



**NOTICE OF WORKSHOP MEETING**

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NOTICE IS HEREBY GIVEN that the Oak Harbor City Council will hold a Workshop Meeting on Tuesday, June 4, 2013, at 3:00 – 5:00 p.m. The meeting will be held in the Council Chambers, 865 SE Barrington Drive.

DATED this 30th day May 2013.

Valerie J. Loffler, City Clerk

The City Council may meet informally in workshop sessions (open to the public) to do concentrated strategic planning, to review forthcoming programs of the City, receive progress reports on current programs or projects, or receive other similar information from the City Administrator, provided that all discussions and conclusions thereon shall be informal. Council shall make no disposition of any item at a workshop meeting. Public comment is not normally allowed at workshop meetings, although Council may allow, or request participation.

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**CITY OF OAK HARBOR  
CITY COUNCIL  
AGENDA**

**WORKSHOP MEETING**

**June 4, 2013 - 3:00 p.m.**

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**Council Discussion**

- Streamlining the Council Agenda
- Parliamentary Procedure



June 4, 2013

**CITY COUNCIL AGENDA**

6:00 p.m.

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1. **CALL TO ORDER**  
Roll Call/Pledge of Allegiance/Invocation  
  
**PRESENTATION OF OTHER NON-ACTION COUNCIL ITEMS**
  - Recognizing Lt. Don Baer, OHFD, 10 Years of Service
2. **APPROVAL OF AGENDA**
3. **CITIZEN COMMENT PERIOD**
4. **CONSENT AGENDA**
  - a. Minutes of the Regular City Council Meetings held May 7, 2013, and May 21, 2013
  - b. Approval of Accounts Payable Vouchers in the amount of \$181,097.45, consisting of Nos. 154285 through 154400
5. **HEARINGS AND ORDINANCES/RESOLUTIONS**
  - a. Ordinance 1658: Relating to Refunding the 2004 Sewer Bonds (Motion to Extend Public Hearing to 06/18/13)
  - b. Ordinance 1659: Relating to Park Reservation System and Amending OHMC 6.14.145 (2<sup>nd</sup> Reading/Adoption)
6. **OTHER BUSINESS**
  - a. Motion to authorize the Mayor to sign a Consultant Agreement with BHC Consultants for engineering consulting services for the Septic to Sewer Project on a time and materials basis in an amount not to exceed \$24,930
  - b. Motion to authorize the Mayor to sign the Agreement of Settlement and Release with New Cingular Wireless PCS, LLC
7. **EXECUTIVE SESSION** – Potential Litigation
8. **CITY ADMINISTRATOR COMMENTS**
9. **COUNCILMEMBER’S COMMENTS**
10. **MAYOR’S COMMENTS**
11. **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.

# City of Oak Harbor City Council Agenda Bill

Bill No. \_\_\_\_\_

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

Subject: \_\_\_\_\_

June 4, 2013

Employee Recognition –

Lt. Don Baer

FROM: Scott Dudley   
Mayor

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

 Larry Cort, City Administrator

 Doug Merriman, Finance Director

 Grant Weed, Interim City Attorney, as to form

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### PURPOSE

To recognize City employees for 10 years, or more, of service.

### AUTHORITY

It is the practice of the City to recognize dedicated employees who have completed 10 years, and then every five years thereafter, of service.

### FISCAL IMPACT DESCRIPTION

Funds Required: \$0.00

Appropriation Source: n/a

### SUMMARY STATEMENT

The Mayor and City Council will recognize Lt. Don Baer, Oak Harbor Fire Department, for 10 years of service with the City.

### STANDING COMMITTEE REPORT

None.

### RECOMMENDED ACTION

Congratulate Lt. Baer for his 10 years of service.

### ATTACHMENTS

None.

Oak Harbor City Council  
Regular Meeting Minutes  
May 7, 2013

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**CALL TO ORDER**

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

**PLEDGE OF ALLEGIANCE/INVOCATION**

Mayor Dudley led the Pledge of Allegiance, and Pastor Tim Geist of Bible Baptist Church gave the invocation.

**ROLL CALL**

City Clerk Valerie J. Loffler called the roll.

Present:

Mayor Scott Dudley  
Mayor Pro Tempore Danny Paggao  
Councilmember Rick Almberg  
Councilmember Jim Campbell  
Councilmember Tara Hizon  
Councilmember Beth Munns  
Councilmember Joel Servatius  
Councilmember Bob Severns

Staff Present:

City Administrator Larry Cort  
City Clerk Valerie J. Loffler  
Development Service Director Steve Powers  
Public Works Director Cathy Rosen  
Assistant City Attorney Nikki Esparza  
Chief of Police Ed Green  
Fire Chief Ray Merrill

**PRESENTATIONS OF OTHER NON-ACTION ITEMS**

Youth Commission "Caught in the Act" Program

Jonathan McLaughlin was recognized by the Youth Commission for his act of honesty and tenacity. He found a purse belonging to Jessica Muzzall, which she dropped in a parking lot. He located the owner and returned the purse with \$800 inside. When offered a reward, he simply asked them to "pay it forward."

At 6:09 p.m. Mayor Dudley announced a three-minute recess to allow Council time to congratulate Mr. McLaughlin and pose for a photograph.

The meeting reconvened at 6:12 p.m.

Recognition of Cathy Rosen's 15 Years of Service

City Administrator Dr. Larry Cort presented Cathy Rosen with a fleece jacket honoring her 15 years of service to the City. Cathy manages eight Public Works divisions and approximately 50 permanent employees in the department. She has been engaged in every aspect of Public Works operations and holds staff accountable in order to offer the best service to the citizens. Dr. Cort stated she has done an excellent job as Public Works Director for the past 15 years, and the City of Oak Harbor is very fortunate to have Cathy Rosen in our employ.

Proclamation for National Nurses Week

Councilmember Almberg was joined at the podium by Captain Jean Proano, Nurse Corps, Executive Officer; and Commander Brian McCann, Nurse Corps, as he read and presented the Proclamation for National Nurses Week.

Proclamation for Elks Youth Week

Councilmember Munns read the Proclamation for Elks Youth Week. The proclamation was presented to Bob Morrison.

American Red Cross Real Heroes Award

Police Chief Green announced recipients were Officer Jon Valenzuela, Officer Robert Mirabal, and Officer Jen Gravel.

Further, Officer Gravel joined Chief Green at the podium as he presented a Citizen Award to Paige Jackson from the Police and Fire Departments. Paige also earned the Real Hero distinction for assisting accident victim Farnie Calley.

Once again the meeting was recessed to congratulate Paige and take a photograph.

The meeting reconvened at 6:29 p.m.

Police Department Annual Report

Police Chief Ed Green presented the Police Department Annual Report.

**APPROVAL OF AGENDA**

**Motion:** Councilmember Hizon moved to place Item 6.i. before 6.a. The motion was seconded by Councilmember Almberg and carried unanimously.

**Motion:** Councilmember Hizon moved to table Item 5.a., Resolution 13-06. The motion was seconded by Councilmember Almberg.

Mayor Dudley and Councilmember Campbell questioned Councilmember Hizon's motion to table the Resolution and her intent regarding any future action.

Mayor Dudley pointed out the question on the floor is approval of the agenda. He confirmed with Councilmember Hizon that she wished to amend the agenda by removing Item 5.a. instead of moving to table the item at the time it's presented.

Councilmember Almberg stated the issue could be brought back when the meeting agenda is shorter.

The motion to amend the agenda by removing Resolution 13-06 carried 6 to 1; Councilmember Campbell opposed.

The agenda, as amended, was adopted by unanimous consent.

**CITIZEN COMMENT PERIOD**

Councilmember Almberg clarified the citizen comment period would conclude after 15 minutes.

Mike Radach expressed frustration about arranging his time to address Council on Resolution 13-06, only to have it removed from the agenda. He provided Council with a recommended revision.

Those speaking in opposition to Resolution 13-06 were:

Ron Lawler  
Tim Geist  
James Stock  
Ray Bouza  
Tom Smith  
Jim Kiesel

**Motion:** Councilmember Hizon moved to extend the time for Citizen Comment another 15 minutes. The motion was seconded by Councilmember Campbell and carried unanimously.

John Sheppard also spoke in opposition.

Randy Beumer submitted a letter in opposition.

Criston Skinner declared Council didn't advocate changing the invocation; it was the Mayor's proposal through the city attorney's office.

Rolando Ferris spoke in opposition.

Bob Olson warned Council about November's election.

Martha Yount encouraged citizens to participate in the Relay for Life. She also announced May is Lupus Awareness Month.

Public comment ended at 7:12 p.m., and the Mayor called for a recess.

The meeting reconvened at 7:21 p.m.

### **CONSENT AGENDA**

City Clerk Valerie J. Loffler read the Consent Agenda.

- a. Minutes of the Regular City Council meeting held April 16, 2013
- b. Approval of Accounts Payable Voucher Nos. 153901 through 154082 in the amount of \$733,000.58
- c. Motion to appoint Nora Daniel to the Community Police Advisory Board to fill an unexpired term ending March 2016
- d. Motion to excuse Councilmember Beth Munns from the Council meetings of May 21, 2013, and June 18, 2013
- e. Motion to re-appoint KC Pohtilla to the Park Board for a three-year term to expire May 2016
- f. Motion to appoint Emily Maughan to the Youth Commission for a three-year term to expire May 2016

**Motion:** Councilmember AlMBERG moved to approve Consent Agenda Items a, b, d and e, and to remove Consent Agenda Items c and f. The motion was seconded by Councilmember Campbell and carried unanimously.

Councilmember AlMBERG asked if the member being replaced on the Community Police Advisory Board was terminated or was it a resignation.

Mayor Dudley responded it was a voluntary resignation.

**Motion:** Councilmember AlMBERG moved to appoint Nora Daniel to the Community Police Advisory Board to fill an unexpired term ending March 2016. The motion was seconded by Councilmember Severns and carried unanimously.

Councilmember Campbell questioned any residency requirement for Youth Commission appointments, and Councilmember Hizon indicated there is no restriction for this position.

**Motion:** Councilmember Campbell moved, seconded by Councilmember Munns, to appoint Emily Maughan to the Youth Commission for a three-year term to expire May 2016. The motion carried unanimously.

## **HEARINGS AND ORDINANCES/RESOLUTIONS**

Resolution 13-10: Authorizing a Boat Sale for Delinquent Marina Charges  
Harbormaster Chris Sublet provided the staff report.

Council and staff discussed the process and associated timeframes.

Development Services Director Steve Powers indicated these Resolutions could be placed on the Consent Agenda once Council becomes familiar with the process as outlined by state law.

### **Resolution 13-10     A Resolution Authorizing Sale of a Boat for “Marina Charges”**

**Motion:** Councilmember Servatius moved to adopt Resolution 13-10. The motion was seconded by Councilmember AlMBERG and carried unanimously.

Resolution 13-11: Authorizing the Commission and Acquisition of Public Art known as “Island Spirit,” created by Artist Wayne Lewis  
Senior Planner Kamak Rajesh provided the staff report. Skip Pohtilla, Art Commission member, elaborated on the piece. Artist Wayne Lewis was introduced.

Councilmembers spoke in support and thanked the artist for his generosity.

### **Resolution 13-11     A Resolution by the City Council of Oak Harbor Authorizing the Commission and Acquisition of the Public Art Known as the “Island Spirit,” Created by Artist Wayne Lewis**

**Motion:** Councilmember Munns moved to adopt Resolution 13-11. The motion was seconded by Councilmember Campbell and carried unanimously.

## OTHER BUSINESS

Lease Agreement with Option to Purchase with Freedom Properties, LLC  
City Administrator Dr. Larry Cort provided the staff report.

Councilmember Hizon spoke in support and asked about the City's intent for the rental on the property.

Dr. Cort replied the rental is not included in the lease.

Councilmember AlMBERG asked how the City would protect itself from potentially buying something less than what is represented for \$267,000, if the current owner removed all the timber value.

Property owner Chris Terrell stated the property would remain in its present condition.

Assistant City Attorney Nikki Esparza recommended revised language be included in the lease agreement, and Mr. Terrell stipulated to the same.

Councilmembers discussed continued use of the seaplane base until the lease takes effect and improvements to the new site.

**Motion:** Councilmember Servatius moved to authorize the Mayor to sign the Lease Agreement with Option to Purchase with Freedom Properties, LLC, including language specifying the property will be preserved in the present condition. The motion was seconded by Councilmember AlMBERG and carried unanimously.

Professional Services Agreement with Equinox Research Consulting International

City Engineer Joe Stowell provided the staff report for the contracts relating to the Wastewater Treatment Plant Project. He also introduced Kelly Bush with ERCI and Craig Fullerton with Fullerton & Associates.

KC Pohtilla asked if the archaeology contract included the entirety of the park and RV area.

Mr. Stowell explained all the records are filed with the State and as the information accumulates it will be reflected on the sensitivity map.

Councilmember AlMBERG and Kelly Bush discussed how time allocations and unit prices are determined.

Councilmember Severns expressed his concern over the cost of the entire project and the effect on the ratepayers.

**Motion:** Councilmember Hizon moved to authorize the Mayor to sign a Professional Services Agreement with Equinox Research Consulting International for Archaeological Services for the Wastewater Treatment Plant (WWTP) Project, in the amount of \$14,332.98 and a management reserve of \$2,000.00. The motion was seconded by Councilmember AlMBERG and carried unanimously.

Professional Services Agreement with Fullerton & Associates for Real Estate & Property Services

Councilmember Severns discussed the contract amount and suggested amending the proposed motion to include “time and materials.”

**Motion:** Councilmember Almberg moved to authorize the Mayor to sign a Professional Services Agreement with Fullerton & Associates for Real Estate & Property Services related to the WWTP Project for time and materials in an amount not to exceed \$16,500 and a management reserve of \$3,500. The motion was seconded by Councilmember Servatius and carried unanimously.

North Reservoir Project Award

City Engineer Joe Stowell provided a staff report on the contracts associated with the North Reservoir Project. He introduced Walter Orzechowski, owner of Veterans Northwest Construction, LLC, and the project superintendent and project manager.

Mr. Stowell suggested a \$200,000 reserve instead of \$400,000.

Councilmembers discussed funding sources and interest rates, management reserve amounts, use of local contractors, the boundary line adjustment, water capacity and improvements to fire flow.

**Motion:** Councilmember Hizon moved to award the North Reservoir Project to Veterans Northwest Construction, LLC, in the amount of \$4,486,324.12, plus all applicable taxes; and to authorize the City Engineer to administratively approve changes to the construction contract totaling not more than \$200,000.00. The motion was seconded by Councilmember Severns and carried unanimously.

Consultant Agreement with KBA, Inc.

**Motion:** Councilmember Almberg moved to authorize the Mayor to sign a Consultant Agreement with KBA, Inc. for construction management services related to the North Reservoir Project in the amount of \$ and a management reserve of \$ 10,000. The motion was seconded by Councilmember Campbell and carried unanimously.

Consultant Agreement with Materials Testing and Consulting

City Administrator Dr. Larry Cort pointed out that although the motion is correct, some of the dates in the document need to be corrected.

Mr. Stowell clarified the term of the contract should be changed from March to May 2013 and extend through May 31, 2014. In Section 3.3, the dollar amount should be \$11,658 instead of \$8,420.

**Motion:** Councilmember Paggao moved to authorize the Mayor to sign a Consultant Agreement with Materials Testing and Consulting for construction materials inspection services for the North Reservoir Project with a not-to-exceed limit of \$73,465.50 and a management reserve of \$5,000.00. The motion was seconded by Councilmember Munns and carried unanimously.

Professional Services Agreement with Frazier Surveying, LLC

**Motion:** Motion to authorize the Mayor to sign a Professional Services Agreement with Frazier Surveying, LLC, for construction staking services for the North Reservoir Project with a not-to-exceed limit of \$10,658 and a management reserve of \$1,000. The motion was seconded by Councilmember Hizon and carried unanimously.

Consultant Agreement with Gray & Osborne, Inc.

**Motion:** Councilmember Servatius moved to authorize the Mayor to sign a Consultant Agreement with Gray & Osborne, Inc. for construction support services for the North Reservoir Project in an amount not to exceed \$24,950 and a management reserve of \$1,300. The motion was seconded by Councilmember Munns and carried unanimously.

**Motion:** Councilmember Munns moved to extend the Council meeting to 10:30 p.m. The motion was seconded by Councilmember Campbell and carried unanimously.

AWC Annual Business Meeting

City Administrator Dr. Larry Cort provided the staff report.

Councilmember Hizon and Dr. Cort discussed travel budget balances.

Dr. Cort clarified the workshop to discuss travel budgets would be held on May 21<sup>st</sup>, and that tonight's action is to appoint voting delegates.

By general consensus, Council postponed appointing delegates until May 21, 2013.

**EXECUTIVE SESSION**

At 9:09 p.m. Mayor Dudley announced an executive session of approximately one hour to discuss potential and pending litigation, property acquisition, and labor negotiations. No action would be taken.

The meeting reconvened at 10:08 p.m.

**CITY ADMINISTRATOR COMMENTS**

City Administrator Dr. Larry Cort discussed upcoming workshop dates.

**COUNCILMEMBER COMMENTS**

Councilmember Munns reported she attended the ROTC National announcement where the Wildcats Company, representing Area 13 that includes the State of Washington, was 1 of 25 out of over 500 units across the world selected to participate in the national contest.

**MAYOR'S COMMENTS**

Mayor Dudley reported on the new artwork in the Council Chambers. The seven paintings were done by Arts Educator Kit Christopherson's students at Oak Harbor High School. The artists are: Caitlin Woodward, Keiko Betcher, Anastasia Schlicht, Megan Kanterman, Micaiah Davis and Jessica Busig.

## ADJOURNMENT

**Motion:** Councilmember Campbell moved, seconded by Councilmember Alberg, to adjourn the meeting.

The meeting adjourned at 10:16 p.m.

Valerie J. Loffler, City Clerk

Oak Harbor City Council  
Regular Meeting Minutes  
May 21, 2013

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**CALL TO ORDER**

Mayor Scott Dudley called the meeting to order at 6:01 p.m.

**PLEDGE OF ALLEGIANCE/INVOCATION**

Mayor Dudley led the Pledge of Allegiance, and Pastor Michael Hurley of Life Church gave the invocation.

**ROLL CALL**

City Clerk Valerie J. Loffler called the roll.

Present:

Mayor Scott Dudley  
Mayor Pro Tempore Danny Paggao  
Councilmember Rick Almberg  
Councilmember Jim Campbell  
Councilmember Tara Hizon  
Councilmember Joel Servatius  
Councilmember Bob Severns

Staff Present:

Finance Director Doug Merriman  
Development Service Director Steve Powers  
Public Works Director Cathy Rosen  
City Clerk Valerie J. Loffler  
Interim City Attorney Grant Weed  
Chief of Police Ed Green  
Fire Chief Ray Merrill

Councilmember Beth Munns was excused.

**PRESENTATIONS OF OTHER NON-ACTION ITEMS**

Proclamation for Relay for Life

Councilmember Paggao was joined at the podium by Relay for Life team members as he read the Proclamation for Relay for Life of Whidbey Island, to be held May 31<sup>st</sup> to June 1<sup>st</sup>. Event Chair Carla Sharkey accepted the proclamation and provided details for participating and dedicating a luminary.

Proclamation for National Public Works Week

Councilmember Campbell was joined at the podium by Public Works Director Cathy Rosen as he read the Proclamation for National Public Works Week. Ms. Rosen expressed her appreciation and thanked Council for their support.

Recognition of Dennis Wright's 20 Years of Service

Fire Chief Ray Merrill presented Dennis Wright with a fleece jacket honoring his 20 years of service to the City.

Economic Development Briefing

Senior Planner Ethan Spoo presented a briefing on Oak Harbor's economic profile and needs assessment.

### Downtown Mural

Karen Mueller shared conceptual photos and provided a progress report on the downtown mural project that she spear-headed. She discussed donation of supplies and needed contributions for hiring an artist.

### **APPROVAL OF AGENDA**

There being no objection, the Agenda was approved as presented.

### **CITIZEN COMMENT PERIOD**

Martha Yount thanked Council for recognizing Relay for Life with a proclamation. She encouraged recognition of other illnesses such as Multiple Sclerosis and Lupus.

### **CONSENT AGENDA**

City Clerk Valerie J. Loffler read the Consent Agenda.

- a. Minutes of the Regular City Council Meeting held May 7, 2013 (POSTPONED)
- b. Motion to approve Accounts Payable Voucher Nos. 154083 through 154095 in the amount of \$975.38; and \$571,026.65, consisting of Nos. 154096 through 154284
- c. Motion to appoint Dr. Abdel-Monem to fill the unexpired term of Position 1 on the Marina Advisory Board, which term expires December 2013
- d. Motion to appoint Terry Lacey to fill the unexpired term on the Community Police Advisory Board, which expires April 2014
- e. Motion to appoint Erica Wasinger as the Alternate member of the Parks Board
- f. Motion to appoint Councilmembers #1, #2 and #3 (to be determined at 05/21/13 Workshop Meeting) as voting delegates to serve at the 2013 Association of Washington Cities (AWC) Annual Business Meeting

**Motion:** Councilmember Severns moved to approve Consent Agenda Items b, c, d and e; and to pull Items a and f. The motion was seconded by Councilmember Alberg and carried unanimously.

**Motion:** Councilmember Severns moved to appoint Councilmembers Servatius, Hizon and Munns to serve as voting delegates at the 2013 Association of Washington Cities Annual Business Meeting. The motion was seconded by Councilmember Alberg.

