City Council Special Meeting
Monday, January 23, 2012, 6:00 p.m.
City Hall – Council Chambers

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

ROLL CALL

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

Steve Powers, Interim City Administrator
Bill Hawkins, City Attorney
Doug Merriman, Finance Director
Cathy Rosen, Public Works Director
Eric Johnston, City Engineer
Larry Cort, Project Manager
Mark Soptich, Fire Chief
Renée Recker, Executive Assistant to the Mayor
Karen Crouch, Executive Assistant to the City Administrator

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS
Contract Revision – Strider Construction

Project Manager Larry Cort presented this agenda bill leading off with a PowerPoint presentation which showed the authorized budget, expenditures to date, and estimates to finish with regard to the Pioneer Way Reconstruction Project (attached as Exhibit A to these minutes). The second line of the spreadsheet represents Strider Construction. A contract revision is sought to increase the contract amount by $150,000 to account for cost increases attributable to the discovery of Native American human remains.
Dr. Cort drew attention to Perteet's line item which has been reduced, and that figures for archaeology – have not been determined since contractor selection is underway. Figures are also not in place for reburial as the City continues working with the Tribes on site selection and acquisition. In short, the $7,840,562 does not include Pit Road archaeological work or reburial.

<u>Council Questions with answers from Dr. Cort</u>
The City's share of PSE/Frontier Undergrounding - authorization and estimate to finish at $630,000 – does the City anticipate spending this amount?
Dr. Cort: The City is expecting to spend about that much considering night work, stronger vaults, and other expenditures.
When will underground and overhead conversions take place?
Dr. Cort: We want to see completion by February 6th, but PSE has been busy in the last weeks because of the weather. Poles are expected to come down as soon as possible and will take a week.

Dr. Cort talked about the agenda bill's outline of prior City Council action and key dates with respect to the City's contract with Strider Construction. He noted the November 4, 2011 date for project suspension which allowed archaeological investigations in Phase 4 to be completed. During this second suspension, the City revised the design for the northern parking spaces to eliminate the need for costly and time-consuming hand excavation in this area. The City applied for a revision to its Archaeological Excavation Permit to accommodate the revised design on November 15, 2011. Strider Construction returned to work on November 28, 2011. In common with the first suspension, Strider incurred costs associated with remobilizing equipment, personnel and subcontractors and site production and overhead inefficiencies as a result of the ongoing archaeological work and the revised design. On December 14, 2011, the City received approval for a revision to its Archaeological Excavation Permit that approved the revised design and authorized that last section of hand excavation within the southern sidewalk area. The sidewalk hand excavation was accomplished that same day, effectively completing the archaeological fieldwork. On December 28, 2011, the City Engineer approved Change Order 8 to account for Phase 4 remobilization costs and site production inefficiencies caused by the ongoing archaeological work and for added bid items resulting from the revised design. The net $9,345.05 reduction in the overall contract amount was the result of factoring in $172,865.00 worth of deductive changes from Strider's original bid on items where the projected final quantities were substantially less than the original estimate.

Looking ahead to the completion of the project, and in light of the second work stoppage precipitated by the ongoing archaeological excavation work, it is clear that Strider Construction has incurred additional costs due to the scheduling changes caused by working around the archaeological work and accommodating the revised design. In addition, there will be some remobilization costs in connection with utility pole removal and the need to patch sidewalks once the poles are out of the ground. The following summarizes the contract changes negotiated between the contractor, KBA as the City's construction manager and City staff as approved in Change Order 8:

Description	Change Order Amount
Additional work related to archaeology	$35,463.56
Revised plans and added bid items	42,019.56
Phase 4 remobilization	71,345.83
Utility pole removal/ repair remobilization	14,500.00
Subtotal	$163,328.95
Deductions to estimated quantities	-$172,865.00
Net Total for Change Order	-9,536.05

Staff requested that KBA work with the contractor to prepare a detailed estimate of the cost of all work remaining on the project. KBA's estimate in the amount of $112,588.45 was attached to the agenda bill. As several of the line items in KBA's spreadsheet represent estimated rather than known amounts, staff recommends that the contract amount with Strider Construction be increased by $150,000.00 to be able to respond to potential minor increases in costs. If approved, this increase would bring the revised maximum amount of the City's contract with Strider to $4,496,098.46.

