



City of Oak Harbor
City Council Meeting
Agenda

For
Wednesday, August 5, 2009
7:00 p.m.

Oak Harbor City Council
7:00 p.m.
Wednesday, August 5, 2009

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

ROLL CALL

MINUTES

NON-ACTION COUNCIL ITEMS:

1. Association of Washington Cities (AWC) Recognition – Waterfront Trail Boardwalk.
2. Proclamation – Summer Reading Program.
3. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

4. Consent Agenda.
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 - a. Excused Absence Request – Councilmember Jim Palmer for 9/15/09.
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 - b. Noise Permit – Naval Ocean Processing Facility.
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 - c. Park Board Re-appointment – Jeff Wallin.
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 - d. Community Police Advisory Board Re-appointment – Joeshua Johnson.
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 - e. Pay Bills.
5. Public Hearing – Report on Element Nightclub.
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6. Public Hearing – Six-Year Transportation Improvement Plan (TIP).
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7. Gentry SR-20 Annexation – Schedule for Public Hearing.
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8. Contract Bid Award – Oak Harbor Marina Redevelopment, Phase One.
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9. Ordinance Introduction – Illicit Discharge Prohibition for NPDES Permit.
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10. Interim Prosecution Services – Law Department.
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11. New Position – Law Department.
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12. Consultant Agreement – Oak Harbor Street Improvements.

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

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14. Contract Close-Out – Reservoir Painting.

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15. Contract Close-Out – Miller Road Intertie.

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16. Contract Close-Out – Police Department Roof.

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17. Heron Ridge Development – Preliminary Four Lot Short Plat.

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 Regular Meeting
Tuesday, July 7, 2009, 7:00 p.m.
City Hall Council Chambers**

CALL TO ORDER Mayor Slowik called the meeting to order at 7:00 p.m.

INVOCATION Thomas Meyer – Common Ground Church

ROLL CALL

Jim Slowik, Mayor	Paul Schmidt, City Administrator
Six Members of the Council,	Margery Hite, City Attorney
James M. Campbell	Doug Merriman, Finance Director
Eric Gerber	Steve Powers, Development Services Director
Danny Paggao, Mayor Pro Tem	Cathy Rosen, Public Works Director
Jim Palmer	Eric Johnston, City Engineer
Beth Munns	Rick Wallace, Chief of Police
Bob Severns	Mike McIntyre, Senior Services Director
	Renée Recker, Executive Assistant to the Mayor

Councilmember Rick Almberg was absent and formally excused from this Council meeting.

PUBLIC HEARING – CANCELLED

Mayor Slowik announced that the Gentry Annexation, published as Public Hearing Notice CC 09-13 in the legal section of the June 24, 2009 Whidbey News Times, is not a part of this evening's printed agenda or agenda packet and has been cancelled.

MINUTES

MOTION: COUNCILMEMBER PALMER MOVED TO APPROVE THE MINUTES OF THE 6/16/09 REGULAR MEETING. THE MOTION WAS SECONDED BY COUNCILMEMBER GERBER AND CARRIED UNANIMOUSLY.

NON-ACTION COUNCIL ITEMS

Washington State Department of Energy – Presentation of Wastewater Treatment Plant Outstanding Performance Award

State Department of Ecology representatives Karen Burgess, Municipal Unit Supervisor and Shawn McKone, Permit Manager presented this award to the City's Wastewater Treatment Plant team:

Larry Michaels, Wastewater Treatment Plant Supervisor
Scott Hubbard, Wastewater Treatment Plant Lab Coordinator
Rob Kelley, Lead Wastewater Treatment Plant Operator
Phil Matthews, Wastewater Treatment Plant Operator II
Wade Iverson, Wastewater Treatment Plant Operator I
David Worley, Wastewater Treatment Plant Operator I

The City has the unique distinction of two treatment plants being recognized with this award. Oak Harbor has received this award for the past three consecutive years and a total of six awards in eleven years. Cathy Rosen, Public Works Director talked about the accomplishments and quality of WWTP staff and noted that the RBC plant is an aging facility and the Lagoons can be challenging.

Steve Bebee, Operations Manager was also thanked. Mayor Slowik talked about the plants' age and that the City is extremely proud of these awards. Oak Harbor has an excellent WWTP staff and keeping Puget Sound clean is a City priority.

Employee Recognition – Scott Hubbard, Public Works, Ten Years

Cathy Rosen, Public Works Director introduced Mr. Hubbard and talked about his accomplishments as the City's Wastewater Treatment Plant Lab Coordinator. He has created a procedural manual for testing and chemical preparation in the lab, updated commercial grease trap policy, and conducts regular inspections to help prevent sewer line backups and grease buildup at the treatment plant. Mr. Hubbard has insured that the lab is accredited by the Department of Ecology and he is a great asset to the City.

Introduction of City Council Candidates

Mayor Slowik introduced the three candidates attending this evening's meeting: Scott Dudley, Mel Vance, and Gerry Oliver.

Break

Mayor Slowik called for a five minute break at 7:15 p.m. to allow Council time to congratulate WWTP staff. The meeting reconvened at 7:25 p.m.

Proclamation – Help House's Christmas in July

Beth Munns read the proclamation establishing July 18, 2009 as Christmas in July Day and urged all citizens to support North Whidbey Help House and its effort to provide assistance to those in need. Jean Wieman, Help House Director; Becky King, Help House Board President; Paige Stanley, and Jo Balda received the proclamation. Ms. Wieman spoke about Help House's longevity – thirty-two years, and the increasing number of clients who are being served. 90 cents of each dollar goes back to Help House and 80 percent of funds come from private donations. Councilmember Munns has been a Help House Board Member since 1996.

Public Comments

Jason Hicks, 3300 Old Goldie Road, Oak Harbor. Mr. Hicks spoke with concern about the Urban Growth Area (UGA) and the proposed Goldie Road sewer lift station and sewer extension: The sewer project will be located at the base of my company's driveway. I have owned this company for fourteen years and the business has been in place for twenty-one years. NASWI's Gate 60 will be blocked and the project is partially outside of the UGA. The City wants the County to act on other outstanding proposals for the UGA and no map shows them in the UGA. If Old Goldie Road remains outside, an exclave will be created since the parcels east of Old Goldie Road will have no contiguous borders with Island County. My other major objection is the 8-inch pipe size which is the minimum allowed by law. Four side sewers are called for. This does not seem like a twenty-year plant. The plan is for this 8-inch gravity pipe and a 6-inch force main. With the lift station at the base of my driveway, there is no plan for parking. There has to be a better location but there is now no time to revise this plan.

Mayor Slowik noted for the Council that the area is outside the County's action on the UGA but not outside the City's action. It is included in the City's latest proposal to expand the UGA. The County has not taken action on the City's latest proposal.

City Attorney Hite added that the Growth Management Act (GMA) requires that the County take action. The City asked for this in 2005 and the County still has not taken action.

Mel Vance, P.O. Box 2882, Oak Harbor. The Ragnar Relay is running on July 24th and 25th beginning in Blaine and ending in Langley. The teams that are involved are often costumed and followed by their chase vans. Mr. Vance invited everyone in town to watch the event; there will be exchange points in the City and by Joseph Whidbey State Park.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

- A. Noise Permit – North Whidbey Sunrise Rotary – Challenge Series
- B. Noise Permit – Outshine, Polishing Party
- C. Noise Permit – Island Classic Mustang Club
- D. Noise Permit – Fidalgo Avenue Merchant's Association
- E. Noise Permit – St. Augustine Catholic Church
- F. Excused Absence Request – Councilmember Jim Palmer, 10/20/09
- G. Pay Bills

Councilmember Severns asked that **Item B – Noise Permit, Outshine Polishing Party** be removed for discussion.

MOTION: COUNCILMEMBER SEVERNS MOVED TO APPROVE CONSENT AGENDA ITEMS A, C, D, E, F, G WITH ITEM G PAYING ACCOUNTS PAYABLE CHECK NUMBERS 137561 – 137565 IN THE AMOUNT OF \$25,970.60; ACCOUNTS PAYABLE CHECK NUMBER 137566 IN THE AMOUNT OF \$2,786.10; ACCOUNTS PAYABLE CHECK NUMBERS 137567 – 137777 IN THE AMOUNT OF \$863,389.04; AND PAYROLL CHECK NUMBERS 92997 – 93064 IN THE AMOUNT OF \$1,008,017.60. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.

Item B – Noise Permit, Outshine Polishing Party

Councilmember Severns asked if Outshine was a for-profit business and asked about the length of time needed for this event. Joshua Elliot, the owner of Outshine was in attendance, and talked about Outshine which is a janitorial business belonging to Mr. Elliot and his wife. They are introducing silver polishing and antique silver polishing as a service of their business and plan on polishing during this event and correctly-done polishing takes time. Mr. Elliot's event will include music and refreshments. City Attorney Hite and City Administrator Schmidt noted that a commercial enterprise does not present a problem and the paperwork is in order for a noise permit.

MOTION: COUNCILMEMBER CAMPBELL MOVED TO APPROVE ITEM B – NOISE PERMIT FOR OUTSHINE POLISHING PARTY. THE MOTION WAS SECONDED BY COUNCILMEMBER GERBER.

VOTE ON THE

MOTION: COUNCILMEMBERS CAMPBELL, GERBER, PAGGAO, MUNNS, AND SEVERNS VOTED IN FAVOR OF THE MOTION; COUNCILMEMBER PALMER OPPOSED. THE MOTION CARRIED.

Housing Trust Fund – Fall 2009 Stage 1 Application

Steve Powers, Development Services Director presented this agenda bill which requested approval of a resolution authorizing the Mayor to submit a Stage 1 application to CTED again seeking funding for the City's proposed affordable housing project. On January 20, 2009, the City Council approved Resolution 09-02, directing the Mayor to enter into a cooperative agreement with the Housing Authority of Snohomish County (HASCO) to carry out an affordable housing project, and further authorizing the Mayor to submit a grant application for funding of a manufactured home community to Stage I of the Department of Community, Trade and Economic Development (CTED). The City was invited to move on to Stage II of the process and on March 3, 2009, the Council approved Resolution 09-06 authorizing the Mayor to submit the application and any other information necessary to support the process. The City was informed on June 11, 2009 that our project was not selected for funding in the spring 2009 round. Since that time, staff has spoken to both HASCO and CTED regarding our application and the future possibilities for funding. HASCO has encouraged the City to continue to pursue our project citing the strength of our application, the sizeable contribution from the City towards the project and the community need. They have also discussed possible strategies for securing funding. Submitting the Stage I application again, in their judgment, will allow the City to continue to be a viable applicant for other housing funds.

Mayor Slowik called for public comments.

Gerry Oliver, 947 NW Prow, Oak Harbor. Mr. Oliver added that affordable housing is a great thing to pursue.

There were no other public comments.

Council Discussion

Discussion followed about the application and if it is the same information as previously submitted (yes), the use of the term "manufactured home," if the term "affordable housing" would be less limiting, and if there was an application fee for this second submittal (no). Mr. Powers clarified that the use of "manufactured homes" is seen as unique and could potentially give us an advantage; HASCO concurred that this would not be limiting.

MOTION: COUNCILMEMBER PALMER MOVED TO ADOPT THE RESOLUTION AUTHORIZING THE MAYOR TO SUBMIT A STAGE 1 APPLICATION AND ALL FURTHER INFORMATION AND APPLICATIONS AS REQUIRED BY CTED TO COMPLY WITH REQUIREMENTS OF THE HOUSING TRUST FUND GRANT PROCESS. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.

Bid Results and Award – Goldie Road Lift Station and Sewer Extension Contract Award

Eric Johnston, City Engineer presented this agenda bill which recommended awarding a construction contract for the Goldie Road Lift Station and Sewer Extension to C. Johnson Construction, Inc. in the amount of \$1,186,861.95. Staff received and opened nine sealed bids on June 25, 2009. The funding for the project is available in the Wastewater 2009 budget and includes \$1,000,000.00 in grants from Island County's Economic Development Fund. The project is necessary to ensure service to development and annexation areas and the City is committed under the 2003 interlocal agreement with Island County to provide sewer service to this area. The contract will construct a new sewer lift station and connect a new gravity and force main sewer system to the existing City sanitary sewer system near the City limits on Goldie Road. The alignment will extend to near the Naval Air Station boundary at the North end along Goldie Road, Colin Lane, and Old Goldie Road. The system is intended to serve the future needs of the area east of Goldie Road and Colin Lane as well as the area north of Ault Field Road. All the projected service area is within the current jointly adopted Urban Growth Area (UGA). Mr. Johnston spoke to Mr. Hicks' earlier comments and talked about the limited number of sites for connection, that, at this time it is difficult for the City to calculate what properties will be developed, and using Scenic Heights as an example, the City re-stubbed to each individual Scenic Heights property. Mr. Johnston also talked about the area east of Goldie Road and the City's sewer comprehensive plan, the County's inaction, and the City's commitment under the interlocal agreement with Island County. He also reiterated that this project's funding includes the million dollar grant secured from the Island County Economic Development Fund several years ago.

Mayor Slowik called for public comments.

Jason Hicks – 3300 Old Goldie Road. Mr. Hicks felt that this sewer line will serve a minimum constituency with a minimum pipe size and is a bad idea. He suggested that the pipe size be re-examined before awarding this contract.

There were no other public comments.

Council Discussion

Council discussion followed about the pipe size, that an 8-inch pipe is sufficient to serve this area which is zoned commercial/industrial, and an outside engineering consultant concurred. The service area size matches water consumption, DOE requirements, and other safety factors.

Discussion continued about the interlocal agreement with the County, the area to be serviced, the benefit to the City, and that it is in the interest of public health to provide sewer service instead of septic. Mr. Powers specifically noted that:

1. The interlocal agreement is about the orderly transition of properties from County to City jurisdiction and addresses the way we have handled utility planning and joint approval.
2. Oak Harbor's Municipal Code talks about sewer service outside the City limits. A condition of connecting in this area requires annexation.
3. There is a pending annexation on the east side of Goldie Road up Technical Drive to Ault Field Road. That annexation is still active and may move forward in the near future.

Discussion followed that this would add new City utility users and generate impact fees for hook up. New customers would pay a system development charge which can help broaden our utility customer base. Discussion continued about pre-annexation agreements and payment of development services charges, applicability to non-residential uses, and encouragement of new businesses.

Councilmember Campbell commented on procedurally taking comments from the same person during open public comments at the beginning of the meeting and again for a specific and listed agenda item.

Comments continued about the Navy gate which is in the County's jurisdiction, the need for the County to provide formal comment, and relocation of the lift station. The engineer's estimate was discussed, how approval this evening would be impacted by the County's permit process if the permit were denied, the procedure of approving the contract, issuing the contract award, issuing the notice to proceed, and that the City would need an approved County permit in hand before issuing the notice to proceed. The project cannot be constructed without the County's permit. The permit is expected very soon and finalization of the contract would most likely take two weeks. Discussion returned to the limited number of indicated sewer sites and distribution of future stub-ins for sites rather than guessing on future site locations. It is a simple process to connect to sewer, is routinely done, and is not abnormal. Council asked about default costs and damage provisions if the contract is awarded and the permit did not follow. The City has a high degree of confidence that the County will issue the permit in light of the million dollar grant funding and the approved franchise. The City's cost would be the remaining \$186,861.95 plus any contract changes subject to administrative approval.

Motion:

Councilmember Palmer moved to:

1. **Authorize the Mayor to sign a contract with C. Johnson Construction, Inc. in the amount of \$1,186,861.95.**
2. **Authorize the City Engineer to administratively approve changes to the construction contract totaling not more than \$120,000.00.**

The motion was seconded by Councilmember Gerber.

Discussion Continued

Discussion followed about delay to the contract and what remedies could be sought by the contractor. The timing of entering a contract, sending the letter of award, what the contractor then provides upon receipt of the award letter and the timeline to return an executed contract, and finally issuing a notice to proceed was also discussed. Holding the notice of award would be the preferred option while waiting for the County's permit to be issued.

Amendment to the

Motion:

Councilmember Campbell moved to amend the original motion to add upon receipt of the permit from Island County to the first sentence which will now read:

- 1. Authorize the Mayor to sign a contract with C. Johnson Construction, Inc. in the amount of \$1,186,861.95 upon receipt of the permit from Island County.**

The motion was seconded by Councilmember Severns.

Vote on the Amendment to the

Motion: **Councilmembers Campbell, Gerber, Palmer, Munns, and Severns voted in favor of the amendment to the motion. Councilmember Paggao opposed.**

The amendment to the motion carried.

Vote on the Original

Motion: **Councilmembers Gerber, Palmer, Munns, and Severns voted in favor of the original motion. Councilmembers Campbell and Paggao opposed.**

The original motion carried.

Sole Source Purchase – Flashing Beacon Lights

Cathy Rosen, Public Works Director presented this agenda bill asking for authorization to purchase 10 flashing beacons lights through sole source bidding. The intent of the School Zone Safety Program is to save lives and prevent serious injuries in and around schools in Washington State and the Washington Traffic Safety Commission had \$1.5 million available for the purchase of equipment, hardware, software and signage to mark elementary school zones with flashing beacon lights. There were no matching funds required. Staff submitted a grant to the Traffic Safety Commission for a total of 10 flashing beacon lights to complete school zones within the City. The total amount of funds requested was \$45,000.00. The City of Oak Harbor was awarded the entire amount on June 11, 2009. The existing Carmanah R829C flashing beacon lights use proprietary software for programming. Because the new flashing beacon lights will be installed in the same school zones as the existing flashing beacons, it is important that they all use the same software for consistency and training. Western Systems, Inc. is Carmanah's exclusive distributor in Washington State and is the only vendor that can provide the Carmanah R829C Single Beacon Compact Solar School Zone Flashers in the State.

The additional 10 flashing beacon lights will be installed before the beginning of the 2009 – 2010 school year.

Mayor Slowik called for public comments but there were none.

Ms. Rosen noted that this is a reimbursable grant and not a lump sum fund from the State. Council complimented Ms. Rosen, Sandra Place, Rich Tyhuis, and Engineering staff who worked toward securing this grant award.

MOTION: COUNCILMEMBER MUNNS MOVED TO ADOPT THE RESOLUTION AND AUTHORIZE THE SOLE SOURCE PURCHASE OF TEN FLASHING BEACON LIGHTS IN THE AMOUNT OF \$32,121.34 TO WESTERN SYSTEMS, INC. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.

Right of Way Acquisition – Oak Harbor Street Project

Eric Johnston, City Engineer presented this agenda bill which requested authorization for the Mayor to sign certain documents to complete the acquisition of rights of way already authorized for acquisition by the City Council on June 2, 2009.

**MOTION: COUNCILMEMBER CAMPBELL MOVED TO AUTHORIZE THE MAYOR TO SIGN ON BEHALF OF THE CITY OF OAK HARBOR ANY AND ALL DOCUMENTS NECESSARY TO SECURE THE ACQUISITION OF THE RIGHTS OF WAY SET FORTH IN THE JUNE 2, 2009 CITY COUNCIL MOTION, INCLUDING BUT NOT LIMITED TO:
DEEDS, EXCISE TAX AFFIDAVITS, TEMPORARY CONSTRUCTION PERMITS AND EASEMENTS, ESCROW AGREEMENTS, MEMORANDA OF UNDERSTANDING, PAYMENT REQUESTS, AND PARCEL SUMMARY MEMOS WHICH REQUIRE CITY SIGNATURE FOR COMPLETION.
THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.**

City Administrator's Comments

Mr. Schmidt talked about upcoming meetings and the possibility of a special meeting on July 16, 2009 at 6:00 p.m. (not yet confirmed). AWC provided the entire conference on flash drive; see Mr. Schmidt if interested in obtaining this information.

Council Members' Comments

Council Members gave available standing committee reports. Both Councilmembers Gerber and Palmer will not be available for the August 5, 2009 Council meeting.

MOTION: COUNCILMEMBER SEVERNS MOVED TO APPROVE 8/5/09 COUNCIL MEETING ABSENCES FOR COUNCILMEMBER JIM PALMER AND COUNCILMEMBER ERIC GERBER. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.

Councilmember Gerber thanked Parks Manager Hank Nydam and the parks staff for establishing the volleyball courts at Ft. Nugent Park. Mr. Gerber asked that a plaque be added to the sculpture titled "Release" which would talk about what the sculpture represents. Mr. Gerber talked about his work with Mr. Schmidt on packaging parks, water, sewer, and storm drain fees – system development fees, by budget time so departments can plan for the future. Councilmember Severns enjoyed the AWC annual conference, Councilmember Munns talked about the conference's success, Mike McCarthy's selection as the CEO of AWC (he sat as the interim CEO), new officers were selected for the AWC Board, and that AWC is fighting to have the Public Works Trust Fund reinstated. Councilmember Munns will be attending the upcoming AWC Board of Directors meeting in Leavenworth, July 22 – 24, 2009. Ms. Munns also thanked the Greater Oak Harbor Chamber of Commerce and Rotary for the fabulous Fourth of July Celebration. Mr. Campbell had asked in 2008 about reducing the speed on Pioneer Way from 25 mph to 20mph and would still like to see it reduced. Mr. Campbell has been approached by citizens about the intersection of Goldie Road and SR-20 and if it could be evaluated regarding traffic movement. Traffic moving straight ahead ends up sitting behind vehicles making a left-hand turn. Could the right-hand turn lane be used for straight ahead traffic and turning? Could the intersection be reconfigured to handle all three: left-hand, straight ahead, and right-hand flow? Councilmember Paggao thanked the artist (Hennig Mural Designs) and City staff for the art work on the reservoir tank. Councilmember Palmer asked if there would be a quorum for August's Wednesday, 8/5/09 regular Council meeting in light of his (and Councilmember Gerber's) absence. This date is set per OHMC Chapter 1.04.010 (2) and changing it to another date (Monday, 8/3/09 was mentioned), would require a special meeting of Council. With only two Council Members absent on 8/5/09, the Council will have a quorum.

Mayor's Comments

Mayor Slowik also talked about the excellent AWC conference and thanked Mr. Schmidt for the Cheney Waste Water Treatment Plant and Spokane Waste Energy Plant tours. Mayor Slowik has asked AWC to consider establishing a Mayor's Conference which would meet semi-annually (individual conference and again during the AWC Annual Conference). Mayor Slowik congratulated Oak Harbor's Wellness Committee for winning the AWC Wellness Award for the fourth year in a row. Councilmember Munns added that receiving the Wellness Award helps reduce the City's insurance rate. Mayor Slowik also thanked the new exhibiting artist, Barbara Bland, for her work presently displayed in Council Chambers.

ADJOURN

With no other business coming before Council, **Councilmember Palmer moved to adjourn; the motion was seconded by Councilmember Severns and carried unanimously.** The meeting adjourned at 8:45 p.m.

Connie T. Wheeler
City Clerk

**July 16, 2009 Special Meeting Minutes
ARE NOT INCLUDED.**

**Minutes were not accessible due to
computer network problems at the
time this packet was printed.**

City of Oak Harbor City Council Agenda Bill

Agenda Bill No. 1
Date: August 5, 2009
Subject: AWC Recognition of
Waterfront Trail Boardwalk

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

SUMMARY STATEMENT

The Association of Washington Cities annually presents the Municipal Excellence Awards during the AWC Conference. These awards are presented to cities that demonstrate outstanding achievements in promoting community excellence within 7 categories: Community Service; Economic Development; Going Green; Hometown Spirit; Public Safety; Public Works; and Small City Successes. This year, the City of Oak Harbor proudly entered the Waterfront Trail Boardwalk into the Community Service category. During the AWC Conference, the City of Oak Harbor was presented a Certificate of Distinction for the entry.

AUTHORITY

It is voluntary to enter projects for consideration.

BACKGROUND

The City of Oak Harbor is a member of the Association of Washington Cities. The Waterfront Trail Boardwalk was a collaboration of many volunteers, the City, and property owners. Countless hours, equipment and materials were generously given by our community members. Councilmember Rick Almborg and City Engineer Eric Johnston were the driving forces of the effort.

STANDING COMMITTEE REPORT

None.

RECOMMENDED ACTION

None.

ATTACHMENTS

None.

MAYOR'S COMMENTS

None.

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION TO RECOGNIZE

THE SUMMER READING PROGRAM

WHEREAS, Children who have access to books are more likely to read for enjoyment and information; and,

WHEREAS, reading motivates, encourages independent learning, increases expectations for achievement and improves reading skills in children; and,

WHEREAS, quality literature can be used to help children grow into lifelong readers; and,

WHEREAS, the City of Oak Harbor recognizes the value of reading and the power of the book; and,

WHEREAS, the children who participate in the Oak Harbor Library's Summer Reading Program improve their minds and build their imaginations.

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby proclaim **August 13, 2009** as **Summer Reading Program Day** in the City of Oak Harbor. We urge all citizens and parents alike to recognize and applaud the effort and initiative of these young readers.

Signed this 5th day of August, 2009



Jim Slowik, Mayor

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

Bill No. 3

Date: AUGUST 5, 2009

Subject: PUBLIC COMMENTS

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

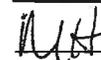


Jim Slowik, Mayor

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: August 5, 2009
Subject: Excused Absence Request
Councilmember Jim Palmer

FROM: Jim Slowik
Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to present and approve Councilmember Jim Palmer's 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 Jim Palmer has submitted an excused absence request since he will not be able to attend the September 15, 2009 City Council Meeting.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve Councilmember Jim Palmer's excused absence from the September 15, 2009 City Council Meeting.

ATTACHMENTS

MAYOR'S COMMENTS

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

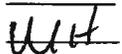
Agenda Bill No. CJA 4B
Date: August 5, 2009
Subject: Noise Permit – Naval Ocean
Processing Facility

FROM: Paul Schmidt, City Administrator 

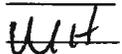
INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



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 Naval Ocean Processing Facility for amplified sound associated with a command picnic.

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:

Naval Ocean Processing Facility has submitted a Noise Permit request for amplified sound associated with a command picnic scheduled for August 28, 2009. The event will be held from 9:00 a.m. – 4:00 pm. The amplified sound will consist of a sound system for family friendly 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 Naval Ocean Processing Facility.

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:

7/9/09 / 7/10/09



SPECIAL EVENT PERMIT/NOISE PERMIT

APPLICATION INFORMATION:

Please check the event type:

- Athletic Event
- Noise Permit
- Car Show
- Other
- Marina Event
- Park Event
- Parade

Name of Applicant/Organization: NAVAL OCEAN PROCESSING FACILITY

Person in Charge: [Signature] Address: _____

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

Additional Authorized Individuals: _____

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

Emergency Contact: [Signature]

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

Type of Activity Planned (describe event): COMMAND SUMMER PICNIC

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: AUGUST 28, 2009

Hours of Operation: 0900-1600

Set-up Date/Time: 28 AUG 09

Dismantling Date/Time: 28 AUG 09

Number of Staff/Volunteers: 10

Estimated Number of Participants: 350

LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan):

FORT NUGENT PARK, OAK HARBOR, WA 98273

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. NONE

***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. AMPLIFIED FAMILY FRIENDLY MUSIC

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: 05 JUL 09
Signature of Applicant: [Signature]
Organization/Title: NORF / NWK PRESIDENT

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization: Naval Ocean Processing Facility

Location of Event: Ft. Nugent Park

Date of Event: August 28, 2009

Hours of Operation: 9:00 a.m. to 4:00 p.m.

