated in certain areas to form large open spaces through the Planned Residential Development process.

Impact Fees or Equivalent

If the properties are annexed, development of lots will be subject to the imposition of all applicable impact fees that exists at the time of application. In addition, it would be prudent to consider a per lot impact charge on public services that are not currently subject to impact fees, but which could realize a lower level of service as a result of annexation. For instance, the fire fee currently collected on new growth in the Fort Nugent Road area might be a usable model for this area. This type of fee can also be collected through the SEPA process.

Street Network and Improvements

The proposed annexation area has frontage on Highway 20 on the east and some frontage on SW 24th Street to the north. There are four streets that have the likelihood of being extended through the annexation property (Please see figure). SW Rosario Place abuts this area on the northwest corner and will need to be extended through this area with the intention of connecting to Waterloo Road in the future. SW Ridgeway Drive and SW Vista Park Drive will also need to be extended into the annexation area, however only one of those may be needed to extend all the way to the south edge of the property with the intention of connection to Waterloo Road.

SW Eagle Vista Avenue located on the east side of the annexation area will also need to be extended through the annexation area. Since it is a good practice to limit access on to Highway 20, the SW Eagle Vista extension should be the only access permitted on to Highway 20 for this annexation area. However, there may be challenges in the alignment of SW Eagle Vista on the annexation property since WSDOT is planning on providing detention at that location for the Highway 20 improvements planned this summer. At the time of development, the proponent will be responsible for making the necessary alteration for the alignment of SW Eagle Vista. SW Eagle Vista should be extended across the property with the intention of connecting to Bonaparte Lane west of the annexation area in the future.

Adjacent to the annexation area to the north, SW 24th Street (Haga Rd) must be extended to connect to SW Rosario Place. The City is currently reviewing the Frostad Pond Subdivision that

will extend SW 24th Street by providing the required half street improvements (30 feet right-of-way) concurrent with their development. Annexation of the proposed area should include the requirement of the south 30 feet of right-of-way along with improvements to be provided to complete the street section. AREA (ANNEXATION-WIDE) TRAFFIC STUDY



Utility/Stormwater Extensions

Development of the proposed annexation area will require the extension of City utilities and stormwater conveyance system to City standards at the developer's expense. Owners are responsible for all costs associated with on-site and off-site drainage facilities required to serve the annexation area and, if necessary, to extend the public stormwater conveyance system to adequate outfall points as identified in the Oak Harbor Comprehensive Stormwater Management Plan.

At the time of development, water line must be extended from SR 20 along the Southwest 24th Street frontage of the annexation and connect to the water main fronting The Heights (Harbor Vista) subdivision and from SW Ridgeway Drive to SW Rosario Place. This line is required to

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SS

be a 10 inch diameter line. The project proponent could be eligible for over sizing costs. Financial responsibility for providing adequate facilities shall be the proponent's. Offsite or regional facilities providing benefit to other adjacent properties may be eligible for a Developer's Reimbursement Agreement. Layout of the water lines within the annexation area will follow the street network and grid the waterlines between SW Rosario Place and Highway 20.

No sewer service is currently available to serve the property. The proposed annexation area is accounted for in the Scenic Heights Lift Station service area. Adequate gravity sanitary sewer facilities to serve the property shall be installed by the annexation proponents or their assignees at the time of redevelopment. The project proponents will be required to design and install sewer per the Comprehensive sewer plan and other adopted standards. Financial responsibility for providing adequate facilities shall be the proponents'. Offsite or regional facilities providing benefit to other adjacent properties may be eligible for a Developer's Reimbursement Agreement. If it is demonstrated to the City that it is not feasible to service the entire basin with gravity sewer, the City may choose to allow installation of a sewage lift station and force main system at the project proponents' expense. If this situation should arrive, the City would reserve the right to require the installation of a system that would serve as a regional lift station, and allow for a Developer's Reimbursement Agreement as applicable by City Code.

Open Space, Trails

Policies under Goal 5 of the Urban Growth Area provide opportunities to address appropriate urban design directions such as including preliminary plan for transportation network, connections of neighborhood streets and pedestrian networks. The policies also provide direction to promote the traditional lot and block grid pattern of development and consider the desirability of acquiring new public facilities such as trails, parks and open space. Since more than 50% of the land in the proposed annexation area is forested, there is potential through this annexation process to further the intent of this goal.

Conclusion

The proposed annexation area is the last large area designated for residential development within the currently approved UGA, since Island County has not yet acted on the 2005 UGA amendments. There are many opportunities and challenges in considering this annexation. Annexation and eventual development of this area would allow for extensions and interconnectedness in this area. Considering this large area all at once provides for collective planning in allocating densities and meaningful open spaces. The challenge regarding this annexation would be the consensus by all the property owners in this area on development potential, layout, phasing and financial responsibilities.

RECOMMENDED ACTION:

- Conduct meeting with annexation proponents
- Authorize annexation to proceed as submitted
- Require:
 - Simultaneous adoption of proposed zoning, and
 - Assumption of all or any portion of existing city indebtedness by property owners within the area to be annexed

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- Direct Staff to prepare Annexation Agreement

ATTACHMENTS:

- Letter from property owner
- Property owners' data and map
- Annexation Policies

MAYOR'S COMMENTS:

The availability of affordable housing is a topic that is of local, regional and national importance. The City Council has on a number of occasions discussed their desire to provide opportunities for affordable housing within our community. Our development codes and Comprehensive Plan support and encourage such actions. One of the Comprehensive Plan policies encourages the development and implementation of affordable housing as part of the City's annexation program. The Council may wish to consider whether this annexation presents an opportunity to help further this policy.

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~~170~~

LANDED GENTRY
HOMES AND COMMUNITIES

March 7, 2007

RECEIVED

MAR 12 2007

**CITY OF OAK HARBOR
Development Services Department**

Mayor Patricia A. Cohen
And City Council
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, Washington 98277

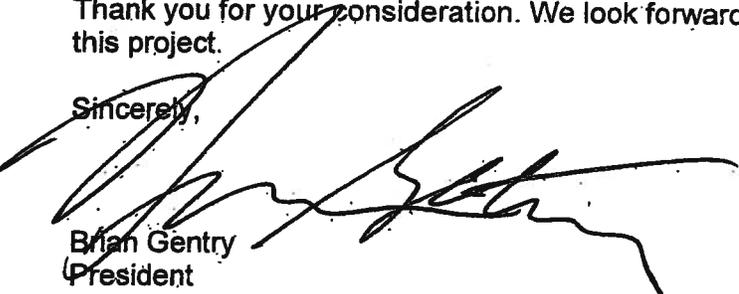
Re: Annexation – Notice of Intent

Dear Madam Mayor and members of the City Council:

I am writing on behalf of the undersigned property owners to request initiation of proceedings to annex approximately 77 acres to the City of Oak Harbor. The proposed annex area comprises eleven parcels and seven owners as depicted on the enclosed property list and map. We propose that the existing R-1 zoning of the surrounding properties within City limits be applied to the annexed area, as per the Comprehensive Plan.

Thank you for your consideration. We look forward to meeting with the City Council to discuss this project.

Sincerely,

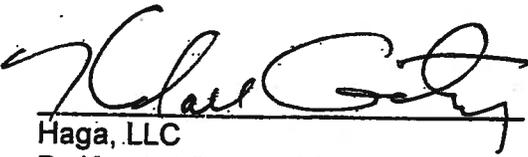


Brian Gentry
President

The undersigned initiating parties represent approximately 28.6% of the owners, 42.3% of the total acreage within the designated area, and 63% of the assessed value:



Homeplace at Burlington, LLC
By Kendall Gentry, Manager



Haga, LLC
By Kendall Gentry, Manager

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Old City Hall Bldg. • 504 E. Fairhaven • Burlington, WA 98233
(360) 755-9021 • Toll Free (877) 769-8070 • Fax (360) 755-9029

www.LandedGentry.com • #LANDEGD062D4

South Oak Harbor, Highway 20 ANNEXATION

Address	Parcel No.	Owner	Address	Acres	Value	Legal Description
	R13210-364-0650	Dennis Faber	2052 SW Dillard Ln, Oak Harbor, WA 98277	20.00	2,020.00	10 - N/2 SW NW DES FOR #106-71
	R13210-364-1400	Reginald & Elizabeth Wood	2610 E Section St. #20, Mount Vernon, WA 98274	2.41	208,800.00	138 - W/2 W/2 NW SE NW EX 30' RD
	R13210-364-1570	Reginald & Elizabeth Wood	2610 E Section St. #20, Mount Vernon, WA 98274	2.41	208,800.00	137 - E/2 W/2 NW SE NW EX N30' RD
NHN Haga Rd.	R13210-364-1730	Homeplace at Burlington, LLC	504 E. Fairhaven Ave., Burlington, WA 98233	2.41	208,800.00	136 - W/2 OF E/2 OF NW SE NW EX N30' RD
NHN Haga Rd.	R13210-364-1900	Homeplace at Burlington, LLC	504 E. Fairhaven Ave., Burlington, WA 98233	2.41	208,800.00	12 - E/2 E/2 NW SE NW EX N30' RD
30345 SR 20	R13210-364-2330	George C. & Doris Wasilewski	30433 SR 20, Oak Harbor, WA 98277	9.04	524,084.00	13 - NE SE NW EX CO RD & EX ST HWY
30377 SR 20	R13210-324-2530	Thomas & Jacquelyn Stoneham	950 SW Upland Court, Oak Harbor, WA 98277	0.65	170,500.00	PT TO EXE 92 - N135' OF E250' OF S/2 SE NW
1831 SR 20	R13210-298-1650	Haga, LLC	504 E. Fairhaven Ave., Burlington, WA 98233	10.00	861,000.00	14 - SW SE NW
30345 SR 20	R13210-298-2300	Haga, LLC	504 E. Fairhaven Ave., Burlington, WA 98233	7.87	700,644.00	141 - SE SE NW EX N135' OF E250' EX PT TO ST HWY EX PT LY ELY OF SR 20
30345 SR 20	R13210-298-0660 1/2 int.	Haga, LLC	504 E. Fairhaven Ave., Burlington, WA 98233	10.00	120,000.00	9 - S/2 SW NW UNDIV 1/2 INT EA
30345 SR 20	R13210-298-0660 1/2 int.	Gerald & Marilyn Coriaway	2457 Coltonwood St., Anchorage, AK 99508	10.00	120,000.00	9 - S/2 SW NW UNDIV 1/2 INT EA
Totals				77.2	3,333,448.0	

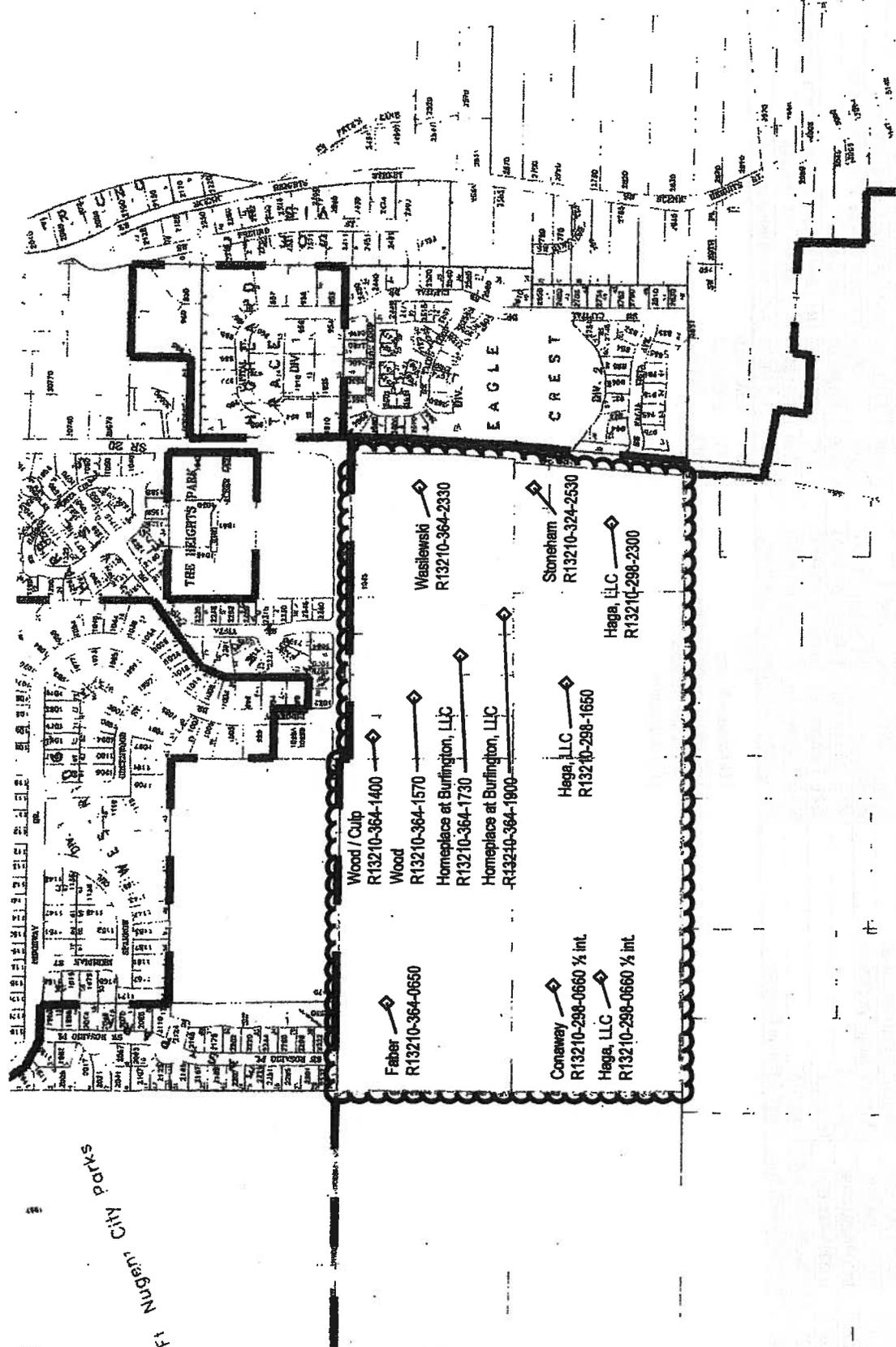
LGD owned - # acres 32.7 2,099,244.0
 LGD owned - % total acreage 42.3% 63.0%
 total number of owners 7
 LGD % of owners 28.6%

165
 42

2/19/07

0 300 600

1" = 200'



FT NUGENT CITY PARKS

- Faber
R13210-364-0650
- Wood / Culp
R13210-364-1400
- Wood
R13210-364-1570
- Homeplace at Burlington, LLC
R13210-364-1730
- Homeplace at Burlington, LLC
R13210-364-1800
- Wasielwski
R13210-364-2330
- Conaway
R13210-298-0660 ½ int.
- Haga, LLC
R13210-298-0660 ½ int.
- Haga, LLC
R13210-298-1650
- Stoneham
R13210-324-2530
- Haga, LLC
R13210-298-2300

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Goal 4 - Annexations to the City will occur in compliance with the Washington State Growth Management Act and the following policies.

Policy: 4.a Land to be annexed should include only areas seen as logical extensions of the City, located adjacent to existing urban development.

Discussion:

This policy is to be used solely as a guide to prevent leap-frogging and not as a means of preventing growth.

4.b The City should avoid annexations that would result in unincorporated enclaves within the UGA.

Discussion:

An unincorporated enclave is an area completely surrounded by incorporated parts of the city. However, the City may make exceptions to this policy in cases where the potential enclave is already characterized by urban density. In such cases, the City should first encourage petitioners to work with property owners inside the potential enclave to include them in the annexation area. Failing this preferred option, only then should the City consider whether the annexation would further other Comprehensive Plan goals, such as economic development, and otherwise be consistent with annexation policies.

4.b Annexations to the City should be based on evidence that public facilities and service capacities already exist or are planned for and can be efficiently, economically, and practically provided by either public or private sources.

4.c Annexations should not diminish the present LOS or create an excessive financial burden to existing and prospective property owners in the City.

4.d Ensure property owners within an annexing area are aware of foreseeable obligations or requirements that may be imposed upon them by the City at the time of annexation.

Discussion:

Provide foreseeable cost estimates where possible.

4.e Require existing buildings, within annexed areas, to meet the City's fire and safety requirements.

Discussion:

Public safety shall be ensured by the following:

- * An inspection will be conducted of all properties within the proposed annexation area. The Fire Department will identify deficiencies of fire and life safety codes to property owners and City Council. Actions for addressing

the deficiencies within specified time frames as recommended by the Fire Department and subject to approval by City Council, will be in the annexation agreement.

- * Upon annexation, existing buildings will be required to have minimum fire-flow within three years for mobile home parks, and two years for all other buildings, or by annexation agreement. Smaller, individually developed properties should not be burdened by excessive costs of utility improvements beyond their normal proportional share of costs. Costs should be proportionate to benefit.
 - * Existing buildings not conforming to the City's requirement for fire sprinkler systems, will not be subject to retrofitting until the building is remodeled, modified or has an occupancy reclassification. Occupancies or portions thereof classified as hazardous and/or required to have fire suppression systems in accordance with the Uniform Building Code will be required to install an approved system within one year.
- 4.f Assure that the City's fire rating is not reduced because of annexation.

Discussion

The intent is to preserve the City's current fire rating and LOS and protect public welfare by providing a water supply of sufficient quantity and pressure for fire protection. In all instances, areas to be annexed should be analyzed for their potential effect on the City's fire rating. Programs should be established to assure improvements are made in the annexed area or to correct identified deficiencies made elsewhere in the City to balance rating deficiencies in the annexed area. Property owners in the annexing area may be required to pay all or a portion of the cost to correct the deficiencies in their area.

- 4.g Maintain the existing level of police service when annexing new areas.

Discussion

The intent is to protect the residents of the City from a reduced level of police services due to annexation. In all instances the areas to be annexed should be analyzed for their potential effect on the City's current level of police protection. Increases in police personnel may be necessary in order to remain at its present LOS. The City should have a method for analyzing the fiscal impacts of annexation on police services.

- 4.h Annexation proposals should describe the method and level of funding for capital facilities needed to serve the annexed area.
- 4.i Proponents of annexation in developed or partially developed areas should pay their fair share of the costs of urban services and public improvements required to meet the City's LOS standards.

Discussion

This commitment to meet the City's LOS standards should be identified by all annexation agreements, including pre-annexation agreements.

- 4.j The City may require the preparation of a fiscal impact study which addresses long and short-term economic impacts to the City.
- 4.k Annex, when possible, areas of sufficient size that square off City boundaries and enhance circulation.

Discussion

This policy makes subarea planning for local roads and utilities more efficient.

- 4.l Proposed annexations shall not result in the long-term reduction of the City's established LOS standards.

Goal 5 - New neighborhoods annexed into the City should contribute in a positive manner to sustain and enhance the quality of life for all Whidbey Island citizens while promoting a strong sense of place for Oak Harbor.

- Policy:**
- 5.a Annexation agreements should include a preliminary plan for a transportation network that emphasizes connections to existing neighborhoods, streets and pedestrian facilities.
 - 5.b Where topography allows, new annexation areas should develop in the traditional lot and block grid pattern that typified early Oak Harbor development and enhances the provision of public facilities and services.
 - 5.c The City should consider the desirability of acquiring potential new public facilities, such as trails, parks or open space lands, during the annexation review process with the cooperation of the petitioners.
 - 5.d In annexation requests where the surrounding land uses could be significantly affected by the potential land uses in the annexing area, the City should require a greenbelt designation of an appropriate width to ameliorate the negative impacts.

Discussion: This policy would apply to the annexation of new industrial lands that abut properties that have historically been used for residential purposes.

- 5.e The City should adopt standards that support the Comprehensive Plan annexation policies.

SOUTH OAK HARBOR ANNEXATION

Development Services Director Steve Powers presented this agenda bill for the proposed South Oak Harbor Annexation on the southwest corner of SR-20 and SW 24th Street (Haga Road), for authorization to circulate a formal petition to annex property into the City. The Notice of Intent covers an area that is approximately 77 acres and is the last large area designated for residential development within the currently approved UGA. Considering this large area all at once provides for collective planning in allocating densities and meaningful open spaces. The challenge regarding this annexation would be the consensus by all property owners in this area on development potential, layout, phasing, and financial responsibilities. Brian Gentry, Landed Gentry, was present for questions and presented an overview to Council of this annexation which is not at the project stage.