Council discussed whether or not Mrs. Munns should be appointed since she is an AWC Board member.

Councilmember Alberg moved to amend the motion to identify Mayor Scott Dudley as the alternate voting delegate. The motion was seconded by Councilmember Campbell and carried unanimously.

The motion as amended carried unanimously.

### **HEARINGS AND ORDINANCES/RESOLUTIONS**

Resolution 13-12: Eliminating the Eligibility of City of Oak Harbor Elected Officials to Participate in the Group Medical Plans

Finance Director Doug Merriman provided the staff report.

Bonnie Tchuileng spoke in support of Councilmembers maintaining their healthcare by a group plan.

Councilmember Hizon clarified the Mayor is considered fulltime and provided healthcare benefits, in addition to 75% paid dependent care; and that Councilmembers are considered part-time employees offered only the employee portion of healthcare.

Ms. Hizon stated she wanted to be considered fulltime and appropriately categorized.

Councilmembers expressed support for postponing any action until after the discussion takes place on employees' benefits.

Finance Director Doug Merriman provided clarification on the amount of money saved by eliminating medical benefits for Councilmembers.

Councilmember AlMBERG criticized Mayor Dudley and accused him of scheduling this discussion during campaign season.

**Motion:** Councilmember AlMBERG moved to table Agenda Items 5.a. and 6.c. until the second meeting in November. The motion was seconded by Councilmember Hizon.

Mayor Dudley stated the motion was improper and Councilmember Servatius appealed the decision of the Chair.

Mayor Pro Tem Paggao asked the city attorney for an opinion.

Interim City Attorney Grant Weed stated the two agenda items should be discussed separately.

Councilmember AlMBERG withdrew his motion and Councilmember Hizon withdrew the second.

**Resolution 13-12 Eliminating the Eligibility of City of Oak Harbor Elected Officials to Participate in the Group Medical, Dental and Vision Plans**

**Motion:** Councilmember AlMBERG moved to table Resolution 13-12 until the second meeting in November 2013. The motion was seconded by Councilmember Hizon and carried unanimously.

**OTHER BUSINESS**

Ordinance 1658: Refunding 2004 Water/Sewer Bonds (First Reading)

Finance Director Doug Merriman provided a staff report and informed Council that the Ordinance is being introduced tonight and would need to be set for a public hearing on June 4, 2013.

**Ordinance 1658:** **An ordinance of the City of Oak Harbor, Washington, relating to contracting indebtedness; providing for the issuance, sale and delivery of not to exceed \$[1,645,000] aggregate principal amount of water and sewer revenue refunding bonds to provide funds to advance refund the callable portion of the City's**

**Water and Sewer Revenue Bonds, 2004, and to pay the administrative costs of such refunding and the costs of issuance and sale of the bonds; fixing or setting parameters with respect to certain terms and covenants of the bonds; appointing the City's designated representative to approve the final terms of the sale of the bonds; and providing for other related matters.**

**Motion:** Councilmember Hizon moved to set a public hearing for June 4, 2013. The motion was seconded by Councilmember Campbell and carried unanimously.

Ordinance 1659: Park Facility Reservation System (First Reading)

Public Works Director Cathy Rosen provided a staff report. She noted this is first reading and introduction of the ordinance and recommended Council set a public meeting on June 4, 2013.

**Ordinance 1659: An Ordinance Amending Section 6.14.145 of the Oak Harbor Municipal Code Relating to the Park Reservation Facility System**

**Motion:** Councilmember Servatius moved to set a public meeting for June 4, 2013. The motion was seconded by Councilmember Campbell.

Finance Director Doug Merriman pointed out it wasn't necessary for Council to set a public meeting date.

The motion, having already been stated by the Chair, failed unanimously.

Elected Officials Salary Review

Finance Director Doug Merriman explained there are two methods to setting Council salaries. Council can set their own salary, although it wouldn't take effect until the next term begins, or Council can establish a salary commission. Staff is looking for direction to either appoint members to the salary commission established by OHMC 2.02, or adopt an ordinance to abolish it and have Council make the decision.

Councilmembers Servatius, Almberg, Severns and Hizon agreed campaign season is not the time to address council salaries.

**Motion:** Councilmember Almberg moved to table Item 6.c. until the second meeting in November 2013. The motion was seconded by Councilmember Hizon and carried unanimously.

**EXECUTIVE SESSION**

At 7:36 p.m. Mayor Dudley announced an executive session of approximately 30 minutes to discuss potential and pending litigation, and labor negotiations.

City Attorney Grant Weed clarified there are five items for discussion. In addition to labor negotiations, one item is potential litigation, two are pending litigation, and one concerns review of employee performance. No action would be taken.

At 8:10 p.m. Mayor Dudley announced another 20 minutes was needed for the Executive Session.

At 8:30 p.m., Mayor Dudley announced another five minutes was necessary.

The meeting reconvened at 8:38 p.m.

### **COUNCILMEMBER COMMENTS**

Councilmember Severns reported he attended the regular May meeting of the Economic Development Committee. They're helping sponsor the Wedding on Whidbey event show, looking forward to the business and home shows, and they're also setting up a 501(c3) foundation.

Councilmember Hizon expressed her appreciation to City Clerk Valerie Loffler for preparing the Council Meeting Schedule.

Councilmember Servatius asked for staff to revisit parliamentary issues with Ann McFarland.

### **MAYOR'S COMMENTS**

Mayor Dudley stated the items regarding Council medical benefits and salaries were not politically motivated. The reason for the timing was to allow employees to prepare for changes instituted on January 1<sup>st</sup> and to take advantage of open enrollment periods. He expressed his disappointment.

### **ADJOURNMENT**

**Motion:** Councilmember Campbell moved, seconded by Councilmember AlMBERG, to adjourn the meeting.

The meeting adjourned at 8:42 p.m.

Valerie J. Loffler, City Clerk

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

Bill No. C/A 4.b.  
Date: June 4, 2013  
Subject: Approval of Accounts Payable  
Vouchers

**FROM:** Doug Merriman, Finance Director

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

 Scott Dudley, Mayor  
 Larry Cort, City Administrator  
 Grant Weed, Interim City Attorney, as to form

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**SUMMARY STATEMENT**

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.

**AUTHORITY**

Oak Harbor Municipal Code Chapter 3.72.

**RECOMMENDED ACTION**

Motion to approve the accounts payable vouchers in the amount of \$181,097.45, consisting of Nos. 154285 through 154400.

**ATTACHMENTS**

Voucher List

Voucher List  
City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154285	5/16/2013	0004903 US BANK	4485591000119689		CREDIT CARD PURCHASES	7,402.54
					<b>Total :</b>	<b>7,402.54</b>
154286	5/28/2013	0000950 LICENSING, WASHINGTON STATE DEPT OF	052013		CONCEALED WEAPONS PERMITS	180.00
					<b>Total :</b>	<b>180.00</b>
154287	5/29/2013	0000028 ALL ISLAND LOCK & KEY	22256 45736		KEYS LEVER REPLACEMENT	9.13 109.24
					<b>Total :</b>	<b>118.37</b>
154288	5/29/2013	0000029 ALL PHASE ELECTRIC SUPPLY	0952-653370 0952-655561		LIGHTING CONTACTOR	126.53 78.50
					<b>Total :</b>	<b>205.03</b>
154289	5/29/2013	0000033 ALPINE PRODUCTS, INC	TM-131787		TRAFFIC PAINT	1,048.22
					<b>Total :</b>	<b>1,048.22</b>
154290	5/29/2013	0000036 AMERICAN PUBLIC WORKS	40554		MEMBERSHIP RENEWAL	608.00
					<b>Total :</b>	<b>608.00</b>
154291	5/29/2013	0000712 AMERIGAS	3017736753		PROPANE/DOG POUND	729.66
					<b>Total :</b>	<b>729.66</b>
154292	5/29/2013	0000046 APPLIED INDUSTRIAL	7000556425		PARKER HANNIFIN	133.33
					<b>Total :</b>	<b>133.33</b>
154293	5/29/2013	0006865 ARMADA	052213		COLLECTION FEE/2610794/2352002-AT	283.10
					<b>Total :</b>	<b>283.10</b>
154294	5/29/2013	0000053 ARROW PEST CONTROL, INC	146973		PEST CONTROL	108.70
					<b>Total :</b>	<b>108.70</b>
154295	5/29/2013	0004019 ASSOCIATED PETROLEUM PRODUCTS	0434094-IN 0436531-IN		FUEL FUEL	4,803.41 15,493.93
					<b>Total :</b>	<b>20,297.34</b>
154296	5/29/2013	0000159 AT&T MOBILITY	287249477751X0524201		AIRCARDS	421.32

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154296	5/29/2013	0000159 0000159 AT&T MOBILITY	(Continued)			<b>Total : 421.32</b>
154297	5/29/2013	0000065 AVOCET ENVIRONMENTAL TESTING	1301398-IN		TESTING SERVICES	112.00
						<b>Total : 112.00</b>
154298	5/29/2013	0005045 BAYVIEW EMBROIDERY 'N PRINT	OHFD52213		UNIFORM T-SHIRTS	330.45
						<b>Total : 330.45</b>
154299	5/29/2013	0005081 BICYCLES NORTHWEST	8585		SADDLE/PUMP/TUBES/BAG/HELMET/G	195.56
						<b>Total : 195.56</b>
154300	5/29/2013	0000103 BLADE CHEVROLET, INC	404938		APR 2013/VEHICLE RENTAL	600.00
						<b>Total : 600.00</b>
154301	5/29/2013	0000109 BLUMENTHAL UNIFORMS	997031-01 997295		UNIFORM ITEMS/CARTER UNIFORM ITEMS/RODNEY	231.44 343.49
						<b>Total : 574.93</b>
154302	5/29/2013	0000112 BOB BARKER COMPANY, INC	WEB000267909		HOOD	59.95
						<b>Total : 59.95</b>
154303	5/29/2013	0006769 BRAUN CONSULTING GROUP	1643		APR 2013/RETAINER	2,650.00
						<b>Total : 2,650.00</b>
154304	5/29/2013	0000137 BRIM TRACTOR COMPANY	IM65638		BOLT/WASHER/NUT	94.87
						<b>Total : 94.87</b>
154305	5/29/2013	0002644 C JOHNSON CONSTRUCTION, INC	3		PROF SVC/FORT NUGENT PARK PICNIC	11,718.10
						<b>Total : 11,718.10</b>
154306	5/29/2013	0000143 CADA	1ST HALF 2013		1ST HALF 2013/CRIMINAL JUSTICE FUN	2,532.50
						<b>Total : 2,532.50</b>
154307	5/29/2013	0000146 CAPITAL INDUSTRIES INC	082116		CASTER/BOTTOM ARROW	1,681.92
						<b>Total : 1,681.92</b>
154308	5/29/2013	0000627 CAPITAL ONE COMMERCIAL	130603065211 156726955211		SUPPLIES SUPPLIES	334.69 497.06

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154308	5/29/2013	0000627 CAPITAL ONE COMMERCIAL	(Continued) 185776655211		SUPPLIES	326.75
<b>Total :</b>						<b>1,158.50</b>
154309	5/29/2013	0000150 CASCADE NATURAL GAS	08793000004 18583000007 36624000000 58793000009 80434000008 82193000005 90134000000		NATURAL GAS/POLICE STATION NATURAL GAS/TREATMENT PLANT NATURAL GAS/FIRE STATION NATURAL GAS/CITY HALL NATURAL GAS/CITY SHOP NATURAL GAS/ANNEX NATURAL GAS/ADULT CARE CENTER	149.44 10.00 520.07 427.60 820.98 32.01 40.83
<b>Total :</b>						<b>2,000.93</b>
154310	5/29/2013	0000167 CHEVRON AND TEXACO BUSINESS	579053		FUEL	219.66
<b>Total :</b>						<b>219.66</b>
154311	5/29/2013	0001563 CHICAGO TITLE COMPANY	245358649-1 245358651-1 245358656-1		SUBDIVISION GUARANTEE/CERTIFICA SUBDIVISION GUARANTEE/CERTIFICA SUBDIVISION GUARANTEE/CERTIFICA	271.75 271.75 271.75
<b>Total :</b>						<b>815.25</b>
154312	5/29/2013	0000172 CHRISTIANS TOWING STORAGE	25987		TOWING SERVICES	196.75
<b>Total :</b>						<b>196.75</b>
154313	5/29/2013	0000179 CLERKS PETTY CASH	052313		PETTY CASH	149.30
<b>Total :</b>						<b>149.30</b>
154314	5/29/2013	0004520 COASTAL WEAR PRODUCTS	3977		GUTTERBROOM	252.73
<b>Total :</b>						<b>252.73</b>
154315	5/29/2013	0005076 CODE 4 PUBLIC SAFETY EDUCATION	11651		REGISTRATION/BAILEY	169.00
<b>Total :</b>						<b>169.00</b>
154316	5/29/2013	0005773 COMCAST	8498300270032002 8498300270032028		CABLE SERVICES XFINITY	111.50 8.04
<b>Total :</b>						<b>119.54</b>
154317	5/29/2013	0000197 CONCRETE NORWEST	875447		0155A	1,129.12

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154317	5/29/2013	0000197 CONCRETE NORWEST	(Continued) 877028		0155A	339.01
<b>Total :</b>						<b>1,468.13</b>
154318	5/29/2013	0000202 COREY OIL COMPANY	73818		FUEL	35.00
<b>Total :</b>						<b>35.00</b>
154319	5/29/2013	0001126 COSTCO WHOLESALE MEMBERSHIP	218300094		MEMBERSHIP	165.00
<b>Total :</b>						<b>165.00</b>
154320	5/29/2013	0000211 CREDIT BUREAU OF ISLAND COUNTY	052213		COLLECTION FEE-36-437000-01-PRYOI	198.91
<b>Total :</b>						<b>198.91</b>
154321	5/29/2013	0000222 CUSTOM ENGRAVING	13-503		CAB NAME TAGS	76.09
<b>Total :</b>						<b>76.09</b>
154322	5/29/2013	0000247 DIAMOND RENTALS	1-502855-12 1-504393-9 1-505564-7		PORTABLES PORTABLES PORTABLES	49.95 49.95 49.95
<b>Total :</b>						<b>149.85</b>
154323	5/29/2013	0000273 EDGE ANALYTICAL, INC	13-08261		TESTING SERVICES	277.00
<b>Total :</b>						<b>277.00</b>
154324	5/29/2013	0002900 FASTENAL	WAOAK13948 WAOAK14112 WAOAK14130 WAOAK14139 WAOAK14150		CABLE TIES/CONNECTORS CONNECTOR DRILL BITS FASTENING SERVICES BITS	51.74 59.56 34.14 58.42 32.57
<b>Total :</b>						<b>236.43</b>
154325	5/29/2013	0003413 FIRE SERVICE BOOKSTORE	300000196		PUBLICATIONS	130.86
<b>Total :</b>						<b>130.86</b>
154326	5/29/2013	0006093 FRAZIER SURVEYING, LLC	62		SURVEYING SERVICES	5,468.00
<b>Total :</b>						<b>5,468.00</b>
154327	5/29/2013	0000355 FRONTIER	007-9244		CURRENT PHONE CHARGES	282.32

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154327	5/29/2013	0000355 FRONTIER	(Continued)			
			675-1572		CURRENT PHONE CHARGES	58.75
			675-2111		CURRENT PHONE CHARGES	59.18
			675-3121		CURRENT PHONE CHARGES	53.42
			675-6794		CURRENT PHONE CHARGES	54.53
			679-8702		CURRENT PHONE CHARGES	65.75
			770-2694		CURRENT PHONE CHARGES	40.11
			770-2715		CURRENT PHONE CHARGES	31.50
					<b>Total :</b>	<b>645.56</b>
154328	5/29/2013	0000325 FRONTIER FORD	95018		ADDREMAN	2,620.83
			95076		NONCABLE	73.06
			95077		SUPPORT	83.35
			95087		DEFLECT	34.46
			95167		BUMPER	21.11
			95176		CLIP	11.57
			CM95018		ADDCORE	-652.20
					<b>Total :</b>	<b>2,192.18</b>
154329	5/29/2013	0001706 GARDNER, PAT	EXP REIMB		EXP REIMB	1,077.60
					<b>Total :</b>	<b>1,077.60</b>
154330	5/29/2013	0004145 GEOENGINEERS, INC	0123937		PROF SVC/GEOTECHNICAL SERVICES	20,172.65
					<b>Total :</b>	<b>20,172.65</b>
154331	5/29/2013	0001598 GORDON D KEYES DDS, INC	032713		INMATE SERVICES	187.00
			050813		INMATE SERVICES	250.00
					<b>Total :</b>	<b>437.00</b>
154332	5/29/2013	0005515 HDR ENGINEERING, INC	00395276-H		PROF SVC/UTILITY RATE AND FEE UPI	1,510.66
					<b>Total :</b>	<b>1,510.66</b>
154333	5/29/2013	0003095 HOME DEPOT CREDIT SERVICES	1045234		MULTIPKS/PLUGS/HOSE/MICROTUBES	28.13
			2020579		TARP	273.53
			2025966		RAL/STUDS	203.39
			2025968		GLUE	4.87
			3053751		SHOWER ROD	10.55

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154333	5/29/2013	0003095 HOME DEPOT CREDIT SERVICES	(Continued)			
			3184810		WHEELBARROW	135.83
			3563648		PTN/CARBOLT/NUTS/WASHERS	57.56
			4092301		30 SEC GAL	10.07
			4164982		TK WASP	6.46
			5570251		TRI TAP	14.12
			6092100		MOWER	433.72
			6562627		PLC7WPL-S	27.01
			7021762		100WMPS	119.42
			8021426		LEAKSEAL	10.84
			8024262		SPRAYER/MOSS OUT/WEED N FEED	69.93
			8090783		PLC4T832W	-10.82
			9026807		PLIERS/TAPE/GLOVES	284.98
			9045326		CENTERSINK/SCREW/SOCKET/BALLAS	47.84
			9081807		PIPE	21.28
			9096288		WONDER BARS	21.66
					<b>Total :</b>	<b>1,770.37</b>
154334	5/29/2013	0003854 ICICLE INN	7220		HOTEL ACCOMMODATIONS/MERRILL	387.32
					<b>Total :</b>	<b>387.32</b>
154335	5/29/2013	0005872 IMPAIRED DRIVING IMPACT PANEL	051513		MAY 2013/DUI/UNDERAGE DRINKING P	166.67
					<b>Total :</b>	<b>166.67</b>
154336	5/29/2013	0000417 INDUSTRIAL BOLT & SUPPLY	535147-2		TEES/CAPS	44.46
			536115-1		SUPER STRIP/FLAP	238.79
			536118-1		PANS/SPRAY/STUDS/RINGS/TIES	151.18
					<b>Total :</b>	<b>434.43</b>
154337	5/29/2013	0000418 INDUSTRIAL TRAINING SERVICE	052213		FORKLIFT TRAINING FEE	2,100.00
					<b>Total :</b>	<b>2,100.00</b>
154338	5/29/2013	0001469 INTERNATIONAL CODE COUNCIL	2945166		MEMBERSHIP	125.00
					<b>Total :</b>	<b>125.00</b>
154339	5/29/2013	0000401 ISLAND COUNTY AUDITOR	B0038207		2013 VOTER REGISTRATION	20,077.32
					<b>Total :</b>	<b>20,077.32</b>

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154340	5/29/2013	0002383 ISLAND COUNTY SHERIFF	050913		INMATE SERVICES	13.08
<b>Total :</b>						<b>13.08</b>
154341	5/29/2013	0000415 ISLAND DISPOSAL	040213 3219285		MAR 2013/COLLECTION CHARGES RECYCLING	8,680.76 40.00
<b>Total :</b>						<b>8,720.76</b>
154342	5/29/2013	0000438 ISLAND PAINT & GLASS	24660		PAINT	269.20
<b>Total :</b>						<b>269.20</b>
154343	5/29/2013	0000441 ISLAND SYSTEMS	212196 212501 214106 250300		WATER/MARINA WATER/MARINA WATER/MARINA WATER/MARINA	11.80 11.80 11.80 11.80
<b>Total :</b>						<b>47.20</b>
154344	5/29/2013	0000454 JET CITY EQUIPMENT RENTAL	18885		CONCRETE DUMPING	23.48
<b>Total :</b>						<b>23.48</b>
154345	5/29/2013	0000485 KRIEG CONSTRUCTION	7877		ASPHALT	228.40
<b>Total :</b>						<b>228.40</b>
154346	5/29/2013	0000979 LES SCHWAB	41400062684		THRUST ANGLE ALIGNMENT	61.14
<b>Total :</b>						<b>61.14</b>
154347	5/29/2013	0000950 LICENSING, WASHINGTON STATE DEPT OF	0044502		LICENSE RENEWAL/STOWELL	116.00
<b>Total :</b>						<b>116.00</b>
154348	5/29/2013	0000950 LICENSING, WASHINGTON STATE DEPT OF	052113		NOTARY FEE	30.00
<b>Total :</b>						<b>30.00</b>
154349	5/29/2013	0000515 LOGGERS & CONTRACTORS, INC	00058477		HOSE	151.91
<b>Total :</b>						<b>151.91</b>
154350	5/29/2013	0001909 LONG, JAY	1		DRIVING SERVICES	123.00
<b>Total :</b>						<b>123.00</b>
154351	5/29/2013	0000522 LUEHR, TOM	1		DRIVING SERVICES	60.00