Mayor Dudley called for public comments on this item.

Gerry Oliver, 740 SE Pioneer Way, Oak Harbor. The four-way stop; a lot of people are still missing those stop signs. Please think about adding blinking lights to bring drivers' attention to these signs.

There were no other public comments.

Council Discussion

Discussion followed regarding these amounts:

- Change Order 8's deducted $172,865.00
- KBA's $112, 588.45 estimation of remaining work costs
- Request to increase Strider's contract amount by $150,000.00.

Dr. Cort noted that the $172,865.00 represented Change Order No. 8's amount (additional archaeology work, revised plans and added bid items, Phase 4 remobilization, utility pole removal/repair remobilization, and a net positive of $9,536.05 from this change order) and that this amount is not directly relatable to KBA's $112, 588.45 estimate for remaining work costs. The $163,328.95 subtotal within Change Order No. 8 has paid for items that are not part of KBA's estimate. Asking for $150,000 allows for an amount that can respond to potential minor cost increases.

Council asked about the $37,411.55 difference between KBA's $112, 588.45 estimate and the requested $150,000 and who would have the authority to spend that difference (City Engineer). Dr. Cort noted that this is the best possible estimate right now and the City wants to be cautious as we approach the wrap-up stages on this project.

MOTION: **Councilmember Campbell moved to increase the contract amount with Strider Construction by $150,000. The motion was seconded by Councilmember Munns.**

Council discussion continued about increasing the contract amount or using authorization language instead of the recommended action as stated in the motion. Council also noted that the $150,000 is a not-to-exceed amount paid as Strider invoices the City. Dr. Cort added that it is important to recognize the distinction between the authorized amount and the contract amount. The contract includes unit prices; this is an increase in the authorization.

MOTION WAS WITHDRAWN:

Councilmember Campbell withdrew his motion and restated it.

MOTION: **Councilmember Campbell moved to increase the authorized contract amount with Strider Construction by $150,000. The motion was seconded by Councilmember Almberg and carried unanimously.**

Contract Amendment – SWCA Environmental Consultants
Project Manager Larry Cort presented this agenda bill and noted that SWCA Archaeologist Chris Miss was also in attendance to answer questions. The purpose of this agenda bill was to authorize the Mayor to sign Contract Amendment No. 2 to the professional services agreement with SWCA Environmental Consultants for archaeology services. Work under this agreement is pursuant to Archaeological Excavation Permit No. 2011-33 issued by the Washington State Department of Archaeology and Historic Preservation on July 28, 2011, and amended on October 3, 2011 and December 14, 2011. The amendment proposes to increase the contract amount from $290,000 to $465,000. Under the terms of the Time and Materials contract, SWCA is entitled to be compensated for the work performed so long as it is part of the Scope of Services outlined in the contract. All work performed to date is contained in the approved Scope of Services. Total compensation requested by SWCA is $125,560.13 more than the Council has authorized to date. In addition to the fieldwork requirements contained within the City's Archaeological Excavation Permit No. 2011-33 (which covers only the Pioneer Way location - not Pit Road), there are several other aspects of the permit that relate to faunal analysis, report preparation and plan preparation. Staff requested that SWCA submit an estimate of costs associated with these remaining permit requirements. These costs were contained in a memo to Larry Cort from Chris Miss dated December 28, 2011 which was part of the agenda bill's attachments. The vast majority of this contract increase is for work already performed by SWCA. It is attributable to the degree of field work needed to complete the work on Pioneer Way.

Ms. Miss talked to Council about the increase, completed and remaining work, faunal analysis, and the report and plan preparation which is part of the archaeological permit.

Mayor Dudley called for public comments.

Mel Vance, P.O. Box 2882, Oak Harbor. Mr. Vance asked for clarification: None of this covers any work on Pit Road, it is still all on Pioneer Way. Dr. Cort noted that this is correct, and that a separate contract will come before Council for Pit Road.

There were no other public comments.

