



**Council Chambers, 865 SE Barrington Drive  
CITY COUNCIL AGENDA**

**February 3, 2015**

**6:00 p.m.**

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- 1. CALL TO ORDER**  
Invocation/Pledge of Allegiance  
Excuse Absent Councilmembers
  
- 2. HONORS AND RECOGNITIONS**
  
- 3. PRESENTATIONS**
  - a. CADA (Citizens Against Domestic and Sexual Abuse) - Cynde Robinson
  - b. Chamber of Commerce Presentation – Annual Report for 2014
  
- 4. APPROVAL OF AGENDA**
  
- 5. CITIZEN COMMENT PERIOD**
  
- 6. CONSENT AGENDA**
  - a. Minutes of the January 20, 2015 Regular Meeting and Workshop meeting on January 28, 2015
  - b. Approval of Accounts Payable and Payroll Check Numbers
  - c. Letter of Engagement with Attorneys of Sebris Busto James for Labor Relations and Negotiation Services
  - d. Reclassify Position from Associate Planner-Engineering to Civil Engineer II
  - e. Resolution 15-02: Authorizing Posting of Signs in City Parks Restricting Smoking in Certain Areas
  - f. Ordinance 1717: Infraction and Civil Penalties Code Amendment
  - g. Ordinance 1719: Amending Park Code Chapter 6.12
  - h. Ordinance 1721: Code Amendment regarding the Youth Commission
  - i. Waste Water Treatment Plant – Professional Services Agreement with ERCI – Amendment No. 3
  - j. Waste Water Treatment Plant – Legal Counsel Perkins Coie LLC
  
- 7. STAFF, MAYOR AND COUNCIL COMMENTS**
  - a. City Administrator
  - b. Mayor
  - c. Councilmembers

To assure disabled persons the opportunity to participate in or benefit from City services, please provide 24-hour advance notice to the City Clerk at (360) 279-4539 for additional arrangements to reasonably accommodate special needs.



**Council Chambers, 865 SE Barrington Drive  
CITY COUNCIL AGENDA**

**February 3, 2015**

**6:00 p.m.**

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**8. ORDINANCES AND RESOLUTIONS**

**9. PUBLIC HEARINGS/PUBLIC MEETINGS**

**10. UNFINISHED BUSINESS**

**11. NEW BUSINESS**

- a. North Reservoir Project – Authorize the Mayor to sign the Final Contract Voucher Certificate

**12. ADJOURNMENT**

As a courtesy to Council and the audience, PLEASE TURN YOUR CELL PHONES OFF before the meeting begins. During the meeting's Public Comments section, Council will listen to your input regarding subjects of concern or interest that are not on the agenda.

For scheduled public hearings, if you wish to speak, please sign your name to the sign-up sheet, located in the Council Chambers. The Council will take all information under advisement. 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!

To assure disabled persons the opportunity to participate in or benefit from City services, please provide 24-hour advance notice to the City Clerk at (360) 279-4539 for additional arrangements to reasonably accommodate special needs.

Oak Harbor City Council  
Regular Meeting Minutes  
January 20, 2015

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**CALL TO ORDER**

Mayor Scott Dudley called the meeting to order at 6:00 p.m.

**ROLL CALL**

Present:

Mayor Scott Dudley  
Mayor Pro Tem Paggao  
Councilmember Rick Almberg  
Councilmember Jim Campbell  
Councilmember Beth Munns  
Councilmember Bob Severns  
Councilmember Tara Hizon

Staff Present:

Deputy City Administrator/Finance Director Doug Merriman  
City Attorney Nikki Esparza  
Chief of Fire Ray Merrill  
Public Works Director Cathy Rosen  
Development Services Director Steve Powers  
City Engineer Joe Stowell  
Captain/ Deputy Chief of Police Teri Gardner  
Senior Services Administrator Mike McIntyre  
Executive Assistant to the Mayor Kellye Mazzoli

Councilmember Servatius was absent.

**PLEDGE OF ALLEGIANCE/INVOCATION**

Councilmember Hizon gave the invocation and Mayor Scott Dudley led the pledge of allegiance.

**Motion:** Councilmember Severns moved to excuse Councilmember Servatius, seconded by Councilmember Hizon. Motion unanimously approved.

**HONORS AND RECOGNITIONS**

**PRESENTATION**

- 3.a** Oak Harbor Yacht Club – Bob Mitchell, Head Buccaneer – Not Presented
- 3.b** Chamber of Commerce Presentation – Annual Report for 2014 – Not Presented

**APPROVAL OF AGENDA**

**Motion:** Councilmember Almberg moved to amend the Agenda, removing items 3.a, 3.b, and 11.a, seconded by Councilmember Munns, unanimously approved.

**Motion:** Councilmember Hizon moved approve the Agenda as amended. Motion seconded by Councilmember, unanimously approved.

## CITIZEN COMMENT PERIOD

Mayor Scott Dudley opened the citizen comment period at 6:06, no comments, closed at 6:07 p.m.

## CONSENT AGENDA

- a. Minutes of the Regular City Council Meeting held on January 6, 2015 and Special
- b. Approval of Accounts Payable and Check Numbers.
- c. Contract with Oak Harbor Chamber of Commerce for Tourism Support Services.
- d. Interlocal Agreement with Whatcom County Sheriff's Department – Custody Chain

**Motion:** Councilmember Hizon moved to approve the Consent Agenda Items as presented, Motion seconded by Mayor Pro Tem Paggao, unanimously approved.

## MAYOR, STAFF AND COUNCIL COMMENTS

### City Administrator

Deputy City Administrator/Finance Director Mr. Merriman reminded the Council of City Action Days.

He announced that City Employee Doug Knuckles recently retired. Mr. Knuckles has worked in the Public Works Department for 31 years. Mr. Merriman noted that there are currently 7 open positions open at the City.

The next Workshop is scheduled for January 28<sup>th</sup>, 2015.

### Mayor

Mayor Dudley congratulated Rick Almberg as the new chair of the Board of Island Transit.

He announced the new art hanging in Council Chambers was created by Oak Harbor High School students.

Go Sea Hawks!

### Councilmembers

Mayor Pro Tem Paggao and Councilmember Severns cheered for the Sea Hawks.

Councilmember Almberg touched on the bill drafted to the state from Dave Hayes regarding removing fees for municipal marinas.

Councilmember Munns encourages citizens to get involved with Feed the Need at the Help House. Ms. Munns announced that Beeksma Park is flying the Sea Hawks flag.

Councilmembers Campbell and Hizon had no comments.

**ORDINANCES AND RESOLUTIONS**  
**PUBLIC HEARINGS/PUBLIC MEETINGS**

**UNFINISHED BUSINESS**

**NEW BUSINESS**

- 11.a** Waste Water Treatment Plant – Professional Services Agreement with ERCI Amendment No. 3.

Item removed.

**ADJOURNMENT**

Councilmember Hizon moved to adjourn, seconded by Mayor Pro Tem Paggao, unanimously carried.

The meeting adjourned at 6:14 p.m.

Kellye Mazzoli, Executive Assistant to the Mayor

Oak Harbor City Council  
Workshop Meeting Minutes  
January 28, 2015

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**CALL TO ORDER**

Mayor Pro Tem Paggao called the meeting to order at 3:00 p.m.

**ROLL CALL**

Present:

Mayor Pro Tem Danny Paggao  
Councilmember Tara Hizon  
Councilmember Rick Almberg  
Councilmember Jim Campbell  
Councilmember Beth Munns  
Councilmember Joel Servatius

Staff Present:

Deputy City Administrator/Finance Director Doug Merriman  
City Attorney Nikki Esparza  
Deputy Fire Chief Mike Buxton  
Public Works Director Cathy Rosen  
Development Services Director Steve Powers  
City Engineer Joe Stowell  
Operations Manager Steve Bebee  
Civil Engineer Brad Gluth  
Parks Manager Hank Nydam  
Human Resources Director Sara Piccone  
Executive Assistant to the Mayor Kellye Mazzoli  
Deputy Police Chief/ Police Captain Teri Gardner

Mayor Dudley and Councilmember Severns were absent.

Deputy Police Chief/ Police Captain Teri Gardner left at 3:12 p.m.  
Councilmember Hizon left at 4:30 p.m.

**AGENDA**

**1. Departmental Briefings**

**a. Park Board Recommendation: Restrictions on Smoking in the Park**

Public Works Director Cathy Rosen provided the summary report

Councilmembers asked questions and Parks Manager Hank Nydam provided clarification.

Deputy Police Chief/ Police Captain Teri Gardner discussed enforcement concerns.

**b. Report from Cronin Forestry – PW**

Public Works Director Cathy Rosen introduced Mike Cronin of Cronin Forestry.  
Mr. Cronin provided the summary report from Cronin Forestry.

City Council, staff and Mr. Cronin discussed the report results.

**c. Update regarding the Post Office Oak Tree Wood – PW**

Parks Manager Hank Nydam provided the summary report on power point. Mr. Powers summarized the Post Office Oak Tree Wood Use Ad Hoc Committee report.

Discussion among Council and staff regarding the committee's suggestions on the use of the wood.

**2. Pending Agenda Items**

**a. Code Amendment regarding the Youth Commission (2/03)**

City Attorney Nikki Esparza provided the summary for the pending Code Amendment.

The City Attorney explained that the Youth Commission will be best served to become an independent coalition in order to have the opportunity to join with other groups such as with Island County. This will provide the Youth Commission with greater access to grant funding and ability to provide more services for the Oak Harbor youth.

Staff's recommendation is to remove both the Oak Harbor Youth Commission and the Oak Harbor Youth Council from the City code and allow the Oak Harbor Youth Commission to function as an independent coalition.

Councilmember Campbell asked follow-up questions.

**b. Civil Penalties and Infraction Code Amendment (2/03)**

City Attorney Nikki Esparza provided a brief summary report.

One of the main goals in amending the civil penalties and infraction code is to be consistent with State Law with respect to appropriate infraction classes. The proposed ordinance amendment includes corrections to outdated code references in the civil penalties and infraction code.

Councilmember Almborg asked whether the proposed changes will be highlighted for clarity.

Councilmember Servatius thanked the legal department for their work on this much needed code amendment.

**c. Letter of Engagement with the Attorneys of Sebris Busto James for Labor Negotiation Services (2/03)**

Human Resources Director Sara Piccone outlined a summary of the intended Contract with Sebris Busto James.

Human Resources Department submitted Request for Proposals for Representation of Labor Negotiations and Services and received two (2) applicants.

Discussion among Councilmembers and staff.

Braun Consulting, the former Negotiations Representation firm, will provide information to the new representation team in order to get them up to speed.

Councilmember Almberg inquired about the change in Negotiation representation. Ms. Piccone responded that the change in representation may help reach union labor settlements.

**d. Reclassify Position from Associate Planner-Engineering to Civil Engineer II (2/03)**

Public Works Director Cathy Rosen provided the summary report. Ms. Rosen explained the rationale for the proposed position reclassification.

Councilmember Almberg confirmed that the proposed reclassification was budgeted for 2015-2016. Ms. Rosen answered that this was passed in the 2015-2016 biennial budget.

**e. Ordinance 1719: Amending Park Code Chapter 6.12 (2/03)**

Public Works Director Cathy Rosen provided the summary report.

The sale of alcohol in Catalina and Windjammer Parks is up for extension if desired. This provision has sunsetted in the current code.

**f. Request for Qualifications for Construction Management – WWTP (2/17)**

City Engineer Joe Stowell provided the summary report.

This Request for Qualifications is seeking construction management services for the Clean Water Facility. The goal is to have construction management on board by April of 2015.

Discussion between Councilmember Almberg and City Engineer Joe Stowell.

**g. Request for Qualifications for Transportation Plan (2/17)**

City Engineer Joe Stowell provided a brief summary regarding the Request for Qualifications (RFQ).

We have received grant funding from the State to complete the Transportation Plan and once the state provides authorization for the RFQ, the notice will be sent out. The goal is to provide notice in March 2015.

**h. Professional Services Agreement with ERCI, Amendment No. 3 – WWTP (2/03)**

City Engineer Joe Stowell provided a summary of Amendment No. 3 for ERCI services with the Waste Water Treatment Plant.

Mr. Stowell explained that through the permitting process, several new items have developed that were not predicted and outside the original scope of service. Amendment No. 3 adds the necessary scope to ERCI's contract to complete permitting.

### **3. Emerging Issues**

#### **a. County-wide Planning Policies**

Development Director Steve Powers provided the staff briefing. These policies are the framework of the City's Comprehensive Plan.

#### **b. Homeless Encampment Code update**

Development Director Steve Powers provided the staff briefing. WCIA suggested we place Homeless Encampment Code provisions in our code. An Ad-hoc committee is in the process of being established to discuss this project.

Mr. Powers added that some of the Council's concerns discussed at the December Workshop meeting regarding this issue will be reflected in the pending draft.

Discussion between Councilmember Munns and Mr. Powers.

#### **c. Waste Water Treatment Plant Discussion at 2/25/15 Workshop**

Deputy City Manager/ Finance Director Doug Merriman announced that the Waste Water Treatment Plant Special Meeting has been rescheduled to the February 25, 2015 City Council Workshop from 3:00 to 6:00 p.m.

Development Director Steve Powers announced the need to schedule a Joint City Council and Planning Commission meeting to continue discussion on the County-Wide Planning Policies.

The joint meeting is scheduled for February 11, 2015 from 4:00 to 5:00 p.m.

Councilmember Munns suggested that staff coordinate with Washington State Department of Transportation to not close Deception Pass Bridge for construction and repairs during previously scheduled City events.

### **ADJOURNMENT**

Mayor Pro Tem Paggao adjourned the meeting at 5:02 p.m.

Kellye Mazzoli, Executive Assistant to the Mayor

City of Oak Harbor  
City Council Agenda Bill

Bill No. C/A 6.b  
Date: February 3, 2015  
Subject: Approval of Accounts Payable  
and Payroll Check Numbers.

**FROM:**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

I move to approve:

Accounts Payable Vouchers and Payroll Checks, see Voucher Numbers and Check Numbers listed in the Background/ Summary Information section below.

**BACKGROUND / SUMMARY INFORMATION**

Oak Harbor Municipal Code Chapter 3.72 establishes procedures for claims (vouchers) payment. The documentation that regularly supports the signature coversheets is attached. Claim coversheets will be provided prior to the City Council meeting for appropriate Council signatures.

The following voucher and check numbers are submitted for approval:

*Accounts Payable Voucher Numbers:*

- Voucher Numbers 161129 through 161229 in the amount of \$266,220.85.

*Payroll Check Numbers:*

- Direct Deposit check numbers 33484 through 33638.
- EFT check numbers 680 through 684.
- Payroll check numbers 97750 through 97803.

**LEGAL AUTHORITY**

**FISCAL IMPACT**

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

**ATTACHMENTS**

1. [Voucher Listing \(1\)](#)
2. [Voucher Listing \(2\)](#)
3. [Voucher Listing \(3\)](#)

Voucher List  
City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount	
161129	1/23/2015	0007729 COLBY, JAMES	Ref000221113		UB Refund Cst #00164204	12.72	
						<b>Total :</b>	<b>12.72</b>
161130	1/23/2015	0007727 MECCA, SHARON	Ref000221111		UB Refund Cst #00125796	116.23	
						<b>Total :</b>	<b>116.23</b>
161131	1/23/2015	0007730 MONTOYA, JOSIAH	Ref000221115		UB Refund Cst #00165754	58.01	
						<b>Total :</b>	<b>58.01</b>
161132	1/23/2015	0007728 SADDLEMIRE, CHRIS	Ref000221112		UB Refund Cst #00158958	118.80	
						<b>Total :</b>	<b>118.80</b>
161133	1/23/2015	0000973 WALDRON CONSTRUCTION	Ref000221114		UB Refund Cst #00164992	85.62	
						<b>Total :</b>	<b>85.62</b>
161134	1/23/2015	0002521 WHIDBEY RESIDENTIAL	Ref000221110		UB Refund Cst #00121081	33.99	
						<b>Total :</b>	<b>33.99</b>
<b>6 Vouchers for bank code : bank</b>						<b>Bank total :</b>	<b>425.37</b>
<b>6 Vouchers in this report</b>						<b>Total vouchers :</b>	<b>425.37</b>

Voucher List  
City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161135	1/27/2015	0007731 BERGER ABAM	308726		PROF SVC/LODGING TAX PROCESS	3,946.90
					<b>Total :</b>	<b>3,946.90</b>
161136	1/27/2015	0000627 CAPITAL ONE COMMERCIAL	141417595211		SUPPLIES	390.67
					<b>Total :</b>	<b>390.67</b>
161137	1/27/2015	0000170 CHIEF SUPPLY	188072		GLOVES	1,003.91
					<b>Total :</b>	<b>1,003.91</b>
161138	1/27/2015	0000222 CUSTOM ENGRAVING	14-1359		ACCOUNTABILITY TAGS/PLATES	128.81
					<b>Total :</b>	<b>128.81</b>
161139	1/27/2015	0006747 EQUINOX RESEARCH & CONSULTING	11-413-16		2014 PROF SVC/ARCHAEOLOGICAL RE	10,670.13
					<b>Total :</b>	<b>10,670.13</b>
161140	1/27/2015	0007732 FIRESHOWS RENO	122214		REGISTRANT ID 3281011	365.00
					<b>Total :</b>	<b>365.00</b>
161141	1/27/2015	0000329 GALLS	002859485 002881781 002913231		HELMET VEST/JACKET BOOTS/MCCALMONT	78.26 117.38 127.18
					<b>Total :</b>	<b>322.82</b>
161142	1/27/2015	0000344 GLOBAL EQUIPMENT COMPANY	107565643		FOLDING TABLES	779.70
					<b>Total :</b>	<b>779.70</b>
161143	1/27/2015	0007236 HAMMOND, JACOB	EXP REIMB		EXP REIMB	194.00
					<b>Total :</b>	<b>194.00</b>
161144	1/27/2015	0003095 HOME DEPOT CREDIT SERVICES	1053269 12073 25177 2563515 3024769 3026082 3092468 3563048		REDWRNT/PLIERS/ANALOG MULTI/DEI 7/16 OSB HEMLOCK/DRYWALL VALVE BOXES/PRT KIT/PCMAXSC/COM TL OUTLET HDWE CLOTH TL OUTLET/TL PLUG 12V 5MAH/BOLT CUTTER	264.45 282.08 49.27 253.17 23.89 14.40 -36.80 50.64

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161144	1/27/2015	0003095 HOME DEPOT CREDIT SERVICES	(Continued)			
			3570953		TL OUTLET/TL PLUG	29.20
			3570970		SS PLATE	2.12
			4026992		BNTHNDLAX	15.20
			4100533		BANDSAW BLADE	-13.01
			4581963		RW	32.56
			5026802		PRW LOPPERS	86.89
			5053160		4PK RATCH SE	19.53
			5581896		GRND STON	13.57
			5581897		HOSE REPAIR	21.64
			5581910		DIG MULTIMET	43.47
			5581931		BC/HINGE/BANDSAW BLADE	28.08
			7025605		ENGRAVER	21.72
			8042286		HEAT GUN	76.04
			8092776		ADJ90DGELB/VENT PIPE	-25.14
			8563290		PLC4FTCW/13W CFL 12/WD40	61.83
					<b>Total :</b>	<b>1,314.80</b>
161145	1/27/2015	0000401 ISLAND COUNTY AUDITOR	B0038293		2014 VOTER REGISTARTION SERVICE	21,824.97
					<b>Total :</b>	<b>21,824.97</b>
161146	1/27/2015	0000411 ISLAND COUNTY TREASURER	123114A		4TH QTR 2014/MUNICIPAL COURT EXP	61,439.45
					<b>Total :</b>	<b>61,439.45</b>
161147	1/27/2015	0004423 MUNICIPAL EMERGENCY SERVICES	00312402_SNV		TAILS/PANTS	4,268.52
			00507840_SNV		SHIRT/BAER	71.69
			00587961_SNV		BOOTS	234.74
					<b>Total :</b>	<b>4,574.95</b>
161148	1/27/2015	0006974 NORTH AMERICAN RESUCE, LLC	IN170382		DRESSING VENT	60.07
					<b>Total :</b>	<b>60.07</b>
161149	1/27/2015	0000668 OAK HARBOR AUTO CENTER	001-224068		WIPER BLADES	20.12
			001-225206		WINDSHIELD	15.65
					<b>Total :</b>	<b>35.77</b>
161150	1/27/2015	0003007 OFFICE DEPOT	746661076001		CASH BOX	26.08