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154351	5/29/2013	0000522 LUEHR, TOM	(Continued) 1		DRIVING SERVICES	207.00
					<b>Total :</b>	<b>267.00</b>
154352	5/29/2013	0000530 MAILLIARD'S LANDING NURSERY	71599		SOIL	45.61
					<b>Total :</b>	<b>45.61</b>
154353	5/29/2013	0000660 MARKET PLACE FOOD & DRUG	545986 546000 707903		GROCERIES GROCERIES GROCERIES	17.57 587.78 530.12
					<b>Total :</b>	<b>1,135.47</b>
154354	5/29/2013	0006072 MASTER'S TOUCH, LLC	M131302		STORAGE UTILITY BILLS	1,369.62
					<b>Total :</b>	<b>1,369.62</b>
154355	5/29/2013	0006028 MCI COMM SERVICE	679-3902		LONG DISTANCE	36.79
					<b>Total :</b>	<b>36.79</b>
154356	5/29/2013	0007115 MEDICAL SUPPLY DEPOT, INC	100364		PADS	61.00
					<b>Total :</b>	<b>61.00</b>
154357	5/29/2013	0004818 MICHAEL BOBBINK LAND USE SRVCS	051813		MAY 2013/HEARING EXAMINER	1,500.00
					<b>Total :</b>	<b>1,500.00</b>
154358	5/29/2013	0005445 MONTOYA, MATTHEW J	92		MAY 2013/PUBLIC DEFENSE	5,500.00
					<b>Total :</b>	<b>5,500.00</b>
154359	5/29/2013	0000610 NORTH CENTRAL LABORATORIES	321142		CHLORINE	209.38
					<b>Total :</b>	<b>209.38</b>
154360	5/29/2013	0000647 NORTHWEST MARINE TRADE ASSOC	84953		MEMBERSHIP RENEWAL	425.00
					<b>Total :</b>	<b>425.00</b>
154361	5/29/2013	0000672 OAK HARBOR ACE	220808 220991 221035 221204 221213		FUSE/TUBE/CONNECTOR SCREWS DRILL/FLAG MOUNTING RINGS LUBE/PLUMBING SUPPLIES PLANTS	23.37 7.61 13.23 10.07 3.88

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154361	5/29/2013	0000672 OAK HARBOR ACE	(Continued)			
			221227		WIRE BRUSHES	17.35
			221394		BALL VALVE/PLUG/TEE	10.08
			221429		NIPPLE	0.86
			221737		CLEANER/STRIPPING TOOL/SANDDISC	52.65
			221751		SLT FL GAL	7.38
			221759		TRIMMER	358.66
			221764		HOME DEFENSE/BUSHING	20.62
			221789		CABLE	18.47
			221799		KEY/FASTENERS	6.16
			221809		PATCHES/SCREEN	41.61
			221822		OUTDOOR LIGHT/BULBS	44.39
			221847		RUST REMOVER/TOOL/PAD	51.56
			221850		BUCKET	32.59
			221856		HOSE SAVER	7.05
			221886		SANDDICS	22.25
			221899		HANDLE/SCREWDRIVERS	42.34
			221927		ROPE	9.23
			221999		RUST REMOVER	51.58
			222000		FASTENERS	35.85
			222102		ADAPTER/BOX OF SCREWS	37.48
			222118		BATTERIES	26.07
			222162		WIRE BRUSH	4.34
			222215		FASTENERS	0.74
			222277		SEALS/HAND BOXES	41.58
			222350		AIR TANK/PLUMBING SUPPLIES	5.09
					<b>Total :</b>	<b>1,004.14</b>
154362	5/29/2013	0000668 OAK HARBOR AUTO CENTER	001-165452		STEERING OIL	25.05
			001-166629		GASKETS	5.97
			001-166722		OIL	9.76
			001-166871		FILTERS	71.75
			001-166872		WINDOW-WELD ROUND	17.77
			001-166878		FILTERS	4.68
			001-166912		TAILIGHT	113.05
			001-167100		REFLECTOR	6.07
			001-167661		CUP HOLDERS	7.00

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154362	5/29/2013	0000668 0000668 OAK HARBOR AUTO CENTER	(Continued)			<b>Total : 261.10</b>
154363	5/29/2013	0003007 OFFICE DEPOT	656376333001 656376412001 656376413001		DVDS/CDS/PAPER/NOTEPADS PENCIL POUCHES NOTES	229.64 2.17 14.41 <b>Total : 246.22</b>
154364	5/29/2013	0000665 OFFICEMAX, INC	709746		LANYARDS/TABS	26.74 <b>Total : 26.74</b>
154365	5/29/2013	0000698 P & L GENERAL CONTRACTORS	2861		TRAILER RENTAL	217.40 <b>Total : 217.40</b>
154366	5/29/2013	0003164 PAINTERS ALLEY	20284 20385		CLEANER PAINT	48.82 552.55 <b>Total : 601.37</b>
154367	5/29/2013	0000746 PUGET SAFETY EQUIPMENT	0012576-IN		STOP/SLOW HI-INTENSITY REF	47.83 <b>Total : 47.83</b>
154368	5/29/2013	0000743 PUGET SOUND ENERGY	2000002723381 200000881421 200000919684 200000947859 200001097589 200001884218 200002035950 200002036164 200002036719 200002037097 200002037261 200002037501 200002170617 200002511539 200003267636 200003459654 200004342099 200004562878		ELECTRICITY/1500 S BEEKSMA DRIVE ELECTRICITY/DISPOSAL PLANT ELECTRICITY/CITY BEACH PARK WIND ELECTRICITY/CITY SHOP ELECTRICITY/BATHROOMS ELECTRICITY/1888 NE 5TH AVENUE ELECTRICITY/180 PIT ROAD ELECTRICITY/30505 STATE ROUTE 20 ELECTRICITY/34777 STATE ROUTE 20 ELECTRICITY/2000 SW SCENIC HEIGH ELECTRICITY/1780 SW SPRINGFIELD C ELECTRICITY/3285 SW SCENIC HEIGH ELECTRICITY/552 NW CLIPPER DRIVE ELCTRICITY/2075 SW FT ELECTRICITY/1000 SE IRELAND STREE ELECTRICITY/1957 FORT NUGENT RO/ ELECTRICITY/650 NE 7TH AVENUE ELECTRICITY/800 SE MIDWAY BOULEV	131.32 2,489.35 9.66 2,061.84 11.62 15.92 13.95 172.44 69.07 17.91 10.24 84.81 9.66 11.44 18.60 107.37 9.75 113.46

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154368	5/29/2013	0000743	PUGET SOUND ENERGY			
			(Continued)			
			200004856627		ELECTRICITY/1577 NW 8TH AVENUE	9.66
			200005263310		ELECTRICITY/SMITH PARK	9.66
			200005461666		ELECTRICITY/KITCHEN	13.70
			200005933094		ELECTRICITY/700 SE PIONEER WAY	4,675.08
			200006103952		ELECTRICITY/5941 STATE ROUTE 20	12.24
			200007702943		ELECTRICITY/700 AV W & MIDWAY	145.58
			200007824192		ELECTRICITY/75 SE JEROME STREET	9.66
			200008386993		ELECTRICITY/FABER ST & HARVEST D	10.24
			200008816189		ELECTRICITY/ANNEX	15.02
			200010322895		ELECTRICITY/2330 SW ROSARIO PLAC	31.58
			200010499065		ELECTRICITY/1000 SE CITY BEACH STI	49.31
			200010499248		ELECTRICITY/1948 NW CROSBY AVENI	98.07
			200010499446		ELECTRICITY/1661 NE 16TH AVENUE	23.61
			200010530240		ELECTRICITY/651 SE BAYSHORE DRIV	65.42
			200010530802		ELECTRICITY/CITY BEACH PARK	11.09
			200010531024		ELECTRICITY/940 SE PIONEER WAY	185.67
			200010531172		ELECTRICITY/1300 NE BIG BERRY LOC	10.24
			200010531354		ELECTRICITY/1500 S BEEKSMA DRIVE	125.91
			200010531941		ELECTRICITY/800 SE DOCK STREET	87.02
			200010699706		ELECTRICITY/BALLPARK	82.68
			200011316839		ELECTRICITY/SR 20 & 650 AV W	839.80
			200011551930		ELECTRICITY/ADULT CARE CENTER	13.33
			200011579964		ELECTRICITY/285 SE JEROME STREET	32.05
			200012220337		ELECTRICITY/128 E WHIDBEY AVENUE	9.66
			200012278087		ELECTRICITY/FIRE STATION	1,062.21
			200012425357		ELECTRICITY/TREATMENT PLANT	2,925.68
			200012838765		ELECTRICITY/PIONEER PARK	15.74
			200013370750		ELECTRICITY/MARINA	2,639.38
			200013734963		ELECTRICITY/672 CHRISTIAN ROAD	290.74
			200013968405		ELECTRICITY/1540 SE PIONEER WAY	128.32
			200014151886		ELECTRICITY/1370 SE DOCK STREET	54.83
			200014596478		ELECTRICITY/CITY HALL	822.48
			200015399153		ELECTRICITY/1678 SW 8TH AVENUE	9.66
			200015618321		ELECTRICITY/600 NE 7TH AVENUE	115.79
			200015685833		ELECTRICITY/287 SE CABOT DRIVE	66.59
			200017255619		ELECTRICITY/690 SW HELLER ROAD	368.32

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154368	5/29/2013	0000743 PUGET SOUND ENERGY	(Continued)			
			200017441482		ELECTRICITY/CITY BEACH PARK	907.78
			200017575347		ELECTRICITY/1367 NW CROSBY AVENI	78.50
			200017653656		ELECTRICITY/3300 OLD GOLDIE ROAD	64.88
			200017654415		ELECTRICITY/1000 SW THORNBERRY I	162.00
			200017853025		ELECTRICITY/2081 NE 9TH AVENUE	11.09
			200017968427		ELECTRICITY/POLICE STATION	1,420.05
			200019043344		ELECTRICITY/90 SE PIONEER WAY LIG	41.88
			200019500517		ELECTRICITY/1137 NW KATHLEEN DRI	38.34
			200020179194		ELECTRICITY/626 CHRISTIAN ROAD	22.46
			200020235012		ELECTRICITY/SENIOR CENTER	659.41
			200020308330		ELECTRICITY/KITCHEN	11.44
			200022441113		ELECTRICITY/980 SW MCCROHAN STF	31.17
			200022988147		ELECTRICITY/TRAILER PK S END	24.28
			200023231067		ELECTRICITY/945 E WHIDBEY AVENUE	27.55
			200023360569		ELECTRICITY/700 W HELLER ROAD	49.02
			200024715845		ELECTRICITY/1285 NE TAFTSON STRE	31.08
			200025075157		ELECTRICITY/33500 STATE ROUTE 20	211.87
			300000010458		ELECTRICITY/MIDWAY STREET LIGHTS	232.73
			300000010516		ELECTRICITY/900 SE MIDWAY BOULEV	148.04
					<b>Total :</b>	<b>24,598.00</b>
154369	5/29/2013	0000775 ROSEN, CATHERINE	TRAVEL REIMB		TRAVEL REIMB	31.60
					<b>Total :</b>	<b>31.60</b>
154370	5/29/2013	0000789 SCHAEFER SYSTEMS INTERNATIONAL	WARA144464		PINS/WHEELS	151.75
					<b>Total :</b>	<b>151.75</b>
154371	5/29/2013	0005967 SEATTLE AUTOMOTIVE DIST	06-801983		PAD SET/ROTOR	245.40
					<b>Total :</b>	<b>245.40</b>
154372	5/29/2013	0003782 SHARP ELECTRONICS CORPORATION	C774589-701		APR 2013/MAINTENANCE CONTRACT	3.29
					<b>Total :</b>	<b>3.29</b>
154373	5/29/2013	0005444 SIERRA, GEORGINA D	052413		MAY 2013/PUBLIC DEFENSE	2,500.00
					<b>Total :</b>	<b>2,500.00</b>

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154374	5/29/2013	0000831 SIX ROBBLEES', INC	14-267740		BRAKE DRUM/BRAKE KIT	257.62
<b>Total :</b>						<b>257.62</b>
154375	5/29/2013	0000814 SKAGIT FARMERS SUPPLY	356241		ROUNDUP	48.90
<b>Total :</b>						<b>48.90</b>
154376	5/29/2013	0000833 SKAGIT HYDRAULICS	126448		TUBE/O RINGS/WEAR BANDS./SEALS	697.45
<b>Total :</b>						<b>697.45</b>
154377	5/29/2013	0000879 SOLID WASTE ASSOCIATION OF	2014-73442		MEMBERSHIP RENEWAL	330.00
<b>Total :</b>						<b>330.00</b>
154378	5/29/2013	0000843 SOLID WASTE SYSTEMS, INC	0062805-IN		CONTROL VAVLE	377.46
<b>Total :</b>						<b>377.46</b>
154379	5/29/2013	0000846 SOUND PUBLISHING	771278 772824 774452		ORD 1655 SEPA BECKETT NOA SEPA SIGN	43.61 161.98 161.98
<b>Total :</b>						<b>367.57</b>
154380	5/29/2013	0000851 SPRINT	414568819-066		APR-MAY LAPTOPS	508.09
<b>Total :</b>						<b>508.09</b>
154381	5/29/2013	0000851 SPRINT	182311697		LONG DISTANCE	5.66
<b>Total :</b>						<b>5.66</b>
154382	5/29/2013	0000860 STANDARD INSURANCE COMPANY	052113		LIFE/POCFF	283.13
<b>Total :</b>						<b>283.13</b>
154383	5/29/2013	0003883 STAPLES BUSINESS ADVANTAGE	3199129379 3199129380 3199817197 3200241889		COPY PAPER PAPER/FOLDER MARKERS/PENS/MAILER/ENVELOPES/ DESK SIGN	1,521.26 19.20 140.76 11.19
<b>Total :</b>						<b>1,692.41</b>
154384	5/29/2013	0006460 STATEWIDE RENT-A-FENCE, INC	26269		PANEL RENTALS	90.40
<b>Total :</b>						<b>90.40</b>

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154385	5/29/2013	0005786 STOWES SHOES & CLOTHING	0007498		BOOTS/HANNAN	150.00
<b>Total :</b>						<b>150.00</b>
154386	5/29/2013	0003749 STUMP, PATRICK L	1		DRIVING SERVICES	96.00
<b>Total :</b>						<b>96.00</b>
154387	5/29/2013	0000874 SURETY PEST CONTROL	359796		PEST EXTERMINATION	32.61
			360932		PEST EXTERMINATION	43.48
			360968		PEST EXTERMINATION	59.79
			360969		PEST EXTERMINATION	97.83
<b>Total :</b>						<b>233.71</b>
154388	5/29/2013	0004933 TACTICAL OFFICERS, WASHINGTON STATE / 13-001			2013 WSTOA TEAM DUES	100.00
<b>Total :</b>						<b>100.00</b>
154389	5/29/2013	0000923 UNITED PARCEL SERVICE	0000A0182W183		SHIPPING	22.99
			0000A0182W193		SHIPPING	16.91
<b>Total :</b>						<b>39.90</b>
154390	5/29/2013	0000926 USABLUBOOK	952432		DUST PLUG/ANGLE	88.18
<b>Total :</b>						<b>88.18</b>
154391	5/29/2013	0001056 WASHINGTON IRON WORKS, INC	2323		PIPE WELDING	6,448.08
<b>Total :</b>						<b>6,448.08</b>
154392	5/29/2013	0006267 WESTERN REFUSE & RECYCLING	131221		PROXIMITY SWITCH	339.02
<b>Total :</b>						<b>339.02</b>
154393	5/29/2013	0001000 WHIDBEY AUTO PARTS, INC.	175599		HOSE CLAMP	25.65
			176127		VALVE/HOSE	65.43
			176129		HOSE	9.96
<b>Total :</b>						<b>101.04</b>
154394	5/29/2013	0001007 WHIDBEY CLEANERS	239022		SEWING	17.93
			240116		EMBROIDERY	10.87
<b>Total :</b>						<b>28.80</b>
154395	5/29/2013	0000675 WHIDBEY COMMUNITY PHYSICIANS	678198		PHYSICAL/SEVERNS	225.00

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
154395	5/29/2013	0000675 0000675 WHIDBEY COMMUNITY PHYSICIANS	(Continued)			<b>Total : 225.00</b>
154396	5/29/2013	0001017 WHIDBEY PRINTERS	46232		CAMPING REMITTANCE ENVELOPES	924.06
			46247		ENVELOPES	248.60
						<b>Total : 1,172.66</b>
154397	5/29/2013	0001010 WHIDBEY TELECOM	3570922		CURRENT NET SERVICE	41.45
						<b>Total : 41.45</b>
154398	5/29/2013	0007121 WHITFIELD UNTIED INSURANCE	39872		NOTARY BOND/HOBERT	75.00
						<b>Total : 75.00</b>
154399	5/29/2013	0001067 ZEP SALES & SERVICE	9000266041		AEROSOL/DEGREASER/WIPER	441.25
						<b>Total : 441.25</b>
154400	5/29/2013	0001068 ZUMAR INDUSTRIES, INC	0162507		FITTING	120.21
						<b>Total : 120.21</b>
<b>116 Vouchers for bank code : bank</b>						<b>Bank total : 181,097.45</b>
<b>116 Vouchers in this report</b>						<b>Total vouchers : 181,097.45</b>

# City of Oak Harbor City Council Agenda Bill

Bill No. 5.a.  
Date: June 4, 2013  
Subject: Bond Ordinance: public hearing

FROM: Doug Merriman, Finance Director 

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

 Scott Dudley, Mayor  
 Larry Cort, City Administrator  
 Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

This agenda bill presents an ordinance drafted to refund (refinance) the City's outstanding 2004 Water/Sewer bonds. A public hearing is scheduled to receive citizen input.

**AUTHORITY**

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

**FISCAL IMPACT DESCRIPTION**

Funds Required: \$ Not Applicable  
Appropriation Source: Not Applicable

**SUMMARY STATEMENT**

In 2004, the City of Oak Harbor issued \$2,865,000 in revenue bonds to finance the construction of numerous infrastructure improvements to the City's sewer system, including the repair of the sewer lagoon liner at the Seaplane Base. Due to advantageous changes in the municipal bond environment, Finance recommends that the City of Oak Harbor perform a refunding, or refinancing, of the \$1,670,000 remaining bonds outstanding of the 2004 Water Sewer Revenue Bond issue.

To refinance municipal bonds, the City will issue a new set of lower interest rate bonds approximately equal in amount to the existing bonds. The money received from the sale of the new bonds is, in turn, used to "call" and pay off the more expensive older bonds. The net effect is a nearly identical bond issue, except that the effective interest rate is lower. In the case of this proposed refunding, the City will save approximately \$154,138 in interest, net of refunding costs, over the remaining life of the bond issue. The final interest rates will be set on the date of closing, which is tentatively scheduled for July 27, 2013.

On June 18, 2013, City Council will be asked to adopt the bond ordinance authorizing the sale of the new bonds, and for the interest rates to be finalized on the bond certificates. Attached to this agenda bill is a draft ordinance as prepared by our bond attorneys at Foster Pepper.

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

## **STANDING COMMITTEE REPORT**

Not applicable at this time.

## **RECOMMENDED ACTION**

1. Hold public hearing.
2. Motion to extend public hearing to June 18, 2013 City Council meeting.

## **ATTACHMENTS**

1. Draft bond ordinance.
2. Powerpoint presentation will be made at meeting – copies will be provided.

CITY OF OAK HARBOR, WASHINGTON

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE of the City of Oak Harbor, Washington, relating to contracting indebtedness; providing for the issuance, sale and delivery of not to exceed \$[2,500,000] aggregate principal amount of water and sewer revenue refunding bonds to provide funds to advance refund the callable portion of the City’s Water and Sewer Revenue Bonds, 2004, and to pay the administrative costs of such refunding and the costs of issuance and sale of the bonds; fixing or setting parameters with respect to certain terms and covenants of the bonds; appointing the City’s designated representative to approve the final terms of the sale of the bonds; and providing for other related matters.

Passed \_\_\_\_\_, 2013

*This document prepared by:*

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

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*\*The cover page, table of contents and section headings of this ordinance are for convenience of reference only, and shall not be used to resolve any question of interpretation of this ordinance.*

CITY OF OAK HARBOR, WASHINGTON

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE of the City of Oak Harbor, Washington, relating to contracting indebtedness; providing for the issuance, sale and delivery of not to exceed \$[2,500,000] aggregate principal amount of water and sewer revenue refunding bonds to provide funds to advance refund the callable portion of the City's Water and Sewer Revenue Bonds, 2004, and to pay the administrative costs of such refunding and the costs of issuance and sale of the bonds; fixing or setting parameters with respect to certain terms and covenants of the bonds; appointing the City's designated representative to approve the final terms of the sale of the bonds; and providing for other related matters.

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

Section 1. Definitions. As used in this ordinance, the following capitalized terms shall have the following meanings:

(a) *"2004 Bonds"* means the Water and Sewer Revenue Bonds, 2004, in the original aggregate principal amount of \$2,865,000, authorized to be issued by Ordinance No. 1397.

(b) *"Acquired Obligations"* means those United States Treasury Certificates of Indebtedness, Notes, and Bonds--State and Local Government Series and other direct, noncallable obligations of the United States of America purchased to accomplish the refunding of the Refunded Bonds as authorized by this ordinance.

(c) *"Annual Debt Service"* for the applicable series of Parity Bonds for any year means all the interest, plus all principal (except principal of Term Bonds due in any Term Bond Maturity Year), and plus all mandatory redemption installments and Sinking Fund Installments for that year, less all bond interest payable from the proceeds of any such bonds in that year.

