

City of Oak Harbor
City Council
Meeting

Agenda

For

May 5, 2009
7:00 p.m.

Oak Harbor City Council
Tuesday, May 5, 2009, 7:00 p.m.

Welcome to the Oak Harbor City Council Meeting

As a courtesy to Council and the audience, **PLEASE TURN YOUR CELL PHONES OFF** before the meeting begins. The City Council values your ideas, and sets aside time at the beginning of each meeting, from 6:45 p.m. to 7:00 p.m., to talk with citizens. During the meeting's Public Comments section, Council will listen to your input regarding subjects of concern or interest that are not on the agenda. For scheduled public hearings, please sign your name to the sign up sheet, located in the Council Chambers if you wish to speak. The Council will take all information under advisement, but generally will not take any action during the meeting. To ensure your comments are recorded properly, state your name and address clearly into the microphone. Please limit your comments to three minutes in order that other citizens have sufficient time to speak.

Thank you for participating in your City Government!

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION Jerry Buss – Oak Harbor Lutheran

ROLL CALL

MINUTES 4/21/09 Regular Meeting

NON-ACTION COUNCIL ITEMS:

1. Introduction of New Employees – None.
2. Proclamation – National Nurses Week
3. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

4. Consent Agenda:

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- a. Excused Absence Request – Mayor Jim Slowik for May 19, 2009 Council Meeting.

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- b. Excused Absence Request – Councilmember Rick Almberg for July 7, 2009 Council Meeting.

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- c. Excused Absence Request – Councilmember Beth Munns for October 6, 2009 Council Meeting.

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- d. Professional Services Agreement – Hearing Examiner Michael Bobbink

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- e. Approval – Disadvantaged Business Enterprise (DBE) Program.

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- f. Noise Permit – Kiwanis Club – Beachcomber's Bazaar.

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- g. Interlocal Agreements – Lifeguard, Concessionaire Services, with North Whidbey Parks and Recreation.

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- h. Appointment to Oak Harbor Arts Commission- Sharon Hall.

- i. Pay Bills.

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5. Public Hearing – Final Ordinance for proposed changes Chapter 19.25 OHMC pertaining to Manufactured Home Developments. Council will be asked to continue this matter to the June 2, 2009 Council Meeting.

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6. Public Hearing – Sign Code Amendment for Electronic Message Signs.

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7. Reservoir Painting

8. City Administrator's Comments.

9. Councilmembers' Comments.

- Standing Committee Reports

10. Mayor's Comments.

ADJOURN

If you have a disability and are in need of assistance, please contact the City Clerk at (360)279-4539 at least two days before the meeting.

"It is the province of knowledge to speak and it is the privilege of wisdom to listen." -Oliver Wendell Holmes

**Regular City Council Meeting
Tuesday, April 21, 2009, 7:00 p.m.
City Hall Council Chambers**

CALL TO ORDER

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

INVOCATION

Given by Councilmember Jim Palmer this evening.

ROLL CALL

Mayor Jim Slowik

Five members of the Council,

Rick Alberg

Beth Munns

Danny Paggao, Mayor Pro Tem

Jim Palmer

Bob Severns

Paul Schmidt, City Administrator

Margery Hite, City Attorney

Doug Merriman, Finance Director

Steve Powers, Development Services Director

Cathy Rosen, Public Works Director

Hank Nydam, Parks Manager

Rich Tyhuis, Public Works Operations Manager

Sandra Place, Equipment & Purchasing Coordinator

Rick Wallace, Chief of Police

Mike McIntyre, Senior Services Director

Renée Recker, Executive Assistant to the Mayor

ABSENT

Councilmembers James M. Campbell and Eric Gerber were absent and formally excused from this meeting.

MINUTES

MOTION:

COUNCILMEMBER SEVERNS MOVED TO APPROVE THE MINUTES OF THE 4/7/09 REGULAR MEETING. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

NON-ACTION COUNCIL ITEMS

Introduction of New Employee – Pete Heller

Public Works Director Cathy Rosen introduced Pete Heller, who is the new Water Specialist I for Public Works' Water Department.

Proclamation – Big Read 2009: The Maltese Falcon

Mayor Pro Tem Paggao read this proclamation establishing Dashiell Hammett's *The Maltese Falcon* as the Big Read 2009. Big Read is a National Endowment of the Arts initiative which was developed to restore reading to the American culture and to bring communities together through literature. Toni Kay Smith accepted the proclamation on behalf of Oak Harbor – Sno-Isle Library. Mayor Slowik noted that the Oak Harbor Library showing of John Huston's 1941 film, *The Maltese Falcon*, is scheduled for Sunday, May 3, 2009 at 2:00 p.m. A calendar of free events and programs was given to Council along with a reader's guide to *The Maltese Falcon*.

Proclamation – Earth Day

Councilmember Palmer read this proclamation honoring the 39th anniversary of Earth Day, establishing April 22, 2009 as Earth Day, and offering citizens an unprecedented opportunity to commit to building a healthy planet and flourishing communities. The proclamation was presented to Oak Harbor's Parks Manager, Hank Nydam.

Proclamation – Arbor Day

Councilmember Severns read this proclamation and presented it to Mr. Nydam in honor of Arbor Day on April 24, 2009, which supports efforts to protect our trees and woodlands. Mr. Nydam talked about the recent tree planting held at Freund Marsh on April 19th, the large turnout from the Growler Squadron, and the conservation futures grant funding which helps with trail repair, signage, trees, and shrubs. Mr. Nydam invited the community to visit Freund Marsh which now hosts over 5,000 native plants.

Proclamation – Bike to Work Month

Councilmember Almborg read this proclamation and presented it to Maribeth Crandell, Oak Harbor's Environmental Educator. Oak Harbor has been named a "bicycle friendly community" by the League of American Bicyclists and May 2009 will be Bike to Work Month. Ms. Crandell thanked Mr. Almborg for his help with the free bike clinic in preparation for Bike to Work Month and the group rides lead by Mr. Almborg, Rick Schulte, Eric Johnston, and Arnie Peterschmidt. Another group ride is planned for May 3rd and will depart from Skagit Valley College. An upcoming sustainability fair will also have an alternative transportation theme.

Proclamation – Silver Star Banner Day

Councilmember Munns read this proclamation which will be sent to the Silver Star Families of America headquarters in Missouri, where it will be displayed in the Stars and Stripes Museum along with 5,000 proclamations from other U.S. cities. The non-profit Silver Star Families of America's purpose is to recognize the sacrifices of our wounded, illnesses incurred during combat, and to honor them with the Silver Star banner and flag.

Mayor Slowik opened the meeting to public comments.

Public Comments

Mel Vance, 275 NW 8th. In recognition of Earth Day, Mr. Vance talked about the federal tax incentives for alternative energy products. He also talked about the Silver Star Program and the banner and flag's display.

PBY Memorial Foundation Members. Ron Wallin, Adolph and Dolores Meisch, Bob Biddle, Wes Westlund, and others talked about the Foundation, its successful location at the gas station (now located at the Seaplane Base Administration Building) and the PBY aircraft and crews honored by the Foundation.

With no other public comments coming forth, Mayor Slowik closed the public comments portion of the meeting.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

- a. Noise Permit – Living Faith Christian Center.
- b. Resolution – Supporting PBY Memorial Foundation.
- c. Rotary Mower Purchase.
- d. Pay Bills.

Councilmember Palmer asked that Item b – Resolution supporting the PBY Memorial Foundation be removed for comments.

MOTION: COUNCILMEMBER PALMER MOVED TO APPROVE CONSENT AGENDA ITEMS A, C, AND D, WITH ITEM D PAYING ACCOUNTS PAYABLE CHECK NUMBERS 136730 – 136908 IN THE AMOUNT OF \$325,684.33, AND PAYROLL CHECK NUMBERS 92837– 92845 IN THE AMOUNT OF \$88,440.00. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

Consent Agenda Item b – Resolution supporting the PBY Memorial Foundation

Resolution 09-10, which recognizes and supports the efforts of the Foundation to secure and site a vintage PBY Catalina aircraft (without implying City financial contribution), was read into the record.

MOTION: COUNCILMEMBER PALMER MOVED TO AUTHORIZE THE MAYOR TO SIGN RESOLUTION 09-10. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

Application – Taxi License for Roadrunner Taxi

Police Chief Rick Wallace presented this agenda bill in consideration of an application for a taxi company license submitted by Alan Brewer, Roadrunner Taxi. Chief Wallace reviewed *OHMC Chapter 5.30, For Hire Vehicles*. Mr. Brewer has completed the appropriate paperwork and the Police Department, in compliance with OHMC 5.30.060, has finished an investigation. The taxi driver application/background check was approved pursuant to OHMC 5.30.110 and all applicable fees have been paid. With respect to OHMC 5.30.070(4), the City currently has three operating taxi companies: Ault Field Taxi, Whidbey Taxi, and Triangle Taxi.

Mayor Slowik called for public comments but there were none. Mr. Brewer was available for questions.

Council Discussion

Discussion followed about the vehicle's inspection schedule (a safety, not mechanical inspection done by OHPD), licensing of additional drivers, the taxi rate sheet, the amount shown on the certificates of insurance, and that OHMC does not address insurance requirements. City Attorney Hite noted that *OHMC Chapter 5.30, For Hire Vehicles*, is old and needs revision.

MOTION: COUNCILMEMBER ALMBERG MOVED TO APPROVE THE APPLICATION FOR TAXI LICENSE – ROADRUNNER TAXI. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

Public Hearing – Zoning Code Amendment, Manufactured Home Developments.

Director of Development Services Steve Powers led this discussion and gave a PowerPoint presentation attached to these minutes as Exhibit A. The agenda bill presented amendments to Oak Harbor Municipal Code Chapters 19.20 and 19.25 as they relate to manufactured home parks. The existing code, while providing for manufactured home parks, is limited in its application and is somewhat contradictory. The amendments will correct these deficiencies, help the City meet its Growth Management Act responsibility to provide opportunities for affordable housing, and will facilitate the construction of the City's proposed affordable housing project. Adopting the proposed amendments as an interim ordinance will put the new code in place on a temporary basis until such time as the final code can be acted upon. In order to be timely as it relates to the City's proposed project, staff has developed an aggressive schedule for the consideration of the amendments. This schedule takes into account the state-mandated review period by the Department of Community, Trade and Economic Development (CTED). The schedule and process are as follows:

- April 21 Council conducts public hearing and considers interim adoption.
- April 28 Planning Commission conducts public hearing and considers recommendation to City Council.
- May 5 Council considers final adoption (if CTED grants expedited review).
- June 16 Council considers final adoption (if 60-day CTED review is necessary).

Mayor Slowik opened the public hearing.

Mel Vance, 275 NW 8th. Mr. Vance asked about the HUD standard mentioned in the agenda bill and that he could not find it online: industry definitions of manufactured homes and mobile homes. Mr. Vance's concern was with R-1 zoning and if a greater density was being allowed than would be available for more traditional structures.

Mayor Slowik noted that the Planning Commission will also be receiving public testimony and that this would be adoption on an interim basis.

With no other comments coming forth, Mayor Slowik closed the public hearing.

Council Discussion

Discussion followed between Council members and Mr. Powers about the interim period, manufactured home definition, the definition standard of HUD and WAC, density and triplexes/duplexes, that plexes could be addressed with the City's zoning code, and that density could be addressed with standards in OHMC Chapter 19.25. Discussion continued about the definition of qualified affordable housing in OHMC Chapter 19.08.690, the change in text in OHMC Chapter 19.25.170 – Revocation, the allowance of parks, existing R-1 zoning and development of a manufactured home community, PRD standards, sidewalk requirements, pathways in lieu of sidewalks, design standards, CTED's decision on a timeline, and the sequence of Planning Commission to City Council timeline.

MOTION: COUNCILMEMBER ALMBERG MOVED TO ADOPT AN INTERIM ORDINANCE REPEALING TITLE 19 "ZONING" OF THE OAK HARBOR MUNICIPAL CODE AND ADOPTING CHAPTERS OF TITLE 19 BY SECTION AND AMENDING VARIOUS SECTIONS TO ALLOW MANUFACTURED HOME PARKS IN ALL RESIDENTIAL ZONES AND PROVIDE DENSITY BONUSES TO "QUALIFIED AFFORDABLE HOUSING PROJECTS" WITH THESE CORRECTIONS:

- 1. IN PARAGRAPH THREE, THE THIRD WHEREAS PARAGRAPH, OF THE ORDINANCE'S FIRST PAGE (PAGE 46 OF THE AGENDA PACKET), INCLUDE R-4 ZONE.**
- 2. IN SUBSECTION (F) OF THE NEW 19.25.040 (1), INCLUDE THE WORD "MAXIMUM." (PAGE 142 OF THE AGENDA PACKET.)**
- 3. CORRECT THE NUMBERING SEQUENCE AT 19.08.690. (PAGE 69 OF THE AGENDA PACKET.)**

THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS.