Discussion followed about affordable housing, sewer impact, sewer treatment (the City's present treatment plants could handle a development's capacity in this area), the Comp Plan, fire impact fees, and number of homes that could be accommodated in this area. Mayor Cohen noted that this evening's presentation is asking only for authorization to allow this annexation to proceed and Council members also cautioned that this evening's action is procedural and not meant to create layers of criteria.

- ACTION: COUNCILMEMBER EATON MOVED TO:**
- **CONDUCT A MEETING WITH THE ANNEXATION PROPONENTS;**
 - **AUTHORIZE THE ANNEXATION TO PROCEED AS SUBMITTED;**
 - **REQUIRE: SIMULTANEOUS ADOPTION OF PROPOSED ZONING AND ASSUMPTION OF ALL OR ANY PORTION OF EXISTING CITY INDEBTEDNESS BY PROPERTY OWNERS WITHIN THE AREA TO BE ANNEXED.**

THE MOTION WAS SECONDED BY CRIDER AND CARRIED UNANIMOUSLY.

BREAK

Mayor Cohen called for a break at 8:10 p.m. The meeting reconvened at 8:20 p.m.

BAYSHORE DRIVE EXTENSION – LID FORMATION REQUEST

Development Services Director Powers presented this agenda bill requesting the City to form a Local Improvement District (LID) for the proposed SW Bayshore Drive Extension as submitted by Mr. Arnold R. Freund and Mr. David H. Wilson, owners of property along the north side of the proposed extension. The street construction project would extend from its present terminus near Whidbey Island Bank to Beeksma Drive. Discussion followed about the wetland mitigation, access for Burger King and 7-11, proportionate share and how that is determined.

- ACTION: COUNCILMEMBER KARAHALIOS MOVED TO CONSIDER THE REQUEST TO FORM A LOCAL IMPROVEMENT DISTRICT (LID) AND SET A DATE TO CONSIDER A RESOLUTION OF INTENT TO FORM AN LID WITH A SUGGESTED DATE OF JUNE 5, 2007. THE MOTION WAS SECONDED BY CAMPBELL AND CARRIED UNANIMOUSLY.**

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LANDED  GENTRY
HOMES AND COMMUNITIES

April 21, 2009

Mayor Jim Slowik
And City Council
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, Washington 98277

Re: Annexation – Notice of Intent

Dear Mr. Mayor and members of the City Council:

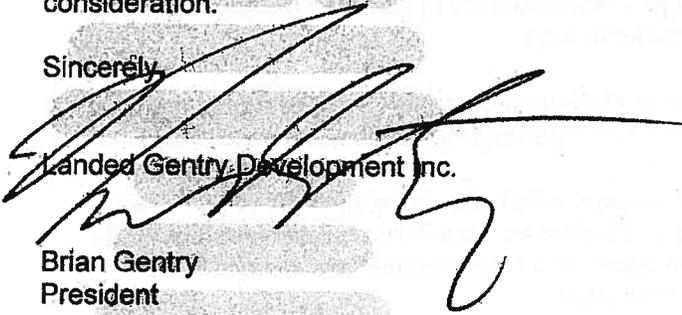
I am writing on behalf of the undersigned property owners to request initiation of proceedings to annex approximately 37 acres to the City of Oak Harbor. The proposed annexation area comprises 6 parcels and 4 owners as depicted on the enclosed property list and map. We propose that the existing R-1 zoning of the surrounding properties within City limits be applied to the annexed area, as per the Comprehensive Plan. I enclose a petition signed by initiating parties representing approximately 67% of the owners, 74% of the total acreage within the designated area, and 75% of the assessed value.

By way of background, in May of 2007 the Oak Harbor City Council approved the 10% annexation petition for this area, which at that time included 77 acres and 10 parcels. However, recent conversations with some property owners have indicated a declining interest in proceeding with annexation at this time. Therefore, we are re-submitting the application with fewer properties, representing a subset of the already approved land area, with over 60% of the ownership.

A previous petition was filed in July 2008, however, due to negotiations, the petition has expired. This request is to renew initiation of the annexation.

If you need additional information, please do not hesitate to contact me. Thank you for your consideration.

Sincerely,



Landed Gentry Development Inc.

Brian Gentry
President

Old City Hall Bldg. • 504 E. Fairhaven • Burlington, WA 98233
(360) 755-9021 • Toll Free (877) 769-8070 • Fax (360) 755-9029
www.LandedGentry.com • #LANDEGD062D4

EXHIBIT 2

171

IRREVOCABLE

PETITION FOR ANNEXATION

TO: The Mayor and City Council
Of the City of Oak Harbor, Washington

We the undersigned being owners of not less than 60 percent in value of the real property herein described and lying contiguous to the City of Oak Harbor, Washington do hereby petition that such territory be annexed to and made a part of the City of Oak Harbor under the provisions of RCW 35A.14 (1981) and any amendments thereto of the laws of the State of Washington.

The territory proposed to be annexed is within Island County, Washington and the boundaries are outlined on the map attached to this petition. (See Exhibit "A" hereto attached and by this reference made a part hereof.) The property is described on Exhibit A attached hereto.

The City Council of the City of Oak Harbor met with the initiating parties at a regular Council meeting on the 1st day of May, 2007 and after the said meeting having been closed at the 1st day of May, 2007, the City Council indicated that it would accept a proposed annexation. At the 1st day of May, 2007 meeting, the City Council did also determine as follows:

1. It would require simultaneous adoption of zoning for the proposed area to be annexed as R1, Single Family Residential, based upon the proposed Comprehensive Plan Land Use Map adopted on the March 21st of 2006.
2. It would require the assumption of existing City indebtedness by the area proposed to be annexed.

Wherefore, the undersigned petition the Honorable City Council and ask:

- (a) That appropriate action be taken to entertain this petition fixing a date of public hearing, causing notice to be published and posted specifying the time and place of such hearing and inviting all persons interested to appear and voice approval or disapproval of such annexation; and,
- (b) That following said hearing the City Council determine by ordinance that such annexation shall be made annexing the above described territory and declaring the date that such annexation shall be effective. That property so annexed shall become a part of the City of Oak Harbor, Washington subject to its laws and ordinances then and thereafter in force.
- (c) That the proposed zoning as adopted for the area as above indicated, shall be effective zoning for the proposed annexation area and shall not be modified for eighteen (18) months after annexation.
- (d) The petitioners subscribing hereto agree that all property within the territory hereby sought to be annexed shall be assessed and taxed at the same rate and on the same basis as other property within the City of Oak Harbor including assessments of taxes and payment of any bonds issued or debts contracted prior to or existing at the date of the annexation.
- (e) That every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or

she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

The undersigned has read the above text and consents to the filing of other pages hereof to be considered as part of this petition.

Dated this 21 day of April, 2009



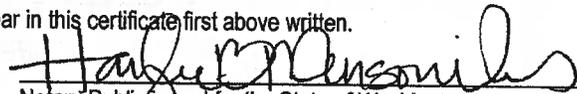
HAGA, LLC
By Brian Gentry, Manager

STATE OF WASHINGTON)
) ss:
COUNTY OF)

THIS IS TO CERTIFY that on this 21 day of April, 2009, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared **BRIAN GENTRY**, to me known to be the **MANAGER** of **HAGA, LLC**, a Washington Limited Liability Corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

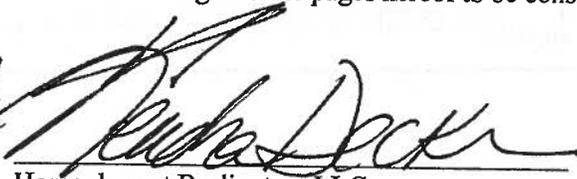




Notary Public in and for the State of Washington
Residing at Mount Vernon, Skagit County
Commission expires: 08-09-2012
Printed name of Notary: Haylee B. Mensonides

The undersigned has read the above text and consents to the filing of other pages hereof to be considered as part of this petition.

Dated this 21 day of April, 2009

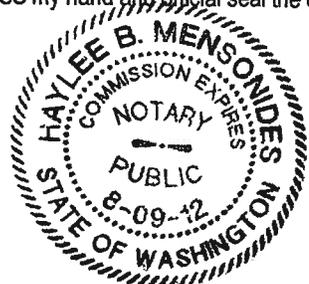


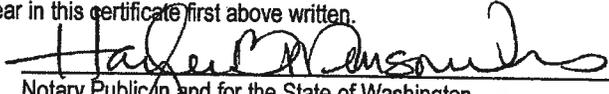
Homeplace at Burlington, LLC
By Kendra Decker, Manager

STATE OF WASHINGTON)
) ss:
COUNTY OF)

THIS IS TO CERTIFY that on this 21 day of April, 2009, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared **KENDRA DECKER**, to me known to be the **MANAGER** of **Homeplace at Burlington, LLC**, a Washington Limited Liability Corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

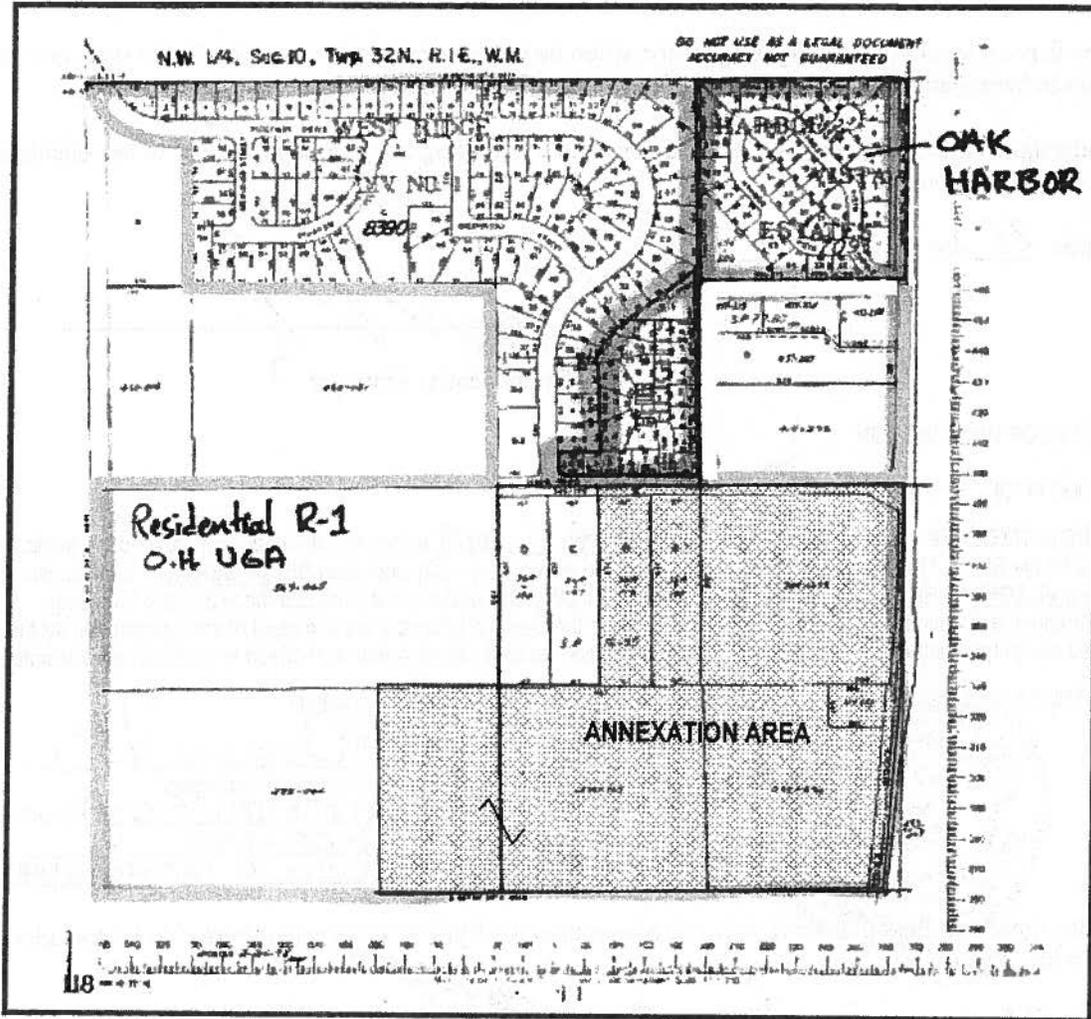
WITNESS my hand and official seal the day and year in this certificate first above written.





Notary Public in and for the State of Washington
Residing at Mount Vernon, Skagit County
Commission expires: 08-09-2012
Printed name of Notary: Haylee B. Mensonides

South Oak Harbor Proposed Annexation Area



LEGAL DESCRIPTION FOR THE "CONAWAY" ANNEXATION
OF LAND INTO THE CITY OF OAK HARBOR

Prepared for Landed Gentry

July 28, 2008

Tracts of land lying within the South ½ of the Northwest ¼ and within the South ½ of the Northeast ¼ of Section 10, Township 32 North, Range 1 East of the Willamette Meridian. Parcels within the South ½ of the Northwest ¼ have the following Parcel Numbers:

R13210-298-1650, R13210-298-2300, R13210-324-2530, R13210-364-2330, R13210-364-1900 and R13210-364-1730, The exterior perimeter boundary of this Land Annexation is further described as follows: (Basis of bearings and ¼ section breakdown – Plat of East Park as recorded.

The East ½ of the East ½ of the South ½ of said subdivision as per Boundary Line Adjustment Recorded under Auditor's File Number 4125909, Records of Said County of Island, State of Washington.

TOGETHER WITH the Southeast ¼ of the Northwest ¼ of Section 10, Township 32 North, Range 1 East of the Willamette Meridian.

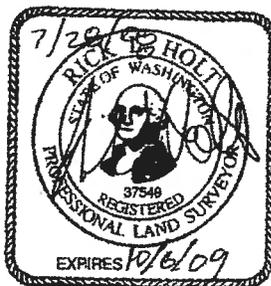
EXCEPTING THEREFROM the West ½ of the Northwest ¼ of the Southeast ¼ of the Northwest ¼ of Section 10, Township 32 North, Range 1 East of the Willamette Meridian also know as Lots C and D of Short Plat 76/55, Filed under Auditor's File Number 301894, Records of Island County, Washington.

EXCEPTING THEREFROM any portions of the Haga Road previously annexed into the City of Oak Harbor by Ordinance Numbers 1424 and 1467 that fall South of the North line of the above described perimeter legal description.

ALSO EXCEPTING that portion of the Southeast ¼ of the Southeast ¼ of the Northwest ¼ of said Section 10 lying Easterly of the Easterly right of way line of State Highway SR No. 20 as described in parcel Number R13210-283-2630 which has been platted as part of Eagle Crest Division No.2.

ALSO EXCEPTING that portion of State Highway SR No. 20 right of way lying within the South ½ of the Northeast ¼ of said Section 10 as shown on SR 20 right of way Plan Sheets 14 and 15 of 16 sheets, Sidney Street vicinity to Swantown Road vicinity dated November 21, 2003. Said SR 20 was conveyed and described in Quit Claim Deed from Island County to State of Washington under Auditor's File No. 84005740 recorded November 21, 1984.

Situate in Island County, Washington.



Return to:
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

ANNEXATION AGREEMENT

Grantors: The Haga, LLC and Home Place Burlington, LLC,
Grantee: City of Oak Harbor

Property Legal Description: [Same description as Exhibit "A" – Owners' Property]

Property Auditor's Parcel Number(s): R13210-298-1650; R13210-298-2300; R13210-364-1900; and R13210-364-1730.

THIS AGREEMENT, made and entered into this _____ day of _____, 2009, by and between the CITY OF OAK HARBOR, a non-charter code city, organized and existing under the laws of the State of Washington (the "City"), and _____ (the "Owner").

WITNESSETH:

WHEREAS, the Owners' Property which is the subject of this Agreement is 27.76 acres in the City of Oak Harbor Urban Growth Area, and is more fully described in the attached Exhibit A (the "Owners' Property" hereafter); and

WHEREAS, the Owners' Property is part of the larger area of the Annexation Property of 40.45 acres, which is the subject of the Owner's Petition for Annexation, and is more fully described in the attached Exhibit B (the "Annexation Property" hereafter); and

WHEREAS, the Owner has petitioned the City to annex the Annexation Property into the City of Oak Harbor; and

WHEREAS, the City of Oak Harbor plans to acquire a portion of the Owners' Property so that the City may develop an affordable housing project on it in the near future; and

WHEREAS, it is likely that the City will develop its project before the Owners would develop any of the remainder of the annexation area; and

WHEREAS, the Annexation Property is contiguous to the City of Oak Harbor and within the City's Urban Growth Area; and

WHEREAS, annexation of the Annexation Property into the City is predicated on the assumption that the property owners will develop the Annexation Property at urban densities and urban levels of intensity as those concepts are set forth in the City's comprehensive plan and development regulations; and

WHEREAS, Comprehensive Plan Policy 4.b finds that "Annexations to the City should be based on evidence that public facilities and service capacities already exist or are planned for and can be efficiently, economically, and practically provided by either public or private sources;" and

WHEREAS, stormwater management is a key urban service that must be provided when new areas are annexed into the City and the entire Annexation Property requires a study of the drainage basin, improvements onsite and offsite, and stormwater flow control and quality measures in order to comport with the City's Stormwater Management Plan; and

WHEREAS, water and sewer are available to the Annexation Property along SR 20, however, development of the Annexation Property may require additional water and sewer improvements, both onsite and offsite, as a condition of approval of a development permit; and

WHEREAS, traffic impacts of development at urban densities and intensities upon the Annexation Property require study and may require mitigation; and

WHEREAS, at a minimum, the extension of SW Eagle Vista Drive westerly from its intersection with SR-20 to the western boundary of the Annexation Property will be required to serve the Annexation Property; and

WHEREAS, the City Council, functioning in its legislative capacity, will annex the Annexation Property if the Owner agrees to make certain infrastructure improvements as set forth herein, regardless of future development of the property being annexed; and

WHEREAS, the Owners have agreed to make such improvements as a condition of annexation, to induce the City Council to approve the annexation of the Property; and

WHEREAS, the Owners voluntarily agree to enter into this agreement to provide the improvements specified herein, conditioned upon the City Council approval of the annexation of the Property,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The "Owners' Property" shall mean the property within the Annexation Property description which is owned by the Owners, and which is more fully described in Exhibit "A" attached hereto.
2. The Annexation Property shall mean the property proposed for annexation as described more fully in Exhibit "B", attached hereto.
3. This agreement is expressly contingent upon City Council approval of the annexation petition for the Annexation Property. This agreement shall be void and of no effect if the City Council shall fail or refuse to annex the Property. Nothing in this agreement shall bind the City Council to annex said Property, nor obligate the City to approve the development of the Property, nor to impose or not impose any particular conditions and requirements for the development of the Property.
4. The sole obligation assumed by the City under this agreement is the obligation to annex the Annexation Property into the City if the City Council approves the annexation. No other duties or obligations of the City shall be deemed to have been created by virtue of this agreement.
5. The Owners will file all documents necessary to complete the annexation process for the Annexation Property, as deemed necessary by the City, if the City Council approves the annexation;
6. By separate document, the Owners have granted the City an option to purchase approximately 5 acres of the Owner's Property on which the City intends to develop an affordable housing project. A copy of that option is attached hereto and incorporated by reference in this agreement. None of the obligations assumed by the Owners under the terms of this agreement shall apply to any of the Owners' Property ultimately purchased by the City for its affordable housing project.
7. The Owners agree to apply for development permits for the Property, consistent with applicable City ordinances, within seven (7) years of the date of annexation PROVIDED that if the City exercises its option and develops its affordable housing project first the Owners shall have up to seven (7) years from the date the City's project is accepted as complete by the City Council to satisfy the terms of this agreement. The Owners agree that the Property will be developed at urban densities and levels of intensity as those concepts are set forth in the City's comprehensive plan and development regulations..