(d) *"Assessment Bonds"* means the original principal amount of any issue of Parity Bonds equal to the total principal amount (or, if refunding bonds, the remaining unpaid principal amount) of ULID Assessments on any final assessment roll or rolls of one or more ULIDs formed in connection with the improvements being financed by such issue of bonds (or bonds being refunded). The original principal amount of such issue of bonds in excess of Assessment Bonds shall be referred to as "bonds (or Bonds) that are not Assessment Bonds." Assessment Bonds shall be allocated to each \$5,000.00 of bonds in proportion to their percentage of the entire issue of bonds. When a bond of any issue of Parity Bonds containing Assessment Bonds is redeemed or purchased, and retired, the same percentage of that bond as the percentage of Assessment Bonds is to the total issue of those bonds shall be treated as Assessment Bonds being redeemed or purchased and retired.

(e) “*Authorized Denomination*” means \$5,000 or any integral multiple thereof within a maturity.

(f) “*Average Annual Debt Service*” means, as of any calculation date, the sum of the Annual Debt Service for the remaining years to the last scheduled maturity of the applicable series of bonds divided by the number of those years, except that for purposes of computing the Reserve Requirement the estimated amount of bonds to be redeemed prior to maturity may be taken into account if required under federal arbitrage regulations.

(g) “*Beneficial Owner*” means, with respect to a Bond, the owner of any beneficial interest in that Bond.

(h) “*Bond*” means each bond issued pursuant to and for the purposes provided in this ordinance.

(i) “*Bond Counsel*” means the firm of Foster Pepper PLLC, its successor, or any other attorney or firm of attorneys selected by the City with a nationally recognized standing as bond counsel in the field of municipal finance.

(j) “*Bond Fund*” means that special fund of the City known as the Water and Sewer Revenue Bond Fund, 1990, created by Ordinance No. 853 for the payment of the principal of and interest on the Parity Bonds.

(k) “*Bond Purchase Agreement*” means an offer to purchase the Bonds, setting forth certain terms and conditions of the issuance, sale and delivery of the Bonds, which offer is authorized to be accepted by the Designated Representative on behalf of the City, if consistent with this ordinance.

(l) “*Bond Register*” means the books or records maintained by the Bond Registrar for the purpose of identifying ownership of the each Bond.

(m) “*Bond Registrar*” means the Fiscal Agent, or any successor bond registrar selected by the City.

(n) “*City*” means the City of Oak Harbor, Washington, a municipal corporation duly organized and existing under the laws of the State.

(o) “*City Council*” means the legislative authority of the City, as duly and regularly constituted from time to time.

(p) “*Code*” means the United States Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

(q) “*Contract Resource Obligation*” means payments made to any other municipal corporation for water or water service or for sewage treatment and disposal service (or for garbage and refuse collection and disposal, if a refuse collection and disposal system hereafter is combined with the Waterworks Utility) in the event the City enters into a contract for such services.

(r) “*Coverage Requirement*” means, for Parity Bonds that are not Assessment Bonds, Net Revenue, together with the collection of ULID Assessments, at least equal to 1.25 times the Annual Debt Service in that year on the Parity Bonds. For purposes of determining the Coverage Requirement for the issuance of Future Parity Bonds having variable interest rates, such bonds shall be assumed to bear interest at a fixed rate equal to the higher of 10% and the highest variable rate borne by any outstanding variable rate water and sewer revenue bonds of the City during the preceding 24 months or, if no such variable rate bonds are outstanding at the time of calculation but are then proposed to be issued, the rate borne by other variable rate debt the interest rate for which is determined by reference to an index comparable to the index to be used to determine the interest rate on the Future Parity Bonds to be issued. ***Upon the redemption or defeasance of all outstanding 2004 Bonds, the following sentence shall be added: If any Assessment Bonds are outstanding, the Coverage Requirement shall also mean an amount of ULID Assessments (plus Net Revenue remaining after meeting the coverage requirement in the first sentence of this paragraph) at least equal to 1.0 times the Annual Debt Service in that year on all Parity Bonds that are Assessments Bonds.***

(s) “*DTC*” means The Depository Trust Company, New York, New York, or its nominee.

(t) “*Designated Representative*” means the officer of the City appointed in Section 4 of this ordinance to serve as the City’s designated representative in accordance with RCW 39.46.040(2).

(u) “*Final Terms*” means the terms and conditions for the sale of the Bonds including the amount, date or dates, denominations, interest rate or rates (or mechanism for determining interest rate or rates), payment dates, final maturity, redemption rights, price, and other terms or covenants, including minimum savings for refunding bonds (if the refunding bonds are issued for savings purposes).

(v) “*Finance Officer*” means the Finance Director or such other officer of the City who succeeds to substantially all of the responsibilities of that office.

(w) “*Fiscal Agent*” means the fiscal agent of the State, as the same may be designated by the State from time to time.

(x) “*Future Parity Bonds*” means any and all Waterworks Utility revenue bonds of the City issued after the date of the issuance of the Bonds, the payment of the principal of and interest on which constitutes a charge or lien on the Gross Revenue of the Waterworks Utility and ULID Assessments equal in rank with the charge and lien upon such revenue and assessments required to be paid into the Bond Fund to pay and secure the payment of the principal of and interest on the Outstanding Parity Bonds and the Bonds.

(y) “*Government Obligations*” has the meaning given in RCW 39.53.010, as now in effect or as may hereafter be amended.

(z) “*Gross Revenue of the Waterworks Utility*” or “*Gross Revenue*” means all of the earnings and revenues received by the City from the maintenance and operation of the Waterworks Utility and all earnings from the investment of money on deposit in the Bond Fund,

except ULID Assessments, government grants, City taxes, principal proceeds of bonds and earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund Waterworks Utility obligations (until commingled with other earnings and revenues of the Waterworks Utility) or held in a special account for the purpose of paying a rebate to the United States Government under the Code.

(aa) “*Issue Date*” means, with respect to a Bond, the date of initial issuance and delivery of that Bond to the Purchaser in exchange for the purchase price of that Bond.

(bb) “*Letter of Representations*” means the Blanket Issuer Letter of Representations between the City and DTC, dated November 16, 2004, as it may be amended from time to time, and any successor or substitute letter relating to the operational procedures of the Securities Depository.

(cc) “*Maintenance and Operation Expense*” means all reasonable expenses incurred by the City in causing the Waterworks Utility of the City to be operated and maintained in good repair, working order and condition, but shall not include any depreciation or taxes levied or imposed by the City or payments to the City in lieu of taxes. Maintenance and Operation Expense shall also include all Contract Resource Obligations and fire and extended coverage insurance premiums.

(dd) “*Maximum Annual Debt Service*” means, as of any calculation date, the maximum amount of Annual Debt Service which will mature or come due in the current calendar year or any future calendar year.

(ee) “*MSRB*” means the Municipal Securities Rulemaking Board.

(ff) “*Net Revenue of the Waterworks Utility*” or “*Net Revenue*” means the Gross Revenue less Maintenance and Operation Expense. ***Upon the redemption or defeasance of all outstanding 2004 Bonds, “Net Revenue of the Waterworks Utility” or “Net Revenue” means Gross Revenue: (a) less (1) Maintenance and Operation Expense and (2) deposits into the Rate Stabilization Fund; and (b) plus withdrawals from the Rate Stabilization Fund.***

(gg) “*Outstanding Parity Bonds*” means the outstanding 2004 Bonds not included in the Refunding Plan.

(hh) “*Owner*” means, without distinction, the Registered Owner and the Beneficial Owner.

(ii) “*Parity Bonds*” means the Outstanding Parity Bonds, the Bonds and any Future Parity Bonds.

(jj) “*Parity Conditions*” means the conditions for issuing Future Parity Bonds set forth in Exhibit A to this ordinance, which is incorporated herein by this reference.

(kk) “*Principal and Interest Account*” means the account of that name created in the Bond Fund for the payment of the principal of and interest on the Parity Bonds.

(ll) “*Purchaser*” means Seattle-Northwest Securities Corporation of Seattle, Washington, its successor, or such other purchaser of the Bonds whose offer is accepted by the Designated Representative in accordance with this ordinance.

(mm) “*Rate Stabilization Fund*” means the Waterworks Utility Rate Stabilization Fund authorized to be created by Section 11 of this ordinance.

(nn) “*Rating Agency*” means any nationally recognized rating agency then maintaining a rating on the Bonds at the request of the City.

(oo) “*Record Date*” means the Bond Registrar’s close of business on the 15<sup>th</sup> day of the month preceding an interest payment date. With respect to redemption of a Bond prior to its maturity, the Record Date shall mean the Bond Registrar’s close of business on the date on which the Bond Registrar sends the notice of redemption in accordance with Section 8.

(pp) “*Redemption Date*” means the date fixed for redemption of the Refunded Bonds.

(qq) “*Refunded Bonds*” means the outstanding \$1,670,000 aggregate principal amount of the 2004 Bonds maturing on September 1 of each of the years 2015 through 2019, inclusive, and 2024, and bearing interest at rates ranging from 3.90% to 4.55%, or any portion thereof included in the Refunding Plan by the Designated Representative.

(rr) “*Refunding Plan*” means (as further described in the Refunding Trust Agreement):

(1) the placement with the Refunding Trustee of sufficient proceeds of the Bonds which, together with other money of the City, if necessary, will acquire the Acquired Obligations to be deposited, with cash, if necessary;

(2) the application of the principal of and interest on those Acquired Obligations (and any other cash balance) to the call, payment and redemption of the Refunded Bonds on the Redemption Date at a price of par plus any accrued interest; and

(3) the payment of the costs of issuing the Bonds and the costs of carrying out the foregoing elements of the Refunding Plan.

(ss) “*Refunding Trust Agreement*” means the Refunding Trust Agreement between the City and the Refunding Trustee in a form consistent with the provisions of this ordinance.

(tt) “*Refunding Trustee*” means the entity chosen to serve as Refunding Trustee pursuant to Section 19.

(uu) “*Registered Owner*” means, with respect to a Bond, the person in whose name that Bond is registered on the Bond Register. For so long as the City utilizes the book–entry only system for the Bonds under the Letter of Representations, Registered Owner shall mean the Securities Depository.

(vv) “*Reserve Account*” means the account of that name created in the Bond Fund for the purpose of securing the payment of the principal of and interest on the Parity Bonds.

(ww) “*Reserve Requirement*” means (1) for the Outstanding Parity Bonds and the Bonds an amount of cash and investments equal to the least of Maximum Annual Debt Service, 125% of Average Annual Debt Service or 10% of the issue price of the Outstanding Parity Bonds and the Bonds; and (2) for any Future Parity Bonds, an amount of cash and investments equal to the least of Maximum Annual Debt Service, 125% of Average Annual Debt Service or 10% of the issue price of the Future Parity Bonds. For the purpose of calculating the Reserve Requirement for the issuance of Future Parity Bonds bearing interest at a variable rate, the interest rate on such bonds shall be assumed to be the interest rate effective on those Future Parity Bonds on the date of their issuance.

In lieu of a deposit of cash and permitted investments, the City may substitute insurance equal to the Maximum Annual Debt Service of the Parity Bonds, but no insurance may be used unless the insurer is rated by Moody’s Investors Service, Inc., and by Standard & Poor’s at one of the highest ratings given to insurers. ***Upon redemption or defeasance of all outstanding 2004 Bonds, this entire paragraph shall be revised to read as follows: In lieu of a deposit of cash and permitted investments, the City may substitute insurance equal to the Maximum Annual Debt Service of the Parity Bonds, but no insurance may be used unless the insurer is rated, at the time of acquisition of the policy, at a credit rating equal to or better than the highest two rating categories by Moody’s Investors Service, Inc., or by Standard & Poor’s (without regard to gradations within those categories).***

(xx) “*Rule 15c2-12*” means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended.

(yy) “*SEC*” means the United States Securities and Exchange Commission.

(zz) “*Securities Depository*” means DTC, any successor thereto, any substitute securities depository selected by the City that is qualified under applicable laws and regulations to provide the services proposed to be provided by it, or the nominee of any of the foregoing.

(aaa) “*Sinking Fund Installment*” or “*Sinking Fund Installments*” means, in any one year, the principal of the Outstanding Parity Bonds, Bonds or Future Parity Bonds designated in the ordinances authorizing their respective issuance and sale as Sinking Fund Installments for that year.

(bbb) “*State*” means the State of Washington.

(ccc) “*System of Registration*” means the system of registration for the City’s bonds and other obligations set forth in Ordinance No. 789 of the City.

(ddd) “*Term Bond Maturity Year*” means any year in which Term Bonds are scheduled to mature.

(eee) “*Term Bond*” means each Bond designated as a Term Bond and subject to mandatory redemption in the years and amounts set forth in the Bond Purchase

Agreement/Contract. For any Outstanding Parity Bonds or Future Parity Bonds, “*Term Bonds*” means those bonds of any single issue or series designated as Term Bonds pursuant to the ordinance authorizing their issuance or sale and which are subject to mandatory prior redemption or for which mandatory sinking fund installments are provided.

(fff) “*ULID*” means Utility Local Improvement District.

(ggg) “*ULID Assessments*” means all assessments levied and collected in any ULID of the City created for the acquisition or construction of additions to and extensions and betterments of the Waterworks Utility, if such assessments are pledged to be paid into the Bond Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments shall include installments thereof and any interest or penalties which may be due thereon.

(hhh) “*Undertaking*” means the undertaking to provide continuing disclosure entered into pursuant to Section 21 of this ordinance.

(iii) “*Waterworks Utility*” of the City means the waterworks system of the City and system of sewerage of the City combined pursuant to Ordinance No. 853 and all additions thereto and betterments and extensions thereof at any time made and shall include any storm and surface water systems or garbage and refuse collection and disposal system hereafter combined with the Waterworks Utility.

Section 2. Findings and Determinations. The City takes note of the following facts and makes the following findings and determinations:

(a) *Background.* The City now owns and operates a waterworks system and a sanitary sewer system, which systems were combined by Ordinance No. 853 of the City into a combined utility (the “Waterworks Utility”).

(b) *Outstanding Parity Bonds.* Pursuant to Ordinance No. 853, the City heretofore issued and sold its Water and Sewer Revenue Bonds, 1990 (the “1990 Bonds”) (all of which have been paid and retired), and reserved the right to issue additional Waterworks Utility revenue bonds which would constitute a lien and charge upon the Net Revenue of the Waterworks Utility and ULID Assessments on a parity with those bonds if the Parity Conditions are met. The 2004 Bonds are the only obligations outstanding payable from the Net Revenue and ULID Assessments.

(c) *Purpose of Financing.* Pursuant to Ordinance No. 1397, the City issued the 2004 Bonds for the purpose of financing a plan of additions to the Waterworks Utility and reserved the right to redeem the 2004 Bonds prior to their maturity at any time on or after September 1, 2014, at a price of par plus accrued interest to the date fixed for redemption. After due consideration, it appears to the City Council that in order to realize a debt service savings to the City and its ratepayers, it is in the City’s best interest to carry out the Refunding Plan.

(d) *Sufficiency of Gross Revenue.* The City Council finds and determines that the Gross Revenue of the Waterworks Utility and benefits to be derived from the operation and maintenance of the Waterworks Utility at the rates to be charged for services from the

Waterworks Utility will be more than sufficient to meet all Maintenance and Operation Expense and to permit the setting aside into the Bond Fund out of the Gross Revenue of amounts sufficient to pay the principal of and interest on the Outstanding Parity Bonds and the Bonds when due. The City Council declares that in fixing the amounts to be paid into the Bond Fund under this ordinance it has exercised due regard for Maintenance and Operation Expense and has not obligated the City to set aside and pay into the Bond Fund a greater amount of Gross Revenue of the Waterworks Utility than in its judgment will be available over and above such Maintenance and Operation Expense.

(e) *Satisfaction of Parity Conditions.* The City Council finds and declares that the amounts required to have been paid into the Bond Fund for the Outstanding Parity Bonds have been paid and maintained as required therein, and that all other Parity Conditions for the issuance of the Bonds as Future Parity Bonds will have been met and satisfied before the Bonds are delivered to the original purchaser thereof.

(f) *Issuance of the Bonds.* For the purpose of providing the funds necessary to carry out the Refunding Plan, the City Council finds that it is in the best interests of the City and its ratepayers to issue and sell the Bonds to the Purchaser, pursuant to the terms set forth in the Bond Purchase Agreement as approved by the City's Designated Representative consistent with this ordinance.

Section 3. Authorization of Bonds. For the purpose of providing funds necessary to carry out the Refunding Plan, the City shall issue and sell water and sewer revenue refunding bonds in the aggregate principal amount of not to exceed \$[2,500,000].

Section 4. Description of the Bonds; Appointment of Designated Representative. The Finance Director is appointed as the Designated Representative of the City and is authorized and directed to conduct the sale of the Bonds in the manner and upon the terms deemed most advantageous to the City, and to approve the Final Terms of the Bonds, with such additional terms and covenants as the Designated Representative deems advisable, within the parameters set forth in Exhibit B, which is attached to this ordinance and incorporated by this reference..

Bond Registrar; Registration and Transfer of Bonds.

(a) *Registration of Bonds.* Each Bond shall be issued only in registered form as to both principal and interest and the ownership of each Bond shall be recorded on the Bond Register.

(b) *Bond Registrar; Duties.* The Fiscal Agent is appointed as initial Bond Registrar. The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's paying agent for the Bonds and to carry out all of the Bond Registrar's powers and duties under this ordinance and the System of Registration. The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on each Bond. The Bond Registrar may become an Owner with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of

its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Owners.

(c) *Bond Register; Transfer and Exchange.* The Bond Register shall contain the name and mailing address of each Registered Owner and the principal amount and number of each Bond held by each Registered Owner. A Bond surrendered to the Bond Registrar may be exchanged for a Bond or Bonds in any Authorized Denomination of an equal aggregate principal amount and of the same interest rate and maturity. A Bond may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall be without cost to the Owner or transferee. The Bond Registrar shall not be obligated to exchange any Bond or transfer registered ownership during the period between the applicable Record Date and the next upcoming interest payment or redemption date.

(d) *Securities Depository; Book-Entry Only Form.* DTC is appointed as initial Securities Depository. Each Bond initially shall be registered in the name of Cede & Co., as the nominee of DTC. Each Bond registered in the name of the Securities Depository shall be held fully immobilized in book-entry only form by the Securities Depository in accordance with the provisions of the Letter of Representations. Registered ownership of any Bond registered in the name of the Securities Depository may not be transferred except: (i) to any successor Securities Depository; (ii) to any substitute Securities Depository appointed by the City; or (iii) to any person if the Bond is no longer to be held in book-entry only form. Upon the resignation of the Securities Depository, or upon a termination of the services of the Securities Depository by the City, the City may appoint a substitute Securities Depository. If (i) the Securities Depository resigns and the City does not appoint a substitute Securities Depository, or (ii) the City terminates the services of the Securities Depository, the Bonds no longer shall be held in book-entry only form and the registered ownership of each Bond may be transferred to any person as provided in this ordinance.

Neither the City nor the Bond Registrar shall have any obligation to participants of any Securities Depository or the persons for whom they act as nominees regarding accuracy of any records maintained by the Securities Depository or its participants. Neither the City nor the Bond Registrar shall be responsible for any notice that is permitted or required to be given to a Registered Owner except such notice as is required to be given by the Bond Registrar to the Securities Depository.

#### Section 6. Form and Execution of Bonds.

(a) *Form of Bonds; Signatures and Seal.* Each Bond shall be prepared in a form consistent with the provisions of this ordinance and State law. Each Bond shall be signed by the Mayor and the City Clerk, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon. If any officer whose manual or facsimile signature appears on a Bond ceases to be an officer of the City authorized to sign bonds before the Bond bearing his or her manual or facsimile signature is authenticated by the Bond Registrar, or issued or delivered by the City, that Bond nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. Any Bond also may be signed on behalf of the City by any person who,

on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on its Issue Date.

(b) *Authentication.* Only a Bond bearing a Certificate of Authentication in substantially the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance: “Certificate Of Authentication. This Bond is one of the fully registered City of Oak Harbor, Washington, [Name of Issue].” The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

Section 7. Payment of Bonds. Principal of and interest on each Bond shall be payable in lawful money of the United States of America. Principal of and interest on each Bond registered in the name of the Securities Depository is payable in the manner set forth in the Letter of Representations. Interest on each Bond not registered in the name of the Securities Depository is payable by electronic transfer on the interest payment date, or by check or draft of the Bond Registrar mailed on the interest payment date to the Registered Owner at the address appearing on the Bond Register on the Record Date. However, the City is not required to make electronic transfers except pursuant to a request by a Registered Owner in writing received on or prior to the Record Date and at the sole expense of the Registered Owner. Principal of each Bond not registered in the name of the Securities Depository is payable upon presentation and surrender of the Bond by the Registered Owner to the Bond Registrar. The Bonds are not subject to acceleration under any circumstances.

Section 8. Redemption Provisions and Purchase of Bonds.

(a) *Optional Redemption.* The Bonds shall be subject to redemption at the option of the City on terms acceptable to the Designated Representative, as set forth in the Bond Purchase Agreement, consistent with the parameters set forth in Exhibit B.