VOTE ON THE

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

Professional Services Agreement – Comprehensive Utilities Rate Study Agreement with HDR Engineering

Public Works Director Cathy Rosen presented this agenda bill regarding a professional services agreement with HDR Engineering, Inc. for a comprehensive rate study for water, sewer, storm drain and solid waste utilities to assure adequate funding of the utilities operation, maintenance and capital needs, while developing rates that are fair and equitable to all classes of customers. The study will include an analysis of revenue requirements over a six-year period, cost of service analysis including an analysis of customer classes and revenue requirement allocations, rate design and analysis, and update of system development fees.

Mayor Slowik called for public comments.

Mel Vance 275 NW 8th. Is it possible to look at stormwater rates, instead of a flat rate, and break out by impervious surface as an incentive for rain gardens?

Council Discussion

Discussion followed about impervious surface allocations for residential properties, the use of flat fee for commercial and multi-unit properties and the formula used to reach a flat fee, rates and design alternative incentives for low impact development, the difference between commercial and residential rates, low-flow toilets, water conservation rates, and review of current reserves in each utility and potential use of reserves.

MOTION: COUNCILMEMBER PALMER MOVED TO AUTHORIZE THE MAYOR TO SIGN THE AGREEMENT WITH HDR ENGINEERING, INC. IN AN AMOUNT NOT TO EXCEED \$134,995.00 FOR THE COMPREHENSIVE RATE STUDY FOR WATER, SEWER, STORM DRAIN, AND SOLID WASTE UTILITIES. THE MOTION WAS SECONDED BY COUNCILMEMBER SEVERNS AND CARRIED UNANIMOUSLY.

City Administrator's Comments

City Administrator Schmidt reviewed upcoming standing committee dates and times. He thanked Council for their response to the AWC Conference registration deadline, and also discussed Engineering's memo regarding surveying activities on Pioneer Way and future geotechnical work on street and sidewalk surfaces.

Councilmembers' Comments

Council members gave individual reports on standing committee activity, and Councilmember Munns reported that AWC is working on unfunded mandates.

Mayor's Comments

Mayor Slowik talked about the June AWC Conference and voting delegates, the April 24th Waterfront Walkway ribbon-cutting which will be held at 3:30 p.m., and his appreciation of the volunteers and staff who worked on this project. Holland Happening will be this weekend and the poster is available at the Chamber of Commerce.

ADJOURN

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

Minutes were taken by Karen Crouch, Deputy Clerk
Writing by Connie Wheeler, City Clerk

Manufactured Home Parks Code Update



Purpose

- Further GMA and City's Comprehensive Plan goals
 - Housing for range of incomes
 - Expand housing choice using incentives
 - Help meet economic development objectives
- Facilitate City's affordable housing project
- Eliminate code confusion

Existing Code

| | | |
|-------------------------|-------------------------|--------------------------|
| Title 16 | Section 19.20.850 | Chapter 19.25 |
| 1982 | 2000 | 2000 |
| Covers: | Covers: | Covers: |
| Existing Parks | New Subdivisions/ Parks | New Parks |
| Manufactured and Mobile | Manufactured Only | Manufactured Only |
| Utilities | | Utilities |
| Building elements | | Building elements |
| Site elements | Site elements | Site elements |
| Installation & Maint. | Installation & Maint. | |
| What's allowed? | What's allowed? | What's allowed? |
| Existing; R1 and R2 | R3 and R4 | R3 and R4 |
| One per lot | One per lot | No lots req'd |
| Lot size: per zone | Lot size: 6k SF | Lot size: 3k or 4.5 k SF |
| Process | Process | Process |
| Review process? | Preliminary Dev. Plan | Preliminary Dev. Plan |
| | Final Dev. Plan | Final Dev. Plan |
| | Plat approval | Plat approval |

New Code

Title 16

2009

Covers:

Existing Parks

Utilities

Building elements

One per lot

~~Section
19.20.850~~

~~2009~~

~~Covers:~~

Chapter
19.25

2000

Covers:

New Subdivisions/ Parks

Manufactured Only

Site elements

Clear process

Incentives for affordable

Greater compatibility

What's allowed?

In R1, R2, R3, R4

No lots req'd

Lot size: fixed & flexible

Density: fixed & flexible

Process

Dev. Plan - PC / CC

Plat - PC / CC

New Code

- Works with all residential districts
- Defines 'qualified affordable housing project'
- Provides density bonus for qualified affordable housing projects in the R-1 district (up to a max. of 8 du/ac)
- Establishes/retains standards for buffering, landscaping and open space
- Allows flexibility in lot sizes & setbacks for qualified affordable housing projects utilizing public funds

Benefits

- Removes regulatory barriers and creates more opportunities for affordable housing without sacrificing compatibility
- Clarifies code and streamlines plan submittal and approval process
- Retains public hearing approval process

Other Items

- Adoption of code does not change existing parks
- Adoption of code is desirable from an overall housing affordability viewpoint
- Adoption of code does not authorize construction of City's project

FAQs

- Will new code allow manufactured homes in places where they're not allowed now?
- What about compatibility?
- Will there still be community input?
- Why an interim ordinance?

Schedule

- April 21, Council Considers Interim Ordinance
- April 28, Planning Commission Public Hearing
- May 5, City Council Final Adoption (w/ CTED expedited review)
- June 16, City Council Final Adoption (w/ CTED 60-day review)

Recommendation

- Conduct public hearing
- Adopt an interim ordinance:
 - Repealing Title 19 "Zoning" of the OHMC
 - Adopting Chapters of Title 19 by Section
 - Amending various sections of Title 19
 - Allowing manufactured home parks in all residential zones

Questions?

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION IN RECOGNITION OF

NATIONAL NURSES WEEK

With the Theme: "Nurses: Building a Healthy America"

WHEREAS, The nearly 2.9 million registered nurses in the United States comprise our nation's largest health care profession; and

WHEREAS, the depth and breadth of the registered nursing profession meets the different and emerging health care needs of the American population in a wide range of settings; and

WHEREAS, the American Nurses Association, as the voice for the registered nurses of this country, is working to chart a new course for a healthy nation that relies on increasing delivery of primary and preventive health care; and

WHEREAS, a renewed emphasis on primary and preventive health care will require the better utilization of all of our nation's registered nursing resources; and

WHEREAS, professional nursing has been demonstrated to be an indispensable component in the safety and quality of care of hospitalized patients; and

WHEREAS, that more qualified registered nurses will be needed in the future to meet the increasingly complex needs of health care consumers in this community.

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby declare the week of **May 6 through 12, 2009** as **National Nurses Week** along with the American Nurses Association, Naval Hospital Oak Harbor and the NHOH Nurses Association in celebration of the ways in which registered nurses strive to provide safe and high quality patient care and map out the way to improve our health care system. We ask that all residents of this community join in honoring the registered nurses who care for all of us. That the residents of Oak Harbor celebrate the accomplishments and efforts of our registered nurses to improve our health care system and show our appreciation for the nation's registered nurses not just during this week, but at every opportunity throughout the year.

Signed this 5th day of May, 2009



Jim Slowik, Mayor

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

Bill No. 3

Date: may 5, 2009

Subject: **PUBLIC COMMENTS**

FROM: **Jim Slowik, Mayor**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

- Budgeted Item: Yes No N/A
- Budget Adjustment Required: Yes No N/A
- Funds Available for Appropriation: Yes No N/A
- Budget Strategy Approved: Yes No N/A

 Margery Hite, City Attorney

SUMMARY STATEMENT

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

City of Oak Harbor
City Council Agenda Bill

Bill No. CJA 4A
Date: May 5, 2009
Subject: Absence Notification for
Mayor Jim Slowik

FROM: Jim Slowik
Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to notify the Council of Mayor Jim Slowik's absence for the May 19, 2009 Council Meeting.

AUTHORITY

No authority exists that would require such notification by the Mayor.

SUMMARY STATEMENT

Mayor Jim Slowik wishes to notify the Council that he will not be able to attend the May 19, 2009 City Council Meeting.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Acknowledge Mayor Jim Slowik's notification that he will be absent for the May 19, 2009 City Council Meeting.

ATTACHMENTS

MAYOR'S COMMENTS

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

Bill No. N/A 4B
Date: May 5, 2009
Subject: Excused Absence Request
Councilmember Rick Alberg

FROM: Jim Slowik
Mayor



INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



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

PURPOSE

The purpose of this agenda bill is to present and approve Councilmember Rick Alberg's excused absence request for July 7, 2009.

AUTHORITY

Per RCW 35A.12.060: ... *a council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council.*

SUMMARY STATEMENT

Councilmember Rick Alberg has submitted an excused absence request since he will not be able to attend the July 7, 2009 City Council Meeting.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve Councilmember Rick Alberg's excused absence from the July 7, 2009 City Council Meeting.

ATTACHMENTS

MAYOR'S COMMENTS

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

Bill No. CJA 4c
Date: May 5, 2009
Subject: Excused Absence Request
Councilmember Beth Munns

FROM: Jim Slowik
Mayor



INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to present and approve Councilmember Beth Munns' excused absence request for October 6, 2009.

AUTHORITY

Per RCW 35A.12.060: ... *a council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council.*

SUMMARY STATEMENT

Councilmember Beth Munns has submitted an excused absence request since she will not be able to attend the October 6, 2009 City Council Meeting.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve Councilmember Beth Munns' excused absence from the October 6, 2009 City Council Meeting.

ATTACHMENTS

MAYOR'S COMMENTS

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

Bill No. CJA 4D
Date: May 5, 2009
Subject: Hearing Examiner Contract

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill presents a two-year contract for Hearing Examiner services with Michael Bobbink.

AUTHORITY

The Hearing Examiner shall perform all of the duties set forth in Oak Harbor Municipal Code Chapters 18.20 and 18.30 and all other actions reasonably necessary to fulfill the obligations of the position, as established by state statute or City ordinance. The provisions of RCW 35.63.130 are incorporated by this reference as if fully set forth herein.

SUMMARY STATEMENT

The City has contracted with Michael Bobbink on an annual basis to provide hearing examiner services. We see no reason why this agreement cannot be a two year agreement. The professional service contract is based on a flat fee in the amount of \$1,500 per month.

RECOMMENDED ACTION:

Approval for the Mayor to renew the hearing examiner contract with Michael Bobbink for the next two years per the terms of the attached agreement.

ATTACHMENTS:

1. Professional Services Agreement with Hearing Examiner Michael Bobbink.

MAYOR'S COMMENTS:

HEARING EXAMINER SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this 5th day of May, 2009, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and MICHAEL BOBBINK hereinafter referred to as the "HEARING EXAMINER".

WHEREAS, there is a need to have Hearing Examiner Services for the City; and

WHEREAS, the Mayor may appoint a Hearing Examiner; and

WHEREAS, Michael Bobbink is an attorney admitted to the Washington State Bar and an experienced Hearing Examiner who has demonstrated the ability to perform the duties of Hearing Examiner in a competent, professional, fair and impartial manner; and

WHEREAS, the Mayor recommends Michael Bobbink be retained on contract under the terms and conditions set forth herein; not, therefore,

In consideration of the mutual benefits to be derived by the parties herein, the parties agree as follows:

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

1. Duties. The Hearing Examiner shall perform all of the duties set forth in OHMC Chapters 18.20 and 18.30 and all other actions reasonably necessary to fulfill the obligations of the position, as established by state statute or City ordinance. The provisions of RCW 35.63.130 are incorporated by this reference as if fully set forth herein.
2. Hearing Examiner shall adopt such rules as he deems necessary to performance of the requirements of Hearing Examiner pursuant to City Code.
3. Term. This Agreement shall be in effect for two (2) years from the date of execution thereof.
4. Compensation and Method of Payment.
 - 4.1 Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.
 - 4.2 No payment shall be made for any service rendered by the HEARING EXAMINER except for services identified and set forth in this Agreement.

4.3 The Hearing Examiner shall provide services to the City and shall be paid One Thousand Five Hundred Dollars (\$1,500.00) per month for the services of Hearing Examiner and performing of the duties described herein.