8. In addition to any other improvements, including but not limited to all public utilities both onsite and offsite, subsequently determined to be necessary as a condition of development of any portion of the Property, and not in lieu thereof, the Owners agree to completely perform the obligations set forth in this Section within seven (7) years of the date of annexation of the Property, or upon development of the Property, whichever is sooner or, if the City develops its project seven (7) years from the date the City's project is accepted as complete by the City Council to satisfy the requirements of this section:
- a. If the City elects to conduct a regional drainage basin study to determine the impacts of stormwater on the regional drainage basin from properties including the Annexation Property, the Owners agree to pay for their proportionate share of the cost of that study. Payment to the City is due upon development of the Annexation Property or sooner if required by the City through a separate ordinance or agreement with the Owners. The Owners' proportionate share shall be that portion of the study area which includes the Annexation Property. The regional drainage study shall be done in accordance with engineering standards set by the City Engineer and guidelines contained in the Department of Ecology Stormwater Management Manual for Western Washington.
 - b. If the City does not elect to perform a regional drainage basin study within two years of the date of execution of this agreement, the Owners shall conduct a drainage study of the stormwater impacts of development of the Annexation Property only. Said study shall be completed within seven (7) years of the date of this agreement and shall be conducted to the satisfaction of the City Engineer. Said study shall also be required prior to the issuance of any City development approvals within the annexation area such as a preliminary plat, site plan or the equivalent.
 - c. The Owners shall provide for the extension of SW Eagle Vista Drive westerly from its intersection with SR-20 to the western boundary of the Annexation Property. The alignment of the extension shall be generally consistent with that shown in Figure 7-2a, *Recommended Functional Classification System, City-Wide*, in the City of Oak Harbor Transportation Element, dated October 2007. The street shall be built to a collector street standard. This requirement to extend SW Eagle Vista Drive shall be in addition to any other improvements, including but not limited to all public utilities both onsite and offsite, subsequently determined to be necessary as a condition of development of any portion of the Owners' Property, and not in lieu thereof. The Owners agree to include this obligation within their phased development plans for the Owners property, which shall be initiated within seven (7) years of the date of annexation of the Annexation Property. If the City exercises its option to purchase a portion of the Owners' Property, the Owners shall not be

responsible for extension of SW Eagle Vista Drive across the City's property. This provision shall not be interpreted to relieve the Owners of any project-related obligation arising under the city municipal code from Owners' application to develop any portion of Owners' property.

9. Owners acknowledge that downstream stormwater facilities are insufficient to meet the needs of additional development within the annexation area and drainage basin in which the Owners' Property is located and which flow east towards Oak Harbor Bay. Owners agree to be responsible for all costs associated with on-site and off-site drainage facilities required to serve the Owners' Property and, if necessary, to extend the public stormwater conveyance system to adequate outfall points as identified in the Oak Harbor Comprehensive Stormwater Management Plan. Owners agree further to provide easements, where applicable, for existing drainage facilities on the Owners' Property which serves a larger area than the Owners' Property. Where allowed for by law the Owner may apply for latecomer's agreements for improvements benefiting other properties. Off-site facilities may be constructed in phases upon the approval of the City Engineer.
10. Owners acknowledge that a traffic impact study for the entire Annexation Property is required and must be submitted prior to or along with the first development application of the property. Owners also acknowledge that if the traffic impact study identifies specific improvements necessary to serve the Annexation Property, the Owners will construct or pay for their proportionate share of those improvements. The timing of construction of those improvements shall be according to the schedule established in the study.
 - a. If the City elects to conduct the traffic study for the Annexation Property, the Owners agree to pay for their proportionate share of the cost of that study. The Owners' proportionate share shall be that portion of the study area which includes the Annexation Property. Payment to the City is due upon development of the Annexation Property or sooner if required by the City through a separate ordinance or agreement with the Owners.
 - b. If the City does not elect to perform the traffic study for the Annexation Property within two years of the date of execution of this agreement, the Owners shall be responsible for the full cost of that study. The Owners must submit the study prior to or along with the first development application of the property.
11. Owners acknowledge that the Parks, Recreation and Open Space Plan designates this area as "Neighborhood Park Target Area" and agrees to dedicate land for a public park within the annexation area. The Owners agree that they shall be responsible for meeting this requirement and that the City shall not be required to satisfy this condition as part of

their intended affordable housing project. The dedication and location of such park shall be in accordance with policies set forth in the Parks and Recreation Plan or subsequent updated document. The Owners acknowledge that portions of wetlands or wetland buffers may be incorporated as part of the neighborhood park subject to the approval of the City. Owners agree to build designated multi-use trails through the annexation area concurrent with development of the property. These multi-use trails can either be along the proposed street system or separate from the street system on designated public easements. The specification for these multi-use trails will be determined at the time of development review. The City agrees that these trails need not be in addition to sidewalks customarily provided with street construction and that subject to City approval the Owners may elect to provide multi-use trails in lieu of sidewalks.

12. This agreement shall be a covenant running with the Property and shall bind the heirs, executors, assigns and successors of the Owners, and shall constitute an obligation which may be specifically enforced against the parties and their successors in interest, in addition to any other remedy provided by law.

The obligations of this agreement are in addition to the requirements of the City of Oak Harbor development code, environmental regulations, and other statutes and regulations, and not in lieu thereof. Nothing in this agreement shall relieve or excuse the Owners from performing any obligation or condition of subdivision and development of the annexed property in effect at the time of application for development activity or land use action. In the development of the Property, the Owners shall comply with all statutes, ordinances, regulations and discretionary requirements applicable to the development at the time the application is deemed complete by the City.

Further, nothing in this agreement shall be construed to waive the application of any resolution, ordinance, regulation or other law of the City of Oak Harbor as now or hereafter adopted.

13. Should any court action be brought to enforce any terms of this agreement, the prevailing party shall be entitled, in addition to any other relief, to a reasonable sum as attorneys' fees. In the event neither party wholly prevails, the party that substantially prevails shall be awarded a reasonable sum as attorneys' fees. Venue of an action to enforce the terms and conditions of this agreement shall be in Island County, Washington.
14. **Third-Party Beneficiaries.** This Agreement is neither expressly nor impliedly intended to be for the benefit of any third party, and is neither expressly nor impliedly enforceable by any third party.
15. **Entire Agreement.** This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and shall not be modified or amended in any way except in writing, and signed by the parties hereto.

The undersigned have read the above text and consents to the filing of other pages hereof to be considered as part of this agreement.

Dated this _____ day of _____, 20__

Print: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF ISLAND)

This is to certify that on this _____ day of _____, 2009, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____, a Washington Limited Liability Corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature of Notary Public
Print: _____
Notary Public in and for the State of
Washington, residing at _____
My appointment expires _____

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EXHIBIT "A"

**LEGAL DESCRIPTION FOR THE ANNEXATION OF
LAND INTO THE CITY OF OAK HARBOR,
ISLAND COUNTY, WASHINGTON
INCLUDING ONLY NET PARCELS INCLUDED IN
THE ANNEXATION AGREEMENT
(Landed Gentry Net Parcels)**

THOSE PORTIONS OF THE NORTHWEST QUARTER OF SECTION 10,
TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY
OF ISLAND, STATE OF WASHINGTON, COLLECTIVELY DESCRIBED
HEREINAFTER AS PARCELS 3, 4, 7, AND 8:

PARCEL 3

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID
NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1
EAST, WILLAMETTE MERIDIAN.

ALSO THE EAST HALF OF THE EAST HALF OF THE SOUTH HALF OF THE
SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID
SUBDIVISION, AS PER BOUNDARY LINE ADJUSTMENT RECORDED UNDER
AUDITOR'S FILE NUMBER 4125909, RECORDS OF SAID COUNTY OF ISLAND,
STATE OF WASHINGTON.

PARCEL 4

THE EAST 666.97 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER
OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH,
RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF
WASHINGTON;

TOGETHER WITH THAT PORTION OF THE FOLLOWING DESCRIBED PARCEL
LYING SOUTH OF THE CERTAIN FENCE LINE AS IT WAS ESTABLISHED IN
ISLAND COUNTY SUPERIOR COURT CAUSE NO. SC-14966:

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID
NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1
EAST, WILLAMETTE MERIDIAN, ISLAND COUNTY, WASHINGTON;

EXCEPT ANY PORTION THEREOF LYING WITHIN THE RIGHT-OF-WAY FOR
STATE ROUTE 20;

AND EXCEPT THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST
QUARTER OF SAID SUBDIVISION, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE WEST ALONG THE NORTH LINE OF SAID SOUTH HALF, 250 FEET; THENCE SOUTH 135 FEET; THENCE EAST 250 FEET; THENCE NORTH 135 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 7

THE EAST HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON, ALSO KNOWN AS PARCEL "A", OF SHORT PLAT 76/55, FILED UNDER AUDITOR'S FILE NUMBER 301894, RECORDS OF ISLAND COUNTY, STATE OF WASHINGTON;

EXCEPT THE NORTH 30 FEET FOR ROAD, AS CONVEYED TO ISLAND COUNTY UNDER AUDITOR'S FILE NUMBER 304426.

PARCEL 8

THE WEST HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON, ALSO KNOWN AS PARCEL "B", OF SHORT PLAT 76/55, FILED UNDER AUDITOR'S FILE NUMBER 301894, RECORDS OF ISLAND COUNTY, STATE OF WASHINGTON.

EXCEPT THE NORTH 30 FEET FOR ROAD, AS CONVEYED TO ISLAND COUNTY UNDER AUDITOR'S FILE NUMBER 304426.

Total area for said Parcels 3, 4, 7, and 8 is 27.756 acres.

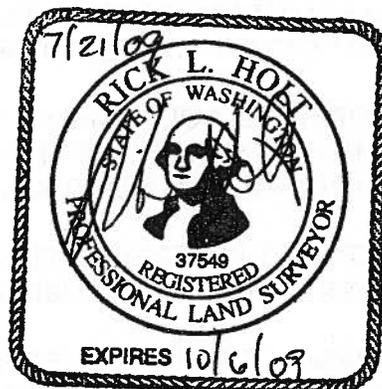


EXHIBIT ^B "A"

LEGAL DESCRIPTION FOR THE
ANNEXATION OF LAND, INCLUDING
ADJACENT ROAD RIGHTS OF WAY, INTO
THE CITY OF OAK HARBOR,
ISLAND COUNTY, WASHINGTON

THOSE PORTIONS OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON, COLLECTIVELY DESCRIBED HEREINAFTER AS PARCELS 3 THROUGH 8, AND THAT PORTION OF GOVERNMENT LOT 2 IN SAID SECTION 10, HEREINAFTER DESCRIBED AS PARCEL 11:

PARCEL 3

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN.

ALSO THE EAST HALF OF THE EAST HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SUBDIVISION, AS PER BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NUMBER 4125909, RECORDS OF SAID COUNTY OF ISLAND, STATE OF WASHINGTON.

PARCEL 4

THE EAST 666.97 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON;

TOGETHER WITH THAT PORTION OF THE FOLLOWING DESCRIBED PARCEL LYING SOUTH OF THE CERTAIN FENCE LINE AS IT WAS ESTABLISHED IN ISLAND COUNTY SUPERIOR COURT CAUSE NO. SC-14966:

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, ISLAND COUNTY, WASHINGTON;

EXCEPT THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID SUBDIVISION, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE WEST ALONG THE NORTH LINE OF SAID SOUTH HALF, 250 FEET; THENCE SOUTH

135 FEET; THENCE EAST 250 FEET; THENCE NORTH 135 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPT THAT PORTION OF SAID SUBDIVISION LYING EAST OF THE STATE ROUTE 20 RIGHT-OF-WAY, AS PER PLAT OF EAGLE CREST, DIVISION 1, RECORDED UNDER AUDITOR'S FILE NUMBER 93005106, AND PER PLAT OF EAGLE CREST, DIVISION 2, RECORDED UNDER AUDITOR'S FILE NUMBER 94011633, RECORDS OF ISLAND COUNTY WASHINGTON.

PARCEL 5

THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTH HALF OF SAID SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER; THENCE WEST, ALONG THE NORTH LINE OF SAID SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER, 250 FEET; THENCE SOUTH 135 FEET; THENCE EAST 250 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER; THENCE NORTH 135 FEET TO THE POINT OF BEGINNING.

PARCEL 6

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON;

EXCEPT THAT PORTION LYING SOUTH OF THE CERTAIN FENCE LINE AS IT WAS ESTABLISHED IN ISLAND COUNTY SUPERIOR COURT CASE NUMBER SC-14966;

PARCEL 7

THE EAST HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON, ALSO KNOWN AS PARCEL "A", OF SHORT PLAT 76/55, FILED UNDER AUDITOR'S FILE NUMBER 301894, RECORDS OF ISLAND COUNTY, STATE OF WASHINGTON;

PARCEL 8

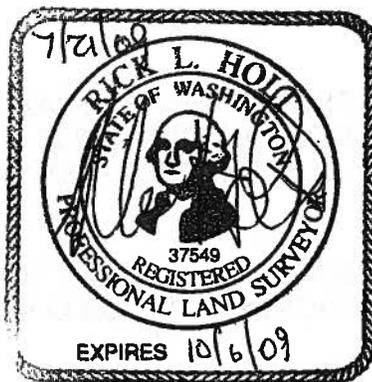
THE WEST HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON, ALSO KNOWN AS PARCEL "B", OF

SHORT PLAT 76/55, FILED UNDER AUDITOR'S FILE NUMBER 301894,
RECORDS OF ISLAND COUNTY, STATE OF WASHINGTON.

PARCEL 11

THAT PORTION OF GOVERNMENT LOT 2 IN SECTION 10, TOWNSHIP 32
NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, LYING WEST OF TRACTS
A AND B, AS PER PLAT OF EAGLE CREST, DIVISION 1, RECORDED UNDER
AUDITOR'S FILE NUMBER 93005106, TOGETHER WITH THAT PORTION OF
SAID GOVERNMENT LOT 2, LYING WEST OF TRACT D, AS PER PLAT OF
EAGLE CREST, DIVISION 2, RECORDED UNDER AUDITOR'S FILE NUMBER
94011633, RECORDS OF ISLAND COUNTY WASHINGTON.

Total area for said Parcels 3 through 8, and Parcel 11, is 41.251 acres.



ORDINANCE NO. _____

AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY AND STATE RIGHT-OF-WAY TO THE CITY OF OAK HARBOR AND ASSIGNING ZONING FOR THE ANNEXED PROPERTY CONSISTENT WITH THE OAK HARBOR COMPREHENSIVE PLAN

WHEREAS, a property owner filed a petition on April 23, 2009 with the City of Oak Harbor requesting the annexation of real property within the Oak Harbor Urban Growth Area and contiguous to the municipal boundary of the City of Oak Harbor, Island County, Washington, pursuant to RCW 35A.14.120 now in effect; and

WHEREAS, the Island County Auditor determined on July 27, 2009 that the petition is sufficient as required by RCW 35A.01.040; and

WHEREAS, the City Council did set September 1, 2009 as the date for public hearing and require that notice of the hearing be published in one or more issues of the City's official newspaper and that notice shall also be posted in three public places within the territory proposed for annexation, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the; and

WHEREAS, said notice of the public hearing was published in the August 22, 2009 edition of the Whidbey News Times; and

WHEREAS, notice was also posted in three public places within the territory proposed for annexation on _____; and

WHEREAS, a public hearing was held before the City Council of Oak Harbor on September 1, 2009; and

WHEREAS, the City Council of the City of Oak Harbor, following due deliberation and careful consideration of the issues germane to the annexation petition, finds that the proposal is consistent with state and local laws pertaining to the annexation of property to the City of Oak Harbor and with the Urban Growth Area goals and policies in the Oak Harbor Comprehensive Plan;

NOW THEREFORE, the City Council of the City of Oak Harbor do ORDAIN as follows:

Section 1. That the following described property, situated in the County of Island, State of Washington and contiguous to the City of Oak Harbor, is hereby annexed to and incorporated into the City of Oak Harbor, Washington:

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EXHIBIT 4

Tracts of land lying within the South ½ of the Northwest ¼ and within the South ½ of the Northeast ¼ of Section 10, Township 32 North, Range 1 East of the Willamette Meridian Parcels within the South ½ of the Northwest ¼ have the following Parcel Numbers:

R13210-298-1650, R13210-298-2300, R13210-324-2530, R13210-364-2330, R13210-364-1900 and R13210-364-1730. The exterior perimeter boundary of this Land Annexation is further described as follows:

LEGAL DESCRIPTION FOR THE
ANNEXATION OF LAND, INCLUDING
ADJACENT ROAD RIGHTS OF WAY, INTO
THE CITY OF OAK HARBOR,
ISLAND COUNTY, WASHINGTON

THOSE PORTIONS OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON, COLLECTIVELY DESCRIBED HEREINAFTER AS PARCELS 3 THROUGH 8, AND THAT PORTION OF GOVERNMENT LOT 2 IN SAID SECTION 10, HEREINAFTER DESCRIBED AS PARCEL 11:

PARCEL 3

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN.

ALSO THE EAST HALF OF THE EAST HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SUBDIVISION, AS PER BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NUMBER 4125909, RECORDS OF SAID COUNTY OF ISLAND, STATE OF WASHINGTON.

PARCEL 4

THE EAST 666.97 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON;

TOGETHER WITH THAT PORTION OF THE FOLLOWING DESCRIBED PARCEL LYING SOUTH OF THE CERTAIN FENCE LINE AS IT WAS ESTABLISHED IN ISLAND COUNTY SUPERIOR COURT CAUSE NO. SC-I4966:

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, ISLAND COUNTY, WASHINGTON;

EXCEPT THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST

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QUARTER OF SAID SUBDIVISION, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE WEST ALONG THE NORTH LINE OF SAID SOUTH HALF, 250 FEET; THENCE SOUTH 135 FEET; THENCE EAST 250 FEET; THENCE NORTH 135 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPT THAT PORTION OF SAID SUBDIVISION LYING EAST OF THE STATE ROUTE 20 RIGHT-OF-WAY, AS PER PLAT OF EAGLE CREST, DIVISION 1, RECORDED UNDER AUDITOR'S FILE NUMBER 93005106, AND PER PLAT OF EAGLE CREST, DIVISION 2, RECORDED UNDER AUDITOR'S FILE NUMBER 94011633, RECORDS OF ISLAND COUNTY WASHINGTON.

PARCEL 5

THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTH HALF OF SAID SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER; THENCE WEST, ALONG THE NORTH LINE OF SAID SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER, 250 FEET; THENCE SOUTH 135 FEET; THENCE EAST 250 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER; THENCE NORTH 135 FEET TO THE POINT OF BEGINNING.

PARCEL 6

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON;

EXCEPT THAT PORTION LYING SOUTH OF THE CERTAIN FENCE LINE AS IT WAS ESTABLISHED IN ISLAND COUNTY SUPERIOR COURT CASE NUMBER SC-I4966;

PARCEL 7

THE EAST HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON, ALSO KNOWN AS PARCEL "A", OF SHORT PLAT 76/55, FILED UNDER AUDITOR'S FILE NUMBER 301894, RECORDS OF ISLAND COUNTY, STATE OF WASHINGTON;

PARCEL 8

THE WEST HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 10,

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TOWNSHIP 32 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, COUNTY OF ISLAND, STATE OF WASHINGTON, ALSO KNOWN AS PARCEL "B", OF SHORT PLAT 76/55, FILED UNDER AUDITOR'S FILE NUMBER 301894, RECORDS OF ISLAND COUNTY, STATE OF WASHINGTON.

PARCEL 11

THAT PORTION OF GOVERNMENT LOT 2 IN SECTION 10, TOWNSHIP 32 NORTH, RANGE I EAST, WILLAMETTE MERIDIAN, LYING WEST OF TRACTS A AND B, AS PER PLAT OF EAGLE CREST, DIVISION 1, RECORDED UNDER AUDITOR'S FILE NUMBER 93005106, TOGETHER WITH THAT PORTION OF SAID GOVERNMENT LOT 2, LYING WEST OF TRACT D, AS PER PLAT OF EAGLE CREST, DIVISION 2, RECORDED UNDER AUDITOR'S FILE NUMBER 94011633, RECORDS OF ISLAND COUNTY WASHINGTON.

Situated in Island County, Washington

Total area for said Parcels 3 through 8, and Parcel 11, is 41.251 acres.

Section 2. An annexation agreement will be entered into by the City and Haga, LLC., Brian Gentry, Manager and Homeplace at Burlington, LLC., Kendra Decker, Manager (owners of parcel R13210-298-1650, R13210-298-2300, R13210-324-2530, R13210-364-2330, R13210-364-1900 and R13210-364-1730). This agreement shall be recorded with the Island County Auditor and shall run with the land.

Section 3. All said real property in the annexed area described in Section 1 shall be assessed and taxed at the same rate and on the same basis as other property in the City of Oak Harbor is assessed and taxed, assume existing City indebtedness and be subject to the comprehensive plan as presently adopted or as hereafter amended.