Permitted Noise: Amplified sound for family friendly 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**

Agenda Bill No. NJA 42
Date: August 5, 2009
Subject: Park Board Re-appointment

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

SUMMARY STATEMENT:

The Park Board consists of five Board Members and an ex-officio City Council member. Per OHMC 2.30.010, the board members are appointed by the Mayor with the consent of a majority of the City Council. Mr. Wallin was appointed to the Board on December 16, 2008. As his initial appointment was to serve out the remaining term of a vacant position, his appointment was for eight months with the opportunity to apply for reappointment for the full three-year term if he so wishes. Mr. Wallin would like to continue his membership on the Board.

Mayor Slowik is forwarding a recommendation that Jeff Wallin be re-appointed to the Board.

Mr. Wallin's term would commence August 5, 2009 and would terminate on August 5, 2012.

STANDING COMMITTEE REVIEW:

There was no standing committee review.

RECOMMENDED ACTION:

Approve the recommendation to re-appoint Jeff Wallin to Park Board for a term of one year beginning August 5, 2009 and terminating August 5, 2012.

ATTACHMENTS:

None

MAYOR'S COMMENTS:

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. CJA 40
Date: August 5, 2009
Subject: Community Police Advisory
Board Re-appointment

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

SUMMARY STATEMENT: Pursuant to OHMC 2.50.020, the Police Department has a nine member citizen's advisory board known as the "Community Police Advisory Board". This Board, which has been in existence since 1991, meets every other month in accordance with OHMC 2.50.060(1).

Per OHMC 2.50.030(1), Mayor Slowik is forwarding a recommendation that Joeshua Johnson be re-appointed to the Board. Mr. Johnson has held a position on the Board, as the High School representative, in accordance with OHMC 2.50.020(3) since 2008 and is willing to continue this appointment. All other qualifications listed under OHMC 2.50.020 would be met.

Mr. Johnson's term would commence August 5, 2009 and would terminate on August 5, 2010.

STANDING COMMITTEE REVIEW: There was no standing committee review.

RECOMMENDED ACTION:

Approve the recommendation to re-appoint Joeshua to the Community Police Advisory Board for a term of one year beginning August 5, 2009 and terminating August 5, 2010.

ATTACHMENTS:

None

MAYOR'S COMMENTS:

City of Oak Harbor
City Council Agenda Bill

Bill No. 5
Date: August 5, 2009
Subject: Report to City Council
Element Nightclub

FROM: Rick Wallace – Chief of Police

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This is an investigative report to the City Council regarding activities at Element Nightclub during the second quarter of 2009 required pursuant to City Council direction.

AUTHORITY

5.22.045 License conditions.

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

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

In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least 10 days' notice of a hearing to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of

conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final.

SUMMARY STATEMENT

During the April 7, 2009 Oak Harbor City Council meeting, following the Council's approval of the Nightclub License for Element Nightclub and as part of the conditions attached to the Nightclub License, the Council directed the Police Chief to issue a quarterly report on any activities that may be in violation of the conditions of the license. This report includes information on all calls for police service to that business but pays specific attention to the calls for service that may pertain to the conditions of the Element Nightclub License as set by the Council.

STANDING COMMITTEE REPORT

This agenda item was discussed at the July 16, 2009 Public Safety Standing Committee.

RECOMMENDED ACTION

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

ATTACHMENTS

Investigative Report.

MAYOR'S COMMENTS

Quarterly Report to the City Council Elements Nightclub License

On April 7, 2009 the Oak Harbor City Council approved the issuance of a Nightclub License for Elements nightclub. In addition to the conditions attached to the license the Council also directed the Chief of Police to present a quarterly report on any calls for police service occurring at the Elements.

The following report includes all calls for service to or from the Elements nightclub during April, May and June 2009.

In the second quarter of 2009 there were a total of 45 calls for police service. Ten 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 remaining 35 calls for service do pertain to the license conditions and are described as follows;

Assault Complaints (9 total - 1 off the property completely – 2 in the parking lot – 5 inside)

- (1) Arrest – This assault did occur but actually happened off the property that the Elements is responsible for, (closer to Island Transit).
- (2) Unfounded – No assault occurred. One was a disorderly subject in the parking lot. The second was actually two loud patrons in their parking lot. Both situations were properly handled by the security staff.
- (2) Gone on arrival – In both cases all parties involved were gone when the officers arrived.
- (2) Information Only Complaints – One victim reported she was struck by something. Unknown by what or by whom. There was no other information available to officers.
- (2) Settled by Contact – Security Staff called officers to remove a customer for trying to start fights. Suspect ran off when officers arrived. In the second case the victim called police then became uncooperative with responding officers. Both cases were properly handled by Security Staff

Disorderly Conduct Complaints (2 Total- Both in the parking lot)

- (1) Settled by Contact - Verbal argument – properly handled by the security staff.

- (1) **Unfounded** - This was not a disorderly conduct but a theft victim that was unhappy with the police for PR'ing, (releasing), the suspect in his theft. Properly handled by security staff.

Harassment Complaint (1 – Inside the building)

- (1) **Unfounded** – Verbal argument, police were called by security staff.

Kidnapping Complaint (1 – Parking Lot)

- (1) **Unfounded** – A husband was unhappy that his wife left with other people.

Malicious Mischief (City Park next to parking lot)

- (1) **Referred for Charges** – Female was picking the flowers in the park next to the parking lot.

Indecent Exposure (1 – Off the property, closer to Pioneer Way)

- (1) **Arrest** - Officer arrested a male for urinating in public, up the stairway from the parking lot.

Suspicious Activity - (1 – Parking Lot)

- (1) **Settled By Contact** – Called by Security Staff to verify ID of customer. Properly handled by Security Staff.

Theft – (2 – Inside the building)

- (1) **Complaint Taken** – Victim reported her purse stolen while in the Business.
- (1) **Settled By Contact** – Suspect attempted to take property from the business. Management did not want to file charges.

DUI – (2 - In the area of the business)

- (2) **Gone on arrival** – No further information was available to the responding officers.

Trespass – (1 – Parking Lot)

- (1) **Trespass Warning Issued** – Called by Security Staff to issue a trespass warning to a customer who had violated their rules.

Noise – (18 – All in the parking lot – 16 at closing time - 2 at or near midnight)

- (11) Settled By Contact or Information Only – There probably was a Violation of the City’s Noise Ordinance but the officers reported that the Security staff responded quickly and effectively to mitigate the noise.
- (2) Gone On Arrival – the officers were delayed in their response by other pending calls but there was no noise or violation upon their arrival.
- (5) Unfounded – Officers were in the parking lot area prior to and at the time of the complaints, there were no violations of the noise ordinance occurring.

SUMMARY

While there is always room for improvement, on the whole, it appears that the management and staff of Elements is doing an effective job of adhering to the license conditions ordered by the City Council. **While 35 complaints is a fairly large number and improvement in preventing these types of complaints does need to occur**, as noted in the report, 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 the business had between 5 and 8 designated security personnel working during the required times but especially near closing time.

Respectfully Submitted,

Richard W. Wallace
Chief of Police
Oak Harbor Police Department
July 6, 2009

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

Bill No. 6
Date: August 5, 2009
Subject: Six-Year Transportation
Improvement Program

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 presents the draft 2010-2015 Six-Year Transportation Improvement Program (TIP) for Council consideration and a resolution of adoption.

AUTHORITY:

The City is authorized and required to adopt a six-year Transportation Improvement Program and forward the program to the State of Washington under RCW 35.77.010.

DISCUSSION

The City is required by State law to submit an approved six-year Transportation Improvement Program (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. Two projects listed in the Transportation Element of the Comprehensive Plan have been completed and two new projects have been added to the TIP. The Bayshore Drive extension between Erie Street and Beeksma Drive and the Waterfront Trail improvements are completed. The new projects listed on the TIP are reconstruction of NE 7th Avenue between Oak Harbor Street and SR-20 and extension of Eagle Vista Avenue west from SR-20. NE 7th Avenue is an important link between the large northwest residential neighborhood and the commercial and transportation core of the City. The road currently lacks sidewalks, bicycle, lighting, and drainage facilities and does not provide adequate service. Eagle Vista Avenue intersects SR-20 near the southern City limits providing highway access to the southern most part of Oak Harbor. The property west of SR-20 between Haga Road and Eagle Vista Avenue is expected to annex into the City in the near future.

Analysis included in the Transportation Element of the Comprehensive Plan indicates that this area should be served by an east-west oriented collector street. Extending Eagle Vista Avenue west from SR-20 will provide the necessary transportation link as this area develops.

The new projects included in the six-year TIP will be added to the Capital Improvement Plan (CIP) during the 2009 Comprehensive Plan amendment process. The CIP is used in developing the City budget and longer term funding strategies for transportation and other City capital projects.

Coordinating projects in the Transportation Comprehensive Plan, the six-year TIP and the Capital Facilities Plan will improve our communication and coordination with other agencies and utility companies and help the City remain focused on a manageable list of transportation projects. Coordination of projects will also improve the communication with the public on planned transportation projects.

The six-year TIP form includes a number of codes and symbols used in the statewide management of the regional TIP documents. A copy of the TIP code key is attached. A symbol in the status column of "S" means funding is secured while a symbol of "P" means the project is not funded. As the Council is aware the form of the six-year TIP includes a priority number associated with each project. Please note that the priority numbering in the TIP is not intended to supersede or be superimposed into the Citywide effort of overall capital project prioritization.

As was previously noted, the City is required by State law to submit an approved six-year TIP. This submittal process is accomplished in conjunction with the Regional Transportation Planning Organization (RTPO). Once approved by the Council, the City's TIP is submitted to the RTPO. In turn, the RTPO submits a regional TIP to the State by October of each year. The State then prepares a statewide TIP in January of each year. The incorporation of the City's projects into this statewide TIP is what enables us to spend federal funds on local transportation projects.

STANDING COMMITTEE REVIEW

This item was presented to the Planning Commission on July 28, 2009 and the General Government Standing Committee on July 20, 2009.

RECOMMENDED ACTION:

1. Conduct a public hearing
2. Pass Resolution 09-18 adopting the 2010-2015 Six-Year Transportation Improvement Program

ATTACHMENTS:

1. Resolution 09-18
2. Six-Year Transportation Improvement Program (TIP)
3. TIP code key
4. Map of improvement locations

MAYOR'S COMMENTS:

RESOLUTION NO. 09-18

RESOLUTION ADOPTING THE 2010-2015 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM.

WHEREAS, the City of Oak Harbor has reviewed the work accomplished under the prior Six-Year Transportation Improvement Program (2009-2014); and

WHEREAS, after an extensive public involvement process the City of Oak Harbor adopted a Comprehensive Plan Transportation Element on January 15, 2008 which established the six-year and long term transportation needs for the community; and

WHEREAS, the City Council finds that the projects identified in the Transportation Improvement Program (TIP) should closely follow those found in the Comprehensive Plan Transportation Element; and

WHEREAS, the City Council finds that basing the TIP on the six-year project list from the Comprehensive Plan will provide for a more realistic transportation planning approach than including all possible projects on the TIP; and

WHEREAS, the City Council finds that utilizing this approach to preparing the TIP will assure that the community will have available a coordinated and realistic approach to carrying out a transportation improvement program; and

WHEREAS, with respect to the provisions of RCW 35.77.010(2) the City Council finds that the City has identified non-motorized transportation projects in the form of trail projects and street projects which include trail and bikeway components; and

WHEREAS, with respect to the provisions of RCW 35.77.010(3) the City Council finds that the City is not served by rail transportation and, therefore, need not plan to preserve railroad right-of-ways; and

WHEREAS, proper notice had been given through public hearing notice CC-09-16 as published in the legal advertisements of the July 25, 2009, Whidbey News Times; and

WHEREAS, a public hearing was held at the regular Council meeting on August 5, 2009, at the hour of 7:00 p.m., and at said hearing, the Six-Year Transportation Improvement Program 2010-2015 was presented.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Oak Harbor, as follows:

1. That the Six-Year Transportation Improvement Program 2010-2015, a copy of which is attached hereto as Schedule "A", be and the same is hereby adopted as the Six-Year Transportation Improvement Program 2010-2015 for the City of Oak Harbor for the ensuing year, and previous plans are amended accordingly.

2. The City Council further directs that a copy of the TIP for 2010-2015 for the City of Oak Harbor be filed with the Washington State Secretary of Transportation not more than thirty (30) days after passage.

PASSED by the City Council this 5th day of August, 2009.

THE CITY OF OAK HARBOR

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

Six Year Transportation Improvement Program

From 2010 to 2015

Agency: Oak Harbor
 Co. No.: 15 Co. Name: Island Co.
 City No.: 0895 MPO/RTPO: RTPO

Hearing Date: 6/23/2009 Adoption Date: 7/17/2009
 Amend Date:

Functional Class	Priority Number	Project Identification A. Federal Aid No. B. Bridge No. C. Project Title D. Street/Road Name or Number E. Beginning MP or Road - Ending MP or Road F. Describe Work to be Done	Improvement Type(s)	Status	Total Length	Utility Codes	Project Costs in Thousands of Dollars										Federally Funded Projects Only	R/W Required Date (MM/YY)								
							Fund Source Information					Expenditure Schedule (Local Agency)														
							Phase Start	Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	1st	2nd	3rd	4th Thru 6th	Empl. Type								
14	1	SR20 / Pioneer Way / S. Beakama Dr. SR20 from: W. Pioneer Way to: SW Erie St Road turn lanes & median intersection; 2 eastbound & 2 westbound through lanes; 1 center & two way left turn lane.	12	S	0.5	C G O P S T W	PE	B	8	10	11	12	13	14	15	16	17	18	19	20	21	CE	Yes	6/1/2011		
Totals							1000	175	1175	12000	12000	500	675	12000												
14	2	SR20 Improvement from: S Beakama Dr to: SW Swanton Ave R/W loc. Improvement & construction widening, sidewalk, curb & gutter, utility, lighting, signal, etc.	04	P	0.80	C G O P S T W	ALL	6/1/2011		OTHER	12000											CE	Yes	6/1/2011		
Totals							1000			OTHER	12000															
16	3	SW Heller Street Improvements SW Heller St to: W Whidbey Ave from: SW Swanton Ave to: W Whidbey Ave R/W loc. curb, curb & gutter, sidewalk, utility, transit facilities, joint project w/ Island County	12	P	0.78	C G O P S T W	ALL	6/1/2013		OTHER	1000	8630	7630	500	500	8000						CE	Yes	1/1/2013		
Totals							1000			OTHER	1000	8630	7630	500	500	8000										
17	4	SE Pioneer Way Improvements SE Pioneer Way to: SE Highway Blvd from: SR20 to: SE Highway Blvd Sidewalk, curb & gutter, utility, street, lighting, circulation.	03	S	0.87	C G O P S T W	ALL	1/1/2010		STP(R)	1000	5000	7000	500	500	6000						CE	Yes	1/1/2010		
Totals							1000			STP(R)	1000	5000	7000	500	500	6000										
16	5	Whidbey Avenue Reconstruction Whidbey Ave to: Regatta Dr from: Heller St to: Regatta Dr Sidewalk, curb & gutter, drainage, transit facilities, non-motorized, street	03	P	1.80	C G O P S T W	ALL	1/1/2011		OTHER	1300	500	1800	500	1800							CE	No			
Totals							1300			OTHER	1300	500	1800	500	1800											
16	6	N. Oak Harbor Street Improvements N Oak Harbor St to: NW Crosby Ave from: W Whidbey Ave to: NW Crosby Ave R/W loc. curb, curb & gutter, sidewalk, bus path, transit, etc.	03	S	0.70	C G O P S T W	ALL	1/1/2010		OTHER	500	1800	500	1800								CE	Yes	12/1/09		
Totals							500			OTHER	500	1800	500	1800												
16	7	NE 7th Avenue Intersection Improvement NE 7th Ave & Oak Harbor St to: Intersection from: Intersection to: Intersection transit, intersection and intersection safety concerns.	03	S	0.10	P T G C	ALL	1/1/2010		STP(R)	138	227	365	227	227							CE	Yes	12/1/2009		
Totals							138			STP(R)	138	227	365	227	227											

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Agency: Oak Harbor
 Co. No.: 15 Co. Name: Island Co.
 City No.: 0895 MPO/RTPO: RTPO

Six Year Transportation Improvement Program

From 2010 to 2015

Hearing Date: 6/23/2009 Adoption Date: 7/7/2009
 Amend Date: Resolution No.:

Functional Class	Priority Number	Project Identification A. Preliminary Aid No. C. Project Title D. Street/Road Name or Number E. Beginning W/P or Road - Ending W/P or Road F. Describe Work to be Done	Improvement Type(s)	Status	Total Length	Utility Codes	Project Costs in Thousands of Dollars										Expenditure Schedule (Local Agency)					Federally Funded Projects Only			
							Fund Source Information					Total Funds					1st	2nd	3rd	4th Thru 6th	Enfr. Type	Required Date (MM/YY)			
							Phase Start	Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	18	17	18	19	20	21						
00	8	Oak Harbor Multimodal Facility Oak Harbor Multimodal Facility from: S. End Dock St Construction of terminal facilities to: S. End Dock St	01	S	0	P S T W	CN	8/1/2010	6309(Bus)	10	11	12	13	14	15	16	17	18	19	20	21	EA	No		
Totals							636	209	1045	90	1000	710	825	No						EA	Yes				
19	9	SE 4th Avenue Reconstruction SE 4th Ave from: SE Ey St Curb & gutter, sidewalk, utility, drainage, pavement, to: SE Midway Blvd	03 12 06	P	0.41	C G O P S T W	ALL	8/1/2010														EA	No		
Totals							1800	825	1800	90	1000	710	825	No						EA	Yes				
16	10	Midway Blvd / NE 7th Avenue Intersection from: Intersection Traffic signal to: Intersection	12	P		C P T	ALL	1/1/2012														EA	No		
Totals							825	825	825															EA	No
16	11	Aerial Sidewalk Phase II Oak Harbor Street & Various Locations from: Complete sidewalks, gaps along minor streets, associated drainage to:	06	S		C G O P S T W	ALL	1/1/2014	STR(R)													EA	No		
Totals							2800	2800	2800															EA	No
17	12	Eagle Vista Street - West Extension Eagle Vista Street from: SR-20 Street Extension. to: SW Rosario Pl	01	P	.44	C G O P S T W	ALL	1/1/2014	STR(R)													EA	No		
Totals							2800	2800	2800															EA	No
17	13	NE 7th Ave Reconstruction NE 7th Ave from: SR-20 Street Reconstruction & Improvements. to: Oak Harbor St	03 06	P	.47	C G O P S T W	ALL	1/1/2014	STR(R)													EA	Yes		
Totals							2800	2800	2800															EA	Yes
Grand Totals for Oak Harbor							2800	2800	2800															EA	Yes

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Six Year Transportation Improvement Program Instructions for Completing the Form

Complete the form for the six year program in accordance with the following instructions. Include all transportation-related projects regardless of location or source of funds.

Heading

Agency	Enter name of the sponsoring agency.
County Number	Enter the OFM assigned number (see LAG Appendix 21.44).
City Number	Enter the OFM assigned number (see LAG Appendix 21.45).
MPO/RTPO	Enter the name of the MPO (if located within urbanized area) or RTPO (if in the rural area).
Hearing Date	Enter the date of the public hearing.
Adoption Date	Enter the date this program was adopted by council or commission.
Resolution Number	Enter Legislative Authority resolution number if applicable.
Amendment Date	Enter the date this program was amended by council or commission.

Column Number

1. **Functional Classification.** Enter the appropriate 2-digit code denoting the Federal Functional Classification. (Note: The Federal Functional Classification must be approved by FHWA.)

Description	
00 - No Classification	
Rural (under 5,000 population)	Urban (over 5,000 population)
01 - Interstate	11 - Interstate
02 - Principal Arterial	12 - Freeways & Expressways
06 - Minor Arterials	14 - Other Principal Arterials
07 - Major Collector	16 - Minor Arterial
08 - Minor Collector	17 - Collector
09 - Local Access	19 - Local Access

2. **Priority Numbers.** Enter local agency number identifying agency project priority (*optional*).

3. **Project Identification.** Enter (a) Federal Aid Number if previously assigned; (b) Bridge Number; (c) Project Title; (d) Street/Road Name or Number/Federal Route Number; (e) Beginning and Ending Termini (Mile Post or Street/Road Names); and (f) Describe the Work to be Completed.

4. **Improvement Type Codes.** Enter the appropriate federal code number(s).

Description		
01 - New construction on new alignment	07 - Resurfacing	14 - Bridge Program Special
02 - Relocation	08 - New Bridge Construction	21 - Transit Capital Project
03 - Reconstruction	09 - Bridge Replacement	22 - Transit Operational Project
04 - Major Widening	10 - Bridge Rehabilitation	23 - Transit Planning
05 - Minor Widening	11 - Minor Bridge Rehabilitation	24 - Transit Training/Admin
06 - Other Enhancements	12 - Safety/Traffic Operation/TSM	31 - Non Capital Improvement
	13 - Environmentally Related	32 - Non Motor Vehicle Project

5. **Funding Status.** Enter the funding status for the entire project which describes the current status.

S - Project is '**selected**' by the appropriate selection body & **funding is secured.**

P - Project is subject to selection by an agency other than the lead and is listed for planning purposes and **funding has not been determined.**

6. **Total Length.** Enter project length to the nearest hundredth mile (or code "00" if not applicable).

7. **Utility Code(s).** Enter the appropriate code letter(s) for the utilities that would need to be relocated or are impacted by the construction project.

C - Cable TV	S - Sewer (other than agency-owned)
G - Gas	T - Telephone
O - Other	W - Water
P - Power	

Six Year Transportation Improvement Program Instructions for Completing the Form

8. **Project Phase.** Select the appropriate phase code of the project.

- PE - Preliminary Engineering, including Design (or Planning)
- RW - Right of Way or land acquisition
- CN - Construction only (or transit planning or equipment purchase)
- ALL - All Phases from Preliminary Engineering through Construction
(Use only in Years 4, 5, & 6)

9. **Phase Start Date.** Enter the month/day/year (in MM/DD/YY format) that the selected phase of the project is actually expected to start.

10. **Federal Fund Sources.** Enter the Federal Fund Source code from the table below.

BIA	- Bureau of Indian Affairs	5307	- <i>FTA Discretionary for Capital Expenditures</i>
BR	- Bridge Replacement or Rehab.	5309(Bus)	- FTA Urban Areas
CBDG	- Community Development Block Grant (HUD)	5309(FG)	- Bus
CMAQ	- Congestion Mitigation Air Quality	5309(NS)	- Fixed Guideways
DEMO	- TEA-21 Demo Projects (Selected)	5310	- New Starts
Discretionary	- Ferry Boat Discretionary, Public Lands Highway, Scenic Byways, etc.	5311	- FTA Elderly/Disabled
DOD	- Department of Defense	REV	- FTA Rural Areas
IC	- Interstate Construction	STP(C)	- Rural Economic Vitality Program
IM	- Interstate Maintenance	STP(E)	- STP Statewide Competitive Program
NHS	- National Highway System	STP(S)	- STP Transportation Enhancements
3037	- FTA Job Access/Reverse Commute	STP(R)	- STP Safety Including Hazard and RR
		STP(U)	- STP Rural Regionally Selected
		STP	- STP Urban Regionally Selected
			- STP (WSDOT Use Only)

11. **Federal Cost.** Enter the total federal cost (in thousands) of the phase regardless of when the funds will be spent.

12. **State Fund Code.** Enter the appropriate code for any of the listed funds to be used on this project.

CAPP	- County Arterial Preservation Program	PWTF	- Public Works Trust Fund
CHAP	- City Hardship Assistance Program	RAP	- Rural Arterial Program
TPP	- Transportation Partnerships Program	SCP	- Small City Program
AIP	- Arterial Improvement Program	FMSIB	- Freight Mobility Strategic Invest. Board
PSMP	- Pedestrian Safety & Mobility Program	WSDOT	- WSDOT funds
PTSP	- Public Transportation Systems Program	OTHER	- Any other <u>unlisted</u> state fund codes

13. **State Funds.** Enter all funds from the State Agencies (in thousands) of the phase regardless of when the funds will be spent.

14. **Local Funds.** Enter all the funds from Local Agencies (in thousands) of the phase regardless of when the funds will be spent.

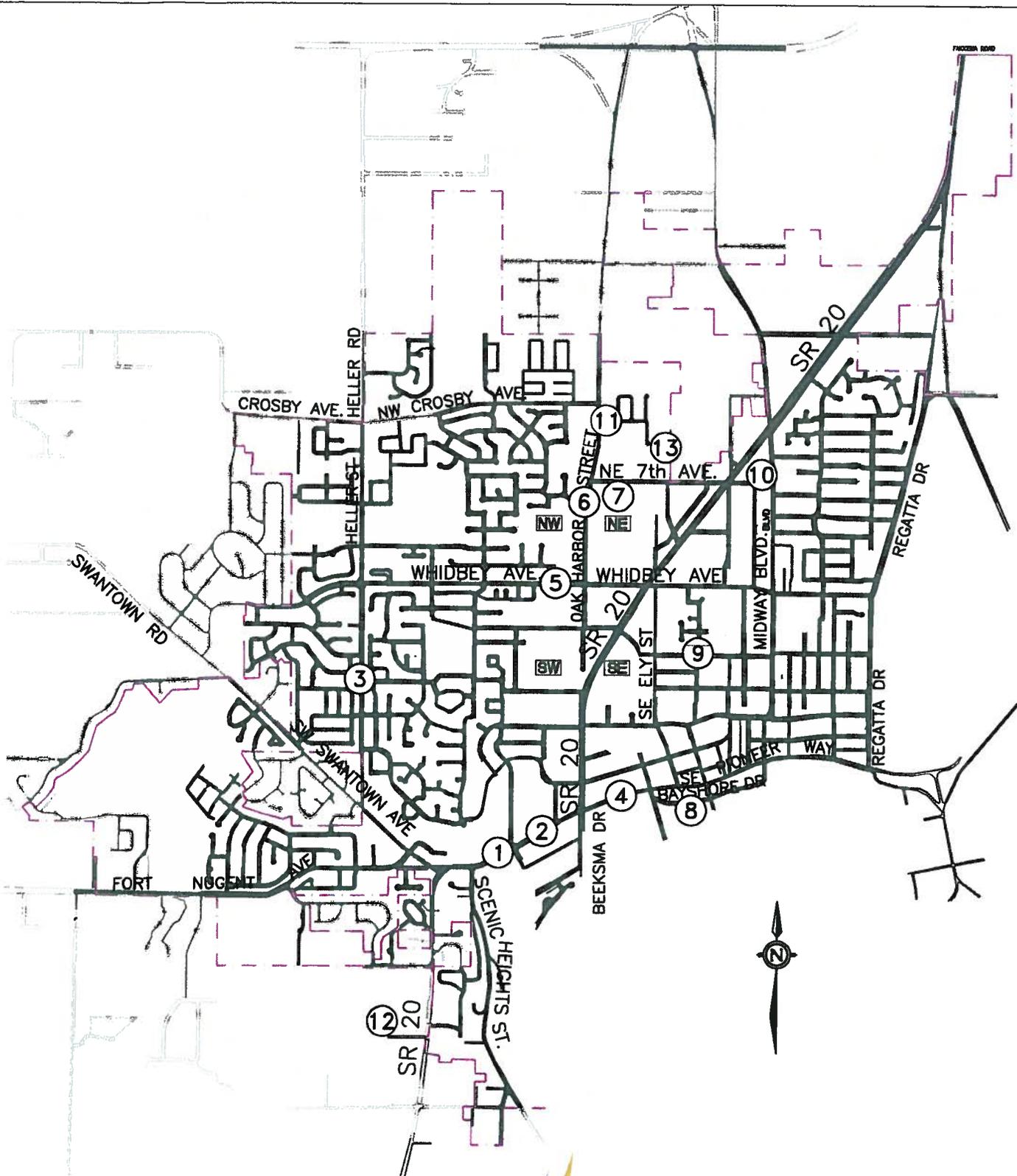
15. **Total Funds.** Enter the sum of columns 10, 12, and 14. (This will auto-total in the STIP software program.)