(b) *Mandatory Redemption.* Each Bond that is designated as a Term Bond in the Bond Purchase Agreement, consistent with the parameters set forth in Exhibit B, if not previously redeemed under any optional redemption provisions, defeased or purchased and surrendered for cancellation under the provisions set forth below, shall be called for redemption at a price equal to the stated principal amount to be redeemed, plus accrued interest, on the dates and in the amounts as set forth in the Bond Purchase Agreement/Contract. If a Term Bond is redeemed under the optional redemption provisions, defeased or purchased by the City and surrendered for cancellation, the principal amount of the Term Bond so redeemed, defeased or purchased (irrespective of its actual redemption or purchase prices) shall be credited against one or more scheduled mandatory redemption installments for that Term Bond. The City shall determine the manner in which the credit is to be allocated and shall notify the Bond Registrar in writing of its allocation prior to the earliest mandatory redemption date for that Term Bond for which notice of redemption has not already been given.

(c) *Selection of Bonds for Redemption; Partial Redemption.* If fewer than all of the outstanding Bonds are to be redeemed at the option of the City, the City shall select the maturities to be redeemed. If fewer than all of the outstanding Bonds of a maturity are to be

redeemed, the Securities Depository shall select Bonds registered in the name of the Securities Depository to be redeemed in accordance with the Letter of Representations, and the Bond Registrar shall select all other Bonds to be redeemed randomly in such manner as the Bond Registrar shall determine. All or a portion of the principal amount of any Bond that is to be redeemed may be redeemed in any Authorized Denomination. If less than all of the outstanding principal amount of any Bond is redeemed, upon surrender of that Bond to the Bond Registrar, there shall be issued to the Registered Owner, without charge, a new Bond (or Bonds, at the option of the Registered Owner) of the same maturity and interest rate in any Authorized Denomination in the aggregate principal amount to remain outstanding.

(d) *Notice of Redemption.* Notice of redemption of each Bond registered in the name of the Securities Depository shall be given in accordance with the Letter of Representations. Notice of redemption of each other Bond, unless waived by the Registered Owner, shall be given by the Bond Registrar not less than 20 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Registered Owner at the address appearing on the Bond Register on the Record Date. The requirements of the preceding sentence shall be satisfied when notice has been mailed as so provided, whether or not it is actually received by an Owner. In addition, the redemption notice shall be mailed or sent electronically within the same period to the MSRB (if required under the Undertaking), to each Rating Agency, and to such other persons and with such additional information as the Finance Officer shall determine, but these additional mailings shall not be a condition precedent to the redemption of any Bond.

(e) *Rescission of Optional Redemption Notice.* In the case of an optional redemption, the notice of redemption may state that the City retains the right to rescind the redemption notice and the redemption by giving a notice of rescission to the affected Registered Owners at any time on or prior to the date fixed for redemption. Any notice of optional redemption that is so rescinded shall be of no effect, and each Bond for which a notice of redemption has been rescinded shall remain outstanding.

(f) *Effect of Redemption.* Interest on each Bond called for redemption shall cease to accrue on the date fixed for redemption, unless either the notice of optional redemption is rescinded as set forth above, or money sufficient to effect such redemption is not on deposit in the Bond Fund or in a trust account established to refund or defease the Bond.

(g) *Purchase of Bonds.* The City reserves the right to purchase any or all of the Bonds offered to the City at any time at any price acceptable to the City plus accrued interest to the date of purchase.

Section 9. Failure To Pay Bonds. If the principal of any Bond is not paid when the Bond is properly presented at its maturity date or date fixed for redemption, the City shall be obligated to pay interest on that Bond at the same rate provided in the Bond from and after its maturity or date fixed for redemption until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Bond Fund, or in a trust account established to refund or defease the Bond, and the Bond has been called for payment by giving notice of that call to the Registered Owner.

Section 10. The Bond Fund; Payments into Bond Fund.

(a) *Payments Into the Bond Fund.* The Bond Fund has been created in the office of the Finance Director, which fund has been divided into the Principal and Interest Account and the Reserve Account. So long as any Outstanding Parity Bonds, Bonds or Future Parity Bonds are outstanding against the Bond Fund, the City shall set aside and pay into the Bond Fund all ULID Assessments on their collection and, out of the Net Revenue of the Waterworks Utility, certain fixed amounts without regard to any fixed proportion, namely:

- (1) Into the Principal and Interest Account prior to each interest or principal and interest payment or mandatory redemption date an amount, together with other money on deposit therein, sufficient to pay the interest or principal and interest or mandatory redemption requirement next coming due; and
- (2) Into the Reserve Account, to the extent not funded on the date of issue from Bond proceeds or the purchase of a reserve insurance policy, an amount necessary to fund the Reserve Requirement for the Bonds in not more than five approximately equal annual installments.

Except for withdrawals therefrom as authorized herein, the Reserve Account shall be maintained at such total Reserve Requirement amount for Parity Bonds at all times so long as any of such bonds are outstanding. When the total amount in the Bond Fund equals the total amount of principal and interest for all outstanding Parity Bonds to the last maturity thereof, no further payment need be made into the Bond Fund.

In the event that there is a deficiency in the Principal and Interest Account in the Bond Fund to meet maturing installments of either principal or interest, as the case may be, such deficiency shall be made up from the Reserve Account by the withdrawal of cash therefrom for that purpose. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up from ULID Assessment payments and the Net Revenue of the Waterworks Utility first available after making necessary provisions for the required payments into the Principal and Interest Account. The money in the Reserve Account shall otherwise be held intact and may be applied against the last outstanding Parity Bonds, except that if the Reserve Account is fully funded, any money in excess of the Reserve Requirement may be withdrawn and expended for the purpose of retiring Parity Bonds or for any other lawful Waterworks Utility purpose.

The City may provide for the purchase, redemption or defeasance of bonds payable from the Bond Fund by the use of money on deposit in any account in the Bond Fund as long as the money remaining in those accounts is sufficient to satisfy the required deposits in those accounts for the remaining bonds outstanding payable from the Bond Fund.

The City may create sinking fund accounts or other accounts in the Bond Fund for the payment or securing the payment of bonds payable from the Bond Fund as long as the maintenance of such accounts does not conflict with the rights of the owners of bonds payable from the Bond Fund.

If the City fails to set aside and pay into the Bond Fund the amounts set forth above, the owner of any of the outstanding Parity Bonds may bring action against the City and compel such setting aside and payment.

(b) *Investment of Money in Bond Fund.* All money in the Bond Fund may be kept in cash or invested in legal investments maturing not later than the date when the funds are required for the payment of principal of or interest on Parity Bonds (for investments in the Principal and Interest Account) or having a guaranteed redemption price prior to maturity and, in no event, maturing later than the last maturity of any remaining Parity Bonds (for investments in the Reserve Account). Earnings from investments in the Principal and Interest Account shall be deposited in that account. Income from investments in the Reserve Account shall be deposited in that account until the amount therein is equal to the Reserve Requirement of all Parity Bonds and thereafter shall be deposited in the Principal and Interest Account.

Section 11. Rate Stabilization Fund. The City may, at any time after the outstanding 2004 Bonds are redeemed or defeased, establish a Waterworks Utility Rate Stabilization Fund. The City may at any time, as determined by the City and as consistent with Section 13 of this ordinance, deposit in the Rate Stabilization Fund Gross Revenue and any other money received by the Waterworks Utility and available to be so deposited, excluding principal proceeds of any Future Parity Bonds or other borrowing. No deposit of Gross Revenue shall be made into the Rate Stabilization Fund to the extent that such deposit would prevent the City from meeting the Coverage Requirement in the relevant fiscal year.

The City may, upon authorization by ordinance, at any time withdraw money from the Rate Stabilization Fund for inclusion in the Net Revenue for the then-current fiscal year of the Waterworks Utility, except that the total amount withdrawn from the Rate Stabilization Fund in any fiscal year of the Waterworks Utility may not exceed the total debt service of the Waterworks Utility in that year. Such deposits or withdrawals may be made up to and including the date 90 days after the end of the fiscal year for which the deposit or withdrawal will be included as Net Revenue for that fiscal year.

Earnings from investments in the Rate Stabilization Fund shall be deposited in that fund and shall not be included as Net Revenue of the Waterworks Utility unless and until withdrawn from that fund as provided herein. The City may also deposit earnings from investments in the Rate Stabilization Fund into any Waterworks Utility fund as authorized by ordinance, and such deposits shall be included as Net Revenue in the year of deposit.

Section 12. Pledge of Revenue and Lien Position. The Net Revenue of the Waterworks Utility and ULID Assessments are pledged to the payment of Parity Bonds, and the pledge with respect to Parity Bonds shall constitute a lien and charge upon such Net Revenue and ULID Assessments prior and superior to any other charges whatsoever.

Section 13. Flow of Funds.

(a) All ULID Assessments shall be paid into the Bond Fund. The Gross Revenue of the Waterworks Utility shall be paid into the Water and Sewer Funds of the City previously

established in the office of the Finance Director and shall be used for the following purposes only and shall be applied in the following order of priority:

- (1) To pay the Maintenance and Operation Expense;
- (2) To pay the interest on the Parity Bonds;
- (3) To pay the principal of the Parity Bonds;
- (4) To make all payments required to be made into any sinking fund account created to provide for the payment of the principal of Term Bonds;
- (5) To make all payments required to be made into the Reserve Account;
- (6) To make all payments required to be made into any revenue bond redemption fund or warrant redemption fund and debt service account or reserve account created to pay or secure the payment of the principal of and interest on any revenue bonds, or revenue warrants or other revenue obligations of the City having a lien upon the revenue of the Waterworks Utility junior and inferior to the lien thereon for the payment of the principal of and interest on the Outstanding Parity Bonds, the Bonds and any Future Parity Bonds; and
- (7) To retire by redemption or purchase in the open market any outstanding revenue bonds or other revenue obligations of the Waterworks Utility, to make necessary additional betterments, improvements and repairs to or extensions and replacements of the Waterworks Utility, or for any other lawful City purposes. ***Upon the redemption or defeasance of all outstanding 2004 Bonds, there shall be added to this paragraph the authorization to make deposits into the Rate Stabilization Fund.***

(b) The City may transfer any money from any funds or accounts of the Waterworks Utility legally available therefor, except bond redemption funds, refunding escrow funds or defeasance funds, to meet the required payments to be made into the Bond Fund.

Section 14. Covenants. The City covenants and agrees with the owner of each Bond at any time outstanding, as follows:

- (a) *ULID Assessments*. All ULID Assessments shall be paid into the Bond Fund.
- (b) *Establishment and Collection of Rates and Charges*. It will establish, maintain and collect such rates and charges for Waterworks Utility service so long as any of the Parity Bonds are outstanding which will make available Net Revenue, together with ULID Assessments, at least equal to the Coverage Requirement.
- (c) *Maintenance and Operation*. It will at all times maintain and keep the Waterworks Utility in good repair, working order and condition, and also will at all times operate that Utility and the business in connection therewith in an efficient manner and at a reasonable cost. It will pay all Maintenance and Operation Expense and the debt service requirements of the Parity Bonds and otherwise meet the obligations of the City as set forth in this ordinance.

(d) *Sale or Disposition of the Waterworks Utility.* It will not sell, lease, mortgage, or in any manner encumber or dispose of all of the property of the Waterworks Utility unless provision is made for the payment into the Bond Fund of an amount sufficient to pay the principal of and interest on the Parity Bonds then outstanding and that it will not sell, lease, mortgage, or in any manner encumber or dispose of any part of the property of the Waterworks Utility that is used, useful and material to the operation thereof, unless provision is made for replacement thereof, or for payment into the Bond Fund of the total amount of revenue received from such disposition which shall not be less than an amount which shall bear the same ratio to the amount of the Parity Bonds then outstanding as the Gross Revenue available for debt service for such outstanding bonds for the twelve months preceding such sale, lease, encumbrance or disposal from the portion of the utility sold, leased, encumbered or disposed of bears to the Gross Revenue available for debt service for the Parity Bonds from the entire Waterworks Utility for the same period. Any such money so paid into the Bond Fund shall be used to retire such Parity Bonds at the earliest possible date.

(e) *Books and Accounts.* While any of the Bonds remain outstanding, it will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the Waterworks Utility, and it will furnish the original purchaser or purchasers of the Bonds or any subsequent owner or owners thereof, at the written request of such owner or owners, operating and income statements of the Waterworks Utility in reasonable detail covering any calendar year within a reasonable time after the close of such calendar year. The City will grant any owner or owners of at least 25% of the outstanding Bonds the right at all reasonable times to inspect the entire Waterworks Utility and all records, accounts and data of the City relating thereto. Upon request of any owner of any of the Bonds, it also will furnish to such owner a copy of the most recently completed audit of the City's accounts by the State Auditor of Washington, or such other audit as is authorized by law in lieu thereof.

(f) *No Free Service.* Except as permitted by law in the aid of the poor and infirm, it will not furnish Waterworks Utility service to any customer whatsoever free of charge and will promptly take legal action to enforce collection of all delinquent accounts.

(g) *Fire and Extended Coverage Insurance.* It will carry the type of insurance on its Waterworks Utility property in the amounts normally carried by similar water and sewer utility companies engaged in the operation of water and sewerage systems, and the cost of such insurance shall be considered part of the operating and maintaining of such utility or, in lieu thereof, may self insure or participate in a joint intergovernmental insurance pool assuring the same coverage as is carried by similar water and sewerage companies.

Section 15. Provisions for Future Parity Bonds. The City reserves the right to issue Future Parity Bonds if the Parity Conditions are met and complied with at the time of the issuance of those Future Parity Bonds. Nothing herein contained shall prevent the City from issuing water and sewer revenue bonds which are a charge upon the Gross Revenue of the Waterworks Utility of the City junior or inferior to the payments required to be made therefrom into the Bond Fund for the payment of the Parity Bonds or from pledging the payment of utility local improvement district assessments into the bond redemption fund created for the payment of the principal of and interest on those junior lien bonds as long as such utility local improvement

district assessments are levied for improvements constructed from the proceeds of those junior lien bonds.

Section 16. Tax Covenants; Designation of Bonds as “Qualified Tax-Exempt Obligations.”

(a) *Preservation of Tax Exemption for Interest on Bonds.* The City covenants that it will take all actions necessary to prevent interest on the Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bonds or other funds of the City treated as proceeds of the Bonds that will cause interest on the Bonds to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirements of Section 148 of the Code are applicable to the Bonds, take all actions necessary to comply (or to be treated as having complied) with those requirements in connection with the Bonds.

(b) *Post-Issuance Compliance.* The Finance Officer is authorized and directed to #[adopt and implement/review and update]# the City’s written procedures to facilitate compliance by the City with the covenants in this ordinance and the applicable requirements of the Code that must be satisfied after the Issue Date to prevent interest on the Bonds from being included in gross income for federal tax purposes.

(c) *Designation of Bonds as “Qualified Tax-Exempt Obligations.”* The Bonds may be designated as “qualified tax-exempt obligations” for the purposes of Section 265(b)(3) of the Code, if the following conditions are met:

- (1) the Bonds are not “private activity bonds” within the meaning of Section 141 of the Code;
- (2) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) that the City and any entity subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) will issue during the calendar year in which the Bonds are issued will not exceed \$10,000,000; and
- (3) the amount of tax-exempt obligations, including the Bonds, designated by the City as “qualified tax-exempt obligations” for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Bonds are issued does not exceed \$10,000,000.

Section 17. Refunding or Defeasance of the Bonds. The City may issue refunding bonds pursuant to State law or use money available from any other lawful source to carry out a refunding or defeasance plan, which may include (a) paying when due the principal of and interest on any or all of the Bonds (the “defeased Bonds”); (b) redeeming the defeased Bonds prior to their maturity; and (c) paying the costs of the refunding or defeasance. If the City sets aside in a special trust fund or escrow account irrevocably pledged to that redemption or defeasance (the “trust account”), money and/or Government Obligations maturing at a time or

times and bearing interest in amounts sufficient to redeem, refund or defease the defeased Bonds in accordance with their terms, then all right and interest of the Owners of the defeased Bonds in the covenants of this ordinance and in the funds and accounts obligated to the payment of the defeased Bonds shall cease and become void. Thereafter, the Owners of defeased Bonds shall have the right to receive payment of the principal of and interest on the defeased Bonds solely from the trust account and the defeased Bonds shall be deemed no longer outstanding. In that event, the City may apply money remaining in any fund or account (other than the trust account) established for the payment or redemption of the defeased Bonds to any lawful purpose.

Unless otherwise specified by the City in a refunding or defeasance plan, notice of refunding or defeasance shall be give, and selection of Bonds for any partial refunding or defeasance shall be conducted, in the manner prescribed in this ordinance for the redemption of Bonds.

Section 18. Use of Bond Proceeds. On the Issue Date, proceeds of the Bonds allocable to the Refunding Plan shall be deposited with the Refunding Trustee in accordance with Section 19 of this ordinance and, if required and determined by the Designated Representative, proceeds of the Bonds may be deposited in the Reserve Account to satisfy a portion of the Reserve Requirement.

Section 19. Refunding of the Refunded Bonds.

(a) *Appointment of Refunding Trustee*. The Designated Representative is authorized and directed to appoint an entity to serve as Refunding Trustee, which entity shall be qualified to perform the duties of Refunding Trustee under this ordinance.

(b) *Use of Bond Proceeds for Refunding Plans; Acquisition of Acquired Obligations*. All of the proceeds of the sale of the Bonds allocated to the Refunding Plan shall be deposited immediately upon the receipt thereof with the Refunding Trustee and used to discharge the obligations of the City relating to the Refunded Bonds under Ordinance No. 1397 by providing for the payment of the amounts required to be paid by the Refunding Plans. To the extent practicable, such obligations shall be discharged fully by the Refunding Trustee's simultaneous purchase of the Acquired Obligations, bearing such interest and maturing as to principal and interest in such amounts and at such times so as to provide, together with a beginning cash balance, if necessary, for the payment of the amounts required to be paid by the Refunding Plan. The Acquired Obligations shall be listed and more particularly described in an exhibit attached to the Refunding Trust Agreement, but are subject to substitution as set forth below. Any Bond proceeds or other money deposited with the Refunding Trustee not needed to purchase the Acquired Obligations and provide a beginning cash balance, if any, and pay the costs of issuance of the Bonds shall be returned to the City at the time of delivery of the Bonds to the Purchaser for deposit in the Principal and Interest Account to pay interest on the Bonds on the first interest payment date.

(c) *Substitution of Acquired Obligations*. Prior to the purchase of any Acquired Obligations by the Refunding Trustee, the City reserves the right to substitute other direct, noncallable obligations of the United States of America ("Substitute Obligations") for any of the Acquired Obligations and to use any savings created thereby for any lawful City purpose if, (1)

in the opinion of Bond Counsel the interest on the Bonds and the Refunded Bonds will remain excluded from gross income for federal income tax purposes under Sections 103, 148 and 149(d) of the Code, and (2) such substitution shall not impair the timely payment of the amounts required to be paid by the Refunding Plan, as verified by a nationally recognized independent certified public accounting firm.

After the purchase of the Acquired Obligations by the Refunding Trustee, the City reserves the right to substitute therefor cash or Substitute Obligations subject to the conditions that such cash or Substitute Obligations held by the Refunding Trustee shall be sufficient to carry out the Refunding Plan, that such substitution will not cause the Bonds and the Refunded Bonds to be arbitrage bonds within the meaning of Section 148 of the Code and regulations thereunder in effect on the date of such substitution and applicable to obligations issued on the Issue Date, and that the City obtain, at its expense: (1) verification by a nationally recognized independent certified public accounting firm acceptable to the Refunding Trustee confirming that the payments of principal of and interest on the Substitute Obligations, if paid when due, and any other money held by the Refunding Trustee will be sufficient to carry out the Refunding Plan; and (2) an opinion from Bond Counsel to the effect that the disposition and substitution or purchase of such Substitute Obligations, under the statutes, rules and regulations then in force and applicable to the Bonds and the Refunded Bonds, will not cause the interest on the Bonds or the Refunded Bonds to be included in gross income for federal income tax purposes and that such disposition and substitution or purchase is in compliance with the statutes and regulations applicable to the Bonds and the Refunded Bonds. Any surplus money resulting from the sale, transfer, other disposition or redemption of the Acquired Obligations and the substitutions therefor shall be released from the trust estate and transferred to the City to be used for any lawful City purpose.

(d) *Administration of Refunding Plan.* The Refunding Trustee is authorized and directed to purchase the Acquired Obligations (or Substitute Obligations) and to make the payments required to be made by the Refunding Plan from the Acquired Obligations (or Substitute Obligations) and money deposited with the Refunding Trustee pursuant to this ordinance. All Acquired Obligations (or Substitute Obligations) and the money deposited with the Refunding Trustee and any income therefrom shall be held irrevocably, invested and applied in accordance with the provisions of Ordinance No. 1397, this ordinance, chapter 39.53 RCW and other applicable statutes of the State and the Refunding Trust Agreement. All necessary and proper fees, compensation and expenses of the Refunding Trustee for the Bonds and all other costs incidental to the setting up of the escrow to accomplish the refunding of the Refunded Bonds and costs related to the issuance and delivery of the Bonds, including bond printing, verification fees, bond counsel's fees and other related expenses, shall be paid out of the proceeds of the Bonds.

(e) *Authorization for Refunding Trust Agreement.* To carry out the Refunding Plans provided for by this ordinance, the Designated Representative is authorized and directed to execute and deliver to the Refunding Trustee a Refunding Trust Agreement setting forth the duties, obligations and responsibilities of the Refunding Trustee in connection with the payment, redemption and retirement of the Refunded Bonds as provided herein and stating that the provisions for payment of the fees, compensation and expenses of such Refunding Trustee set forth therein are satisfactory to the Refunding Trustee.