Section 4. The annexed area described in Section 1 is hereby assigned zoning of R-1, Single Family Residential in accordance with the Oak Harbor Comprehensive Plan Land Use Map. The zoning provisions of the Oak Harbor Municipal Code shall be in full force and effect in the annexed area in accordance with this assignment.

Section 5. This ordinance and the annexation provided herein, shall be in full force and effect five days after its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor this 1st day of September, 2009.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

Published: _____, 2009

GOVERNMENTAL SERVICES STANDING COMMITTEE

Regular Meeting
City Hall Conference Room
April 13, 2009

ATTENDANCE

The meeting began at 7:00 a.m. with the following members in attendance: Rick Almberg, Bob Sevens and Jim Palmer. Jim Campbell excused absence.

Staff present: Mayor Slowik, City Administrator, Paul Schmidt; Development Services Director, Steve Powers; Harbor Master, Mack Funk and Senior Services Director, Mike McIntire.

PUBLIC COMMENT - None

DEVELOPMENT SERVICES

• ***Gentry Annexation***

Mr. Powers provided an aerial photograph of the annexation area and reported:

- Landed Gentry filed for annexation for properties in the southern portion of the Urban Growth Area (UGA) mid 2007. Since then the annexation area has been reduced because some of the property owners have changed their minds about participating in the annexation.
- The property is designated Low-Density Residential and will be assigned R-1 Single-Family Residential zoning upon annexation. R-1 has a density range of 3-6 dwelling units per acre.
- At the time the Council considered the original annexation request in 2007, Council directed staff to prepare an annexation agreement at the same time Council authorized Mr. Gentry to circulate the petition for annexation. Mr. Powers provided copies of the draft annexation agreement.

Mr. Powers touched upon some of the conditions contained in the annexation agreement as follow:

- Time limit for performance is 7 years
- The City may elect to pay for a regional storm water study and the property owner will pay their proportionate share.
- The owners shall provide for the extension of SW Eagle Vista Drive westerly from its intersection with SR-20 to the western boundary of the annexation property.
- Owners acknowledge that downstream stormwater facilities are insufficient to meet the needs of additional development. Owners agree to be responsible for all costs associated with on-site and off-site drainage facilities.
- Owners agree that a traffic impact study for the entire annexation property is required and must be submitted prior to or along with the first development application of the property.
- Owners acknowledge that the Parks, Recreation and Open Space Plan designates this area as "Neighborhood Park Target Area, and agrees to dedicate land for a public park within the annexation area.

Governmental Services Standing Committee

April 13, 2009

Page 1 of 5

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EXHIBIT 5

- Owners may seek reimbursement for pro rata share of the cost of construction of any of the agreed improvements from subsequent owners of the property, or from other property owners benefiting from the improvements.

Mr. Powers also noted that the affordable housing project is within the red boundary depicted on the aerial map.

Committee Discussion

- What is the reason for the unusual shape of the affordable housing area boundary?
Answer: The boundary cannot encompass the DOT stormwater detention pond or the property that is not owned by Gentry.
- How is the owners/City proportionate share of improvements calculated? Answer: The City's goal is to fund both the drainage study and transportation study. The City's proportionate share is based on acreage versus the total annexation area acreage. For the studies, Gentry's is based on the property that he controls.
- Can the easement issue for the drainage corridor be resolved before entering into the annexation agreement? Answer: The easement issue cannot be resolved first because the timeline is not our own making. There are parallel projects occurring at the same time. One is the affordable housing project which is being driven by the application process for the affordable housing project and the other is the annexation. If there is State funding there will be an affordable housing project and the City will be acting as a developer and will have to deal with the easement issue if it still exists. If there is no State funding for the affordable housing project the City will be the agency that is just considering the annexation.
- There was some discussion of the drainage study area.
- Do other property owners within the annexation area know about the annexation?
Answer: They were aware but there has been no recent communication with them.

- **Affordable Housing Project**

Mr. Powers reported:

- January 20th Council approved a resolution authorizing the submittal of the Stage I application to the State (CTED Housing Trust Fund Grant).
- Mid February CTED invited the City to submit the Stage II application.
- March 3rd the Council authorized submittal of the Stage II application and to provide any other information and application materials required.
- Staff has been working with HASCO (the Snohomish County Housing Authority) and HomeSight (the non-profit developer/builder that HASCO has worked with in the past) to look at possible sites for the project and enter into discussions with the land owners. There were three properties pursued initially but the Gentry property proved to be the most suitable.
- A civil engineer and an environmental specialist have done preliminary work for a phase one environmental. An appraisal and market study has been done and a surveyor has been tasked with creating a legal description of the property. The City has negotiated an option and a purchase and sale agreement. The Council will have to authorize the execution of the purchase and sale agreement. The Mayor had the authority to enter into the option which has attached to it the exhibit the unexecuted purchase and sale agreement. The option runs through the end of the year which should give adequate time to know if the project is State funded or not. If the project is not State funded, the viability of the project is in question.

Committee Discussion

- What is the price? Answer: \$600,000 for 5.5 acres.
 - Does the size of the project justify the infrastructure costs and were other sites that would meet infill and walking community goals of the Comprehensive Plan considered? Answer: Yes. The goal was to find 5 acres to accommodate 40 units. The only site in town that fit the criteria was the site north of NE 7th and east of Oak Harbor Road but that property owner was only interested in leasing the property. As for the infrastructure costs, the City is the entity that should bear the cost of both the study and the improvements for the larger regional picture since it is difficult for smaller projects to bear the cost of both the study and the improvements which ends up being a piecemeal solution and misses the larger regional picture.
 - Has a project budget been prepared? Answer: A project budget was prepared by HomeSight and a copy will be provided to the committee members. The City's contribution to the project will be the proceeds from the surplus of the City property on Goldie Road and the fee waivers already built into our Code for affordable housing projects which add up to approximately, \$600,000.
 - There was discussion about mechanisms to recoup costs for transportation improvements.
 - There was some concern that the City would have to be the managing agency for the housing project. Mayor Slowik indicated that once the project is complete either Island County Housing Authority or Saratoga Housing Authority would take over as the managing authority. Once the project has State funding, the Council may ask for a memorandum of understanding with one of the housing authorities.
- ***Manufactured Home Code Amendments***

Mr. Powers provided the draft agenda bill, proposed code changes and reported that the amendments can be summarized as follows:

 - Broadening the applicability of the manufactured home park overlay district to all residential districts.
 - Defining what constitutes a 'qualified affordable housing project.'
 - Providing density bonuses for a qualified affordable housing project.
 - Clarifying and simplifying the plan submittal and approval process.
 - Establishing consistency between the different sections of the Municipal Code that pertain to manufactured homes.

Mr. Powers noted that the Council will be asked to adopt the amendments on interim basis while the Planning Commission does their review of the amendments and then it will come back to the Council for a final decision. The interim basis is for the sake of the affordable housing project and so that the CTED review period can be run concurrently with the Planning Commission process.

Committee Discussion

- Does the City have to repay CTED? Answer: The CTED Grant is a grant that has no pay back. There are some long term covenants that will run with the property such as a 40 – 50 year time that it has to be an affordable housing project as well as some contractual strings.
- How much is the City requesting? Answer: The City is requesting \$3.5 million grant from CTED.

MARINA – General Update

Mr. Funk reported:

- Seasonal employees are being hired for the summer.
- One full-time staff position is being advertised. This is an authorized position.
- The Assistant Harbor Master will be leaving his position in late June or July.
- Salmon will be released end of May or beginning of June
- Sailing club continues to prosper. Adult sailing classes will begin later this month. An improved agreement for Youth Sailing is being worked on.

Committee Discussion

- Assistant Harbor Master applicants should be chosen from of internal and external applicants to ensure a wide pool of applicants.
- Committee asked for a Marina Redevelopment Project update. This item will be on the May 11 agenda.
- Big Brothers and Sisters 18 month review of gaps in youth programs in Oak Harbor region revealed that Youth Sailing program was not included.

SENIOR SERVICES – General Update

Mr. McIntyre reported:

- National Conference on aging – of note was that seniors are working longer. Oak Harbor is on target for ideas as far as what will be needed in the future locally. Adult Day Care will be as common place as what child care is today and maybe more.
- \$7,500 was spent in the last month for water heater and door replacement.
- Bus transition went well.
- The North Whidbey Caregivers Cove continues as a Washington State non-profit and will submit paperwork for 501C3 status this week.
- Computerization of the front desk has been determined to be too expensive to implement. There are enough Senior volunteers to continue operating manually.
- The Foundation will now subsidize low income Seniors to take exercise courses at Skagit Valley College.
- "The Bridge" will be out on April 9 as part of the Whidbey News-Times.
- The person who has run the foot clinic is no longer able to continue the program so they are working on establishing some kind of capability for low income seniors to receive foot care.

Committee Discussion

- What is the cost for computerizing the front desk? \$6,000 for the first year not counting the computer and is \$3,000 for every year thereafter for program, support and data.

ADMINISTRATION

Mr. Schmidt reported:

• ***Youth Employment Program***

During the Mayor's trip to Washington DC the Mayor spoke to Senator Murray who suggested the City watch for summer youth program monies coming from the American Recovery and Investment Act. The State Department of Employment has verified that the funds will be coming forth. The City has submitted job descriptions for the State Department of Employment to advertise minimum wage jobs occurring May through September. The City has submitted for seventeen positions.

Committee Discussion

- The goal is to add 17 jobs and not to offset jobs current jobs. Another goal of the program is to get youth into the job market so that they can see a career path and develop their skills so that they may have experience and have an opportunity to continue.
- The youth involved in the current youth internship program in the engineering department should be given the opportunity to participate in the program.

NEXT MEETING: May 11, 2009

**MEETING ADJOURNED
8:30 a.m.**

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

Bill No. 7
Date: September 1, 2009
Subject: Public Hearing – Ordinance to
Amend 2009 – 2010 Biennial Budget

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

SUMMARY STATEMENT:

The Finance Department has completed their final review of the budgetary requirements for fiscal year 2009. The purpose of this review was to re-examine the current cost of operations, special projects, labor costs, projects needing expenditure authority carried over from 2008, and other city functions that may require a budget amendment due to changes that may have occurred since the 2009-2010 budget was originally projected in the fall of 2008.

In important step in preparing the 2009 - 2010 biennial budget was calculating an estimate of financial resources that were projected to be available to be appropriated on January 1, 2009. The projection was first accomplished by measuring the amount of financial resources on hand at or near the end of August 2008 when the new budget was being prepared. Next, an amount was added that represented revenues expected to be received, and an amount was subtracted that represented expenditures expected to be paid - both through the remaining months of 2008. The resulting figure represented a close approximation of available resources expected to be on hand as of December 31, 2008 and subsequently carried over to January 1, 2009.

As can be expected, 2008 final ACTUAL revenues and final ACTUAL expenditures were slightly different than the projection made in August of 2008. This typically results from the deferment of projects, variations in staffing levels, and planned purchases, or may be from other events such as delaying a grant application or other financing options until 2009. Accordingly, this budget amendment is required to amend the 2009 budget to change the Beginning Fund Balance figures from those estimated in August of 2008 to the actual balances on hand at January 1, 2009.

In addition, there are five operational items that require a mid-biennial budget amendment. These items are as follows:

- 1) The 2008 Fire Bond Fund #230 requires an increase in budget authority of \$1.00. The actual bond payment for 2009 is \$51,710.78. The adopted budget included a provision for payment of \$51,710.00. The funding source for this increase will come from the Fire Department.
- 2) The Fire Department has obtained a State Homeland Security Grant for 2009-2010 after the current budget was adopted. Accordingly, the General Fund #001 requires an increase

in budget authority to recognize receipt and expenditure of the grant funds. The \$27,000 grant will be used to purchase equipment to be used in the Emergency Services Center at the fire station. The funding source will be the proceeds of the grant to be received on a reimbursement basis.

- 3) The Street Division of Public Works has obtained a \$34,802 Traffic Safety Commission Grant to be used in flashing school zone lights – the purchase of which was not included in the original adopted budget. Accordingly, the Street Fund #001 requires an increase in appropriation authority to receive and expend the grant proceeds. The funding source will be the proceeds of the grant received on a reimbursement basis.
- 4) The Parks Department will be completing two projects during 2009 that will require an increase of \$35,850 in budget authority that was not included in the 2009 budget. The first project includes \$20,850 of improvements to the Scenic Heights Trailhead. The second project includes \$15,000 of improvements at Fort Nugent Park. A portion of the funding for these two projects qualifies for the usage neighborhood park impact fees. Accordingly, an operating transfer from the Neighborhood Parks Fund #125 to the Community parks Fund #126 is required. This requires an amendment to Fund #125 to increase appropriation authority for the expenditure of funds for the operating transfer, and an equal increase in expenditure authority in Fund #126 to pay for the improvements.
- 5) During 2009, the Windjammer Boardwalk project has been completed, with the costs of the project being accrued and paid out of the Community Parks Fund #126. As planned, a portion of the funding for the boardwalk was designated to come from \$70,000 of the proceeds from the vacated Izett Street right away which are held in the General Fund #001. Accordingly, an increase of budget authority in the amount of \$70,000 is required in the General Fund #001 for the operating transfer of the funds to Fund #126, with a corresponding and equal increase in budget authority in the Community Parks Fund #126 to receive and reimburse the fund for its costs.

This review has shown that one amendment is required to accomplish all of these budget changes. A detailed listing of these recommended changes is attached to this agenda bill. Per OHMC 1.04.020, ordinances required for budget amendments do not require introduction during the previous Council meeting in order to be considered.

AUTHORIZATION

Under RCW 35A.34 .040, all code cities are authorized to establish by ordinance a two-year fiscal biennium budget. Under RCW 35A.34.130, the legislative authority of a city having adopted the provisions of this chapter shall provide by ordinance for a mid-biennial review and modification of the biennial budget. The ordinance shall provide that such review and modification shall occur no sooner than eight months after the start nor later than conclusion of the first year of the fiscal biennium. The budget modification shall be by ordinance approved in the same manner as are other ordinances of the city.

STANDING COMMITTEE REVIEW:

The Finance Standing Committee discussed and reviewed this agenda bill during their August 11, 2009 meeting.

RECOMMENDED ACTION:

1. Hold a Public Hearing
2. Pass Ordinance

ATTACHMENTS:

1. Draft Ordinance
2. Schedule showing comments on changes

MAYOR'S COMMENTS:

410 - Marina	2,591,169
411 - Cumulative Reserve: Water	5,452,403
412 - Cumulative Reserve: Wastewater	4,864,378
413 - Cumulative Reserve: Solid Waste	117,726
414 - Cumulative Reserve: Storm Drainage	337,485
420 - Cumulative Reserve: Marina	25,000
501 - Equipment Repair	933,850
502 - Equipment Replacement	5,900,760
505 - Technology Reserve Fund	445,918
510 - Facilities	1,917,137
	<hr/>
	<u>\$83,529,734</u>

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

Section Three: Effective Date. This ordinance shall take effect five days after publication as provided by law.

Passed by the City Council this 1st day of September, 2009.

Approved by the Mayor this _____ day of September, 2009.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

ORDINANCE NO. _____

AN ORDINANCE TO ADJUST THE 2009-2010 BIENNIAL BUDGET TO APPROPRIATE AND ENCUMBER ADDITIONAL RESOURCES TO RECONCILE 2009 ESTIMATED BEGINNING FUND BALANCES TO ACTUAL RESOURCES ON HAND AS OF JANUARY 1, 2009, AND TO REFLECT ANY INCREASES IN APPROPRIATION AUTHORITY NECESSARY TO MEET OPERATIONAL PROJECTS NOT PREVIOUSLY INCLUDED IN THE 2009-2010 BUDGET.

WHEREAS, due to circumstances not envisioned during the formation of the year 2009-2010 City of Oak Harbor's Biennial Budget, it has become necessary to amend certain portions of the City of Oak Harbor 2009 Budget; and

WHEREAS, the City Council has given proper public notice of the public hearing by posting an advertisement in the Whidbey News Times on August 22, 2009, and has held a public meeting on these adjustments to the 2009 budget; and the City Council, after holding the public hearing, has determined that an amendment to the 2009 City Budget is necessary;

NOW THEREFORE, the City Council of the City of Oak Harbor do hereby ordain as follows:

Section One: That the 2009-2010 budget as presented is hereby adjusted for the budget year 2009 in the appropriation changes set forth below:

Fund	Budget
001 - General Fund	\$17,734,281
002 - General Fund Reserves	1,450,238
101 - Streets	1,982,038
104 - Arterials	3,464,362
105 - Transportation Improvement	911,273
106 - Paths & Trails	14,824
110 - Street Cumulative Reserve	21,063
116 - Civic Improvement Fund	467,007
125 - Neighborhood Parks	258,294
126 - Community Parks	457,193
129 - Senior Center	677,136
201 - Bond Fund: Fire Public Safety	246,800
230 - 2008 Fire Bond	51,711
311 - 1st 1/4% REET	3,060,008
312 - 2nd 1/4% REET	2,529,221
320 - Pier Construction	486,347
325 - Windjammer Park	437,712
401 - Water	9,316,024
402 - Wastewater	10,792,121
403 - Solid Waste	5,223,603
404 - Storm Drainage	1,362,653

City of Oak Harbor
 Mid-Biennial Budget Amendment
 For the budget year ending December 31, 2009

Fund	Adopted Budget		Previous Amendment		Amendment of Beginning Fund Balances		Net Change		Operational Amendments		Current Budget Status	
	2009	2009 Budget Amendment	2009 Adopted	2009 Revised	2008 Fire Bond	State Homeland	Fishing School	Seaside Heights	Windjammer	Amended Budget		
	Adopted Budget	Engineering Move to PW	BRB	BRB	Amendment	Security Grant	Zone Lights	Trailhead	Boardwalk	1-Sep-09		
001 - General Fund	\$14,223,670	\$902,728	\$1,302,943	\$3,813,825	\$1	\$27,000	\$0	\$0	\$70,000	\$17,734,281		
002 - General Fund Reserves	1,443,571	0	1,383,571	1,390,238	0	0	0	0	0	\$1,450,238		
101 - Streets	1,493,436	0	348,436	802,233	0	0	0	0	0	\$1,982,038		
104 - Arterials	3,270,743	0	2,390,743	2,584,362	0	0	34,805	0	0	\$3,464,362		
105 - Transportation Improvement	767,144	0	597,144	741,273	0	0	0	0	0	\$911,273		
106 - Paths & Trails	15,817	0	13,217	12,224	0	0	0	0	0	\$14,824		
110 - Street Cumulative Reserve	99,750	0	96,250	17,563	0	0	0	0	0	\$21,063		
116 - Civic Improvement Fund	445,358	0	270,858	292,507	0	0	0	0	0	\$467,007		
125 - Neighborhood Parks	212,093	0	163,093	173,444	0	0	0	0	0	\$258,294		
128 - Community Parks	361,370	0	238,870	228,843	0	0	0	35,850	0	\$457,193		
129 - Senior Center	647,078	0	221,370	251,428	0	0	0	35,850	0	\$677,136		
201 - Bond Fund: Fire Public Safety	246,800	0	0	0	0	0	0	0	70,000	\$246,800		
230 - 2008 Fire Bond	51,710	0	0	0	1	0	0	0	0	\$51,711		
311 - 1st 1/4% REET	3,030,983	0	2,681,983	2,711,008	0	0	0	0	0	\$3,060,008		
312 - 2nd 1/4% REET	2,522,128	0	2,183,128	2,190,221	0	0	0	0	0	\$2,529,221		
320 - Pier Construction	479,480	0	254,990	261,847	0	0	0	0	0	\$486,347		
325 - Windjammer Park	322,258	0	252,258	367,712	0	0	0	0	0	\$437,712		
401 - Water	8,672,790	0	3,305,546	3,948,780	0	0	0	0	0	\$9,316,024		
402 - Wastewater	12,279,712	0	6,510,208	5,022,617	0	0	0	0	0	\$10,792,121		
403 - Solid Waste	5,041,269	0	1,888,276	2,070,610	0	0	0	0	0	\$5,223,603		
404 - Storm Drainage	1,437,716	0	266,141	191,078	0	0	0	0	0	\$1,362,653		
410 - Marina	2,549,660	0	1,015,434	1,056,943	0	0	0	0	0	\$2,591,169		
411 - Cumulative Reserve: Water	5,530,502	0	5,006,502	4,928,403	0	0	0	0	0	\$5,452,403		
412 - Cumulative Reserve: Wastewater	5,009,940	0	4,607,940	4,462,378	0	0	0	0	0	\$4,864,378		
413 - Cumulative Reserve: Solid Waste	118,465	0	114,465	113,726	0	0	0	0	0	\$117,726		
414 - Cumulative Reserve: Storm Drainage	336,013	0	305,513	306,985	0	0	0	0	0	\$337,485		
420 - Cumulative Reserve: Marina	25,000	0	0	0	0	0	0	0	0	\$25,000		
501 - Equipment Repair	933,850	0	4,000	4,000	0	0	0	0	0	\$933,850		
502 - Equipment Replacement	6,510,170	0	5,588,167	4,978,757	0	0	0	0	0	\$5,900,760		
505 - Technology Reserve Fund	468,167	0	243,997	221,748	0	0	0	0	0	\$445,918		
510 - Facilities	1,132,787	752,485	10,000	41,865	0	0	0	0	0	\$1,917,137		
	\$79,679,439	\$1,655,213	\$41,265,043	\$43,186,618	\$2	\$27,000	\$34,805	\$71,700	\$140,000	\$83,529,734		

[Handwritten signature]

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

Bill No. 8
Date: September 1, 2009
Subject: Waterfront Trail - Maylor Point
Trail Extension Memorandum of
Agreement (MOA)

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



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

PURPOSE

The purpose of this agenda bill is to consider two agreements between the City of Oak Harbor and Navy Region Northwest to allow use of Maylor Point Trail located on the Seaplane Base.