5. Reports and Inspections.

5.1 The Hearing Examiner shall provide a yearly report on activities performed and recommendations concerning changes to the land use code or land use processing.

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

5.3 Ownership of Work Product. Any and all documents, drawings, reports, and other work product produced by the Examiner under this Agreement shall become the property of the City upon payment of the Examiner's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Examiner.

6. Independent Contractor Relationship.

The Examiner is an independent contractor for the performance of services under this Agreement. The Examiner is also an appointed City official. The City shall not be liable for, nor obligated to pay to the Examiner, or any employee of the Examiner, sick leave, vacation pay, overtime or any other benefit applicable to employees of the City, nor to pay or deduct any social security, income tax, or other tax from the payments made to the Examiner which may arise as an incident of the Examiner performing services for the City. The City shall not be obligated to pay industrial insurance for the services rendered by the Examiner.

7. Taxes. The Examiner will be solely responsible for the payment of any and all applicable taxes related to the services provided under this Agreement and if such taxes are required to be passed through to the City by law, the same shall be duly itemized on any billings submitted to the City by the Examiner.

8. Integration. The written provisions and terms of this Agreement shall supersede all prior verbal statements of any officer or representative of the City, or any prior agreements between the parties, and such statement or prior agreements shall not be effective or be construed as entering into, forming a part of, or altering this Agreement in any way.

9. Hold Harmless/Indemnification.

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

9.2 For purposes of this indemnification and hold harmless agreement, the HEARING EXAMINER waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.

9.3 No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

10. Compliance with Laws.

The HEARING EXAMINER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

11. Nondiscrimination.

11.1 The CITY is an equal opportunity employer.

11.2 Nondiscrimination in Employment. In the performance of this Agreement, the HEARING EXAMINER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The HEARING EXAMINER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital

status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The HEARING EXAMINER shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

- 11.3 Nondiscrimination in Services. The HEARING EXAMINER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.
- 11.4 If any assignment and/or subcontracting has been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The HEARING EXAMINER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.
12. Hearing Examiner Pro Tem. The Hearing Examiner, if unable to complete the services of Hearing Examiner for any reason (including conflicts or appearance of fairness) shall pay for the services of another Hearing Examiner. The City reserves the right to select the Hearing Examiner Pro Tem appointed pursuant to this provision.
13. Changes.
- Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.
14. Maintenance and Inspection of Records.
- The Examiner shall keep all records related to this Agreement for a period of three years following completion of the work for which the Examiner is retained. The Examiner shall return the City's original records to the City. The Examiner shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Examiner. Upon request, the Examiner will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Examiner, but the Examiner may charge the City for copies requested for any other purpose.

15. Other Provisions.

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

16. Termination.

This Agreement can only be terminated for criminal law violations, malfeasance in office or sustained findings of violation of the Rules of Professional Conduct (RPCs).

17. Notice.

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

18. Attorneys Fees and Costs.

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

19. Jurisdiction and Venue.

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

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

20. Severability.

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

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

21. Waiver.

The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed to be a waiver or relinquishment of said Agreement provision, and the same shall remain in full force and effect.

22. Entire Agreement.

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

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

CITY:

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

HEARING EXAMINER:

Michael Bobbink
528 Clark Road
Bellingham, WA 98225

Jim Slowik, Mayor

Michael Bobbink

Attest:

Connie Wheeler, City Clerk

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

Agenda Bill No. N/A 4E
Date: May 5, 2009
Subject: DBE Program Approval

FROM: Paul Schmidt 
City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT

In order to request and receive Federal grant funds for local government projects, cities are required to demonstrate compliance with many Federal mandates. One such mandate is the establishment of a Disadvantaged Business Enterprise (DBE) Program to ensure that DBEs, as defined in 49 CFR Part 26 [attached], have an equal opportunity to receive and participate in DOT-assisted contracts.

AUTHORITY

Under Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C. Section 2000d, et seq, the Federal Transit Authority Office of Civil Rights is responsible for monitoring FTA recipient's DBE programs and ensuring their compliance with Department of Transportation's DBE Regulations found at 49 CFR Part 26.

BACKGROUND

The City of Oak Harbor recently provided notification to the Federal Transit Authority to obligate funds to construct the "upland portion" of the Municipal Pier Project. In doing so, the Federal Transit Authority has requested that the City of Oak Harbor submit their DBE program and overall goals before the grants can be processed. Program guidelines and procedures help to ensure that DBEs have equal opportunity to compete for contracts, subcontracts, and agreements in the award and administration of USDOT assisted contracts.

The draft program has been reviewed by Federal Transit Authority representatives and has received a conditional approval pending City Council adoption.

STANDING COMMITTEE REPORT

None

RECOMMENDED ACTION

Approve Resolution No. 09-11 approving the City of Oak Harbor Disadvantaged Business Enterprise Program/Policy.

City of Oak Harbor City Council Agenda Bill

ATTACHMENTS

Resolution No. 09-11.
Draft DBE Program.

MAYOR'S COMMENTS

RESOLUTION NO. 09-11

A RESOLUTION BY THE CITY OF OAK HARBOR ADOPTING A DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM/POLICY

WHEREAS, the City of Oak Harbor gives public notice of adopting a Disadvantaged Business Enterprise (DBE) Program/Policy; and

WHEREAS, the City of Oak Harbor's DBE program is in accordance with regulations of the U. S. Department of Transportation, 49 CFR Part 26; and

WHEREAS, the City of Oak Harbor's DBE Program contains guidelines and procedures which help to ensure that DBEs have equal opportunity to compete for contracts, subcontracts, and agreements in the award and administration of USDOT assisted contracts; and

WHEREAS, the City of Oak Harbor's DBE shall be considered and administered as an ongoing activity that is annually monitored and updated as needed to remain current and effective in the assurances of complying with 49 CFR Part 26; and

WHEREAS, implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Oak Harbor in its financial assistance agreements with the Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Oak Harbor, Washington, that the attached DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM/POLICY be adopted as of the date of this Resolution as policy of the City of Oak Harbor.

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

CITY OF OAK HARBOR

MAYOR

ATTEST:

City Clerk



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM/POLICY

OBJECTIVES/POLICY STATEMENT – 49 CFR, Parts 26.1 & 26.23

The City of Oak Harbor has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Oak Harbor has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Oak Harbor has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Oak Harbor to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT - assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The City Administrator for the City of Oak Harbor shall be the DBE Director and have the ultimate authority and responsibility for the City's adherence to the City of Oak Harbor's DBE Policy and Program. The DBE Director shall delegate duties to achieve the policy goals as necessary.

The City Engineer is responsible for managing and implementing all aspects of the DBE program. A DBE Coordinator (DBEC) shall be delegated to perform the administrative, day-to-day functions of the DBE Program.

Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Oak Harbor in its financial assistance agreements with the Department of Transportation.

The City of Oak Harbor has disseminated this policy statement to the Mayor and City Council and all of the components of our organization. We will distribute this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

[Signature of Recipients Director]

Date

SUBPART A - GENERAL REQUIREMENTS

SECTION 26.1 – Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 - Applicability

The City of Oak Harbor is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 – Definitions

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the **DBE** program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or DBE means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (**DBE**) program for small and disadvantaged businesses.

Good faith efforts means efforts to achieve a **DBE** goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a **DBE** firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the **DBE** is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of

Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to **DBE** firms.

Small Business Administration or SBA means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

(ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003]

Section 26.7 - Non-discrimination Requirements

The City of Oak Harbor ^{will} ~~will never~~ exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the City of Oak Harbor will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 - Record Keeping Requirements

The City of Oak Harbor will report DBE participation on a semi-annual basis, using the DOT Form, "Uniform Report of DBE Commitments/Awards and Payments." These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

The City of Oak Harbor will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidders list will include the firm name, firm address, DBE non-DBE status, age of firm, and annual gross receipts of firms.

We will collect this information by including a form and notice in all our solicitations requesting DBE information about the firm bidding and also a contract clause requiring prime bidders to report the names/addresses, and possibly other information regarding their subcontractors.

Section 26.13 - Federal Financial Assistance Agreement

The City of Oak Harbor has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

The City of Oak Harbor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The City of Oak Harbor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The City of Oak Harbor's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of Oak Harbor of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

“The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 - DBE Program Updates

Since the City of Oak Harbor has received a grant of \$250,000 or more in FTA planning capital, and/or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.23 - Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.25 - DBE Liaison Officer (DBELO)

The City of Oak Harbor has designated the following individual as our DBE Liaison Officer:

Eric Johnston, City Engineer, 1400 NE Barrington Drive, Oak Harbor, WA 98277. 360-279-4522. ejohnston@oakharbor.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of Oak Harbor complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the DBE Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of four to assist in the administration of the program. The duties and responsibilities include the following:

- a. Gathers and reports statistical data and other information as required by DOT.
- b. Reviews third party contracts and purchase requisitions for compliance with this program.
- c. Works with all departments to set overall annual goals.
- d. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- e. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
- f. Analyzes City of Oak Harbor's progress toward attainment and identifies ways to improve progress.
- g. Participates in pre-bid meetings.
- h. Advises the governing body on DBE matters and achievement.
- i. Chairs the DBE Advisory Committee.
- j. Participates in pre-bid meetings.
- k. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- l. Plans and participates in DBE training seminars.
- m. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Washington.
- n. Provides outreach to DBEs and community organizations to advise them of opportunities.
- o. Maintains the City of Oak Harbor's updated directory on certified DBEs.

Section 26.27 - DBE Financial Institutions

It is the policy of the City of Oak Harbor to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

We will make the following efforts to identify and use such institutions:

- a. Letters will be sent to all financial institutions within a ten mile radius of our offices to request information on possible DBE status.
- b. Periodically, a search will be made of the area for new financial institutions which may qualify as DBE.
- c. Bid solicitation will include a notice to prime contractors encouraging the use of DBE financial institutions and the offer of assistance in locating such institutions.

Section 26.29 - Prompt Payment Mechanisms

The City of Oak Harbor will include the following clause in each DOT-assisted prime contract:

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the City of Oak Harbor. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time

frame may occur only for good cause following written approval of the City of Oak Harbor. This clause applies to both DBE and non-DBE subcontracts.

Section 26.31 - Directory

The City of Oak Harbor maintains a directory identifying all firms eligible to participate as DBEs. This directory is developed from lists of certified DBEs obtained from Uniform Certification Program of the Washington State Office of Minority and Women Business Enterprises (OMWBE).

The directory lists each firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise and update the Directory as needed or at least annually. The Directory may be found in Attachment "B" to this document.

We make the Directory available to any prime contractors upon request and include the following language in all prime contract solicitations:

"To assist in meeting the contract goals for DBE participation, the City of Oak Harbor will provide the prime contractor with a directory of certified DBE subcontractors in the Whatcom, Skagit, Island and Snohomish County areas. To have the list sent to you, contact City of Oak Harbor purchasing at (360) 279-4757. Lists of DBEs throughout Washington State may also be obtained at the State of Washington Office of Minority and Women's Enterprises website through an automated look-up system at www.omwbe.wa.gov/directory/directory.htm."

Interested parties may obtain information regarding the City of Oak Harbor's Small Works Roster by writing or calling the City of Oak Harbor Public Works Department at 1400 NE 16th Avenue, Oak Harbor, WA 98277 – (360) 279-4750 or by visiting their website at www.oakharbor.org.

Section 26.33 - Over-concentration

The City of Oak Harbor has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 - Business Development Programs

The City of Oak Harbor has not established a business development program.

Section 26.37 - Monitoring and Enforcement Mechanisms

The City of Oak Harbor will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

- a. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT

- Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
- b. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment C (Compliance Monitoring and Enforcement Mechanisms of DBE Contracts) lists the monitoring and enforcement mechanisms to verify that work committed to DBEs at contract award is actually performed by the DBEs, regulation, provisions, and contract remedies available to us in the events of non-compliance.
 - c. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 - Set-asides or Quotas

The City of Oak Harbor does not use quotas in any way in the administration of this DBE program.

Section 26.45 - Overall Goals

This section of the program will be updated as appropriate, but no less than annually. A further breakdown of overall goal calculation is found in attachment "D" to this program.

In accordance with Section 26.45(a)(2):

- 1) If it is reasonably anticipated that the City of Oak Harbor will award \$250,000 or less in FTA funds to prime contracts in a Federal fiscal year,

The City of Oak Harbor will not set an overall goal, however the City of Oak Harbor's DBE program will remain in effect and we will seek to fulfill the objectives outlined in Section 26.1 (section 1, objectives of this policy).