Council Discussion

Council discussion followed about the requested amendment exceeding the original contract estimate, how to ensure this request will meet remaining costs, and if Council could receive weekly amount updates in conjunction with actual costs. It was noted that the amount of work would not change and Council discussion continued that any contract tracking system will not catch up with the amounts recognizing that the numbers presented would not be current numbers the next day.

Discussion ran to how contract estimates are reached (assumption of major or minor discovery) and that a major discovery would complicate and change an estimate. Ms. Miss talked about not having to dig beyond the level of disturbance, the good relationship with and cooperation of the Swinomish Tribe, how remains are stored, the number of intact remains, the location of remains, and how faunal analysis is used by the Tribes and as scientific information to help establish a base line for habitat.

Council discussion continued regarding SWCA's scope of work, the burial plan and cultural resources plan, and why the City is engaging in contract selection for archaeology on Pit Road (SWCA is also being considered). Selection would come back to Council.

In response to a Council question regarding Dr. Cort's statement in the agenda presentation – "if we had done things differently…" – Dr. Cort talked about the amount of work necessary to meet the state permit (the amount was not known until the work happened), that handling of the intact burials took a great deal of time, and how excavation work was based on the amount of materials.

Ms. Miss talked about the additional hours of monitoring work, but other than that, remaining tasks are straightforward. Ms. Miss also noted that SWCA began monitoring immediately without a contract in place as Council followed their process to approve the contract.

MOTION: **Councilmember Munns moved to authorize the Mayor to sign Contract Amendment No. 2 with SWCA to cover the last of the fieldwork and remaining permit work on SE Pioneer Way, increasing the not-to-exceed total compensation from $290,000 to $465,000. The motion was seconded by Councilmember Campbell and carried unanimously.**

FIRST REVIEW OF APPLICATIONS FOR CITY COUNCIL POSITION NO. 5
Interim City Administrator Steve Powers led this discussion and agenda bill for applications received regarding vacant City Council Position No. 5. Mr. Powers first reviewed the RCW language regarding City Council vacancies noting the importance of executive session use only for evaluation of candidate qualifications (see h below).

RCW 42.12.070
Filling nonpartisan vacancies.
RCW 42.12.070 states in part:

> "Where one position is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position." It also states "if a governing body fails to appoint a qualified person to fill a vacancy within 90 days....the county legislative authority .....shall appoint a qualified person to fill the vacancy."

RCW 42.30.110
Executive sessions.
RCW 42.30.110 (1)(h) states:

(1) "Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public."

As of January 1, 2012, Mayor Scott Dudley's previous City Council position (No. 5) is vacant. Council Position No. 5 needs the remaining term of office filled and served until a person is elected and sworn in immediately after certification of the regular election sometime in November of 2013. By Council motion on January 3, 2012, the full Council has chosen to review all applications in accordance with the timeline (as amended on January 3, 2012) to create a short list of no more than four candidates by February 1, 2012. The short list will be presented during City Council's regular February 7, 2012 meeting and short-listed candidates will be interviewed during City Council's February 21, 2012 meeting. A candidate will be selected at the February 21st meeting.

Council may meet in executive session to discuss applicant qualifications, but all interviews and the final appointment to fill this vacancy are conducted in an open public meeting. It was recommended that public comment not be taken with regard to candidate applications to allow Council review of the submitted written applications only.

Mayor Dudley called for Council Discussion.
Councilmember Almberg talked about the candidate address sheet which had been distributed to Council before the meeting and noted that two candidates did not live within the City limits and could be removed from the list. Council discussion followed about the use of an executive session to discuss qualifications, running through the candidates one-by-one in the open meeting and dropping candidates, that going down the list in this fashion with "yea or nay" seemed arbitrary, using a 1 through 10 numbering system and using this rating process in the opening meeting to reduce candidates, and a return to preference for an executive session to discuss qualifications with concern that those who are not selected may be embarrassed by the suggested ways to consider candidates' qualifications. Discussion continued about the amount of candidates for a short list – four or three.

Executive Session
MOTION: **Councilmember Almberg moved to go into executive session to whittle the list down to four candidates. Councilmember Severns seconded the motion.**

Councilmember Almberg had noted that a group of three had merit but preferred to stay with the original number for a candidate shortlist.