AUTHORITY

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

SUMMARY STATEMENT

The City of Oak Harbor and the Navy have been discussing the options available for opening the trail extending to Maylor Point to the general public. The Waterfront Trail currently extends from Scenic Heights Street to the Oak Harbor Marina. In accordance with the requirements of Navy Region Northwest, this Memorandum of Agreement (MOA) and the associated Right of Entry Agreement is established between the Commander, Navy Region Northwest, and the City of Oak Harbor to define responsibilities and procedures regarding the establishment and maintenance of a trail from Catalina Drive to Maylor Point on the NAS Whidbey Island Seaplane Base. Approval of the MOA will allow for both the general public and Navy personnel to use the trail as it continues out to Maylor Point.

The 2001 Parks and Recreation Plan, the public opinion survey conducted in 2007, and the 2009 Parks, Recreation and Open Space Plan express the community's desire to establish the Maylor Point Trail which would extend the Waterfront Trail from the Scenic Heights Trailhead site. Approval of the MOA and the right of entry agreements is consistent with Oak Harbor Comprehensive Parks Plan recently approved by the City Council.

It is anticipated that City staff will do the minor capital improvements referred to in the MOA. However, as the project was not included in the 2009 budget additional funding, approximately

\$15,000 will be needed. Funding for the initial improvements will come from Fund 301- Paths and Trails. Fund 301 receives a small portion of gas tax revenues and has been used previously for improvements along other sections of the Waterfront Trail.

In addition to the capital costs, funding for the operation and maintenance of the trail is necessary. The Parks division estimates maintenance needs will cost approximately \$5,000 per year to maintain the surfacing, collect and dispose of the trash and perform the routine maintenance described in the MOA. Funding for this level of maintenance is not currently in the Parks division budget. It is expected that the additional funding for maintenance will come from the General Fund.

The necessary budget amendment to the Parks division for both the capital improvements and the maintenance costs will be included with the mid-year budget amendments if the MOA is approved.

STANDING COMMITTEE REPORT

This item was presented to the Public Works Standing Committee on August 6, 2009.

RECOMMENDED ACTION

It is recommended that the Council consider a motion to, authorize the Mayor to sign the Trail Memorandum of Agreement and Right of Entry Agreement with the US Navy for the Maylor Point Trail.

ATTACHMENTS

Draft Memorandum of Agreement
Draft Right of Entry Agreement

MAYOR'S COMMENTS

DEPARTMENT OF THE NAVY
Commander, Navy Region Northwest
1100 Hunley Rd., Silverdale, WA 98315-1100

City of Oak Harbor
865 SE Barrington Drive, Oak Harbor, WA 98277

COMNAVREG NW
5740
Ser N83/
(Date)

CITY OF OAK HARBOR
5740
Ser
(Date)

MEMORANDUM OF AGREEMENT
BETWEEN
COMMANDER, NAVY REGION NORTHWEST
AND
CITY OF OAK HARBOR

FOR SUPPORT PROVIDED BY

NAVAL AIR STATION WHIDBEY ISLAND
3730 North Charles Porter Avenue, Oak Harbor WA 98278-5000

Subj: MEMORANDUM OF AGREEMENT FOR THE ESTABLISHMENT,
MAINTENANCE AND USE OF MAYLOR POINT TRAIL

Ref: (a) DoD Instruction 1000.15
(b) DoD Instruction 4000.19
(c) DOD Instruction 4165.70
(d) CNICINST 4000.1
(e) 31 U.S.C. 1535
(f) DOD Financial Management Regulation Vol 11
(g) DoN Financial Management Policy Manual, NAVSO P-1000

Encl: (1) Right of Entry Agreement
(2) Maylor Point Trail Map

1. Purpose. To establish a Memorandum of Agreement (MOA), between Commander, Navy Region Northwest (COMNAVREG NW) on behalf of Naval Air Station (NAS) Whidbey Island and the City of Oak Harbor, hereinafter referred to as 'City' in accordance with references (a) through (g), which identify the roles and responsibilities for the establishment, maintenance and use of a trail from Catalina Drive to Maylor Point on NAS Whidbey Island.

N68742-20090323-0111

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SUBJ: MEMORANDUM OF AGREEMENT FOR THE ESTABLISHMENT, DEVELOPMENT
AND SHARED USE OF MAYLOR POINT TRAIL

2. Background. The City's 2001 Parks and Recreation Plan, the public opinion survey conducted in 2007 and the proposed 2009 Parks, Recreation and Open Space Plan express the community's desire to establish the Maylor Point Trail which would extend the Waterfront Trail from Scenic Heights Trailhead site. NAS Whidbey Island is supportive of public access provided adequate control and safety is established. This trail would be beneficial for Navy sailors, retirees and family members, which are projected to be about 60% of the trail users.

3. Scope.

(a) This MOA applies specifically to the development of a non-vehicular multimodal trail connection to Maylor Point from the terminus of the existing Waterfront Trail at the City's Harbor Marina, with positioning of the trail along the water's edge (shoreline) where possible.

(b) Only minimum improvements necessary to connect the existing trails will be performed. All contemplated improvements must limit impact on the surrounding area.

(c) The trail will be opened daylight hours (dawn to dusk) with access through the Catalina Drive perimeter gate.

(d) Dogs may be brought on the trail but must be leashed at all times.

(e) Memorial benches, markers, flag poles or other remembrance items are not authorized along the trail.

4. Period of Performance. This MOA shall be in effect for two (2) years from date of last signature.

5. Responsibilities.

a. NAS Whidbey Island will:

(1) Coordinate with the City on the design and engineering of the trail connection and necessary improvements for trail development and obtain site approval and permits as required upon request by the Oak Harbor Parks Department. Final approval authority on all contemplated improvements or

SUBJ: MEMORANDUM OF AGREEMENT FOR THE ESTABLISHMENT, DEVELOPMENT
AND SHARED USE OF MAYLOR POINT TRAIL

construction rests with the NAS Whidbey Island Public Works
Department (PWD).

- (2) Identify boundaries and extent of trail project.
- (3) Grant access to Oak Harbor Parks Department for authorized improvements and maintenance as authorized under this MOA and enclosure (1).
- (4) Coordinate with the City on lettering for signs providing information on trail use in accordance with Navy sign requirements.
- (5) Provide emergency response (fire, emergency medical services, and law enforcement) as requested or notified through the Regional Dispatch Center.
- (6) Remove existing Navy-owned debris along the section of Catalina Drive on base and adjacent perimeter security fence.
- (7) Grant public access to the area specifically identified and marked for the trail and shown in enclosure (2). Assumption of access is granted unless otherwise notified by NAS Whidbey Island.
- (8) In the event of heightened security measures, emergency response or other circumstances deemed necessary by NAS Whidbey Island Commanding Officer, trail access may be closed without prior notification. NAS Whidbey Island Security Department will notify the Oak Harbor Parks Department when a closure event occurs and has complete discretion on when and if trail access is re-opened.

b. City of Oak Harbor will:

- (1) Coordinate with NAS Whidbey Island PWD to obtain necessary site approval and permits.
- (2) Assume financial responsibilities for trail improvements and trail surface maintenance.
- (3) Purchase, install and maintain removable bollards at the trail head to restrict vehicular access.

SUBJ: MEMORANDUM OF AGREEMENT FOR THE ESTABLISHMENT, DEVELOPMENT
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(4) Install road striping on Catalina Drive to designate the location of the walking path crossing the roadway.

(5) Grade and install gravel in designated path area from Catalina Drive to the trail head.

(6) Coordinate with NAS Whidbey Island PWD on lettering for signs to provide information on trail use in accordance with Navy sign requirements.

(7) Maintain Navy approved City installed signs at the connection and along the trails.

(8) Provide normal maintenance and repair of the gravel and gravel road sections of the trail.

(9) Provide a minimum of three (3) trash receptacles and weekly trash removal for the trail area with increased trash removal frequency as needed, i.e., for special events or other high use periods.

(10) Provide emergency response (fire, emergency medical services, and law enforcement) as requested or notified through the Island County Communications Center. .

6. Other Provisions.

a. The parties agree that nothing herein will be construed as obligating either party to violate existing laws or regulations.

b. All services provided by the parties are subject to the constraints of available resources (personnel, funds, and equipment).

c. This MOA does not create, limit, or modify existing legislative jurisdiction vested in the State of Washington or the U.S. government. Nothing contained herein creates or extends any right, privilege, or benefit to any person or entity.

d. The City expressly agrees to indemnify, hold harmless, and defend, at its own cost, the Government of the United

SUBJ: MEMORANDUM OF AGREEMENT FOR THE ESTABLISHMENT, DEVELOPMENT
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States, its officers and employees acting within the scope of their employment, its agencies, and instrumentalities against any and all suits, claims, actions, costs, or demands (including, without limitations, suits, actions, claims, costs, or demands for death, personal injury, and or property damage) to which the U.S. Government, its officers and employees, its agencies, and instrumentalities might be subjected and/or held liable for, arising or resulting from or attributable to the acts or omissions of the City, its guests and invitees, contractors, agents, officers and/or employees while upon or within the aforementioned areas, or while undertaking action required by or related to this MOA.

7. Points of Contact:

a. NAS Whidbey Island Public Works Officer (PWO):

CAPT Brad Spangler
(360) 257-3348 email: bradley.spangler@navy.mil

b. City of Oak Harbor Public Works Director:

Mr. Eric Johnston, City Engineer
(360) 279-4522, e-mail: eric.johnston@oakharbor.org

c. COMNAVREG NW: Support Agreement Manager:

Ms Ellen Williams, Support Agreement Manager
(360) 396-1935, email: ellen.m.williams@navy.mil.

d. City of Oak Harbor: (To be provided)

8. Review, Revision, Modification or Cancellation:

a. Each party shall review this agreement on an annual basis to evaluate its effectiveness and determine if any modifications are needed.

b. Requests by either party to revise or modify this agreement will be forwarded by written notice to the other party in a timely manner, so that both parties agree to the proposed change at least 180 days prior to its effective date, unless mutually agreeable.

SUBJ: MEMORANDUM OF AGREEMENT FOR THE ESTABLISHMENT, DEVELOPMENT
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c. Notification of intention by either party to terminate the agreement will be forwarded by written notice to the party at least 30 days in advance of the proposed termination date, unless mutually agreeable. Termination by either party shall not provide a basis for any claim by the City of Oak Harbor against the U.S. Government, the Department of the Navy or COMNAVREG NW.

9. Effective Date. This MOA is effective upon signature of both parties.

JAMES SLOWIK
Mayor
City of Oak Harbor

A.P. VERHOFSTADT, P.E.
Executive Director
Commander, Navy Region Northwest

DATE

DATE



214.S

Exhibit A

RIGHT OF ENTRY AGREEMENT

N44255-09-RP-00004

The United States of America, hereinafter called the Government, acting through the Department of the Navy, in consideration of the assistance and benefits to be derived, hereby grants to the City of Oak Harbor, its employees, contractors and designated representatives, hereinafter called the City, a right of entry with the following terms and conditions:

1. The Government grants to the City a right to enter upon the lands hereinafter described, at any time within a period two (2) years from the date of execution of this instrument for the establishment, maintenance, and use of a non-vehicular multimodal trail connection from the terminus of the existing Waterfront Trail at the City's Marina and continuing to Maylor Point on Naval Air Station (NAS) Whidbey Island.
2. Improvements and normal maintenance and repair will endeavor to limit impact on the areas surrounding the trail. Points of contact to coordinate work are: the Public Works Officer, Naval Facilities Engineering Command Public Works Department, NAS Whidbey Island; and the Public Works Director, City of Oak Harbor.
3. Nothing herein obligates either party to violate existing laws or regulations. Appropriate environmental conditions and restrictions apply. All services provided by the parties are subject to the constraints of available appropriations and resources.
4. The UNITED STATES shall not be responsible for, and the City shall hold the Government harmless from claims for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the said premises, except where such damages or injuries are due to the fault or negligence of the Government. The liability, if any, of the Government shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. 2671-2680).
5. The area affected by the right of entry begins at the terminus of the existing Waterfront Trail at the City of Oak Harbor Marina and extends to Maylor Point, as depicted on Exhibit A, attached and made a part hereof.
6. For additional details regarding specific actions related to this Right of Entry, please refer to Memorandum of Agreement for the Development and Shared Use of Maylor Point Trail N68742-20090323-0111 between Commander, Navy Region Northwest and the City of Oak Harbor.

7. Execution by both parties:

City of Oak Harbor

UNITED STATES OF AMERICA

By: _____
(Signature)

By: _____
HOPE D. LEWIS
Real Estate Contracting Officer

Date: _____

Date: _____

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

Bill No. 9
Date: September 1, 2009
Subject: Marina Phase I Redevelopment
Construction Administration &
Services Contract

FROM: Steve Powers *SP*
Development Services Dept. Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill recommends approval of a contract amendment with Reid Middleton in the amount of \$88,518.00 for the provision of construction administration services for the Marina Redevelopment Phase I.

AUTHORITY

The City has authority under RCW 35A.11.020 to enter into contracts for municipal operations such as marina projects.

SUMMARY STATEMENT

The Council approved a design engineering contract with Reid Middleton in the amount of \$191,600.00 on October 8, 2008 for the Oak Harbor Marina Redevelopment Project Phase I (Attachment A). This contract resulted in bid plans and specifications for Phase I, plus dredging analysis. Since that time an administrative amendment to the contract was approved on March 26, 2009 by staff in the amount of \$12,300.00 (for a revised, total contract amount of \$203,900.00). The amendment added utility locate and survey services and mitigation review and analysis to the contract. A second administrative amendment extending the contract timeframe, but not changing the total compensation, was approved on August 25, 2009.

On August 5, 2009 the City Council awarded the construction contract for Phase I. The construction contract includes the replacement of the main gangway and landing floats, upgrades to the potable water and fire flow water lines, upgrades to the electrical system and the complete re-wiring of C Dock. As part of its presentation on that date, staff informed the Council that they intended to return with a construction administration services contract at the September 1st meeting.

City staff has developed a scope of work for these services with Reid Middleton. The proposed services will be provided as an amendment to their existing contract. Reid Middleton will

provide both project management and constructions services. Their services are detailed in the attached scope of work (Attachment B). The proposed amendment is on a 'time plus expense' basis, with a not to exceed amount of \$88,518.00. This would bring the new, total contract amount to \$292,418.00.

Funding: The funding for this contract amendment is available in the Marina cash reserves.

Justification: The Phase I work is specialized, including in-water work (floats and pile driving) and a substantial amount of electrical work. The City Engineering staff is presently operating with a very high workload. The combination of specialized work, plus very limited City staff time, justifies the need to retain outside assistance. Retaining the design engineer for these services provides for a smooth transition between project design and construction.

STANDING COMMITTEE REPORT

The proposed contract amendment was presented to the Government Services Committee on August 10, 2009.

RECOMMENDED ACTION

Approve Contract Amendment 4 with Reid Middleton for construction administration services for the Marina Phase I redevelopment project in an amount not to exceed \$88,518.00, revising the total contract amount to \$292,418.00.

ATTACHMENTS

Attachment A - Contract

Attachment B – Amendment 4 Scope of work

MAYOR'S COMMENTS

COPY



**CITY OF OAK HARBOR
CONSULTANT AGREEMENT
WITH Reid Middleton**

PROJECT TITLE: Marina Dredging + Infrastructure
PROJECT COMPLETION DATE: April 30, 2009 Upgrade
MAXIMUM AMOUNT PAYABLE: \$ 191,600

Z18

ATTACHMENT A

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**CONSULTANT CONTRACT
HEADING**

I. INSTRUCTIONS

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

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

II. CONSULTANT INFORMATION

Name: Reid Middleton, Inc.
Address: 728 - 134th Street SW, Suite 200 Everett WA 98204
Telephone/Fax No.: 425.741.3800 Fax 425.741.3900
Federal ID No.: 91-0714387
Do you require a 1099 for the IRS? No

III. PROJECT INFORMATION

Project Title: Marina Dredging and Infrastructure Upgrade
Project Description: See Exhibit B - Scope of Services

Project Completion Date: April 30, 2009
Maximum Amount Payable: \$ 191,600
Progress Payments: Monthly

IV. ADDITIONAL DOCUMENTS ADDED TO THIS CONTRACT

None

AGREEMENT

V. INTRODUCTION

THIS AGREEMENT, made and entered into this 8th day of OCTOBER, 2008, 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.

No Modifications

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 Shannon Kusler
Consultant: Reid Middleton, Inc.

By [Signature]
Agency: Mayor, City of Oak Harbor
Principal

I, Shannon Kinsella, 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: 9/16/08

By Shannon Kinsella

GENERAL REQUIREMENTS

1. MISCELLANEOUS PROVISIONS

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

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

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

2. TIME FOR BEGINNING AND COMPLETION

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

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

3. SUBCONTRACTING

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

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

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

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

4. EMPLOYMENT

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

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

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

5. NONDISCRIMINATION

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

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

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

- A. COMPLIANCE WITH REGULATIONS:** The CONSULTANT shall comply with the applicable federal law relative to nondiscrimination, Title 49, Code of Federal Regulations, which are herein incorporated by reference and made a part of this AGREEMENT. The CONSULTANT shall comply with the Americans with Disabilities Act of 1992, as amended.
- B. INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the CITY and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such state or federal law. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- C. SANCTIONS FOR NONCOMPLIANCE:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, the CITY shall impose such sanctions as it may determine to be appropriate, including, but not limited to:
- (1) Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
 - (2) Cancellation, termination or suspension of the AGREEMENT, in whole or in part.
- D. INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (A) through (E) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY.
- E. UNFAIR EMPLOYMENT PRACTICES:** The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O. 77-13 of the Governor of the State of Washington which prohibits unfair employment practices.

6. TERMINATION OF AGREEMENT

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

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

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

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

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

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

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

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

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

7. CHANGES OF WORK

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

8. DISPUTES

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

9. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

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

10. LEGAL RELATIONS AND INSURANCE

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

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

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

11. INDEMNIFICATION REQUIREMENTS

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

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

Should a court of competent jurisdiction determine that this AGREEMENT is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the CONSULTANT and the CITY, its officers, officials, employees, and volunteers, the CONSULTANT's liability hereunder shall be only to the extent of the CONSULTANT's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the CONSULTANT's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this AGREEMENT.

12. INSURANCE.

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

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

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

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

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

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

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

1. The CONSULTANT's insurance coverage shall be primary insurance with respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be in excess of the CONSULTANT's insurance and shall not contribute with it.
2. The CONSULTANT's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.

- E. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- F. **Verification of Coverage.** CONSULTANT shall furnish the CITY with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement evidencing the insurance requirements of the CONSULTANT before commencement of the work.