OR

- 2) If it is reasonably anticipated that the City of Oak Harbor will award over \$250,000 of FTA funds in prime contracts in a Federal fiscal year,

The City of Oak Harbor will develop an overall goal and will submit its overall goal to DOT on August 1st each year or a date determined by the operating administration (FTA). Our overall goal submission to DOT will include a summary of information and comments received during the public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

A description of the methodology to calculate the overall goal and the goal calculations are as follows:

- a. Annual (overall) Goals. The DBELO will establish an annual DBE participation goal which will be a percentage of federal financial assistance that we expect to expend that year in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles. Revised annual goals will be provided to the US Department of Transportation Administration (FTA) in a timely manner for review and approval.

- b. Method of establishing annual goal. Before establishing the overall goal each year, the City of Oak Harbor will consult with any appropriate organizations to include but not limited to; minority, women's and general contractor groups, community organizations, and other officials or organizations as identified by the DBEC to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Oak Harbor's efforts to establish a level playing field for the participation of DBEs.

Most of the bidders competing for the City of Oak Harbor's contracts are from within Island County. Therefore, the annual goal will be established by assessing the overall number of certified and capable businesses which are available in Island County. In the event that a large procurement is expected which will involve solicitation of bids from outside the County, the goal will take into consideration the availability of DBEs in the areas outside the County where the bid is published. DBE information will be obtained from the DBE catalog issued by the Washington State Office of Minority and Women Business Enterprises as well as any other appropriate means available.

- c. Goals by contract or category. Goals will only be set for contracts that have subcontracting possibilities. All prospective projects will be reviewed by the DBELO on a project-by-project basis to determine whether specific projects are good candidates for DBE goals. Efforts will be made to determine the dollar value of the projected City of Oak Harbor contracts by categories, based on the overall dollar value of projects scheduled for the year. Goals will be set on a contract to contract basis and may be different for each contract and/or different than the overall annual goal. Contract or project goals within a given year will be used to cumulatively result in meeting any portion of the overall annual goal.
- d. Project Goal Calculation. The following factors shall be used in determining goals for specific projects or contracts:
- 1) The availability of DBE contractors and subcontractors in the trades and specialization of work involved in the project or any other means available within the same geographical boundaries that the City of Oak Harbor would normally seek bids from nondisadvantaged firms for the particular work (these boundaries may extend beyond Island County).
 - 2) The full range of activities in the proposed contract performance.
 - 3) The size of the project.
 - 4) Unique conditions of the project which would affect the ability of a contractor or prime contractor to coordinate, utilize or incorporate subcontractors or suppliers into the project.
 - 5) The effect that the disadvantaged contractor requirement might have on the time of completion.
 - 6) Other relevant criteria as determined by the DBE Director.
- e. Public Notice of Proposed Goals. Each year, the City of Oak Harbor will publish a notice of the proposed overall goals in local Island County newspaper(s) and on our website. The notice will be available for public inspection during normal working hours at the City of Oak Harbor's principal place of business – 865 SE Barrington Drive, Oak Harbor, WA and on our website for at least 30 days from the date of the notice's first publication.

This notice will include:

- 1) The City of Oak Harbor's overall annual goal and projected specific project goals for the year.
- 2) The rationale used to determine the goal (s).
- 3) Notice that the City of Oak Harbor and DOT will accept comments on the goal(s) for 45 days from the notice's first date of publication.
- 4) Addresses where comments may be sent to the City of Oak Harbor and DOT.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.49 - Transit Vehicle Manufacturers Goals

The City of Oak Harbor will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the City of Oak Harbor may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Section 26.51(a-c) - Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment E to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) - Contract Goals

The City of Oak Harbor will use contract goals to meet any portion of the overall goal the City does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

The Letter of Intent, Attachment "H", will be included on solicitations where contract goals have been set. This form will be used for the prime contract to commit to use DBE firms.

Section 26.53 - Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

If a contract goal has been set for a procurement, a contract award will be made only if good faith efforts have been made by the prime contractor/bidder to meet the goal. Good faith efforts will be determined in two ways:

- a. The goal for DBE participation is met. In this case, to allow the City of Oak Harbor to make a good faith effort determination, bidders (whether they themselves are DBE or not) will be required to submit the following information:

Included with their bid:

- If bidder is the DBE, a signed affidavit affirming that the business is a certified DBE and their OMWBE Certification number. Affidavit found in Attachment "F" will appear in all City of Oak Harbor solicitations.
- If the bidder is a prime contractor proposing to subcontract to DBEs. A statement of DBE utilization form will be required and is found in Attachment "G". This form appears in all City of Oak Harbor solicitations in which a contract goal has been set and will require the following information;
 - Names, addresses and OMWBE Certification number of DBE subcontractors that will participate in the contract.
 - Description of the work the DBE firm(s) will perform.
 - The value of the subcontract(s).

No later than 48 hours after bid due date and time:

- The percentage and dollar amount of the subcontract to actually be performed by the DBE(s) themselves.
- Written and signed confirmation from the DBE subcontractor that it is actually participating in the contract as provided in the prime contractor's commitment. The DBE will use attachment "F" for this purpose.

- b. The goal for DBE participation is not met. In this case, the City of Oak Harbor will document its good faith efforts to obtain DBE participation and why its attempts failed paying special attention to why the contract was not awarded to DBEs which may have submitted bids.

If the bidder who is recommended to be awarded the contract will be a prime contractor with subcontractors, that bidder will be required, within 48 hours after the bid due date and time and prior to award of contract, to furnish documentation showing that it made good faith efforts to achieve the contract goal. Such documentation may include the form, found at attachment "H". The DBEC will review the steps taken by the bidder to establish if said steps represent good faith efforts that could reasonably be expected to result in DBE participation in accordance with 49 CFR, Part 27, Appendix A. The DBELO will make a final determination of good faith efforts. If good faith efforts have not been met, the bidder's offer will be determined as non-responsive. In no event will a contract be awarded or performance begun on a contract by a prime contractor before good faith efforts have been documented.

Information to be submitted - (26.53(b))

The City of Oak Harbor treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

If the DBELO determines that good faith efforts have not been made by a bidder, the bidder shall be notified immediately. Within 5 business days of being informed by the City of Oak Harbor that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offers may request administrative reconsideration. Bidder/offers should make this request in writing to the following reconsideration official: Human Resources Director, Myrna Wilson, 865 SE Barrington Drive, Oak Harbor, WA , 360-279-4509, mwilson@oakharbor.org. The reconsideration official will not have played any role in the original determination that the bidder/offers did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offers will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offers will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offers a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is final and cannot be appealed to the Department of Transportation.

Good Faith Efforts when a DBE is replace on a contract (26.53(f))

The City of Oak Harbor will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. Pursuant to 49 CFR, Part 26.53(f)(3), if the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Good Faith Effort Provision to appear in bids:

When a contract goal is established, the resulting contract documents and bid package must notify bidders/offerors of the requirements to make good faith efforts. The form found at Attachment "G" will be used for when prime contractor will use DBE subcontractors. The form found at Attachment "H" will be used when a prime contractor has not secured DBE subcontractors yet has practiced good faith efforts.

The following shall be placed as a provision or contract clause in any bid solicitation or contract which a DBE goal has been set:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Oak Harbor to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE.

A DBE means a small business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals who own it. DBEs must be certified with the State of Washington.

A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information:

If the bidder/offeror is a DBE and not using any subcontractors, an affidavit affirming their DBE status.

If the bidder/offeror is a Prime contractor or DBE using subcontractors they are required to submit:

- (1) The names and addresses of DBE firms that will participate in the contract;
- (2) A description of the work that each DBE firm will perform;
- (3) The dollar amount of the participation of each DBE firm participating;
- (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

If the contract goal is not met, evidence of good faith efforts are required.

Section 26.55 - Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 - Certification Process

In Washington State a central office has been created to perform certification and recertification functions. The Washington State Office of Minority and Women Business Enterprises (OMWBE) has legislative authority to perform all minority, women and disadvantaged business enterprise certifications for all public agencies in the State. For DBE certifications the office is required to utilize certification procedures that meet all federal requirements as defined in 49 CFR Part 26 and as amended to ensure eligibility of certified firms for Department of Transportation projects.

For information about the certification process or to apply for certification, firms should contact: OMWBE PO Box 411160 Olympia, WA 98504 / Phone (360) 753-9693 or www.omwbe.wa.gov

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 - Unified Certification Programs

The City of Oak Harbor is a member of the Uniform Certified Authority and, as such, will utilize the DBE certification of the Washington State Office of Minority and Women Business Enterprises (OMWBE) which has the legislative authority to perform all minority, women and disadvantaged business enterprise certifications for all public agencies in the State. The City of Oak Harbor will refer firms seeking DBE certification to OMWBE and assist as necessary.

OMWBE will serve the obligations under the following:

"No Change" Affidavits and Notices of Change – 49 CFR, Part 26.82(j)

Denials of Initial Requests for Certification – 49 CFR, Part 26.85

Removal of a DBE's Eligibility – 49 CFR, Part 26.87

Section 26.89 - Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation (DOT)
Office of Small and Disadvantaged Business Utilization (OSDBU)
1200 New Jersey Avenue, SE, W56-485
Washington, DC 20590

Challenge

A third party may challenge a firm's presumed eligibility or a firm's certification as a DBE. The City of Oak Harbor shall immediately review the information received and determine if grounds exist to pursue the challenge. If the challenge appears to have merit, the City of Oak Harbor will notify the OMWBE who will have the authority to investigate and resolve the challenge in accordance with the certification requirements of 49 CFR, Part 26 and as amended. The City of Oak Harbor will provide all available information for the investigation and identify the third party challenger. The challenged party shall submit rebutting information to the OMWBE for their consideration. The City of Oak Harbor shall actively participate with the OMWBE, if needed, until the investigation is concluded and a determination has been finalized.

Decertification

In addition to the performance of the certification function for all public agencies in the State of Washington, the OMWBE is responsible for decertification if a DBE no longer qualifies for the program under 49 CFR Part 26 and SBA small business criteria. The City of Oak Harbor will cooperate with the OMWBE as needed to assist in the decertification process. Once decertified a DBE contractor will no longer be counted towards the City of Oak Harbor's overall annual goals.

SUBPART F - COMPLIANCE AND ENFORCEMENT

Compliance Procedures

Notice and compliance forms shall be made available to all potential City of Oak Harbor contractors during the bidding process. Each City of Oak Harbor contract shall include language requiring conformance with DBE policy requirements. Failure to submit adequate information for evaluation of DBE compliance or material misrepresentation concerning compliance with DBE requirements shall be grounds for elimination from the bidding process or termination of an existing contract. Action under Federal or State laws concerning false statements shall be considered in such instances.