16-19. **Expenditure Schedule - (1st, 2nd, 3rd, 4th thru 6th years).** Enter the estimated expenditures (in thousands) of dollars by year. (*For Local Agency use.*)

20. **Environmental Data Type.** Enter the type of environmental documentation that will be required for this project. Environmental determination must be completed before the Right-of-Way/Construction phase(s) can be obligated. (This is required for *Federally funded* projects.)

- EIS - Environmental Impact Statement
- EA - Environmental Assessment
- CE - Categorical Exclusion

21. **R/W Certification.** If Right of Way acquisition is required, enter R/W Certification Date, if known. (This is required for *Federally funded* projects.)



SIX YEAR TRANSPORTATION IMPROVEMENT PLAN

2010 - 2015

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

Bill No. 7
Date: August 5, 2009
Subject: Gentry – SR-20 Annexation:
Scheduling of Public Hearing

FROM: Steve Powers *SP*
Development Services 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:

The proponent for the Gentry – SR-20 Annexation has submitted the annexation petition. This agenda bill presents a resolution for the City Council's consideration that if approved would schedule a public hearing on this matter for September 1, 2009.

AUTHORITY:

The requirement for the City Council to set a date for the public hearing for a proposed annexation is found in RCW 35A.14.130.

DISCUSSION

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.

On April 21, 2009 Mr. Gentry submitted the annexation petition (see Exhibit 1). Since the Council's approval to circulate a petition, the annexation area has been reduced. The petition now seeks annexation of only 37 acres. Before the City can act on the annexation, the petition must be deemed sufficient (RCW 35A.01.040). In keeping with state law the City forwarded the petition to the Island County Auditor for a determination of sufficiency.

The City Council may now entertain the petition, and if they so choose, schedule the annexation for public hearing. If the attached resolution is approved it would schedule the public hearing for September 1, 2009 and cause notice of the hearing to be published in the City's official newspaper and for notice to be posted within the annexation area.

STANDING COMMITTEE REVIEW

The Gentry – SR-20 Annexation was before the Governmental Services Standing Committee on April 13, June 8 and July 20, 2009. The proposed annexation was also discussed in the context of the City's affordable housing project on other occasions with the Committee.

RECOMMENDED ACTION:

Approve the resolution setting September 1, 2009 as the public hearing date for the Gentry – SR-20 Annexation.

ATTACHMENTS:

- Figure 1: Annexation Area
- Exhibit 1: Annexation Petition
- Resolution

MAYOR'S COMMENTS:

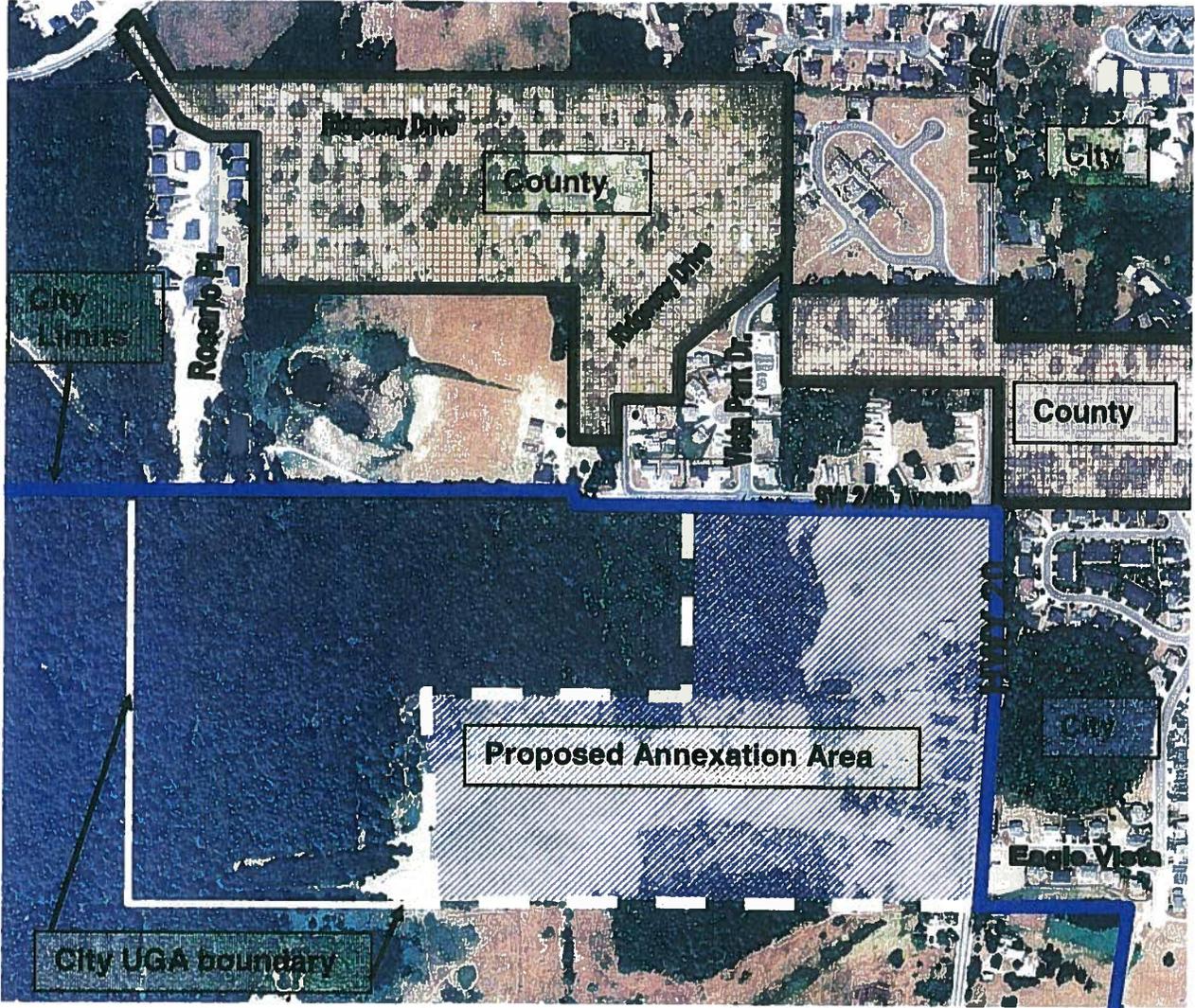


Figure 1 – Annexation Area

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:

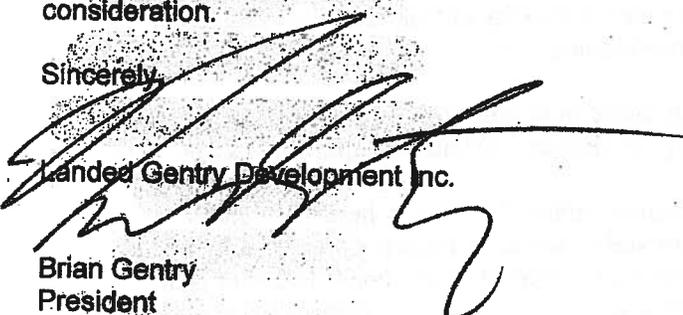
I am writing on behalf of the undersigned property owners to request initiation of proceedings to annex approximately 37 acres to the City of Oak Harbor. The proposed annexation area comprises 6 parcels and 4 owners as depicted on the enclosed property list and map. We propose that the existing R-1 zoning 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 I

43

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.

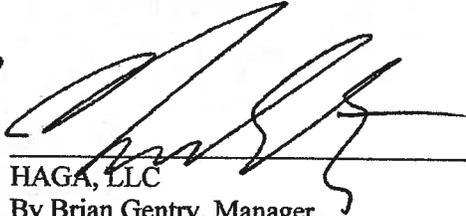
Wherefore, the undersigned petition the Honorable City Council and ask:

- (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



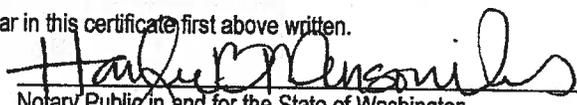
HAGA, LLC
By Brian Gentry, Manager

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.

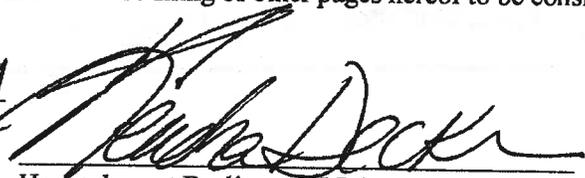




Notary Public in and for the State of Washington
Residing at Mount Vernon Skagit County
Commission expires: 08-09-2012
Printed name of Notary: Haylee B. Mensonides

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

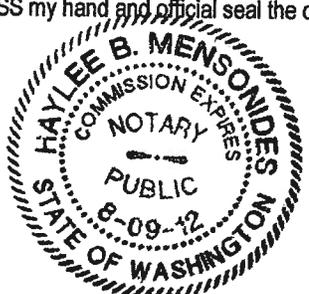


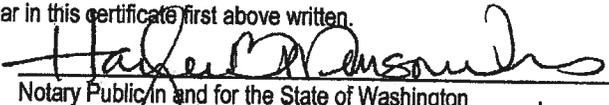
Homeplace at Burlington, LLC
By Kendra Decker, Manager

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.

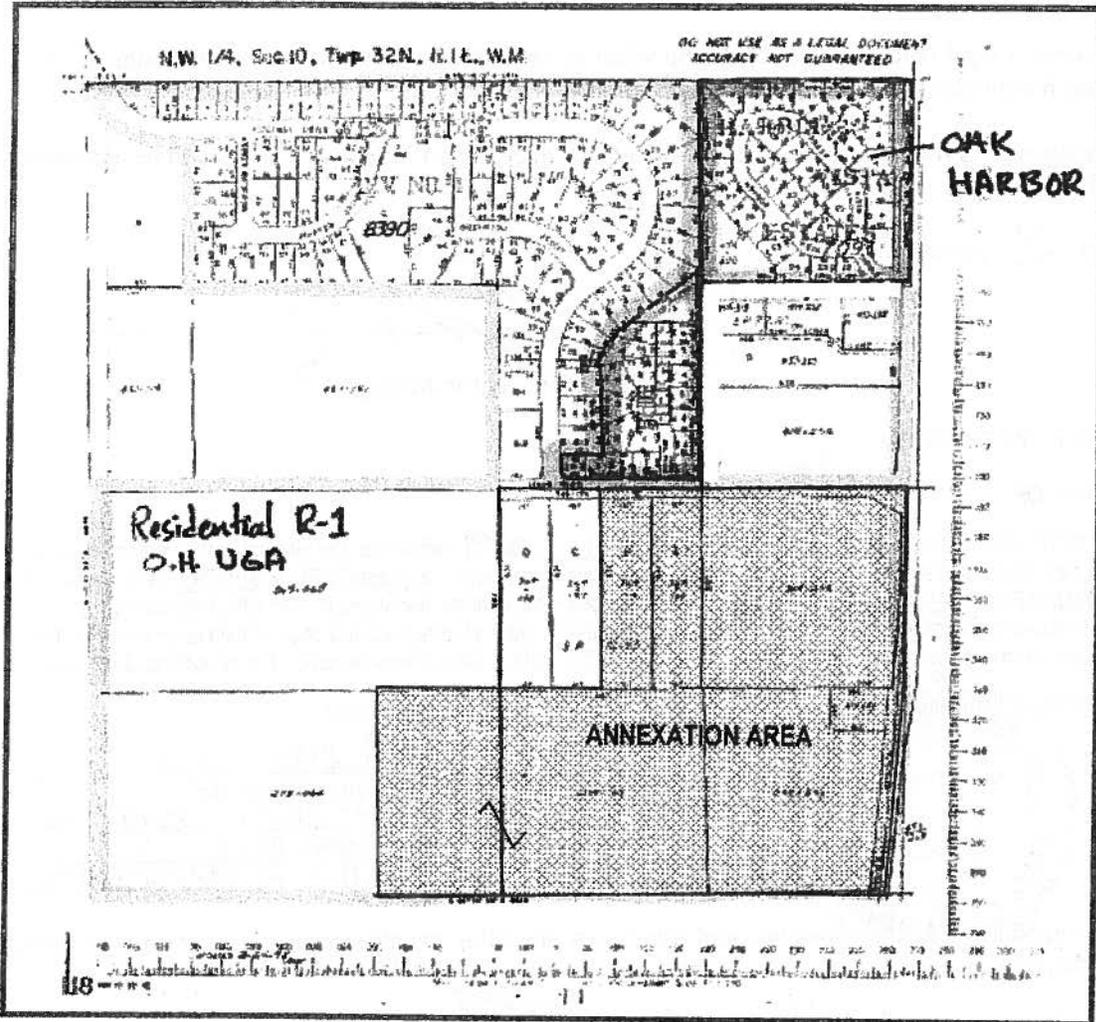
WITNESS my hand and official seal the day and year in this certificate first above written.





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:

R13210-295-1480, 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.

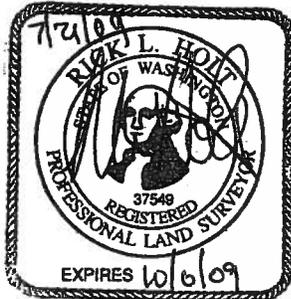
EXCEPTING THEREFROM the West ½ of the Northwest ¼ of the Southeast ¼ of the Northwest ¼ of Section 10, Township 32 North, Range 1 East of the Willamette Meridian also know as Lots C and D of Short Plat 76/55, Filed under Auditor's File Number 301894, Records of Island County, Washington.

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.



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RESOLUTION NO. 09-XX

RESOLUTION setting the public hearing for the Gentry – SR-20 Annexation for September 1, 2009, and causing notice to be published in a newspaper of general circulation and causing notice to be posted in three public places within the territory proposed for annexation.

WHEREAS, the City Council on May 7, 2007 did consider a proponent’s request to initiate annexation proceedings for territory known as the Gentry – SR-20 Annexation; and

WHEREAS, the City Council on that date did initiate the annexation and authorized the proponent to circulate a petition; and

WHEREAS, the proponent has submitted a petition for annexation; and

WHEREAS, the Island County Auditor determined on 7/27/09 that the petition is sufficient as required by RCW 35A.01.040; and

WHEREAS, the annexation may now be scheduled for public hearing.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Oak Harbor, Washington that the Gentry – SR-20 Annexation be scheduled for public hearing on September 1, 2009, and 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 annexation

PASSED by the City Council of the City of Oak Harbor and approved by its Mayor this 5th day of August, 2009.

THE CITY OF OAK HARBOR

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

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

Bill No. 8
Date: August 5, 2009
Subject: Marina Redevelopment Phase I
Construction Contract Award

FROM: Steve Powers *rep*
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 recommends awarding a construction contract for the Oak Harbor Marina Redevelopment Phase 1 to Bellingham Marine Industries in the amount of \$715,900.00.

AUTHORITY

Oak Harbor Municipal Code Section 2.330.010 addresses the contracting for public works and improvements and reads in part as follows:

“Except as otherwise authorized by Chapters 39.04 and 39.28 RCW, or RCW 35.22.620, relating to emergency public works, or other applicable general state law, as now enacted or as hereafter amended, all public works and improvements shall be done by contract pursuant to public notice and call for competitive bids in accordance with this chapter whenever the estimated cost of such public work or improvement, including the cost of materials, supplies, equipment and labor, will exceed the sum of \$30,000 if more than one craft or trade is involved with the public works project...”

In keeping with this code provision the Marina Redevelopment Project, Phase I, was advertised and competitively bid (see Discussion section).

SUMMARY STATEMENT

On October 8, 2008 the City Council approved a design engineering contract with Reid Middleton for the first phase of the Marina Redevelopment Project. The scope of work associated with that contract included the 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. The scope also included work to assist the City with predesign and evaluation of sediment accumulation rates and dredging at the marina. Please note that dredging design, with a deliverable of construction plans and specifications for

dredging, was not part of the contracted scope of work. Phase II of the project will focus on dredging. Staff will provide the City Council a tentative schedule for the dredging work (e.g. planning, design, funding discussion, bid advertisement and actual dredging) at the August 5th meeting.

The proposed Phase I 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 gangway. 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 both be repaired and upgraded. The contract also features the re-wiring of the electrical system on C dock to meet current codes as a bid alternate.

Given the nature of the proposed work, and the resource limitations of City engineering staff, it is necessary for the City to contract for construction administrative services. City staff is working with Reid Middleton to develop a scope of work for these services (as an amendment to their existing contract). The contract amendment will be presented for the Council's consideration at the September 1, 2009 meeting.

DISCUSSION:

Project Advertising: The project was advertised for bid in the *Daily Journal of Commerce* on June 29 and July 6 and the *Whidbey New Times* on June 27 and July 4.

Amount of the Contract: Staff received and opened four (4) sealed bids on July 28, 2009. Two bid schedules were advertised: Schedule A and Schedule B. The work required under the two bid schedules is identical with the exception that Schedule B adds new electrical service for C Dock. The following bids were received (amounts include Washington State Sales Tax in the amount of 8.4%):

Contractor	Location	Schedule A Bid Total	Schedule B Bid Total
Bellingham Marine Industries	Ferndale, WA	\$562,900.00	\$715,900.00
Culbertson Marine	Anacortes, WA	\$554,791.49	\$720,419.81
American Construction	Tacoma, WA	\$599,360.00	\$719,360.00
Advanced Construction	Mukilteo, WA	\$1,107,300.00	\$792,000.00

<i>Engineer's Estimate</i>	<i>Oak Harbor, WA</i>	<i>\$800,000 to \$1,000,000</i>
----------------------------	-----------------------	---------------------------------

Staff reviewed the bid prices, qualifications and experience of the low bidder and is satisfied with the results of that review. It is recommended that a contract in the amount of \$715,900.00 be

awarded to Bellingham Marine Industries who is the lowest responsible bidder for work described under Schedule B.

Construction Contingency: Most construction projects involve change orders and modifications to the contract plans. Delays in processing change order requests can result in costly delay claims against the City. To minimize the possibility of delays and the resulting claims, staff requests that the City Engineer be authorized to administratively approve up to \$71,000.00, or approximately 10% of the contract amount, for change orders.

Funding: Funding for the project is available from the Marina's cash reserves.

Justification: The project is necessary to protect and enhance the capital investment the City has in the Marina. It will improve the safety, accessibility and infrastructure capacity for the Marina as a whole over the long term and to certain portions of it in the short term.

STANDING COMMITTEE REPORT

The project has been discussed on several occasions with the Governmental Services Committee. Most recently it was presented to them on June 8, 2009 and July 20, 2009. It has also been discussed on several occasions with the Marina Advisory Committee. On June 1, 2009 they voted unanimously to recommend proceeding with the project.

RECOMMENDED ACTION

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 \$71,000.00.

ATTACHMENTS

Bid Tabulation
Contract Form

MAYOR'S COMMENTS

Oak Harbor Marina Redevelopment Phase 1 Bid Schedule A

Bid Item	American Construction Tacoma, WA		Bellingham Marine Ferndale, WA WA		Culbertson Marine Anacortes, WA WA		Advanced Construction Mukilteo, WA	
	75000	20000	30584.79	75000	20000	30584.79	75000	20000
A-1 Mobilization/ demobilization	1000	6600	1.08	20000	6600	1.08	20000	6600
A-2 Shoring	5000	6300	655.82	6300	6300	655.82	6300	6300
A-3 Temporary facilities	500	4600	5044.72	4600	4600	5044.72	4600	4600
A-4 Environmental Protection	9500	5200	9373.13	5200	5200	9373.13	5200	5200
A-5 Remove and Dispose timber piling	13500	13000	6841.67	13000	13000	6841.67	13000	13000
A-6 Remove and Salvage floats and gangway	1500	12800	1879.11	12800	12800	1879.11	12800	12800
A-7 Remaining demolition	1500	1600	607.04	1600	1600	607.04	1600	1600
A-8 Furnish and Install Concrete pavement	68000	83200	74786.18	83200	83200	74786.18	83200	83200
A-9 Furnish and Install precast float system	33000	39000	29068.08	39000	39000	29068.08	39000	39000
A-10 Furnish and install steel piling	4000	2900	4186.52	2900	2900	4186.52	2900	2900
A-11 Furnish and install pile splice 20	360	1200	424.02	1200	1200	424.02	1200	1200
A-12 Furnish and install pile caps	45000	43000	42276	43000	43000	42276	43000	43000
A-13 Furnish and install marina potable water system	33000	33000	30352	33000	33000	30352	33000	33000
A-14 Furnish install and repair marina fire water system	2000	4300	4787.53	4300	4300	4787.53	4300	4300
A-15 Furnish and install marina gangway connections	36500	34200	44577.98	34200	34200	44577.98	34200	34200
A-16 Furnish and install gangway	260000	242000	259345.82	242000	242000	259345.82	242000	242000
A-17 Electrical system	10000	10000	10000	10000	10000	10000	10000	10000
A-18 Minor Additions and deletions								
TOTAL	\$599,360.00	\$562,900.00	\$554,791.49	\$562,900.00	\$562,900.00	\$554,791.49	\$1,107,300.00	\$1,107,300.00

GP

Oak Harbor Marina Redevelopment Phase 1 Bid Schedule B

Bid Item	American Construction Tacoma, WA	Bellingham Marine Ferndale, WA	Culbertson Marine Anacortes, WA	Advanced Construction Mukilteo, WA
B-1 Mobilization/ demobilization	75000	22000	43939.67	50000
B-2 Shoring	1000	6600	1.08	10000
B-3 Temporary facilities	5000	6300	655.82	10000
B-4 Environmental Protection	500	4600	5044.72	10000
B-5 Remove and Dispose timber piling	9500	5200	9373.13	25000
B-6 Remove and Salvage floats and gangway	13500	13000	6841.67	35000
B-7 Remaining demolition	1500	12800	1879.11	15000
B-8 Furnish and Install Concrete pavement	1500	1600	607.04	300
B-9 Furnish and Install precast float system	68000	83200	74786.18	75000
B-10 Furnish and install steel piling	33000	39000	29068.08	30000
B-11 Furnish and install pile splice 20	4000	2900	4186.52	5000
B-12 Furnish and install pile caps	360	1200	424.02	15000
B-13 Furnish and install marina potable water system	45000	43000	42276	75000
B-14 Furnish install and repair marina fire water system	33000	33000	30352	92000
B-15 Furnish and install marina gangway connections	2000	4300	4787.53	15000
B-16 Furnish and install gangway	36500	34200	44577.98	70000
B-17 Electrical system	260000	242000	259345.82	200000
B-18 C-Dock electrical service	150000	151000	152273.44	50000
B-19 Minor Additions and deletions	10000	10000	10000	10000
TOTAL	\$749,360.00	\$715,900.00	\$720,419.81	\$792,300.00

The Advanced Construction total is \$300.00 more than that submitted as their bid.

61 W

**CITY OF OAK HARBOR, WA
CONSTRUCTION CONTRACT COVER SHEET**

Contract Parties: **City of Oak Harbor and Bellingham Marine Industries**

Contract Reference: **Oak Harbor Marina Redevelopment Phase I #Eng-09-04**

Description of Work: Replace the old gangway and floats to provide a new aluminum gangway with hinged concrete landing floats at the Oak Harbor Marina. The work to be performed includes, but is not limited to, removing old gangways and floats, installing new gangway, installing new foam-filled concrete floats connected with timber walers, providing utilities and electrical upgrades (including C-Dock electrical service), providing galvanized steel piling, and other work in accordance with the Contract Documents.

Contract Amount: **Not to exceed \$715,900.00.**

Contract Period:

Time for Completion: Work shall be completed within 150 days of the Notice to Proceed

Final Acceptance by City: The date on which the City accepts the work as complete

Indemnification: Indemnification Addendum

Insurance: SP 1-07.18 (Special Provisions)

Contract Documents: Agreement and Contract
Change Orders
Addenda No. 1, 2 and Indemnification Addendum
Bid Proposal Form
Special Provisions
Contract Drawings
Amendments
WSDOT Standard Specifications for Road, Bridge and Municipal
Construction (2008)
Agency Standard Plans
WSDOT Standard Plans
Appendices
Information/Instructions to Bidders
Bid Solicitation
Performance and Payment Bond
Notice of Award
Notice to Proceed

RE: OAK HARBOR MARINA REDEVELOPMENT PHASE 1

THIS AGREEMENT AND CONTRACT, made this 5th day of August 2009, by and between the CITY OF OAK HARBOR, herein called the Owner, and Bellingham Marine Industries hereinafter called the Contractor.

ARTICLE I. SCOPE OF WORK. The Contractor shall perform, within the time stipulated, the Contract as herein defined, of which this agreement is a component part, and everything required to be performed, and shall provide and furnish any and all utility and transportation services necessary to perform the contract and complete in a workmanlike manner furnishing materials and installing improvements entitled "OAK HARBOR MARINA REDEVELOPMENT PHASE 1" CONTRACT ENG-09-04, in strict conformity with the plans and project manual, including any and all Addenda issued by the Owner, with the other contract documents hereinafter enumerated.

It is agreed that said labor, materials, tools, equipment, and services shall be furnished and the contract performed and completed subject to the approval of the Owner or its authorized representative.