13. EXTRA WORK

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

14. ENDORSEMENT OF PLANS

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

15. EQUAL OPPORTUNITY

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

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

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

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

- ii. Executive and top management means any employee:
- (a) whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and
 - (b) who customarily and regularly directs the work of two (2) or more other employees therein; and
 - (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
 - (d) who customarily and regularly exercises discretionary powers; and
 - (e) who does not devote more than twenty percent (20%), or, in the case of an employee of a retail or service establishment who does not devote as much as forty percent (40%), of his or her hours of work in the work week to activities which are not directly and closely related to the performance of the work described in (a) through (d) of this paragraph 6.ii.; Provided, that (e) of this paragraph 6.ii. shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a twenty percent (20%) interest in the enterprise in which he or she is employed.

iii. Positions that will be filled from within the CONSULTANT's organization means employment openings for which no consideration will be given to persons outside the CONSULTANT's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

7. The CONSULTANT agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
8. In the event of the CONSULTANT's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

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

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

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

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

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

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

**EXHIBIT A-1
CERTIFICATION OF CONSULTANT**

Project No. _____

I hereby certify that I am Shannon Kinsella a duly authorized representative of the firm of Reid Middleton, Inc. whose address is 728-134th St SW, Suite 200 and that neither I nor the above firm I here represent has: Everett WA 98204

- (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.

9/16/08
Date

Shannon Kinsella
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.

OCTOBER 8, 2008
Date

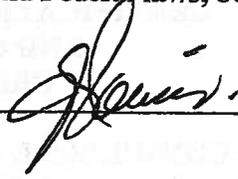

Signature

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): Reid Middleton, Inc

9/16/08

Date



President or Authorized Official or
Consultant Signature

EXHIBIT B
SCOPE OF SERVICES
City of Oak Harbor
Oak Harbor Marina Redevelopment Phase 1
Pre-design Dredge, Value Engineering, and Electrical
and Water System Upgrades Phase

A. PROJECT UNDERSTANDING

The City of Oak Harbor (City) owns and operates Oak Harbor Marina in Oak Harbor, Washington. The proposed project includes maintenance dredging, replacement of the main gangway and float walkway, furnishing and installation of a new Dock F, furnishing and installation of new utility systems and dock appurtenances. The major project components are identified in the Master Plan prepared for the facility.

The City is evaluating how to invest its limited resources in order to extend the life of the marina. The City is currently in the process of permitting for the project and has identified dredging as a top priority for the project. The following provides a scope of work to assist the City with pre-design and evaluation of sediment accumulation rates and dredging at the marina and in the adjacent channel areas and to provide value engineering services for various planned essential infrastructure improvements at the marina. The scope also includes planning and design of upgrades to the existing electrical services for the moorage slips, upgrades to the existing PVC potable water system on the floats, and replacement of the main gangway.

B. SCOPE OF SERVICES

1. Project Management

Reid Middleton will provide overall project management for the pre-design services. The project management services for the pre-design phase will include coordination with subconsultants, project administration including cost control, budget reviews, resource allocation, and communication with the team and City staff, and submittal of monthly invoices.

2. Dredging Analysis

Reid Middleton and our Subconsultant Coast and Harbor Engineering will provide pre-design services for the proposed dredging of the marina and coordination with the proposed harbor dredging. All work associated with dredging will be tracked separately from other work to enable the City to invoice the grant agency for dredge related work. The following scope of services will be performed for the dredge pre-design.

a. **Information Review and Sedimentation Rates Analysis – Existing Basin**

Reid Middleton and its subconsultant Coast and Harbor Engineering will review existing hydrographic and survey information and will prepare a graphic of the marina showing estimated sediment accumulation rates. Based on this information, predicted future rates and locations of sediment accumulation will be analyzed.

Based on the analysis of estimated past and future sediment accumulation rates, recommendations and mitigation measures will be made to minimize future dredging needs and to make future dredging efforts more cost effective.

b. **Dredge Review, Coordination, and Analysis– Existing Channel Area**

Reid Middleton and its subconsultant Coast and Harbor Engineering will review existing hydrographic and survey information for the channel and will coordinate with the NOAA contractor on a new hydrographic survey of the channel. Based on information from the new hydrographic survey prepared by others, a graphic of the channel area showing estimated sediment accumulation rates will be prepared. Based on this information, predicted future rates and locations of sediment accumulation will be analyzed. Proposed dredging will be discussed with the Corps for potential coordinated dredging projects with other Corps dredge projects in the area such as the Swinomish Channel dredging.

c. **Dredge Grant Assistance– Existing Channel Area**

Reid Middleton and its subconsultant Coast and Harbor Engineering will assist the City in identifying and discussion of potential grant opportunities for dredging of the harbor channel area. Basic site plans of proposed dredged area and volumes will be prepared for preliminary discussion with the agencies. Detailed grant application materials are not included in this scope of services but can be done as additional services.

d. **Dredge Predesign – Existing Marina**

Utilizing information from the discussions, the sediment accumulation rate, and Master Plan documents, Coast and Harbor will prepare a proposed dredge phasing and alternative plan including recommendation for any alternative cost effective mean and methods for the disposal and a recommended priority for dredging.

Reid Middleton and Coast and Harbor will provide the City with a proposed dredge plan and opinion of probable costs for the

dredging including identification of any alternative options for dredging and potential methods of disposal including beneficial use.

e. Dredge Predesign – Permitting Assistance

The City currently is in the permitting process for redevelopment of the marina. Reid Middleton will provide information to the City to address aspects of the dredge analysis work that may affect the submitted permit documents. This may include suggested amendments to the permit documents if required. Based on the dredge predesign, we will assist the City in identifying what elements of the overall proposed mitigation are relevant to the proposed elements of work that will be implemented in the initial construction phase or phases.

f. Dredge Predesign – Meetings

It is expected that a variety of meetings may be required for the dredge predesign phase of the project. This scope of services includes budget for up to four meetings in Oak Harbor, Seattle, or Olympia for various discussions and presentations by Reid Middleton staff. Additional meetings can be done as additional services.

3. Value Engineering Services

Reid Middleton will assist the City as requested on various Value Engineering reviews for implementation of the Phase I essential infrastructure: new ADA compliant gangway, potable water, fire protection water, and electricity. The exact scope of the services will be dependent on requests from the City, and will be done on a time and expense basis.

Reid Middleton will perform a value engineering review of the remaining life of the main walkway and potential alternative float replacement options for the main walkway. The proposed new dock system may consist of concrete floating docks and steel piling; however there are many alternate float systems to concrete floats. Two main concrete float types being utilized in the area include a modular system consisting of smaller concrete pontoons with a wood waler structural connections system similar to the docks at the marina and a monolithic type float system consisting of longer concrete pontoons with a steel and rubber connection at the float joints. Alternate float systems may include polyethylene tub systems with galvanized or aluminum frame systems and concrete or timber decking.

Reid Middleton will provide a technical letter memorandum that describes the estimated remaining life and recommended major maintenance items that can extend the life of the main walkway float. In addition, we will provide a letter that describes the general characteristics of three to four float systems along with typical

construction and maintenance costs to assist the City in making a decision on when and with what type of product to replace the main walkway float.

Reid Middleton will also discuss the existing conditions of the various other elements within the marina such as the utility systems, floating breakwater, and other elements within the marina and provide recommendations on expected remaining life, major maintenance projects that may extend that life, and replacement options where warranted.

4. Gangway and Landing Float Upgrades

Reid Middleton will provide planning and engineering design for replacement of the existing gangway and landing float to improve ADA accessibility, accommodate new utilities, and to decrease the potential for grounding and need for dredging at the landing float vicinity. The new gangway will be attached to the existing access pier, and the new landing float will be attached to the existing main walkway float.

a. Preliminary 30 Percent Design Plans, Specification Outline, and Cost Estimate (PS&E)

Reid Middleton will provide design plans identifying the overall layout of the new gangway, section of landing float to be removed including size and location, and other information at an approximately 30 percent level of completion. The plans will show the overall basic configuration of the project elements and typical cross-sections and details.

An outline table of contents list of Special Provisions to be included in the contract specifications will be provided. Specifications will be in the Washington State Department of Transportation (WSDOT) Standard Specification format. A preliminary opinion of probable construction costs for the preferred layout will be included in the 30 percent design submittal.

Deliverables for the 30 percent design phase of work will include 30 percent level drawings, an outline Special Provisions specification, and an opinion of probable construction costs.

Three sets of the full-size 30 percent drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

b. 50 Percent Design Phase

Reid Middleton will provide performance specifications for the new gangway and landing float including schematic utility routing, design details, and performance criteria.

Deliverables for the 50 percent design phase of work will include 50 percent level drawings, Special Provision specifications, and an opinion of probable construction costs.

Three sets of the full-size drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

c. 90 Percent Design Phase

Based on review and comments by the City, Reid Middleton will provide 90 Percent engineering design for the gangway and landing float system including schematic layout and details and performance specifications for the gangway structure and float system.

Deliverables for the 90 percent design phase of work will include 90 percent level drawings, special provisions, and an opinion of probable construction costs.

Three sets of the full-size drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

d. Final Design Phase

Based on review and comments by the City, Reid Middleton will provide final engineering design, drawings, and specifications of the gangway and landing float system including all layout and detail suitable for bidding of the project. The City shall be responsible for preparing the front end of the construction contract documents including the contract and general requirements

Deliverables for the Final design phase of work will include drawings sealed by a licensed professional engineer, Special Provisions, and an opinion of probable construction costs.

One Mylar® set of the full-size drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

5. Potable Water System Upgrades

Reid Middleton will provide design plans identifying the overall potable water system project elements, preferred piping and Potable Water System Upgrades

Reid Middleton will provide planning and engineering design for replacement of the existing potable water systems from the head of the existing main access pier and throughout the float system. The planning

will include review of the existing PVC piping systems that have not been replaced. A complete design and plan for replacement of the system will be developed with a phasing plan to allow for phased implementation depending on project funding. The following services will be provided for the upgrade to the water systems.

a. Preliminary 30 Percent Design Plans, Specification Outline, and Cost Estimate (PS&E)

Reid Middleton will provide design plans identifying the overall potable water system project elements, preferred piping and appurtenance layout, typical details, proposed phasing plans, coordination with existing dock services, and other information at an approximately 30 percent level of completion. The plans will show the overall basic configuration of the project elements and typical cross-sections and details.

An outline table of contents list of Special Provisions to be included in the contract specifications will be provided. Specifications will be in the Washington State Department of Transportation (WSDOT) format. A preliminary opinion of probable construction costs for the preferred layout will be included in the 30 percent design submittal.

Deliverables for the 30 percent design phase of work will include 30 percent level drawings, an outline specification list, and an opinion of probable construction costs.

Three sets of the full-size 30 percent drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

b. 50 Percent Design Phase

Reid Middleton will provide engineering design of the potable water system including connection to the upland water supply system downstream of the backflow preventor, routing along the access pier, down the new gangway, and on the entire float system. Spacing and details of the hose bibs, shut off valves, drain valves, and other appurtenances will be detailed and shown on the drawings.

Deliverables for the 50 percent design phase of work will include 50 percent level drawings, Special Provisions specifications, and an opinion of probable construction costs.

Three sets of the full-size drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

c. 90 Percent Design Phase

Based on review and comments by the City, Reid Middleton will provide 90 percent engineering design of the potable water system including all layout and details.

Deliverables for the 90 percent design phase of work will include 90 percent level drawings, Special Provisions, and an opinion of probable construction costs.

Three sets of the full-size drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

d. Final Design Phase

Based on review and comments by the City, Reid Middleton will provide final engineering design, drawings, and specifications of the potable water system including all layout and detail suitable for bidding of the project. The City shall be responsible for preparing the front end of the construction contract documents including the contract and general requirements

Deliverables for the Final design phase of work will include drawings sealed by a licensed professional engineer, Special Provisions, and an opinion of probable construction costs.

One Mylar set of the full-size drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

6. Electrical System Upgrades

J Omega as a subconsultant to Reid Middleton will provide planning and electrical engineering design for upgrade of the existing electrical engineering systems for the inwater marina facility. The project scope of work includes electrical engineering design for the Phase 1 Construction scope of work identified in the Marina Master Plan document including the following:

- Upland Power – Upgrade marina electrical service. A new switchboard and electrical service will be designed to support the final marina configuration according to the preferred alternate of the marina master plan. The new services will reconnect existing loads that are to remain in operation.
- Dock Power- Electrical distribution equipment, feeders, dock mounted unit substations, will be designed to serve existing docks. Existing dock transformers will be replaced. Distribution equipment sizes will be configured for future phases of construction. Planning for future dock installation is a vital

element in this effort.

- Low Voltage Systems – underground conduit will be included in the upland areas for the future marina configuration. Existing low voltage service will be reconnected via the new gangway and landing float.
- Lighting – lighting system will not change

This scope of work includes engineering for future docks that are necessary for the development of Phase 1 including the following:

- Power – Engineering tasks for Docks A, B, C, D, E, and G that are necessary to complete the design of the Phase 1 electrical infrastructure. No drawings are included for this effort; the layout will be based on the master plan preferred alternative.
- Lighting – distribution equipment will be configured to support future lighting of the approach pier, gangways, and floats.

This scope of services excludes planning and design for low voltage systems including telephone, cable, and other systems, drawings for future phase docks except for reconnection of power feeders and dock modifications necessary to connect new feeders, lighting systems, and upland work except as necessary for service upgrades. This scope of work also excludes documenting existing conditions except at connection points for new work.

The following services will be provided for the upgrade to the electrical systems.

- a. Preliminary 30 Percent Design Plans, Specification Outline, and Cost Estimate (PS&E)

Deliverables for this phase of the project will include technical memos as necessary for design decisions, a design narrative, and schematic level drawings.

An outline table of contents list of Special Provisions to be included in the contract specifications will be provided. Specifications will be in the Washington State Department of Transportation (WSDOT) Standard format. A preliminary opinion of probable construction costs for the preferred layout will be included in the 30 percent design submittal.

Deliverables for the 30 percent design phase of work will include 30 percent level drawings, an outline specification list, a design narrative, and an opinion of probable construction costs.

Three sets of the full-size 30 percent drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

b. 50 Percent Design Phase

Deliverables for the 50 percent design phase of work will include 50 percent level drawings, Special Provisions, and an opinion of probable construction costs. The drawings will show plan layouts showing locations for shore power pedestals, unit substations, and distribution equipment.

Three sets of the full-size drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

c. 90 Percent Design Phase

Based on review and comments by the City, J. Omega will provide 90 percent engineering design of the electrical system including all layout and details.

Deliverables for the 90 percent design phase of work will include 90 percent level drawings, Special Provisions, and an opinion of probable construction costs.

Three sets of the full-size drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

d. Final Design Phase

Based on review and comments by the City, J Omega will provide final engineering design, drawings, and specifications of the electrical system including all layout and detail suitable for bidding of the project. The City shall be responsible for preparing the front end of the construction contract documents including the contract and General Provisions.

Deliverables for the Final design phase of work will include drawings sealed by a licensed professional engineer, Special Provisions, and an opinion of probable construction costs.

One Mylar set of the full-size drawings will be provided along with a half size 11" x 17" drawing set. The drawings will be prepared in AutoCAD on a 22" x 34" border.

7. Meetings

It is expected that a variety of meetings may be required for the design and value engineer phase of the project. This scope of services includes budget for up to four meetings in Oak Harbor, Seattle, or Olympia for various discussions and presentations by Reid Middleton staff. This scope also includes four meetings by the electrical engineer in Oak Harbor. Additional meetings can be done as additional services.

8. Bidding Services – Electrical

Reid Middleton and our subconsultant J Omega will provide bidding assistance during the bid phase for the electrical renovation project. The following bid services will be provided:

- Attendance at a Prebid Meeting by the Electrical Engineer.
- Answering technical questions during bidding. All answers will be in writing and issued via addendum.
- Preparation of up to two addenda.

This scope of work is based on the assumption that the City will be responsible for copying of the bid documents for distribution, advertising the bid, distributing the bid documents, fielding bidder's questions, and distribution of any addendum. Any of these services can be provide as additional services by Reid Middleton if requested by the City. A detailed scope and fee will be developed for any requested additional services as requested by the City.

9. Bidding Services – Potable Water, Gangway, and Landing Float

Reid Middleton will provide bidding assistance during the bid phase for the potable water, gangway, and landing float project. The following bid services will be provided:

- Attendance at a Prebid Meeting by the Engineer.
- Answering technical questions during bidding. All answers will be in writing and issued via addendum.
- Preparation of up to two addenda.

This scope of work is based on the assumption that the City will be responsible for copying of the bid documents for distribution, advertising the bid, distributing the bid documents, fielding bidder's questions, and distribution of any addendum. Any of these services can be provide as additional services by Reid Middleton if requested by the City.

It is assumed that the potable water, gangway, and landing float will be bid as one package. However, there is the potential that a separate purchase order may be issued for the gangway, and that the potable water system renovation may be bid separately. Reid Middleton can provide bid services for additional bid packages as additional services as requested by the City. A detailed scope and fee will be developed for any requested additional services as requested by the City.

10. Construction Services

Construction services are not included in this scope of work but can be added later as additional services. A detailed scope and fee will be developed for these services as requested by the City.

C. PERIOD OF PERFORMANCE

Reid Middleton will begin services upon receipt of a signed agreement and will make every reasonable effort to complete the services in a timely manner considering the needs of the project. We expect that these services will occur over a time period of approximately six months.

D. CLIENT'S RESPONSIBILITIES

The City shall provide available pertinent data, documents, and other information to Reid Middleton as necessary to complete the services outlined in Section B above. Data shall include available record drawings and survey documentation and adjacent facilities as needed, site base maps in AutoCAD format. The City shall provide access to the project site for site investigations.

E. COMPENSATION

1. For services described in Section B, Items 1 through 9, Reid Middleton shall be paid on a "time-plus-expense" basis in accordance with provisions of the attached Exhibit "A," Schedule of Charges Effective July 1, 2008, or on the basis of such other mutually satisfactory arrangements as may be negotiated. An estimated fee for these services is \$191,600.

F. MANAGEMENT DESIGNATIONS

Mack Funk will be the primary City of Oak Harbor project manager for this project.

Shannon Kinsella will be the Reid Middleton project manager primarily responsible for this job. However, other individuals at Reid Middleton will work on aspects of the project as required.

clw\H:\DOC\24WA07913\032 Oak Harbor Marina\Proposal\Oak Harbor Marina Dredge VE Elect Water Scope.doc\smk

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.