(f) *Call for Redemption of the Refunded Bonds.* The Designated Representative is authorized to call, on behalf of the City, the Refunded Bonds for redemption on their Redemption Date in accordance with Ordinance No. 1397 and this ordinance. In addition to such other information as may be necessary or convenient, the call for redemption shall specify the name of the Refunded Bonds being called, their maturity dates, their Redemption Date and redemption price (expressed as a percentage of par, plus accrued interest), and shall be irrevocable after the Bonds are delivered to the Purchaser. The proper officials of the City are authorized and directed to give or cause to be given such notices as required, at the times and in the manner required pursuant to the Refunded Bond Ordinances in order to effect the redemption prior to their maturity of the Refunded Bonds.

(g) *City Findings with Respect to Refunding.* Prior to approving the sale of the Bonds, the Designated Representative shall make the following determinations in writing:

- (1) The Redemption Date is the earliest practical date on which the Refunded Bonds may be called for redemption.
- (2) The savings that will be effected (as measured by the difference between the principal and interest cost over the life of the Bonds and the principal and interest cost over the life of the Refunded Bonds but for such refunding) will be at least the percentage set forth in Exhibit B. In making such findings and determinations, the Designated Representative has given consideration to the fixed maturities of the Bonds and the Refunded Bonds, the costs of issuance of the Bonds and the known earned income from the investment of the proceeds of the issuance and sale of the Bonds pending payment and redemption of the Refunded Bonds.
- (3) The Refunding Plan will be effected by the issuance and sale of the Bonds and the application of the proceeds of such Bonds (together with other money of the City, if necessary) to carrying out that Refunding Plan and that the money to be deposited with the Refunding Trustee for the Refunded Bonds in accordance with the Refunding Plan will be sufficient (together with interest earned on the Acquired Obligations) to discharge and satisfy the obligations of the City under the Ordinance No. 1397.

The City Council finds and determines that the money to be deposited with the Refunding Trustee for the Refunded Bonds in accordance with this Section 19 and upon the determination made by the Designated Representative pursuant to subsection (g) of this section will discharge and satisfy the obligations of the City under Ordinance No. 1397 with respect to the Refunded Bonds and the pledges, charges, trusts, covenants and agreements of the City therein made or provided for as to the Refunded Bonds, and that the Refunded Bonds shall no longer be deemed to be outstanding under Ordinance No. 1397 immediately upon the deposit of such money with the Refunding Trustee.

Section 20. Sale and Delivery of the Bonds.

(a) *Manner of Sale of Bonds; Delivery of Bonds.* The Designated Representative is authorized to sell the Bonds by negotiated sale to the Purchaser, based on the assessment of the Designated Representative of market conditions, in consultation with appropriate City officials and staff, Bond Counsel and other advisors. In accepting the Final Terms, the Designated Representative shall take into account those factors that, in the judgment of the Designated Representative, may be expected to result in the lowest true interest cost to the City. The Bond Purchase Agreement shall set forth the Final Terms. The Designated Representative is authorized to execute the Bond Purchase Agreement on behalf of the City, so long as the terms provided therein are consistent with the terms of this ordinance.

(b) *Preparation, Execution and Delivery of the Bonds.* The Bonds will be prepared at City expense and will be delivered to the Purchaser in accordance with the Bond Purchase Agreement, together with the approving legal opinion of Bond Counsel regarding the Bonds.

Section 21. Official Statement; Continuing Disclosure.

(a) *Preliminary Official Statement Deemed Final.* The Designated Representative shall review the form of the preliminary official statement prepared in connection with the Bonds to the public. For the sole purpose of the Purchaser's compliance with paragraph (b)(1) of Rule 15c2-12, the Designated Representative is authorized to deem that preliminary official statement final as of its date, except for the omission of information permitted to be omitted by Rule 15c2-12. The City approves the distribution to potential purchasers of the Bonds of a preliminary official statement that has been deemed final in accordance with this subsection.

(b) *Approval of Final Official Statement.* The City approves the preparation of a final official statement for the Bonds to be sold to the public in the form of the preliminary official statement, with such modifications and amendments as the Designated Representative deems necessary or desirable, and further authorizes the Designated Representative to execute and deliver such final official statement to the Purchaser. The City authorizes and approves the distribution by the Purchaser of that final official statement to purchasers and potential purchasers of the Bonds.

(c) *Undertaking to Provide Continuing Disclosure.* To meet the requirements of paragraph (b)(5) of Rule 15c2-12, as applicable to a participating underwriter for the Bonds, the Designated Representative is authorized to execute a written undertaking to provide continuing disclosure for the benefit of holders of the Bonds in substantially the form attached as Exhibit C.

Section 22. Supplemental and Amendatory Ordinances. This ordinance shall not be modified or amended in any respect subsequent to the initial issuance of the Bonds, except as provided in and in accordance with and subject to the provisions of this section.

(a) *Supplement or Amendment Without Consent.* The City may from time to time, and at any time, without the consent of or notice to the Registered Owners of the Bonds, pass supplemental or amendatory ordinances as follows:

- (1) To cure any formal defect, omission, inconsistency or ambiguity in this ordinance in a manner not adverse to the owner of any Parity Bonds;
- (2) To impose upon the Bond Registrar (with its consent) for the benefit of the Registered Owners of the Bonds any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with this ordinance as theretofore in effect;
- (3) To add to the covenants and agreements of, and limitations and restrictions upon, the City in this ordinance, other covenants, agreements, limitations and restrictions to be observed by the City which are not contrary or inconsistent with this ordinance as theretofore in effect;
- (4) To confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by this ordinance of any other money, securities or funds;
- (5) To authorize different denominations of the Bonds and to make correlative amendments and modifications to this ordinance regarding exchangeability of Bonds of different authorized denominations, redemptions of portions of Bonds of particular authorized denominations and similar amendments and modifications of a technical nature;
- (6) To modify, alter, amend or supplement this ordinance in any other respect which is not materially adverse to the Registered Owners of the Bonds and which does not involve a change described in subsection (c) of this section; and
- (7) Because of change in federal law or rulings, to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

Before the City shall adopt any such ordinance pursuant to this subsection, there shall have been delivered to the City and the Bond Registrar an opinion of Bond Counsel stating that such ordinance is authorized or permitted by this ordinance and, upon its effective date, will be valid and binding on the City in accordance with its terms and will not adversely affect any exclusion from gross income for federal income tax purposes of interest applicable to any outstanding Parity Bonds.

(b) *Supplement or Amendment Requiring Consent.* Except for any ordinance passed pursuant to subsection (a) of this section, subject to the terms and provisions contained in this subsection (b) and not otherwise, registered owners of not less than 60% in aggregate principal amount of the Parity Bonds then outstanding shall have the right from time to time to consent to and approve the adoption by the City Council of any ordinance deemed necessary or desirable by the City for the purpose of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in this ordinance; except that, unless approved in writing by the registered owners of all the Parity Bonds then outstanding, nothing contained in this section shall permit, or be construed as permitting:

- (1) A change in the times, amounts or currency of payment of the principal of or interest on any outstanding Parity Bond, or a reduction in the principal amount of redemption price of any outstanding Parity Bond or a change in the redemption price of any outstanding Parity Bond or a change in the method of determining the rate of interest thereon, or
- (2) A preference of priority of any Parity Bond, or
- (3) A reduction in the aggregate principal amount of Parity Bonds, the consent of the Registered Owners of Parity Bonds of which is required for any such ordinance.

If at any time the City shall adopt any ordinance for any of the purposes of this subsection (b), the Bond Registrar shall cause notice of the proposed ordinance to be given by first-class United States mail to all registered owners of the then outstanding Parity Bonds to each Rating Agency. Such notice shall briefly set forth the nature of the changes contained in the proposed ordinance and shall state that a copy thereof is on file at the office of the Bond Registrar for inspection by all registered owners of the outstanding Parity Bonds.

Within two years after the date of the mailing of such notice, the City may pass such ordinance in substantially the form described in such notice, but only if there shall have first been delivered to the Bond Registrar (i) the required consents, in writing, of the registered owners of the Parity Bonds and (ii) an opinion of Bond Counsel stating that such ordinance is authorized or permitted by this ordinance, and, upon its effective date, will be valid and binding upon the City in accordance with its terms and will not adversely affect the exclusion from gross income for federal income tax purposes of interest applicable to outstanding Parity Bonds.

If registered owners of not less than the percentage of Parity Bonds required by this subsection (b) shall have consented to and approved the execution and delivery thereof as herein provided, no owner of the Parity Bonds shall have any right to object to the passage of such ordinance, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the passage thereof, or to enjoin or restrain the City or the Bond Registrar from taking any action pursuant to the provisions thereof.

(c) *Effect of Amendatory or Supplemental Ordinances.* Upon the passage of any ordinance pursuant to the provisions of this section, this ordinance shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City, the Bond Registrar and all Registered Owners of Bonds then outstanding, thereafter shall be determined, exercised and enforced under this ordinance subject in all respects to such modifications and amendments.

Section 23. General Authorization and Ratification. The Designated Representative and other appropriate officers of the City are severally authorized to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this ordinance, and to do everything necessary for the prompt delivery of the Bonds to the Purchaser and for the proper application, use and investment of the proceeds of the Bonds. All actions taken prior to the effective date of this

ordinance in furtherance of the purposes described in this ordinance and not inconsistent with the terms of this ordinance are ratified and confirmed in all respects.

Section 24. Severability. The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

Section 25. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Oak Harbor, Washington, at an open public meeting thereof, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Bond Counsel

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**EXHIBIT A**  
**PARITY CONDITIONS**

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As set forth in Section 15 of this Ordinance, the City may issue Future Parity Bonds on a parity with the Bonds and the Outstanding Parity Bonds if the following conditions are met and complied with at the time of issuance of those proposed Future Parity Bonds:

- (a) There shall be no deficiency in the Bond Fund.
- (b) The ordinance providing for the issuance of the Future Parity Bonds shall provide that all ULID Assessments (including interest and penalties thereon) which may be levied in any ULID created for the purpose of paying, in whole or in part, the principal of and interest on those Future Parity Bonds shall be paid directly into the Bond Fund.
- (c) The ordinance providing for the issuance of such Future Parity Bonds shall provide for the payment of the principal thereof and interest thereon out of the Bond Fund.
- (d) The ordinance providing for the issuance of such Future Parity Bonds shall provide for the payment of an amount (or reserve insurance) equal to the Reserve Requirement for those Future Parity Bonds into the Reserve Account in the Bond Fund from the Future Parity Bond proceeds or, to the extent that Reserve Requirement is not funded from Future Parity Bond proceeds, within five years from the date of issue of the Future Parity Bonds from ULID Assessments, if any, levied and first collected for the payment of the principal of and interest on those Future Parity Bonds and, to the extent that ULID Assessments are insufficient, then from the Net Revenue of the Waterworks Utility in not more than five approximately equal annual payments.
- (e) The ordinance authorizing the issuance of such Future Parity Bonds shall provide for the payment of sinking fund requirements into the Bond Fund for any Term Bonds to be issued and for regular payments to be made for the payment of the principal of such Term Bonds on or before their maturity, or, as an alternative, the mandatory redemption of those Term Bonds prior to their maturity date from money in the Principal and Interest Account.
- (f) There shall be on file from a licensed professional engineer experienced in the design, construction and operation of municipal utilities, or from a certified public accountant, a certificate showing that in his or her professional opinion the Net Revenue of the Waterworks Utility for any 12 consecutive calendar months out of the immediately preceding 18 calendar months, together with the annual assessments reasonably anticipated to be collected in any ULID created to pay, in whole or in part, those Future Parity Bonds proposed to be issued, shall be equal to the Coverage Requirement for each year thereafter.

The certificate, in estimating the Net Revenue of the Waterworks Utility available for debt service, shall use the historical Net Revenue of the Waterworks Utility for any 12 consecutive months out of the 18 months immediately preceding the month of delivery of the Future Parity Bonds. Net Revenue of the Waterworks Utility may be adjusted to reflect:

- (1) Any changes in rates in effect and being charged or expressly committed by ordinance to be made in the future;

(2) Income derived from customers of the Waterworks Utility that have become customers during the 12 consecutive month period or thereafter adjusted to reflect one year's net revenue from those customers;

(3) Revenue from any customers to be connected to the Waterworks Utility who have paid the required connection charges;

(4) Revenue received or to be received which is derived from any person, firm, corporation or municipal corporation under any executed contract for water, sewage disposal or other utility service, which revenue was not included in the historical Net Revenue of the Waterworks Utility; and

(5) The engineer's or accountant's estimate of the Net Revenue of the Waterworks Utility to be derived from customers to connect to any additions to and improvements and extensions of the Waterworks Utility to be paid for out of the proceeds of the sale of the additional Future Parity Bonds or other additions to and improvements and extensions of the Waterworks Utility then under construction and not fully connected to the facilities of the Waterworks Utility when such additions, improvements and extensions are completed.

If Future Parity Bonds proposed to be so issued are for the sole purpose of refunding outstanding Parity Bonds, such certification of coverage shall not be required if the amount required for the payment of the principal and interest in each year for the refunding bonds is not increased over the amount required for the bonds to be refunded thereby and the maturities of such refunding bonds are not extended beyond the maturities of the bonds to be refunded thereby.

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**EXHIBIT A**  
**DESCRIPTION OF THE BONDS**

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- (a) Principal Amount. The Bonds shall not exceed the aggregate principal amount of \$2,500,000.
- (b) Date or Dates. Each Bond shall be dated the Issue Date, which date may not be later than December 31, 2013.
- (c) Denominations, Name, etc. The Bonds shall be issued in Authorized Denominations and shall be numbered separately in the manner and shall bear any name and additional designation as deemed necessary or appropriate by the Designated Representative.
- (d) Interest Rate(s). Each Bond shall bear interest at a fixed rate per annum (computed on the basis of a 360-day year of twelve 30-day months) from the Issue Date or from the most recent date for which interest has been paid or duly provided for, whichever is later. One or more rates of interest may be fixed for the Bonds. No rate of interest for any Bond may exceed 6.0%, and the true interest cost to the City for the Bonds may not exceed 3.0%.
- (e) Payment Dates. Interest shall be payable at fixed rates semiannually on dates acceptable to the Designated Representative, commencing no later than the next such semiannual date following the Issue Date. Principal payments shall commence on a date acceptable to the Designated Representative and shall be payable at maturity or in mandatory redemption installments annually thereafter, on dates acceptable to the Designated Representative.
- (f) Final Maturity. The Bonds shall mature no later than September 1, 2024.
- (g) Redemption Rights. The Designated Representative may approve in the Bond Purchase Agreement provisions for the optional and mandatory redemption of Bonds, subject to the following:
- (1) Optional Redemption. Any Bond may be designated as being (A) subject to redemption at the option of the City prior to its maturity date on the dates and at the prices set forth in the Bond Purchase Agreement; or (B) not subject to redemption prior to its maturity date. If a Bond is subject to optional redemption prior to its maturity, it must be subject to such redemption on one or more dates occurring not more than 10½ years after the Issue Date.

(2) Mandatory Redemption. Any Bond may be designated as a Term Bond, subject to mandatory redemption prior to its maturity on the dates and in the amounts set forth in the Bond Purchase Agreement.

(h) Price.

The purchase price for the Bonds may not be less than 95% or more than 130% of the stated principal amount of the Bonds.

(i) Other Terms and Conditions.

(1) The Designated Representative may determine whether it is in the City's best interest to provide for bond insurance or other credit enhancement; and may accept such additional terms, conditions and covenants as he or she may determine are in the best interests of the City, consistent with this ordinance.

(2) The Designated Representative shall have the authority described in Section 19 with respect to authorizing the refunding and carrying out the Refunding Plan. The refunding of the Refunded Bonds shall produce net present value savings equal to at least [\_\_]% of the principal amount of the Bonds. The Designated Representative must have determined that the provisions set forth in Section 19(g) have been met and satisfied as of the date of issuance of the Bonds.

(3) The Designated Representative must have determined that the Parity Conditions have been met and satisfied as of the date of issuance of the Bonds.

[Form of]  
**UNDERTAKING TO PROVIDE CONTINUING DISCLOSURE**

**City of Oak Harbor, Washington**  
**Water and Sewer Revenue Refunding Bonds, 2013**

To meet the requirements of paragraph (b)(5) of Rule 15c2-12, as applicable to a participating underwriter for the above-referenced bonds (the “Bonds”), the City makes the following written Undertaking for the benefit of holders of the Bonds:

(a) Undertaking to Provide Annual Financial Information and Notice of Listed Events. The City undertakes to provide or cause to be provided, either directly or through a designated agent, to the MSRB, in an electronic format as prescribed by the MSRB, accompanied by identifying information as prescribed by the MSRB:

- (i) Annual financial information and operating data of the type included in the final official statement for the Bonds and described in paragraph (b) (“annual financial information”);
- (ii) Timely notice (not in excess of 10 business days after the occurrence of the event) of the occurrence of any of the following events with respect to the Bonds: (1) principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701 – TEB) or other material notices or determinations with respect to the tax status of the Bonds; (7) modifications to rights of holders of the Bonds, if material; (8) bond calls (other than scheduled mandatory redemptions of Term Bonds), if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the City, as such “Bankruptcy Events” are defined in Rule 15c2-12; (13) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (14) appointment of a successor or additional trustee or the change of name of a trustee, if material.
- (iii) Timely notice of a failure by the City to provide required annual financial information on or before the date specified in paragraph (b).

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

- (i) Shall consist of (1) annual financial statements prepared (except as noted in the financial statements) in accordance with applicable generally accepted accounting principles applicable to local governmental units of the State such as the City, as such principles may be changed from time to time, which statements may be unaudited, provided, that if and when audited financial statements are prepared and available they will be provided; (2) a statement of authorized, issued and outstanding bonded debt secured by Net Revenue of the Waterworks Utility and ULID Assessments; (3) debt service coverage ratios; and (4) general customer statistics for the Waterworks Utility [of the types set forth in the tables titled \_\_\_\_\_ of the Official Statement for the Bonds];
- (ii) Shall be provided not later than the last day of the ninth month after the end of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the City's fiscal year ending December 31, 2012; and
- (iii) May be provided in a single or multiple documents, and may be incorporated by specific reference to documents available to the public on the Internet website of the MSRB or filed with the SEC.

(c) Amendment of Undertaking. This Undertaking is subject to amendment after the primary offering of the Bonds without the consent of any holder of any Bond, or of any broker, dealer, municipal securities dealer, participating underwriter, Rating Agency or the MSRB, under the circumstances and in the manner permitted by Rule 15c2-12. The City will give notice to the MSRB of the substance (or provide a copy) of any amendment to the Undertaking and a brief statement of the reasons for the amendment. If the amendment changes the type of annual financial information to be provided, the annual financial information containing the amended financial information will include a narrative explanation of the effect of that change on the type of information to be provided.

(d) Beneficiaries. This Undertaking shall inure to the benefit of the City and the holder of each Bond, and shall not inure to the benefit of or create any rights in any other person.

(e) Termination of Undertaking. The City's obligations under this Undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the City's obligations under this Undertaking shall terminate if the provisions of Rule 15c2-12 that require the City to comply with this Undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of Bond Counsel delivered to the City, and the City provides timely notice of such termination to the MSRB.

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

(g) Designation of Official Responsible to Administer Undertaking. The Finance Officer or his or her designee is authorized to take such further actions as may be necessary, appropriate or convenient to carry out this Undertaking in accordance with Rule 15c2-12, including the following actions:

- (i) Preparing and filing the annual financial information undertaken to be provided;
- (ii) Determining whether any event specified in paragraph (a) has occurred, assessing its materiality, where necessary, with respect to the Bonds, and preparing and disseminating any required notice of its occurrence;
- (iii) Determining whether any person other than the City is an “obligated person” within the meaning of Rule 15c2-12 with respect to the Bonds, and obtaining from such person an undertaking to provide any annual financial information and notice of listed events for that person required under Rule 15c2-12;
- (iv) Selecting, engaging and compensating designated agents and consultants, including financial advisors and legal counsel, to assist and advise the City in carrying out this Undertaking; and
- (v) Effecting any necessary amendment of this Undertaking.

**CERTIFICATION**

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

1. The attached copy of Ordinance No. \_\_\_\_ (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on \_\_\_\_\_, 2013, as that ordinance appears on the minute book of the City.

2. The Ordinance will be in full force and effect five days after publication in the City's official newspaper, which publication date is \_\_\_\_\_, 2013.

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

Dated: \_\_\_\_\_, 2013.

CITY OF OAK HARBOR, WASHINGTON

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

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

Bill No. **5.b.**  
Date: June 4, 2013  
Subject: Park Facility Reservation System  
Ordinance Update

**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  
 Grant Weed, Interim City Attorney, as to form

**PURPOSE**

This agenda bill recommends updating Oak Harbor Municipal Code 6.14.145 relating to the Park Facility Reservation System.

**FISCAL IMPACT DESCRIPTION**

Funds Required: None  
Appropriation Source: Parks

**SUMMARY STATEMENT**

Since the completion of the community built playground at Ft Nugent Park, the Parks Division has received numerous requests for covered picnic shelters that can serve family reunions, birthday parties, large and small gatherings for groups and individuals. Two new shelters are currently under construction and nearing completion at Ft. Nugent Park.

The City of Oak Harbor has had a Facility Reservation System in place at Windjammer Park for several years. For a \$25.00 fee, citizens may reserve a facility (including kitchens, gazebos and shelters) and a sign will be posted for them to ensure that the facility is reserved for their use for the day. All facilities are available on a first come first served basis unless reserved.

With the availability of the two new shelters at Ft. Nugent Park, the shelter at Flintstone Park, currently under reconstruction, the new gazebo at Hal Ramaley Park and the existing gazebo at Smith Park, staff believes that it is time to update the Ordinance to include all park facilities in the reservation system.