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161150	1/27/2015	0003007 OFFICE DEPOT	(Continued) 746661122001 747180675001		ENVELOPES ROLLS	92.28 52.13 <b>Total : 170.49</b>
161151	1/27/2015	0004654 RILEY, KENNETH	EXP REIMB		EXP REIMB	102.00 <b>Total : 102.00</b>
161152	1/27/2015	0000801 SEA WESTERN, INC	180725		GATE VALVES	620.88 <b>Total : 620.88</b>
161153	1/27/2015	0000846 SOUND PUBLISHING	695564		DEC 2014/PUBLICATIONS-ACCT#80125	522.48 <b>Total : 522.48</b>
161154	1/27/2015	0003883 STAPLES BUSINESS ADVANTAGE	3251429353 3251429354 3251429355 3252036322 3252036323 3252036325 3252354317 3252354319		WRAPHIA WRAPHIA INK INK/BINDER CLIPS/PENS/TONER PAINT DESK PADS/ADD ROLLS/PAPER CLIPS/ PAPER CLIPS PENS	4.66 4.55 93.36 1,074.85 35.28 57.39 7.05 4.83 <b>Total : 1,281.97</b>
161155	1/27/2015	0001053 TREASURER, WASHINGTON STATE	123114A		2014 FORFEITED PROPERTY	1,403.93 <b>Total : 1,403.93</b>
161156	1/27/2015	0004903 US BANK	4485590002304679		CREDIT CARD PURCHASES	1,198.47 <b>Total : 1,198.47</b>
161157	1/27/2015	0005899 WASHINGTON AUDIOLOGY SERVICES	45143		HEARING TESTS	60.00 <b>Total : 60.00</b>
161158	1/27/2015	0001000 WHIDBEY AUTO PARTS, INC.	233291		MEGUIARS/TOWELS	69.30 <b>Total : 69.30</b>
161159	1/27/2015	0001007 WHIDBEY CLEANERS	264700		EMBROIDERY	8.15

Voucher List  
City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161159	1/27/2015	0001007 0001007 WHIDBEY CLEANERS	(Continued)			<b>Total : 8.15</b>
161160	1/27/2015	0001061 XEROX CORPORATION	701819733		NOV 2014/COPIER RENTAL	4,781.47
						<b>Total : 4,781.47</b>
<b>26 Vouchers for bank code : bank</b>						<b>Bank total : 117,271.09</b>
<b>26 Vouchers in this report</b>						<b>Total vouchers : 117,271.09</b>

Voucher List  
City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161161	1/28/2015	0007273	CAMPGROUND AUTOMATION SYS, INC	2891	PARK MANAGEMENT SYSTEM	178.00
					<b>Total :</b>	<b>178.00</b>
161162	1/28/2015	0007273	CAMPGROUND AUTOMATION SYS, INC	2913	PARK MANAGEMENT SYSTEMS	114.84
					<b>Total :</b>	<b>114.84</b>
161163	1/28/2015	0007449	A-1 PERFORMANCE, INC	22096	JANITORIAL	58.64
					<b>Total :</b>	<b>58.64</b>
161164	1/28/2015	0007332	ADAMSON POLICE PRODUCTS	INV163230	SHIRT	54.34
					<b>Total :</b>	<b>54.34</b>
161165	1/28/2015	0005405	AGRICULTURE, UNITED STATES DEPT OF	3001518506	2014 ANIMAL AND PLANT HEALTH INSP	985.37
					<b>Total :</b>	<b>985.37</b>
161166	1/28/2015	0000712	AMERIGAS	3036529080	PROPANE	137.86
				3036529084	PROPANE	172.85
					<b>Total :</b>	<b>310.71</b>
161167	1/28/2015	0002044	ANACORTES.NET/HOW IT WORKS	35783	JAN 2015/WEB HOSTING	75.00
				35821	JAN 2015/WEB HOSTING	15.95
					<b>Total :</b>	<b>90.95</b>
161168	1/28/2015	0000044	ANDERSON, CRAIG	TRAVEL ADVANCE	TRAVEL ADVANCE	199.00
					<b>Total :</b>	<b>199.00</b>
161169	1/28/2015	0007077	ANDREWS, SARA	012315	PUBLIC DEFENSE	900.00
					<b>Total :</b>	<b>900.00</b>
161170	1/28/2015	0001351	ASSOCIATED BAG COMPANY	N408481	BAGS	584.90
					<b>Total :</b>	<b>584.90</b>
161171	1/28/2015	0000055	ASSOCIATION OF WASHINGTON	010915	2015 MEMBERSHIP FEE	15,063.00
					<b>Total :</b>	<b>15,063.00</b>
161172	1/28/2015	0000159	AT&T MOBILITY	287249477751X0124201	AIRCARDS	485.44

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161172	1/28/2015	0000159 0000159 AT&T MOBILITY	(Continued)			<b>Total : 485.44</b>
161173	1/28/2015	0000069 BAILEY, MICHAEL	EXP REIMB TRAVEL ADVANCE		EXP REIMB TRAVEL ADVANCE	90.68 153.50 <b>Total : 244.18</b>
161174	1/28/2015	0004733 BARRON HEATING & AIR COND, INC	158506		TRAY REPAIR	122.29 <b>Total : 122.29</b>
161175	1/28/2015	0003980 BHC CONSULTANTS	0006481		PROF SVC/STORMWATER MANAGEME	20,650.18 <b>Total : 20,650.18</b>
161176	1/28/2015	0000109 BLUMENTHAL UNIFORMS	113920		BOOTS/POWERS	288.00 <b>Total : 288.00</b>
161177	1/28/2015	0000112 BOB BARKER COMPANY, INC	WEB000353170		SANDALS	101.95 <b>Total : 101.95</b>
161178	1/28/2015	0005027 BURT'S SAW & MOWER	2526		ROPE	5.44 <b>Total : 5.44</b>
161179	1/28/2015	0000139 BUXTON, MIKE	TRAVEL ADVANCE		TRAVEL ADVANCE	199.00 <b>Total : 199.00</b>
161180	1/28/2015	0000150 CASCADE NATURAL GAS	03963180678 08793000004 11829220273 12470743597 13275491754 18583000007 36624000000 40661045647 45420760055 57309970234 58793000009 62337906945 67984882349 80434000008		2014 NATURAL GAS/210 2014 NATURAL GAS/POLICE STATION 2014 NATURAL GAS/208 2014 NATURAL GAS/207 2014 NATURAL GAS/205 2014 NATURAL GAS/TREATMENT PLAN 2014 NATURAL GAS/FIRE STATION 2014 NATURAL GAS/ANIMAL SHELTER 2014 NATURAL GAS/202 2014 NATURAL GAS/201 2014 NATURAL GAS/CITY HALL 2014 NATURAL GAS/204 2014 NATURAL GAS/209 2014 NATURAL GAS/CITY SHOP	60.16 481.32 414.12 141.06 10.60 10.00 1,687.29 241.84 10.60 10.60 703.62 395.92 81.39 2,554.56

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161180	1/28/2015	0000150	CASCADE NATURAL GAS			
			(Continued)			
			82193000005		2014 NATURAL GAS/ANNEX	88.23
			90134000000		2014 NATURAL GAS/ADULT CARE CEN	134.03
			92612025210		2014 NATURAL GAS/203	10.60
					<b>Total :</b>	<b>7,035.94</b>
161181	1/28/2015	0000157	CDW GOVERNMENT, INC			
			RQ43007		INK	681.47
			RQ74933		INK	170.36
					<b>Total :</b>	<b>851.83</b>
161182	1/28/2015	0000188	CODE PUBLISHING COMPANY			
			48696		MUNICIPAL CODE UPDATES	2,960.88
			48733		MUNICIPAL CODE UPDATES	761.03
			48752		MUNICIPAL CODE UPDATES	797.16
					<b>Total :</b>	<b>4,519.07</b>
161183	1/28/2015	0005773	COMCAST			
			8498300270032002		CABLE	115.39
			8498300290363841		INTERNET	218.98
					<b>Total :</b>	<b>334.37</b>
161184	1/28/2015	0007724	CONNECT HEARING			
			137		HEARING TESTS	25.00
			138		HEARING TESTS	25.00
					<b>Total :</b>	<b>50.00</b>
161185	1/28/2015	0000222	CUSTOM ENGRAVING			
			15-38		SLIDES	107.61
					<b>Total :</b>	<b>107.61</b>
161186	1/28/2015	0005840	DUDLEY, SCOTT			
			TRAVEL REIMB		TRAVEL REIMB	173.15
					<b>Total :</b>	<b>173.15</b>
161187	1/28/2015	0000257	DUTCH MAID CLEANERS			
			013115		JAN 2015/LAUNDRY SERVICES	327.67
			1082		DEC 2014/LAUNDRY SERVICES	21.47
					<b>Total :</b>	<b>349.14</b>
161188	1/28/2015	0001859	ELITE			
			06-702632		2015 ANNUAL MAINTENANCE	1,528.88
					<b>Total :</b>	<b>1,528.88</b>
161189	1/28/2015	0000355	FRONTIER			
			007-9244		CURRENT PHONE CHARGES	239.74
			675-1572		CURRENT PHONE CHARGES	66.23

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161189	1/28/2015	0000355 FRONTIER	(Continued)			
			675-2111		CURRENT PHONE CHARGES	69.60
			675-3121		CURRENT PHONE CHARGES	63.84
			675-6794		CURRENT PHONE CHARGES	63.88
			679-8702		CURRENT PHONE CHARGES	72.38
			770-2694		CURRENT PHONE CHARGES	40.11
			770-2715		CURRENT PHONE CHARGES	31.50
					<b>Total :</b>	<b>647.28</b>
161190	1/28/2015	0000329 GALLS	002929302		NAME PLATES	38.62
			002972575		PANTS/ENGL	228.24
					<b>Total :</b>	<b>266.86</b>
161191	1/28/2015	0001706 GARDNER, PAT	EXP REIMB		EXP REIMB	830.00
					<b>Total :</b>	<b>830.00</b>
161192	1/28/2015	0000345 GREATER OAK HBR CHAMBER OF COM	30180		JAN 2015/VISITOR CENTER OPERATIO	8,333.34
					<b>Total :</b>	<b>8,333.34</b>
161193	1/28/2015	0003095 HOME DEPOT CREDIT SERVICES	100716		TANK EXCHANGE	43.41
			2590667		ADAPTER/NAILS	53.22
			6043063		209 HENRY T/PLC22WA21	61.08
			7020026		PPI/EHGLUWQT	15.19
			7572027		TEKS ROOFING	19.12
			8027581		DL 6PK/EHC/23W DAY 4	41.78
			9042958		3FT PIPE	8.64
					<b>Total :</b>	<b>242.44</b>
161194	1/28/2015	0007413 HUNT, BILL	012115		KRAKEN/INTERIM PAYMENT	4,000.00
					<b>Total :</b>	<b>4,000.00</b>
161195	1/28/2015	0000396 I-COM	15-UFQ1-7		1ST QTR 2015/USER FEES	7,321.90
					<b>Total :</b>	<b>7,321.90</b>
161196	1/28/2015	0000411 ISLAND COUNTY TREASURER	11		4TH QTR 2015/MUNICIPAL COURT REN	4,300.00
					<b>Total :</b>	<b>4,300.00</b>
161197	1/28/2015	0007406 LAW ENFORCEMENT SEMINARS, LLC	84721421259252		REGISTRATION/BAILEY	325.00

Voucher List  
City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161197	1/28/2015	0007406 0007406 LAW ENFORCEMENT SEMINARS, LLC	(Continued)			<b>Total : 325.00</b>
161198	1/28/2015	0000660 MARKET PLACE FOOD & DRUG	175923 175926		GROCERIES GROCERIES	381.35 632.38 <b>Total : 1,013.73</b>
161199	1/28/2015	0000040 MATRIX	608321770		2014 LONG DISTANCE	314.35 <b>Total : 314.35</b>
161200	1/28/2015	0007450 MAZZOLI, KELLYE	EXP REIMB		EXP REIMB	500.30 <b>Total : 500.30</b>
161201	1/28/2015	0006028 MCI COMM SERVICE	679-3902		LONG DISTANCE	34.85 <b>Total : 34.85</b>
161202	1/28/2015	0001041 MUNICIPAL ATTORNEYS, WASHINGTON STA'	012115		MEMBERSHIP DUES/LEWIS/ESPARZA	40.00 <b>Total : 40.00</b>
161203	1/28/2015	0004423 MUNICIPAL EMERGENCY SERVICES	00593455_SNV		BOOTS/MERRIMAN	230.76 <b>Total : 230.76</b>
161204	1/28/2015	0000623 NITCHER, WENDY	TRAVEL ADVANCE		TRAVEL ADVANCE	141.50 <b>Total : 141.50</b>
161205	1/28/2015	0000672 OAK HARBOR ACE	249959 250347 250548 250688 250707		PLUG/LUBRICANTS CONNECTOR/SAND PAPER BATTERIES FASTENERS DRILL BITS/FASTENERS	19.54 23.35 15.21 5.33 19.54 <b>Total : 82.97</b>
161206	1/28/2015	0000681 OAK HARBOR SCHOOL DISTRICT	0000140061		JAN 2015/COMPUTER NETWORK SUPP	6,708.33 <b>Total : 6,708.33</b>
161207	1/28/2015	0000688 OVERHEAD DOOR CO	JS65288		DOOR REPAIRS	2,409.88 <b>Total : 2,409.88</b>
161208	1/28/2015	0000724 PONY MAILING & BUSINESS CENTER	236744		SHIPPING	13.80

Voucher List  
City of Oak Harbor

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161208	1/28/2015	0000724 0000724 PONY MAILING & BUSINESS CENTER	(Continued)			<b>Total : 13.80</b>
161209	1/28/2015	0006909 PRICE MEDIA, INC	14189		2014 ADVERTISING	910.00
						<b>Total : 910.00</b>
161210	1/28/2015	0006685 PROFESSIONAL LAW ENFORCEMENT	Q2254		REGISTRATION/HOAGLAND/SILVEIRA	250.00
						<b>Total : 250.00</b>
161211	1/28/2015	0000743 PUGET SOUND ENERGY	200000881421		2014 ELECTRICITY/1500 S BEEKSMA D	1,843.31
			200000919684		2014 ELECTRICITY/1501 SE CITY BEAC	10.24
			200000947859		2014 ELECTRICITY/CITY SHOP	2,402.06
			200001097589		2014 ELECTRICITY/1500 S BEEKSMA D	11.36
			200001884218		2014 ELECTRICITY/1888 NE 5TH AVE PI	12.94
			200002036164		2014 ELECTRICITY/30505 ST ROUTE 20	204.69
			200002036719		2014 ELECTRICITY/34777 STATE ROUTE	88.47
			200002037097		2014 ELECTRICITY/2000 SW SCENIC HI	21.87
			200002037261		2014 ELECTRICITY/1780 SW SPRINGFIELD	10.77
			200002037501		2014 ELECTRICITY/3285 SW SCENIC HI	93.39
			200002170617		2014 ELECTRICITY/552 NW CLIPPER DRIVE	10.16
			200002723381		2014 ELECTRICITY/1500 S BEEKSMA D	149.88
			200003267636		2014 ELECTRICITY/1000 SE IRELAND STREET	15.76
			200003459654		2014 ELECTRICITY/1957 FORT NUGEN	142.44
			200004342099		2014 ELECTRICITY/650 NE 7TH AVE SE	16.96
			200004562878		2014 ELECTRICITY/800 SE MIDWAY BLVD	202.03
			200004856627		2014 ELECTRICITY/1577 NW 8TH AVE	10.16
			200005263310		2014 ELECTRICITY/SMITH PARK	10.16
			200005461666		2014 ELECTRICITY/1500 S BEEKSMA D	10.87
			200006103952		2014 ELECTRICITY/5941 STATE ROUTE	13.46
			200007702943		2014 ELECTRICITY/700 AV W & MIDWAY	295.99
			200007824192		2014 ELECTRICITY/75 SE JEROME ST	10.16
			200008386993		2014 ELECTRICITY/FABER ST & HARVEY	10.77
			200008816189		2014 ELECTRICITY/ANNEX	17.15
			200010322895		2014 ELECTRICITY/2330 SW ROSARIO	30.62
			200010499248		2014 ELECTRICITY/1948 NW CROSBY AVE	101.38
			200010499446		2014 ELECTRICITY/1661 NE 16TH AVE SE	22.25
			200010530240		2014 ELECTRICITY/651 SE BAYSHORE	88.71
			200010530802		2014 ELECTRICITY/1501 SE CITY BEAC	10.77

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161211	1/28/2015	0000743	PUGET SOUND ENERGY			
			(Continued)			
			200010531024		2014 ELECTRICITY/940 SE PIONEER W	262.92
			200010531172		2014 ELECTRICITY/1300 NE BIG BERRY	10.77
			200010531354		2014 ELECTRICITY/1500 S BEEKSMA D	228.45
			200010531941		2014 ELECTRICITY/800 SE DOCK ST	112.21
			200010699706		2014 ELECTRICITY/1500 S BEEKSMA D	26.18
			200011316839		2014 ELECTRICITY/SR 20 & 650 AV W	1,071.97
			200011551930		2014 ELECTRICITY/ADULT CARE CENT	23.82
			200011579964		2014 ELECTRICITY/285 SE JEROME ST	12.24
			200012220337		2014 ELECTRICITY/128 E WHIDBEY AVI	10.16
			200012278087		2014 ELECTRICITY/FIRE STATION	945.12
			200012425357		2014 ELECTRICITY/TREATMENT PLANT	3,438.66
			200012838765		2014 ELECTRICITY/PIONEER PARK	18.19
			200013370750		2014 ELECTRICITY/MARINA	4,723.20
			200013734963		2014 ELECTRICITY/672 CHRISTIAN RD	2,321.54
			200013968405		2014 ELECTRICITY/1540 SE PIONEER V	120.12
			200014151886		2014 ELECTRICITY/1370 SE DOCK ST	84.42
			200014596478		2014 ELECTRICITY/CITY HALL	657.32
			200015399153		2014 ELECTRICITY/1678 SW 8TH AVE	10.16
			200015618321		2014 ELECTRICITY/600 NE 7TH AVE	113.14
			200015685833		2014 ELECTRICITY/287 SE CABOT DR S	63.53
			200017255619		2014 ELECTRICITY/690 SW HELLER RD	453.69
			200017441482		2014 ELECTRICITY/CITY BEACH	432.08
			200017575347		2014 ELECTRICITY/1367 NW CROSBY A	108.51
			200017653656		2014 ELECTRICITY/3300 OLD GOLDIE F	67.58
			200017654415		2014 ELECTRICITY/1000 SW THORNBE	161.47
			200017853025		2014 ELECTRICITY/2081 NE 9TH AVE S	11.22
			200017968427		2014 ELECTRICITY/POLICE STATION	3,065.73
			200019043344		2014 ELECTRICITY/90 SE PIONEER WA	85.81
			200019500517		2014 ELECTRICITY/1137 NW KATHLEEN	35.50
			200020179194		2014 ELECTRICITY/626 CHRISTIAN RD	35.51
			200020235012		2014 ELECTRICITY/SENIOR CENTER	828.85
			200020308330		2014 ELECTRICITY/1500 S BEEKSMA D	10.87
			200022441113		2014 ELECTRICITY/980 SW MCCROHAI	82.10
			200022988147		2014 ELECTRICITY/TRAILER PK S END	25.61
			200023231067		2014 ELECTRICITY/945 E WHIDBEY AVI	30.42
			200023360569		2014 ELECTRICITY/700 W HELLER RD	54.87