ARTICLE II. LUMP SUM PRICES. The Owner shall pay to the Contractor as full consideration for the performance of the contract, an amount equal to the lump prices as set forth in the bid.

ARTICLE III. UNIT PRICES. The Owner shall pay to the Contractor as full consideration for the performance of the contract, an amount computed upon the basis of the quantity of work actually performed at the unit prices set forth in the bid, and, should the quantities be increased or decreased, payment shall be made per 1-04.6 of the Standard Specifications and the Contractor shall make no claim for anticipated profits for any increase or decrease in the quantities. Actual quantities shall be determined upon completion of the work and as described in the bid specifications.

ARTICLE IV. COMPONENT PARTS OF THIS CONTRACT. The Contract entered into by the acceptance of the Contractor's bid and the signing of this agreement consists of the following documents all which are component parts of said Contract and as fully a part thereof as if herein set out in full, and if not attached, as if hereto attached.

1. This Agreement and Contract
2. Change Orders
3. Addenda No. 1, 2 and Indemnification Addendum
4. Bid Proposal Form
5. Special Provisions
6. Contract Drawings
7. Amendments
8. WSDOT Standard Specifications for Road, Bridge and Municipal Construction (2008)
9. Agency Standard Plans
10. WSDOT Standard Plans

- 11. Appendices
- 12. Instructions to Bidders
- 13. Bid Solicitation
- 14. Performance and Payment Bond
- 15. Notice of Award
- 16. Notice to Proceed

In the event of any conflict or inconsistency between any of the foregoing documents, the conflict or inconsistency shall be resolved upon the basis of the numerical order. The document or documents assigned the small number or numbers being controlling over any document having a larger number in the numerical order set forth above. Provided, however, although the supplemental conditions incorporates standard specifications by reference, in case of conflict or inconsistency, these standard specifications have a numerical order as shown above.

ARTICLE V. SALES TAXES. All applicable taxes associated with this contract shall be submitted under Location Code 1503 (City of Oak Harbor).

IN WITNESS WHEREOF, four (4) identical counterparts of this Agreement, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on this day and year first above written.

City of Oak Harbor
OWNER

Corporate Seal:

By: _____

Title: _____

By: _____

Title: _____

CONTRACTOR

Corporate Seal:

By: _____

Title: _____

WITNESS, if individual or partnership

ATTEST, if Corporation

By: _____

By: _____

By: _____

Title: _____

City of Oak Harbor
City Council Agenda Bill

Bill No. 9
Date: August 5, 2009
Subject: Ordinance Introduction- Illicit
Discharge Prohibition

**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 introduces 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 of Oak Harbor by the Washington State Department of Ecology.

AUTHORITY

The City Council is granted authority under RCW 35A.11.020 to adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the City.

SUMMARY STATEMENT

In February of 2007, the City of Oak Harbor was formally issued an NPDES Phase II Municipal Stormwater Permit by the Washington State Department of Ecology (DOE). The DOE is required to issue the NPDES stormwater permits under the terms of the Washington State Water Pollution Control Law and the Federal Water Pollution Control Act (the Clean Water Act). The NPDES permit requires the City of Oak Harbor to undertake a significant number of operational changes as well as policy and code changes in order to reduce or eliminate sources of pollution through the City of Oak Harbor stormwater drainage system. It is important to note that the NPDES permit is issued to the City as the governmental jurisdiction, but that much of the content of the NPDES permit is directed towards the actions of private parties, businesses, developers and property owners with the City acting as the policing agent for the protection of water resources.

The permit requires that adoption of the code changes related to illicit discharge be in place by August of 2009.

The proposed ordinance adds a new Chapter 12.50 to Title 12 entitled "Illicit Discharge Prohibited" to address the requirement to prohibit illicit discharges.

OHMC 12.50 Illicit Discharge Prohibited

The NPDES permit requires that the City enact an ordinance that not only prohibits the discharge or all non-stormwater discharges through the City of Oak Harbor stormwater drainage system, but also provides for enforcement actions if an unlawful discharge occurs. The goal of the permit requirement is to reduce both point source and non-point source pollution discharges to storm drainage conveyances, surface water and ground water. The attached ordinance proposes a new chapter in Title 12 of the OHMC that identifies and prohibits certain discharges, identifies allowable discharges and provides for enforcement actions. The list of prohibited discharges, allowable discharges and conditional discharges was adapted from DOE-provided guidance.

This agenda bill is for introduction of the ordinance with a date for a public hearing set for the regular City Council meeting on October 6, 2009. Introducing the ordinance in August, but delaying formal action on adoption until October, allows for reasonable compliance with terms of the permit, review by the Council standing committees and public input.

STANDING COMMITTEE REPORT

This agenda bill and ordinance introduction has not been reviewed by a standing committee.

RECOMMENDED ACTION

Make a motion that the ordinance be considered and set October 6, 2009 for a public hearing for additional consideration and action on the ordinance.

ATTACHMENTS

Draft ordinance - Ch. 12.50 OHMC

MAYOR'S COMMENTS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR ADDING A NEW CHAPTER 12.50 TO THE OAK HARBOR MUNICIPAL CODE ENTITLED "ILLICIT DISCHARGE PROHIBITED" WHICH PROHIBITS THE DISCHARGE OF CERTAIN MATERIAL INTO THE CITY'S STORMWATER DRAINAGE SYSTEM; PROHIBITS ILLICIT CONNECTIONS TO THE CITY'S STORMWATER DRAINAGE SYSTEM; AND ESTABLISHES ENFORCEMENT PROCEDURES AND PENALTIES

WHEREAS, contaminants in stormwater runoff discharge nutrients, metals, oil and grease, toxic materials, and other forms of pollution into the city's surface and groundwater resources, thereby endangering their use for recreation, drinking water and fisheries; and

WHEREAS, protection of the environment, sustainable development and responsible stewardship and preservation of the water resources in Oak Harbor and Whidbey Island are a high priority for the citizens of the city of Oak Harbor.

WHEREAS, regulation of illicit discharges into and illicit connections to the City's stormwater drainage system is necessary for the public health, safety and general welfare of Oak Harbor residents; and

WHEREAS, the City of Oak Harbor has been included as a Phase II city for purposes of the Phase II Municipal Stormwater General Permit for Western Washington under the National Pollutant Discharge Elimination System ("NPDES") program; and

WHEREAS, as a Phase II city, the City of Oak Harbor is required to adopt pollution prevention measures including regulation of illicit discharges into and illicit connections to the City's stormwater drainage system or "municipal separate storm sewer system" ("MS4") ; and

WHEREAS, the present deadline established for adoption of an ordinance regulating illicit discharges into and illicit connections to the City's stormwater drainage system is August 15, 2009;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. There is hereby added to Title 12 of the Oak Harbor Municipal Code a new Chapter 12.50 entitled "Illicit Discharge Prohibited" to read as follows:

**CHAPTER 12.50
ILLICIT DISCHARGE PROHIBITED**

Sections:

- 12.50.005 Definitions
- 12.50.010 Discharges to Water Resources

- 12.50.015 Spills
- 12.50.020 Illicit Connections
- 12.50.030 Administration
- 12.50.040 Public Nuisance
- 12.50.050 Summary Abatement
- 12.50.060 Penalties
- 12.50.070 Enforcement

12.50.005 Definitions.

- (1) "Contaminant" or "stormwater discharge contaminant" means any material other than stormwater, an allowable discharge as defined in OHMC 12.50.010(2), or a conditional discharge allowed pursuant to OHMC 12.50.010(3).
- (2) "Illicit connection" means any man-made conveyance that is connected to the City of Oak Harbor Stormwater Drainage System that either facilitates any illicit discharge or any connection to the City system made without a permit. Examples include, but are not limited to, sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets or outlets that are connected directly or indirectly to the City of Oak Harbor Stormwater Drainage System.
- (3) "Illicit discharge" means any discharge, directly or indirectly, to the City of Oak Harbor Stormwater Drainage System and/or to surface waters or ground waters under the jurisdiction of the City of Oak Harbor, that is not composed entirely of stormwater except discharges pursuant to a NPDES Permit and discharges resulting from fire fighting activities.
- (4) "Stormwater Drainage System", "City system", "municipal separate storm sewer system" or "MS4" means the conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains) owned or operated by the City, designed or used for collecting or conveying stormwater.

12.50.010 Discharges to Water Resources.

- (1) Illicit Discharges Prohibited. No person shall throw, drain or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the City of Oak Harbor Stormwater Drainage System, surface waters or ground waters, any material other than stormwater. No person, property owner, business or other operation shall allow, either through direct act or through failure to prevent, discharge of any contaminated stormwater to any storm drain conveyance, surface water or ground water. Persons or operations shall use all known, available, and reasonable methods to prevent the discharge of contaminants to the City of Oak Harbor Stormwater Drainage System or any surface or ground waters. The following are examples of prohibited stormwater discharge contaminants:

- (a) Trash or debris
- (b) Construction and landscaping materials
- (c) Petroleum products including, but not limited to, oil, gasoline, grease, diesel, fuel oil and heating oil
- (d) Antifreeze and other automotive-fluids and lubricants
- (e) Metals, in either particulate or dissolved form
- (f) Flammable or explosive materials
- (g) Radioactive materials
- (h) Batteries
- (i) Acids, alkalis or bases
- (j) Paints, stains, resins, lacquers or varnishes
- (k) Degreasers and/or solvents
- (l) Drain cleaners
- (m) Pesticides, herbicides or fertilizers
- (n) Steam cleaning wastes
- (o) Soaps, detergents or ammonia
- (p) Car washing soaps, waxes, polishing agents, wheel cleaning products, degreasing agents or engine cleaners
- (q) Swimming pool or spa filter backwash
- (r) Chlorine, bromine or other disinfectants
- (s) Heated water
- (t) Domestic animal wastes
- (u) Sewage
- (v) Recreational vehicle wastes
- (w) Animal carcasses
- (x) Food wastes
- (y) Bark, mulch, compost or other fibrous material
- (z) Lawn clippings, leaves, branches, weeds or other yard waste
- (aa) Silts, sediment, concrete, cement, clay, gravel or other soil generated from erosion, vehicle tracking, material stockpiles or other similar source
- (bb) Dyes
- (cc) Chemicals not normally found in rainwater
- (dd) Any other process-associated discharge except as others allowed in this section
- (ee) Any hazardous material or waste

(2) Allowable Discharges to Stormwater Drainage System. The following types of discharges shall be permitted unless the City determines that these discharges (whether singularly or in combination with others) are causing significant contamination of water resources:

- (a) Diverted stream flows
- (b) Rising ground waters
- (c) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(2))
- (d) Uncontaminated pumped ground water
- (e) Foundation drains

- (f) Air conditioning condensation
- (g) Irrigation water from agricultural sources that is commingled with urban stormwater
- (h) Springs
- (i) Water from crawl space pumps
- (j) Footing drains and roof drains, from non-pollution generating roofing materials, drains
- (k) Flows from riparian habitats and wetlands
- (l) Non-stormwater discharges covered by another NPDES Permit
- (m) Discharges from emergency fire fighting activities
- (n) Accidental discharges from breaks in potable water mains, damage to fire hydrants or other failure of any potable water facilities or structure
- (o) Any discharge specifically authorized in writing by a local, state or federal agency for remedial action in an agreed order, a consent decree or a voluntary cleanup effort

(3) Conditional Discharges. The following categories of non-stormwater discharges are allowed under the conditions listed below:

- (a) Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing and pipeline hydrostatic test water with a chlorine residual greater than 0.1 ppm, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the City of Oak Harbor Stormwater Drainage System.
- (b) Incidental discharges from lawn watering and other irrigation runoff provided that said discharge is the result of weather, equipment malfunction or other uncontrollable act and is not the result of excessive irrigation or sprinkler patterns that direct water towards impervious surfaces.
- (c) Dechlorinated swimming pool discharges with a residual chlorine concentration less than 0.1 ppm, pH-adjusted and re-oxygenated if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the City of Oak Harbor Stormwater Drainage System.
- (d) Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents, soaps or other cleansing agent. Street and sidewalk wash water discharges shall be permitted only if street sweeping is performed prior to washing.
- (e) Other non-stormwater discharges in compliance with the requirements of a stormwater pollution prevention plan, in accordance with Section 12.30, reviewed and approved by the City, which addresses control of discharges by applying all known and available resources and technology (AKART) to prevent contaminants from entering surface or ground waters.

12.50.015 Spills.

- (1) Spills, whether intentional or accidental, of stormwater contaminants released, discharged to, or having the potential to release or discharge to the City of Oak Harbor Stormwater Drainage System, surface waters or ground waters, shall be contained, controlled, collected, cleaned up and properly disposed. All affected areas shall be restored to their preexisting condition to the maximum extent practical.
- (2) All costs incurred by the City of Oak Harbor in assisting with containing, controlling, collecting, cleaning up and properly disposing of spilled materials together with all restoration costs shall be the responsibility of the persons, organization, entities or other parties in control of the stormwater contaminants immediately prior to their release or discharge.
- (3) Persons in control of the stormwater contaminants immediately prior to their release or discharge, and persons owning the private property, vehicles, equipment or vessels, on or from which, the substances were released or discharged, shall immediately notify the Oak Harbor Stormwater Utility and Oak Harbor Fire Department of the release or discharge, as well as making any required notifications under state and federal law. Notification of a spill shall be made by contacting the emergency dispatch center, (ICOM at 911) or the City of Oak Harbor spill notification hotline. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability, civil penalty or criminal offense which may be imposed by state or other law.

12.50.020 Illicit Connections.

- (1) Any connection that could allow conveyance of any illicit discharge or conveyance of any solid, liquid, or gas materials not composed entirely of surface and stormwater directly to water resources is considered an illicit connection and is prohibited, except:
 - (a) Connections conveying allowable discharges as set forth at Section 12.50.010(2);
 - (b) Connections conveying discharges pursuant to a National Pollutant Discharge Elimination System (NPDES) Permit or a State Waste Discharge Permit; and
 - (c) Connections conveying effluent from permitted or authorized onsite sewage disposal systems to subsurface soils provided that said system is properly operating and in conformance with all relevant Washington State and Island County regulations for use, operation, maintenance and inspection.

12.50.030 Administration. The Director of Public Works, or designee, shall be responsible for the administration and enforcement of this Chapter.

12.50.040 Public Nuisance. Illicit discharges and illicit connections which exist within the city limits are hereby found, deemed, and declared to be dangerous or prejudicial to the public health or public safety and are found, deemed, and declared to be unlawful and public nuisances.

12.50.050 Summary Abatement. Notwithstanding any other authority granted herein, the City may summarily abate an illicit discharge or illicit connection which is an immediate threat to the safety, health or welfare of the public or is a contamination threat to any surface or ground water and for which any delay might cause irreparable loss. All costs borne by the City in undertaking a summary abatement shall be, following passage of a lawful resolution by the Council, charged against the owner of the property, responsible person, or responsible operation and a lien against any real property. Notice of the lien herein authorized shall as nearly as practicable be in substantially the same form, filed with the same officer within the same time and manner, and enforced and foreclosed as is provided by law for liens for labor and materials.

12.50.060 Penalties.

- (1) The failure to comply with the provisions of this chapter is a civil offense, classified as a Class 1 infraction pursuant to Ch. 1.20 OHMC. Each day of violation shall be a separate offense. This is an absolute liability offense. No mental element as defined in law is required for proof of violation.
- (2) The knowing or intentional failure or refusal to comply with an abatement order of an illicit discharge or an illicit connection is a misdemeanor which shall be punishable by the maximum penalty established by RCW 9.92.030 as now or hereafter amended.
- (3) An intentional or repeated violation of this chapter by the person responsible subsequent to a finding of a violation pursuant to the civil infraction procedures of Ch. 1.28 OHMC shall be a misdemeanor.

12.50.070 Enforcement.

- (1) Provisions of this chapter will be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.
- (2) Investigation required. Upon information received that a violation of this chapter has occurred or is occurring, the Public Works Director or designee shall investigate the alleged violation and, if it is determined that a violation has occurred or is occurring, enforcement action shall be taken in accordance with the terms of this section.
- (3) Voluntary compliance. Unless the violation poses an immediate threat to the safety, health or welfare of the public or is a contamination of any surface or groundwater for which delay may cause irreparable loss or harm, the Public Works Director or designee may attempt to secure voluntary compliance.
 - (a) If the Public Works Director or designee determines that the violation is a first-time minor offense, a written warning may be issued, advising the property owner

of the violation, the requirements to achieve compliance and the time by which compliance is required to prevent further enforcement action. The stipulated time period for compliance may not exceed thirty (30) days. If the Public Works Director or designee is satisfied that compliance has been achieved in the stipulated time period, no further enforcement action is required.

- (b) If the Public Works Director or designee determines that the violation is not a first-time minor offense but that the violation also does not pose an immediate threat to the safety, health or welfare of the public or is a contamination of any surface or groundwater for which delay may cause irreparable loss or harm, then a voluntary correction agreement may be entered with the person responsible for the violation. A voluntary correction agreement is a contract between the City and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:
- (i) The name and address of the person responsible for the violation; and
 - (ii) The street address or other description sufficient for identification of the land upon which the violation has occurred or is occurring; and
 - (iii) A description of the violation and a reference to the code section which has been violated; and
 - (iv) The necessary corrective action to be taken, and a date or time by which correction must be completed; and
 - (v) An agreement by the person responsible for the violation that the City may inspect the property as may be necessary to determine compliance with the voluntary correction agreement; and
 - (vi) An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and impose a monetary penalty pursuant to this chapter and Ch. 1.28 OHMC from the person responsible for the violation if the terms of the voluntary correction agreement are not satisfied; and
 - (vii) An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing on the violation and the required corrective action.

Execution of a voluntary correction agreement shall not relieve the person responsible for the violation of liability for any violations not specifically included in the voluntary correction agreement.

- (4) **Civil Infraction Procedures Applicable.** If voluntary compliance is not achieved with respect to a violation or if the Public Works Director or designee determines that voluntary compliance is not appropriate due to the nature of the violation, prior civil offenses on the part of the person responsible for the violation or for other reasons, the civil infraction procedures of Ch. 1.28 OHMC shall be followed.
- (5) **Criminal Prosecution.** A criminal complaint may be brought by the City Attorney or a citation may be issued by a duly commissioned law enforcement officer for violation of the misdemeanor provisions of this chapter, in accordance with CrRLJ 2.1.
- (6) **Nothing in this section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first seeking voluntary compliance.**

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

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

PASSED by the City Council and approved by its Mayor this _____ day of _____, 2009.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

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

Bill No. 10
Date: August 5, 2009.
Subject: Interim Prosecution Services –
Law Department

FROM: Paul Schmidt, City Administrator



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

The purpose of this agenda bill is to seek approval of the City Council 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.

AUTHORITY

Pursuant to OHMC 2.390.010, unless otherwise authorized or directed by law, ordinance or council resolution (for example, responding to any emergency), all contracts over \$30,000 require council approval.

SUMMARY STATEMENT

Due to a sudden and unforeseen absence in the Law Department, it was necessary to immediately contract with an outside attorney to cover the City's prosecution workload. Mr. William Hawkins agreed to step in on very short notice and handled the prosecution workload for the first six weeks pursuant to a professional services agreement within the Mayor's signature authority. However, due to forces outside the City's control, the period of the contract was also not predictable and a second, lengthier contract is necessary to cover the period from the end of the first contract (June 22, 2009) until an employee can be hired to fill the vacant Law Department prosecutor position. That is anticipated to occur on October 1, 2009.

Mr. Hawkins has extensive experience with the Island County District Court and has command of the City's prosecution caseload. His past billings suggest that prosecution services can be handled in 22-30 hours per week. Mr. Hawkins' billing rate is \$225 per hour but he has agreed to lower that rate to \$195 per hour beginning August 1, 2009 since his need for his own office staff has decreased.

It is not possible to quantify the number of hours that will be needed to handle the prosecution caseload since it varies with the number of filings, motions and trials. However, in light of past experience, this contract is not expected to exceed \$70,000.00.

STANDING COMMITTEE REPORT

This contract has not been presented to any committee since it was made necessary on an emergency basis.

RECOMMENDED ACTION

Authorize the Mayor to sign the attached professional services agreement with William H. Hawkins.

ATTACHMENTS

Proposed Professional Services Agreement with William H. Hawkins

MAYOR'S COMMENTS

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this _____ day of _____, 2009, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and William H. Hawkins, hereinafter referred to as the "SERVICE PROVIDER".

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

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

WHEREAS, the SERVICE PROVIDER represents the SERVICE PROVIDER is qualified, a member in good standing of the Washington State Bar Association, and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

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

1. Scope of Services. The SERVICE PROVIDER shall perform prosecution services on behalf of the City including, but not limited to, preparation for and court appearances at all City misdemeanor, gross misdemeanor and infraction (as applicable) cases in Island County District Court, filing decisions, sentencing recommendations and police advice.
2. Term. The Project shall begin on June 22, 2009 and shall be completed no later than September 30, 2009, unless sooner terminated according to the provisions herein.
3. Compensation and Method of Payment.
 - 3.1 Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.
 - 3.2 No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.
 - 3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement as follows: Legal services at the rate of Two Hundred Twenty-five Dollars (\$225) per hour from June 22, 2009 through July 31, 2009 and One Hundred Ninety-five Dollars (\$195) per hour thereafter.

4. Reports and Inspections.

4.1 The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this Agreement.

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

5. Independent Contractor Relationship.

5.1 The parties intend that an independent contractor relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

5.2 In the performance of the services herein contemplated the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY's general rights of inspection and review to secure the satisfactory completion thereof.

6. Hold Harmless/Indemnification.

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

- 6.2 For purposes of this indemnification and hold harmless agreement, the SERVICE PROVIDER waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.
- 6.3 No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.
7. **Insurance.** The SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, its agents, representatives, or employees.
- 7.1 **Minimum Scope of Insurance.** SERVICE PROVIDER shall obtain insurance of the types described below:
- a. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 - b. Professional Liability Insurance appropriate to the SERVICE PROVIDER's profession.
- 7.2 **Minimum Amounts of Insurance.** SERVICE PROVIDER shall maintain the following insurance limits:
- a. Professional Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) policy aggregate limit.
- 7.3 **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:
- a. The SERVICE PROVIDER's insurance coverage shall be primary insurance with respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be in excess of the SERVICE PROVIDER's insurance and shall not contribute with it.
 - b. The SERVICE PROVIDER's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.
- 7.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

8. Treatment of Assets. Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.
9. Compliance with Laws.
 - 9.1 The SERVICE PROVIDER, in performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
 - 9.2 The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.
10. Nondiscrimination.
 - 10.1 The CITY is an equal opportunity employer.
 - 10.2 Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability; provided, that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The SERVICE PROVIDER shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.
 - 10.3 Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, or the

presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

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

11. Assignments/subcontracting.

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

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

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

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

13. Maintenance and Inspection of Records.

- 13.1 The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

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

14. Other Provisions. The following additional terms shall apply: It is agreed between the parties that pursuant to changes in state law necessitating that services hereunder be expanded, the parties shall negotiate an appropriate amendment. If after thirty (30) days of negotiation, agreement cannot be reached, the CITY may terminate this Agreement no sooner than sixty days (60) days thereafter.
15. Termination.
 - 15.1 Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time, by giving thirty (30) days' written notice to the SERVICE PROVIDER. Upon such termination for convenience, the CITY shall pay the SERVICE PROVIDER for all services provided under this Agreement through the date of termination.
 - 15.2 Termination for Cause. If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days' written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement through the date of termination.
16. Notice. Notice provided for in this Agreement shall be sent by certified mail, return receipt requested, to the addresses designated for the parties on the last page of this Agreement.
17. Attorney Fees and Costs. If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.
18. Jurisdiction and Venue.
 - 18.1 This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.
 - 18.2 Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Island County, Washington.

19. Severability.

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

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

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

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

CITY:

City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

SERVICE PROVIDER:

William H. Hawkins
791 SE Barrington Drive
Oak Harbor, WA 98277

Jim Slowik, Mayor

William H. Hawkins

ATTEST:

Connie Wheeler, City Clerk

C:\My Documents\Hawkins - Professional Services Agmt #1.doc

City of Oak Harbor
City Council Agenda Bill

Bill No. 11
Date: August 5, 2009
Subject: New Position – Law Department

FROM: Margery Hite, City Attorney *MH*

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director

PURPOSE

The purpose of this agenda bill is to seek the authorization of the City Council 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 both handle the criminal prosecutions and assist the City Attorney; and also coordinate law and justice issues in the City.

AUTHORITY

The authority to create new employment positions within City government is in the City Council pursuant to RCW 35A.11.020:

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pensions systems not in conflict with the provisions of this title...

SUMMARY STATEMENT

The City Law Department has been staffed with two attorneys since November 2006 – the City Attorney and the Assistant City Attorney/Prosecutor. Since 2006, the Assistant City Attorney's time has primarily been devoted to criminal prosecution. However, with the consolidation of City calendars at the District Court (since summer of 2008), the average workload for the prosecutor has only required one full court day per week. This has meant that the criminal workload does not require full-time legal services. (The hours spent by contract over the past few months for prosecution of criminal cases were between 22-30 hours per week).

At the same time, the coordination issues among the component parts of the City's justice system have become more pressing:

1. Municipal court. The City has decided to form its own municipal court, effective January 1, 2011, to provide appropriate and more efficient services to Oak Harbor residents. Staff resources are needed to frame the decision-points for the City Council as the new municipal court is established, taking into consideration financial, law enforcement and judicial system requirements.
2. Jail medical costs. Medical and other jail inmate costs are increasingly being shifted to city government such that coordination with the courts, the County, the hospital and law enforcement is needed to keep the costs manageable within legislative and judicial constraints.
3. Jail custody options. Appropriate but less-costly jail options such as work crews are legally permissible, but require coordination and direction to put into place.
4. Police training. Training and legal education are necessary for police officers to have timely and focused advice to avoid legal pitfalls.

The City's prosecutor is well-placed to observe and address the various issues coming through the criminal justice system while the prosecutor is handling the City's criminal caseload. However, the ability to identify and creatively respond to the challenges in the criminal justice system is a special skill that can only be developed through experience. While it takes a person with exceptional experience and talent in the field of criminal justice generally and in Oak Harbor in particular to actually carry out these functions, the City has the opportunity to take advantage of just those skills and experience at this time.

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 (as the chief criminal deputy prosecutor and then the elected prosecutor), he has already been able to identify improvements in the City's prosecution processes which are anticipated to create financial savings. He has a firm grasp on the requirements for a municipal court and has the ability to lay out the policy choices for the City Council in a timely fashion. He has worked county-wide on all of the same kinds of law and justice issues that are facing the City at this time, and has the trust of the courts and law enforcement to bring all parties together to resolve them in the public interest.