The proposed change in the Ordinance simply generalizes the language in order to include all park facilities.

**STANDING COMMITTEE REPORT**

The Park Facility Reservation System was discussed at the Park Board meeting on May 13, 2013. This item has not been discussed at the Standing Committee meetings.

**RECOMMENDED ACTION**

Adopt Ordinance 1659 amending Oak Harbor Municipal Code 6.14.145 relating to the Park Facility Reservation System.

**ATTACHMENTS**

- Ordinance #1659
- Park Facility Reservation Form

**ORDINANCE NO. 1659**

**AN ORDINANCE RELATING TO THE AMENDMENT AND READOPTION OF OAK HARBOR MUNICIPAL CODE AMENDING SECTION 6.14.145 OF THE OAK HARBOR MUNICIPAL CODE RELATING TO THE PARK FACILITY RESERVATION SYSTEM.**

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

**Section OneTwo.** Oak Harbor Municipal Code Section 6.14.145 entitled “Windjammer Park kitchen and gazebo reservation system” is hereby amended to read as follows:

**6.14.145      ~~Windjammer Park~~ facility kitchen and gazebo reservation system.**

- (1)      ~~Windjammer~~ Park facilities (kitchens, gazebos, shelters, etc.) ~~and the gazebo (hereafter called a “facility”)~~ may be reserved for day use by an individual or group under terms and conditions specified by the administrator.
- (2)      The fee for reservation for a single day’s use of a facility shall be \$25.00. As part of the reservation, the person or group reserving the facility shall assure that the facility is left in as good a condition as it was at the time of beginning occupancy.
- (3)      Reservation shall usually be first come, first serve, provided an individual or group may not be first in line for a facility more than once every six months to assure the widest public use of facilities.
- (4)      When a facility is not reserved, the facility’s use is available on a first come, first serve basis for use by occupants that day without payment of a fee.
- (5)      The administration may refuse to reserve the facility for certain dates and for events inconsistent with the purposes of the parks~~Windjammer Park~~.
- (6)      Signs shall be posted noting the reservation system and who has reserved for a date certain.
- (7)      The administrator for this section is the person designated by the mayor to administer this facility reservation system.
- (8)      Oak Harbor police may terminate the use of a facility when its use is part of a public disturbance or is causing a noise violation or there is threatened damage to persons or property.
- (9)      The mayor may issue such additional regulations as are necessary to implement this system.
- (10)     The privilege of using a facility shall not be construed as a lease or rental, but simply a license terminable at will by the administrator or his or her designee as he or she determines to be the city’s best interests.

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

**Section ThreeFour.** Effective Date. This Ordinance shall be in full force and effect five days after its passage and publication as required by law.

PASSED by the City Council and approved by its Mayor this 4th day of June, 2013.

~~THE~~CITY OF OAK HARBOR

\_\_\_\_\_  
SCOTT DUDLEY, MAYOR~~Mayor~~

Attest:

\_\_\_\_\_  
Valerie J. Loffler, City Clerk

Approved as to Form:

\_\_\_\_\_  
Grant Weed, Interim City Attorney

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

Presented: May 21, 2013

Adopted: June 4, 2013

Published: June 8, 2013



## CITY PARKS Facility Reservation Form

Today's date \_\_\_\_\_

Contact Name \_\_\_\_\_

Phone number \_\_\_\_\_

**Organization** \_\_\_\_\_  
*(for reservation **SIGN**)*

Number of Participants \_\_\_\_\_

Billing Address \_\_\_\_\_

Day/Date/Time of reservation \_\_\_\_\_

Windjammer Park	Ft. Nugent Park	Flintstone Park	Hal Ramaley Park	Smith Park
East Kitchen A <input type="checkbox"/>	Shelter 1 <input type="checkbox"/>	Shelter <input type="checkbox"/>	Gazebo <input type="checkbox"/>	Gazebo <input type="checkbox"/>
East Kitchen B <input type="checkbox"/>	Shelter 2 <input type="checkbox"/>			
West Kitchen C <input type="checkbox"/>				
Gazebo D <input type="checkbox"/>				
Canopy E <input type="checkbox"/>				

**Will the event include amplified sound?** Yes  No  (Kitchen Key \_\_\_\_\_) (Bollard Key \_\_\_\_\_)  
*(If YES, a Special Events/Noise Permit application is required.)*

**Please check box(es) below if applicable:**

- I will be bringing in a Party Canopy.** *(Must be placed in a designated area.)*
- I will be hiring a Portable Play Apparatus.** Allowed only when operated by a licensed insured provider.  
The provider must submit a copy of a valid permit issued from the Dept. of Labor & Industries to operate amusement rides on public property and a certificate of liability insurance naming the City as an addition insured.  
*(Must be placed in a designated area.)*
- The facility fee is \$25.00 per day which is non-refundable. The key check out fee is \$5.00 and is refundable, providing all keys are returned. All fees must be paid in advance.
- The \$5.00 key deposit will be returned to the person returning the key provided they are the person who made the reservation or have a signed note from said person allowing them to pick up the \$5.00.
- If a bollard key is required, measures must be taken to ensure that only authorized vehicles are allowed past the bollard, and that the bollard is immediately replaced.
- A reserved sign with your party's name will be posted on the facility you have requested, and the facility will be locked for your party.
- If you need access to the facility (for decorating purposes) prior to the date you have reserved, you must reserve the facility for the additional date(s).
- Do not leave personal belongings unattended in the facility. The City of Oak Harbor is not responsible for damage to, or theft of, personal property.
- Remove all food, dishes, decorations etc. brought in for the event. Place trash in nearby receptacles. Wipe counters, sink and any spills on the floor.
- The City of Oak Harbor reserves the right to assess an additional cleanup fee if the facility is not left in an acceptable manner.
- If it is necessary to drive a vehicle into the park to deliver supplies, please do so on the asphalt pathways only. No vehicles should be left unattended in the park.
- The City of Oak Harbor reserves the right to assess charges to repair damage resulting from vehicles driven across park grounds.
- Check-out time is 10:00 PM.
- Please lock the facility when you leave, and return the key to the City Hall Utilities Office by the following business day.
- **ALCOHOLIC BEVERAGES ARE NOT ALLOWED IN CITY PARKS PER OHMC 16.12.020.**

Signature \_\_\_\_\_

Scheduled key return date \_\_\_\_\_

**City Hall Utilities Office (360) 279-4530 • Office Hours: 8:00 a.m. - 5:00 p.m.  
865 SE Barrington Drive, Oak Harbor, WA 98277**

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

Bill No. **6.a.**  
Date: June 4, 2013  
Subject: Septic to Sewer Project -  
Consultant Agreement with BHC

**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  
 Grant Weed, Interim City Attorney, as to form

**PURPOSE**

The purpose of this agenda bill is to seek City Council's approval of a Consultant Agreement with BHC Consultants to provide engineering consulting services for the Septic to Sewer Project.

**AUTHORITY**

The Oak Harbor Municipal Code states:

***2.310.050 Professional service contracts.***

*Contracts for professional services, including contracts for legal and consulting services, are not subject to the bidding requirements of Chapters 2.310 through 2.390 OHMC. The mayor or his/her designee shall promulgate procedures and standards for the approval of such contracts. Contracts for architectural and engineering services shall be awarded in accordance with Chapter 2.350 OHMC and Chapter 39.80 RCW. For purposes of this section, "professional services" are those services involving skill, education and special knowledge and where the work is predominately mental and intellectual, rather than physical and mechanical. The mayor shall establish guidelines and procedures for obtaining professional services. Professional service contracts in excess of \$10,000 shall require approval by the city council. Contracts for professional services under \$10,000 shall be reviewed by the finance director or the city attorney prior to signing to assure compliance with the Oak Harbor biannual budget, provisions of Chapter 2.390 OHMC and purchasing policies promulgated by the mayor. (Ord. 1629 § 1, 2012; Ord. 1470 § 8, 2006).*

**FISCAL IMPACT DESCRIPTION**

Funds Required:                   \$24,930  
Appropriation Source:           Sewer Fund

**SUMMARY STATEMENT**

The City of Oak Harbor (City) recently submitted a Draft Wastewater Facility Plan to the Washington State Department of Ecology (DOE). The development of the facilities plan explored unsewered properties within the City limits and Urban Growth Area (UGA). The plan

provided planning level alignments and cost estimates to provide sewer services to 13 island areas within the UGA. Costs estimates were divided based on inclusion in the City or UGA.

While the plan clearly identifies the limits of the unsewered areas, it does not address the City policy regarding sewer connections.

The intent of this contract is to receive assistance from BHC Consultants in developing policy and/or code revisions to clearly address unsewered properties in the City's jurisdiction.

BHC Consultants' scope of work includes –

- Task 1 – Baseline Research and Capture the Problem
  - o Review of existing City policies and code
  - o Additional research of individual septic system properties (not part of the island areas)
  - o Review of existing fees and charges for connection to the sewer system.
- Task 2 – Establish a Matrix of Options
  - o Connection requirements
  - o Temporary connections
  - o Extension beyond City limits into UGA
- Task 3 – Financing Alternatives
  - o Financing options
  - o Grants / Loans / LIDs
  - o Examples from other communities
- Task 4 – Workshops and Meetings
  - o Assist the city with public meetings to discuss the options and develop policy
- Task 5 – Project Management

### **CITY COUNCIL WORKSHOP**

This item was discussed at the May 29, 2013 City Council Workshop.

### **RECOMMENDED ACTION**

Motion to authorize the Mayor to sign a Consultant Agreement with BHC Consultants for engineering consulting services for the Septic to Sewer Project on a time and materials basis in an amount not to exceed \$24,930.

### **ATTACHMENTS**

Consultant Agreement



**CITY OF OAK HARBOR  
CONSULTANT AGREEMENT  
WITH BHC Consultants**

**PROJECT TITLE:** Septic to Sewer Project

**PROJECT COMPLETION DATE:** 12/31/2013

**MAXIMUM AMOUNT PAYABLE:** \$24,930

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## **CONSULTANT CONTRACT HEADING**

### **I. INSTRUCTIONS**

This contract must be completed in full, including all applicable exhibits. If an exhibit is not applicable, it should be marked "VOID".

Any changes or additions to this contract must be made in writing and set forth below. (The parties may attach appendices and exhibits to this contract but they **must** be listed in Section IV below.) Any exceptions or changes to the General Requirements must be listed in Section XI of the contract.

### **II. CONSULTANT INFORMATION**

Name: BHC Consultants

Address: 1601 Fifth Avenue, Suite 500  
Seattle, WA 98101

Telephone/Fax No.: (206) 505-3400 / (206) 505-3406 fax

Federal ID No.: 26-1363237

Do you require a 1099 for the IRS? No

### **III. PROJECT INFORMATION**

Project Title: Septic to Sewer Project

Project Description: During the development of the City's Wastewater Facilities Plan, several unsewered island areas were reviewed for potential connection to the City's wastewater collection system. The Septic to Sewer Project is intended to help the City develop a policy and/or ordinance revisions to address unsewered properties within the City and the potential connection of properties located in the Urban Growth Area.

Project Completion Date: 12/31/2013  
Maximum Amount Payable: 24,930  
Progress Payments: Invoiced Monthly

### **IV. ADDITIONAL DOCUMENTS ADDED TO THIS CONTRACT**

Delete Exhibits D-1 and D-2 and replace with Exhibit D-3

## **AGREEMENT**

### **V. INTRODUCTION**

THIS AGREEMENT, made and entered into this 4th day of June, 2013, between the City of Oak Harbor, Washington, hereinafter called the "CITY", and the below identified organization hereinafter called the "CONSULTANT" consists of this agreement, the exhibits and the General Requirements attached hereto.

WITNESSETH THAT:

WHEREAS, the CITY desires to accomplish the above-referenced project, and

WHEREAS, the CITY does not have sufficient staff to meet the required commitment and, therefore, deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the CITY;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

### **VI. GENERAL DESCRIPTION OF WORK**

The work under this AGREEMENT shall consist of the work and services described in Section III of this AGREEMENT and as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

### **VII. SCOPE OF WORK**

The Scope of Work and project level of effort for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT.

### **VIII. PAYMENT**

The CONSULTANT shall be paid by the CITY for completed work and services rendered under this AGREEMENT on the basis of a negotiated hourly rate plus costs as provided in Exhibit "C" attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Exhibit "B" attached hereto and by this reference made part of this AGREEMENT; except for out of pocket costs as identified in Exhibit "C".

**IX. CERTIFICATION OF THE CONSULTANT AND THE CITY**

Attached hereto as Exhibit "A-1" is the Certification of the Consultant and Certification of City Official. Exhibit "A-2" is the Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions.

**X. COMPLETE AGREEMENT**

This document and referenced attachments contain all covenants, stipulations and provisions agreed upon by the parties. No agent or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XI. GENERAL REQUIREMENTS**

The General Requirements for Consulting Contract, on file in the City Clerk's Office at Oak Harbor City Hall, a copy of which is attached hereto, shall apply to this AGREEMENT except as modified in this Section XI (General Requirements). The CONSULTANT has assured that the attached copy of the General Requirements conforms to the set filed in the City Clerk's Office.

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

**XII. EXECUTION AND ACCEPTANCE**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

By \_\_\_\_\_  
Consultant: BHC, Craig P. Chambers  
Principal

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

I, Craig P. Chambers, Consultant, certify under penalty of perjury under the laws of the State of Washington that this copy of the General Requirements for Consultant Contract conform to the set filed in the Clerk's Office.

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

\_\_\_\_\_  
By: Craig P. Chambers

## **GENERAL REQUIREMENTS**

### **1. MISCELLANEOUS PROVISIONS**

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the CITY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the CITY.

The CONSULTANT shall attend coordination, progress and presentation meetings with the CITY or such officials, groups or individuals as may be requested by the CITY. The CITY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT's participation. The minimum number of hours or days notice required shall be agreed to between the CITY and the CONSULTANT and shown in Exhibit "B" attached hereto and made part of this AGREEMENT. The CONSULTANT shall prepare a monthly progress report as needed by the CITY (but in no case shall it be more than once a month), in a form approved by the CITY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

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

### **2. TIME FOR BEGINNING AND COMPLETION**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the CITY. All work under this AGREEMENT shall be completed by the date shown in Section III of this AGREEMENT under "Project Completion Date".

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

### **3. SUBCONTRACTING**

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

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

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section VIII. All subcontracts exceeding Ten Thousand Dollars (\$10,000.00) in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the CITY. No permission for subcontracting shall create, between the CITY and subcontractor, any contract or any other relationship.

#### **4. EMPLOYMENT**

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the CITY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the CITY, and any and all claims that may or might arise under any Workers' Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the CITY, except regularly retired employees, without written consent of the public employer of such person.

#### **5. NONDISCRIMINATION**

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sexual orientation, sex, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability; unless based upon a bona fide occupational qualification; with regard to, but not limited to, the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or termination, rate of pay or other forms of compensation, selection for training, or rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the CITY and further that

the CONSULTANT shall be barred from performing any services for the CITY now or in the future unless a showing is made satisfactory to the CITY that discriminatory practices have terminated and that recurrence of such action is unlikely.

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

- A. COMPLIANCE WITH REGULATIONS:** The CONSULTANT shall comply with the applicable federal law relative to nondiscrimination, Title 49, Code of Federal Regulations, which are herein incorporated by reference and made a part of this AGREEMENT. The CONSULTANT shall comply with the Americans with Disabilities Act of 1992, as amended.
- B. INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the CITY and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such state or federal law. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- C. SANCTIONS FOR NONCOMPLIANCE:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, the CITY shall impose such sanctions as it may determine to be appropriate, including, but not limited to:

  - (1) Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
  - (2) Cancellation, termination or suspension of the AGREEMENT, in whole or in part.
- D. INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (A) through (E) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY.
- E. UNFAIR EMPLOYMENT PRACTICES:** The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O. 77-13 of the Governor of the State of Washington which prohibits unfair employment practices.

## **6. TERMINATION OF AGREEMENT**

The right is reserved by the CITY to terminate this AGREEMENT at any time upon ten (10) days' written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the CITY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit "F".

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice to Terminate exceeds the total amount that would be due, computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the CITY for any excess paid.

If the services of the CONSULTANT are terminated by the CITY for default on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the CITY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the CITY at the time of termination; the cost to the CITY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the CITY of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reasons that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without it or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the CITY in accordance with the provision of this AGREEMENT.

In the event of death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the CITY. This subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the CITY, if the CITY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the CITY's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT, or for failure of the

CONSULTANT to perform work required of it by the CITY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## **7. CHANGES OF WORK**

The CONSULTANT shall make changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the CITY, without additional compensation thereof. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as herein provided under General Requirements, Section 13.

## **8. DISPUTES**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the CITY shall be referred for determination to the City Administrator or his/her designee, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided, however, that if an action is brought challenging the Public Works Superintendent or City Engineer's decision, that decision shall be subject to de novo judicial review.

## **9. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior Court of the State of Washington, situated in Island County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in Island County.

## **10. LEGAL RELATIONS AND INSURANCE**

- A. The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of Washington.
- B. The CONSULTANT's relation to the CITY shall be at all times as an independent contractor and not as an employee.
- C. Unless otherwise specified in the AGREEMENT, the CITY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call

assistance to the CITY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

- D. The CITY will pay no payments under Section VIII "Payments" until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the CITY may take such other action as is available to them under other provisions of this AGREEMENT, or otherwise in law.

## **11. INDEMNIFICATION REQUIREMENTS**

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

## **12. INSURANCE.**

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

- A. **No Limitation.** CONSULTANT's maintenance of insurance as required by the AGREEMENT shall not be construed to limit the liability of the CONSULTANT to the coverage provided by such insurance, or otherwise limit the CITY's recourse to any remedy available at law or in equity.
- B. **Minimum Scope of Insurance.** CONSULTANT shall obtain insurance of the types described below:
1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an insured under the CONSULTANT's Commercial General Liability insurance policy with respect to the work performed for the CITY.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the CONSULTANT's profession.

C. **Minimum Amounts of Insurance.** CONSULTANT shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000.00) per accident.
2. Commercial General Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000.00) each occurrence, Two Million Dollars (\$2,000,000.00) general aggregate.
3. Professional Liability insurance shall be written with limits not less than One Million Dollars (\$1,000,000.00) per claim and One Million Dollars (\$1,000,000.00) policy aggregate limit.

D. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The CONSULTANT's insurance coverage shall be primary insurance with respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be in excess of the CONSULTANT's insurance and shall not contribute with it.
2. The CONSULTANT's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.

E. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

F. **Verification of Coverage.** CONSULTANT shall furnish the CITY with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement evidencing the insurance requirements of the CONSULTANT before commencement of the work.

### **13. EXTRA WORK**

- A. The CITY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly. If the change causes an increase in the maximum amount payable, it shall not become a part of this AGREEMENT unless and until a written amendment to the AGREEMENT is executed by both the CITY and the CONSULTANT.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as "claim") under this clause within thirty (30) days from the date of receipt of the written order. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

### **14. ENDORSEMENT OF PLANS**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

### **15. EQUAL OPPORTUNITY**

- A. Compliance with 41 CFR 60-1.4 -- Equal Opportunity Clause. The CITY incorporates 41 CFR 60-1.4 -- Equal Opportunity Clause by reference.
- B. Compliance with 41 CFR 60-250.5 -- Equal Opportunity Clause (Special Disabled Veterans).
  - 1. The CONSULTANT will not discriminate against any employee or applicant for employment because he or she is a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT agrees to take affirmative action to employ, advance in

employment and otherwise treat qualified individuals without discrimination based on their status as a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
  - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - iii. Rates of pay or any other form of compensation and changes in compensation;
  - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - v. Leaves of absence, sick leave, or any other leave;
  - vi. Fringe benefits available by virtue of employment, whether or not administered by the CONSULTANT;
  - vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - viii. Activities sponsored by the CONSULTANT including social or recreational programs; and
  - ix. Any other term, condition, or privilege of employment.
2. The CONSULTANT agrees to immediately list all employment openings which exist at the time of the execution of this AGREEMENT and those which occur during the performance of this AGREEMENT, including those not generated by this AGREEMENT and including those occurring at an establishment of the CONSULTANT other than the one wherein the AGREEMENT is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local employment service office of the state employment security agency wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
  3. Listing of employment openings with the local employment service office pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals

of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the CONSULTANT from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

4. Whenever the CONSULTANT becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the state employment security agency in each state where it has establishments of the name and location of each hiring location in the state: Provided, That this requirement shall not apply to state and local governmental CONSULTANTS. As long as the CONSULTANT is contractually bound to these provisions and has so advised the state agency, there is no need to advise the state agency of subsequent AGREEMENTS. The CONSULTANT may advise the state agency when it is no longer bound by this AGREEMENT clause.
5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
6. As used in this clause:
  - i. All employment openings include all positions except executive and top management, those positions that will be filled from within the CONSULTANT's organization, and positions lasting three (3) days or less. This term includes full-time employment, temporary employment of more than (3) three days' duration, and part-time employment.
  - ii. Executive and top management means any employee:
    - (a) whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and
    - (b) who customarily and regularly directs the work of two (2) or more other employees therein; and
    - (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
    - (d) who customarily and regularly exercises discretionary powers; and

- (e) who does not devote more than twenty percent (20%), or, in the case of an employee of a retail or service establishment who does not devote as much as forty percent (40%), of his or her hours of work in the work week to activities which are not directly and closely related to the performance of the work described in (a) through (d) of this paragraph 6.ii.; Provided, that (e) of this paragraph 6.ii. shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a twenty percent (20%) interest in the enterprise in which he or she is employed.
  - iii. Positions that will be filled from within the CONSULTANT's organization means employment openings for which no consideration will be given to persons outside the CONSULTANT's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.
- 7. The CONSULTANT agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 8. In the event of the CONSULTANT's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 9. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the CONSULTANT's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans. The CONSULTANT must ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the CONSULTANT may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
- 10. The CONSULTANT will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONSULTANT is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and is committed to

take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans.