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161211	1/28/2015	0000743 PUGET SOUND ENERGY	(Continued)			
			200024715845		2014 ELECTRICITY/1285 NE TAFTSON S	31.97
			200025075157		2014 ELECTRICITY/33500 STATE ROUT	258.68
			20002511539		2014 ELECTRICITY/2075 SW FT	10.16
			220000598098		2014 ELECTRICITY/2725 NE GOLDIE ST	139.51
			220002244337		2014 ELECTRICITY/END OF GUN CLUB	56.55
			220003651407		2014 ELECTRCIITY/101	480.48
			220003735804		2014 ELECTRICITY/275 SE PIONEER W	480.48
			300000005003		2014 ELECTRICITY/SW BEEKSMA DR R	374.79
			300000009906		2014 ELECTRICITY/2220 SW VISTA PAR	64.01
			300000010409		2014 ELECTRICITY/NE 11TH AVE RIDGE	57.90
			300000010458		2014 ELECTRICITY/1NTSCTN OF MIDW	503.56
			300000010516		2014 ELECTRICITY/900 SE MIDWAY BL	341.21
					<b>Total :</b>	<b>28,412.02</b>
161212	1/28/2015	0002806 RADIA	1420133-RADA		2014 INMATE SERVICES	350.00
					<b>Total :</b>	<b>350.00</b>
161213	1/28/2015	0007733 SELLERS, PHILIP	EXP REIMB		EXP REIMB	199.07
					<b>Total :</b>	<b>199.07</b>
161214	1/28/2015	0007029 SERVATIUS, JOEL	EXP REIMB		EXP REIMB	638.20
					<b>Total :</b>	<b>638.20</b>
161215	1/28/2015	0003782 SHARP ELECTRONICS CORPORATION	C820844-701		DEC 2014/MAINTENANCE CONTRACT	10.27
					<b>Total :</b>	<b>10.27</b>
161216	1/28/2015	0000964 SHERIFFS & POLICE CHIEFS, WASHINGTON	DUES2015-00308		MEMBERSHIP DUES/GREEN	305.00
					<b>Total :</b>	<b>305.00</b>
161217	1/28/2015	0000876 SKAGIT VALLEY COLLEGE	23244		4TH QTR 2015/BUILDING OPERATIONS	14,589.89
					<b>Total :</b>	<b>14,589.89</b>
161218	1/28/2015	0000846 SOUND PUBLISHING	WCW608228		CITY APPLICATIONS	122.11
			WCW608240		CITY NOTICES	56.07
			WCW609293		CITY ORDINANCES	47.35
			WCW609300		CITY NOTICES	127.09

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161218	1/28/2015	0000846 0000846 SOUND PUBLISHING	(Continued)			<b>Total : 352.62</b>
161219	1/28/2015	0000851 SPRINT	182311697		LONG DISTANCE	5.76
						<b>Total : 5.76</b>
161220	1/28/2015	0000860 STANDARD INSURANCE COMPANY	122214		JAN 2015/LIFE POCFF	258.13
						<b>Total : 258.13</b>
161221	1/28/2015	0003749 STUMP, PATRICK L	1		DRIVING SERVICES	138.00
						<b>Total : 138.00</b>
161222	1/28/2015	0000874 SURETY PEST CONTROL	1044900		PEST EXTERMINATION	54.35
						<b>Total : 54.35</b>
161223	1/28/2015	0007265 THOMPSON, ANNA	011515		WELLNESS INCENTIVE	20.00
						<b>Total : 20.00</b>
161224	1/28/2015	0001056 WASHINGTON IRON WORKS, INC	2460		BRACKET REPAIR	103.27
						<b>Total : 103.27</b>
161225	1/28/2015	0001055 WATERWORX DIVE SERVICE	011515		BREAKWATER ZINCS REPLACEMENT	1,750.07
						<b>Total : 1,750.07</b>
161226	1/28/2015	0001000 WHIDBEY AUTO PARTS, INC.	235209 235233		SWIV FIT/TIR VALV ETHANOL TRTMT	11.07 8.79
						<b>Total : 19.86</b>
161227	1/28/2015	0001005 WHIDBEY GENERAL HOSPITAL	WAC50139 WAC50800 WAC50800A		2014 INMATE SERVICES 2014 INMATE SERVICES 2014 INMATE SERVICES	1,134.75 551.65 4,594.25
						<b>Total : 6,280.65</b>
161228	1/28/2015	0001017 WHIDBEY PRINTERS	47457 47473		ENVELOPES ENVELOPES	234.25 236.42
						<b>Total : 470.67</b>
161229	1/28/2015	0001010 WHIDBEY TELECOM	3805498		CURRENT NET CHARGES	63.05

Bank code : bank

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
161229	1/28/2015	0001010	0001010 WHIDBEY TELECOM		(Continued)	<b>Total : 63.05</b>
<b>69 Vouchers for bank code : bank</b>						<b>Bank total : 148,524.39</b>
<b>69 Vouchers in this report</b>						<b>Total vouchers : 148,524.39</b>

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

Bill No. C/A 6.c  
Date: February 3, 2015  
Subject: Letter of Engagement with  
Attorneys of Sebris Buston  
James for Labor Relations and  
Negotiation Services

**FROM: Sara Piccone, Human Resources Director**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

Authorize the Mayor to sign to authorize the letter of engagement with Sebris Busto James not to exceed \$35, 000, without Council approval for labor relations and negotiation services.

**BACKGROUND / SUMMARY INFORMATION**

This agenda bill is to seek City Council's approval to sign the letter of engagement with the law firm, Sebris, Busto, James for labor relations and negotiation services. The proposed letter of engagement would cover these services for the two existing bargaining units (Commissioned Unit and Non-Commissioned Unit) in the Police Department.

The City of Oak Harbor was previously contracted with Braun Consulting Group, (April 3, 2012 - December 31, 2014), for labor relations and negotiation services. The City recently underwent a request for proposal process and staff recommends utilizing the services of Sebris Busto James. Sebris Busto James labor relations partners each have over 25 years of experience successfully representing both public and private employers in collective bargaining and labor law matters. The firm works with many agencies such as King and Pierce Counties, Seattle, Tacoma, Bellevue, Bellingham, Bremerton, Edmonds, Federal Way, Lynnwood, Port Townsend, Olympia, Puyallup and Mercer Island.

**LEGAL AUTHORITY**

**FISCAL IMPACT**

The proposed engagement agreement with Sebris Busto James legal services are based on hourly rates for attorneys and other professional staff. The hourly billing rate for matters within the Scope of Work will be \$280 and \$140 for travel time, with total cumulative time on current commissioned and non-commissioned officers' collective bargaining matters not to exceed \$35,000 without prior City Council

approval. Should the City find itself at impasse/mediation or arbitration for any of the labor contracts, the associated costs would be included as part of the hourly rate.

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

This item was discussed at the January 28, 2015 City Council Workshop.

**ATTACHMENTS**

1. [Letter of engagement with Sebris Busto James](#)

# SEBRIS BUSTO JAMES

a professional service corporation

Matthew W. Lynch  
mlynch@sebrisbusto.com

(425) 450-3387

January 21, 2015

## **PRIVATE AND CONFIDENTIAL**

### **Via Email and U.S. Mail**

Ms. Sara Piccone  
Human Resource Director  
City of Oak Harbor  
865 SE Barrington Drive  
Oak Harbor, WA 98277

Re: Employment Advisory

Dear Sara:

It was a pleasure speaking with you yesterday. You contracted us regarding a request for proposal (RFP) for collective bargaining assistance and related services to the City of Oak Harbor under the Scope of Work set forth in Attachment A and incorporated by reference in this letter. The purpose of this letter is to outline the terms of our engagement.

Our charges for legal services are based on hourly rates for attorneys and other professional staff. As we discussed, my and Mark Busto's hourly billing rate for matters within the Scope of Work will be \$280, and \$140 for travel time. The total cumulative time on current commissioned and non-commissioned officers' collective bargaining matters shall not exceed \$35,000 without prior City Council approval. I may consult with other colleagues in the firm; when possible and appropriate, I will use an associate or paralegals to provide services at a lower rate. Rates for any matters unrelated to the Scope of Work under a new engagement will be negotiated separately by the City and Sebris Busto James. We bill on a monthly basis for fees and expenses (e.g., messenger service) and expect payment within 30 days. Interest on accounts over 30 days old will accrue at the rate of 12% per annum (1% per month).

Our goal at Sebris Busto James is to provide quality legal services in an efficient manner. If you ever believe that we fall short of this goal, please do not hesitate to contact either me or our managing partner, Mark Busto. You have the right to terminate our representation at any time. We also reserve the right to withdraw from representation if any bills remain delinquent for what we regard as an excessive period of time.

January 21, 2015

Page 2 of 3

As a courtesy, we shall also include you on our mailing list for our monthly *Employment Law Note* (our most recent issue is enclosed). Thank you for your confidence in Sebris Busto James. We are grateful for the opportunity to serve the City of Oak Harbor.

The signatures of the Mayor of the City of Oak Harbor and the managing partner, Mark Busto constitute an agreement as outlined in the above letter and the attached scope of services.

This Agreement was adopted by the City on \_\_\_\_\_ which is its effective date.

BY: \_\_\_\_\_  
Mayor, City of Oak Harbor

BY: \_\_\_\_\_  
Mark Busto, Managing Partner of Sebris Busto James

**ATTACHMENT A**

**SCOPE OF WORK—COLLECTIVE BARGAINING ASSISTANCE**

**CITY OF OAK HARBOR-SEBRIS BUSTO JAMES**

**January \_\_, 2015**

- (a) Review, draft and negotiate collective bargaining agreements and related correspondence;
- (b) Advise on legal matters as related to the City's collective bargaining process;
- (c) Represent the City of Oak Harbor in any potential arbitration proceeding; and
- (d) Other legal services as needed.

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

Bill No. C/A 6.d  
Date: February 3, 2015  
Subject: Reclassify Position from  
Associate Planner-Engineering to  
Civil Engineer II

**FROM: Cathy Rosen, Public Works Director**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

A motion to approve the reclassification of the Associate Planner-Engineering position to a Civil Engineer II at salary grade 53.

**BACKGROUND / SUMMARY INFORMATION**

In the 2011-2012 budget, the City Council authorized a Project Specialist position in the Engineering Division. This Project Specialist position became vacant in 2012. The approved 2013-2014 City budget included moving an Associate Planner from the Development Services Department to the vacant Project Specialist position in the Engineering Division. In October 2014 the Associate Planner-Engineering position became vacant and has not yet been filled.

In evaluating the experience and skills needed to complete the many capital projects in the recently approved Capital Improvement Plan and to assist in the review of the increasing number of development applications, The Public Works Director and City Engineer have determined that the needs of the Engineering Division would be better served by a Civil Engineer rather than an Associate Planner. Therefore, staff is requesting that the Associate Planner-Engineering position be reclassified to a Civil Engineer II.

The recently conducted market survey placed the Associate Planner position at Salary Grade 44 with a range of \$4,654 to \$5,724 per month.

The proposed Civil Engineer II is at Salary Grade 53 with a range of \$6,073 to \$7,469 per month. The previously approved Project Specialist position was at salary grade 50 with a range of \$5,558 to \$6,835 per month.

The proposed changes in the Engineering staffing are summarized in the following table:

<b><u>Classification</u></b>	<b><u>Authorized Positions</u></b>	<b><u>Proposed</u></b>
City Engineer	1	1
Project Engineer	2	2
Project Engineer – 4 year position	1	1
Civil Engineer II	0	1
Civil Engineer I	1	1
Associate Planner –Engineering	1	0
Archaeologist	1	1
Engineering Technician	1	1
Construction Inspector	1	1
Administrative Assistant - Engineering	1	1

## **LEGAL AUTHORITY**

### **FISCAL IMPACT**

The pay differential (top step) between the Associate Planner position and the Civil Engineer II position is \$1,745 per month. Funds are available in the Engineering Division budget to cover this pay differential as a result of salary savings in the Archaeologist position.

The approved budget includes approximately \$9,100 per month in salary expenses for the new Archaeologist position. The recent market survey places the Archaeologist position at salary grade 47 with maximum salary of \$6,255 per month, resulting in a savings of \$2,845 per month.

A portion of these savings may be used to cover the pay differential between the Associate Planner and Civil Engineer II positions.

### **PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

The proposal to reclassify the Associate Planner position to Civil Engineer II was presented at the January 28, 2015 City Council Workshop.

**ATTACHMENTS**

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

Bill No. C/A 6.e  
Date: February 3, 2015  
Subject: Resolution 15-02: Authorizing  
Posting of Signs in City Parks  
Restricting Smoking in Certain  
Areas

**FROM: Cathy Rosen, Public Works Director**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

A motion to adopt Resolution 15-02 authorizing and directing staff to post signs in City parks stating 'For Our Kids' Sake - No Smoking Near Play Areas/Trails/Sports Fields'.

**BACKGROUND / SUMMARY INFORMATION**

The purpose of this agenda bill is to consider a resolution authorizing staff to post signs in City parks restricting smoking in children's play areas, trails and sports fields.

In response to citizens requests, the City of Oak Harbor Park Board discussed concerns regarding allowing smoking in City parks. The Board believes City parks are intended for the healthy enjoyment of all citizens and they wish to promote the overall health and well-being of the community. Limiting smoking in parks to outside of children's play areas, trails and sports fields addresses concerns regarding risks to children's health, as well as to reduce litter in these areas.

At their January 12, 2015 meeting, the Park Board voted to recommend to City Council that they restrict smoking in these areas of City parks.

**LEGAL AUTHORITY**

**FISCAL IMPACT**

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

Resolution 15-02 was presented to City Council at their January 28, 2015 Workshop.

**ATTACHMENTS**

1. [Resolution 15-02: Authorizing the Posting of Signs in City Parks Banning Smoking in Children's Play Areas, Trails and Sports Fields.](#)

**RESOLUTION NO. 15-02**

**A RESOLUTION AUTHORIZING POSTNG OF SIGNS IN CITY OF OAK HARBOR OWNED PARKS, BANNING SMOKING IN CHILDREN’S PLAY AREAS, TRAILS AND SPORTS FIELDS.**

WHEREAS, the City’s play areas, trails and sports fields are intended for the healthy enjoyment of all our citizens, including our children and youth; and

WHEREAS, the Oak Harbor City Council values efforts promoting the overall health and well-being of the community; and

WHEREAS, children are particularly at risk from the effects of passive smoke, which has been linked with development of lung cancer, heart attack, low birth weight, sudden infant death syndrome, bronchitis, pneumonia, asthma, chronic respiratory problems, eye and nasal irritation, and middle ear infection; and

WHEREAS, limiting the amount of smoking in parks play areas, trails and sports fields will provide children and youth with positive role modeling and discourage them from smoking when they get older; and

WHEREAS, smoking in parks play areas, trails and sports fields results in the littering of cigarette butts, cigar butts, and other tobacco-related waste that can cause environmental degradation and pose a health risk to children and animals; and

WHEREAS, all City of Oak Harbor public buildings and Oak Harbor School District facilities are smoke free and the City of Oak Harbor recognizes it has a role in protecting the health of the general public and safety of outdoor public areas; and

WHEREAS, guests of Oak Harbor’s parks have requested that smoking be banned near children’s play areas, trails and sports fields; and

WHEREAS, children are vulnerable to tobacco smoke and may have difficulty protecting themselves from second-hand smoke.

NOW, THEREFORE, BE IT RESOLVED that the Oak Harbor City Council hereby authorizes and directs the proper City officers to post signs at children’s play areas, trails and sports fields in appropriate City parks stating, “For Our Kids’ Sake – No Smoking Near Play Area/Trail/Sports Fields.”

PASSED BY THE OAK HARBOR CITY COUNCIL this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

CITY OF OAK HARBOR

\_\_\_\_\_  
Scott Dudley, Mayor

Attest:

\_\_\_\_\_  
Anna Thompson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Nikki Esparza, City Attorney

Published: \_\_\_\_\_

DRAFT

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

Bill No. C/A 6.f  
Date: February 3, 2015  
Subject: Ordinance No. 1717: Civil penalties and Civil infractions

**FROM: Nikki Esparza, City Attorney**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

Adopt Ordinance 1717 relating to civil penalties and infractions.

**BACKGROUND / SUMMARY INFORMATION**

The Oak Harbor Municipal Code contains two chapters that address civil penalties. OHMC Chapter 1.20 provides that any violation of a City ordinance is a class 1 infraction, unless otherwise specified. OHMC Chapter 1.28 provides for a system of citing individuals for violation of ordinances and for processing those citations.

There are many provisions in the OHMC that reference civil penalties or civil infractions. Many of them cite back to either OHMC 1.20 or OHMC 1.28. There is no consistency in the wording used throughout the code, nor is there consistency as to which chapter (OHMC 1.20 or OHMC 1.28) the various code provisions reference back to.

RCW Chapter 7.80 outlines the state law on infractions and how they are processed. Municipalities are free to adopt their own penalty provisions and means of processing them. The City of Oak Harbor has adopted by reference portions of RCW Chapter 7.80.

The purpose of Ordinance 1717 is to amend the code to make references to civil infractions less confusing. The proposed amendments would include consolidation of the civil penalty provisions into one chapter of the code. The newly revised OHMC 1.28 would be more in line with the structure of RCW Chapter 7.80.

OHMC 1.20 provides that unless otherwise stated, all violations of the Code are class 1 infractions with a \$250.00 penalty. However, there are several places in our code where things are designated class 3 infractions. Class 3 infractions are not defined by or included in our code, but rather in RCW 7.80. One of the main amendments to OHMC 1.28 would be to include the definitions of class 2, class 3, and class 4 infractions and give Council the opportunity to designate violations as something other than a class 1,

should it see fit.

Amending the OHMC as proposed would also create consistent language throughout the code and would allow for changes to the amounts charged for each class of infraction without amendments to any portion of the OHMC other than OHMC 1.28.

Staff recommends adoption of Ordinance 1717 amending the Oak Harbor Municipal Code provisions relating to civil penalties and infractions.

**LEGAL AUTHORITY**

RCW 35A.11.010 gives code cities the ability adopt and enforce ordinances. The ability to enforce ordinances includes the ability to impose civil monetary penalties on individuals in violation of ordinances.

**FISCAL IMPACT**

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

This item was presented at the January 28, 2015 workshop.

**ATTACHMENTS**

1. [Ordinance No. 1717](#)

ORDINANCE NO. 1717

AN ORDINANCE OF THE CITY OF OAK HARBOR *REPEALING* OAK HARBOR MUNICIPAL CODE CHAPTER 1.20 "GENERAL PENALTY" AND SECTIONS 1.28.130 "ADDITIONAL ENFORCEMENT OFFICERS FOR CERTAIN CHAPTERS OF THE OAK HARBOR MUNICIPAL CODE", 1.28.150 "DISPOSITION OF ORIGINAL AND COPIES OF NOTICES OF INFRACTIONS" AND 1.28.160 "NOTICE OF INACTION – RECORDS – CANCELLATION PROHIBITED – PENALTY – AUDIT"; *AMENDING* OAK HARBOR MUNICIPAL CODE SECTIONS 1.28.010 "PURPOSE", 1.28.015 "DEFINITIONS, 1.28.040 "JURISDICTION", 1.28.115 "COSTS", 1.28.140 "NOTICES OF CIVIL INFRACTION – SYSTEM ESTABLISHED", 5.03.125 "INFRACTIONS", 5.22.020 "LICENSE REQUIRED", '5.24.070 "VIOLATIONS – PENALTY", 6.12.120 "VIOLATIONS IN PARKS THAT ARE INFRACTIONS", 6.13.110 "PENALTIES", 6.16.070 "PENALTY FOR VIOLATIONS", 6.20.110 "PENALTIES", 6.28.030 "PENALTY FOR VIOLATION", 6.33.090 "VIOLATION – CIVIL PENALTY", 6.34.090 "PENALTY", 6.40.190 "PROHIBITED ACTIVITIES – INFRACTIONS", 6.60.030 "PENALTIES", 8.03.080 "PENALTIES", 8.12.060 "FALSE ALARMS – CIVIL INFRACTION – PENALTY", 11.08.290 "PENALTIES", 11.14.110 "VIOLATIONS – PENALTIES", 12.30.730 "PENALTIES", 12.50.060 "PENALTIES", 13.40.010 "PENALTY", 14.13.020 "SEWER SERVICE PENALTIES, DAMAGES AND ENFORCEMENT MEASURES", 17.05.090 "PENALTIES", 17.06.080 "PENALTIES", 17.10.080 "PENALTIES", 17.12.080 "PENALTIES, 17.15.070 "PENALTIES", 17.16.070 "PENALTIES", 17.22.100 "PENALTIES", 17.40.050 "CIVIL PENALTIES AND CORRECTION PROCEDURES", "18.21.050 "PENALTIES", 19.48.200 "PENALTY FOR NONCOMPLIANCE", 20.04.130 "DNS/MITIGATED DNS", 20.12.130 "ENFORCEMENT AND PENALTIES" AND 21.90.020 "PENALTY"; AND *ADDING* OAK HARBOR MUNICIPAL CODE SECTION 1.28.020 "PENALTIES".