Section 26.109 - Information, Confidentiality, Cooperation

The City of Oak Harbor will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Oak Harbor or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

ATTACHMENTS

- Attachment A** **Organizational Chart**
- Attachment B** **DBE Directory**
- Attachment C** **Monitoring and Enforcement Mechanisms**
- Attachment D** **Overall Goal Calculation**
- Attachment E** **Breakout of Estimated Race-Neutral & Race-Conscious Participation**
- Attachment F** **Affidavit of DBE Status**
- Attachment G** **Statement of DBE Utilization**
- Attachment H** **Letter of Intent**
- Attachment I** **Regulations: 49 CFR Part 26**

Attachment B

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|----------------------------|------------------|------------------------|------------|----|-------|------------|-----|-----|--------|
| AG DESIGN & ASSOCIATES LLC | ALLEN HERRINGTON | 959 VASHON DRIVE | GREENBANK | WA | 98253 | 3606788705 | MBE | DBE | ISLAND |
| CAETANO TRANSPORT CORP | KERBIA PRYOR | PO BOX 463 | STANWOOD | WA | 98292 | 3603878749 | WBE | DBE | ISLAND |
| VALDEZ CONSTRUCTION INC | RYAN VALDEZ | 2187 BOULDER MEADOW LN | OAK HARBOR | WA | 98277 | 3606793000 | MBE | DBE | ISLAND |

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|---|---------------------|--------------------------|--------------|----|-------|--------------|------|-----|--------|
| CHANDLER CONSTRUCTION INC | LYNDA CHANDLER | P O BOX 100 | BURLINGTON | WA | 98233 | 360 755-9541 | WBE | DBE | SKAGIT |
| ELECTRIC WEST INC | BRUNO PADILLA | 817 NORTH 6TH ST | MOUNT VERNON | WA | 98273 | 360 419-9378 | MBE | DBE | SKAGIT |
| ENVIRONMENTAL ABATEMENT SERVICES INC | CATHERINE D MARQUEZ | PO BOX 2503 | MOUNT VERNON | WA | 98273 | 360 755-1085 | MWBE | DBE | SKAGIT |
| GUYLINE CONSTRUCTION COMPANY INC | GUY ANDERSON | 205 LILA LANE | BURLINGTON | WA | 98233 | 360 757-8410 | MBE | DBE | SKAGIT |
| PRECISION MANUFACTURING | HEIDI NILSEN | 23810 COPPER RIVER COURT | MOUNT VERNON | WA | 98274 | 3604225726 | WBE | DBE | SKAGIT |
| STEVE SAUER TRUCKING & CONSTRUCTION INC DBA | STEVE SAUER | 4015 ASTREA PLACE | ANACORTES | WA | 98221 | 360 293-9702 | MBE | DBE | SKAGIT |

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| AIRFLOW MECHANICAL INC | HECTOR V HERNANDEZ | P O BOX 6056 | LYNNWOOD | WA | 980366056 | 4257769857 | MBE | DBE | SNOHOMISH |
| AUSTIN SPECIALTIES | DEBBRA J SHAY-HUGHES | 8212 HENNINGS DR | STANWOOD | WA | 98292 | 3606296662 | WBE | DBE | SNOHOMISH |
| BERONA ENGINEERS INC | MELCHOR E BERONA | 4630 200TH ST SW | LYNNWOOD | WA | 98036 | 425 744-6033 | MBE | DBE | SNOHOMISH |
| CAPITAL ARCHITECTS INC | SANDRA J ALDER | 2813 ROCKEFELLER AVE | EVERETT | WA | 982013524 | 4253178017 | WBE | DBE | SNOHOMISH |
| CCI COMPUTER CONSULTANTS INTERNATIONAL INC | ARISHIA TAYYAB | 10948 W VILLA MONTE DRIVE | MUKILTEO | WA | 98275 | 8004932105 | MWBE | DBE | SNOHOMISH |
| COMPASS COURSES MARITIME TRAINING | JULIE KEIM | 110 WEST DAYTON STREET | EDMONDS | WA | 98020 | 2068175346 | WBE | DBE | SNOHOMISH |
| CONSTRUCTION MANAGEMENT AND MATERIALS LLC | MARTIN OZUNA | PO BOX 13129 | MILL CREEK | WA | 98082 | 4252255861 | MBE | DBE | SNOHOMISH |
| DMSL CONSTRUCTION INC | DEBBIE WELCH WALDAL | 20902 67TH AVE NE | ARLINGTON | WA | 98223 | 3604357144 | MWBE | DBE | SNOHOMISH |
| ECG INC | DANIEL ENRICO | 13914 228TH ST SE | SNOHOMISH | WA | 98296 | 2067158415 | MBE | DBE | SNOHOMISH |
| EMERALD CITY EDITING | KAREN L CANTILLON | 20604 22ND AVE W | LYNNWOOD | WA | 98036-7871 | 425 775-6053 | WBE | DBE | SNOHOMISH |
| FREDHOES BUILDING CONSTRUCTION COMPANY LLC | FRIDAY AIWEKHOE | 13428 1ST PLACE WEST | EVERETT | WA | 98208 | 4257412370 | MBE | DBE | SNOHOMISH |
| GFI TRUCKING LLC | ELIZABETH M YANCEY | PO BOX 653 | LAKE STEVENS | WA | 98258 | 4253770301 | WBE | DBE | SNOHOMISH |
| GLORIA JEANE HAULING & HWY REHAB INC | GLORIA TONGARD | 8920 84TH ST NE | ARLINGTON | WA | 98223 | 360 659-6274 | MWBE | DBE | SNOHOMISH |
| GRADY EXCAVATING INC | KIMBERLY S GRADY | P O BOX 467 | MUKILTEO | WA | 98275 | 4254237932 | WBE | DBE | SNOHOMISH |
| GUZMAN HAULING | SHERRY J GUZMAN | 1624 MARINE DR N E | TULALIP | WA | 98271 | 4255087902 | MBE | DBE | SNOHOMISH |
| HAOZOUS ENGINEERING P S | ROBERT H DARROW | 13428 45TH COURT W | MUKILTEO | WA | 98275-5928 | 425 745-5872 | MBE | DBE | SNOHOMISH |
| INTEGRA TECHNICAL SERVICES INC | JOSEPH KUNTHARA | 14920 HWY 99 | LYNNWOOD | WA | 98087 | 4253158002 | WBE | DBE | SNOHOMISH |
| J & B ARCHITECTURAL SIGNS | CYNTHIA D GRUBE | 914 164TH STREET SOUTHEAST | MILL CREEK | WA | 98012 | 4253389875 | WBE | DBE | SNOHOMISH |
| J & J GUZMAN TRUCKING INC | JESSE GUZMAN | 6830 19TH AVE NE | TULALIP | WA | 98271 | 36068586329 | MBE | DBE | SNOHOMISH |
| LEAJAK CONCRETE CONSTRUCTION INC | FREDELL L ANDERSON | PO BOX 250 | MOUNTLAKE TERRACE | WA | 98043 | 425 771-7168 | MBE | DBE | SNOHOMISH |
| LIFT SOLUTIONS INC | JOHN CASTANO | 5225 138TH DR SE | SNOHOMISH | WA | 98290 | 3608628328 | MBE | DBE | SNOHOMISH |
| LIL CHIEF SPECIALTIES INC | KEN WILLIAMS | P O BOX 25748 | SEATTLE | WA | 98165 | 206 364-1244 | MBE | DBE | SNOHOMISH |
| MARSHBANK CONSTRUCTION INC | DAVE MARSHBANK | P O BOX 87 | LAKE STEVENS | WA | 98258 | 425 377-9708 | MBE | DBE | SNOHOMISH |
| OUT WEST LANDSCAPE AND IRRIGATION INC | TERESA OOSTERWYK | P O BOX 1805 | WOODINVILLE | WA | 98072 | 3608632797 | WBE | DBE | SNOHOMISH |

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| P & G LANDSCAPING INC | TARA ROGERS | 15912 73RD AVE SE | #B | SNOHOMISH | WA | 98296 | 425 485-6091 | WBE | DBE | SNOHOMISH |
| PARKER TRUCKING | TERRY R PARKER JR | 8719 27TH AVENUE NORTHEAST | | TULALIP | WA | 98271 | 3606532434 | MBE | DBE | SNOHOMISH |
| PEARSON DRILLING INC | TERRI TREW | 22514 86TH AVENUE WEST | | EDMONDS | WA | 98020 | 425 672-4826 | MBE | DBE | SNOHOMISH |
| PENNY LEE TRUCKING INC | PENNY GUTSCHMIDT | P O BOX 3554 | | ARLINGTON | WA | 98223 | 360 403-7520 | WBE | DBE | SNOHOMISH |
| PIONEER GROUP | NATHAN A PIERCE | P O BOX 1362 | | GOLD BAR | WA | 98251 | 3607936805 | MBE | DBE | SNOHOMISH |
| PORT A PRO WELDING | WILLIE L HOLLAND | 10913 MOUNTAIN LOOP HWY | SUITE B | GRANITE FALLS | WA | 982528500 | 4253779027 | MBE | DBE | SNOHOMISH |
| R J RICHARDS CE LLC | ROMAN J RICHARDS | 12414 HWY 99 | SUITE 103 | EVERETT | WA | 98204 | 4253476929 | MBE | DBE | SNOHOMISH |
| ROSS COMPANY ENGINEERING SERVICES LLC | DR MICKEY V ROSS | 1734 C PLACE SE | | AUBURN | WA | 98002 | 4259711615 | MBE | DBE | SNOHOMISH |
| TOWN & COUNTRY OFFICE CLEANING CO | CAROL CHAMPOUX | PO BOX 3222 | | LYNNWOOD | WA | 98046 | 4257745020 | WBE | DBE | SNOHOMISH |
| UZUNOV TRUCKING LLC | VALERIE UZUNOV | 1218 188TH ST NE | | ARLINGTON | WA | 98223 | 3605724606 | WBE | DBE | SNOHOMISH |
| VIT CORPORATION | ROXY D STIMPSON | 10121 EVERGREEN WAY | SUITE 25-554 | EVERETT | WA | 982043885 | 4252905566 | MWBE | DBE | SNOHOMISH |
| WESTSHARE SERVICES INC | SHARI SCHOONOVER CRIC | 14529 BROADWAY AVE S E | | SNOHOMISH | WA | 98296 | 360 668-6841 | WBE | DBE | SNOHOMISH |
| WOODBURN COMPANY | FRANK Y FUKUI | 2815 ROCKEFELLER | | EVERETT | WA | 982016601 | 4252584402 | MBE | DBE | SNOHOMISH |

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| ABRIGE CORP / C-SECURE SYSTEMS | LORI EVANS | 4410 PARKHURST DRIVE | | BELLINGHAM | WA | 98229 | 3607345580 | WBE | DBE | WHATCOM |
| COMMON GROUND ENVIRONMENTAL CONSULTING LLC | ANALEISE BURNS | 1536 SILVER BEACH ROAD | | BELLINGHAM | WA | 98229 | 3607349484 | WBE | DBE | WHATCOM |
| DO CONSTRUCTION INC | DARLENE A OLSEN | 3286 BALCH ROAD | | BELLINGHAM | WA | 98226 | 3607587927 | MBE | DBE | WHATCOM |
| LAND DEVELOPMENT ENGINEERING & SURVEYING INC | RAMON LLANOS | 5160 INDUSTRIAL PLACE | SUITE 108 | FERNDALE | WA | 98248 | 3603830620 | MBE | DBE | WHATCOM |
| LANDSCAPE ASSOCIATES | LAURIE A FREEMAN | PO BOX 1884 | | FERNDALE | WA | 98248 | 3603050396 | WBE | DBE | WHATCOM |
| MATIA CONTRACTORS | MARY LAWRENCE | 525 TELEGRAPH ROAD | | BELLINGHAM | WA | 982268096 | 3606769177 | WBE | DBE | WHATCOM |
| MERIT ENGINEERING INC | AUSTIN X HUANG | 2715 MERIDIAN ST | | BELLINGHAM | WA | 98225 | 360 738-6083 | MBE | DBE | WHATCOM |
| MILLENNIUM ENGINEERING GROUP INC | TERESA K REED JENNINGS | P O BOX 137 | | LYNDEN | WA | 98264 | 360 354-8141 | WBE | DBE | WHATCOM |
| NORTHWEST WETLANDS CONSULTING LLC | KATRINA JACKSON | 1214 XENIA | | BELLINGHAM | WA | 98229 | 3605101605 | WBE | DBE | WHATCOM |
| QUIMBYS CONCRETE LLC | DANIEL R QUIMBY JR | 3330 CHANDLER PKWY | | BELLINGHAM | WA | 98226 | 3606470566 | MBE | DBE | WHATCOM |
| SOTO AND SONS CONSTRUCTION LLC | ROBERT SOTO | 7730 GOODWIN ROAD | | EVERSON | WA | 98247-0491 | 3609669999 | MBE | DBE | WHATCOM |
| STEELE & ASSOCIATES HARDSCAPE SPECIALISTS | RODNEY L STEELE | PO BOX 29736 | | BELLINGHAM | WA | 98228 | 3606769354 | MBE | DBE | WHATCOM |
| WARRIOR CONSTRUCTION OF BHAM | CHARLES E CRIST | 3484 N RED RIVER RD | | FERNDALE | WA | 98248 | 360 384-0071 | MBE | DBE | WHATCOM |

05

Attachment C

Monitoring and Enforcement Mechanisms

In order to ensure compliance with DBE requirements in its contracts, the City of Oak Harbor's project managers and representatives at job sites will monitor on an ongoing basis that work committed to being performed by DBEs is actually performed by the DBEs named in a contractor's bid or proposal.

A clause will be included in all contracts requiring that the contractor cannot substitute subcontractors without the City of Oak Harbor's concurrence. In addition, if a DBE subcontractor is unable to perform the work contracted for, the prime contractor must either replace such subcontractor with another DBE or show the City of Oak Harbor that good faith efforts to do so have been made.