This is a unique opportunity for the City to obtain the services of the right person at the right time. I would not propose creating this position without the availability of the unique experience and skills that Mr. Hawkins has in the Island County arena, since it can only be successful and cost-effective to the City if the criminal justice issues can be appropriately addressed without delay.

Creation of this position allows the City to capitalize on Mr. Hawkins' skills and abilities to make the justice system in the City more efficient without reducing service. The City is poised to make important changes in its criminal justice system now, at a time when efficiencies in every part of

the city government are imperative. Mr. Hawkins has shown that he can effectively handle the City's prosecution caseload in a professional manner and still retain time to accomplish other tasks.

The new position is at a higher pay grade than the previous Assistant City Attorney/Prosecutor position. This higher pay grade reflects the greater responsibility that the new position has for the City's criminal justice system overall. As a reflection of its support for the new position and Mr. Hawkins in particular, the OHPD has offered to commit funds from its own budget for the pay difference.

STANDING COMMITTEE REPORT

Public Safety Committee reviewed this request at its July 30, 2009 meeting.

RECOMMENDED ACTION

Approve the creation of the position of Law and Justice Coordinator/Prosecutor as set out in the attached Resolution No. _____

ATTACHMENTS

Resolution No. _____

Job Description - Law and Justice Coordinator/Prosecutor (will be provided to Council prior to this meeting)

MAYOR'S COMMENTS

RESOLUTION NO. ___ - ___

A RESOLUTION CREATING A NEW POSITION OF LAW AND JUSTICE
COORDINATOR/PROSECUTOR IN THE LAW DEPARTMENT

WHEREAS, handling criminal cases arising from violations of City ordinances involves several different City departments and the court; and

WHEREAS, coordination of the efforts of those departments and the court will make the criminal justice process more efficient and effective; and

WHEREAS, the attorney handling criminal prosecutions on behalf of the City is in an excellent position to help raise coordination strategies; and

WHEREAS, the budget pressures on local government are severe and necessitate every effort to contain costs in all City departments, including departments responsible for criminal justice; and

WHEREAS, cost containment cannot come at the expense of public safety; and

WHEREAS, the City intends to establish its own Municipal Court by 2011; and

WHEREAS, planning for the Municipal Court will require additional City staff resources; and

WHEREAS, the criminal prosecution workload is not full-time; and

WHEREAS, a new position to coordinate law and justice issues together with handling the criminal prosecution workload would be a cost-effective way to staff both sets of responsibilities; and

WHEREAS, the City has a unique opportunity to employ an attorney who has experience coordinating the criminal justice agencies in the City of Oak Harbor and Island County; and

WHEREAS, the Oak Harbor Police Department is able to allocate sufficient budgetary resources to make up the difference in pay-grade for the new position;

NOW, THEREFORE, be it resolved by the City Council of the City of Oak Harbor as follows:

1. A new position is created in the City to be entitled "Law and Justice Coordinator/Prosecutor".
2. The Mayor is authorized to proceed directly to hiring without further process due to the immediate need to fill the position in support of City institutions and services. The initial term of the contract shall be three years, and the position shall be an at-will position that serves at the pleasure of the Mayor and the City Attorney.

3. The Mayor is authorized to execute an employment contract for the new position at a compensation level of Eight Thousand Nine Hundred Seventeen Dollars (\$8,917) per month, subject to the same cost-of-living increases provided to other Law Department employees.
4. The Law and Justice Coordinator/Prosecutor shall be under the supervision of the City Attorney.
5. The City Attorney is directed to maintain a record of cost savings and efficiencies created through the efforts of the Law and Justice Coordinator/Prosecutor in the three-year period and report on those efforts to the Public Safety Committee and the City Council at the end of the three-year period. This report shall be presented to the City Council to evaluate the effectiveness of the position and determine whether to renew the contract for an additional period of time.

PASSED AND APPROVED by the City Council this 5th day of August, 2009.

THE CITY OF OAK HARBOR

Jim Slowik, Mayor

Attest:

Connie Wheeler, City Clerk

Approved as to form:

Margery Hite, City Attorney

Published August __, 2009

CITY OF OAK HARBOR

JOB DESCRIPTION

Title: Law & Justice Coordinator/Prosecutor
Department: Law
Reports to: City Attorney

Job Summary:

Responsible for assisting the City Attorney in providing comprehensive legal services with emphasis on prosecution of criminal and infraction cases. Also responsible for identifying impediments, proposing solutions and coordinating responses among law and justice agencies, to promote efficiency and effectiveness in the Oak Harbor criminal justice system.

Examples of Duties:

- Responsible for prosecution of misdemeanor, gross misdemeanor and infraction cases in the Oak Harbor Municipal Court, and appeals to Superior Court and Appellate Courts.
- Research and analyze legal problems as preparation for the City Attorney.
- Assist in representing the City in civil actions before state and federal courts and administrative agencies.
- Prepare, or assist in the preparation of, City ordinances, regulations, contracts and other legal documents ensuring compliance with local, state and federal laws and ensuring the City is appropriately protected.
- Provide assistance to the Police Department concerning enforcement of ordinances of the City of Oak Harbor and the laws of the State of Washington.
- Prepare City's options for transition to Municipal Court.
- Work appropriately with Police Department to train police officers in recent legal trends.
- Coordinate with County, hospital(s) and other agencies on containing jail medical costs.
- Liaison with courts, police and other agencies to devise alternatives to incarceration where appropriate.
- Keep Public Safety Standing Committee apprised of law and justice concerns.

Working Environment and Physical Demands:

Work is performed primarily indoors in a legal office, courtroom or meeting room environment with frequent interruptions. Work requires hand eye coordination and fine manipulation skills to operate computers, and the ability to speak clearly in person and on the telephone to groups and individuals. Some travel is required to and from courts and other locations.

The Law & Justice Coordinator/Prosecutor has frequent contact with other persons including employees of the City requiring legal advice or a legal opinion, defendants in court cases in the roll as prosecutor, witnesses and crime victims for court preparation and citizens in a wide variety of circumstances including code enforcement. Contacts are occasionally hostile or highly emotional in nature and the Law & Justice Coordinator/Prosecutor is required to exercise skill in persuasion and conflict resolution. Communicating information in a professional manner is central to position success. Contact with the local legal community is encouraged to remain current on issues relating to the practice of municipal and criminal law. Good customer relations skills are required.

The work requires close, sustained attention to detail often performed in a busy, noisy work area with frequent interruptions. The stress of working with competing demands and under stringent timelines is an on-going part of the position.

Supervision: In the absence of the City Attorney, this position will provide supervision for support staff especially in the area of criminal prosecution.

Accountability: The Law & Justice Coordinator/Prosecutor is accountable for the provision of accurate, effective legal services for the City; and for positive problem solving of cross-agency law and justice concerns.

QUALIFICATIONS GUIDELINES

Knowledge/Skills/Abilities:

- Knowledge of criminal law. Also working knowledge of at least two of the following subject areas of the law: municipal, administrative, contract, land-use, employment law.
- Trial and presentation skills.
- Ability to quickly identify best practices for law and justice agency coordination.
- Ability to bring law and justice agencies together to work cooperatively.
- Demonstrated leadership skills.
- Proven ability to problem-solve in public arena.
- Legal research skills.
- Ability to apply creative and logical legal reasoning to a wide variety of issues.
- Ability to understand complex factual data, draw defensible conclusions and formulate sound legal decisions.
- Ability to communicate complex legal concepts verbally and in writing to audiences of varying degrees of legal sophistication.
- Ability to practice law before state and federal courts and various administrative agencies.

- Ability to articulate and persuade in verbal and written arguments.
- Ability to work cooperatively with many individuals within the City, including City Council, the Mayor, City Administrator's office and Department Directors.
- Ability to work cooperatively with courts, police, and other law and justice agencies to achieve positive results.

Experience/Education:

- Graduation from a law school accredited by the American Bar Association required.
- Experience and success working with local law and justice agencies to achieve efficiencies and coordination of services.
- Management experience in prosecution or other law and justice services.

Special Requirements:

- Requires a J.D. Degree from an accredited law school.
- Admitted to practice law in the State of Washington at the time of hiring.
- Admitted to any federal bar.
- Must pass background investigation, which includes criminal records check.

A combination of training and experience that provides the requisite skills will be considered.

Established: Legal 7/09

FLSA: Exempt

Revised:

Salary Range:

The statements contained herein reflect general details as necessary to describe the principal functions of this job, the level of knowledge and skill typically required, and the scope of responsibility, but should not be considered as an all-inclusive listing of work requirements. Individuals may perform other duties as assigned including work in other functional areas to cover absences or relief, to equalize work periods, or otherwise balance the workload.

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

Bill No. 12
Date: August 5, 2009
Subject: Oak Harbor Street
Improvements Consultant
Agreement

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill presents a Consultant Agreement with Reid Middleton Inc for engineering design services for the Oak Harbor Street Improvements Project.

AUTHORITY

The City has authority under RCW 35A.11.020 to enter into contracts for common municipal operations such as street improvement projects.

SUMMARY STATEMENT

The City of Oak Harbor has been working with the engineering design firm of Reid Middleton for street improvements on Oak Harbor Street since 2006. The project has federal aid funding and as such 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.

In brief, 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 the expiration date. Therefore, 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. Notably, as result of the City's inability to acquire the property necessary for the construction of the roundabout at NE 7th Avenue, a change to the current design for the intersection is necessary. In lieu of the previously designed roundabout, the intersection will be converted to a three way stop control intersection. The attached agreement includes the modification to the original scope of work necessitated from the completion of the right of way acquisition and negotiations as well as the work necessary to

Agenda Bill - Oak Harbor Street Improvements

Consultant Agreement

Page 1 of 2

move through to award of a construction contract. As work continued on the project between the date of expiration and the proposed Agreement, Council authorization is being sought to ratify payment for this work. It is anticipated that Reid Middleton will also be retained for construction engineering service once a contract is awarded. In addition, a firm specializing in the construction management and documentation of federal aid projects will be needed to assist staff in the voluminous record keeping required.

The hourly not to exceed limit of the new agreement is \$125,126.72. Funds are available in the project budget, through fund 104, for the agreement. Funding is a combination of Federal and state grants, gas tax revenues, impact fees and private contributions. Approval of the agreement will lead to a rapid conclusion of the design phase and the project being advertised for public bidding and construction. It is anticipated that the project will be under construction late this fall

STANDING COMMITTEE REPORT

This item was not presented to a standing committee

RECOMMENDED ACTION

A motion authorizing the Mayor to sign the attached Consultant Agreement with Reid Middleton, Inc for the completion of the design of the Oak Harbor Street Improvements.

ATTACHMENTS

Consultant Agreement

MAYOR'S COMMENTS

Local Agency Standard Consultant Agreement	Consultant/Address/Telephone Reid Middleton, Inc. 728 134th Street SW, Suite 200 Everett, WA 982041-5322	
<input checked="" type="checkbox"/> Architectural/Engineering Agreement <input type="checkbox"/> Personal Services Agreement		
Agreement Number	Project Title And Work Description N. Oak Harbor Street Improvements PS&E	
Federal Aid Number		
Agreement Type (Choose one) <input type="checkbox"/> Lump Sum Lump Sum Amount \$ _____ <input type="checkbox"/> Cost Plus Fixed Fee Overhead Progress Payment Rate _____ % Overhead Cost Method _____ <input type="checkbox"/> Actual Cost <input type="checkbox"/> Actual Cost Not To Exceed _____ % <input type="checkbox"/> Fixed Rate _____ % Fixed Fee \$ _____ <input checked="" type="checkbox"/> Specific Rates Of Pay <input type="checkbox"/> Negotiated Hourly Rate <input type="checkbox"/> Provisional Hourly Rate <input type="checkbox"/> Cost Per Unit of Work	DBE Participation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No _____ %	Federal ID Number or Social Security Number 91-0714387
	Do you require a 1099 for IRS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Completion Date December 2010
	Total Amount Authorized \$ _____	125,126.72
	Management Reserve Fund \$ _____	
	Maximum Amount Payable \$ _____	125,126.72

Index of Exhibits

- Exhibit "A" - Scope of Work
- Exhibit "B" - DBE Participation
- Exhibit "C" - Electronic Exchange of Engineering and Other Data
- Exhibit "D" - Payment (by Agreement Type)
- Exhibit "E" - Consultant Fee Determination
- Exhibit "F" - Breakdown of Overhead Cost
- Exhibit "G" - Subcontract Work/Fee Determination
- Exhibit "H" - Title VI Assurances
- Exhibit "P" - Payment Upon Termination of Agreement
- Exhibit "J" - Alleged Consultant Design Error Procedures
- Exhibit "K" - Consultant Claim Procedures
- Exhibit "L" - Liability Insurance Increase
- Exhibit "M" - Certification Documents

THIS AGREEMENT, made and entered into this _____ day of _____, _____, between the Local Agency of _____ City of Oak Harbor _____, Washington, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the AGENCY desires to accomplish the above referenced project, and

WHEREAS, the AGENCY 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 AGENCY,

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:

I General Description of Work

The work under this AGREEMENT shall consist of the above described work and services 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.

II Scope of Work

The Scope of Work and projected level of effort required for this PROJECT is detailed in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT.

III General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY and/or such Federal, State, Community, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which 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.

The CONSULTANT, and each SUBCONSULTANT, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT, and each SUBCONSULTANT, shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT that may result in the termination of this AGREEMENT.

Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR Part 26, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made a part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY'S "DBE Program Participation Plan". The mandatory DBE participation goals of the AGREEMENT are those established by the WSDOT'S Highway and Local Programs Project Development Engineer in consultation with the AGENCY.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C."

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

IV Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY.

All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

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

V Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit "D" attached hereto, and by 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. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the State Auditor, WSDOT External Audit Office and/or at the request of the AGENCY'S PROJECT Manager.

VI Sub-Contracting

The AGENCY permits sub-contracts for those items of work as shown in Exhibit "G" attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit "G."

The work of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this AGREEMENT.

With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for sub-contracting shall create, between the AGENCY and sub-contractor, any contract or any other relationship. A DBE certified sub-consultant is required to perform a minimum amount of their sub-contracted agreement that is established by the WSDOT Highways and Local Programs Project Development Engineer in consultation with the AGENCY.

VII Employment

The CONSULTANT warrants that they have 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 AGENCY 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 AGENCY, and any and all claims that may arise under any Workmen's 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 United States Department of Transportation, or the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

VIII Nondiscrimination

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975
(42 USC Chapter 76 Section 6101 et seq.)

Civil Rights Restoration Act of 1987
(Public Law 100-259)

American with Disabilities Act of 1990
(42 USC Chapter 126 Section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "H" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "H" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX Termination of Agreement

The right is reserved by the AGENCY 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 AGENCY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit "I" for the type of AGREEMENT used.

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 of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY 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 AGENCY 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 AGENCY at the time of termination, the cost to the AGENCY 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 AGENCY 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 above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT'S failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the 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 AGENCY. This subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY 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 AGENCY'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 AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. 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.

X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY 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 AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, 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 Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J", and disputes concerning claims will be conducted under the procedures found in Exhibit "K".

XII 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 the county in which the AGENCY is located. 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 the county in which the AGENCY is located.

XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT'S negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the AGENCY or the STATE against and hold harmless the AGENCY or the STATE from claims, demands or suits based solely upon the conduct of the AGENCY or the STATE, their agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT'S agents or employees, and (b) the AGENCY or the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the AGENCY or the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT'S negligence or the negligence of the CONSULTANT'S agents or employees.

The CONSULTANT'S relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT'S own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the PROJECT. Subject to the processing of a new sole source, or an acceptable supplemental agreement, the CONSULTANT shall provide On-Call assistance to the AGENCY 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.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the AGENCY will be named on all policies as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by the AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to the AGENCY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT'S professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater, unless modified by Exhibit "L". In no case shall the CONSULTANT'S professional liability to third parties be limited in any way.

The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIV Extra Work

- A. The AGENCY 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 AGENCY 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.
- C. The CONSULTANT must submit any "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 AGENCY decides that the facts justify it, the AGENCY 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.

XV Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XVI Federal and State Review

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

XVII Certification of the Consultant and the Agency

Attached hereto as Exhibit "M-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "M-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "M-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "M-4" Certificate of Current Cost or Pricing Data. Exhibit "M-3" is required only in AGREEMENTS over \$100,000 and Exhibit "M-4" is required only in AGREEMENTS over \$500,000.

XVIII 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.

XIX 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 material submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

EXHIBIT "A"

**SCOPE OF SERVICES
For
N. Oak Harbor Street Improvements**

Prepared for City of Oak Harbor
July 23, 2009

It is understood that this Scope of Services is a continuation of the previous N. Oak harbor Street Improvements and includes extra work performed and requested to complete the PS&E for N. Oak Harbor Street (Project). The Project covers work for:

- Arterial Sidewalk Program Phase II STP(E)-STP(R) - 7758(001)
- 7th and N. Oak Harbor Street STP(R) -7758(002)
- Transportation Improvement Board (TIB) Project Number 8-2-157(010)-1

The work for this project will be split between the above three grants as outlined in Exhibit "C", Percent Justification of the original agreement.

A. PROJECT UNDERSTANDING

Reid Middleton, Inc. (Consultant) will provide all labor and services necessary to complete the scope of services of this Agreement, including all supplies, equipment, software, incidentals, and materials, except as designated elsewhere in the Agreement.

The City of Oak Harbor (City) shall provide support services to the Consultant as described in the following text. The Consultant will cooperate and coordinate with the City to facilitate the Project.

All work will be performed in accordance the *Washington State Department of Transportation Design Manual* and *Local Agency Guidelines (LAG)*.

B. SCOPE OF SERVICES

1. Project Management

Project Management is based on project duration of 18 months (June 2009 – December 2010).

a. Invoices and Administration

The Consultant will prepare monthly invoices according to a City-approved format.

b. Subconsultant Management

The Consultant will coordinate with subconsultants, process subconsultant invoices, and disseminate information to the project subconsultants.

c. Project File Management

The Consultant will manage and close out the electronic and hardcopy project files.

2. Survey/Right-of-Way

a. Parcel Closeout – Escrow Closing

- (1) Upon securing required acquisition documents from the City, submit the necessary documents and closing instructions to the designated Title/Escrow Company.
- (2) Work with the Title/Escrow company to obtain release documentation from the encumbrance(s) of public record that are not acceptable to the City in order to provide clear title to the property being acquired.
- (3) The Escrow Company shall prepare and obtain the owner(s) signature on the necessary closing documents.
- (4) Coordinate signatures on closing documents for submittal to the City and payment(s) to the owner(s).
- (5) Coordinate with the Escrow/Title Company in filing documents with Island County.
- (6) UFS will deliver completed files to the City.

b. **Right-of-Way Certification**
UFS will provide certification advisory review services. This may include being available to the WSDOT reviewer during the file review process. All files will be prepared and completed to the satisfaction of a WSDOT right of way file review.

a. **Mark Right-of-Way Limit and provide R/W exhibits**

As requested, the Consultant marked the proposed right-of-way in the vicinity of 7th Avenue and N. Oak Harbor Street. In addition, effort beyond original scope of work was performed to prepare right of way and easement exhibits.

3. **Coordination**

a. **Coordination with Utilities**

Additional effort was required to satisfy Puget Sound Energy (PSE) regarding the reconfiguration of their driveway prior to reaching a right-of-way acquisition agreement.

b. **Additional coordination will be required with Intolight in order to finalize the illumination design.**

c. **Update Funding prospectus**

WSDOT required the funding prospectus be modified to reflect the construction of a roundabout. At this time, the prospectus will require an additional modification to reflect current intersection improvements.

4. **Environmental Documentation**

a. **Revise Environmental Classification Summary (ECS)**

WSDOT revised the ECS form in July 2007. Existing information was revised to meet the requirements of the new format. In addition, WSDOT now requires an ECS for each of the two grants funding the project. The ECS(s) will be re-submitted with the prospectus change to the new intersection configuration.

b. Wetland Delineation

In anticipation of enclosing a portion of the ditch along 7th Avenue outside the original project limits, the wetlands in that area were delineated and surveyed to determine impacts.

5. Value Engineering(VE) Study

The Consultant provided additional exhibits and design alternatives to support the VE study. The recommendations of the VE study required a change in the design cross section which resulted in redesign of the entire roadway.

6. Final PS&E

a. Opinion of Probable Cost

The Consultant will calculate quantities and preparing engineer's opinion of probable construction costs. Estimates will be provided with the 95, 100, and final submittals.

b. Reopen Project/Familiarize.

The Consultant will review previously submitted plans, specifications, and reports to familiarize with project. The Consultant will also conduct a field visit to verify base mapping and the proposed design layout, and note any recent changes to site conditions.

c. Upsize Storm Drainage System from NW Columbia Drive to W Whidbey Avenue.

The Consultant will modify the proposed storm drainage system to accommodate the pipeline replacement recommendations of the Comprehensive Stormwater Drainage Plan.

d. Redesign the Intersection at 7th Avenue and N. Oak Harbor Street

Due to financial issues, the roundabout will not be constructed at this intersection at this time. The intersection will be re-designed to accommodate a southbound left turn pocket. The Consultant will evaluate the feasibility of incorporating proposed grading and

drainage improvements for a future roundabout. The Consultant will also redesign the adjacent driveway improvements due to the revised intersection grading. Other design revisions include, but are not limited to: channelization and signing, irrigation, and landscaping.

e. Update Project Manual to WSDOT 2008 Standard Specifications

Construction is anticipated for fall of 2009. This change in date requires the Consultant to update the current project manual, and technical specifications, to the WSDOT 2008 Standard Specifications.

f. Submittals

The Consultant will submit five draft copies of the plans and specifications, and two draft copies of the Engineers' Estimate at the 100 percent design level for City review (100% Submittals). Consultant will address and provide responses to City review comments after each review. The Consultant will submit ten paper copies and one electronic copy of the final plans and specifications and one electronic version of the final Engineers' Estimate.

7. Bid Assistance

The Consultant will post final PS&E to Builders' Exchange and coordinate project manual reprinting. The Consultant will prepare bid addendums as needed and assist the City in addressing any contractor questions that may arise during the bidding process.

c:\w\H:\DOC\258\05\009 N Oak Harbor Street\Scope and Fee Proposal\Supp 3 SOS 7-17-09.doc\kw



**Disadvantaged Business
Enterprise Utilization Certification**
(Optional - Use only when DBE Consultant is Utilized)

To be eligible for award of this contract the bidder must fill out and submit, as part of its bid proposal, the following Disadvantaged Business Enterprise Utilization Certification relating to Disadvantaged Business Enterprise (DBE) requirements. The Contracting Agency shall consider as non-responsive and shall reject any bid proposal that does not contain a DBE Certification which properly demonstrates that the bidder will meet the DBE participation requirements in one of the manners provided for in the proposed contract. If the bidder is relying on the good faith effort method to meet the DBE assigned contract goal, documentation in addition to the certificate must be submitted with the bid proposal as support for such efforts. The successful bidder's DBE Certification shall be deemed a part of the resulting contract. Information on certified firms is available from OMWBE, telephone 360-753-9693.

NOT APPLICABLE (NONE INCLUDED)

certifies that the Disadvantaged Business Enterprise

Name of Bidder _____

(DBE) Firms listed below have been contacted regarding participation on this project. If this bidder is successful on this project and is awarded the contract, it shall assure that subcontracts or supply agreements are executed with those firms where an "Amount to be Applied Towards Goal" is listed. (If necessary, use additional sheet.)

Name of DBE Certificate Number	Project Role * (Prime, Joint Venture, Subcontractor, Manufacturer, Regular Dealer, Service Provider)	Description of Work	Amount to be Applied Towards Goal
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Disadvantaged Business Enterprise Subcontracting Goal: _____ DBE Total \$ _____ ***

- * Regular Dealer status must be approved prior to bid submittal by the Office of Equal Opportunity, Wash. State Dept. of Transportation on each contract.
- ** See the section "Counting DBE Participation Toward Meeting the Goal" in the Contract Document.
- *** The Contracting Agency will utilize this amount to determine whether or not the bidder has met the goal. In the event of an arithmetic difference between this total and the sum of the individual amounts listed above, then the sum of the amounts listed shall prevail and the total will be revised accordingly.

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Exhibit C

Electronic Exchange of Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

- I. **Surveying, Roadway Design & Plans Preparation Section**
 - A. **Survey Data**
 - B. **Roadway Design Files**
 - C. **Computer Aided Drafting Files**
 - D. **Specify the Agency's Right to Review Product with the Consultant**
 - E. **Specify the Electronic Deliverables to Be Provided to the Agency**
 - F. **Specify What Agency Furnished Services and Information Is to Be Provided**

- II. **Any Other Electronic Files to Be Provided**

- III. **Methods to Electronically Exchange Data**
 - A. **Agency Software Suite**
 - B. **Electronic Messaging System**
 - C. **File Transfers Format**

Exhibit D Payment (Negotiated Hourly Rate)

The CONSULTANT shall be paid by the AGENCY 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. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

1. Hourly Rates: The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibit ~~"A"~~^{E-1, E-2} and ~~"B"~~ 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 AGENCY. 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 AGENCY shall be utilized. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

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 sub-consultant costs.
 - a. Subconsultant costs will include a Sub-Consultant Oversight mark-up of 4% as allowed in accordance with 48 CFR 31.2 Subconsultant costs including Oversight Markup must be itemized on the Subconsultant Fee Determination - Summary sheet attached as Exhibit G-1.
 - b. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the AGENCY'S Travel Rules and Procedures. However, air, train, and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 "Travel Costs."
 - c. The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT.
 - d. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request.
 - c. All above charges must be necessary for the services provided under this AGREEMENT.

3. **Management Reserve Fund:** The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize 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 \$100,000 or 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 not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section XIV, "Extra Work."
4. **Maximum Total Amount Payable:** The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." 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 billing shall be supported by detailed statements for hours expended at the rates established in Exhibit "E", including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT'S employees, the AGENCY 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. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data 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 AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY 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 AGENCY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

7. **Inspection of Cost Records:** The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY, STATE and the United States, for a period of three (3) years after receipt of 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 arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

Estimate for Professional Services

728 134th Street SW
Everett, WA 98204
425.741-3800

**N. Oak Harbor Street Improvements
Misc. additional tasks, contract extension and project revisions**

CLIENT: City of Oak Harbor
PROJ. NO.: 25-2006-009
FILE: C:\Documents and Settings\krcouch\Local Settings\Temporary Internet Files\OLK\Fee 7-23-09 mw.xlsjSheet1

By: KAO
CHKD BY: CLW 6/17/09
Date: 11-2-07 3-19-08 11-18-08 3-4-09 6-9-09 7-17-09

NOTE: TASKS IDENTIFIED AS "WORK PERFORMED" WERE COMPLETED DURING 2007-2008. TASKS IDENTIFIED AS "WORK TO BE PERFORMED" ARE NEW TASKS THAT NEED TO BE COMPLETED.