WHEREAS, RCW 35A.11.020 allows code cities to adopt and enforce ordinances; and

WHEREAS, RCW 35A.11.020 allows code cities to impose civil penalties for code violations; and

WHEREAS, Chapter 7.80 RCW provides a statutory infraction scheme that includes varying classes of infraction and the processes by which they are adjudicated; and

WHEREAS, the Oak Harbor Municipal Code provisions relating to civil penalties and civil infractions contain many inconsistencies and are difficult to understand; and

WHEREAS, OHMC 1.20 and OHMC 1.28 can be combined to provide for a more efficient civil penalty system; and

WHEREAS, while infraction classes under State law vary, the Oak Harbor Municipal Code is outdated and does not define any class of infraction other than class 1.

NOW, THEREFORE,

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

**Section One.** Oak Harbor Municipal Code Chapter 1.20 entitled "General Penalty" is hereby repealed.

**Section Two.** Oak Harbor Municipal Code Section 1.28.010 entitled "Purpose" adopted by Ord. 759 (1986) is hereby amended to read as follows:

**1.28.010 Purpose.** It is the purpose of this chapter to provide ~~procedures for civil offenses~~ for a system of civil infractions and penalties.

**Section Three.** Oak Harbor Municipal Code Section 1.28.015 entitled "Definitions" adopted by Ord. 1013 (1995) is hereby amended to read as follows:

**1.28.015 Definitions.** As used in this chapter:

(1) “Civil Infraction” shall mean a violation of the Oak Harbor Municipal Code for which a monetary penalty may be imposed under this chapter. Each day or portion thereof during which a violation occurs or exists shall be deemed a separate civil infraction. Traffic and vehicle violations pursuant to OHMC Title 10 are specifically excluded from the application of this chapter, with the exception of OHMC Chapter 10.44.

(2) ~~“Enforcement officer” means an authorized city law enforcement officer and a person authorized to enforce the provisions of the Oak Harbor Municipal Code or city ordinance in which the civil infraction is established.~~ “Enforcement officer” shall mean the city’s code enforcement officer or any person authorized by the director of any department to enforce the provisions of the code or ordinance in which the civil infraction or civil penalty is established, but shall not include private citizens.

(3) ~~“Court” refers to the municipal court for Oak Harbor which is a department of the Island County district court.~~

**Section Four.** There is hereby added a new Section 1.28.020 entitled "Penalties" to the Oak Harbor Municipal Code to read as follows:

**1.28.020 Penalties.**

(1) A person found to have committed a civil infraction shall be assessed a monetary penalty.

(a) The maximum penalty and the default amount for a class 1 civil infraction shall be two hundred fifty dollars (\$250.00), not including statutory assessments, except for an infraction of state law involving (i) potentially dangerous litter as specified in RCW 70.93.060(4) or violent video or computer games under RCW 9.91.180, in which case the maximum penalty and default amount is five hundred dollars (\$500.00); or (ii) a person's refusal to submit to a test or tests pursuant to

RCW 79A.60.040 and 79A.60.700, in which case the maximum penalty and default amount is one thousand dollars (\$1,000.00);

(b) The maximum penalty and the default amount for a class 2 civil infraction shall be one hundred twenty-five dollars (\$125.00), not including statutory assessments;

(c) The maximum penalty and the default amount for a class 3 civil infraction shall be fifty dollars (\$50.00), not including statutory assessments; and

(d) The maximum penalty and the default amount for a class 4 civil infraction shall be twenty-five dollars (\$25.00), not including statutory assessments.

(2) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting authority of the failure to pay.

(3) The court may also order a person found to have committed a civil infraction to make restitution.

(4) Unless otherwise stated, any violation of the Oak Harbor Municipal Code is a class 1 infraction.

(5) Nothing in this Chapter is intended to prohibit imposition of alternative “civil penalties”, where appropriate. Where “civil penalties” are imposed, the procedures outlined in this Chapter shall apply unless an alternative process is provided for in the Code.

**Section Five.** Oak Harbor Municipal Code Section 1.28.040 entitled "Jurisdiction" adopted by Ord. 759 (1986) is hereby amended to read as follows:

**1.28.040 Jurisdiction.** All violations of law designated as ~~civil-offenses~~ infractions and civil penalties may be filed in the municipal court of Oak Harbor, unless an alternative process is provided for within the applicable Chapter of the OHMC.

**Section Six.** Oak Harbor Municipal Code Section 1.28.115 entitled "Costs" adopted by Ord. 1013 (1995) is hereby amended to read as follows:

**1.28.115 Costs.** Each party to a civil infraction case is responsible for costs incurred by that party, but the court may assess witness fees against a non-prevailing respondent.

**Section Seven.** Oak Harbor Municipal Code 1.28.130 entitled “Additional enforcement officers for certain chapters of the Oak Harbor Municipal Code” is hereby repealed.

**Section Eight.** Oak Harbor Municipal Code Section 1.28.140 entitled "Notices of civil infraction – System established" adopted by Ord. 1013 (1995) is hereby amended to read as follows:

**1.28.140 Notices of civil infraction—System established.**

- (1) ~~There is placed in effect a system of “fixless” notices of infraction whereby each enforcement officer shall obtain from his or her department head or supervisor and sign a receipt for all books of notices of infraction, in the form prescribed by the Administrator of the Courts of the state of Washington.~~
- (2) ~~Notices of infraction shall be in quadruplicate and shall be consecutively numbered.~~
- (3) ~~Any enforcement officer issuing a notice of infraction in accordance with this chapter shall complete the same in accordance with this chapter and in accordance with the rules and regulations of the Supreme Court of the state of Washington.~~
- (4) ~~The enforcement officer issuing a notice of infraction shall serve and file the same in accordance with this chapter and in accordance with the rules of the Supreme Court of the state of Washington.~~
- (5) ~~Enforcement officers may each obtain not more than two books at any one time but must promptly turn in to his or her department head or supervisor each used book to be filed and kept of record in the files of the department by which such enforcement officer is employed.~~

**1.28.140 Notices — Record of — Cancellation prohibited, penalty — Audit.** ~~The processes, procedures and requirements outlined in RCW 7.80.150 now in effect or as subsequently amended are hereby adopted.~~

**Section Nine.** Oak Harbor Municipal Code Section 1.28.150 entitled “Disposition of original and copies of notices of infractions” is hereby repealed.

**Section Ten.** Oak Harbor Municipal Code Section 1.28.160 entitled “Notice of infraction – Records – Cancellation prohibited – Penalty – Audit” is hereby repealed.

**Section Eleven.** Oak Harbor Municipal Code Section 5.03.125 entitled "Infractions" adopted by Ord. 1218 (2000) is hereby amended to read as follows:

**5.03.125 Infractions.** ~~Violations of this chapter shall be a civil infraction with a penalty of \$250.00. Each day of violation is a separate offense~~ class 1 infraction as defined in OHMC 1.28.

**Section Twelve.** Oak Harbor Municipal Code Section 5.22.020 entitled "License required" last amended by Ord. 1544 (2008) is hereby amended to read as follows:

**5.22.020 License required.** It is declared to be unlawful for any person to conduct, manage or operate a nightclub unless such person is the holder of a valid license from the city of Oak Harbor so to do, obtained in the manner provided in this chapter. A ~~first~~ violation of the requirement to obtain a license shall be a class 1 civil infraction filed pursuant to as defined in Chapter 1.28 OHMC., ~~punishable by a fine of \$250.00. A second violation shall be a civil infraction punishable by a fine of \$500.00~~Each day in violation of these provisions shall constitute a separate offense. A first or second violation of the requirement to obtain a license shall be a civil offense subject to the procedures of Chapter 1.28 OHMC. Thereafter, further violation of the requirement to obtain a license of this chapter shall be a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000), up to ninety (90) days in jail, or both such fine and jail time.

**Section Thirteen.** Oak Harbor Municipal Code Section 5.24.070 entitled "Violations – Penalty" last amended by Ord. 1014 (1995) is hereby amended to read as follows:

**5.24.070 Violations – Penalty.** Every pawnbroker, and every clerk, agent or employee of such pawnbroker who:

- (1) Fails, neglects or refuses to make such report; or
- (2) Falsely reports any material matter to the chief of police, or any police officer detailed for that purpose; or
- (3) Receives any property from any person under the age of eighteen (18) years; or
- (4) Any person, firm or corporation who engages in the activities herein defined as pawnbroker without first obtaining a license therefor and complying with the reporting requirements herein shall be guilty of a class 1 infraction ~~and punishable as set out in Chapter 1.20 OHMC, as now in effect or hereafter amended~~as defined in OHMC 1.28.

**Section Fourteen.** Oak Harbor Municipal Code Section 6.12.120 entitled "Violations in parks that are infractions" adopted by Ord. 1669 (2013) is hereby amended to read as follows:

**6.12.120 Violations in parks that are infractions.** Each of the following actions or inactions, as the case may be, is a violation and an class 1 infraction as defined in OHMC 1.28. ~~Any person convicted of such violation shall be punished as set out in Chapter 1.20 OHMC, as now in effect or hereafter amended.~~

- (1) It is a violation and an class 1 infraction as defined in OHMC 1.28 to block any sidewalk or pathway in a park or adjacent to a park. "Blocking" means standing, sitting, or reclining on a sidewalk by oneself or in concert with others in such a way that more than half of the width of a sidewalk or walkway is blocked for normal use as a sidewalk or walkway.
- (2) It is a violation and an class 1 infraction as defined in OHMC 1.28 to unreasonably impede access to any restroom or restroom stall in a park. "Unreasonably impede" means

impede by their person, or by the placement of personal property in such a fashion that a normal pathway into the restroom, or stalls in a restroom is not maintained.

- (3) Except for a city employee in the performance of his or her duties, or except for persons given permission by the administrator or chief of police or their designee, it is a ~~violation~~ and class 1 infraction as defined in OHMC 1.28 to enter, remain in, rest, stand, or sit in any flower bed or landscaped area within a city park. A “landscaped area” shall not include an area where a bench is provided, or an area devoted only to planted lawn.
- (4) It is a ~~violation and a~~ class 1 infraction as defined in OHMC 1.28 to stand or walk or lay down on the table tops of any picnic table or countertop in a kitchen area of a park.
- (5) Except for persons given permission by the administrator or chief of police or their designee or concessionaires or lessees consistent with their concession agreement or lease, it is a ~~violation~~ class 1 infraction as defined in OHMC 1.28 to throw, leave, tack, or post any poster, advertisement, or sign advertising for any good, service, meeting of people or otherwise within a city park.
- ~~(6) It is a violation and a class 1 infraction as defined in OHMC 1.28 to aggressively solicit, interfere with, and/or accost other persons in city parks for the purposes of selling, begging or otherwise interfering with another’s use of the park or adjacent sidewalks or walkways.~~
- ~~(7)~~ (6) Except in areas allowed for concessionaires or lessees, or for areas under special use permit under Chapter 5.50 OHMC and under OHMC 6.12.080, it is a ~~violation and a~~ class 1 infraction as defined in OHMC 1.28 to possess an open beer, wine and/or liquor container in a park.
- ~~(8)~~ (7) Except in areas allowed for concessionaires or lessees, or for areas under special use permit under Chapter 5.50 OHMC and under OHMC 6.12.080, it is a ~~violation and a~~ class 1 infraction as defined in OHMC 1.28 to consume beer, wine and/or liquor in a park.
- ~~(9)~~ (8) It is a ~~violation and a~~ class 1 infraction as defined in OHMC 1.28 to dispose of or deposit any refuse or other material in a park, except in designated receptacles.
- ~~(10)~~ (9) It is a ~~violation and a~~ class 1 infraction as defined in OHMC 1.28 to dump or dispose of garbage generated or created outside a park in a receptacle within a park. Wrappings for edibles purchased outside the park, but consumed within a park, shall not be deemed to violate this subsection.
- ~~(11)~~ (10) It is a ~~violation and a~~ class 1 infraction as defined in OHMC 1.28 to chain, lock, connect or store any item of tangible personal property, including but not limited to, a bicycle in any area of a park except for areas designated for such storage for such times as allowed by posted notice.

- (~~12~~11) It is a ~~violation and a~~class 1 infraction as defined in OHMC 1.28 to allow or permit any dog or other animal to run at large in any park, or enter any lake, pond, pool, fountain or stream therein, with the exception of areas designated as “off-leash.”
- (~~13~~12) It is a ~~violation and a~~class 1 infraction as defined in OHMC 1.28 to allow a dog or animal to defecate in a park and not clean up after the dog or animal and properly dispose of the dog or animal waste.
- (~~14~~13) Except for a service animal, it is a ~~violation and a~~class 1 infraction as defined in OHMC 1.28 to allow or permit any dog or other animal in any building in any park.
- (~~15~~14) It is a ~~violation and a~~class 1 infraction as defined in OHMC 1.28 to explode any fireworks, firecrackers, torpedo or any explosive of any kind in any park.
- (~~16~~15) For devices not weapons under state law, it is a ~~violation and a~~class 1 infraction as defined in OHMC 1.28 to discharge any air gun, paint ball gun, B.B. gun or any other type of gun or rocket (i.e., potato guns and the like) in any park.
- (~~17~~16) Except in conjunction with an activity authorized by the administrator or chief of police or designee, it is a ~~violation and a~~class 1 infraction as defined in OHMC 1.28 to shoot any slingshot or bow and arrow in any park.
- (~~18~~17) Except as allowed by properly adopted rules and regulations, it is a ~~violation and a~~class 1 infraction as defined in OHMC 1.28 to take up collections as a strolling musician, organ grinder, street performer, or street artist in any park.
- (~~19~~18) Except at places set apart for such purposed use and so designated by signs, or in an emergency, it is a ~~violation and a~~class 1 infraction as defined in OHMC 1.28 to have, keep or operate any boat, float, raft or other watercraft in or upon any bay, lake, slough, river or creek within the limits of any park or to land the same at any point upon the shores thereof bordering upon any park.
- (~~20~~19) Except in areas designated for such riding, and then only at speeds less than 15 miles per hour, it is a ~~violation and a~~class 1 infraction as defined in OHMC 1.28 to ride or drive any motorcycle, motor vehicle, motorized skateboard, motorized bicycle, motorized scooter, horse or pony over or through any park. This provision is not intended to prohibit the use of motorized mobility devices.
- (~~21~~20) Except in places designated for such use, it is a ~~violation and a~~class 1 infraction as defined in OHMC 1.28 to practice, or play golf, baseball, cricket, lacrosse, polo, archery, hockey, tennis, badminton, football, soccer or other games of like character or to hurl any airborne or other missile, including the flying of model airplanes or rockets in any park. Playing catch with any type of ball or playing catch with a Frisbee shall not be deemed to violate this subsection.

(~~2221~~) Except where permission has been obtained from the administrator or chief of police or designee, it is a ~~violation and a~~ class 1 infraction as defined in OHMC 1.28 to engage in, conduct or hold any trials or competitions for speed, endurance, or hill climbing involving any vehicles, power boat, aircraft or animal in any park.

(~~2322~~) It is a ~~violation and a~~ class 1 infraction as defined in OHMC 1.28 to build any fires in any park except in areas designated for such use and posted for such use by appropriate signage.

(~~2423~~) Except as authorized by a special event permit issued pursuant to Chapter 5.50 OHMC, it is a ~~violation and a~~ class 1 infraction as defined in OHMC 1.28 to use any public address system, loudspeaker, or other sound amplifying device in any park.

**Section Fifteen.** Oak Harbor Municipal Code Section 6.13.110 entitled "Penalties" last amended by Ord. 1681 (2014) is hereby amended to read as follows:

**6.13.110 Penalties.**

- (1) Any person failing to pay camping fees under this chapter shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) or a jail sentence of ninety (90) days in jail or both such fine and jail time. Each day of violation shall be a separate offense.
- (2) Any intentional violation of this chapter is a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) or a jail sentence of ninety (90) days in jail or both such fine and jail time. Each day of violation shall be a separate offense.
- (3) Any other violation of provisions in this chapter shall be a ~~Class A~~ class 1 infraction as defined ~~by the Oak Harbor Municipal Code and shall be subject to a penalty of up to \$250.00 in OHMC 1.28.~~ as defined in OHMC 1.28. Each day of continuing violation shall be a separate infraction.

**Section Sixteen.** Oak Harbor Municipal Code Section 6.16.070 entitled "Penalty for violations" last amended by Ord. 1365 (2004) is hereby amended to read as follows:

**6.16.070 Penalty for violations.**

- (1) Except as provided in subsection (4) of this section, it is a class 3 civil infraction as ~~provided in RCW 7.80.120~~ defined in OHMC 1.28 for a person to litter in an amount less than or equal to one cubic foot.
- (2) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars (\$50.00) per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the

cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

- (3) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars (\$100.00) per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.
- (4) It is a class 1 ~~civil~~ infraction as ~~provided in RCW 7.80.120~~ defined in OHMC 1.28 for a person to discard, in violation of this chapter, a cigarette, cigar or other tobacco product that is capable of starting a fire.

**Section Seventeen.** Oak Harbor Municipal Code Section 6.20.110 entitled "Penalties" adopted by Ord. 1651 (2013) is hereby amended to read as follows:

**6.20.110 Penalties.**

- (1) The failure to comply with the provisions of this chapter shall constitute a class 1 ~~civil~~ infraction, ~~adjudicated in accordance with Chapter 1.28 OHMC as defined in OHMC 1.28. The maximum penalty and default shall be \$250.00.~~ 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 a nuisance is a misdemeanor which shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such jail sentence and fine.

**Section Eighteen.** Oak Harbor Municipal Code Section 6.28.030 entitled "Penalty for violation" last amended by Ord. 1014 (1995) is hereby amended to read as follows:

**6.28.030 Penalty for violation.** Any person violating the provisions of this chapter shall be guilty of an class 1 infraction as defined in OHMC 1.28 ~~and shall be fined in a sum not to exceed \$250.00.~~ Each discharge of a weapon shall be a separate offense.

**Section Nineteen.** Oak Harbor Municipal Code Section 6.33.090 entitled "Violation – Civil penalty" adopted by Ord. 1024 (1995) is hereby amended to read as follows:

**6.33.090 Violation – Civil penalty.**

- (1) A violation of curfew in OHMC 6.33.040 shall be a class 3 civil ~~infraction as defined in OHMC 1.28~~ punishable by a fine not to exceed \$200.00; each 30 minutes after which a violation is found and in which a violation continues or additionally occurs shall be deemed to constitute a separate offense, and shall be punishable as a civil infraction by a fine not to exceed \$200.00.
- (2) Violation of OHMC 6.33.060 shall be a class 3 infraction as defined in OHMC 1.28 ~~civil infraction punishable by a fine not to exceed \$200.00.~~

**Section Twenty.** Oak Harbor Municipal Code Section 6.34.090 entitled "Penalty" last amended by Ord. 1014 (1995) is hereby amended to read as follows:

**6.34.090 Penalty.** Violation of this title shall be ~~punishable as an infraction as set out in Chapter 1.20 OHMC~~ a class 1 infraction as defined in OHMC 1.28, as now in effect or hereafter amended, except reckless operation of a vessel under OHMC 6.34.030. Reckless operation of a vessel shall be punishable as a gross misdemeanor by a fine of up to five thousand dollars (~~\$45,000~~) or jail sentence of one year ~~three hundred sixty-four (364) days~~ or both said fine and jail time.