The City of Oak Harbor Project Manager will periodically report to the DBELO his/her observations that DBE subcontractors actually are performing the amount and type of work committed.

If a prime contractor is found not to be in compliance with its DBE commitment it shall be so notified by the City of Oak Harbor and directed to cure the problem within an appropriate time period. Failure by the prime contractor to comply may result in monetary penalties and partial or total termination for default with resolicitation costs to be born by the prime contractor or its bond. In addition, the City of Oak Harbor may consider a contractor's non-compliance with its stated contract goal or good faith efforts when evaluating contractor responsibility in future bids or proposals.

The City of Oak Harbor will bring to the attention of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) and the Federal Transit Administration any false, fraudulent or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension or debarment or Program Fraud and civil Penalties rules and prosecution pursuant to 18 USC 1001) provided in 49 CFR Part 26.109.

The City of Oak Harbor will also assist OMWBE in the consideration of appropriate action under local legal authorities.

Attachment D

Section 26.45: Overall Goal Calculation

Amount of Goal

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing and able}}$$

The data source or demonstrable evidence used to derive the numerator was:

The data source or demonstrable evidence used to derive the denominator was:

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was

Step 2: 26.45(d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by ___%.

The data used to determine the adjustment to the base figure was:

The reason we chose to adjust our figure using this data was because:

From this data, we have adjusted our base figure to:

Public Participation

We published our goal information in these publications:

We received comments from these individuals or organizations:

Summaries of these comments are as follows:

Our responses to these comments are:

Attachment E

Section 26.51: Breakout of Estimated

Race-Neutral & Race Conscious Participation

The City of Oak Harbor will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The City of Oak Harbor uses the following race-neutral means to increase DBE participation:

The calendar year 2009 will be the City of Oak Harbor's first year implementing a formal DBE program. We, therefore, have no historical DBE data upon which to base an estimated breakout of Race-Neutral versus Race Conscious participation.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

Attachment F

Affidavit of DBE Status

I _____, affirm that the Company _____

is a Disadvantaged Business Enterprise (DBE) as defined in Title 49, Part 26 of the United States Code of Federal Regulations. The definition of a DBE is in part as follows:

A small business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals who own it. DBEs should be certified with the State of Washington. Please contact our purchasing official for more information and for certification procedures at (360) 757-8801.

We are certified by the State of Washington Office of Minority and Women Business Enterprises (OMWBE). Our certification number is _____.

We are not certified by the OMWBE but believe that we meet the criteria necessary for DBE status and will obtain certification before award of the contract.

Company Name: _____

Company Address: _____

Printed Name and Title of official affirming status: _____

Signature: _____

Attachment "G"

Statement of Disadvantaged Business Enterprise (DBE) Utilization

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

- The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.
- The bidder/offeror (if unable to meet the DBE goal of ____ %) is committed to a minimum of ____ % DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature)

Title _____

For each DBE that will participate in the contract please list the following:

Name; address; Office of Minority and Women Business Enterprises (OMWBE) certification number; description of the work the DBE will perform; the value of the subcontract.

NOTE: The following information will be due no later than 48 hours after the bid due date and time. Use the "Letter of Intent" form. (Attachment "H")

- 1) The percentage and dollar amount of the subcontract to actually be performed by the DBE.**
- 2) Written and signed confirmation from the DBE subcontractor that it is actually participating in the contract as provided in the prime contractors agreement.**

Attachment "H"

LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

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

Agenda Bill No. N/A 4F

Date: May 5, 2009

Subject: Noise Permit – Kiwanis Club
Beachcomber's Bazaar

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



Jim Slowik, Mayor

Doug Merriman, Finance Director

Margery Hite, City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from the Kiwanis Club of Oak Harbor for amplified sound associated with the Beachcomber's Bazaar event.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) will not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

The Kiwanis Club of Oak Harbor has submitted a Noise Permit request for amplified sound associated with planned entertainment at the annual Beachcomber's Bazaar scheduled for Saturday, June 20, 2009. The amplified sound will consist of a small keyboard and speakers at the Gazebo area.

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

STANDING COMMITTEE REVIEW:

Not required.



RECOMMENDED ACTION:

Grant a noise permit for amplified sound to the Kiwanis Club of Oak Harbor.

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:

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SPECIAL EVENT PERMIT/NOISE PERMIT

APPLICATION INFORMATION:

Please check the event type:

- Athletic Event
- Marina Event
- Carnival
- Noise Permit
- Car Show
- Parade
- City Facility Reservation
- Park Event
- Other

Name of Applicant/Organization: Kiwanis Club of Oak Harbor

Person in Charge: Martha Wallin Address: _____

Phone Number: Daytime: _____ Work: _____) Email: _____
or _____

Individuals: same as above

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

Emergency Contact: _____

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

Type of Activity Planned (describe event): Beachcomber's Bazaar
Garage Sale, Craft Sale, Food Vendors

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

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

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

Date(s) of Proposed Event: Saturday, June 20, 2009

Hours of Operation: 9:00 am - 3:00 p.m

(Set-up)

Friday, June 19 6pm-8pm - space layout
Set-up Date/Time: Saturday June 20 6:30am

Dismantling Date/Time: Saturday June 20 3:00pm-4:00pm

Number of Staff/Volunteers: 20

Estimated Number of Participants: 500

LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan):
Windjammer Park grassy areas near Gazebo and Smokehouse

Special Considerations – Will there be:

Amplified sound indoors? no outdoors? X at the Gazebo area
small keyboard speakers
(May require a noise permit, which is granted by the City Council*)

Alcohol? (Please circle) YES NO

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

Booths/Commercial Vendors: (Please circle) YES NO

Cooking/Food Service: (Please circle) YES NO

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

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

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

Signs: (Please circle) YES NO

Stage: (Please circle) YES NO

Other special considerations: _____

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

*NOISE PERMIT INFORMATION

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

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 under the following circumstances if it is determined the activity and associated noise will: 1) not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

To obtain a Noise Permit, please provide the activities you wish to carry out and the noise requirements of your event. Amplified vocal, music, and keyboard.

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

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

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

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

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

Date: 04-07-09
Signature of Applicant: Maitha Wallin
Organization/Title: Kiwanis Club of Oak Harbor

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

Bill No. JA 48
Date: May 5, 2009
Subject: Interlocal Agreements with
North Whidbey Park and
Recreation District

FROM: Cathy Rosen, Public Works Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

It is a goal of the City of Oak Harbor Parks Division to promote recreational activities for all residents. The City has provided, through Interlocal Agreements with the North Whidbey Park and Recreation District (District), lifeguarding services at the lagoon, wading pool maintenance and boat rental services at Windjammer Park during the summer months for the citizens of Oak Harbor.

AUTHORITY

The Interlocal Cooperation Act, Chapter 39.34 RCW, authorizes public entities to contract to do jointly that which each is authorized to do individually. The City is authorized to provide recreational services through RCW 35A.11.020. The North Whidbey Parks and Recreation District is authorized to provide recreation through Chapter 36.69 RCW.

SUMMARY STATEMENT

The District will be responsible for all aspects of the lifeguarding program, including providing a Safety Monitor for the lagoon area, scheduling, hiring, training and some general maintenance (housekeeping) responsibilities within a designated area. Also, the District will ensure that all lifeguards are certified, and will provide liability insurance for the lifeguarding program. The District will also be responsible for wading pool maintenance, including daily cleaning, water testing, purification and the daily opening and closing of the pool(s). The District will carry liability insurance on the staff members assigned to maintain and operate the wading pool(s). The 2009-2010 Parks Budget provides funding in the amount of \$29,808 for these services.

Also, under a separate agreement, the District will once again be providing paddle boat and canoe rentals at the windmill, and will pay the City \$100 per month for use of the windmill for this purpose. This fee will cover the cost to the City for utilities and overhead and includes any leasehold excise tax that will be due.

STANDING COMMITTEE REPORT

The agenda bill and contracts were presented and discussed at the Public Works and Utilities Standing Committee meeting on April 2, and at the Park Board meeting on April 13, 2009.

RECOMMENDED ACTION

It is recommended that the City Council approve the Interlocal Agreements with the North Whidbey Park and Recreation District for Water Recreational Protection Services and for Boat Rental Services and authorize the Mayor to sign the agreements.

ATTACHMENTS

- ◆ Water Recreational Protection Services Agreement (Lifeguarding)
- ◆ Boat Rental Services Agreement

MAYOR'S COMMENTS

City of Oak Harbor

AGREEMENT WITH NORTH WHIDBEY PARK & RECREATION DISTRICT FOR BOAT RENTAL SERVICES

This Agreement is made this _____ day of _____, 2009, between the City of Oak Harbor ("City") and North Whidbey Park and Recreation District ("District"). Generally, the District agrees to furnish, and the City agrees to accept, boat rental services as described in Section 1 at its lagoon facilities, located in Windjammer Park, all subject to the terms and provisions of this agreement.

Section 1. Purpose. The City seeks the temporary services of a skilled independent organization capable of providing boat rental services to the general public at Windjammer Park.

Section 2. Services. The District shall provide boat rental services ("Services") located in the Windmill at Windjammer Park, in a manner consistent with the accepted practices for other similar services, performed to the City's satisfaction, within the time period prescribed by the City.

2.1 **Customer Service.** The District's employees, agent, representatives shall provide high quality customer service and shall treat all customers with courtesy and respect.

2.2 **Employee Appearance.** All District employees, agents, representatives or licensees shall have a neat, clean and sanitary personal appearance and those who come in direct contact with the public shall wear clothing or identification which distinguishes them as employees of the District.

2.3 **Staffing.** The Windmill shall be staffed in order to provide boat rental services to the public.

2.4 **Hours of Operation.** The boat rental Stand shall be open during the hours of 12:00 - 5:00 p.m. Sunday through Thursday, and 12:00 - 6:00 p.m. Friday and Saturday, unless the City requests and the District agrees to other hours of operation.

Section 3. Equipment.

3.1 The District shall supply his/her own equipment.

3.2 **Alterations.** The District shall not make any alterations, additions or improvements to the Windmill without the City's prior written consent, which consent may be withheld for any reason. In the event the City consents to the making of any alterations, additions or improvements to the Windmill, the same shall be made at the District's sole cost and expense, and in the event such alterations, additions or improvements are made to a structure, building or other improvements attached to the real property, the same will become a part of the real property and be surrendered to the City upon the termination of this Agreement. The City has no obligation to alter, remodel, improve, repair, decorate, or paint the Windmill. The City shall provide water and electricity and solid waste disposal.

3.3 **Maintenance.** The District shall, at its sole cost and expense, maintain the Windmill area in good condition and repair, including, but not limited to, maintaining the Windmill in a neat, clean and sanitary condition and removing all garbage, trash or other debris on a regular basis pursuant to the City's instructions.

3.4 **Damage to Windmill.** If the Windmill or any part thereof or surrounding real property is damaged by the District, the District shall at its sole cost and expense, restore the Windmill to a condition equivalent to better than their condition immediately prior to such damage. The City will inspect and provide in writing an inventory of City equipment and condition of Windmill for use by the District as a base line for damage claims.

3.5 **Utilities, Taxes and Expenses.** The District shall pay all costs and expenses associated with the operation of the Windmill other than utility expenses for water, solid waste and power which will be paid by the City.

Section 4. Exclusive Right. The City hereby grants the District an exclusive right to rent boats in buildings of Windjammer Park, except during City approved special events, during the term of this Agreement. The City reserves the right to grant to other persons or entities any of the remaining rights contained herein or otherwise.

Section 5. Term. The term of this Agreement shall commence June 19, 2009 and shall continue until the completion of the Services, but in any event no later than September 7, 2009 ("Term"). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the District.

Section 6. Termination. Prior to the expiration of the Term, the City and or the District may terminate this Agreement immediately, with or without cause. Termination shall be in writing, and shall be effective upon service on the signatories to this Agreement.

Section 7. Compensation.

7.1 Total Compensation. The District agrees to pay the City an amount equal to One Hundred Dollars (\$100.00) per month during any month he/she occupies the Windmill. This fee includes any leasehold excise tax due to the City.

7.2 Payment Due Date. The District shall pay fees to the City on or before the 5th day of each month that he/she occupies the Windmill. Payment for the first month shall be made prior to occupancy.

7.3 The District – Responsible for Taxes. The District shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement. The Leasehold Excise Tax, currently at a rate of 12.84%, is included in the One Hundred Dollar (\$100.00) monthly compensation.