11. The CONSULTANT will include the provisions of this clause in every subcontract or purchase order of Twenty-five Thousand Dollars (\$25,000.00) or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance may direct to enforce such provisions, including action for noncompliance.

C. Compliance with 41 CFR 60-741.5 -- Equal Opportunity Clause (Workers with Disabilities).

1. The CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
  - i. Recruitment, advertising, and job application procedures;
  - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - iii. Rates of pay or any other form of compensation and changes in compensation;
  - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - v. Leaves of absence, sick leave, or any other leave;
  - vi. Fringe benefits available by virtue of employment, whether or not administered by the CONSULTANT;
  - vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

- viii. Activities sponsored by the CONSULTANT including social or recreational programs; and
  - ix. Any other term, condition, or privilege of employment.
2. The CONSULTANT agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
  3. In the event of the CONSULTANT's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
  4. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the CONSULTANT's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The CONSULTANT must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
  5. The CONSULTNAT will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.
  6. The CONSULTANT will include the provisions of this clause in every subcontract or purchase order in excess of Ten Thousand Dollars (\$10,000.00), unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**EXHIBIT A-1  
CERTIFICATION OF CONSULTANT**

Project No. ENG-13

I hereby certify that I am, Craig P. Chambers, a duly authorized representative of the firm of BHC Consultants whose address is 1601 Fifth Avenue, Suite 500, Seattle, WA 98101 and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract.
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract.
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation or consideration of any kind for, or in connection with procuring or carrying out the contract; except as here expressly stated (if any).

I further certify that the firm I here represent is authorized to do business in the State of Washington and that the firm is in full compliance with the requirements of the Board of Professional Registration.

I acknowledge that this certificate is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature – Craig P. Chambers

**CERTIFICATION OF CITY OFFICIAL**

I hereby certify that I am the responsible City official for the City of Oak Harbor, Washington, for this AGREEMENT and that the above consulting firm or its representative has not been required directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) employ or retain, or agree to employ or retain, any firm or person; or
- (b) pay or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind, except as here expressly stated (if any).

I acknowledge that this certificate is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**EXHIBIT A-2**  
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,**  
**AND OTHER RESPONSIBILITY MATTERS-**  
**PRIMARY COVERED TRANSACTIONS**

1. The CONSULTANT, through the prospective primary participant, certifies to the best of its knowledge and belief, that it and its principals:
  - a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State or Federal department or city;
  - b. have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and
  - d. have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
  
2. Where the CONSULTANT, through the prospective primary participant, is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm): BHC Consultants

\_\_\_\_\_  
Date

\_\_\_\_\_  
President or Authorized Official or  
Consultant Signature

**EXHIBIT B**  
**SCOPE OF WORK (ADD ON)**

Project No. ENG 13-07

**See attached documents furnished by the Consultant**

# Exhibit B

## Scope of Work

### City of Oak Harbor

### Septic to Sewer Project

## Statement of Understanding

As part of the preparation of the City's Wastewater Facility Plan, BHC was commissioned to investigate the extension of sewer systems throughout the City's Growth Management Boundary. There were a total of 13 island or pocket areas that were designated as likely candidates for sewer extensions. A preliminary alignment and routing of the sewer main was determined, a field visit was conducted verify that the parcels could be served and cost estimates were developed for each of the unsewered 13 pocket areas.

In addition to the pocket areas, there were isolated areas generally consisting of a parcel or two that, for various reasons, were not connected to the sewer system. In these cases the sewer main was adjacent or near the parcel.

The routing and cost estimates were developed in conjunction with the City staff and a final report showing the routes and costs was prepared. These findings were subsequently presented to the Public Works Standing Committee.

The following scope of services is intended to develop policies and financing options associated with the extension of sewers to unserved areas.

## Scope of Services

In an effort to maximize the available information and consequently to minimize costs associated with the development of these services, the following tasks include three components:

- 1) the receivables, or those elements that will be provided by the City,
- 2) the work tasks, or those tasks that will be completed by the Consultant, and
- 3) the deliverables, or that finished product that will be delivered to the City.

### **Task 1          Baseline Research and Capture the Problem**

Receivables:

- The City's current policies associated with mandated sewer connection, pay back agreements and conditions, sewer connection charges, deferment policies for elderly, low income or disabled (if applicable), and temporary connection policies.
- Name and contact information of the City attorney
- Name and contact information of Island County Health official

Consultant Work Tasks:

Summarize the City's current policies (if they exist) associated with the following elements:

- 1.1 Connection requirements when within a particular distance of an existing sewer system
- 1.2 Policies adopted to assist low income, elderly or disabled with connection charges, and assessments,
- 1.3 Policies that address temporary connection to the City's sewer system. This would include payment of the connection charges, future assessments, cost sharing (if any) of the temporary system,
- 1.4 City policies associated with financial contributions to general facilities installed by private interests. This would include all over-sized sewer interceptors and pump stations.
- 1.5 City policies associated with connections outside the UGA
- 1.6 City policies associated with emergency provisions and failing septic systems that result in documented health hazards. In these circumstances, does the City allow connections to their system that are outside the UGA?
- 1.7 In-City versus out-of-City charges. This applies to both the monthly sewer charges as well as the connection charges.
- 1.8 Extension of City finances to out-of-City parcels
- 1.9 Define a septic system failure.
- 1.10 Identify the locations of failed septic systems based on information from Island County Health Department.

Deliverables:

- Summary policies and issues presented above.

**Task 2          Establish Matrix of Options**

Receivables:

- None

Consultant Work Tasks:

The following issues need to be addressed either through new policies or enforcement of existing policies:

- 2.1 Prepare listing of policies that should be addressed and considered. Policies may include:
- 2.2 Connection requirements
  - 2.2.1 Within certain distance from existing sewer systems?
  - 2.2.2 At exchange of ownership?

- 2.2.3 At issuance of a building permit?
  - 2.2.4 At refinancing of mortgage?
  - 2.2.5 Island Health mandated connections?
  - 2.2.6 At septic system failure?
  - 2.2.7 At conversion from temporary to permanent sewer service?
  - 2.2.8 Collective requirement or should there be exemptions 94915for elderly, disabled or low income?
  - 2.2.9 If a parcel has a large enough reserved area for a new or expanded drain field, would such a parcel be obligated to connect, or would they be allowed to modify the drain field to accommodate the change in use?
- 2.3 Septic Systems Inspections. Should the City mandate that existing septic systems should be routinely inspected and reported to the City or Health Department? Review current inspection policies.
- 2.4 Laterals and Side Sewers:
- 2.4.1 Ownership and maintenance requirements of Side Sewers (on private property) and Laterals (within right-of-way).
  - 2.4.2 Joint side sewers allowed?
  - 2.4.3 New construction requires separate connection?
  - 2.4.4 Clean outs at property line? At building? At alignment changes?
  - 2.4.5 Internal inspections of side sewers at ownership changes? On a routine basis?
- 2.5 Monthly Sewer Charges
- 2.5.1 Flat rate or volume based charges for single family? For commercial accounts?
  - 2.5.2 Frequency of Rate Analyses
- 2.6 Service beyond City Limits or Urban Growth Areas
- 2.6.1 Under what conditions, if any, would the City consider extending sewer service outside the City Limits or Urban Growth Area? Documented health hazard? Schools?
  - 2.6.2 Is there a surcharge (both connection charges and monthly sewer charges) for serving parcels outside the City Limits or UGA?
- 2.7 Contribution to General Facilities
- 2.7.1 What is the City's contribution to General Facilities installed by a Developer or through a ULID/LID? If a pump station or over-sized sewer main is installed should the City make a cash contribution, and/or a credit against the connection charges, for these improvements?
  - 2.7.2 If a City-contribution to General Facilities is made to a Developer, should the Developer be required to relinquish all payback options? Or should a proportionate share of the late comer's payback be split between the Developer and the City?

- 2.8 Sewer Connection Agreement for new Single-family Unit (SFU) or for a Temporary Sewer Service to an existing SFU
  - 2.8.1 If a new SFU is constructed and sewer service is not available, should conditional approval for a septic system include an obligation to connect to the sewer system when it is available?
  - 2.8.2 If temporary sewer service is granted to an existing SFU, should such temporary service require the owner to sign a Sewer Connection Agreement that stipulates that the owner will connect to the sewer and/or support a future ULD/LID?

### **Task 3 Financing Alternatives**

Various financing options are available to the City. Each of these options will be described and discussed with the committee and Council:

- 3.1 ULID or LID Formation. Resolution or petition method of formation
- 3.2 Developer extension. Describe the conditions associated with payback to the developer. This would include the payback period and terms.
- 3.3 Low Income/Elderly/Disabled financial assistance. Does the City currently or want to establish a low income/elderly or disabled financing program? This might include a discussion about 1) connection charges, 2) monthly sewer charges, 3) temporary sewer service and 4) deferment of assessments
- 3.4 Federal, State, and Local grants and low interest loans
- 3.5 City Financed improvements. This alternative has been described as the City of Kirkland model where the City designs and constructs a public sewer system. When triggering events occur the residents are required to connect to the system. These triggering events might include those listed in 2.2 above.
- 3.6 City financing of connection charges and private on-site improvements.
- 3.7 City financing of private development in the form of a Developer Extension?
- 3.8 Extension of City based financing beyond City Limits? Beyond UGA Boundaries?

### **Task 4 Workshops and Meetings**

- 4.1 Meeting with City Attorney and City Finance Director to discuss current policies and advisability of the options presented in Tasks 2 and 3. At the City's direction, this meeting perhaps should be expanded to include a discussion with Steve DiJulio who is a recognized name in municipal financing and legal issues.
- 4.2 Meeting with Island County Health Department to discuss failing systems, inspection requirements, enforcement actions, and other Health Department regulations.
- 4.3 Attend and present at three workshops with City.
  - 4.3.1 First Workshop: Present issues that will be investigated. This will include the issues that are specifically germane to Oak Harbor and discuss challenges that other communities have wrestled with. Solicit additional topics from the committee.
  - 4.3.2 Second Workshop: Summarize the issues arising from Workshop #1 and present an array of potential solutions. Present solutions that other

communities have implemented. These potential solutions will be vetted with the City Attorney. Solicit preferences from committee

- 4.3.3 Third Workshop: Summary of options and recommendations.
- 4.4 Attend City Council Meeting and present final recommendations arising out of the previous workshops.
- 4.5 Prepare summary document describing the policy issues, the approach other agencies have adopted, the recommendation, deliberations of the City and the final action for implementation.

**Task 5            Project Management**

- 5.1 Prepare monthly invoices and the associated project update report

**EXHIBIT C**  
**PAYMENT (NEGOTIATED HOURLY RATE PLUS COSTS)**

The CONSULTANT shall be paid by the CITY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. If a federal highway project, the CONSULTANT shall conform with all applicable portions of 48 CFR 31.

**1. Hourly Rates**

The CONSULTANT shall be paid by the CITY for work done, based upon the negotiated hourly rates shown in Exhibits "D-1" and "D-2" attached hereto and by this reference made part of this AGREEMENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the CITY. If negotiations are not conducted for the second or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT or subsequent written authorization(s) from the CITY shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead and fees.

In the event renegotiation of the hourly rates is conducted, the CITY reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in CONSULTANT's fixed hourly rates may include salary or overhead adjustments.

**2. Direct Non-salary Costs**

Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the CITY. Automobile mileage for travel will be reimbursed as the current rate approved for CITY employees and shall be supported by the date and time of each trip with origin and designation of such trips. Subsistence and lodging expenses will be reimbursed at the same rate as for CITY employees. The billing for non-salary cost, directly identifiable with the PROJECT, shall be an itemized listing of the charges supported by the original bills, invoices, expense accounts, and miscellaneous supporting data retained by the CONSULTANT. Copies of the original supporting documents shall be supplied to the CITY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

3. **Management Reserve Fund**

The CITY may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplement agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section 11, "Extra Work".

4. **Maximum Amount Payable**

The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section 11, "Extra Work" of the General Requirements. No minimum amount payable is guaranteed under this AGREEMENT.

5. **Monthly Progress Payments**

Progress payments may be claimed on a monthly basis for all costs authorized in (1) and (2) above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibits "D-1" and "D-2", including names and classifications of all employees, and invoices for all direct non-salary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the CITY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the project at the time of the interview.

6. **Inspection of Cost Records**

The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the CITY, State, and the United States, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit is started before the three (3) year period, the records shall be retained until all litigation, claims, or audit filings involving the records have been resolved. The three (3) year retention period begins when the CONSULTANT receives final payment.

## 7. **Final Payment**

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the CITY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the CITY unless such claims are specifically reserved in writing and transmitted to the CITY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the CITY may have against the CONSULTANT or to any remedies the CITY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the CITY within ninety (90) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT of any claims relating to the validity of a finding by the CITY of overpayment.







**EXHIBIT F**  
**PAYMENT UPON TERMINATION OF AGREEMENT BY CITY**  
**OTHER THAN FOR FAULT OF THE CONSULTANT**  
**(Refer to General Requirements, Section 3)**

**Specific Rates of Pay Contracts**

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus any direct non-salary costs incurred at the time of termination of this AGREEMENT.



**EXHIBIT G-2**  
**BREAKDOWN OF SUBCONSULTANT'S OVERHEAD COST**

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

**Fringe Benefits**

FICA .....	_____
Unemployment.....	_____
Medical Aid and Industrial Insurance.....	_____
Company Insurance and Medical.....	_____
Vacation, Holiday, and Sick Leave.....	_____
Commission, Bonuses/Pension Plan.....	_____
<b>Total Fringe Benefits .....</b>	<b>_____</b>

**General Overhead**

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

# City of Oak Harbor City Council Agenda Bill

**Bill No.** 6.b.  
**Date:** June 4, 2013  
**Subject:** ATT/Cingular Settlement

**FROM:** Doug Merriman, Finance Director

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

\_\_\_\_\_ Scott Dudley, Mayor  
\_\_\_\_\_ Larry Cort, City Administrator  
\_\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

The purpose for this agenda bill is to authorize settlement of the New Cingular Wireless PCS LLC (Formerly ATT Wireless) claim for refund of Local Utility Taxes for the amount of \$33,461.06.

**AUTHORITY**

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

**FISCAL IMPACT DESCRIPTION**

Funds Required: \$33,461.06

Appropriation Source: General Fund #001: Department 45, Judgments and Settlements

**SUMMARY STATEMENT**

The Claimant and Settlement Class submitted to the City a claim dated November 1, 2010, subsequently modified by a letter dated June 15, 2012, seeking the refund of \$42,601.20 in Local Utility Tax which had erroneously been collected by the Claimant from its customers on charges for data services providing Internet access between November 1, 2005 and September 30, 2010. The collected tax was subsequently forwarded to the City. In response to the claim, the City has asserted various defenses including but not limited to an assertion that certain portions of the Claim are outside the three year limitations period for which a refund of Taxes is available under the City's municipal code. In a subsequent action, the Claimant filed suit against the City, and other municipalities as well, in King County Superior Court.

It has been determined that it is in the best interest of both parties to settle the claim as outlined in the attached settlement agreement. Per the terms of the agreement, the City will refund an agreed upon percentage of the filed claim in return for the Claimant's full satisfaction of any and all claims under this matter, thereby releasing the City from any further liability. The amount of the settlement payment is \$33,461.06

**RECOMMENDED ACTION**

1. Authorize the Mayor to sign the Agreement of Settlement and Release between New Cingular Wireless PCS LLC and the City of Oak Harbor.

**ATTACHMENTS**

1. Draft Settlement Agreement

**AGREEMENT OF SETTLEMENT & RELEASE BETWEEN  
NEW CINGULAR WIRELESS PCS LLC  
AND THE CITY OF OAK HARBOR, WASHINGTON**

New Cingular Wireless PCS LLC (“Claimant”), the Settlement Class as described below, and the City of Oak Harbor (“City”), enter into the following Agreement of Settlement and Release (“Agreement”) with regard to the Claim described and defined below.

WHEREAS, the Claimant and Settlement Class submitted to City a claim dated November 1, 2010, subsequently modified by letter dated June 15, 2012, seeking the refund of \$42,601.20 in Local Utility Tax (“Tax”), which Tax had previously been collected by the Claimant from its customers on charges for data services providing Internet access between November 1, 2005 and September 30, 2010, and which Tax previously was remitted by the Claimant to City (the “Claim”); and

WHEREAS, City has asserted various defenses to the Claim, including but not limited to an assertion that certain portions of the Claim are outside the three year limitations period for which a refund of Taxes is available under the City’s municipal code; and

WHEREAS, the Claimant is a party-defendant to the Global Class Action Settlement Agreement approved by the United States District Court for the Northern District of Illinois in Case No. 10-CV-02278, pursuant to which the rights of the customers included in the Settlement Class (the “Settlement Class”) have been established; and

WHEREAS, the Settlement Class includes but is not limited to customers from whom the Tax was collected, which Tax is sought in the Claim; and

WHEREAS, the Claimant has filed suit in King County Superior Court against City and others under Cause No. 12-2-15031-1 SEA (the “Lawsuit”); and

WHEREAS, the Claimant and City desire to promptly settle the Claim and dismiss allegations against the City in the Lawsuit, and as a result resolve this matter fully and finally as between the Claimant and City.

NOW, THEREFORE, the parties hereto mutually agree:

FIRST, the Claimant Settlement Class and City agree that this Agreement shall be final with regard to any liability for Tax sought in the Claim.

SECOND, City agrees to pay, and the Claimant and Settlement Class agree to accept payment of \$33,341.06 in full satisfaction of any and all obligations with respect to the Claim. In exchange for this payment, the Claimant and Settlement Class agree to release City from any further liability with regard to the Claim.

THIRD, City shall issue a check in the amount of \$33,341.06 in the name of AT&T Mobility Settlement Fund (escrow account) and shall within fifteen (15) days after the final execution of this Agreement, send such check via certified mail to John Brophy, ARPC, 1220 19<sup>th</sup> Street, NW, Suite 700, Washington, DC 20036, for deposit in an escrow account for the benefit of the Settlement Class as prescribed by the Global Class Action Settlement Agreement referenced above. A copy of that check shall simultaneously be mailed to Thomas Giltner, Esq., AT&T, 208 S. Akard St. Suite 3015, Dallas, Texas 75202. A copy of that check shall simultaneously be mailed to James P. Frickleton, Bartimus, Frickleton, Robertson & Gorny, P.C., 11150 Overbrook Road, Suite 200, Leawood, KS 66211; Margaret C. Wilson, Reeder Wilson LLP, 231 Altamont Place, Somerville, NJ 08876; and Michael R. Scott, Hillis Clark Martin & Peterson P.S., 1221 Second Avenue, Suite 500, Seattle, WA 98101.

FOURTH, this Agreement sets forth the entire understanding between the Claimant, Settlement Class and City with respect to the subject matter hereof and supersedes any prior negotiations, agreements, understandings or arrangements between them.

FIFTH, Claimant and City hereby authorize their respective legal counsel to execute a dismissal with prejudice and without the award of costs or attorneys' fees to any party of all allegations and claims of Claimant against City in the Lawsuit.

SIXTH, this Agreement shall be binding upon and inure to the benefit of the Claimant, Settlement Class, and all of their respective former and current officers, employees and directors, and respective successors and assigns.

SEVENTH, each of the undersigned represents and warrants that he or she is fully authorized to execute and deliver this Agreement on behalf of the party and in the capacity identified below.

EIGHTH, this Agreement may be signed in one or more counterparts.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates shown below.

NEW CINGULAR WIRELESS PCS LLC

\_\_\_\_\_  
*Date*

By \_\_\_\_\_  
*Name* \_\_\_\_\_  
*Title* \_\_\_\_\_

CITY OF OAK HARBOR, WASHINGTON

06/05/13  
\_\_\_\_\_  
*Date*

By \_\_\_\_\_  
*Name* Scott Dudley  
*Title* Mayor

ACKNOWLEDGMENT OF CONSENT TO AGREEMENT:

THE SETTLEMENT CLASS, BY AND  
THROUGH SETTLEMENT CLASS COUNSEL

\_\_\_\_\_  
*Date*

By \_\_\_\_\_  
*Name* \_\_\_\_\_  
*Title* \_\_\_\_\_



# City Council Meeting Schedule June – August 2013

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**June 4, 2013**

Tuesday, 3:00 – 5:00 p.m.

WORKSHOP MEETING

1. Streamlining the Council Agenda
2. Parliamentary Procedure

6:00 p.m.

REGULAR COUNCIL MEETING

**June 18, 2013**

Tuesday, 3:00 – 5:00 p.m.

WORKSHOP MEETING

Tuesday, 6:00 p.m.

REGULAR COUNCIL MEETING

**June 24 – 28, 2013**

AWC Annual Meeting  
Richland WA

**July 2, 2013**

Tuesday, 6:00 p.m.

REGULAR COUNCIL MEETING

**July 15, 2013**

Monday, 3:00 – 5:30 p.m.

WORKSHOP MEETING

1. Health Benefits

**August 7, 2013**

Wednesday, 6:00 p.m.

REGULAR COUNCIL MEETING

Postponed from 08/06/13 (National Night Out)