**Section Twenty-one.** Oak Harbor Municipal Code Section 6.40.190 entitled "Prohibited activities – Infractions" adopted by Ord. 1167 (1999) is hereby amended to read as follows:

**6.40.190 Prohibited activities – Infractions.**

- (1) The following activities are not permitted in the marina:
  - (a) ~~Being under the influence of intoxicating liquors and illegal drugs to a degree sufficient to be a danger to other persons or property;~~
  - (ba) Spitting on sidewalks, docks, grounds, buildings or water areas, as such activity is a threat to public health;
  - (eb) Cursing or swearing at another person who is using the marina or who is using the adjacent sidewalk or street;
  - (ec) Blocking any sidewalk, dock or pathway in the marina or adjacent to the marina. "Blocking" means standing, sitting or reclining on a sidewalk by oneself or in concert with others in such a way that more than half of the width of a walkway is blocked from normal use as a walkway;

- (e) Walking, remaining in, resting, standing or sitting in any flower bed or landscaped area within a marina area;
- (f) Standing or walking on the table tops of any picnic table in the marina;
- (g) Distributing, leaving, throwing, tacking or posting any sign, hardback poster, advertisement or inscription for advising any good, service, meeting of people or similar purpose except for ~~authorized~~ locations authorized by the harbormaster or his or her designee;
- (h) ~~Soliciting, interfering with, or accosting other people for purpose of selling, begging, immoral acts, harassing or otherwise interfering with another's use of the marina or adjacent walkways or for other similar purposes;~~
- (i) Disposing of or depositing any refuse or other material in the marina except in designated receptacles;
- (j) Assisting any other person or persons in carrying out any of the above acts.

(2) Every offense defined by this section shall be a ~~civil class 1~~ class 1 infraction as defined in OHMC 1.28 ~~and shall be punishable as such by a civil penalty of up to \$250.00.~~

**Section Twenty-two.** Oak Harbor Municipal Code Section 6.60.030 entitled "Penalties" adopted by Ord. 1114 (1997) is hereby amended to read as follows:

**6.60.030 Penalties.**

- (1) The penalty for violating any provision of the Island Transit Rules of Conduct for Transit Vehicles, Facilities and Properties shall be a ~~civil infraction with a fine up to \$250.00~~ class 1 infraction as defined in OHMC 1.28.
- (2) The penalty for a violation of any provision of the Island Transit Rules of Conduct for Transit Vehicles, Facilities and Properties by a person with one or more previous violations shall be a misdemeanor with a fine not exceeding one thousand dollars (\$1,000) or a jail sentence not exceeding ninety (90) days in jail or both such fine and jail sentence.

**Section Twenty-three.** Oak Harbor Municipal Code Section 8.03.080 entitled "Penalties" last amended by Ord. 1661 (2013) is amended to read as follows:

**8.03.080 Penalties.**

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done

in violation of this chapter and/or Chapter 8.05 OHMC as now in effect or hereafter amended or added to, or the technical codes.

- (2) Civil Violation. Except as provided in subsection (5) of this section, any violation of any of the provisions of this chapter and/or Chapter 8.05 OHMC as now in effect or hereafter amended or added to, or of the technical codes, constitutes a ~~civil violation as provided for class 1 infraction as defined in OHMC Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein and not to exceed \$250.00.~~
- (3) Criminal Penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter and/or Chapter 8.05 OHMC as now in effect or as hereafter amended or added to, or the technical codes, shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.
- (4) Violations of Orders by the Fire Code Official. Persons operating or maintaining an occupancy, premises or vehicle subject to the International Fire Code who allow a hazard to exist or fail to take immediate action to abate a hazard on such occupancy, premises or vehicle when ordered to do so by the fire code official shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.
- (5) Separate Offense. Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) Destruction of Notice. It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the fire official pursuant to the provisions of this chapter or the fire code which violations shall be a ~~civil offense as described in subsection (2) of this section~~ class 1 infraction as defined in OHMC 1.28.

**Section Twenty-four.** Oak Harbor Municipal Code Section 8.12.060 entitled "False alarms – Civil infraction -- Penalty" last amended by Ord. 1635 (2012) is hereby amended to read as follows:

**8.12.060 False alarms – Civil ~~infraction~~—Penalty.**

- (1) If an alarm or alarm system generates and transmits more than one false alarm to which either city fire department or police has responded in any one hundred eighty (180)-day period, the owner or other persons in control of the premises shall be liable for a civil penalty not to exceed two hundred fifty dollars (\$250.00). A minimum penalty shall be fifty dollars (\$50.00).
- (2) If an alarm or alarm system generates and transmits more than two false alarms to which either city fire department or police has responded in any one hundred eighty (180)-day period, the owner or other persons in control of the premises shall be liable for a civil

penalty not to exceed two hundred fifty dollars (\$250.00). A minimum penalty shall be one hundred dollars (\$100.00).

- (3) If an alarm or alarm system generates and transmits more than three false alarms to which either city fire department or police has responded in any one hundred eighty (180)-day period, the owner or other persons in control of the premises shall be liable for a civil penalty not to exceed two hundred fifty dollars (\$250.00). A minimum penalty shall be one hundred fifty dollars (\$150.00).

**Section Twenty-five.** Oak Harbor Municipal Code Section 11.08.290 entitled "Penalties" last amended by Ord. 1014 (1995) is hereby amended to read as follows:

**11.08.290 Penalties.**

- (1) Intentional knowing or reckless violation of this chapter is a misdemeanor. Every person is guilty of a misdemeanor who wilfully violates any provision of this chapter or fails or neglects to comply with any requirements of this chapter. Such person is guilty of a separate offense for each and every day during any part of which any such violation or noncompliance occurs and is punishable by a fine of not more than five hundred dollars (\$500.00).
- (2) Other violations of this chapter are ~~infractions punishable as set out in Chapter 1.20 OHMC, as now in effect or hereafter amended~~ a class 1 infraction as defined in OHMC 1.28.

**Section Twenty-six.** Oak Harbor Municipal Code Section 11.14.110 entitled "Violations – Penalties" adopted by Ord. 1129 (1998) is hereby amended to read as follows:

**11.14.110 Violations – Penalties.** Any violation of this chapter shall be a ~~civil~~ class 1 infraction ~~with a fine not to exceed \$250.00~~ as defined in OHMC 1.28.

**Section Twenty-seven.** Oak Harbor Municipal Code Section 12.30.730 entitled "Penalties" last amended by Ord. 1576 (2010) is hereby amended to read as follows:

**12.30.730 Penalties.**

- (1) The failure to comply with the provisions of this chapter is a civil offense, classified as a ~~C~~ class 1 infraction ~~pursuant to Chapter~~ as defined in OHMC 1.28. 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 a stop work order under the provisions of this chapter 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 shall be a misdemeanor.

**Section Twenty-eight.** Oak Harbor Municipal Code Section 12.50.060 entitled "Penalties" adopted by Ord. 1563 (2009) is hereby amended to read as follows:

**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 as defined in OHMC 1.28~~pursuant to Chapter 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 shall be a misdemeanor.

**Section Twenty-nine.** Oak Harbor Municipal Code Section 13.40.010 entitled "Penalty" last amended by Ord. 1393 (2004) is hereby amended to read as follows:

**13.40.010 Penalty.**

- (1) Any person, firm, association or corporation found guilty of violating OHMC 13.12.020, Damaging or interfering with water system prohibited, or OHMC 13.12.060, Unauthorized connection and turning off prohibited, shall be punishable as a gross misdemeanor and may be fined up to five thousand dollars (\$5,000) or imprisoned up to three hundred sixty-four 365(364) days in jail or both such fine and jail time.
- (2) Reckless or intentional interruption of service to a customer of the water utility which is the result of a prohibited act under Chapter 13.12 OHMC shall be a gross misdemeanor punishable by a fine of up to five thousand dollars (\$5,000) or ~~a year~~ three hundred sixty-four (364) days in jail or both such fine and jail time. Interruption of service to each customer affected by an interruption, in violation of Chapter 13.12 OHMC, shall be a separate offense.
- (3) Any person, firm or corporation found guilty of intentionally or recklessly violating the terms of this title (except as specified in subsections (1) and (2) of this section) shall be guilty of a misdemeanor and may be fined up to a sum of one thousand dollars (\$1,000) or imprisoned up to ninety (90) days in jail, or both such fine and jail time.
- (4) Other violations of this chapter are ~~civil infractions punishable by a fine of up to \$250.00 under procedures set out in Chapter 1.20 OHMC, as now in effect or hereafter amended~~ class 1 infractions as defined in OHMC 1.28.

- (5) Each day of continued violation shall be a separate offense.

**Section Thirty.** Oak Harbor Municipal Code Section 14.13.020 entitled "Sewer service penalties, damages and enforcement measures" last amended by Ord. 1323 (2002) is hereby amended to read as follows:

**14.13.020 Sewer service penalties, damages and enforcement measures.**

- (1) Criminal Penalty. Any person knowingly or intentionally violating any provision of this title shall be deemed guilty of a gross misdemeanor and, upon conviction thereof, shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in jail not to exceed ~~one year~~ three hundred sixty-four (364) days, or both such fine and imprisonment.

Each separate day, or any portion thereof, during which any violation of this chapter occurs or continues shall be deemed to constitute a separate offense and, upon conviction thereof, shall be punishable as provided in this section.

- (2) Civil Infraction. Any person otherwise violating any provision of this title shall be deemed to have committed a class 1 civil infraction for which a penalty of \$250.00 may be imposed as defined in OHMC 1.28.

Each separate day, or any portion thereof, during which any violation of this chapter occurs or continues shall be deemed to constitute a separate offense and, upon conviction thereof, shall be punishable as provided in this section.

- (3) Injunction. In addition to the foregoing criminal remedy, the violation of any of the provisions of this chapter is deemed to be a nuisance and threatening to the health and safety of the citizens of Oak Harbor. The city may utilize any civil remedy available to it under the laws of the state of Washington to enforce these provisions, including injunctive relief.
- (4) Civil Damages. Any person violating any of the provisions of this chapter shall become liable to the city for any direct or indirect expense, loss or damage occasioned by the city by reason of such violation.

**Section Thirty-one.** Oak Harbor Municipal Code Section 17.05.090 entitled "Penalties" last amended by Ord. 1660 (2013) is hereby amended to read as follows:

**17.05.090 Penalties.**

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.

- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a ~~civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein~~class 1 infraction as defined in OHMC 1.28.
- (3) Criminal Penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days in jail, or both such fine and jail time.
- (4) Violations of Orders under This Chapter. Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter or who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.
- (5) Separate Offense. Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3), (4) and (5) of this section.
- (6) Destruction of Notice. It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a civil offense as described in subsection (2) of this section.

**Section Thirty-two.** Oak Harbor Municipal Code Section 17.06.080 entitled "Penalties" last amended by Ord. 1599 (2011) is hereby amended to read as follows:

**17.06.080 Penalties.**

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, or utilize a mechanical system, or cause same to be done, in conflict with or in violation of any of the provisions of this chapter or the technical codes.
- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a ~~civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein~~class 1 infraction as defined in OHMC 1.28.
- (3) Criminal Penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the

provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.

- (4) Violations of Orders under This Chapter. Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.
- (5) Separate Offense. Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) Destruction of Notice. It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a ~~civil offense as described in subsection (2) of this section~~ class 1 infraction as defined in OHMC 1.28.

**Section Thirty-three.** Oak Harbor Municipal Code Section 17.10.080 entitled "Penalties" last amended by Ord. 1599 (2011) is hereby amended to read as follows:

**17.10.080 Penalties.**

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.
- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a ~~civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein~~ class 1 infraction as defined in OHMC 1.28.
- (3) Criminal Penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.
- (4) Violations of Orders under This Chapter. Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building,

structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.

- (5) Separate Offense. Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) Destruction of Notice. It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a ~~civil offense as described in subsection (2) of this section~~ class 1 infraction as defined in OHMC 1.28.

**Section Thirty-four.** Oak Harbor Municipal Code Section 17.12.080 entitled "Penalties" last amended by Ord. 1599 (2011) is hereby amended to read as follows:

**17.12.080 Penalties.**

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.
- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a ~~civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein~~ class 1 infraction as defined in OHMC 1.28.
- (3) Criminal Penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.
- (4) Plumbing Code Violations. Violations of the Uniform Plumbing Code as adopted under this chapter shall be misdemeanors punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.
- (5) Violations of Orders under This Chapter. Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.

- (6) Separate Offense. Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3), (4) and (5) of this section.
- (7) Destruction of Notice. It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a ~~civil offense as described in subsection (2) of this section~~ be a class 1 infraction as defined in OHMC 1.28.

**Section Thirty-five.** Oak Harbor Municipal Code Section 17.15.070 entitled "Penalties" adopted by Ord. 1660 (2013) is hereby amended to read as follows:

**17.15.070 Penalties.**

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.
- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a ~~civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein~~ class 1 infraction as defined in OHMC 1.28.
- (3) Criminal Penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days in jail, or both such fine and jail time.
- (4) Violations of Orders under This Chapter. Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.
- (5) Separate Offense. Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) Destruction of Notice. It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a ~~civil offense as described in subsection (2) of this section~~ class 1 infraction as defined in OHMC 1.28.

**Section Thirty-six.** Oak Harbor Municipal Code Section 17.16.070 entitled "Penalties" adopted by Ord. 1660 (2013) is hereby amended to read as follows:

**17.16.070 Penalties.**

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.
- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a ~~civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein~~ class 1 infraction as defined in OHMC 1.28.
- (3) Criminal Penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days in jail, or both such fine and jail time.
- (4) Violations of Orders under This Chapter. Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.
- (5) Separate Offense. Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) Destruction of Notice. It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a ~~civil offense as described in subsection (2) of this section~~ class 1 infraction as defined in OHMC 1.28.

**Section Thirty-seven.** Oak Harbor Municipal Code Section 17.22.100 entitled "Penalties" adopted by Ord. 1514 (2007) is hereby amended to read as follows:

**17.22.100 Penalties.**

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any

building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.

- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a ~~civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein~~ class 1 infraction as defined in OHMC 1.28.
- (3) Criminal Penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days in jail, or both such fine and jail time.
- (4) Violations of Orders under This Chapter. Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000) or a jail sentence of up to ninety (90) days, or both such fine and jail time.
- (5) Separate Offense. Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) Destruction of Notice. It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a ~~civil offense as described in subsection (2) of this section~~ class 1 infraction as defined in OHMC 1.28.

**Section Thirty-eight.** Oak Harbor Municipal Code Section 17.40.050 entitled "Civil penalties and correction procedures" last amended by Ord. 1326 (2002) is hereby amended to read as follows:

**17.40.050 Civil penalties and correction procedures.**

- (1) Civil Penalty. Any person violating or failing to comply with OHMC 17.04.030 shall, ~~upon conviction thereof, be subject to a civil penalty not to exceed \$250.00~~ class 1 infraction as defined in OHMC 1.28. Each day of violation shall be a separate offense. In addition, permits authorizing construction work which was occurring when the monuments were destroyed may be suspended or revoked pending restoration of the monuments.
- (2) Responsibility. The person primarily responsible for construction work resulting in loss of the survey monuments shall be the person obtaining the permit.

- (3) Notice and Correction. It is directed that, when feasible, a correction notice shall be used in lieu of filing citations or complaints. It is recognized that a correction notice process may not be feasible (appropriate or workable) where the violation is intentional.

The correction notice process shall have the following elements:

- (a) The administrator shall give written notice describing the violation and directing the person to cease violation or to correct the violation and giving a reasonable time limit to correct it.
  - (b) Notice may be served in person, by certified mail, postage prepaid, or by posting the notice at a visible location on or near the property; provided, that when posting the property, the permittee shall be personally served or sent a letter by certified mail, postage prepaid.
  - (c) The city and permittee may enter into an agreement to meet the conditions for restoration of the monument specified by the notice or agreement so as to allow finalization or approval on a construction permit.
  - (d) If the permittee does not achieve compliance by the date set forth in the notice, the city attorney, or his or her designee, may file a citation or complaint for each day of violation under OHMC 17.40.030.
- (4) The civil liability under this section is supplemental to other authority under any other ordinances or codes of the city of Oak Harbor.

**Section Thirty-nine.** Oak Harbor Municipal Code Section 18.21.050 entitled "Penalties" adopted by Ord. 1169 (1999) is hereby amended to read as follows:

**18.21.050 Penalties.** Intentional violations, falsification of documents, or failure to comply with the provisions of this chapter shall be punishable as an class 1 infraction ~~as set out in Chapter 1.20 OHMC~~ as defined in OHMC 1.28, as now in effect or hereafter amended. Further, the offender may be subject to delays of up to sixty (60) days for project review.

**Section Forty.** Oak Harbor Municipal Code Section 19.48.200 entitled "Penalty for noncompliance" adopted by Ord. 1555 (2009) is hereby amended to read as follows:

**19.48.200 Penalty for noncompliance.** Anyone found in violation of this chapter shall be guilty of a civil class 1 infraction as defined in OHMC 1.28 ~~subject to a maximum of \$250.00 fine~~. Each day the violation continues may be considered as a separate violation.

**Section Forty-one.** Oak Harbor Municipal Code Section 20.04.130 entitled "DNS/mitigated DNS" last amended by Ord. 1271 (2001) is hereby amended to read as follows:

#### **20.04.130 DNS/mitigated DNS.**

- (1) As provided in this section and in WAC 197-11-350, the responsible official may issue a determination of nonsignificance (DNS) based on conditions attached to the proposal by the responsible official or on changes to or clarifications of the proposal made by the applicant.
- (2) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:
  - (a) Follow the submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and
  - (b) Precede the city's actual threshold determination for the proposal.
- (3) The responsible official should respond to the request for early notice within ten (10) working days. The response shall:
  - (a) Be written;
  - (b) State whether the city considers issuance of a DS likely and, if so, indicate the general or specific area or areas of concern that are leading the city to consider a DS; and
  - (c) State that the applicant may change or clarify the proposal to mitigate the indicated impacts revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.
- (4) As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- (5) When an applicant submits a changed or clarified proposal along with a revised environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen (15) days of receiving the changed or clarified proposal:
  - (a) If the city indicated specific mitigation measures in its response to the request for early notice and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a determination of nonsignificance under WAC 197-11-340(2);
  - (b) If the city indicated the areas of concern but did not indicate specific mitigating measures that would allow it to issue a DNS, the city shall make the threshold determination issuing a DNS or DS as appropriate;

- (c) The applicant’s proposed mitigation measures must be in writing and must be specific. For example, proposal to “control noise” or “prevent storm water runoff” are inadequate whereas proposals to “muffle machinery to X number of decibels” or “construct a 200-foot storm water retention pond at Y location” are adequate;
  - (d) Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.
- (6) A mitigated DNS is issued under WAC 197-11-340(2) requiring a 14-day comment period and public notice.
  - (7) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit or enforced in any manner specifically prescribed by the city.
  - (8) If the city’s tentative decision on the permit or approval does not include mitigation measures that were incorporated in the mitigated DNS for approval, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).
  - (9) The city’s written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal as opposed to a written request for early notice shall not bind the city to consider the clarifications or changes in its threshold determination.
  - (10) Anyone violating or failing to comply with any mitigation measure imposed under this section shall, upon conviction thereof, be subject to a ~~civil penalty not exceeding \$250.00~~ class 1 infraction as defined in OHMC 1.28. Each day of violation shall be a separate offense. Anyone who shall continue to violate or fail to comply with such measure after receiving notice of the violation shall be guilty of a gross misdemeanor punishable by a fine of up to five thousand dollars (\$5,000) or three hundred sixty-four (364) 365-days in jail or both such fine and jail time. In addition, any permits authorizing work which are subject to the mitigation measures imposed under this section may be suspended or revoked pending restoration or settlement of claims resulting from the violation of the mitigation measures.
    - (a) Responsibility. The person primarily responsible for SEPA compliance shall be the person obtaining the permit. A person other than the permittee may be held liable under this the penalty provision of this chapter if he/she has notice of the SEPA conditions.
    - (b) Notice and Correction. It is directed that when feasible, a notice to correct shall be used in lieu of filing citations or complaints. It is recognized that a correction notice process may not be feasible (appropriate or workable) where an action cannot be corrected such as the protection of unique or special natural vegetation,

species habitat, air and noise pollution standards and restrictions on time or duration of construction or other work or where the violation is willful.

The correction notice process shall have the following elements:

- (i) The city attorney shall give written notice describing the violation and directing the person cease violation or to correct and giving a reasonable time limit to correct.
  - (ii) Notice may be served in person, by certified mail or by posting the notice at a visible location on or near the property; provided, that when posting the property, the permittee shall be personally served or sent a letter by certified mail.
  - (iii) The city and permittee may enter into an agreement to meet the SEPA conditions within the time specified by notice or agreement.
  - (iv) If the permittee cannot achieve compliance with the SEPA condition, the city attorney or his or her designee may file a citation or complaint for each day of violation under this section.
- (c) Definitions for This Section.
- (i) "Permittee" includes the property owner or other person who obtains the development permit.
  - (ii) "Person" includes natural persons, corporations and other legal entities having independent power to act with regard to property or persons.
- (d) The civil and criminal liability under this subsection is supplemental to other remedial authority under SEPA and the ordinances and codes of the city of Oak Harbor.