Section 8. Compliance with Laws. The District shall comply with and perform the Services in accordance with all applicable federal, state and City laws including, without limitation all City codes, ordinances, resolutions, standards, and policies, as now existing or hereafter adopted or amended, including, but not limited to, the following:

- (i) Federal, state and local health, safety and licensing laws relating to the boat rentals.
- (ii) City code provisions requiring any person or entity doing business in the City to obtain a business registration; and
- (iii) City Parks, Recreation and Cultural Services Department policies, including, but not limited to, its concession policy.

Section 9. Warranty. The District warrants that it has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including, but not limited to, being registered to do business in the City of Oak Harbor by obtaining a City of Oak Harbor business license.

Section 10. Independent Contractor Relationship.

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

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

Section 11. Indemnification/Hold Harmless

11.1 Contractor Indemnification. The District shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the District and the City, its officers, officials, employees, and volunteers, the District's liability hereunder shall be only to the extent of the District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the District's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

11.2 Indemnity. Each party to this Agreement is a public agency within the meaning of Chapter 39.34 RCW and each party shall hold harmless, defend and indemnify the other party in any action involving this Agreement, arising from its sole negligence, including payment of all attorney fees and costs.

In the event of negligence of more than one party, each party shall be responsible for its proportionate share of damages and/or other award attributable to that party. In the event of negligence or other wrongful acts asserted against more than one party in a lawsuit, any damages awarded shall be levied in proportion to the percentage of fault attributable to each party as determined in a separate proceeding with the same trial judge that presided over the main lawsuit. It is further agreed by the parties to reserve their cross-claims until after the main issue(s) of liability has been resolved.

11.3 Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

Section 12. Equal Opportunity Employer. Personnel employment shall be as per the existing Districts policy. The District shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the American with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the District's breach, may result in ineligibility for further City agreements.

Section 13. Insurance. The District shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the District, their agents, representatives, employees or subcontractors.

13.1 No Limitation. The District's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the District to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

13.2 Minimum Scope of Insurance. The District shall obtain insurance of the types described below:

- (i) 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.
- (ii) Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent Districts, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the District's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage through insurance pool.
- (iii) Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

13.3 Minimum Amounts of Insurance. The District shall maintain the following insurance limits:

- (i) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- (ii) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

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

- (i) The District's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the District's insurance and shall not contribute with it.
- (ii) The District'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.

13.5 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII or Enduris - Washington.

13.6 Verification of Coverage. The District 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 District before commencement of the work.

13.7 Third party entities are also required to carry their own insurance, naming the City of Oak Harbor as also insured.

Section 14. Signs. The District shall coordinate placement of any sign, notice or advertising matter in or about the City's real property, with City staff. If required by City code, the District shall obtain all necessary permits in connection with any such signs.

Section 15. General Provisions.

- 15.1 **Entire Agreement.** This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.
- 15.2 **Modification.** No provision of this Agreement may be amended or modified except by written agreement signed by the Parties.
- 15.3 **Full Force and Effect.** Any provision of this Agreement, which is declared invalid or illegal shall in no way, affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- 15.4 **Assignment.** Neither the District nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and right hereunder without the prior written consent of the other party.
- 15.5 **Successors in Interest.** Subject to the foregoing Subsection, the right and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.
- 15.6 **Attorney Fees.** In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all of its own attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be Island County, Washington.
- 15.7 **No Waiver.** Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default. Failure or delay of the District to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the District to declare one breach or default does not act as a waiver of the District's right to declare another breach or default.
- 15.8 **Governing Law and Venue.** This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington. If suit is brought in this matter, venue shall be Island County District Court or Island County Superior Court.
- 15.9 **Authority.** Each individual executing this Agreement on behalf of the City and the District represents and warrant that such individuals are duly authorized to execute and deliver this Agreement on behalf of the District or the City.
- 15.10 **Notices.** Any notice required to be given by the Parties shall be delivered at the addresses set forth below. Any notice may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.
- 15.11 **Captions.** The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement.
- 15.12 **Performance.** Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Service is essential to the District's performance of this Agreement.
- 15.13 **Remedies Cumulative.** Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute.
- 15.14 **Counterparts.** This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.
- 15.15 **Third-Party Beneficiaries.** This Agreement is neither expressly nor impliedly intended to be for the benefit of any third party, and is neither expressly nor impliedly enforceable by any third party.

CITY OF OAK HARBOR

**NORTH WHIDBEY PARK &
RECREATION DISTRICT**

865 SE Barrington Drive
Oak Harbor, WA 98277

85 SE Jerome Street
Oak Harbor, WA 98277

By _____
Jim Slowik, Mayor

By _____
Craig Carlson, Director

Date _____

Date _____

City of Oak Harbor

AGREEMENT WITH NORTH WHIDBEY PARK & RECREATION DISTRICT FOR WATER RECREATIONAL PROTECTION SERVICES AGREEMENT

This Agreement is made this ____ day of _____, 2009, between the City of Oak Harbor ("City") and North Whidbey Park and Recreation District ("District"). Generally, District agrees to furnish and the City agrees to pay for and accept lifeguarding, safety monitoring and water recreation services as described in Section 1 at its lagoon and wading pool facilities located in Windjammer Park, all subject to the terms and provisions of this agreement.

Section 1. Purposes. The City allows public use of the Windjammer Park lagoon as a swimming area and the use of the wading pool for children. For these purposes, ~~the City and requires~~ provides lifeguard services at the lagoon and general maintenance, oversight and operation of ~~one the~~ wading pool. ~~Each year the City needs to recruit new employees to act as lifeguards. To accomplish these aims, it makes sense to enter into a cooperative arrangement with a service provider who has the skill to run this program and provide the necessary personnel. The District maintains a swimming pool and runs the program all year round. The District has specific experience in recruiting and providing guards; and~~ maintaining providing and maintaining lifeguarding services, ~~and running lifeguarding services and~~ running water recreation programs. ~~The District and is willing to run these programs provide these services to the City at the Windjammer Park lagoon and wading pool, that the City has in exchange for which the City will provide compensation to the District. These services and responsibilities are valid only~~ Lifeguarding and safety monitoring services will be provided during the open hours of the Windjammer Park to wit: Sunday through Thursday, 12:00 p.m. - 5:00 p.m., and Friday through Saturday, 11:00 a.m. - 6:00 p.m.

Section 2. Services Provided. The District shall provide a lifeguard services ing and a safety monitoring program for the City of Oak Harbor Parks and Recreation program at Windjammer Park for the term of this Agreement. These services shall include including scheduling, hiring and training and oversight of necessary qualified staff to perform lifeguard services in accordance with standards for lifeguard services at public parks and facilities in the state of Washington. The District shall also be responsible for scheduling, hiring and training and oversight of qualified staff to be responsible for safety monitoring for users of the lagoon and wading pool, in accordance with standards for safety monitoring services at public parks and facilities in the state of Washington. The District will provide lifeguarding and safety monitoring services at Windjammer Park during the hours that Windjammer Park is open for the term of this Agreement, to wit: Sunday through Thursday, 12:00 p.m. - 5:00 p.m., and Friday through Saturday, 11:00 a.m. - 6:00 p.m.

In addition to its primary responsibility for lifeguard services and safety monitoring, the District shall also ~~Responsibilities will also include perform some~~ general maintenance (housekeeping) responsibilities within a designated area set out in Exhibit A. These tasks ~~would include~~ keeping the windmill office clean; sweeping the pathways around the swimming area of the lagoon and the swimming dock; picking up litter; and discarded clothing, towels, toys and floatation devices. The lifeguarding staff and safety monitor will also be responsible for removing driftwood from the lagoon. The area to be maintained will be designated in the contract (a map will be provided).

The District will assure that all lifeguards are qualified and certified to perform lifeguard services (holding a current Red Cross certificate or equivalent) and will provide liability insurance for the lifeguarding services.

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

No Limitation. District's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the District to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

Minimum Scope of Insurance. The District shall obtain insurance of the types described below:

- a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent Districts, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the District's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage through insurance pool.
- c. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

Minimum Amounts of Insurance. The District shall maintain the following insurance limits:

- a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- b. Commercial General Liability insurance shall be written with limits no less than \$3,000,000 each occurrence, \$9,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

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

- a. The District's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the District's insurance and shall not contribute with it.
- b. The District'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.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII or Enduris – Washington. ~~Governmental Entity Pool.~~

Verification of Coverage. The District 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 District before commencement of the work.

The program shall run from June 19 to September 7, 2009, Sunday through Thursday from 12:00 to 5:00 p.m. and on Friday and Saturday from 11:00 to 6:00 p.m.

The District shall at all times during this agreement cooperate with the City by assuring that the lifeguards provided are trained and certified to carry out the duties of lifeguard in an outdoor setting.

The District shall provide adequate staffing to cover the facilities described. Lifeguards will be provided with a cellular telephone to call for emergency backup from the police, fire department, parks division or ambulance.

The District shall provide a bi-weekly invoice to the City showing days and hours of services provided, including for which pay is requested and showing days when the water was too cold or raining to provide lifeguarding services.

Section 3. Duty of City to Pay for Services Provided. The City of Oak Harbor ~~would agree~~ to pay North Whidbey Park and Recreation District ~~the a~~ maximum of Twenty Nine Thousand Eight Hundred Eight Dollars (\$29,808) for providing the ~~af~~ mentioned services described in this Agreement.

Payment for services at the wading pool and lagoon shall be made per day that those services are provided. It is anticipated that the wading pool and lagoon ~~could~~ will be open for 81 days during the summer months. The rate of compensation shall be Three Hundred Sixty Eight Dollars (\$368) per day.

Rainout days, determined by the District, are those days when the weather is reasonably determined to be too cold and/or rainy to open the pool and lagoon. The District would credit Two Hundred Dollars (\$200) per rainout day to the City, leaving the remainder to cover the cost of incidentals, ongoing costs, and the administrative costs of coordinating the shutdown.

The District will be allowed the use of office space in the Windjammer Windmill to use for their operation headquarters. The concession stand contractor will also utilize an area of the windmill.

City shall pay the District on a monthly basis, upon billing.

City and State Auditor shall have a right to audit the accounts and records of the District kept for these services at its offices 85 SE Jerome Street, Oak Harbor, Washington 98277.

Section 4. Maintenance of Grounds. The District's obligations under this agreement shall also include:

The District shall provide ~~for~~ wading pool maintenance. This will include the maintenance and operation of the East and West wading pool located at Windjammer Park. The pool will be open the same days and hours as the swimming lagoon. The District will be responsible for the daily cleaning, water testing-purification and the daily opening and closing of the pool. The District will also carry liability insurance on the maintenance staff members assigned to maintain and operate the wading pool.

City's obligations under this agreement shall also include:

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The City of Oak Harbor ("City") will be responsible for obtaining a Water Recreational Permit from the County; and conduct the initial pre-season clean-up, to include driftwood removal, necessary repairs to the dock and digging out the channel to the bay. The City will be responsible for the installation of the outdoor foot wash, shower and water slide. The City will supply all necessary safety/first aid supplies and equipment. The City will be responsible for all necessary repairs to the water slide, swimming dock, swim ladders, buoys, shower and foot wash. City Parks staff will do a weekly inspection of the swimming area to ensure that all equipment is safe and functional. The District will notify the Oak Harbor Parks Division immediately of any damage or problems with equipment they have identified to ensure that the repairs are made in a timely manner. The City will assure that all City equipment is operational and in good repair before the District assumes control of operations.

The City will be responsible for the initial pre-season clean-up, which includes pumping out the pool, pressure washing, and ensuring that the circulation lines and pumps are functioning properly. The City will also provide all necessary pool chemicals, cleaning supplies and a chemical test kit.

Section 5. Additional Services. The City will allow the District to operate paddleboat and kayak rentals in the lagoon. City will provide storage of boats and equipment at Windjammer Park. The District will assume full responsibility for this program, including the maintenance of the boats, collection of fees, usage supervision, and will carry ~~proper~~ liability insurance for this activity as provided for in Section 2. ~~However, the City shall continue to insure City property for property damage.~~

All collected rental fees will go to the District.

The District shall keep boats in repair and safe for use and shall operate such recreational services in a safe and prudent manner. If the City determines that this cannot be done safely, these services shall be shut down; provided, if there is a dispute on this matter, the District may seek arbitration of this issue.

Section 6. Term of the Agreement.

This Agreement shall be in effect from June 19, 2009 to September 7, 2009, unless terminated earlier by one of the parties pursuant to Section 15 herein.

Section 7. Cooperation.