Estimate of Professional Services

728 134th Street SW
 Everett, WA 98204
 (425) 741-3800
 (425) 741-3900 FAX

PROJECT: Oak Harbor Marina Pre-design Dredge & VE
CLIENT: City of Oak Harbor
PROJ. NO.: 24-07-813
FILE: H:\DOCS\24\W071913\032 Oak Harbor Marina\Proposal\Fee Estimate Dredge, VE, Water, Electr.xls\Sheet1

BY: smk
DATE: 9/5/2008
CHKD BY: CLW 9/5/08

Task No.	Description	Principal		Sr Engineer		Project Eng		Engineer		Sr Tech Writer		Sr Designer		PA		Total Labor Hours	Total Labor Earnings	Computer hrs \$/2	Mileage \$	Travel cost	Subs cost	Contingency %	Labor & Reimb
		sk	sk	\$155.00	\$120.00	\$120.00	\$85.00	\$105.00	\$105.00	\$85.00	do	do	do	do	do								
001	Project Management																						
00101	Project Admin	5														8	1,205	0				500	1,705
00102	Coordination	6														9	1,395	0				0	1,395
	Subtotal Task 001	11		0	0	0	0	0	0	0	0	0	0	0	0	17	2,600	0	0	500	0	500	3,100
002	Dredging Analysis																						
00201	Review and Sedimentation Rates	6						4								10	1,480	0				0	1,480
00202	Coast and Harbor - dredge review	6						8								14	1,820	0		15,000		15,000	16,820
00203	Dredge Review and Analysis - RM	4						6								10	1,270	0				0	1,270
00204	Dredge Grant Assistance	6						8								14	1,820	0				0	1,820
00205	Dredge Pre-design - RM																						
00206	Dredge pre-design - CH	2						8								10	1,060	0		25,000		25,000	26,060
00207	Opinion of Probable Costs	12						4								34	4,390	0				0	4,390
00208	Dredge PM and Coordination	16						12								28	4,060	0		200		200	4,260
00209	Dredge Meetings - 4	8						4								12	1,860	0				0	1,860
00210	Permitting Assistance																						
	Subtotal Task 002	60		0	0	0	54	0	54	0	0	12	6	6	132	17,760	12	144	200	40,000	0	40,344	58,104
003	Value Engineering																						
00301	Review elements - gangway, utilitie	12						18								54	6,480	0				0	6,480
00302	VE - float systems	12						18								54	6,480	0				0	6,480
00303	Letter Report	8						10		2						28	3,610	0				0	3,610
00304	Electrical VE															0	0	0		2,000		2,000	2,000
	Subtotal Task 003	32		0	46	56	2	2	56	2	0	0	0	0	136	16,570	0	0	0	2,000	0	2,000	18,570
004	Gangway and Landing Float																						
00401	Review Existing Conditions	2						4								6	860	0				0	860
00402	Layout and Float Location	2						4								8	960	0				0	960
00403	Gangway Performance Spec	2						8		4						18	1,960	0				0	1,960
00404	Float Spec and Details	2						20		8						32	3,160	0				0	3,160
00405	Utility Coordination															16	1,500	0				0	1,500
00406	Access Pier coordination															4	480	0				0	480
00407	Drawings															64	6,660	40	480			480	7,140
00408	Cost Estimate	6						8								10	920	0				0	920
00408	QA/QC															10	1,760	0				0	1,760
	Subtotal Task 004	14		4	34	64	12	12	64	12	0	0	0	0	168	18,260	40	480	0	0	0	480	18,740
005	Potable Water																						
00501	Review existing conditions/plan	2						8								10	1,060	0				0	1,060
00502	Water system plan	2						24								26	2,420	0				0	2,420

255

0.114771

1.11

Estimate of Professional Services

728 134th Street SW
Everett, WA 98204
(425) 741-3800
(425) 741-3800 FAX

PROJECT: Oak Harbor Marina Prededesign Dredge & VE
CLIENT: City of Oak Harbor
PROJ. NO: 24-07-913
FILE: H:\DOC\24\W\071913\032 Oak Harbor Marina\Proposal\Fee Estimate Dredge, VE, Water, Electr.xls\Sheet1

BY: smk
DATE: 9/5/2008

CHKD BY: CLW 9/5/08

Task No.	Description	Principal	Sr Engineer	Project Eng	Engineer	Sr Tech Writer	Sr Designer	PA	Total Labor hours	Total Labor Earnings	Computer hrs \$12	Mileage \$	Travel & Misc cost	Subs cost	Total Reimb	Labor & Reimb
00503	Upland/connection details								10	920	0				0	920
00504	Hose bib and misc details								10	920	0				0	920
00505	Drawings								60	6,060	48	576			576	6,636
00506	Specifications								32	3,520	0				0	3,520
00507	Cost Estimate								14	1,260	0				0	1,260
00508	QA/QC								12	2,140	0				0	2,140
	Subtotal Task 005								174	18,300	48	576	0	0	576	18,876
006	Electrical Design								0	0	0				0	0
00601	J Omega								0	0	0				0	0
	Subtotal Task 006								0	0	0	0	0	0	0	0
007	Meetings								24	4,000	0		300		0	4,300
00701	Four meetings								24	4,000	0		300		0	4,300
	Subtotal Task 007								24	4,000	0	0	300	0	300	4,300
008	Bidding Services Electrical								12	1,520	0				0	1,520
00801	RM Coordination, Tech Writing								0	0	0				0	0
00802	Bidding Services Electrical								12	1,520	0				0	1,520
	Subtotal Task 008								12	1,520	0	0	0	0	0	1,520
009	Bidding Services - Civil								12	1,860	0		104		104	1,754
00901	Prebid Meeting								8	880	0				0	880
00902	Answering Questions								30	3,420	8	96			96	3,516
00903	2 Addendum								50	5,960	8	96	104	0	200	6,160
	Subtotal Task 009								713	84,970.00	108	1,296	1,104	0	1,06,630	191,600
	TOTAL HOURS	165	8	104	282	34	108	12	713	84,970.00	108	1,296	1,104	104,230	106,630	191,600
	Subtotal Cost	31,350.00	1,240.00	12,480.00	23,970.00	3,570.00	11,340.00	1,020.00	84,970.00	84,970.00	108	1,296	1,104	104,230	106,630	191,600
	Percent of Total Hours	23%	1%	15%	40%	5%	15%	2%								

Hours and rates shown are for estimating purposes only. The actual number of hours charged to the project and personnel used may vary.
Hours worked will be billed using the rates, personnel categories, and terms identified in Exhibit A.

TOTAL 191,600



**Washington State
Department of Transportation**
Douglas B. MacDonald
Secretary of Transportation

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300

360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

August 30, 2007

Simeon Alejo, Accounting Manager
Reid Middleton, Inc.
728 134th Street SW, Suite 200
Everett, WA 98204-5322

RE: Reid Middleton, Inc. Overhead Schedule
Fiscal Year End December 31, 2006

Dear Simeon Alejo:

On August 30, 2007, as a WSDOT representative, Laura Julius of our office reviewed your proposed Fiscal Year End December 31, 2006 Overhead Schedule. Laura also completed an analytical review of the schedule by comparing it to the accepted 2005 Overhead Schedule, and reviewed data that WSDOT had collected in our permanent files. This schedule was examined by the State of Alaska Department of Transportation for compliance with part 31 of the Federal Acquisition Regulations.

The reviewed data included, but was not limited to: the schedule of the indirect cost rate, a description of the company and their accounting system, and the basis for Reid Middleton, Inc.'s accounting and indirect costs.

Based on our review, we are issuing this letter of concurrence establishing Reid Middleton's overhead rate for the year ended December 31, 2006 at 184.35% of direct labor. Costs billed to actual agreements will still be subject to audit of actual costs.

If you, or any representative of Reid Middleton, Inc., have any questions, please contact Martha Roach at 360-705-7006.

Sincerely,

Martha S. Roach
External Audit Manager

MR:ds
Enclosure

cc: Steve McKerney
File

Rick Griffith MS 47323
Mike Kane MS 47323

Exhibit D-1
Page 3 of 5

Reid Middleton, Inc.
Overhead Schedule
Fiscal Year Ended December 31, 2006

Description	Amount per G/L	Reid			Ref.	Accepted Amount	%
		Middleton Adj	Alaska Adj	WSDOT Adj			
Direct Labor	<u>\$2,926,509</u>		<u>(\$6,380)</u>		L	<u>\$2,920,129</u>	
Payroll Burden:							
Leave (Holiday/Vacation/Sick)	\$615,836					\$615,836	21.09%
Employer-Paid Taxes	471,072					471,072	16.13%
Health & Life Insurance	281,944					281,944	9.66%
Retirement	49,252					49,252	1.69%
Workers' Compensation	24,438					24,438	0.84%
Total Payroll Burden	<u>\$1,442,542</u>					<u>\$1,442,542</u>	<u>49.40%</u>
Other Indirect Costs:							
Indirect Labor	\$1,968,455					\$1,968,455	67.41%
Job Cost Variance	(\$76,585)					(76,585)	
Advertising & Promotion	30,261	(30,261)			A	0	0.00%
Bad Debt	23,283	(23,283)			B	0	0.00%
Bonuses	418,500		(12,682)		M	405,818	13.90%
Signing Bonuses	10,227					10,227	0.35%
Business Taxes	183,325					183,325	6.28%
Professional Licenses	3,856					3,856	0.13%
Computer Supplies & Maintenance	167,537					167,537	5.74%
Contributions	7,264	(7,264)			C	0	0.00%
Depreciation	101,916					101,916	3.49%
Dues, Meetings, Fees & Classes	112,009	(1,788)	(1,529)		D,N	108,692	3.72%
Employee Morale	28,490	(26,590)			E	1,900	0.07%
Employee Recruitment	30,602		(1,015)		O	29,587	1.01%
Entertainment	48,058	(48,058)			F	0	0.00%
Facilities Capital Cost of Money	7,708			8,363	R	16,071	0.55%
Insurance	142,622					142,622	4.88%
Interest & Bank Fees	16,948	(16,948)			G	0	0.00%
Maintenance & Repairs	48,222					48,222	1.65%
Office Rent	457,966					457,966	15.68%
Other	2,144	(192)			H	1,952	0.07%
Outside Services	8,890					8,890	0.30%
Printing, Stationery and Supplies	74,052					74,052	2.54%
Professional Services	133,677	(4,802)			I	128,875	4.41%
Reimbursed Mileage & Computer Charges	(68,004)					(68,004)	-2.33%
Other Income/(Loss)	0		(469)		P	(469)	-0.02%
Subscriptions & Publications	12,330					12,330	0.42%
Telephone/Radio Communications	67,956					67,956	2.33%

**Reid Middleton, Inc.
Overhead Schedule
Fiscal Year Ended December 31, 2006**

Description	Amount per G/L	Reid			Accepted Ref.	Amount	%
		Middleton Adj	Alaska Adj	WSDOT Adj			
Utilities	7,700					7,700	0.26%
Vehicle Expense & Travel Not Assignable	45,009		(313)		Q	44,696	1.53%
Federal Income Tax	336,118	(336,118)			J	0	0.00%
Dividends	27,415	(27,415)			K	0	0.00%
Warranty Service	93,249					93,249	3.19%
Total Other Indirect Costs	\$4,471,200	(\$522,719)				\$3,940,836	134.95%
Total Overhead Costs	\$5,913,742	(\$522,719)				\$5,383,378	184.35%
Overhead Rate	202.07%					184.35%	

*Reid Middleto, Inc. - Accepted 08/30/07 LJ
Overhead Schedule reviewed and accepted by the State of Alaska on June 12, 2007*

Reid Middleton Adjustment References:

- A Advertising & Promotion costs unallowable per 48 CFR 31.205-1(b).
- B Bad Debt unallowable per 48 CFR 31.205-3.
- C Contributions unallowable per 48 CFR 31.205-8.
- D Lobbying unallowable per 48 CFR 31.205-22.
- E Entertainment unallowable per 48 CFR 31.205-14 and Excess Holiday party costs per WSDOT OH policy.
- F Entertainment unallowable per 48 CFR 31.205-14.
- G Interest unallowable per 48 CFR 31.205-20.
- H Unallowable costs per 48 CFR.
- I Dividend unallowable per 48 CFR 31.205-6.
- J Federal Income Tax unallowable per 48 CFR 31.205-41(b)(1).
- K Dividends unallowable per 48 CFR 31.205-

State of Alaska DOT Adjustment References:

- L Direct project costs unallowable per 48 CFR 31.202.
- M Compensation for personal services in excess of Alaska DOT policy unallowable per 48 CFR 31.205-6(f).
- N Memberships in Civic and Community organizations unallowable per 48 CFR 31.205-1(f)(7).
- O Entertainment unallowable per 48 CFR 31.205-14.
- P Credits in overhead per 48 CFR 31.201-5.
- Q Personal use of company vehicles unallowable per 48 CFR 31.205-6(m)(2).

State of Washington DOT Reference:

- R: Cost of Money allowable per 48 CFR 31.205-10.

Exhibit D-1

Page 5 of 5

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

Fee Schedule

Discipline or Job Title	Hourly Rate	Overhead @ 184.35%	Profit @ 30%	Rate Per Hour
Principal	\$61.50	113.38	\$18.45	193.33
Senior Engineer	\$48.69	89.76	\$14.61	153.06
Project Engineer	\$37.09	68.38	\$11.13	116.59
Design Engineer	\$30.07	55.43	\$9.02	94.53
Engineer	\$26.50	48.85	\$7.95	83.30
Project Surveyor	\$33.30	61.39	\$9.99	104.68
Surveyor	\$33.30	61.39	\$9.99	104.68
Senior Designer	\$32.55	60.01	\$9.77	102.32
Project Administrator	\$27.00	49.77	\$8.10	84.87
Senior Tech Writer	\$32.20	59.36	\$9.66	101.22
Senior Technician	\$23.75	43.78	\$7.13	74.66
Technician	\$22.70	41.85	\$6.81	71.36
Drafter	\$18.55	34.20	\$5.57	58.31

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
j Omega Engineering, Inc. - Electrical Engineering

Fee Schedule

Discipline or Job Title	Hourly Rate	Overhead 189.20%	Profit 30%	Rate Per Hour
Electrical - Principal	\$48.07	42.88	\$14.42	105.37
Electrical - Engineer	\$38.46	34.31	\$11.54	84.30
Electrical - Designer	\$33.65	30.02	\$10.10	73.76
Electrical - CAD	\$28.84	25.73	\$8.65	63.22
Electrical - Clerical	\$20.19	18.01	\$6.06	44.26
		0.00	\$0.00	0.00
		0.00	\$0.00	0.00
		0.00	\$0.00	0.00
		0.00	\$0.00	0.00
		0.00	\$0.00	0.00
		0.00	\$0.00	0.00
		0.00	\$0.00	0.00
		0.00	\$0.00	0.00

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Exhibit G-1
SUBCONSULTANT FEE DETERMINATION - SUMMARY SHEET
Coast & Harbor Engineering, Inc.

Fee Schedule

Discipline or Job Title	Hourly Rate	Overhead @ 164.17%	Profit @ 28%	Rate Per Hour
Senior Principal Engineer	\$59.00	96.86	\$16.52	172.38
Senior Coastal Engineer	\$54.16	88.91	\$15.16	158.24
Principal Engineer	\$48.14	79.03	\$13.48	140.65
Senior Project Manager	\$37.98	62.35	\$10.63	110.97
Engineer VI	\$38.46	63.14	\$10.77	112.37
Engineer V	\$37.02	60.78	\$10.37	108.16
Engineer IV	\$33.65	55.24	\$9.42	98.32
Engineer III	\$31.25	51.30	\$8.75	91.30
Engineer II	\$30.29	49.73	\$8.48	88.50
Engineer I	\$24.52	40.25	\$6.87	71.64
Designer	\$27.88	45.77	\$7.81	81.46
CAD Technician	\$25.48	41.83	\$7.13	74.44
Administration	\$22.50	36.94	\$6.30	65.74



**Washington State
Department of Transportation**
Paula J. Hammond, P.E.
Secretary of Transportation

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

June 16, 2008

~~Ms. Nancy Evans~~

Coast & Harbor Engineering, Inc.
110 Main Street #103
Edmonds, WA 98020-3180

Re: Coast & Harbor Engineering, Inc. Overhead Schedule
FYE December 31, 2007

Dear Ms. Evans:

On June 16, 2008 as a WSDOT representative, Nicole Mitchell reviewed your proposed 2007 Overhead Schedule. Nicole also completed an analytical review of the schedule by comparing it to data that WSDOT had collected in our permanent files. Coast & Harbor provided a copy of the In-House compiled overhead and 2007 financial statement.

The reviewed data included, but was not limited to, the schedule of the indirect cost rate, a description of the company, basis of accounting and description of Coast & Harbor's accounting system, basis of indirect costs, in addition to a review of the firm's internal control structure.

Based on our review, we are issuing this letter of concurrence establishing Coast & Harbor's overhead rate for 2007, at 164.17% of direct labor. Costs billed to actual agreements will still be subject to audit of actual costs.

If you or any representative of Coast & Harbor have any questions, please contact Martha Roach at (360)705-7006.

Sincerely,

Martha S. Roach
Agreement Compliance Audit Manager

MR:ds
Enclosures

cc: Steve McKerney
Doyle Dilley, MS 47323
Rick Griffith, MS 47323

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Exhibit 6-1

20F4

COAST & HARBOR ENGINEERING, INC.
Overhead Rationale - Fiscal Year 2007
WSDOT Audited 06/2008

		% of Income \$3,272,788		% of Direct
Direct Labor				
5000	Direct Labor - Principals	389,034.16	11.89%	
5010	Direct Labor - Technical	462,997.59	14.15%	
5020	Direct Labor - Administrative	2,898.33	0.09%	
5030	Direct Labor - Contract Labor	34,421.25	1.05%	
		Direct Labor		\$889,351
Labor Related Overhead				
6111	401k Contribution	136,915.31	4.18%	
6112	410k Plan Expenses	1,935.00	0.06%	
6121	PTO	79,366.99	2.43%	
6130	Holidays	42,878.21	1.31%	
6140	FICA/MEDI Expense	110,500.62	3.38%	
6150	Federal Unemployment Expense	1,172.53	0.04%	
6155	WA State Unemployment Expense	1,009.30	0.03%	
6160	WA State L&I Expense	3,135.85	0.10%	
6170	CA State Unemployment Expense	560.00	0.02%	
6186	CA - SF Payroll Tax	3,878.02	0.12%	
6190	TX State Unemployment Expense	51.88	0.00%	
6195	TX/CA/FL State Workers Comp	7,081.28	0.22%	
6196	FL State Unemployment Expense	189.00	0.01%	
6205	Group Insurance	96,465.06	2.95%	
		Labor Related Overhead		\$485,139
				54.55%
Indirect Labor				
6000	Indirect Labor - Principals	44,410.00	1.36%	
6010	Indirect Labor - Technical	37,054.00	1.13%	
6020	Indirect - Administrative	163,378.00	4.99%	
6030	Proposals/SOW Labor-Principals	38,280.36	1.17%	
6035	Proposals/SOW Labor-Technical	12,582.05	0.38%	
6040	Proposals/SOW Labor-Admin	3,187.69	0.10%	
6050	Indirect Consultant Expense	18,589.90	0.57%	
		Indirect Labor		\$317,482
				35.70%
Operating Expenses				
6215	Public Transportation Reimb.	4,487.90	0.14%	
6220	Registration/Licenses/Dues	5,061.00	0.15%	
6230	Education/Training/Seminars	13,248.42	0.40%	
6305	Advertising	75.00	0.00%	
6320	Amortization	955.44	0.03%	
6325	Auto/Gas/Parking	4,526.35	0.14%	
6330	Bad Debts	0.00	0.00%	
6335	Bank Services Charges	540.58	0.02%	
6100	Bonus	431,418.69	13.18%	
6105	Severance	0.00	0.00%	
6340	Charitable Contributions	0.00	0.00%	
6345	Client / Staff Gifts	1,886.10	0.06%	
6350	Communications(Efax,GoToMy PC)	9,965.03	0.30%	
6352	Conferences & Prof. Org. Meetings	23,253.75	0.71%	
6355	Depreciation Expense	24,127.00	0.74%	
6375	Dues, Memberships & Subsc.(Company)	3,253.60	0.10%	
6376	Employee Health Club Reimb.	3,934.01	0.12%	
6380	Equipment Rental	442.89	0.01%	
6387	Graphics/Film/Processing	1,105.19	0.03%	
6400	Insurance - General Liability	1,539.34	0.05%	
6405	Insurance - Professional Liab.	23,865.00	0.73%	

Exhibit G-1
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6415	Insurance - KeyMan	4,494.00	0.14%
6420	Interest Expense	3,582.78	0.11%
6425	Meals - Business	7,677.43	0.23%
6426	Meals	3,190.11	0.10%
6431	Meetings - Staff / Mgmt Related	12,014.00	0.37%
6435	Misc. Expenses	0.00	0.00%
6436	Non-Allowable Expenses	3,767.47	0.12%
6440	Office Lunchroom Supplies	2,951.98	0.09%
6445	Payroll Data Processing	3,424.83	0.10%
6450	Personnel Recruitment	13,378.71	0.41%
6455	Postage/Shipping/Couriers	7,193.51	0.22%
6460	Professional Fees - Accounting	3,510.00	0.11%
6462	Professional Fees - Accounting Federal Tax l	250.00	0.01%
6465	Professional Fees - Legal	0.00	0.00%
6470	Professional Fees - Other	0.00	0.00%
6475	Reference Materials	1,202.43	0.04%
6480	Rent	125,794.38	3.84%
6485	Maintenance	265.28	0.01%
6490	Repairs & Repair Agreements	2,063.86	0.06%
6500	Reproduction	890.72	0.03%
6505	Small Purchases	6,566.03	0.20%
6510	Small Purchases - SW / HW	29,887.96	0.91%
6520	Supplies - Technical	5,153.19	0.16%
6525	Supplies - Office	16,194.24	0.49%
6540	Taxes - B&O (WA, TX, CA)	24,907.24	0.76%
6545	Taxes & Business Licenses	2,053.00	0.06%
6550	Taxes - Personal Property	748.91	0.02%
6560	Telephone	28,159.77	0.86%
6565	Telephone - Cellular	14,459.68	0.44%
6600	Travel	17,576.97	0.54%
6601	Loss on Disposal of Assets	0.00	0.00%
	Facilities Capital Cost of Money	398.00	0.01%

Operating Expenses \$895,442 100.68%

Total G&A Overhead \$1,212,924 136.38%
(Indirect + Operating Expenses)

Total Overhead Rate \$1,698,063 190.93%

Unallowable

6305	Advertising	75.00	0.00%
6320	Amortization	955.44	0.03%
6330	Bad Debts	0.00	0.00%
6340	Charitable Contributions	0.00	0.00%
6345	Client / Staff Gifts	1,886.10	0.06%
6415	Insurance - KeyMan	4,494.00	0.14%
6420	Interest Expense	3,582.78	0.11%
6426	Meals	3,190.11	0.10%
6425	Meals - Business	7,677.43	
6436	Non-Allowable Expenses	3,767.47	0.12%
6100	Bonus Overage	212,415.00	6.49%

Unallowable \$238,043 26.77%

Total Allowable Overhead \$1,460,019

Allowed Overhead Rate 164.17%

266p
Exhibit G-7
4 of 4

**CONSULTANT CONTRACT AMENDMENT
MARINA DREDGING AND INFRASTRUCTURE UPGRADE AGREEMENT
AMENDMENT NO. 4**

This Amendment amends the Consultant Agreement between the City of Oak Harbor, Washington (the "City") and Reid Middleton, Inc. (the "Consultant") entered the 8th day of October 2008, first amended on March 26, 2009, and further amended on August 25, 2009, as follows:

Exhibit B, Scope of Services, is hereby amended to add a Scope of Services for Construction Administration Services. The existing Scope of Services shall be enumerated beginning with a Roman numeral I. This second Scope of Services shall be enumerated beginning with a Roman number II and will read as follows:

II. A. PROJECT UNDERSTANDING

The City of Oak Harbor (City) owns and operates Oak Harbor Marina in Oak Harbor, Washington. The City has developed a master plan and permitted a renovation and expansion of the marina facility. As part of the first phase of renovation a set of construction documents has been prepared and bid for the following components:

1. Replace the existing main walkway float in the vicinity of the main access gangway. The proposed new dock system will consist of concrete floating docks and steel piling. The existing main walkway float system will be salvaged by the contractor and provided to the City.
2. Replace the existing main gangway with a new 80' long gangway.
3. New HDPE potable water systems on the new main walkway sections with connections to the existing PVC water services on the existing docks.
4. New electrical service including a new landside transformer, new service along the new main walk systems, and connection to the existing services on the existing main walkway dock to remain.
5. Piling for the new main walkway and a couple replacement piling within the marina.
6. Phasing plan to provide for temporary access and utilities to the existing docks to remain during construction.
7. As an additive bid item, upgrade of the C Dock electrical system.