**Section Forty-two.** Oak Harbor Municipal Code Section 20.12.130 entitled "Enforcement and penalties" adopted by Ord. 1440 (2005) is hereby amended to read as follows:

**20.12.130 Enforcement and penalties.**

- (1) Inspections. Reasonable access to the site shall be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period. The director shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.
- (2) When a critical area or its buffer has been altered in violation of this chapter, all ongoing development work shall stop and the critical area or buffer shall be restored. The city

shall have the authority to issue a stop work order to cease all ongoing development work and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this chapter. All development work shall remain stopped until a restoration plan is prepared and approved by the city. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in subsection (3) of this section. The director shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

(3) Minimum Performance Standards for Restoration.

- (a) For alterations to critical aquifer recharge areas, wetlands, and habitat conservation areas, restoration shall return the affected environment to the historic conditions or the conditions existing at the time of the initiation of the project; if that is infeasible, restoration shall replace, enhance, or provide substitute resources or environments meeting the criteria for mitigation in OHMC 20.12.090 and 20.12.100.
- (b) For alterations to flood and geological hazards, the following minimum performance standards shall be met for restoration:
  - (i) The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard;
  - (ii) Any risk to public safety or other critical areas resulting from the alteration shall be eliminated or minimized; and
  - (iii) To the extent feasible, the hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.
- (c) Restoration of oak trees shall be through a replacement ratio of at least five trees for every tree removed, topped or killed in violation of Chapter 20.16 OHMC. Replacement trees must be of a genetic stock from the Puget Sound/Georgia Strait ecoregion, unless such trees are not reasonably available. At least two trees must survive at least five years after planting and must grow to a height of at least eight feet.

- (4) Penalties. Any person convicted of violating any of the provisions of this chapter shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The city may levy civil penalties against any person, party, firm, corporation, or other legal entity for

violation of any of the provisions of this chapter. The civil penalty shall be assessed at a maximum rate of one thousand dollars (\$1,000) per day per violation.

**Section Forty-three.** Oak Harbor Municipal Code Section 21.90.020 entitled "Penalty" adopted by Ord. 1568 (2010) is hereby amended to read as follows:

**21.90.020 Penalty.**

- (1) Any knowing or intentional violation of any provision of this title shall be a gross misdemeanor punishable by a fine of up to five thousand dollars (\$5,000) or a jail sentence of ~~one year~~ three hundred sixty-four (364) days in jail or both such fine and jail time.
- (2) Any other violation of this title shall be a class 1 civil infraction ~~with a maximum penalty of \$250.00~~ as defined in OHMC 1.28.

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

**Section Forty-five. Effective Date.** This Ordinance shall be in full force and effect five (5) days after publication.

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

THE CITY OF OAK HARBOR

Veto ( )  
Approve ( )

By \_\_\_\_\_  
Scott Dudley, Mayor

Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Anna Thompson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Nikki Esparza, City Attorney

Published: \_\_\_\_\_

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

Bill No. C/A 6.g  
Date: February 3, 2015  
Subject: Ordinance No. 1719: Amending  
OHMC Chapter 6.12 Adding  
Section 6.12.080 Sale of Beer,  
Wine and/or Liquor in City  
Parks.

**FROM: Cathy Rosen, Public Works Director**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

A motion to adopt Ordinance 1719 amending Oak Harbor Municipal Parks Code Chapter 6.12, adding Section 6.12.080 Sale of Beer, Wine and/or Liquor in City Parks.

**BACKGROUND / SUMMARY INFORMATION**

The purpose of this agenda bill is to amend Oak Harbor Municipal Parks Code Chapter 6.12, adding Section 6.12.080 Sale of Beer, Wine and/or Liquor in City Parks.

In 2013, the City Council modified the Park Code to allow licensed vendors and concessionaires in Community Parks, as well as allowing the sale of alcohol in designated areas at approved special events held at Windjammer and Catalina Parks.

*The original ordinance included Section 5. Sunset. Section 6.12.080 shall terminate and no longer be in effect on the 366th day after the effective date of this ordinance. Any lease, concession agreement or special use permit issued under Chapter 6.12 as adopted in this ordinance shall remain in effect for its stated term.*

After more than a year with no significant concerns with allowing the sale of alcohol in designated areas at Windjammer and Catalina Parks, it has been determined that Section 6.12.080 can be permanently added to the Code.

**LEGAL AUTHORITY**

**FISCAL IMPACT**

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

The draft Ordinance 1719 was presented at the January 28, 2015 City Council Workshop.

**ATTACHMENTS**

1. [Ordinance 1719 Amending OHMC Chapter 6.12](#)

**ORDINANCE NO. 1719**

**AN ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON, AMENDING OAK HARBOR MUNICIPAL PARKS CODE CHAPTER 6.12, ADDING SECTION 6.12.080 SALE OF BEER, WINE AND/OR LIQUOR IN CITY PARKS.**

The City Council of the City of Oak Harbor, Washington do ordain as follows:

Section 1. Section 6.12.080 Sale of Beer, Wine and/or Liquor in City parks. Except as allowed by this section, there shall be no sale, use or consumption of beer, wine and/or liquor in any City park. The sale, use and consumption of beer, wine and/or liquor may be allowed in certain City parks under a concession agreement or special event permit subject to the following conditions:

- (1) The sale of beer, wine and/or liquor may be allowed only in Catalina and/or Wind-jammer parks for certain specific events upon application to and approval by the City. Applications for concession agreements, or special event permits under this Chapter shall be decided by the City Council.
- (2) The sale of beer, wine and/or liquor shall be subject to the conditions of the concession agreement and/or special event permit.

The City Council or City Administrator/designee shall have the right to impose other and additional conditions related to the sale or consumption of beer, wine and/or liquor in the approval of a special event permit, or concession agreement as it/he deems necessary to protect the health, safety and welfare of the public.

Section 2. Severability.

If any part, provision or section of this Chapter is held to be void or unconstitutional, all other parts not expressly so held shall continue in full force and effect.

Section 3. Effective Date.

This ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law.

PASSED by the City Council this 3<sup>rd</sup> day of February 2015.

CITY OF OAK HARBOR

\_\_\_\_\_  
Scott Dudley, Mayor

Attest:

\_\_\_\_\_  
Anna Thompson, City Clerk

Approved as to Form:

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Nikki Esparza, City Attorney

Published:

DRAFT

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

Bill No. C/A 6.h  
Date: February 3, 2015  
Subject: Ordinance No. 1721: Repealing  
OHMC 2.240 'Youth Council'  
and OHMC 2.250 'Oak Harbor  
Youth Commission'

**FROM: Nikki Esparza, City Attorney**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

Adopt Ordinance 1721 repealing OHMC 2.240 'Youth Council' and OHMC 2.250 'Oak Harbor Youth Commission'.

**BACKGROUND / SUMMARY INFORMATION**

The Oak Harbor Youth Commission is an advisory body created by ordinance that is tasked with determining the needs of Oak Harbor area youth and conveying those needs to the City Council so that decisions can be made on behalf of youth. The commission is funded as the City Council determines is appropriate. The current funding amount provided is \$1,200.00.

The Oak Harbor Youth Commission has the opportunity to expand its duties and capabilities by partnering with Island County, youth services providers and community members to create an independent coalition. This coalition would have the ability to act on behalf of youth with a great deal more flexibility than it can operating as a City commission. Operation as an independent coalition will provide access to over \$80,000 in grant money and allow for an increase in the services provided to Oak Harbor area youth. Should this ordinance be approved, the City will maintain a representative on the Commission and will continue to fund the Commission as Council sees fit.

The Youth Council is not populated and has not been for a significant amount of time. The activities undertaken by the Youth Commission will address and fulfill the needs intended to be addressed by a Youth Council.

It is staff's recommendation that Ordinance 1721 be adopted and that the Youth Commission cease to be a City commission and instead part of an independent coalition.

**LEGAL AUTHORITY**

**FISCAL IMPACT**

None

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

This item was discussed at the January 28, 2015 workshop.

**ATTACHMENTS**

1. [Ordinance No. 1721](#)

ORDINANCE NO. 1721

AN ORDINANCE OF THE CITY OF OAK HARBOR REPEALING OAK HARBOR MUNICIPAL CODE CHAPTER 2.240 ENTITLED “YOUTH COUNCIL” AND OAK HARBOR MUNICIPAL CODE CHAPTER 2.250 ENTITLED “OAK HARBOR YOUTH COMMISSION”

WHEREAS, the Oak Harbor Youth Council is not currently populated; and

WHEREAS, the Oak Harbor Youth Council and Oak Harbor Youth Commission have similar objectives and address similar needs; and

WHEREAS, the Oak Harbor Youth Commission is currently structured as an advisory body under the Oak Harbor Municipal Code; and

WHEREAS, the Oak Harbor Youth Commission is currently funded by the City in the amount of Twelve Hundred Dollars (\$1,200.00) per year; and

WHEREAS, by partnering with Island County and forming an independent coalition, the Oak Harbor Youth Commission will be able to access grant funds in excess of Eighty Thousand Dollars (\$80,000.00); and

WHEREAS, an independent coalition will have flexibility that the Oak Harbor Municipal Code does not provide and will be able to provide services to Oak Harbor youth that the Commission and the City cannot provide; and

WHEREAS, the City of Oak Harbor will maintain a representative on the Oak Harbor Youth Commission; and

WHEREAS, the City of Oak Harbor will continue to support the work of the Oak Harbor Youth Commission; and

WHEREAS, the youth of the City of Oak Harbor and its surrounding area will be best served by an independent coalition comprised of members of the Oak Harbor community, Island County and youth services providers;

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

**Section One.** Oak Harbor Municipal Code Chapter 2.240 entitled “Youth Council” is hereby repealed.

**Section Two.** Oak Harbor Municipal Code Chapter 2.250 entitled “Oak Harbor Youth Commission” is hereby repealed.

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

**Section Four.** Effective Date. This Ordinance shall be in full force and effect five (5) days after publication.

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

THE CITY OF OAK HARBOR

Veto ( )  
Approve ( )

By \_\_\_\_\_  
Scott Dudley, Mayor

Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Anna Thompson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Nikki Esparza, City Attorney

Published: \_\_\_\_\_

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

Bill No. C/A 6.i  
Date: February 3, 2015  
Subject: Wastewater Treatment Plant -  
Professional Services Agreement  
with ERCI - Amendment No. 3

**FROM: Cathy Rosen, Public Works Director & Joe Stowell, City Engineer**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

Authorize the Mayor to sign Amendment No. 3 to the Professional Services Agreement with Equinox Research Consulting International for Archaeological Services related to the new wastewater treatment plant in the amount of \$28,074.25 increasing the total contract amount from \$236,513.48 to \$264,587.73.

**BACKGROUND / SUMMARY INFORMATION**

The City of Oak Harbor is actively pursuing the replacement of two aging wastewater treatment plant with a new, state of the art, membrane bioreactor treatment plant.

One of the many critical components of the project is permitting. Staff has been working with Equinox Research and Consulting International (ERCI) Since May of 2013 to address cultural resource permitting for the project.

On Octboer 7, 2014, City Council approved Amendment 2 to the contract with ERCI for services related to the wastewater treatment plant. The proposed scope of services was intended to support the project through the permitting phase of the project.

Through the permitting process, several new items have developed that were not predictable and outside the original scope of service. Some of these items include additional consultation with the tribes, the Department of Ecology, Department of Archaeology and Historic Preservation and our design consultants. The permitting process has also resulted in the additional effort to complete the monitoring plan and the addition of a memorandum of agreement. The attached Amendment 3 adds the necessary scope to ERCI's contract to completion of the permitting phase of work.

**FISCAL IMPACT**

Funds Required: \$28,074.25

Appropriation Source: Wastewater Fund

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

October 7, 2014 – City Council Authorized the Mayor to sign Amendment No. 2 to the Professional Services Agreement with Equinox Research Consulting International for Archaeological Services related to the new wastewater treatment plant in the amount of \$21,660.50 increasing the total contract amount from \$214,852.98 to \$236,513.48.

December 17, 2013 – City Council authorized the Mayor to sign Amendment No. 1 to the Professional Services Agreement with Equinox Research Consulting International for Archaeological Services related to the new wastewater treatment plant in the amount of \$198,520 increasing the total contract amount from \$16,332.98 to \$214,852.98.

May 7, 2013 – City Council authorized the Mayor to sign a Professional Services Agreement with Equinox Research Consulting International for Archaeological Services related to the new wastewater treatment plant in the amount of \$14,332.98 and a management reserve of \$2,000.00.

**ATTACHMENTS**

1. [Amendment No. 3](#)
2. [Amendment No. 3 Scope of Work](#)
3. [Amendment No. 2, No. 1, and Original PSA \(combined document\)](#)

<b>Professional Services Agreement Amendment Number <u>3</u></b>	Organization and Address	
Original Agreement Title:  WWTP Archaeological Services	City of Oak Harbor 865 SE Barrington Drive Oak Harbor, WA 98239  Phone: 360-279-4539	
Project Number:  ENG-13-05	Execution Date  5/7/2013	Completion Date (Prior)  12/31/2015
Project Title  City of Oak Harbor Wastewater Treatment Plant	New Maximum Amount Payable  \$264,587.73	
Description of Work Provide archaeological services related to the new wastewater treatment plant.		

The City of Oak Harbor desires to supplement the agreement entered into with Equinox Research and Consulting International and executed on 5/7/2013 and identified as Professional Services Agreement with Equinox Research and Consulting International.

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

**SCOPE OF WORK** is hereby amended to add the following:

See attached scope of work and fee.

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**SCOPE OF WORK** is hereby changed and supplemented with the following:

NO CHANGE.

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**PROJECT COMPLETION DATE AMENDED TO: NO CHANGE** \_\_\_\_\_

**PAYMENT** shall be amended as follows:

Amendment reflects the additional effort necessary to assist in the permitting process for the proposed wastewater treatment plant property. The maximum amount payable under the contract is increased by \$28,074.25, from \$236,513.48 to \$264,587.73.

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Payment shall be made in accordance with the terms and conditions described in the original contract.

If you concur with this amendment and agree to the changes as stated above, please sign in the appropriate spaces and return to this office for final action.

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
Approving Authority Signature

\_\_\_\_\_  
Date



January 8, 2015

**John Piccone, Project Manager**

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

Re: Scope and budget for all preconstruction planning associated with WWTP Project ,  
Oak Harbor, Washington

Dear Mr. Piccone:

Thank you for the considering Equinox Research and Consulting International Inc. (ERC I) for your cultural resource management needs. ERC I provides a full service cultural resource management program and we look forward to providing you timely and professional fieldwork and reporting.

This scope and budget is for all activities associated with managing cultural resources prior to the implementation of the monitoring plan for the construction on the new WWTP facility including.

It also includes the completion of a Historic Property Inventory on the existing Wastewater Treatment Plant and the preparation and curation of the objects and documents for the preliminary archaeological investigation for the WWTP from 2014.

**Qualifications:**

- 14 years experience working in Western Washington.
- Principal investigator and 4 senior archaeologists meet the Secretary of Interior's professional qualification standards for archaeology
- Expertise on prehistoric and historic archaeology of Western Washington
- Experience in State Laws, SEPA and permitting, Executive Order 05-05, NHPA Section 106 work and meshing with NEPA.
- Positive working relationship with federally recognized Tribes who are consulting parties on this project.
- Experience in processes that balance competing resource needs
- Strong record of completing work on time within budget

The following costs are not included in this estimate:

- Any costs associated with the implementation of the Monitoring Plan and Memorandum of Agreement

The team at ERCI is comprised of individuals with strong personal research specialties who pride themselves on efficiency, performance and integrity. We provide the highest quality product in a timely fashion. Please check out our web site for additional details; [www.equinoxerci.com](http://www.equinoxerci.com) .

Thank you for the opportunity to provide excellent heritage planning services for this recovery work and we look forward to working with you.

Regards,



Kelly R. Bush  
Equinox Research and Consulting International Inc. (ERCI)

<b>Description</b>	<b>Units</b>	<b>Rate/HR</b>	<b>Sub Total</b>
Project Orientation and planning; in person and phone meetings for/with The City of Oak Harbor.	22.00	143.75	3,162.50
Review of associated documents and other research	4.00	97.75	391.00
Consultation with affected Tribes regarding methods and other implementation issues. Including on-site visits/tours as needed	18.00	143.75	2,587.50
Historic Property Inventory Form for existing WWTP	15.00	97.75	1,466.25
Consultation with Agencies.	4.00	143.75	575.00
Document control, site form update, transcriptions	16.00	63.25	1,012.00
Document Editing and Formal Review	4.00	143.75	575.00
Writing and revising of Agreement Documents and associated correspondence	40.00	97.75	3,910.00
Graphics	4.00	97.75	391.00
Posters	5.00	100.00	500.00
Prepare documents, artifacts and samples for curation	48.00	97.75	4,692.00
Curation with The Burke Museum of Documents, Objects and Samples - per box	5.00	1,500.00	7,500.00
<b>SUB TOTAL</b>			<b>26,762.25</b>
Travel (travel to Oak Harbor, tribal offices and the Burke)	16.00	40.00	640.00
Mileage (to Oak Harbor, tribal offices and the Burke)	1200.00	0.56	672.00
<b>SUB TOTAL</b>			<b>1,312.00</b>
<b>GRAND TOTAL</b>			<b>28,074.25</b>

<b>Professional Services Agreement Amendment Number <u>1</u></b>		<b>Organization and Address</b>	
Original Agreement Title: WWTP Archaeological Services		City of Oak Harbor 865 SE Barrington Drive Oak Harbor, WA 98239  Phone: 360-279-4539	
Project Number:	Execution Date	Completion Date (Prior)	
ENG-13-05	5/7/2013	12/31/2013	
Project Title	New Maximum Amount Payable		
City of Oak Harbor Wastewater Treatment Plant	\$214,852.98		
Description of Work Provide archaeological services related to the new wastewater treatment plant.			

The City of Oak Harbor desires to supplement the agreement entered into with Equinox Research and Consulting International and executed on 5/7/2013 and identified as Professional Services Agreement with Equinox Research and Consulting International.

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

**SCOPE OF WORK** is hereby amended to add the following:

See attached scope of work and fee.

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**SCOPE OF WORK** is hereby changed and supplemented with the following:

NO CHANGE.

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PROJECT COMPLETION DATE AMENDED TO: December 31, 2014

PAYMENT shall be amended as follows:

Amendment reflects the additional effort necessary to perform due diligence on the proposed wastewater treatment plant property. The maximum amount payable under the contract is increased by \$198,520.00, from \$16,332.98 to \$214,852.98, as outlined in the attached scope of work.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Payment shall be made in accordance with the terms and conditions described in the original contract.

If you concur with this amendment and agree to the changes as stated above, please sign in the appropriate spaces and return to this office for final action.

By: Scott R. Bush  
\_\_\_\_\_  
Consultant Signature

By: Scott Dudley  
Scott Dudley  
\_\_\_\_\_  
Approving Authority Signature  
12/30/13  
\_\_\_\_\_  
Date



41507 South Skagit Hwy Concrete, WA 98237 Tel.360-826-4930 Fax. 360-826-4830 [www.equinoxerci.com](http://www.equinoxerci.com)

November 21, 2013

Joe Stowell, City Engineer  
City of Oak Harbor Public Works  
1400 NE 16<sup>th</sup> Avenue  
Oak Harbor, WA 98277

Re: Intensive Field Survey for the Wastewater Treatment Plant Facilities, Oak Harbor, Washington

Dear Mr. Stowell:

Thank you for the considering Equinox Research and Consulting International Inc. (ERC I) for your cultural resource management needs. ERC I provides a full service cultural resource management program and we look forward to providing you timely and professional fieldwork and reporting.

Section 106 of the National Historic Preservation Act (NHPA), SEPA and Executive Order 05-05 requires agencies to consider the effects of their actions on historic properties and to consult with others in carrying out historic preservation activities. The State of Washington also has a series of RCWs and associated WACs concerning cultural resources that we are guided by. In providing cultural resource management services for clients, Equinox Research and Consulting International Inc. (ERC I) works in accordance with all applicable laws and regulations.