Mayor Dudley announced that by general consensus, the Council would go into executive session at 7:00 p.m. for 30 minutes and announce a time extension at 7:30 p.m. if needed.

The executive session ended at 7:28 p.m. and the meeting reconvened at that time.

The following text is verbatim:

Mayor Dudley
We did go into executive session, City Council went into executive session, to possibly come up with a short list of possible candidates for filling the vacant Council seat. If I can go ahead and turn to our Mayor Pro Tem Danny Paggao, did you come up with a short list, and if so, do you want to go ahead and announce those candidates?

Mayor Pro Tem Paggao
Thank you your honor. The Council has made a unanimous decision for the short list of four candidates for position no. 5 in the City Council. The names are: Richard Devlin, James Reynolds, Joel Servatius, and Jeffery Wallin. These four short list (candidates) will be interviewed by the Council and an announcement will be made when the interview will be made.

Mayor Dudley
Thank you. We appreciate it. We appreciate all those who did submit their names and there are many ways of giving back so don't be surprised if we call upon you for other special roles as well. At this time, that was our last active business.

Council Motion for an Agenda Item on February 7, 2012
Councilmember Severns introduced an item which required a second from another Council member to add an agenda item to be set over to a full Council meeting for consideration and possible action.

MOTION: **Councilmember Severns moved that this agenda item be placed on the regular Council agenda for the meeting of 2/7/2012. Specifically, I would like to have the Council discuss the direct and indirect costs in connection with the Mayor's recent decisions to terminate the employment of Paul Schmidt, Margery Hite, Chief Mark Soptich, and Chief Rick Wallace. To prepare for this discussion, I am requesting that our Finance Director Doug Merriman give this Council an accounting to include the following:**

- **All known costs of severance, including but not limited to, all benefits, costs of transition, and cost related to interim appointments and training, if any.**
- **Costs for release of liability from said terminated employees if anticipated.**
- **Anticipated sources of funds for the above costs if more than one source exists.**
- **An illustration of how these expenses will affect our existing budget.**

This motion was seconded by Councilmember Munns. A vote is not needed to place an item on a future agenda.

Council Remarks
Councilmember Almberg wanted to thank the four (Mr. Schmidt, Ms. Hite, Chief Soptich, and Chief Wallace) for their service: In my experience with each of them, particularly Mr. Schmidt, he will be missed by this Council member. He is well-regarded throughout the state and I will miss him. We will still be a functioning well-operating City, but I will miss all of them. Councilmember Severns held the same sentiments.

ADJOURN
With no other business coming before the Council, Mayor Dudley adjourned the meeting at 7:25 p.m.

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Connie T. Wheeler
City Clerk

Exhibit A

	Total to Date	Auth/Budget		Estimate to Finish	
Pre-Construction Costs	$ 1,004,592	$ 1,004,592	1	$ 1,004,592	
Roadway/City Utilities/Parking Alternate	$ 4,345,934	$ 4,346,098		$ 4,496,098	3
City Share of PSE/Frontier Undergrounding	$ 70,600	$ 630,000		$ 630,000	
Inspection / Testing	$ 21,200	$ 23,012		$ 23,012	
Surveyor	$ 111,598	$ 147,385		$ 147,385	
Construction Management	$ 300,280	$ 398,975		$ 398,975	
Other	$ 87,609	$ 185,000		$ 140,000	
Public Art (1% of project)	$ 19,804	$ 98,000	2	$ 98,000	
Construction Mitigation Outreach	$ 125,890	$ 167,500		$ 167,500	
Archaeology – Pioneer Way	$ 519,550	$ 520,000		$ 695,000	4
Archaeology – Pit Road	Contractor Selection Underway				
Project Engineering – Perteet/HBB	$ 35,338	$ 50,000		$ 40,000	
Reburial	Working with Tribes on Site Selection and Acquisition				
Total Project Cost	***$ 6,642,395***	***$ 7,570,562***		***$ 7,840,562***	
Original Budget Resolution				***$ 8,350,000***	

1 – Expended Substantially in the 2009-2010 biennium
2 – Expenditures funded from separate source
3 – Estimate includes recommended $150,000 contract increase
4 – Estimate includes recommended $175,000 contract increase