The City has requested that Reid Middleton provide full construction administration for the project. The following provides the scope of services for the Construction Administration phase of the project. The following scope of services is based on a

maximum field construction time of three months. If the field work for the project extends beyond the three month time period, then additional fees or services may be required and will be requested in an amendment.

II. B. SCOPE OF SERVICES

1. Project Management

Reid Middleton will continue to provide overall project management for the Oak Harbor Redevelopment Phase I project construction phase. The project management services will include the following activities:

- Coordination with subconsultants.
- Project administration including cost control, budget reviews, resource allocation, and communication with the team and City staff.
- Submittal of monthly invoices.

Deliverables: Reid Middleton will provide monthly progress reports and invoices.

2. Construction Services

a. Reid Middleton will provide construction administration services for the project. The scope of work for the construction administration services will include the following items:

- (1) Attendance at the pre-construction meeting by the project engineer and the electrical engineer. Preparation and distribution of an agenda and meeting minutes from the preconstruction meeting.
- (2) Review of technical submittals and design submittals required by the contract documents for general conformance with the contract documents.
- (3) Response to Requests For Information (RFIs) from the contractor. This scope of services is based on response for up to forty RFIs.
- (4) Site observation visits at the manufacturing plant of the floats to ensure general conformance with the contract documents. This scope of services includes three visits to a manufacturing plant located in Washington.

- (5) Once a week construction coordination meetings for the duration of the onsite construction. This scope of services is based on up to twelve construction coordination meetings.
 - (6) Site observation visits to the project site to ensure general conformance with the contract documents. Site visits will be coordinated with the weekly construction meeting as much as feasible. However, other site visits will be required based on scheduled work such as recommended full time observation during pile installation, site visits during utility system testing, and punchlist walkthrough upon substantial completion. This scope of services is based on up to fifteen additional site visits in addition to the once a week coordination meetings.
 - (7) Review of Contractor Pay Requests.
 - (8) Review of change order proposals and preparation of up to five design change bulletins.
 - (9) Preparation of record drawings based on Contractor's field set.
 - (10) Level of effort of electrical services is based on the award of the C Dock Electrical additive bid item. Our fee estimate assumes the C Dock Electrical will be awarded. The \$34,183 fee for electrical services shown on the attached fee estimate applies.
3. Additional services requested by City.

II. C. PERIOD OF PERFORMANCE

Reid Middleton will begin services upon receipt of a signed agreement and will provide the services for the duration of the construction period and construction phase closeout.

II. D. CLIENT'S RESPONSIBILITIES

The City shall provide available pertinent data, documents, and other information to Reid Middleton as necessary to complete the services outlined in Section B above.

II. E. COMPENSATION

1. For services described in Section B, Items 1 through 2, Reid Middleton shall be paid on a "time-plus-expense" basis in accordance with provisions of the attached Exhibit "A," Schedule of Charges Effective July 1, 2009, or on the basis of such other mutually satisfactory arrangements as may be negotiated. An estimate for these services is \$88,518 (which includes C Dock Electrical work).

2. For services described in Section B, Item 3, Reid Middleton shall be paid on a "time-plus-expense" basis in accordance with provisions of the attached "Exhibit "A", Schedule of Charges Effective July 1, 2009, or on the basis of such.

II. F. MANAGEMENT DESIGNATIONS

Steve Powers will be the primary City of Oak Harbor project manager for this project.

Shannon Kinsella will be the Reid Middleton project manager primarily responsible for this job. However, other individuals at Reid Middleton will work on aspects of the project as required.

II.G CONSULTANT CONTRACT HEADING

The Consultant Contract Heading is hereby amended to change the project completion date and the maximum amount payable as follows:

III. Project Information

Project Completion Date: March 31, 2010.

Maximum Amount Payable: \$292,418.00 (\$88,518 for construction administration services)

All other terms and conditions of the Consultant Agreement between the City of Oak Harbor, Washington (the "City") and Reid Middleton, Inc. (the "Consultant") entered the 8th day of October 2008, first amended on March 26, 2009 and further amended on August 25, 2009, shall remain in full force and effect.

Amendment signed this ___ day of _____, 2009.

For the City of Oak Harbor:

For Reid, Middleton, Inc.:

Jim Slowik, Mayor

Estimate of Professional Services

728 134th Street SW
Everett, WA 98204
(425) 741-3800
(425) 741-3900 FAX

PROJECT: Oak Harbor Marina Predesign Dredge & VE
CLIENT: City of Oak Harbor
PROJ. NO.: 24-07-913
FILE: H:\DOC\24\W\08\014 Oak Harbor Marina\Proposal\Construction Phase Scope 070109\Fee Estimate CA Services 070109.xls\Std Rates

BY: smk
DATE: 7/1/2008

CHKD BY: CLW 7/2/09

Task No.	Description	Principal	Project Eng	Engineer	Sr Tech Writer	Sr Designer	PA	LEAD	TOTAL HOURS	TOTAL COST	Computer hrs	Mileage	Travel & Misc cost	Subs cost	Total Assump	GROSS CHARGE
001	Project Management															
00101	Project Admin	6	8	8	2				20	600.00	0		500			1,100.00
00102	Coordination	6							0	180.00	0					180.00
SUBTOTAL 001																
002	Construction Administration															
00201	Preconstruction Meeting	6	8		1				2	208.00	0	120				328.00
00202	Technical Submittal Review	8	32	48					0	2,400.00	0					2,400.00
00203	RFIs	4	12	24					0	480.00	0					480.00
00204	Manufacturing Plant (3 visits)		18						0	360.00	0	200				560.00
00205	Weekly Construction Meetings (12)	8	80						0	640.00	0	800				1,440.00
00206	Site Observations incl Purchist (15)	6	18	75					0	1,350.00	0	1,300				2,650.00
00207	Contractor Pay Requests	4	6						0	240.00	0					240.00
00208	Change Order Proposals/Design Bulletin	4	12	8	2				10	1,200.00	0					1,210.00
00209	Record Drawings	2	6	8					18	360.00	0					378.00
SUBTOTAL 002																
003	Electrical Construction Services															
00301	Electrical Services w/ C Dock*										0					
SUBTOTAL 003																
TOTAL HOURS																
		64	180	169	5	28	8		47	5,028.00	26	312	0	3,020	35,026	48,518
SubTotal Cost		10,280.00	21,800.00	14,365.00	525.00	2,730.00	680.00									
Assumptions		Percent of Total Hours	12%	41%	38%	1%	6%	2%								

Hours and rates shown are for estimating purposes only. The actual number of hours charged to the project and personnel used may vary. Hours worked will be billed using the rates, personnel categories, and terms identified in Exhibit A.

TOTAL 88,518
*Electrical reduced 50% if C Dock not awarded -17,092
TOTAL IF C DOCK ELECTRICAL IS NOT AWARDED 71,427

~~THE END!~~

DATE	DESCRIPTION	AMOUNT	CHECK NO.	ACCOUNT	BALANCE
1/1/78	OPENING BALANCE	100.00		CHECKING	100.00
1/5/78	DEPOSIT	50.00	101	CHECKING	150.00
1/10/78	WITHDRAWAL	25.00	102	CHECKING	125.00
1/15/78	DEPOSIT	75.00	103	CHECKING	200.00
1/20/78	WITHDRAWAL	30.00	104	CHECKING	170.00
1/25/78	DEPOSIT	40.00	105	CHECKING	210.00
1/30/78	WITHDRAWAL	15.00	106	CHECKING	195.00
2/5/78	DEPOSIT	60.00	107	CHECKING	255.00
2/10/78	WITHDRAWAL	20.00	108	CHECKING	235.00
2/15/78	DEPOSIT	35.00	109	CHECKING	270.00
2/20/78	WITHDRAWAL	10.00	110	CHECKING	260.00
2/25/78	DEPOSIT	55.00	111	CHECKING	315.00
2/30/78	WITHDRAWAL	45.00	112	CHECKING	270.00
3/5/78	DEPOSIT	25.00	113	CHECKING	295.00
3/10/78	WITHDRAWAL	35.00	114	CHECKING	260.00
3/15/78	DEPOSIT	45.00	115	CHECKING	305.00
3/20/78	WITHDRAWAL	15.00	116	CHECKING	290.00
3/25/78	DEPOSIT	65.00	117	CHECKING	355.00
3/30/78	WITHDRAWAL	55.00	118	CHECKING	300.00
4/5/78	DEPOSIT	35.00	119	CHECKING	335.00
4/10/78	WITHDRAWAL	25.00	120	CHECKING	310.00
4/15/78	DEPOSIT	45.00	121	CHECKING	355.00
4/20/78	WITHDRAWAL	35.00	122	CHECKING	320.00
4/25/78	DEPOSIT	55.00	123	CHECKING	375.00
4/30/78	WITHDRAWAL	45.00	124	CHECKING	330.00
5/5/78	DEPOSIT	25.00	125	CHECKING	355.00
5/10/78	WITHDRAWAL	15.00	126	CHECKING	340.00
5/15/78	DEPOSIT	35.00	127	CHECKING	375.00
5/20/78	WITHDRAWAL	25.00	128	CHECKING	350.00
5/25/78	DEPOSIT	45.00	129	CHECKING	395.00
5/30/78	WITHDRAWAL	35.00	130	CHECKING	360.00
6/5/78	DEPOSIT	55.00	131	CHECKING	415.00
6/10/78	WITHDRAWAL	45.00	132	CHECKING	370.00
6/15/78	DEPOSIT	25.00	133	CHECKING	395.00
6/20/78	WITHDRAWAL	15.00	134	CHECKING	380.00
6/25/78	DEPOSIT	35.00	135	CHECKING	415.00
6/30/78	WITHDRAWAL	25.00	136	CHECKING	390.00
7/5/78	DEPOSIT	45.00	137	CHECKING	435.00
7/10/78	WITHDRAWAL	35.00	138	CHECKING	400.00
7/15/78	DEPOSIT	55.00	139	CHECKING	455.00
7/20/78	WITHDRAWAL	45.00	140	CHECKING	410.00
7/25/78	DEPOSIT	25.00	141	CHECKING	435.00
7/30/78	WITHDRAWAL	15.00	142	CHECKING	420.00
8/5/78	DEPOSIT	35.00	143	CHECKING	455.00
8/10/78	WITHDRAWAL	25.00	144	CHECKING	430.00
8/15/78	DEPOSIT	45.00	145	CHECKING	475.00
8/20/78	WITHDRAWAL	35.00	146	CHECKING	440.00
8/25/78	DEPOSIT	55.00	147	CHECKING	495.00
8/30/78	WITHDRAWAL	45.00	148	CHECKING	450.00
9/5/78	DEPOSIT	25.00	149	CHECKING	475.00
9/10/78	WITHDRAWAL	15.00	150	CHECKING	460.00
9/15/78	DEPOSIT	35.00	151	CHECKING	495.00
9/20/78	WITHDRAWAL	25.00	152	CHECKING	470.00
9/25/78	DEPOSIT	45.00	153	CHECKING	515.00
9/30/78	WITHDRAWAL	35.00	154	CHECKING	480.00
10/5/78	DEPOSIT	55.00	155	CHECKING	535.00
10/10/78	WITHDRAWAL	45.00	156	CHECKING	490.00
10/15/78	DEPOSIT	25.00	157	CHECKING	515.00
10/20/78	WITHDRAWAL	15.00	158	CHECKING	500.00
10/25/78	DEPOSIT	35.00	159	CHECKING	535.00
10/30/78	WITHDRAWAL	25.00	160	CHECKING	510.00
11/5/78	DEPOSIT	45.00	161	CHECKING	555.00
11/10/78	WITHDRAWAL	35.00	162	CHECKING	520.00
11/15/78	DEPOSIT	55.00	163	CHECKING	575.00
11/20/78	WITHDRAWAL	45.00	164	CHECKING	530.00
11/25/78	DEPOSIT	25.00	165	CHECKING	555.00
11/30/78	WITHDRAWAL	15.00	166	CHECKING	540.00
12/5/78	DEPOSIT	35.00	167	CHECKING	575.00
12/10/78	WITHDRAWAL	25.00	168	CHECKING	550.00
12/15/78	DEPOSIT	45.00	169	CHECKING	595.00
12/20/78	WITHDRAWAL	35.00	170	CHECKING	560.00
12/25/78	DEPOSIT	55.00	171	CHECKING	615.00
12/30/78	WITHDRAWAL	45.00	172	CHECKING	570.00
1/5/79	DEPOSIT	25.00	173	CHECKING	595.00
1/10/79	WITHDRAWAL	15.00	174	CHECKING	580.00
1/15/79	DEPOSIT	35.00	175	CHECKING	615.00
1/20/79	WITHDRAWAL	25.00	176	CHECKING	590.00
1/25/79	DEPOSIT	45.00	177	CHECKING	635.00
1/30/79	WITHDRAWAL	35.00	178	CHECKING	600.00
2/5/79	DEPOSIT	55.00	179	CHECKING	655.00
2/10/79	WITHDRAWAL	45.00	180	CHECKING	610.00
2/15/79	DEPOSIT	25.00	181	CHECKING	635.00
2/20/79	WITHDRAWAL	15.00	182	CHECKING	620.00
2/25/79	DEPOSIT	35.00	183	CHECKING	655.00
2/30/79	WITHDRAWAL	25.00	184	CHECKING	630.00
3/5/79	DEPOSIT	45.00	185	CHECKING	675.00
3/10/79	WITHDRAWAL	35.00	186	CHECKING	640.00
3/15/79	DEPOSIT	55.00	187	CHECKING	695.00
3/20/79	WITHDRAWAL	45.00	188	CHECKING	650.00
3/25/79	DEPOSIT	25.00	189	CHECKING	675.00
3/30/79	WITHDRAWAL	15.00	190	CHECKING	660.00
4/5/79	DEPOSIT	35.00	191	CHECKING	695.00
4/10/79	WITHDRAWAL	25.00	192	CHECKING	670.00
4/15/79	DEPOSIT	45.00	193	CHECKING	715.00
4/20/79	WITHDRAWAL	35.00	194	CHECKING	680.00
4/25/79	DEPOSIT	55.00	195	CHECKING	735.00
4/30/79	WITHDRAWAL	45.00	196	CHECKING	690.00
5/5/79	DEPOSIT	25.00	197	CHECKING	715.00
5/10/79	WITHDRAWAL	15.00	198	CHECKING	700.00
5/15/79	DEPOSIT	35.00	199	CHECKING	735.00
5/20/79	WITHDRAWAL	25.00	200	CHECKING	710.00
5/25/79	DEPOSIT	45.00	201	CHECKING	755.00
5/30/79	WITHDRAWAL	35.00	202	CHECKING	720.00
6/5/79	DEPOSIT	55.00	203	CHECKING	775.00
6/10/79	WITHDRAWAL	45.00	204	CHECKING	730.00
6/15/79	DEPOSIT	25.00	205	CHECKING	755.00
6/20/79	WITHDRAWAL	15.00	206	CHECKING	740.00
6/25/79	DEPOSIT	35.00	207	CHECKING	775.00
6/30/79	WITHDRAWAL	25.00	208	CHECKING	750.00
7/5/79	DEPOSIT	45.00	209	CHECKING	795.00
7/10/79	WITHDRAWAL	35.00	210	CHECKING	760.00
7/15/79	DEPOSIT	55.00	211	CHECKING	815.00
7/20/79	WITHDRAWAL	45.00	212	CHECKING	770.00
7/25/79	DEPOSIT	25.00	213	CHECKING	795.00
7/30/79	WITHDRAWAL	15.00	214	CHECKING	780.00
8/5/79	DEPOSIT	35.00	215	CHECKING	815.00
8/10/79	WITHDRAWAL	25.00	216	CHECKING	790.00
8/15/79	DEPOSIT	45.00	217	CHECKING	835.00
8/20/79	WITHDRAWAL	35.00	218	CHECKING	800.00
8/25/79	DEPOSIT	55.00	219	CHECKING	855.00
8/30/79	WITHDRAWAL	45.00	220	CHECKING	810.00
9/5/79	DEPOSIT	25.00	221	CHECKING	835.00
9/10/79	WITHDRAWAL	15.00	222	CHECKING	820.00
9/15/79	DEPOSIT	35.00	223	CHECKING	855.00
9/20/79	WITHDRAWAL	25.00	224	CHECKING	830.00
9/25/79	DEPOSIT	45.00	225	CHECKING	875.00
9/30/79	WITHDRAWAL	35.00	226	CHECKING	840.00
10/5/79	DEPOSIT	55.00	227	CHECKING	895.00
10/10/79	WITHDRAWAL	45.00	228	CHECKING	850.00
10/15/79	DEPOSIT	25.00	229	CHECKING	875.00
10/20/79	WITHDRAWAL	15.00	230	CHECKING	860.00
10/25/79	DEPOSIT	35.00	231	CHECKING	895.00
10/30/79	WITHDRAWAL	25.00	232	CHECKING	870.00
11/5/79	DEPOSIT	45.00	233	CHECKING	915.00
11/10/79	WITHDRAWAL	35.00	234	CHECKING	880.00
11/15/79	DEPOSIT	55.00	235	CHECKING	935.00
11/20/79	WITHDRAWAL	45.00	236	CHECKING	890.00
11/25/79	DEPOSIT	25.00	237	CHECKING	915.00
11/30/79	WITHDRAWAL	15.00	238	CHECKING	900.00
12/5/79	DEPOSIT	35.00	239	CHECKING	935.00
12/10/79	WITHDRAWAL	25.00	240	CHECKING	910.00
12/15/79	DEPOSIT	45.00	241	CHECKING	955.00
12/20/79	WITHDRAWAL	35.00	242	CHECKING	920.00
12/25/79	DEPOSIT	55.00	243	CHECKING	975.00
12/30/79	WITHDRAWAL	45.00	244	CHECKING	930.00
1/5/80	DEPOSIT	25.00	245	CHECKING	955.00
1/10/80	WITHDRAWAL	15.00	246	CHECKING	940.00
1/15/80	DEPOSIT	35.00	247	CHECKING	975.00
1/20/80	WITHDRAWAL	25.00	248	CHECKING	950.00
1/25/80	DEPOSIT	45.00	249	CHECKING	995.00
1/30/80	WITHDRAWAL	35.00	250	CHECKING	960.00

Interest on this account is calculated on the basis of the average daily balance. Minimum monthly payment is 2% of the outstanding balance. Annual Percentage Rate is 12%.