This project currently has no Federal nexus and so we expect that we will require a permit from the State Department of Archaeology and Historic Preservation to carry out this survey work as we expect to encounter disturbed shell midden deposits and we may encounter intact shell midden deposits and will want to test and evaluate these deposits.

This scope doesn't include safety fencing and we believe that during the testing in Windjammer Park that will be a significant issue. Although, fewer people use the park in winter it is still difficult to keep people back from our testing trenches. We hope the City will provide some assistance with this challenge.

We are providing this scope and budget for approximately 2000 feet of machine testing and approximately 75 shovel test holes in the attached APE. We understand that you are in the buy/sell phase of land acquisition and that this is the final site selection for the new WWTP facility. The data we collect during this intensive testing will be used as the identification and evaluation phase of the project for cultural resources. Should any cultural material be encountered, our permit application would allow us to test and evaluate that material and collect data useful in adding to a mitigation data recovery plan and to evaluate and cultural resources for eligibility to the National Register.

The Scope activities include:

- Write a permit application for the Washington State DAHP
- Carry out machine testing with approximately 2000 feet of machine testing as per the attached map.
- Carry out supplementary shovel testing up to 75 shovel test holes.

- Provide a preliminary analysis of all historic and pre-contact artifacts and prepare them for curation at the Burke Museum. This includes up to 5 boxes of artifacts including any faunal remains.
- Provide report to state and federal standards
- Provide a backhoe and operator for the machine trenching

**Assumptions:**

- Human remains will be encountered only once during the testing program.
- Only 5 boxes of artifacts and faunal material will be encountered during the testing
- No additional plans or protocols are included in this scope. Should we need to file an amended permit for additional data recovery that would be outside this scope.
- Costs associated with completing an HPIF (historic property inventory form) for the existing facilities is outside this scope.

**Qualifications:**

- Experience working in Puget Sound and on projects associated with public works systems and infrastructure.
- Principal investigator meets the Secretary of Interior's professional qualification standards for archaeology
- Expertise on prehistoric and historic archaeology of Western Washington
- Experience in Executive Order 05-05 and NHPA Section 106 work and in working with additional state laws related to historic preservation and human remains.
- Positive working relationship with federally recognized Tribes in and adjacent to the project area and experience in tribal consultation.
- Experience in processes that balance competing resource needs
- Strong record of completing work on time within budget

We expect the field work to take approximately 5 weeks from start to finish. We will need 3 days to set up the testing area. Then we will have a full crew for 20 days and then a smaller crew for an additional 5 days that includes final mapping and clean up. We will not be working weekends unless weather becomes the critical success/failure element and we have windows of clear weather that allows us to proceed. Based on our experience last year – weather is a critical player in visibility and will certainly be an issue for this more precise work.

The team at ERCI is comprised of individuals with strong personal research specialties who pride themselves on efficiency, performance and integrity. We provide the highest quality product in a timely fashion. Please check out our web site for additional details [www.equinoxerc.com](http://www.equinoxerc.com)

Thank you for the opportunity to provide excellent heritage planning services for the City of Oak Harbor.

Regards,

Kelly R. Bush  
Equinox Research and Consulting International Inc. (ERCI)

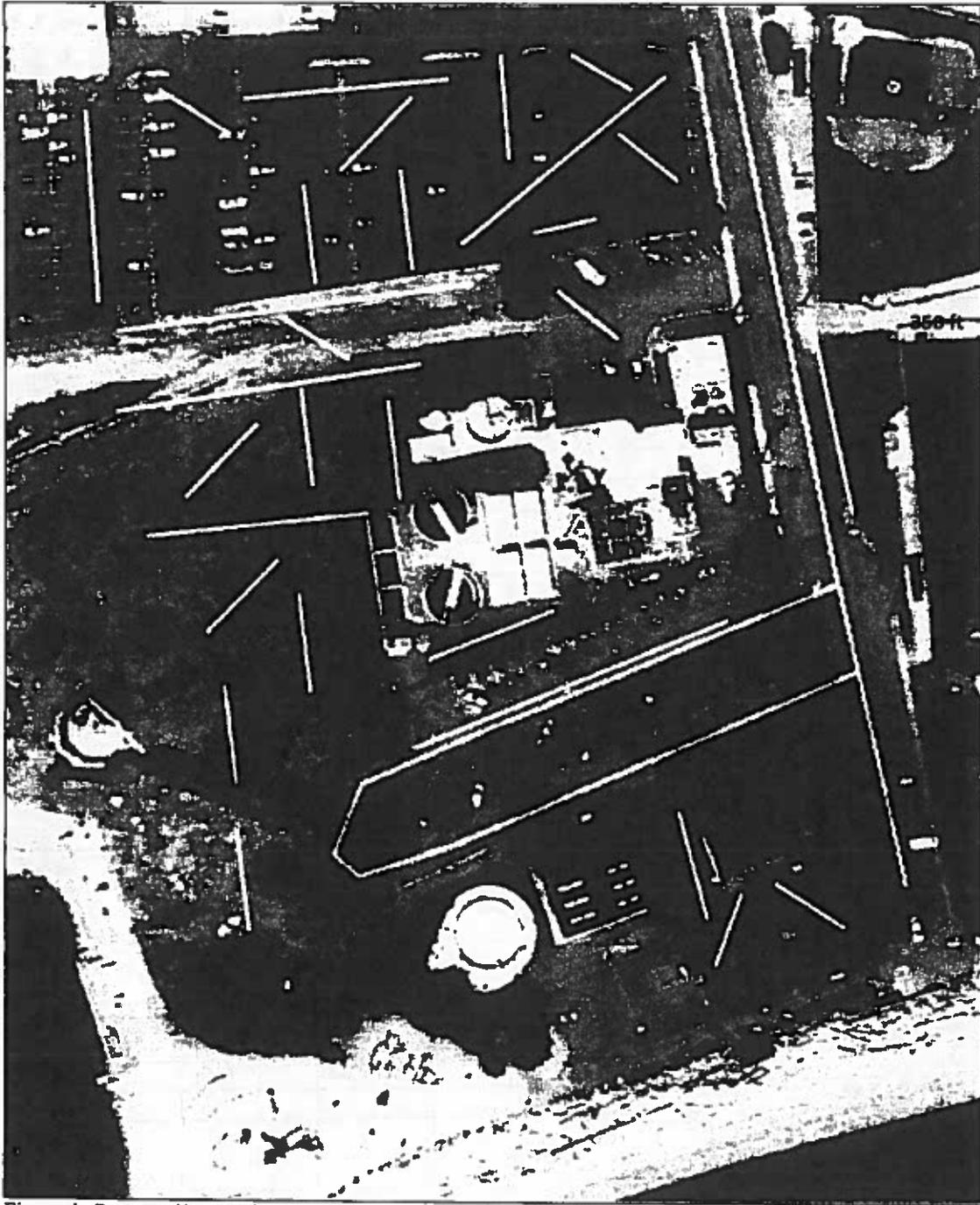


Figure 1: Proposed/approximate testing trench locations in yellow.

<b>Description</b>	<b>Units</b>	<b>Rate/HR</b>	<b>Sub Total</b>
Project Orientation, meetings and project management	12.00	143.25	1,719.00
Historic, geoarch and archival background research	6.00	97.75	586.50
Coordinate with governments of affected Tribes.	8.00	143.25	1,146.00
Determine Eligibility of identified historic properties for listing in the National Register of Historic Places.	2.00	143.75	287.50
Consider the effects of Project alternatives on all cultural resources and provide recommendations about how to avoid, minimize, or mitigate the adverse effect.	12.00	143.75	1,725.00
Write Permit for survey	18.00	97.75	1,759.50
Consultation with SHPO and agencies	12.00	143.25	1,719.00
Document control, field forms, transcriptions, site forms	96.00	63.75	6,120.00
lab data management	24.00	63.75	1,530.00
Report editing	4.00	143.25	573.00
Report writing	32.00	97.75	3,128.00
Graphics, layout	48.00	97.75	4,692.00
Curation: Preparation	80.00	63.75	5,100.00
Curation: Per box costs	10.00	1,500.00	15,000.00
<b>SUB TOTAL</b>			<b>45,085.50</b>
<b>Field Work</b>			
<b>DESCRIPTION</b>	<b>Units</b>	<b>Rates</b>	<b>Sub Total</b>
Principal Investigator	30.00	143.75	4312.50
Senior Archaeologist Field Supervisor	200.00	97.75	19550.00
Senior Archaeologist Lab/Field Supervisor	200.00	97.75	19550.00
Physical Anthropologist	40.00	115.00	4600.00
Archaeological Lab/field Technician	200.00	74.75	14950.00
Archaeological Field Technician	160.00	74.75	11960.00
Archaeological Field Technician	160.00	74.75	11960.00
Archaeological Field Technician	160.00	74.75	11960.00
Archaeological Field Technician	160.00	74.75	11960.00
Archaeological Field Technician	160.00	74.75	11960.00
Equipment Rental Backhoe and operator	15.00	900.00	13500.00
Travel time	200.00	40.00	8000.00
Accommodation (weekly)	4.00	625.00	2500.00
Per Diem daily	80.00	61.00	4880.00
Mileage	3200.00	0.56	1792.00
<b>SUB TOTAL</b>			<b>153,434.50</b>
<b>GRAND TOTAL</b>			<b>198,520.00</b>

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this 18 day of March, 2013, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and Equinox Research + Consulting International Inc. (ERCI), hereinafter referred to as the "SERVICE PROVIDER".

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

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

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

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

1. Scope of Services.

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

2. Term.

The Project shall begin on Monday April 1/13 and shall be completed no later than Friday May 17/13, 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:

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

6. Service Provider Employees/agents.

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

7. Hold Harmless/Indemnification.

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

8. Insurance.

The SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, its agents, representatives, or employees.

- 8.1 Minimum Scope of Insurance. SERVICE PROVIDER shall obtain insurance of the types described below:
  - a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
  - b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the SERVICE PROVIDER'S Commercial General Liability insurance policy with respect to the work performed for the City.
  - c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
  - d. Professional Liability Insurance appropriate to the SERVICE PROVIDER'S profession.

- 8.2 **Minimum Amounts of Insurance.** SERVICE PROVIDER shall maintain the following insurance limits:
- a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per accident.
  - b. Commercial General Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate.
  - c. Professional Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) policy aggregate limit.
- 8.3 **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:
- a. The SERVICE PROVIDER'S insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the SERVICE PROVIDER'S insurance and shall not contribute with it.
  - b. The SERVICE PROVIDER'S insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- 8.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- 8.5 **Verification of Coverage.** SERVICE PROVIDER shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the SERVICE PROVIDER before commencement of the work.

9. Treatment of Assets.

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

10. Compliance with Laws.

- 10.1 The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- 10.2 The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.

11. Nondiscrimination.

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

discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. Assignment/subcontracting.

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

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

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

13. Changes.

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

14. Maintenance and Inspection of Records.

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

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

15. Other Provisions.

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

16. Termination.

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

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

17. Notice.

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

18. Attorneys Fees and Costs.

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

19. Jurisdiction and Venue.

19.1 This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

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

20. Severability.

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

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

21. Entire Agreement.

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

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

CITY:

SERVICE PROVIDER:

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

  
\_\_\_\_\_  
Scott Dudley, Mayor

  
\_\_\_\_\_  
Kelly R Bohl  
President, ERCC

Attest:

  
\_\_\_\_\_  
Valerie Loffler City Clerk



41507 South Skagit Hwy Concrete, WA 98237 Tel.360-826-4930 Fax. 360-826-4830 [www.equinoxerci.com](http://www.equinoxerci.com)

April 24, 2013

Joe Stowell  
 City of Oak Harbor Public Works  
 1400 NE 16<sup>th</sup> Avenue  
 Oak Harbor, WA 98277

Re: Planning and alternatives analysis for the Wastewater Treatment Plant Facilities, Oak Harbor, Washington

Dear Mr. Stowell:

Thank you for the considering Equinox Research and Consulting International Inc. (ERCI) for your cultural resource management needs. ERCI provides a full service cultural resource management program and we look forward to providing you timely and professional fieldwork and reporting.

Section 106 of the National Historic Preservation Act (NHPA), SEPA and Executive Order 05-05 requires agencies to consider the effects of their actions on historic properties and to consult with others in carrying out historic preservation activities. The State of Washington also has a series of RCWs and associated WACs concerning cultural resources that we are guided by. In providing cultural resource management services for clients, Equinox Research and Consulting International Inc. (ERCI) works in accordance with all applicable laws and regulations.

We are providing this scope and budget for planning for two approximately 4 acre parcels in and around Windjammer Park in Oak Harbor, Washington. We understand that you are in the planning phase of developing a design for a new wastewater treatment facility for the City of Oak Harbor and that this work will support your alternatives analysis. The Scope activities include:

- Develop a sensitivity map for the Windjammer Vicinity based on existing studies, archival and geoarchaeological research and a pedestrian survey.
- Attend up to 4 meetings to assist in planning.
- Monitoring and screening sediments from machine excavating of 4 test areas. Two for each of the two proposed facilities alternatives.
- Provide report to state, federal and tribal standards

Our estimate is based on the City providing the equipment and crew to remove asphalt and to provide a machine and operator should that be required for the field testing. The locations would be determined prior to field testing. These testing locations would then have a combination of deep testing and shovel testing carried out in them. The City would then cover and resurface the tests.

The archaeology would be carried out with a Senior Archaeologist and a field technician to dig, screen and record matrix information.

This scope presumes that no permit from DAHP will be required to carry out this testing as we are outside of any recorded archaeological sites.

**Qualifications:**

- Experience working in Puget Sound and on projects associated with public works systems and infrastructure.
- Principal investigator meets the Secretary of Interior’s professional qualification standards for archaeology
- Expertise on prehistoric and historic archaeology of Western Washington
- Experience in Executive Order 05-05 and NHPA Section 106 work and in working with additional state laws related to historic preservation and human remains.
- Positive working relationship with federally recognized Tribes in and adjacent to the project area and experience in tribal consultation.
- Experience in processes that balance competing resource needs
- Strong record of completing work on time within budget

The following estimate covers the identification and evaluation for historic properties in this project area. The following costs are not included in this estimate:

- Costs associated with encountering human remains during this fieldwork.
- Costs associated with completing Historic Property Inventory Forms (HPIFs) for any buildings older than 50 years
- Costs associated with developing any additional agreements, plans, protocols, or permits should they be required.

The team at ERCI is comprised of individuals with strong personal research specialties who pride themselves on efficiency, performance and integrity. We provide the highest quality product in a timely fashion. Please check out our web site for additional details [www.equinoxercicom](http://www.equinoxercicom)

Thank you for the opportunity to provide excellent heritage planning services for the City of Oak Harbor.

Regards,



Kelly R. Bush  
Equinox Research and Consulting International Inc. (ERCI)

Description	Units	Rate/HR	Sub Total
Project Orientation, meetings and project management	16.00	143.25	2,292.00
Historic and archival background research	6.00	97.75	586.50
Geoarchaeological research	4.00	97.75	391.00
Coordinate with governments of affected Tribes regarding cultural resource issues including the cultural heritage value of sites within the vicinity of the Area of Potential Effect (APE).	1.00	143.25	143.25

Determine eligibility of identified historic properties for listing in the National Register of Historic Places.	2.00	143.75	287.50
Consider the effects of Project alternatives on all cultural resources and provide recommendations about how to avoid, minimize, or mitigate the adverse effect.	12.00	143.75	1,725.00
Develop sensitivity model for Project Area	8.00	97.75	782.00
Consultation with SHPO and agencies	1.00	143.25	143.25
Document control, transcriptions, site forms	12.00	63.75	765.00
Report editing	2.00	143.25	286.50
Report writing	16.00	97.75	1,564.00
Graphics, layout	14.00	97.75	1,368.50
Report Production	2.00	63.75	127.50
Report printing	6.00	23.00	138.00
<b>SUB TOTAL</b>			<b>10,600.00</b>
<b>Field Work: Preliminary field Survey and/or monitoring of specific testing locations in 2 roughly 4 acre parcels</b>			
<b>DESCRIPTION</b>	<b>Units</b>	<b>Rates Daily</b>	<b>Sub Total</b>
Principal Investigator	2.00	143.75	287.50
Senior Archaeologist Field Supervisor	16.00	97.75	1564.00
Archaeological Field Technician	16.00	74.75	1196.00
Travel time	10.00	34.50	345.00
Mileage	608.00	0.56	340.48
<b>SUB TOTAL</b>			<b>3,732.98</b>
<b>GRAND TOTAL</b>			<b>14,332.98</b>

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

Bill No. C/A 6.j  
Date: February 3, 2015  
Subject: Wastewater Treatment Plant -  
Legal Counsel Perkins and Coie,  
LLP

**FROM: Cathy Rosen, Public Works Director and Joe Stowell, City Engineer**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

The purpose of this agenda bill is to seek City Council's approval for additional legal services with Perkins and Coie LLP related to the Wastewater Treatment Plant Project.

**BACKGROUND / SUMMARY INFORMATION**

On December 3, 2013, City Council adopted Resolution 13-32 directing staff to pursue the alternative project delivery method of General Contractor / Construction Manager (GC/CM) for delivery of the new wastewater treatment plant (WWTP).

In an effort to streamline the GC/CM contracting process, outside legal counsel specializing in GC/CM contracting was recommended.

On Monday, March 10, 2014, three potential firms were interviewed by Nikki Esparza, Pat Anderson of Grant, Graafstra, and Benson, Inc. PS, and Joe Stowell. Of the three interviewed, Perkins Coie LLP was determined to be the most qualified to provide legal assistance for the new wastewater treatment plant.

On March 18, 2014, City Council authorized the Mayor to sign an engagement letter with Perkins Coie LLP to provide initial legal assistance with drafting the GC/CM contract, assisting in the RFQ and RFP, and assisting in minor contracts and advice not to exceed \$30,000.

On September 16, 2014, City Council authorized the Mayor to sign a supplemental engagement letter that provided additional funding for review of earlier procurement documentation for membrane bioreactor and ultraviolet disinfection equipment as well as preparation of the first amendment to Hoffman Construction's contract (Guaranteed Maximum Price (GMP) #1). These tasks have been completed and terms of the September 16, 2014 engagement have been fulfilled.

As work on the wastewater treatment plant project progresses, we will need the services of Perkins Coie

to assist with future amendments to the contract with Hoffman Construction and will be looking to them for advice on contract specifications and bidding procedures.

The attached engagement letter from Perkins Coie is intended to reserve funding for such services where the scope and effort are largely unpredictable at this point. In an effort to control costs and monitor the progress of their contract, we have asked for monthly billings, even if no effort has been expended that month. We have also asked for notification at key intervals to allow staff to closely monitor cost and scope impacts.

Perkins Coie's efforts on the project are essential and have proven valuable. Staff's recommendation is to approve the engagement letter.

**FISCAL IMPACT**

Funds Required: \_\_\_\_\_ \$50,000 \_\_\_\_\_

Appropriation Source: \_\_\_\_\_ Wastewater Fund \_\_\_\_\_

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

March 18, 2014 – City Council authorized the Mayor to sign an engagement letter with Perkins Coie LLP on a time and materials basis, not to exceed \$30,000.

September 16, 2014 – City Council authorized the Mayor to sign the engagement letter with Perkins Coie for legal counsel services related to equipment procurement for the Clean Water Facility.

**ATTACHMENTS**

1. [Engagement Letter](#)

Richard O. Prentke  
PHONE: (206) 359-8404  
FAX: (206) 359-9404  
EMAIL: RPrentke@perkinscoie.com

January 22, 2015

Mr. Joe Stowell  
Ms. Nikki Esparza  
City of Oak Harbor  
865 SE Barrington Drive  
Oak Harbor, WA 98277

**Re: Legal Representation**

Dear Joe and Nikki:

Thank you for selecting Perkins Coie LLP to represent City of Oak Harbor in connection with construction-related advice for the water treatment plant project for the year 2015.

The principal factors in determining our fees will be the time and effort devoted to the matter and the hourly rates of the lawyers and paralegals involved. Graehm Wallace and I will have primary oversight for Perkins Coie's representation of the City, but we assign other firm lawyers and paralegals when necessary, beneficial or cost-effective and when desirable to meet the time constraints of the matter.