Task No.	Description	Principal Hourly Rate	Sr Engineer	Project Eng	Project Eng	Design Eng.	PA	Sr. Tech	Sr. Drafter	Total Labor hrs/hrs	Total Labor Expendts	Mileage	Actual Cost to date	Subs cost	Sub total	Labor & Fringe
1 Project Management (extension past original Contract data)																
	None															
	Work to be Performed															
	Invoices and Administration		9.00				18.00			33.00	\$ 3,690.24					\$ 3,690.24
	Subconsultant Management		2.00				2.50			4.50	\$ 444.61					\$ 444.61
	Project File and Oversight		12.00							24.00	\$ 2,297.50					\$ 2,297.50
	Subtotal Task 1	6.00	23.00	0.00	0.00	0.00	20.50	0.00	0.00	61.50	\$ 7,428.35	0.00	0.00	0.00	\$ 7,428.35	
2 Survey/Right-of-way																
	Work Performed															
	R/W Coordination/Exhibits									0.00			9,211.05			\$ 9,211.05
	Field Mark R/W limits+ Exhibits									0.00			7,099.15			\$ 7,099.15
	Work to be Performed															
	Temp Dew Permit Extensions		8.00							16.00	\$ 2,196.00					\$ 2,196.00
	Finalize R/W Acquisition		8.00							16.00	\$ 2,196.00		2,910.00			\$ 5,196.00
	Subtotal Task 2	0.00	16.00	0.00	0.00	0.00	0.00	0.00	0.00	32.00	\$ 4,392.00	0.00	16,370.20	2,910.00	\$ 19,230.20	\$ 25,510.20
3 Coordination																
	Work Performed															
	Coordination with PUD for driveways									0.00			5,355.42			\$ 5,355.42
	Update prospectus									0.00			852.72			\$ 852.72
	Work to be Performed															
	Coordination with PUD for driveways		1.00							10.00	\$ 1,041.41					\$ 1,041.41
	Update prospectus									14.00	\$ 1,563.24					\$ 1,563.24
	Coordination with Intelight									26.00	\$ 2,786.37					\$ 2,786.37
	Subtotal Task 3	0.00	1.00	0.00	0.00	0.00	0.00	0.00	0.00	50.00	\$ 5,400.02	0.00	6,208.14	0.00	\$ 6,208.14	\$ 11,608.16
4 Environmental Documentation																
	Work Performed															
	Rework the ECS (+ cultural resources and SD update)									0.00			282.96			\$ 282.96
	Re-submit ECS (new format and need for each grant)									0.00			1,429.69			\$ 1,429.69
	Wetland delineation (potential ditch rework) RMA-LAI									0.00			3,699.88			\$ 3,699.88
	Work to be Performed															
	Rework the ECS (+ cultural resources and SD update)									8.00	\$ 876.96					\$ 876.96
	Re-submit ECS (new format and need for each									18.00	\$ 2,196.00					\$ 2,196.00
	Subtotal Task 4	0.00	8.00	0.00	0.00	0.00	0.00	0.00	0.00	24.00	\$ 3,073.96	0.00	6,412.53	0.00	\$ 6,412.53	\$ 8,486.47

728 134th Street SW
Everett, WA 98204
425.741-3000

EXHIBIT E.1

Estimate for Professional Services

N. Oak Harbor Street Improvements

Misc. additional tasks, contract extension and project revisions

CLIENT: City of Oak Harbor

PROJ. NO: 25-2005-009

FILE: C:\Documents and Settings\crouch\Local Settings\Temporary Internet Files\OLK4\Fee 7-23-09 mw.xls\Sheet1

By: KAO CHKD BY: CLW 6/17/09

Date: 11-2-07 3-19-08 11-19-08 3-4-09 6-8-09 7-17-09

NOTE: TASKS IDENTIFIED AS "WORK PERFORMED" WERE COMPLETED DURING 2007-2008. TASKS IDENTIFIED AS "WORK TO BE PERFORMED" ARE NEW TASKS THAT NEED TO BE COMPLETED.

Task No.	Description	Hourly Rate:	Principal	Sr Engineer	Project Eng	Project Eng.	Design Eng.	PA	Sr. Tech	Sr. Drafter	Total Labor hours	Total Labor Earnings	Mileage	Actual cost to date	Sub cost	Labor & Reimb
5 Value Engineering																
	Work Performed															
	Value Engineering															
	Work to be Performed															
	None															
	Subtotal Task 5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,821.89	0.00	5,821.89
6 Finalize PS&E																
	Work Performed															
	Re-open project/familiarize															
	- Field visit															
	Upsize pipe															
	Redesign Intersection															
	None															
	100% Submittal															
	- Address City comments															
	- 100% Submittal prep															
	Work to be Performed															
	Opinion of Probable Construction Costs															
	Re-open project/familiarize															
	- Field visit															
	Upsize pipe (?)															
	Redesign Intersection															
	- Channelization/Signing															
	- Grading															
	- Drainage															
	- Driveway revisions															
	- Irrigation/landscaping															
	Update Project manual to 2008 spec book															
	Submittals															
	100% Submittal															
	- 100% Submittal prep															
	- 100% Submittal QA/QC															
	Final Submittal															
	- Address City comments															
	- Final Submittal prep															
	- Final Submittal QA/QC															
	2.00															
	Subtotal Task 6	4.00	45.00	0.00	124.00	0.00	216.00	0.00	33.00	66.00	466.00	84,126.74	0.00	9847.29	1150.00	94,124.03

Estimate for Professional Services

728 134th Street SW
Everett, WA 98204
425.741-3800

**N. Oak Harbor Street Improvements
Misc. additional tasks, contract extension and project revisions**

CLIENT: City of Oak Harbor
PROJ. NO: 25-2005-009
FILE: C:\Documents and Settings\krcouch\Local Settings\Temporary Internet Files\OLK\Fee 7-23-09 mw.xls\Sheet1

By: KAO
CHKD BY: CLW 6/17/09
Date: 11-2-07 3-19-08 11-19-08 3-4-09 6-8-09 7-17-09

NOTE: TASKS IDENTIFIED AS "WORK PERFORMED" WERE COMPLETED DURING 2007-2008. TASKS IDENTIFIED AS "WORK TO BE PERFORMED" ARE NEW TASKS THAT NEED TO BE COMPLETED.

Task No.	Description	Principal	Sr Engineer	Project Eng	Project Eng	Design Eng.	PA	Sr. Tech	Sr. Drafter	Total Labor Hours	Total Labor Earnings	Mileage	Actual Cost to date	Sub cost	Sub total	Labor & Prints
	Hourly Rate:	\$212.87	\$164.75	\$127.63	\$109.62	\$104.88	\$86.04	\$102.61	\$97.04							
7	Bid Assistance															
	Work Performed															
	None															
	Work to be Performed															
	Post PSE to Builders' Exchange				1.00			1.00		2.00	\$212.23					\$212.23
	Project Manual reproduction		1.00		1.00			2.00		4.00	\$478.60					\$478.60
	Prepare addenda (2)		2.00		6.00			4.00	2.00	14.00	\$1,581.76			900.00		\$1,379.60
	Address contractor questions		2.00		4.00					6.00	\$787.86					\$787.86
	Subtotal Task 7	4.00	5.00	12.00	12.00	0.00	0.00	7.00	2.00	26.00	\$3,081.53	0.00	0.00	900.00	900.00	\$3,581.53
	TOTAL HOURS	4.00	10.00	0.00	215.00	222.00	20.50	42.00	73.00	672.50	\$77,546.67	0.00	-42,600.05	-4,950.00	-47,360.05	\$125,126.72
	SubTotal Cost	\$851.49	\$16,639.99	\$-	\$23,678.46	\$23,239.65	\$1,763.84	\$4,309.69	\$7,083.58		\$77,546.67					\$125,126.72
	Percent of Total Hours	1%	15%	0%	32%	33%	3%	6%	0.11							

Assumptions

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 direct salary cost of the personnel at the time the work is performed times a multiplier of 3.1867

TOTAL \$ 125,126.72

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Reid Middleton, Inc.
Exhibit "E-2" Schedule of Charges
Effective July 1, 2009 through June 30, 2010

Compensation shall be based on time and expenses directly attributable to the project and shall follow the schedule below unless another method of compensation has been expressed in the written agreement.

I. Personnel	Hourly Rate
Principal	\$ 180.00 - \$ 225.00
Principal Engineer/Principal Planner/Principal Surveyor	\$ 170.00 - \$ 190.00
Senior Engineer/Senior Planner/Senior Surveyor	\$ 145.00 - \$ 165.00
Project Engineer/Project Surveyor/Project Planner	\$ 115.00 - \$ 135.00
Design Engineer/Senior Designer/Surveyor/Senior Technical Writer	\$ 95.00 - \$ 105.00
Engineer/Planner/Senior Technician	\$ 85.00 - \$ 95.00
Project Administrator	\$ 80.00 - \$ 85.00
Technician	\$ 60.00 - \$ 70.00

Survey Crew (2 Person/RTK/Robotic).....	\$ 165.00
Survey Crew (3 Person/GPS).....	\$ 250.00

Expert Witness/Forensic Engineering 1.5 times usual hourly rate (4 hour minimum)

Individuals not in the regular employ of Reid Middleton may occasionally be engaged to meet specific project requirements. Charges for such personnel will be comparable to charges for regular Reid Middleton personnel.

A premium may be charged if project requirements make overtime work necessary.

II. Equipment	Rate
Design Software/Computer Aided Drafting	\$ 12.00/hour

III. Reimbursable Expenses

Local Mileage - Automobile	\$ 0.65/mile
Local Mileage - Survey Truck	\$ 0.65/mile

Expenses that are directly attributable to the project are invoiced at cost plus 15%. These expenses include, but are not limited to, subconsultant or subcontractor services, travel and subsistence, communications, couriers, postage, fees and permits, document reproduction, special instrumentation and field equipment rental, premiums for additional insurance where required, special supplies, and other costs directly applicable to the project.

A new schedule of charges is issued and becomes effective July 1 each year. Charges for all work, including continuing projects initiated in prior years, will be based on the latest schedule of charges.

IV. Client Advances

Unless the parties agree otherwise in writing, charges for the following items shall be paid by the client directly, shall not be the responsibility of Reid Middleton, and shall be in addition to any fee stipulated in the agreement: government fees, including permit and review fees; soils testing fees and costs; charges for aerial photography; and charges for monuments. If Reid Middleton determines, in its discretion, to advance any of these costs in the interest of the project, the amount of the advance, plus a fifteen percent administrative fee, shall be paid by the client upon presentation of an invoice therefore.

Exhibit F

Breakdown of Overhead Costs

Note: Hourly Rates were negotiated using 3.1867 multiplier to account for overhead and fixed fee)

Right of Way Acquisition Services

UNIVERSAL FIELD SERVICES, INC.
City of Oak Harbor - North Oak Harbor Street Improvements

July 17, 2009

<u>Universal Field Services</u>	<u>Direct</u>	<u>Direct</u>	<u>Direct</u>
<u>Direct Labor</u>	<u>Labor</u>	<u>Labor</u>	<u>Labor \$</u>
<u>Labor Classification</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Total</u>
Project Manager	10	\$81.83	\$818.30
Sr R/W Negotiator	0	\$71.24	\$0.00
Senior Administrative Specialist	30	\$51.45	\$1,543.50
Direct Labor Subtotal	40		\$2,362

UFS Direct Costs

Miscellaneous (See Note 2 Below)		\$300.00	
Mileage @ \$0.550 / mile	450	\$248.00	
UFS Direct Costs Subtotal			\$548
UFS Subtotal			\$2,910

Estimated Total	\$2,910
------------------------	----------------

Notes:

- 1.) Universal reserves the right to re-negotiate estimate total if Notice to Proceed not provided within 180 days from the date of this estimate.
2. Reimbursable miscellaneous expenses at cost, including but not limited to, mapping, photos, parking, printing, long distance telephone, ferry fees, postage, shipping, etc.
- 3.) Mileage to be billed at \$0.550/mile or the approved IRS rate at the time mileage is incurred.
- 4.) This fee estimate for Scope of Work - Amendment No. 3

Exhibit H Title VI Assurances

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

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference and made a part of this AGREEMENT.
2. **Non-discrimination:** The CONSULTANT, with regard to the work performed during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
3. **Solicitations for Sub-consultants, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by AGENCY, STATE or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the AGENCY, STATE or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the CONSULTANT'S non-compliance with the non-discrimination provisions of this AGREEMENT, the AGENCY shall impose such AGREEMENT sanctions as it, the STATE or the FHWA may determine to be appropriate, including, but not limited to:
 - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
 - Cancellation, termination, or suspension of the AGREEMENT, in whole or in part

6. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every sub-contract, 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 sub-consultant or procurement as the AGENCY, STATE or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY and the STATE enter into such litigation to protect the interests of the AGENCY and the STATE and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.

Exhibit I
Payment Upon Termination of Agreement
By the Agency Other Than for
Fault of the Consultant

(Refer to Agreement, Section IX)

Lump Sum Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Cost Plus Fixed Fee Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the Project. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

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 nonsalary costs incurred at the time of termination of this AGREEMENT.

Cost Per Unit of Work Contracts

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.

Exhibit J Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the adopted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery in those instances where the agency believes it has suffered some material damage due to the alleged design error of the consultant.

Design Error(s) is Identified by Agency's Project Manager

When a potential consultant design error(s) is identified, the first step in the process is for the project manager to notify the Director of Public Works or Agency Engineer regarding the error(s). For state or federally funded projects, the Region Highways and Local Programs are also involved in these procedures. (Note: The Director of Public Works or Agency staff person other than the project manager, who has not been previously identified as responsible for the remaining steps in these procedures.)

Step 2 - Project Manager Identifies Consultant Design Error(s)

After discussion with the Director of Public Works, the project manager obtains more detailed documentation than that provided by the consultant, including photographs, drawings, and equipment.

Based on the magnitude of the alleged error(s), and with the assistance of the project manager, the project manager obtains more detailed documentation. Examples include: all decisions and descriptions of equipment.

Step 3 - Contact the Consultant

If it is determined that there is a design error(s), the project manager and consultant should be represented by their respective attorneys. If deemed appropriate for the alleged design error(s), the project manager should contact the consultant's attorney.

The next step in the process is for the project manager to identify the error(s) and the magnitude of the alleged error(s). The project manager should represent the agency and the consultant (including sub-consultants).

NOT APPLICABLE

Step 4 - Attempt to Resolve Alleged Design Error

After the meeting(s) with the consultant have been held, there are three possible scenarios:

the consultant's alleged design error(s).

- It is determined via mutual agreement that this is the case, then the process will not proceed.

error(s). If

- It is determined via mutual agreement that a consultant design error is the case, then the Director of Public Works or Agency representatives, negotiate a settlement with the consultant. The amount paid to the agency or the amount would be reduced from the amount paid to the agency for the services on the project in which the design error took place. The agency is to provide H&LE, and the Region

of this settlement

Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.

If not a mutual agreement regarding the alleged consultant design error(s). The Agency may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach an agreement with the consultant, proceed to Step 5.

Step 5 -

Local Programs

For federal projects, the Region will provide the FHWA with the alleged design error(s) and assistance from the Region to resolve the alleged error(s) after

information, including costs, should be forwarded through the Region to H&LP for their review and consultation with the Agency and the consultant to review the issue. If necessary, H&LP will request clarification and interpretation. H&LP will also identify how federal reimbursement

NOT APPLICABLE

- If mutual agreement is reached, the consultant will adjust the scope of work and costs to reflect the agreement. H&LP will identify the amount of federal reimbursement upon resolution of the issue.
- If mutual agreement is not reached, the consultant will seek settlement by arbitration or by litigation.

Exhibit K Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures shall be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, the cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000.

This exhibit shall be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 – Request for Additional Services from the Agency Project Manager

If the consultant were requested to perform additional services that were outside of the agreement, the consultant shall be entitled to a claim. The first step that must be completed is the request to the Agency's project manager.

The consultant's request shall include:

- Summation of hours and cost of the firm that is included in the claim;
- Any correspondence regarding the request to perform the additional work;
- Timeframe of the additional services outside of the project scope;
- Summary of direct labor dollars and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant's services are outside of the agreement scope of work.

NOT APPLICABLE

Step 2 – Review by Agency Personnel Regarding the Request for Additional Compensation

After the consultant has completed step 1, the next step is to submit the request to the Agency's project manager. The project manager will review the request and forward it to the Director of Public Works or Agency Engineer to determine if the request will be met with the claim. If the request is approved, the Agency's recommendation for federal participation in the claim shall be forwarded to the FHWA. If the FHWA is participating in the project's funding, forward a copy of the Agency's recommendation for federal participation in the claim to the FHWA. If the FHWA is not participating, forward a copy of the Agency's recommendation for federal participation in the claim to the Region Local Programs Engineer. If the FHWA is participating, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, Highways and Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either accept the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Step 3 - Report Documentation Regarding Consultant's Claim(s)

If the Agency agrees with the consultant's claim, the project manager shall prepare a report for the Director of Public Works or Agency Engineer that included the following:

1. A list of all claims by the consultant regarding the claim;

- A classification for each firm that should be included in the claim;
- Any additional work required of the consultant to perform the additional work;
- Agency overhead costs, profit and reimbursable costs associated with the claim;
- Explanation of why the Agency does/does not agree with the claim;
- Explanation to describe the claim and include future consultant claim(s); and
- Recommendations to resolve the claim.

NOT APPLICABLE

Step 4 - Director of Public Works or Agency Engineer Documentation

1. Consultant Claim and Agency

The Director of Public Works or Agency Engineer shall approve or disapprove the claim, or portions thereof. If the project involves federal participation, obtain concurrent Commission approval (as appropriate to agency). If the project involves federal participation, obtain concurrent FHWA approval regarding final settlement of the claim. If the project involves federal participation, payment will need to be from agency funds.

2. If the project involves federal participation, obtain concurrent Commission approval (as appropriate to agency). If the project involves federal participation, payment will need to be from agency funds.

Step 5 - Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall inform the consultant of their final decision regarding the consultant's claim(s). Include a copy of the claim(s) and rationale utilized for the decision.

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Step 6 - Preparation of Supplement or New Agreement for the Consultant

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.

Exhibit L
(To Be Used Only If Insurance Requirements Are Increased)

If the CONSULTANT to the AGENCY identified in Section XIII, Legal Agreement is amended to \$ _____.

The _____ Professional Liability insurance with minimum per occurrence limits in the amount of _____.

Such insurance shall be obtained by one of the following methods:

- Certificate of Insurance
- Self-insurance
- Credit from a qualified financial institution.

Self-insurance through the AGENCY shall be established exclusively for the payment of professional liability claims, including claims against the fund, safeguards established for payment from the fund, a copy of the investment portfolio, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance per occurrence or the value of the project exceed \$1 million per occurrence or the value of the project, then justification shall be submitted to the Federal Highway Administration (FHWA) if the minimum insurance limit.

NOT APPLICABLE

If FHWA approval is obtained, the AGENCY shall obtain _____ CONSULTANT for the additional professional liability insurance requirements.

Notes: Cost of added insurance requirements: \$ _____

- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit.

**Exhibit M-1(a)
Certification Of Consultant**

Project No. _____
Local Agency _____

I hereby certify that I am Michael J. Wallace and duly authorized representative of the firm of Reid Middleton, Inc. whose address is 728 134th Street SW, Suite 200, Everett, WA 98204 and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure the AGREEMENT;
- (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 this AGREEMENT; or
- (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 this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

7/30/09
Date

Michael J. Wallace
Signature

Exhibit M-1(b)
Certification Of Agency Official

I hereby certify that I am the AGENCY Official of the Local Agency of City of Oak Harbor, Washington, and that the 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 AGREEMENT to:

- (a) Employ or retain, or agree to employ to 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 hereby expressly stated (if any):

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

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Exhibit M-2
Certification Regarding Debarment, Suspension, and Other Responsibility
Matters-Primary Covered Transactions

- I. 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 federal department or agency;
 - 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 (I)(B) of this certification; and
 - D. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
- II. Where 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.

7/30/09
(Date)

ROA
(Signature) President or Authorized Official of Consultant

Exhibit M-3
Certification Regarding The Restrictions
of The use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Consultant (Firm): Reid Middleton, Inc.

7/30/09
(Date)


(Signature) President or Authorized Official of Consultant

**Exhibit M-4
Certificate of Current Cost or Pricing Data**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 101-11.6 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) is true and correct, and is being submitted by specific identification in writing, to the contracting officer or to the representative in support of _____ *

_____ as of _____ ** This certification includes any advance agreements and forward pricing rate agreements between _____ part of the proposal.

For _____
Name _____
Title _____
Date of Execution* _____

NOT APPLICABLE

- * Identify the proposal, quotation, or contract number and the submission involved, giving the appropriate identifying information.
- ** Insert the day, month, and year when the price agreement was reached.
- *** Insert the day, month, and year of signing, when the price negotiations were concluded and the date.

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

Bill No. 13
Date: August 5, 2009
Subject: Island County Interlocal
Agreement for Goldie Road
Sewer Grant

**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 presents an interlocal agreement with Island County related to the economic development grant awarded to the City of Oak Harbor for the extension of sanitary sewers to the Goldie Road Enterprise Area.

AUTHORITY

The city has authority under RCW 35A.11 and RCW 39.34 to enter into interlocal agreements to “cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities” (cit. RCW 39.34.010).

SUMMARY STATEMENT

In May of 2006 the City Council authorized an application to the Island County Board of Commissioners for a \$1,000,000 grant from the Rural County Economic Development Fund to assist in the extension of municipal sewer service to the Goldie Road Enterprise Area. The Board of Commissioners unanimously approved the grant.

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. The agreement is typical of reimbursement grant agreements that the City has entered into with other state and federal agencies for capital projects. The City is required to report to Island County on an annual basis, for a period of 5 years, the beneficial effects of the project in terms of jobs created or retained.

Staff have reviewed the agreement, have no exceptions to the conditions or terms and therefore recommend approval of the interlocal agreement.

STANDING COMMITTEE REPORT

Staff received the agreement from the Island County staff on July 10, 2009. Given the schedule of council meetings and standing committee meetings in July and August, staff were not able to present the agreement to a standing committee prior to the August 5, 2009 council meeting.

RECOMMENDED ACTION

A motion authorizing the Mayor to sign the attached interlocal agreement with Island County for up to \$1,000,000 in reimbursements for the Goldie Road Sewer Project.

ATTACHMENTS

Interlocal Agreement

MAYOR'S COMMENTS

121

**INTERLOCAL AGREEMENT
RURAL COUNTY ECONOMIC DEVELOPMENT FUNDS**

THIS INTERLOCAL AGREEMENT is made and entered into pursuant to Chapter 39.34 of the Revised Code of Washington, by and between Island County, Washington, a political subdivision of the State of Washington, acting by and through its Board of County Commissioners, (the "County") and the City of Oak Harbor, a municipal corporation organized under the laws of the State of Washington, and wholly situated in Island County, Washington, (the "City"), on the date shown below.

RECITALS

A. County is eligible for and receives sales and use taxes for rural counties authorized in RCW 82.14.370 and imposed in Island County Code Chapter 3.02C. Such tax is authorized for the purpose of financing public facilities serving economic development purposes in rural areas.

B. The Island County Council of Governments at its April 26, 2006 meeting by way of a unanimous motion recommended for approval by the County the award of Rural County Economic Development Funds to assist the City in financing the costs of an utility improvement project known as North Whidbey Enterprise Area Sanitary Sewer (the "Project"), said improvements are more particularly described in the Application for Rural County Economic Development Funds, submitted by the City, dated August 1, 2005.

C. The County approved on May 1, 2006 an award of Rural County Economic Development Funds in the amount of One Million Dollars (\$1,000,000.00) for the Project, subject to the City having the remaining funding in place to complete Phase 1 of the Project by May 1, 2009, and the City had the remaining funding in place by May 1, 2009.

D. The Project is listed in the City of Oak Harbor Capital Facilities Plan.

E. The City has the appropriate statutory authority pursuant to Chapter 35A.11 RCW, and is ready, willing, and able to complete the Project described herein, and the parties are entering into this Agreement to carry out such purpose.

F. Entry into this Agreement is authorized under Chapter 39.34 of the Revised Code of Washington, the Interlocal Cooperation Act.

AGREEMENT

1. For and in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

2. Purpose. The purpose of this Agreement is to allow the County to provide partial funding assistance to the City for costs of a utility improvement Project known as the North Whidbey Enterprise Area Sanitary Sewer, said improvements are more particularly described in the Application for Rural

County Economic Development Funds, submitted to the County by the City, dated August 1, 2005.

3. Project Time / Budget. Work on the Project shall be substantially complete within 24 months from the effective date of this Agreement. For purposes of RCW 39.34.030(3)(d), the City will establish and maintain a Project construction budget. The City will be responsible for acquiring, holding and disposing of Project property. Unless otherwise agreed by the parties by subsequent written instrument, the County shall not own any real or personal property acquired with the funds distributed to the City hereunder.

4. Construction. The County shall have no responsibility for the design, construction or Project management of said Project. The City shall have the sole authority to determine its design, construction and Project management, and to enter into partnerships, contracts, or other legal arrangements with potential investors and/or users thereof to assist in financing and/or construction and permitting, in the manner allowed by law.

5. Allowable uses. All funds disbursed by the County to the City under this Agreement shall be used by the City solely for Project costs considered permitted uses under RCW 82.14.370 and Island County Code Chapter 3.02C.040(A). The City hereby warrants and guarantees that the said Project shall be completed for uses as described herein.

6. Financing. The contribution to the City from County rural county sales and use tax proceeds for this Project will be in the amount of One Million dollars (\$1,000,000.00). Upon receipt of a request for reimbursement and documentation evidencing that the City has paid Project costs allowable under this Agreement, the County shall pay said reimbursement request within forty-five (45) days of receipt.

7. Repayment Guarantee. In the event that it is determined that any portion of the funds provided by the County is used for any purpose not authorized under this Interlocal Agreement, the City hereby guarantees that it will repay to the County all such funds, together with accrued interest at the same rate as if the funds had been invested with the Washington State Local Government Investment Pool. Any repayments due to the County shall be paid by the City within forty-five (45) days of written request made by the County.

8. Documentation. The City shall maintain for a period of six (6) years proper records documenting that the funds provided by the County were used solely for the purposes contained herein. The City shall make Project records available for inspection or audit by the County or its duly authorized representatives.

9. Reporting. The City shall file a report with the Board of County Commissioners by January 31st of the year succeeding completion of the Project, for 5 years, reflecting the number of jobs and businesses created and retained as a result of the Project, along with other related information reasonably required by the County to measure the economic impact of its financial assistance.