We have agreed to provide you with a discount of approximately 15% from our regular rates. The current hourly rates of the partners most likely to work on these matters are:

<u>Name</u>	<u>2015 Regular Rate</u>	<u>Discounted Rate</u>
Dick Prentke	\$610	\$515
Graehm Wallace	\$550	\$470
Brendan Peters	\$510	\$435
Andrew Greene	\$490	\$415
Scott Siekawitch	\$305	\$260

These rates are adjusted at least annually, usually on January 1. Services performed after the effective date of the new rates will be charged at the new applicable rates.

We have agreed that our fees will not exceed \$50,000 without prior agreement by the City of Oak Harbor. This is not an agreement to cap all fees at \$50,000 as neither party yet knows the

Mr. Joe Stowell  
Ms. Nikki Esparza  
January 22, 2015  
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extent that our services will be requested, but simply an agreement to not bill any amount above \$50,000 without first obtaining the City's agreement. If we are nearing this \$50,000 fee amount, we will provide you with sufficient advance email notice so that you can seek permission from the City Council to determine if the City is willing to increase this \$50,000 amount and to continue using our services.

The magnitude of costs will depend in large part on the extent to which you seek our involvement. We try to issue invoices for our fees and disbursements on a monthly basis. These invoices include detail that most of our clients find sufficient, but please let me know at any time if more detailed information is needed on our invoices. Please also refer to the enclosed Information for Clients for specifics regarding fees, disbursements, billing, payment, and termination of our representation should payment not be made or other circumstances warrant.

Our representation of the City does not include acting as counsel for any entity in which the City participates or holds equity or any affiliate, officer, employee, family member or other person (collectively, "Affiliates"), unless such additional representation is separately and clearly undertaken by us. If in the future we and the City mutually agree to expand our representation of the City to include any of the City's Affiliates, it is agreed that the terms, conditions and consents contained herein will apply to such representation(s).

Perkins Coie represents many other companies, individuals and government agencies ("clients"). During the time we are representing the City we may be asked to represent:

- (1) other present or future clients in transactions, litigation or other disputes directly adverse to the City that are not substantially related to our representation of the City; and/or
- (2) parties who are considered directly adverse parties in matters we handle for the City. Our work for these directly adverse parties would be in matters that are not substantially related to our work for the City.

We request the City's consent to allow Perkins Coie to undertake such future representations without the need to obtain any further or separate approval from the City, as long as those representations described in (1) and (2) above are not substantially related to work Perkins Coie has done, or is doing, for the City. Your signature below constitutes the City's consent to such representation(s). We agree not to use any proprietary or other confidential nonpublic information concerning the City acquired by us as a result of our representation of the City in connection with any litigation or other matter in which we represent a party directly adverse to the City.

During our representation of the City, there may from time to time be issues that raise questions as to our duties under the rules of professional conduct that apply to lawyers. These might include, e.g., conflict of interest issues, and could even include issues raised because of a dispute

Mr. Joe Stowell  
Ms. Nikki Esparza  
January 22, 2015  
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between us and a client over the handling of a matter. Under normal circumstances when such issues arise we would seek the advice of our Professional Standards Counsel, Loss Prevention partners or Professional Standards Conflicts Attorneys who are experts in such matters. Historically, we have considered such consultations to be attorney-client privileged conversations between firm personnel and the counsel for the firm. In recent years, however, there have been judicial decisions indicating that under some circumstances such conversations involve a conflict of interest between the client and Perkins Coie and that our consultation with Perkins Coie's counsel may not be privileged, unless we either withdraw from the representation of the client or obtain the client's consent to consult with Perkins Coie's counsel.

We believe that it is in our clients' interests, as well as Perkins Coie's interest, that in the event legal ethics or related issues arise during a representation, we receive expert analysis of our obligations. Accordingly, as part of our agreement concerning our representation of the City, you agree that if we determine in our own discretion during the course of the representation that it is either necessary or appropriate to consult with our firm counsel (either Perkins Coie's internal counsel or, if we choose, outside counsel) we have your consent to do so and that our representation of you shall not, thereby, waive any attorney-client privilege that Perkins Coie may have to protect the confidentiality of our communications with counsel. The costs associated with such legal counsel will be paid by Perkins Coie.

This letter, along with the enclosed Information for Clients, confirms the terms and conditions on which Perkins Coie LLP will provide legal services to the City. Unless otherwise agreed in writing, the terms of this letter and the enclosed Information for Clients will also apply to any additional matters that we undertake at the City's request. If this letter correctly sets forth our understanding, please sign and date a copy of this letter and promptly return it to me. If you have any questions about this letter or generally about our services or bills, please call me at any time. We look forward to working with you and thank you for placing your confidence in Perkins Coie.

Sincerely,



Richard O. Prentke

ROP:cb

Enclosure: Information for Clients

Mr. Joe Stowell  
Ms. Nikki Esparza  
January 22, 2015  
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ACCEPTED AND AGREED:

CITY OF OAK HARBOR

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## Information for Clients

Perkins Coie LLP is pleased to serve you. The following information explains the terms that apply to our engagements (except to the extent that you have reached a different written understanding with us about particular terms) for legal services provided by Perkins Coie LLP. No changes or additions to these terms will be binding unless confirmed in writing sent by us or signed by us. We encourage you to discuss this information with our lawyers at the inception of a matter and whenever you have questions during the course of that matter. Section headings are for convenience of reference only and not intended to affect the interpretation of the provisions of such sections.

**Personnel.** We generally assign one lawyer primary responsibility for seeing that your requests for legal services are met, but additional lawyers may assist in rendering the most appropriate and efficient legal services. We attempt to assign personnel to each matter based on the nature and scope of the issues raised by the matter and our lawyers' experience and expertise.

**Basis for Fees.** We charge for legal services rendered by our firm at applicable hourly rates. Each attorney, paralegal, and other timekeeper records time at assigned billing rates. Because hourly rates vary among personnel, each statement typically reflects a composite of several hourly rates. Those rates are reviewed periodically and change at least annually (usually on January 1) based on economic factors and the changing experience levels of our personnel. Services performed after the effective date of the new rates will be charged at the new rates.

**Disbursements and Other Charges.** In the course of performing legal services for you, various services may be provided by third parties. Examples include messenger and courier charges, filing and recording fees, foreign agent fees, court reporters and transcript costs, expert and other witness fees, charges for outside consultants and research services, and travel expenses. You are responsible for these third-party charges, and we reserve the right to forward their invoices directly to you for payment. For administrative ease, however, we may advance payment to the third-party provider and include the charge on our invoice to you, with no markup for handling. We will retain and not allocate to clients relatively insignificant discounts we receive for prompt payment or volume usage. For patent, trademark and other matters that may involve significant third-party payments, you may be required to maintain a minimum balance in a trust account to fund such payments. You will be advised of any such requirements, and we will not be obligated to request or pay for third-party services not fully covered by such deposits.

We will also charge you for certain internal services we provide in connection with our legal services. As noted below, because we both invest in specialized equipment and commit to long-term contracts with computer research vendors (such as Westlaw), long-distance telephone carriers, and others, we achieve savings in exchange for guaranteed payment, usage or other obligations undertaken at our risk. This allows us to charge our clients for certain computer research services and most long-distance telephone calls at rates discounted below standard rates. However, the payments we receive from clients for these services may exceed our total payments to the vendors. This excess is used to partially offset the costs we incur for related equipment and personnel and the risks we assume in entering into these contracts.

We currently charge specific internal costs in the following manner:

- 1. Photocopying, Printing, and Facsimile.** In our U.S. offices, clients are charged ten cents per page for photocopying. These charges are higher in our non-U.S. offices. We do not charge for facsimiles sent or received.
- 2. Computer Research.** There is no extra charge to clients for our use of the firm's internal work product retrieval system. Clients are charged for computer-assisted research from outside services, other than many Westlaw Services, at the vendors' standard rates. For many services from Westlaw, our primary outside computer-research source, we are able to charge clients just 37% of Westlaw's standard rates as of 2012 because we committed to a long-term contract with monthly minimum payments. We may occasionally be able to pass along other discounted rates for computer-assisted research from outside sources when we can negotiate volume discounts.

**3. Telecommunications.** We do not charge for local calls or for any email communications. In the United States, where we have been able to install special equipment and negotiate volume discounts, we share our savings with clients by charging long-distance calls at 50% of the AT&T tariff for direct-dial long-distance calls, plus applicable taxes. In our non-U.S. offices, long-distance calls are charged at the carrier's tariff for such calls, plus applicable taxes. Credit card and cell phone calls necessitated by work on your matters are charged at our actual cost.

**4. Mail/Messengers.** In our larger offices, we may use firm messengers whenever appropriate to shorten delivery times and offer greater flexibility. Charges for such internal messengers are equal to or below rates charged by outside messengers for similar services. We do not charge for regular mail. Bulk mailings, packages, overnight deliveries, and special postal services are charged at our actual cost.

**5. Overtime.** Clients are charged for staff overtime, meals, and transportation only when (a) the client specifically requests after-hours effort or (b) the nature of the work necessitates overtime and such work could not have been done during normal work hours.

**6. Document Services and Database Hosting.** Certain matters, particularly large-scale litigation, may require optical character recognition ("OCR") services. We currently charge 5 cents per page for OCR. Clients may also require hosting and support of discovery databases. We currently charge \$10/GB per month to host discovery databases on internal firm servers.

**Invoices and Payment.** We typically bill monthly, and payment is due upon receipt of the invoice. Payment of an invoice will reflect your agreement to the amount charged on that invoice, and you must bring any misbilling or other charge that you believe is inappropriate to our attention within 45 days of presentation of the invoice. To the fullest extent permitted by law, you agree that we have an attorneys' lien (including, without limitation, in the results of our services) to secure payment of the obligations owed us and that we may take steps to inform others of any attorneys' lien rights we might have. For accounts not paid within 30 days of the invoice date, we add a late payment charge of 1% per month (or such lower rate as required by applicable law) on unpaid balances from the invoice date. Unless otherwise agreed upon, we may apply payments first to our own attorneys' fees and costs of collection, second to our late charges, third to our invoiced fees, and finally to our invoiced disbursement charges. Our election not to exercise any rights or not to require punctual performance of each provision of this agreement will not be construed as a waiver or relinquishment of our rights. We do not and cannot guarantee the outcome of any matter or particular results, and payment of our fees and disbursements is not conditioned on any particular outcome. If we are required to bring an action or proceeding to collect fees or disbursements due us, we will also be entitled to recover certain fees and costs. These include, but are not limited to, our own outside attorneys' fees, expert witness fees, other costs of collection billed to us, and the value of legal services Perkins Coie's own attorneys perform in analyzing or prosecuting a collection action if such circumstances arise on your account. You consent to venue and jurisdiction wherever we have an office with attorneys who worked on your behalf. Also, if we are required to testify, produce documents, or respond to other requests in connection with litigation or other proceedings commenced by third parties that relate to our representation of you, you will pay us our reasonable fees and costs incurred in connection with such activities. For matters handled by our New York lawyers, the client may have a right to arbitrate fee disputes under Part 137 of the Rules of the Chief Administrator of the New York Supreme Court, Appellate Division.

**Insurance Coverage.** You may have insurance policies relating to a matter for which you engage us that might cover, among other things, reimbursement of attorneys' fees and costs. If coverage is potentially available, including coverage for our fees and costs, your appropriate insurance company must be notified as soon as possible. We can advise you on the availability of insurance coverage only if you expressly and timely request that we do so, we do not have a conflict of interest, and we agree to undertake such additional work. You would then need to furnish us copies of all relevant insurance policies and related documents. Regardless whether, when, and to what the extent insurance coverage might be available to reimburse all or a portion of our fees and costs, you nevertheless remain primarily obligated for amounts owed us, including any late charges that accrue during any delay in payment by others.

**Advance Payments and Estimates.** We may require advance payments before working or continuing work on a matter. Of course, the amount of work we are called upon to perform may subsequently exceed our prior expectations. Regardless of whether you make an advance payment, you agree that any budget, estimate, or similar range for potential charges is nothing more than a forecast based on then-current assumptions, and any such forecast may be high or low due to changed or unforeseen circumstances. We reserve the right, as a condition of providing additional services, to require an increase in any advance payment.

**Legal Service Provider.** We provide strictly legal services to you in connection with this agreement. You are not relying on us for any services other than legal services, and we are specifically not providing any business, investment, insurance, or accounting advice or any investigation of the character or credit of persons with whom you may be dealing.

**Identity of Client.** You confirm that we are being engaged by you and not any of your subsidiaries, affiliates, equityholders, employees, members of your family, or other persons (collectively, "Affiliates"), unless we separately and explicitly undertake such representation. You also expressly confirm that, as our representation is limited to you and does not include acting as counsel for your Affiliates, we may represent other clients adverse to your Affiliates without disclosing those matters to you or obtaining your consent. If in the future we agreed to expand our representation of you to include one or more of your Affiliates, you, and Affiliate(s), agree that the terms, conditions and consents contained in our engagement letter with you will apply to such representation(s).

**Conflicts of Interest.** We have performed a search of our other clients to determine whether representing you might create a potential conflict of interest with any other clients. That check was done using your name and any other names you gave us. Please inform us immediately if you use other names or have affiliated companies that we should enter into our conflicts system.

**Cooperation/Reliance on Accurate Information.** To enable us to represent you effectively, you will cooperate fully with us in your matter(s). You and your agents will fully and accurately disclose to us all facts and documents that may be relevant to a matter we undertake or which we may otherwise request. This information will form the basis of our legal advice.

**Email Communication Disclaimer.** Many of our legal professionals receive hundreds of email messages per day (in addition to spam). Although email is an efficient method for many communications, it can also be delayed in transit or otherwise missed (e.g., blocked by our anti-spam software). You cannot assume that each email message copied or sent to one of our legal professionals was actually opened and read by him or her unless you receive a non-automated reply message indicating that he or she read the substance of your message.

**Termination of Services.** We retain the right to cease performing legal services and to terminate our legal representation for any reason consistent with ethical rules, including conflicts of interest or your failure to pay our legal fees and expenses when due. Our representation in any matter will also cease on completion of our work on that matter unless you ask us to perform additional work that we agree to undertake. Performing additional services for you on the same or any other matter is subject to these terms and conditions, our mutual concurrence and clearance of conflicts, if any. We are unable to assure you that matters for other clients will not conflict us out of additional matters you might later ask us to undertake. On completion of a matter, we may close our files and, absent a specific written undertaking to do so, will not thereafter be obligated to docket milestones, make additional or continuation filings, pursue appeals, take other steps on your behalf on the matter, or monitor or advise you with respect to changes in the law or circumstances that might bear upon or adversely affect the completed matter. If you wish to have us return material from your files after the conclusion of a particular matter, we will provide you such material at your request and expense. We will have no obligation to retain client files more than one year after the conclusion of a particular matter or our representation. Our representation of you will be deemed concluded at the time that we have rendered our final bill for services on the matter described in our engagement letter or any such additional matters that are clearly undertaken by us. Whether we will undertake any further matters and form an attorney-client relationship again will depend upon your request, our performance of a conflicts check and our expression to you of our willingness to accept any further matters.

**Alliances/Other Counsel.** Many of our clients also have international or other legal needs we cannot fulfill. This causes us from time to time to establish ongoing working relationships or strategic alliances with law firms in other jurisdictions. While our close relationships with our legal colleagues at these firms have helped us provide coordinated representation for many of our clients, these firms (and other firms we may recommend to our clients) are separate from and independent of Perkins Coie. We do not share personnel or fees, do not have common operations beyond occasional joint seminars and presentations, and must check any other firm's conflicts of interest before that firm's lawyers may jointly represent any of our clients. Under rules in certain jurisdictions where we practice, we must advise you that you may consult independent counsel to advise you regarding these documents governing our relationship, and we encourage you to do so if you like. Also, you retain the right to consult with independent counsel at any time while we represent you. However, we are not responsible for any advice an independent counsel may give you, and such consultation will be entirely at your expense.

**Questions.** We endeavor to deliver legal services effectively and efficiently and to render accurate and understandable billings. Please direct any questions about services or billing practices to your client service lawyer. Questions regarding the billing or payment status of your account may also be directed to the Client Accounting Department in our Seattle office at 1-800-261-3143 (206-359-3143 in the Seattle area).

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

Bill No. 11.a  
Date: February 3, 2015  
Subject: North Reservoir Project –  
Authorize the Mayor to sign the  
Final Contract Voucher  
Certificate

**FROM: Cathy Rosen, Public Works Director and Joe Stowell, City Engineer**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

Authorize the Mayor to sign the Final Contract Voucher Certificate for the North Reservoir project with Veterans Northwest Construction.

**BACKGROUND / SUMMARY INFORMATION**

This agenda bill recommends final acceptance of Veterans Northwest Construction's work on the North Reservoir Project.

On May 7, 2013, City Council approved a construction contract with Veterans Northwest Construction to build the North Reservoir in the amount of \$4,486,324.12. Staff and the Design Engineer inspected the work and considered it complete on January 9<sup>th</sup>, 2015. The final contract amount with Veterans Northwest Construction at the completion of work was \$4,283,636.93 including tax.

Eleven change orders were issued during the course of construction resulting from various additions to and deletions from the work that occurred during construction. The net result reduced the total contract amount by \$202,687.19.

The attached Final Contract Voucher Certification formally closes the contract with Veterans Northwest Construction for work on the project.

Remaining open contracts associated with the project include the following:

Professional Service	Vendor	Current Authorized Contract Maximum	Estimated Final Amount
Construction Management	KBA	\$332,123.00	\$237,000.00
Construction Support	Gray & Osborne	\$34,569.00	\$34,569.00

Final invoicing and closeout is expected on these professional service agreements by the end of June 2015.

**FISCAL IMPACT**

Funds Required: \$0

Appropriation Source: Water Utility Fund

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

January 15, 2013 – City Council authorized staff to proceed with advertisement of the North Reservoir Construction Project for competitive bidding.

May 7, 2013 – City Council authorized the Mayor to sign a contract with Veterans Northwest Construction in the amount of \$4,486,324.12 and authorized the City Engineer to administratively approve change orders to the construction contract totaling not more than \$200,000.00

**ATTACHMENTS**

1. [Final Contract Voucher Certification](#)



# Final Contract Voucher Certificate

Contractor: Veterans Northwest Construction, LLC			
Street Address: 2926 6 <sup>th</sup> Avenue South			
City: Seattle	State: WA	Zip: 98134	Date: January 21, 2015
City Project Number: ENG 06-43		Federal-Aid Project Number: na	
Contract Title: North Reservoir Project			
Date Work Physically Completed: January 9, 2015		Final Amount: \$4,283,636.93	

### Contractor's Certification

I, The undersigned, having first been duly sworn, certify that I am authorized to sign for the claimant; that in connection with the work performed and to the best of my knowledge no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Oak Harbor nor I have I rented or purchased any equipment or materials for any employee of the City of Oak Harbor; I further certify that the attached final estimate is a true and correct statement showing all the monies due me from the City of Oak Harbor for work performed and material furnished under this contract; that I have carefully examined said final estimate and understand the same and that I hereby release the City of Oak Harbor from any and all claims of whatsoever nature which I may have, arising out of the performance of said contract which are not set forth in said estimate.



x Walter A. Orzechowski  
 Contractor Authorized Signature Required  
Walter A. Orzechowski  
 Printed Signature Name

Subscribed and sworn to before me this 22 day of January 20 15

x Angel N. Vaughn Notary Public in and for the State of Washington  
 Notary Signature

residing at 2621 K St NE Apt B Auburn, WA 98002

### Public Works Department Certification

I certify the attached final estimate to be based upon actual measurements, and to be true and correct

Approved Date 1/22/15

x Amelida A. Hernandez 1/22/15  
 Project Engineer / Project Administrator Signature

x Joe Sorenson  
 City Engineer

The Mayor of Oak Harbor hereby accepts the completed contract pursuant to Section 2.330.010 of the Contract provisions and the Oak Harbor Municipal Code.

x \_\_\_\_\_ Mayor, City of Oak Harbor  
 \_\_\_\_\_ Date of Acceptance

Original To:  City Clerk    Copies to:  Project Engineer or Project Administrator     Contractor     File