The City shall also file a report with the County Auditor by January 31, 2010 and each year thereafter when the City has been reimbursed in the prior year under Section 6 above. The report

must show the following:

- (a) List the name of the project as "North Whidbey Enterprise Area Sanitary Sewer";
- (b) Indicate where the project is listed in the City's economic development plan or the economic development section of the City's comprehensive plan;
- (c) List the City's total expenditures for the project from rural county sales and use tax funds received from the County in previous year and in prior years, if applicable;
- (d) List the actual or estimated number of businesses created/retained by the Project; and
- (e) List the actual of estimated number of jobs created/retained by the Project.

10. Indemnification. The City shall be solely responsible for administration of the Project. The City shall at all times protect, indemnify and save harmless the County from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable counsel fees, and expenses) imposed upon or reasonably incurred by or asserted against the County on account of (i) any failure of the City to comply with any of the terms of this Agreement or (ii) any loss or damage to real or personal property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project or the use or financing thereof or (iii) any use of the Project in violation of applicable law (including environmental laws); provided, the City has no obligation to indemnify the County for any claim or liability resulting from the County's negligence or willful misconduct. This paragraph shall survive the completion, expiration, and/or termination of this Agreement.

The City shall maintain, during the life of the Agreement, Industry Standard Occurrence Commercial General Liability in the amount of \$1,000,000.00 Per Occurrence and \$2,000,000.00 Aggregate, including Premises/Operations, Products/Completed Operations, Blanket Contractual Liability and Personal Injury Coverage, to protect the City from claims for damages for bodily injury, including wrongful death, as well as from claims of property damage which may arise from any operations under this contract whether such operations be by the City or by anyone directly employed by or contracting with the City.

The City shall maintain, during the life of this Agreement, Business Automobile Liability Insurance in the amount of \$1,000,000.00 Bodily Injury and Property Damage per combined single limit to protect the City from claims which may arise from the performance of this Contract, whether such operations are by the City or by anyone directly or indirectly employed by the City.

11. No Separate Legal Entity. It is not the intention that a separate legal entity be established to conduct this cooperative undertaking. For purposes of RCW 39.34.030(4)(a), the City's chief administrative officer shall administer the Project.

12. Modification of the Agreement. This Agreement may be modified only by the written consent of each party.

13. Term of Agreement and Termination. This Agreement shall become effective on full execution hereof and compliance with Section 14, and shall expire upon the payment in full to the City, if any, owed by the County pursuant to Section 6 of this Agreement.

14. Filing of Agreement. Under RCW 39.34.040, prior to its entry into force this Agreement must be either filed with the Island County Auditor or, alternatively, listed by subject on the City's Internet website.

15. Survival. Sections 5, 7, 8, 9 and 10 of this Agreement shall survive the termination of this Agreement.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

By: _____
John Dean, Chairman

Date: _____

Attest:

Elaine Marlow, Clerk of the Board

CITY OF OAK HARBOR

By: _____
Jim Slowik, Mayor

Date: _____

Attest:

_____, City Clerk

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

Bill No. 14
Date: August 5, 2009
Subject: Paint West Reservoir Tanks Exteriors,
Contract No. ENG-09-02 Acceptance as
Complete

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

To accept Contract ENG-09-02 with Washington Industrial Coatings, Inc., in the amount of \$81,833.33 as complete in order to authorize contract closeout including the standard 45-day claims and lien period and final payments.

AUTHORITY

OHMC 2.330.010 provides for the acceptance of Public Works Construction Contract work as follows: "The mayor, or his/her designee, is authorized to accept the public works and improvements performed under any contract awarded hereunder after determining that such work has been satisfactorily completed in accordance with the contract terms thereof.

SUMMARY STATEMENT

At the May 5, 2009 regular business meeting, the City Council awarded a contract to Washington Industrial Coatings, Inc. of Tumwater, WA, in the amount of \$86,277.73 including sales tax, to paint the west reservoir tanks exteriors. The award was made pursuant to OHMC 2.340 in that an invitation for bids was made to contractors registered on the Municipal Research and Service Center (MRSC) small works roster Sub Category Reservoir – Cleaning, Painting & Caulking. The bids received were publicly opened and evaluated in accordance with the bid specifications. In addition, Council authorized funds in the amount of \$10,000 as a contingency for contract changes.

City staff has inspected the completed work and determined that it is in compliance with the terms of the contract. After completing the work, making minor adjustments for unknown conditions, and tabulating the final quantities, the final contract amount, including sales tax, is \$81,833.33. No formal change orders were issued.

This agenda bill is to accept the contract work as complete and to authorize contract closeout including the standard 45-day claims and lien period and final payment.

STANDING COMMITTEE REPORT

The Public Works and Utilities Standing Committee has not considered this action since the project was completed too late to be considered at the committee's July 2, 2009 meeting. Postponement of action to September 8, 2009 to allow for presentation to the Public Works Committee on August 6, 2009, would delay close-out of the contract resulting in a delay in final payments to the contractor.

RECOMMENDED ACTION

A motion to accept Contract 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.

ATTACHMENTS

None

MAYOR'S COMMENTS

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

Bill No. 15
Date: August 5, 2009
Subject: Waterline Interties at Miller Road
Contract No. ENG 08-02 Acceptance as
Complete

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:

To accept Contract ENG-08-02 with Marshbank Construction, Inc. in the amount of \$325,583.70 as complete in order to authorize contract closeout including the standard 45-day claims and lien period and final payments.

AUTHORITY:

OHMC 2.330.010 provides for the acceptance of Public Works Construction Contract work as follows: "The mayor, or his/her designee, is authorized to accept the public works and improvements performed under any contract awarded hereunder after determining that such work has been satisfactorily completed in accordance with the contract terms thereof. (Ord. 1470 § 4, 2006)."

SUMMARY STATEMENT:

At the September 16, 2008 regular business meeting, the City Council awarded a contract to Marshbank Construction, Inc. of Lake Stevens, Washington in the amount of \$265,380.54 to install interties between the Anacortes and Oak Harbor water systems at either end of Miller Road in Skagit County. The award was made pursuant to RCW 39.04 and OHMC 2.330 in that an invitation for bids was made, public notice was given by publication, and bids received were publicly opened and evaluated in accordance with the bid specifications. The Council authorized the City Engineer to administratively approve changes up to \$26,500.

Change Order 1 was needed for additional work required to remove an existing steel casing pipe from the water pipe at the north Miller Road intertie. The casing was not shown on the contract drawings and constituted a "Differing Site Condition" under the terms of the contract. Section 1-04.7 of the Standard Specifications governing this project states the Contractor is entitled to additional compensation for extra work resulting from differing site conditions. Change Order 1 increased the contract amount by \$24,821.96.

Change Order 2 covers design changes proposed by the Contractor to the thrust restraint systems for the interties. The design changes reduced construction time and costs. Change Order 2 decreased the contract amount by \$4,258.00.

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.

Item	Cost (taxes included)	Status
Original Contract	\$265,380.54	
Change Order 1	\$ 24,821.96	Approved by staff
Change Order 2	(\$ 4,258.00)	Approved by staff
Quantity Changes	\$ 39,639.20	Pending
Total	\$325,583.70	

Marshbank Construction, Inc. has completed the work in accordance with the terms of the contract. The work has been inspected and is in compliance with the terms of the contract. Marshbank Construction, Inc. has submitted documented payment of employees and taxes in accordance with contract requirements.

This agenda bill is to accept the contract work as complete and to authorize contract closeout including the standard 45-day claims and lien period and final payment.

STANDING COMMITTEE REPORT

The Public Works and Utilities Standing Committee was briefed on the project status and costs at the Committee's July 2, 2009 meeting.

RECOMMENDED ACTION:

Accepting as completed Contract No. 08-02 with Marshbank Construction, Inc. as amended in the amount of \$325,583.70 and begin the 45-day claims and lien period.

ATTACHMENTS:

Pay Estimate 3

MAYOR'S COMMENTS:

CITY OF OAK HARBOR - Marshbank Construction, Inc.
 WATERLINE INTERTIES AT MILLER ROAD
 CONTRACT # 08-02 - PAY ESTIMATE 3 (Final)

July 2, 2009

ITEM NO.	BID ITEM DESCRIPTION	Units	ESTIMATED QUANTITY	BID PRICE	EXTENDED PRICE	THIS PERIOD		TOTAL TO DATE	
						QUANTITY	COST	QUANTITY	COST
1	Mobilization	LS	1	22,000.00	22,000.00	0.00	-	1.00	22,000.00
2	Minor Additions/Deletions	FA	1	20,000.00	20,000.00	0.83	16,678.07	0.83	16,678.07
3	Project Temporary Traffic Control	LS	1	18,000.00	18,000.00	0.00	-	1.00	18,000.00
4	Shoring or Extra Excavation Class B	SF	800	5.00	4,000.00	0.00	-	765.00	3,825.00
5	Gravel Borrow Including Haul	TON	150	45.00	6,750.00	534.89	24,081.05	684.89	30,811.05
6	Crushed Surfacing Top Course	TN	32	38.00	1,216.00	-352.20	(13,383.80)	47.80	1,818.40
7	HMA for Pavement Repair CL 1/2 PG 64-22	TN	45	400.00	18,000.00	0.00	-	87.06	34,824.00
8	Butterfly Valve 24 in.	EA	4	7,900.00	31,600.00	0.00	-	4.00	31,600.00
9	Ductile Iron Pipe for Water Main 16 in.	LF	25	350.00	8,750.00	0.00	-	25.00	8,750.00
10	Ductile Iron Pipe for Water Main 24 in.	LF	25	400.00	10,000.00	0.00	-	25.00	10,000.00
11	Ductile Iron Pipe Fittings	LB	11,000	1.00	11,000.00	0.00	-	14,581.00	14,581.00
12	Joint Restraint on Existing Pipe 24 in.	EA	10	2,000.00	20,000.00	0.00	-	4.00	8,000.00
13	Thrust Blocks	EA	3	500.00	1,500.00	0.00	-	3.00	1,500.00
14	Special Thrust Block at Miller Road North	LS	1	18,000.00	18,000.00	0.00	-	0.00	-
15	Corrosion Control	LS	1	13,000.00	13,000.00	0.00	-	0.96	12,500.00
16	All Tie-Ins to Existing Oak Harbor Pipe	LS	1	35,000.00	35,000.00	0.00	-	1.00	35,000.00
17	Water Line Tie-In Incentive	EST	1	5,000.00	5,000.00	-	-	0.00	-
Subtotal						27,353.52	-	249,893.52	-

C.O. No. Change Orders

1	Steel Casing Removal	LS	1	22,898.49				1	22,898.49
2	Dead Man Thrust Restraint and Quantity Reductions (net contract change: -\$4258.00)	LS	1	27,571.96				1	27,571.96
Subtotal						3,928.04	-	3,928.04	50,470.45

Subtotal
 Washington State Sales Tax (8.4%):
 Contract Total
 Retainage (5%)
 Less Previous Payment
 Total

\$ 31,281.58
 \$ 2,627.85
 \$ 1,584.08
 \$ 32,345.13
 \$ 300,353.97
 \$ 26,228.73
 \$ 325,583.70
 \$ 15,017.71
 \$ 278,220.87
 \$ 32,345.13

CONTRACTOR SIGNATURE

[Signature]

DATE

7/12/09

CITY MANAGER SIGNATURE

[Signature]

DATE

7/13/09

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

Bill No. 16
Date: August 5, 2009
Subject: Police Department Re-Roof, Contract
No. 09-000403 Acceptance as Complete

FROM: Cathy Rosen, Public Works Director

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

To accept Contract 09-000403 with Hytech Roofing, Inc. in the amount of \$99,066.76 as complete in order to authorize contract closeout including the standard 45-day claims and lien period and final payments.

AUTHORITY

OHMC 2.330.010 provides for the acceptance of Public Works Construction Contract work as follows: "The mayor, or his/her designee, is authorized to accept the public works and improvements performed under any contract awarded hereunder after determining that such work has been satisfactorily completed in accordance with the contract terms thereof. (Ord. 1470 § 4, 2006)."

SUMMARY STATEMENT

At the May 19, 2009 regular business meeting, the City Council awarded a contract to Hytech Roofing, Inc. of Lynden, WA in the amount of \$99,066.76 including sales tax, to re-roof the Police Department. The award was made pursuant to OHMC 2.340 in that an invitation for bids was made to contractors registered on the Municipal Research and Service Center (MRSC) small works roster Sub Category Facility Construction, Repair and Maintenance-Roofing. The bids received were publicly opened and evaluated in accordance with the bid specifications. In addition, Council authorized funds in the amount of \$10,000 as a contingency for contract changes.

City staff has inspected the completed work and determined that it is in compliance with the terms of the contract. After completing the work, making minor adjustments for unknown conditions, and tabulating the final quantities, the final contract amount, including sales tax, is \$99,066.76. No formal change orders were issued.

This agenda bill is to accept the contract work as complete and to authorize contract closeout including the standard 45-day claims and lien period and final payment.

STANDING COMMITTEE REPORT

The Public Works and Utilities Standing Committee has not considered this action since the project was completed too late to be considered at the Committee's July 2, 2009 meeting.

Postponement of action to September 8, 2009 to allow for presentation to the Public Works Committee on August 6, 2009, would delay close out of the contract resulting in a delay in final payments to the contractor.

RECOMMENDED ACTION

A motion to accept Contract 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 and final payments.

ATTACHMENTS

None

MAYOR'S COMMENTS

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

Bill No. 17
Date: July 15, 2009
Subject: Heron Ridge Development -
Preliminary 4 Lot Short Plat

FROM: Steve Powers *SP*
Development Services 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 presents waivers for a four lot short plat known as Heron Ridge for the City Council's consideration. This is a quasi-judicial review process.

AUTHORITY:

The authority for cities, towns and counties to review and approve subdivisions are provided by RCW 58.17. The Oak Harbor Municipal Code (OHMC) Title 21 establishes the codes for review of land subdivisions within the City of Oak Harbor OHMC. Chapter 18.20 establishes the application review process.

The application to subdivide property into four lots falls under two review process types. The plat application is for a Short Subdivision which is categorized as a Type II (Administrative/Staff) review process (OHMC 18.20.240(3)(a)). The waivers from the street (width and slope) and sidewalk requirements are a Type IV review process (public hearing) (OHMC 21.50.020). As per OHMC 18.20.220, the application components can be processed separately but the process that requires the public hearing and the decision by City Council (Type IV) must be considered first.

The scope of this report is to evaluate the requested waivers based on the criteria established in OHMC 21.50.020. The proposed 4 lot development has been provided as an exhibit to provide context for the waiver.

SUMMARY STATEMENT

Project Description

The subject property is currently addressed as 771 SW 20th Court. The property is approximately 1 acre in size and is located west of SW Scenic Heights Street opposite the Freund Marsh Trailhead site and behind the Christian Science Society. The property is currently vacant and zoned R-1, Single Family Residential. The applicant is proposing to subdivide the property into two lots and eventually into four lots. The eventual subdivision into four lots will depend on the

final platting of Scenic Estates ¹ that is located immediately south of the subject property (see Exhibit 1). The Scenic Estates development has a preliminary plat approval and they are in the process of building the infrastructure.

The property is currently a flag shaped lot with 30 feet of frontage on SW Scenic Heights Street. The 30 foot flag strip that provides access to the subject parcel also includes an easement that provides access to the lot located west of the subject property. The preliminary plat is proposing to create a public street that will provide access to the future lots. If approved, the proposed public street will also provide access to the existing west lot (thus making the existing access easement not necessary). The proposed public street will also provide an option to be extended in the future to provide access to lots further west of the subject property.

Waivers Requested

To accomplish the development as proposed, the applicant will require three waivers from Title 21. They are listed below.

- Waiver from OHMC 21.40.070 (3)(b)(i) to allow the street grade for the proposed plat to be 13.5% (10% max).
- Waiver from OHMC 21.40.070 (4) to permit a reduced right-of-way width of 30 feet for neighborhood streets (min 50-60 feet).
- Waiver from OHMC 21.050.010 (6)(a) to allow for sidewalks on one side of the street (sidewalks required on both sides of the street).

Justification of waivers

As per the requirements of OHMC 21.50.020 Waiver of Requirements – Procedure, the applicant has provided a request and justification for the above mentioned waivers (Exhibit 2). Staff concurs with the applicants request and justification.

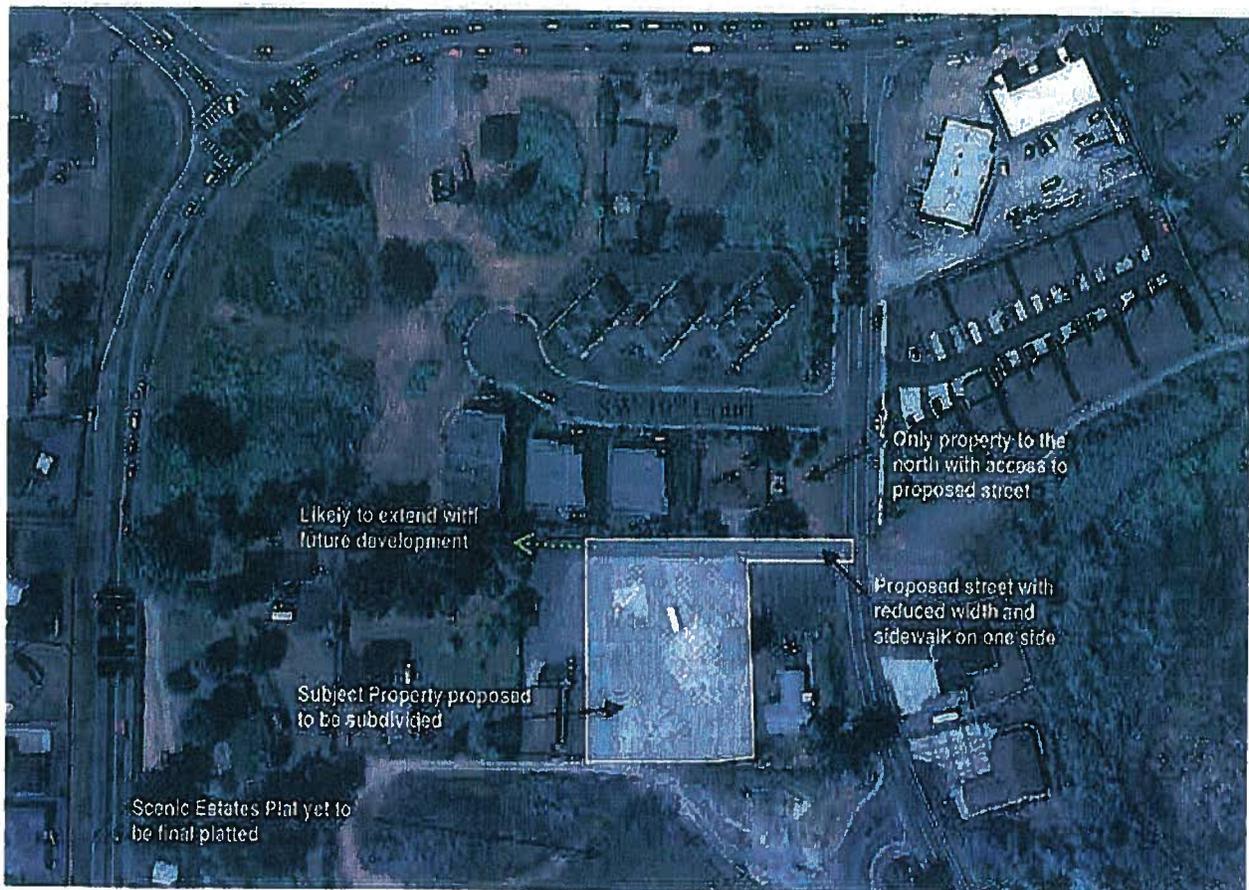
- Size and shape of the tract to be subdivided:
The property is a flag pole shape lot with the existing SW 20th Court forming the pole portion of the property. Since the existing SW 20th Court is currently not public right-of-way, its intersection with SW Scenic Heights Street provides the frontage for the subject property. Since the pole shaped portion of the property, which provides frontage and access, is limited to 30 feet, the ability to provide full street width right-of-way dedication is not possible. This limitation also impacts the street cross-section and the ability to provide sidewalks on both sides of the street.

OHMC 21.50.020 Waiver of Requirements – Procedure –
(excerpt) A variance shall be granted only upon a finding that, where because of the size of the tract to be subdivided, its topography, the conditions or nature of adjoining areas, or the existence of unusual physical condition, strict compliance with the provisions for subdivision, short subdivision or dedication would cause unusual and unnecessary hardship on the subdivider. Not variance shall be granted which allows a subdivision, short subdivision or boundary line adjustment which is not in the public interest as identified in RCW 58.17.010 et seq.

¹ The Scenic Estates Development adjacent to the subject property is under construction. One of the streets in this development, when final platted, will provide access to two lots (labeled "Future Lots" in Preliminary Short Plat – Exhibit 1) proposed as part of the Heron Ridge Short Plat. A preliminary plat for the Scenic Estates Development was approved in April, 2006. A time extension was granted in April, 2009 for one year.

- The condition and nature of adjoining area:**
 The property is surrounded by residential development. To the east is the Christian Science Society, to the north are the Altamer Condos and an single family residence, to the west is a single family residence and the south is being developed as a single family residential development. Only one property (750 SW 20th Court) on the north side of the existing SW 20th Court takes access from this street. It is unlikely that other properties on the north side will ever take access to SW 20th Court since they have access to SW 19th Court. Therefore SW 20th Court will primarily serve lots located to its south eve if it were extended west of the development. In other words, it will function like a half street improvement which will serve lots only on one side (except 750 SW 20th Court – corner lot on Scenic Heights). This limited access and reduce street width configuration also provides a justification for sidewalks only on one side (south) of the street.
- The existence of unusual physical conditions:**
 The average slope of the property is approximately 16% from east to west and 12% from southwest to northeast. This makes it extremely difficult to meet the slope requirements of streets without drastically grading the property. Drastic grading of the property to meet the code requirements for slopes can have additional impacts on grades for access to the proposed lots and the adjacent neighboring lots that have existing access to SW 20th Court.

Based on the above, there are practical difficulties involved in meeting the strict requirements of the code. The properties location, shape, surrounding characteristics and existing slopes causes an unusual and unnecessary hardship on the property owner.



The intent of the code requirements can be met by including conditions to mitigate the narrower and steep street configuration. These are addressed in the conditions to consider with the review of these waiver requests.

Conditions

OHMC 21.50.202 (3) provides the authority for requiring conditions when considering waivers. Listed below are conditions to consider:

- Provide a turnaround (as shown on the preliminary plat) for fire and utility trucks. The turnaround must be built equivalent to street standards and marked with "Fire Lane" and "No Parking" signs. A note on the final plat should be included indicating that future lot owners will be responsible for maintaining the turnaround.
- The reduced width street as per the cross-section provided on the preliminary plat shall be posted with "No Parking" signs at locations approved by the City Engineer.
- Obtain approval of Civil Plans from the City Engineer prior to construction of the infrastructure.
- Minor variations from the requested waivers may be permitted as approved by the City Engineer.

PROCESS

Normally a 4 lot subdivision (short plat) is reviewed administratively. Since the proposal requires consideration of waivers to continue the development process, the applicant has chosen to have the waivers considered first prior to the short plat being considered. If approved, this process will allow the subdivision plat to be reviewed administratively as a short plat.

The review process Type IV with a public hearing held by the Planning Commission and a public meeting by the City Council.

The Planning Commission held a public hearing on July 28, 2009.

Notification:

This item was advertised in the Whidbey News Times on June 6, 2009 for the June 23, 2009 Planning Commission meeting. Since the Planning Commission did not have a quorum for the June 23rd the hearing was postponed to July 28, 2009. The notice for the July 28th meeting was advertised in the July 11th Whidbey News Times.

The public meeting for the August 5, 2009 City Council 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 hearings. Owners of a neighboring property located west of the proposed development visited staff for clarification and additional information.

RECOMMENDED ACTION:

- Conduct the public meeting.
- Approve the resolution granting the requested waivers and associated conditions for Heron Ridge Development – Preliminary Four Lot Short Plat.

ATTACHMENTS:

- Exhibit 1: Preliminary Short Plat
- Exhibit 2: Request for waivers and justification
- Exhibit 3: Proposed street cross-section
- Exhibit 4: Applicant's request on the review process
- Exhibit 5: Public Notification Documents
- Exhibit 6: Letters to adjacent property owners
- Exhibit 7: Resolution

COH SHORT PLAT 08-00001
 PARCEL NO. R13210-516-3230

PROPERTY INFORMATION

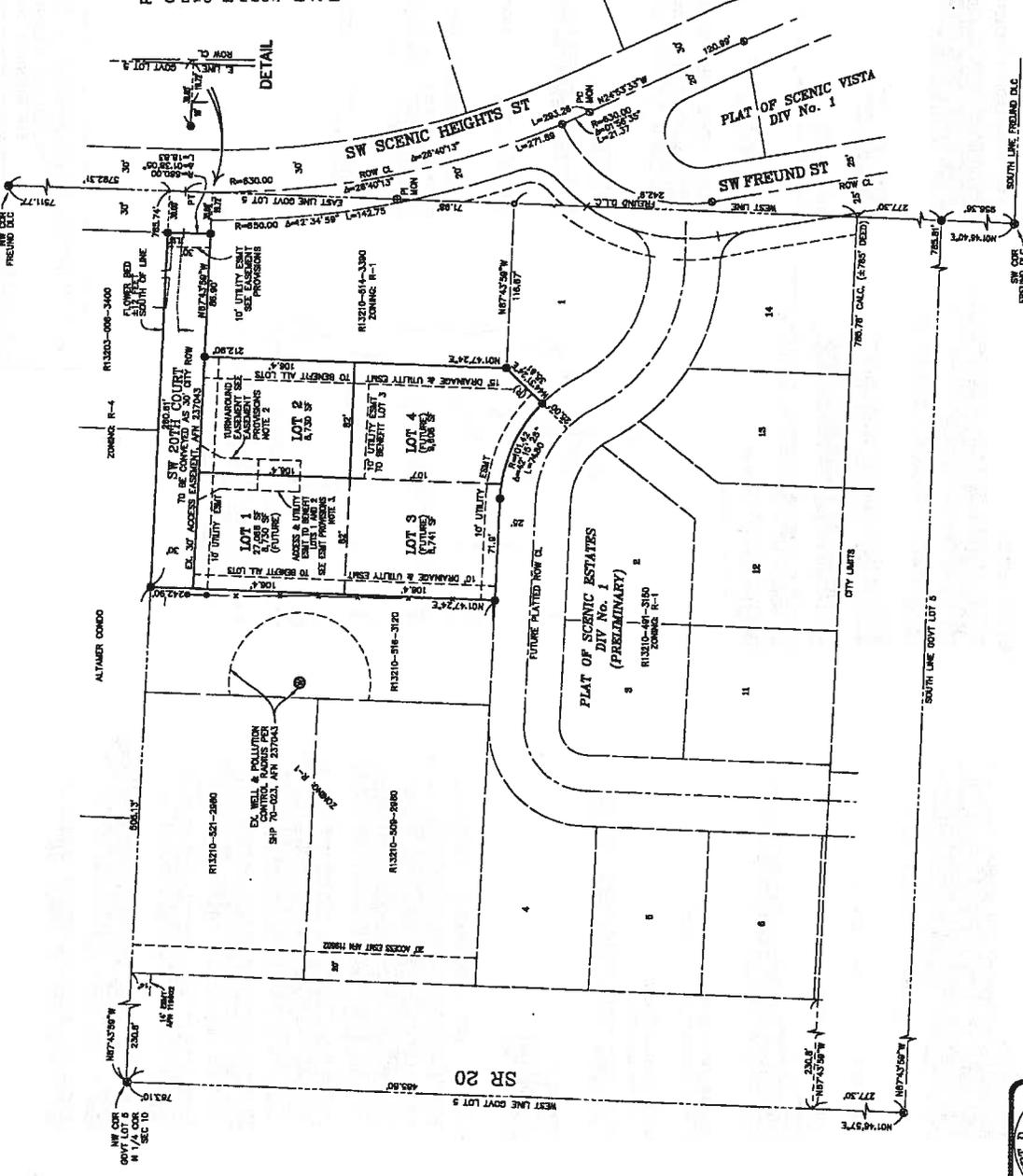
OWNER/APPLICANT:
 DENNIS & CINDY SGLER
 1400 1/2 AVENUE, SE
 OAK HARBOR, WA 98277

ENGINEERING/SURVEYING:
 FAKKEMA & KINGMA INC. (C/O R. JASON FELLOWS)
 6400 1/2 AVENUE, SE
 OAK HARBOR, WA 98277
 360-875-5873

PARCEL NO.: R13210-516-3230

ZONING: R-1 RESIDENTIAL

LOT INFORMATION: TOTAL PARCEL SIZE = 1.00 ACRE
 ROW DEDICATION (C/O R. JASON FELLOWS)
 LOT 1 = 0.7500 AC (FUTURE)
 LOT 2 = 0.7500 AC (FUTURE)
 LOT 3 = 0.7500 AC (FUTURE)
 LOT 4 = 0.7500 AC (FUTURE)



LEGEND

- SET REBAR AND CAP, MARKED
- PANDORA & IRONDA, INC. L.S. 11541
- ⊕ EXISTING SURVEY MONUMENT, AS NOTED
- ⊙ EXISTING CONCRETE MONUMENT
- ⊙ EXISTING ALUMINUM SURFACE MONUMENT
- FOUND IRON PIPE
- ⊕ SECTION CORNER
- ⊕-C= SECTION QUARTER CORNER

HERON RIDGE DEVELOPMENT - PRELIMINARY SHORT PLAT
PARCEL NO. R13210-516-3230
 FOR DENNIS & CINDY SGLER

SEC 10, T 32N, R 1E, W11
 OAK HARBOR, WASHINGTON

DATE: 08/09/09
 DRAWN BY: JLT

FAKKEMA & KINGMA, INC.
 CONSULTING ENGINEERING & LAND SURVEYING
 6400 1/2 AVENUE, SE, OAK HARBOR, WA 98277 (360)875-5873

SCALE: 1" = 50'
 SHEET NO. 4701
 SHEET 2 OF 2

NOTE: ROTATE BEARINGS LEFT 172°14'
 TO BE ON DEED BEARINGS.



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**PLAT OF HERON RIDGE
REVISED SUBDIVISION WAIVER REQUEST
-NARRATIVE -**

The Applicant seeks a subdivision waiver for the following aspects of plat development:

1. *Reduced Street Width*

This parcel on which this development is to occur is configured with a 30 foot flag or pipe stem extension to its access point on Scenic Heights Road (SW 20th Court). This existing condition comprises the only means of access to the lot and the parcel directly to the west of the site. In order to infill the parcel with this subdivision the 30 foot strip known as SW 20th Court must be improved accordingly to provide the maximum compliance with the subdivision code. Therefore, the applicant is proposing a 20 foot paved traveled width for the access road. Given the low number of trips and lack of connectivity to other adjacent roads it is anticipated that this width will be more than sufficient to serve the parcel and its access needs.

2. *Sidewalk on one side of the Street SW 20th Court.*

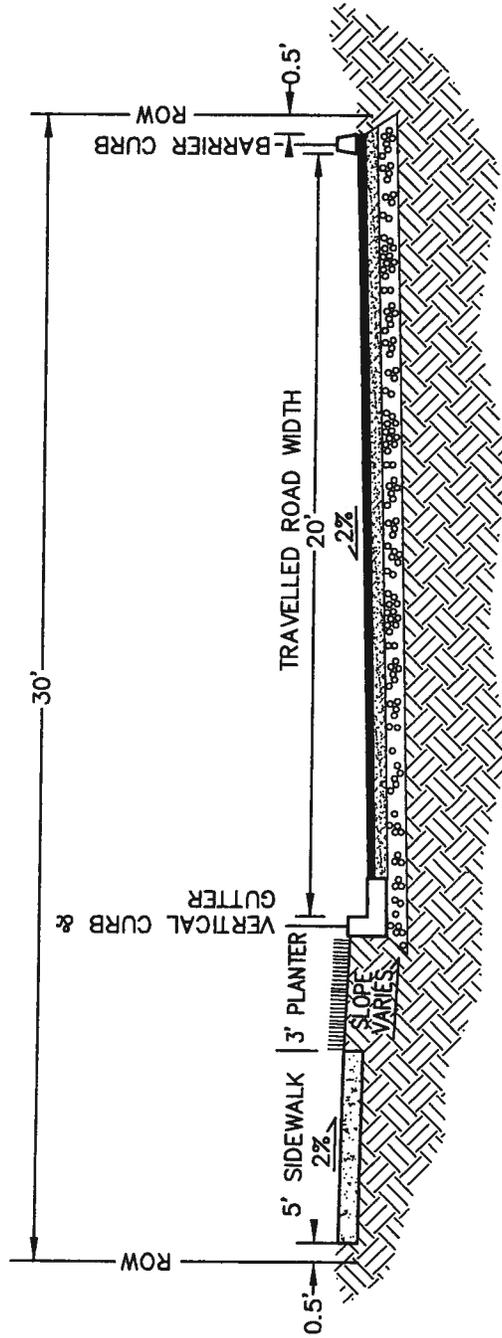
A request for waiver for the requirement of sidewalks on both sides of the platted road is again linked to the existing narrow condition of the site's access point onto Scenic Heights Road. The addition of a 20 foot paved access lane within the 30 feet of proposed right of way leaves room only for one section of sidewalk to be included in the road section. Per city staff comments the applicant is proposing the sidewalk to be placed on the south side of SW 20th Court. The street section also includes a 3 foot planter strip between the sidewalk and the curb to account for the remainder of the space within the 30' road section. The lack of a sidewalk on both sides of this access road should be acceptable given the anticipated level of pedestrian traffic expected from the four residential lots.

3. *Road Grade in excess of 10%*

This development is occurring on a steep site. Therefore providing access to the lots is a balance between excessive earthwork and the need to create safe public access. Currently the maximum grade of the road to serve the lots of this subdivision is 13.5% which is above the City Code standard of 10% for subdivisions.

National published guidance indicates that a maximum grade of 15% is acceptable for very low volume roads. In addition, other recently constructed City roads and other local jurisdictions including the City of Everett, City of Marysville and Snohomish County allow a maximum grade of 15% on roads where traffic volumes are below 1,000 average daily trips. The anticipated volume for this project is far below that threshold. Given this precedent and supporting professional opinion, we believe this project's road grades are not in excess of that which will maintain public safety while minimizing the potentially negative environmental aspects of excessive earthwork.

EXHIBIT 2



TYPICAL ROAD SECTION—SW 20TH COURT

NOT TO SCALE

1. MODIFIED STREET WIDTHS AND DIMENSIONS SHOWN ABOVE ARE TO BE APPROVED BY CITY OF OAK HARBOR THROUGH PRELIMINARY PLAT PROCESS.
2. PAVING AND SUBGRADE PREPARATION WILL CONFORM TO COH STD DETAIL ST-4.
3. CONCRETE CURB & GUTTER (VERTICAL CURB) WILL BE INSTALLED PER COH STD DETAIL ST-6.
4. SIDEWALKS AND DRIVEWAYS WILL BE CONSTRUCTED WHERE INDICATED PER COH STD DETAILS ST-9 AND ST-1.

EXHIBIT 3

142

FAKKEMA &



KINGMA INC

A HARMBEEN COMPANY

ANTICIPATE UNDERSTAND GUIDE DELIVER

July 15, 2009

Cac Kamak, Senior Planner
City of Oak Harbor Development Services
865 S.E. Barrington Drive,
Oak Harbor, WA 98277

RE: HERON RIDGE PRELIMINARY SHORT PLAT (SPL 08-00001) SIGLER

Dear Cac:

Per our discussions regarding the process for moving forward with the Heron Ridge project, I would like to request the following regarding two distinct aspects of the project:

- 1) That the subdivision waivers submitted be handled separately as a Type IV process to be considered by the City Council; and
- 2) That the Short Plat continues to be handled as a Type II process administratively by City Staff.

I think that by separating the two of these issues we can accomplish the underlying goal of allowing for infrastructure improvements and keeping the process moving forward in a timely manner.

Sincerely;
Fakkema & Kingma, Inc.

Jason Fields

EXHIBIT 4

CIVIL ENGINEERING / LAND SURVEYING / LANDSCAPE ARCHITECTURE / LAND USE PLANNING

840 SE 8th Avenue, Suite 102, Oak Harbor, WA 98277 • t (877) 321-7242 t (360) 675-5973 f (360) 675-7255

1413

**CERTIFICATION OF NOTIFICATION
OF PUBLIC HEARING**

I, Kathy Gifford, am the Development Services Administrative Assistant for the City of Oak Harbor. I certify under penalty of perjury under the laws of the State of Washington that:

1. On the 8th day of July 2009, I provided written notice to the Whidbey News Times, located at 800 SE Barrington Drive, of the Oak Harbor Planning Commission meeting which is scheduled for the 28th day of July 2009; and
2. On the 9th day of July 2009, I posted the notice on the City of Oak Harbor website and Channel 10.

Signed this 9th day of July 2009, at Oak Harbor, Washington.



Print Name: Katherine Gifford

Title: Admin Assistant

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EXHIBIT 5

**CERTIFICATION OF POSTING
PUBLIC HEARING NOTICES**

Planning Commission
865 SE Barrington Drive
Oak Harbor, Washington 98277

I, Katherine Gifford, certify under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

That on the 9th day of July, 2009, I did post 3 notices (a copy of which is attached hereto and by reference made a part hereof) at the following locations:

1&2) Oak Harbor City Hall
865 SE Barrington Drive
Oak Harbor, WA 98277

3) Library
1000 East Regatta Drive
Oak Harbor, WA 98277

advertising public hearings for see attached before the Planning Commission on July 28, 2009.

Executed this 9th day of July, 2009, in Oak Harbor, Washington.

(Signature of person posting)

441145

CITY OF OAK HARBOR PLANNING COMMISSION
NOTICE OF PUBLIC HEARING
PC# 7-28-09

Notice is hereby given that the Planning Commission will conduct its regular monthly meeting on Tuesday, July 28, 2009. The meeting starts at 7:30 p.m. and will be held in the Council Chambers at City Hall, 865 SE Barrington Drive, Oak Harbor WA. The Planning Commission will consider the following:

HERON RIDGE PRELIMINARY SHORT PLAT #PPL-09-00001 – Public Hearing

The Planning Commission will conduct a public hearing on a proposal to subdivide an existing 1 acre parcel into four single family residential lots. The proposed site is located at 779 SW 20th Court, parcel R13210-516-3230. The Planning Commission will consider a waiver to reduce the street width and sidewalks on one side of the street. The Planning Commission will forward a recommendation to the City Council.

SUBDIVISION CODE REVISIONS – Public Hearing

The Planning Commission will conduct a public hearing on the subdivision code revisions project, which was initiated in January of 2008. Staff will present public comments received on the draft subdivision code since the June Planning Commission hearing. Planning Commission will accept verbal comments from the public on the draft code at the hearing.

Background information about the project is available on the City's website at <http://cohsubdivisions.blogspot.com/>, or by calling 279-4513.

The Planning Commission will conduct a pre-meeting at 7:00 p.m. in the Council Chambers Conference Room prior to the regular meeting.

All meetings of the Planning Commission are open to the public.

Published Whidbey News Times
July 11, 2009

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AFFIDAVIT OF POSTING

RECEIVED

MAY 28 2009

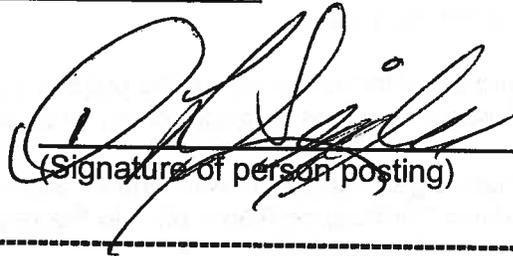
CITY OF OAK HARBOR
BUILDING DIVISION

City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

I, Dennis Sigler, hereby certify that I did, on the 27 day of MAY, 2009 post 2 notice(s), a copy of which is hereunto attached, marked "Exhibit", and by the reference made a part hereof, at the following location(s):

- 1) Corner of SW 20th Court and SW Scenic Heights Street
- 2) Existing vacant Lot 2 on SW 20th Court

advertising a Notice of Application for Short Plat SPL-08-00001 and Preliminary Plat PPL-09-00001.


 (Signature of person posting)

SIGNED AND ATTESTED to before me this 28th day of MAY, 2009 by DENNIS SIGLER.



Jacqueline M. Leetham
 Notary Public
 Print Name JACQUELINE M. LEETHAM
 Notary Public in and for the State of
 Washington, Oak Harbor / Island City/County.
 Commission 11-13-10 expire



7/9/2009

Notice of Application Heron Ridge Preliminary Short Plat PPL-09-00001

Dear Sir/Madam,

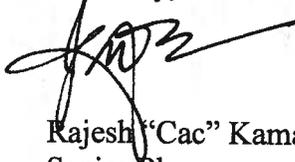
This letter is to inform you that a certain property in vicinity of property that you own is being considered for platting. The subject property is approximately 1 acre in size and is located just off of Scenic Heights Road opposite the trailhead site and west of the Christian Science Society. The applicant is preliminarily platting the property with the intention of creating four lots in the future (see exhibit).

The eventual platting of the property will result in a dedicated street (SW 20th Court) with sidewalks on one side. **A public hearing is scheduled for the July 28th Planning Commission meeting which will be held at 7:30 pm in the City Council Chambers, 865 SE Barrington Drive, Oak Harbor, WA 98277.** The public hearing is to consider a reduced width for the street right-of-way and the limitation of sidewalks to only one side of the street.

You can comment on the proposed plat by mail, email or phone. The information is provided below.

Development Services Department
Attn. Heron Ridge Preliminary Plat
865 SE Barrington Drive
Oak Harbor, WA 98277
Ph: 360-279-4510
Email: ckamak@oakharbor.org

Sincerely,



Rajesh "Cac" Kamak, AICP
Senior Planner

EXHIBIT 6

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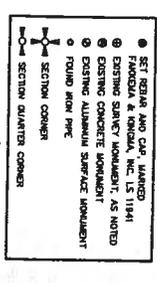
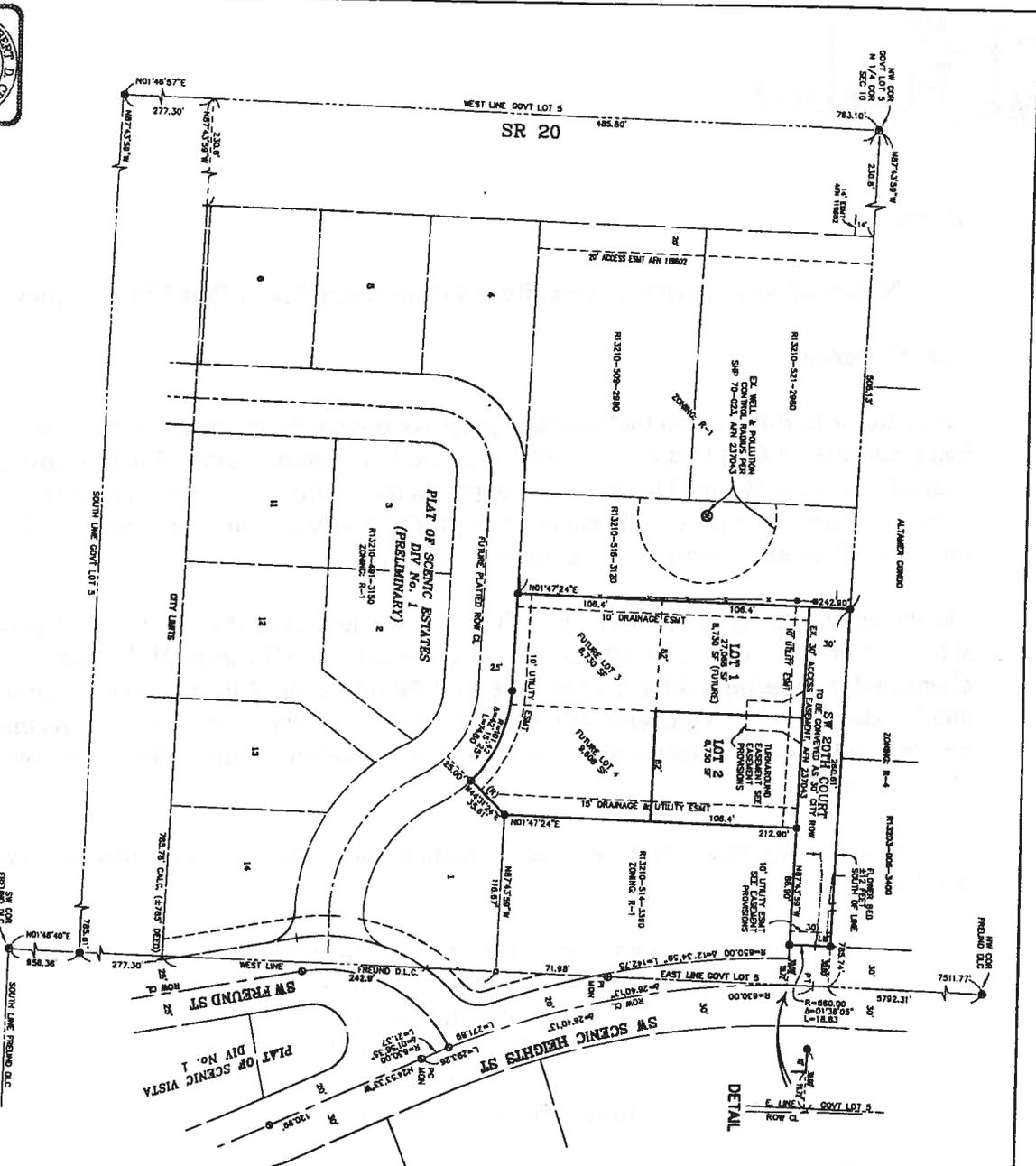
NOTE: ROTATE BEARINGS LEFT 11°2'14"

HERON RIDGE DEVELOPMENT - PRELIMINARY 4 LOT PLAT
PARCEL NO. R13210-516-3230
 FOR DENNIS & CINDY SIGLER

SE: 1/1 20N, R: 1E, W/4
 SECTION: 14
 DATE: 05/28/09

Fackkita And Kildette, Inc.
 SURVEYING & LAND SURVEYING
 1000 W. MARKET ST. SUITE 100
 CHARLOTTE, NC 28202

OK: WARD WASHINGTON
 NA
 SHEET 2 OF 2



PROPERTY INFORMATION
 OWNER/APPLICANT:
 DENNIS & CINDY SIGLER
 1000 W. MARKET ST. SUITE 100
 CHARLOTTE, NC 28202

ENGINEERING/SURVEYING:
 FACKKITA & KILDETTE, INC.
 1000 W. MARKET ST. SUITE 100
 CHARLOTTE, NC 28202

PARCEL NO.: R13210-516-3230
 ZONING: R-1 RESIDENTIAL

LOT INFORMATION: TOTAL PARCEL SIZE = 1.00 ACRE
 ROW DEDICATION (CITY STREETS) = 7.817 SF
 LOT 1 = 27.08 SF (FOUNDED)
 LOT 2 = 8,720 SF (FOUNDED)
 LOT 3 = 8,720 SF (FOUNDED)
 LOT 4 = 8,720 SF (FOUNDED)

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**CERTIFICATION OF MAILING
NOTICE TO ADJACENT PROPERTY OWNERS**

I, Katherine Gifford, certify under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

That on the 9th day of July, 2009, I deposited in the U.S. mail, postage prepaid, a copy of the Notice of Public Hearing before the Planning Commission (a copy of which is attached hereto and by reference made a part hereof) to the following property owners:

see attached list

Executed this 9th day of July, 2009, in Oak Harbor, Washington.



(Signature of person mailing)

Richard R Nunn
730 SW 19th Ct Apt A4
Oak Harbor, WA 98277

Kyle Aduskevich & Kristie Lloyd
777 SW 19th Ct Apt A1
Oak Harbor, WA 98277

David & Vicki Hahn
750 SW 20th Ct
Oak Harbor, WA 98277

Christian Science Society
PO Box 782
Oak Harbor, WA 98277

John & Doris Daniel
777 SW 19th Ct Apt A2
Oak Harbor, WA 98277

Joseph & Sandra Beamon
777 SW 19th Ct Apt B1
Oak Harbor, WA 98277

Scott & Laura Fromme
1920 Hastie Lake Road
Oak Harbor, WA 98277

Karl Kreig & Darlyne Kreig
4643 Moran Road
Oak Harbor, WA 98277

Kristen G Severns
777 SW 19th Ct Apt B2
Oak Harbor, WA 98277

Brent & Barbara Travis
777 SW 19th Ct Apt C3
Oak Harbor, WA 98277

Janice E Hayes
777 SW 19th Ct Apt C1
Oak Harbor, WA 98277

City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Stanley & Judith Pinkerton
1173 N 66th St
Milwaukee, WI 53213

Donald M Hulett
Maria E Hulett
730 SW 19th Ct Apt A1
Oak Harbor, WA 98277

Richard S / James E Pierce
3655 Lynndale Cres
Burnaby BC Canada V5A355

Duane F / Marilyn J Dorsing
PO Box 2724
Oak Harbor, WA 98277

Walden Family LLC
1234 Lombardy Lane
Oak Harbor, WA 98277

Sally L Freund
4094 Tichenor Road
Hector, NY 14841

George E Lamm – Trustee
0770 SR 20
Oak Harbor, WA 98277

James A / Helen G Bremmer
2060 SW Scenic Heights St
Oak Harbor, WA 98277

Steven C Ove
30750 SR 20
Oak Harbor, WA 98277

Jan D / Lamora L Parker
3740 SR 20
Oak Harbor, WA 98277

Danny P / Jannine Islhler
30678 SR 20
Oak Harbor, WA 98277

Carl Prats
966 Poppys Lane
Oak Harbor, WA 98277

Robert L / Nancy L Collins
245 SW Lopez Drive
Oak Harbor, WA 98277

Joshua B/Mishal J Rowley
2010 SW Scenic Heights St
Oak Harbor, WA 98277

Scenic Terrace LLC
504 E Fairhaven Drive
Oak Harbor, WA 98277

Comestar Northwest LLC
PO Box 409
Orcutt, WA 98264

Island County
Attn-Roy Daniel
PO Box 1735
Coupeville, WA 98239

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RESOLUTION NO.

**A RESOLUTION WAIVING, TO A CERTAIN EXTENT, THE REQUIREMENTS OF
OHMC 21.40.070 (3)(b)(i), OHMC 21.40.070 (4), OHMC 21.50 (6)(a) FOR THE
PROPOSED HERON RIDGE SHORT PLAT**

WHEREAS, a property owner filed a request for waivers on May 21, 2009 to the extent that right-of-way dedication for a public residential street be limited to thirty (30) feet, sidewalks be limited to only one side of the street, and the street grade be 13.5% for a proposed 4 lot development; and

WHEREAS, the requested waivers apply to the Heron Ridge Short Plat, a copy of which is attached to and referenced herewith as Attachment A; and

WHEREAS, a public hearing to consider the waivers was held before the Planning Commission on July 28, 2009 after due and proper notice was published as required by RCW 58.17.090 in the local newspaper on July 11, 2009; and

WHEREAS, property owners within 300 feet of the property were notified of the application and the public hearing as per requirements of RCW 58.17.090 with description of the proposed location of the development; and

WHEREAS, a public meeting was held by the City Council of Oak Harbor on August 5, 2009, notice of said hearing having been published on July 25, 2009 as required by law; and

WHEREAS, the City Council of the City of Oak Harbor, following due deliberation and careful consideration of the issues germane to the development, finds that the waiver request is consistent with the requirements of OHMC 21.50.020; and

WHEREAS, the City Council finds that due to the size of the tract to be subdivided, its topography, the condition or nature of adjoining areas, or the existence of unusual physical conditions, strict compliance with the provision for subdivision, short subdivision or dedication would cause unusual and unnecessary hardship on the subdivider; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Oak Harbor as follows:

1. The City Council finds that because of the topography of the site the existence of unusual physical condition strict compliance of the provisions for short subdivision would cause unusual and unnecessary hardship on the subdivider.
2. The City Council finds that waivers listed below are consistent with the requirements of OHMC 21.50.020; and
 - i. Waiver from OHMC 21.40.070 (3)(b)(i) to allow the street grade for the proposed plat to be 13.5%.

- ii. Waiver from OHMC 21.40.070 (4) to permit a reduced right-of-way width of 30 feet for neighborhood streets.
- iii. Waiver from OHMC 21.50.010 (6)(a) to allow for sidewalks on one side of the street.

3. The City Council, consistent with the requirements of OHMC 21.50.020 (3), requires the following conditions associated with granting of the waivers:

- i. Provide a turnaround (as shown on the preliminary plat) for fire and utility trucks. The turnaround must be built equivalent to street standards and marked with "Fire Lane" and "No Parking" signs. A note on the final plat should be included indicating that future lot owners will be responsible for maintaining the turnaround.
- ii. The reduced width street as per the cross-section provided on the preliminary plat shall be posted with "No Parking" signs at locations approved by the City Engineer.
- iii. Obtain approval of Civil Plans from the City Engineer prior to construction of infrastructure.
- iv. Minor variations from the requested waiver may be permitted as approved by the City Engineer.

PASSED and approved by the City Council this _____ day of _____, 2009.

THE CITY OF OAK HARBOR

Jim Slowik, Mayor

Attest:

Connie Wheeler, City Clerk

Approved as to Form:

Margery Hite, City Attorney

Published: _____, 2009

THE END!