- a. City staff and District staff shall cooperate in maintaining safe and reasonable recreational services at the City lagoon and wading pool.
- b. Both parties will work to assure adequate signage is posted concerning safe use of the lagoon and wading pool. It will be the City's responsibility to provide and pay for the necessary signage.

Section 8. Indemnity. Each party to this Agreement is a public agency within the meaning of Chapter 39.34 RCW and each party shall hold harmless, defend and indemnify the other party in any action involving this Agreement, arising from its sole negligence, including payment of all attorney fees and costs.

In the event of negligence of more than one party, each party shall be responsible for its proportionate share of damages and/or other award attributable to that party. In the event of negligence or other wrongful acts asserted against more than one party in a lawsuit, any damages awarded shall be levied in proportion to the percentage of fault attributable to each party as determined in a separate proceeding with the same trial judge that presided over the main lawsuit. It is further agreed by the parties to reserve their cross-claims until after the main issue(s) of liability has been resolved.

Section 98. Equal Opportunity Employer. Personnel employment shall be as per the existing Districts policy. The District shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the American with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, ~~in the case of the District's breach,~~ may result in ineligibility for further City agreements.

Section 109. Inability to Perform. The District shall not be liable to City for damages in the event the performance of the District service shall be delayed or prevented by fire, flood, earthquake, riot, strike or other labor dispute beyond the control of the District and without fault on its part; that wherever possible the District shall give City at least one hour's prior notice of its inability to perform such services for such reason. The District shall promptly resume performance on removal or cessation of the cause of the interference or delay.

Section 110. Licensing. The District shall maintain necessary licenses for carrying out its activities.

Section 121. Agreements and Covenants. The provisions ~~in Section 7 and 8~~ of this Agreement are not entered into for the benefit of any third party nor are ~~these~~ any provisions of this Agreement intended to be a guarantee or warranty of fitness of facilities for use. ~~It being is recognized that this pool the swimming areas are~~ open to the public and the weather and all other natural conditions cannot be controlled, anticipated or easily detected.

Section 12. Notices.

- a. Except as otherwise provided in this agreement, all notices given pursuant to this agreement to City shall be in writing and shall be delivered to its Mayor at the City or at such other place as City may designate to the District in writing. Except as otherwise provided for in the agreement, all notice given to the District shall be in writing and delivered to its Director at the office at 85 SE Jerome Street, Oak Harbor.
- b. All notices given pursuant to this agreement to the District shall be in writing and shall be delivered to the address appearing at the beginning of this agreement or to such other address as the District shall designate to City in writing.

Section 13. Governing Law. This agreement shall be governed by, construed, and enforced in accordance with the laws of Washington.

Section 14. Modification of Agreement. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if in writing signed by each party or an authorized representative of each party.

Section 15. Termination. Either party may terminate this Agreement by giving to the other party thirty (30) days' advance written notice of its intention to do so; provided, however, that such termination shall not affect rights acquired or obligations incurred prior to the effective date of termination.

Section 16. Assignment or Substituting of Rights or Obligation. The rights and duties of each party under this agreement are personal to that party and may not be assigned or substituted or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

Section 17. Paragraph Headings. The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at Oak Harbor, Washington, on the date indicated below.

CITY OF OAK HARBOR

865 SE Barrington Drive
Oak Harbor, WA 98277

By _____
Jim Slowik, Mayor

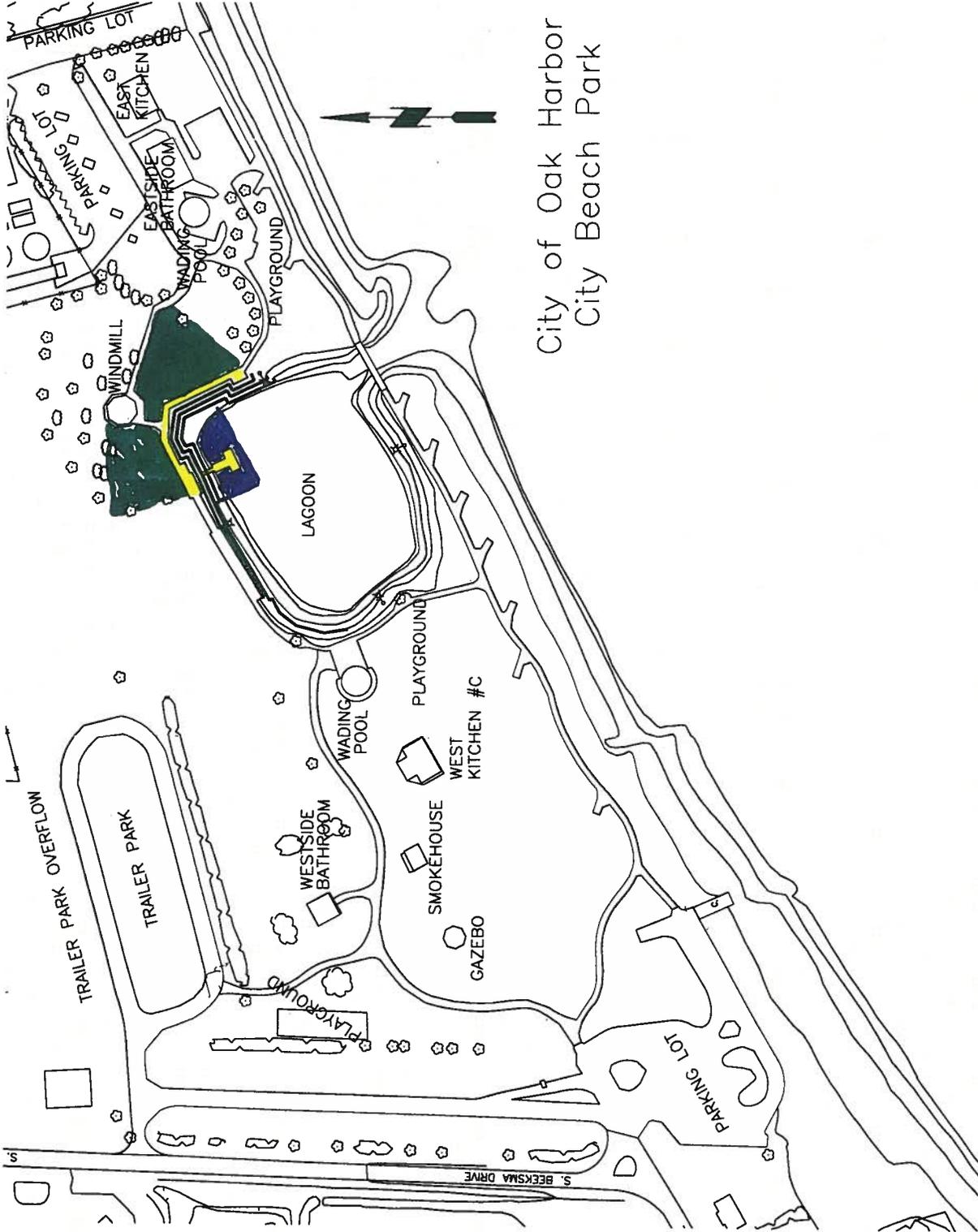
Date _____

**NORTH WHIDBEY PARK &
RECREATION DISTRICT**

85 SE Jerome Street
Oak Harbor, WA 98277

By _____
Craig Carlson, Director

Date _____



City of Oak Harbor
City Beach Park

Area for Litter Control and removal of discarded clothing, towels and toys
area to be swept

Swim area to be life guarded to include removal of drift wood.

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

Bill No. C/A 44
Date: May 5, 2009
Subject: Arts Commission Appointment -
Sharon Hall

FROM: Jim Slowak
Mayor 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to recommend the appointment of Sharon Hall to the Oak Harbor Arts Commission. There are presently three vacancies on the Oak Harbor Arts Commission and this appointment would fill a four-year term.

AUTHORITY

Per Oak Harbor Municipal Code **Chapter 2.29 Oak Harbor Arts Commission:**

2.29.050 Term of office of members.

The term of office of the members appointed shall be for periods of four years; provided, initial appointments shall be as follows:

- (1) Three shall be appointed for initial terms of two years.
- (2) Three shall be appointed for initial terms of three years.
- (3) Five shall be appointed for initial terms of four years.

2.29.060 Appointment, vacancy or removal.

- (1) In appointing members and filling vacancies, the mayor and council should endeavor to obtain a diverse cross-section of Oak Harbor's residents as members and also appoint members from groups having an interest in the arts and cultural activities, practicing artists and other persons employed in artistic endeavors.
- (2) Vacancies on said commission from whatever cause, except temporary vacancies as hereinafter provided, shall be filled by the mayor, subject to city council approval, for the unexpired term.

SUMMARY STATEMENT

Ms. Hall has a strong background in art and art education. Residing in Oak Harbor, she is currently an Instructor of Art, Humanities Department Chair, and Campus Collection Curator for Skagit Valley College. Ms. Hall initiated, through student coordination, a public art collection on the Whidbey Campus of Skagit Valley College. She also plans and coordinates an annual

College event which celebrates the addition of a new work of art to the collection. This well-attended event draws 250 students, faculty, staff, and community members each year. For seven years, Ms. Hall volunteered as a classroom art specialist at Broadview Elementary. In addition to printmaking, she created the Holland Happening poster image from 2002 to 2007. Ms. Hall completed the Biography Form for the Arts Commission and has been interviewed by Mayor Slowik.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve the appointment of Sharon Hall to the Oak Harbor Arts Commission for a four-year term.

ATTACHMENTS

None.

MAYOR'S COMMENTS

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

Bill No. 5
Date: May 5, 2009
Subject: Manufactured Home Park Code
Amendments – Final Adoption

FROM: Steve Powers *SP*
Director of Development Services

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

Staff requests the City Council continue this item to the June 2, 2009 meeting in order to provide additional time to address issues raised during the April 21st meeting and to work with the Planning Commission.

RECOMMENDED ACTION

Continue matter to the June 2, 2009 City Council meeting.

ATTACHMENTS

None

MAYOR'S COMMENTS

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

Agenda Bill No. 6
Date: May 5, 2009
Subject: Sign Code Amendment for
Electronic Message Center Signs

FROM: Steve Powers *SP*
Development Services Director

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

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

PURPOSE:

This agenda bill seeks final City Council consideration and action on a text amendment to the Oak Harbor Municipal Code that would permit electronic message center signs in certain commercial and industrial zoning districts. The Council opened the public hearing on this matter on March 24, 2009.

AUTHORITY

The authority to establish land use controls is provided by RCW 36.70A.040.

SUMMARY STATEMENT

An electronic message center sign¹, sometimes referred to as an electronic reader board, is one that has a scrolling or changing message of a commercial nature. Currently, the sign code allows electronic reader boards in the Public Facilities (PF) zoning district only; in this district these signs may only display messages of a non-commercial nature. The proposed amendment to Oak Harbor Municipal Code (OHMC) Chapter 19.36, Sign Code, adds electronic message center signs as permitted signs in the following commercial and industrial zoning districts:

- C-1, C-3, C-4, C-5
- I, PIP, PBP

Electronic message center signs would *not* be allowed in the following zoning districts:

- CBD
- R-O
- Any residential districts

¹ "Electronic message center" means an electronically or electrically controlled message center where different copy changes of a commercial nature are shown on the same lamp bank. An electronic message center is considered a primary sign and may be either freestanding or building mounted.

In summary, the proposed amendment:

- Expands the sign options available to commercial properties by allowing for a sign with a changing message;
- Does not increase the total amount of signs available to a business or project;
- Establishes the standards by which the signs would be allowed (maximum area, length of time for message, colors, etc.); and
- Does not allow for video boards (signs with changing pictures).

This amendment was initiated in response to occasional requests from the business community for this type of signage.

AMENDMENT PROCESS

Amendments to the zoning code (which includes the sign code) are legislative actions identified as a Type V review process. Such actions require a public hearing before the Planning Commission, with the Commission making a recommendation to the City Council (OHMC 18.20.270).

OHMC Chapter 19.80 addresses text amendments to the zoning code. Specifically, OHMC 19.80.020(1) sets out the following review criteria for amendments:

- a. The amendment must be consistent with the Oak Harbor comprehensive plan; and
- b. The amendment must substantially promote the public health, safety and welfare.

Analysis of the review criteria listed above was included in the staff report to the Planning Commission for the November 25, 2008 meeting.

PLANNING COMMISSION REVIEW AND PUBLIC HEARINGS:

The draft code was introduced to the Planning Commission at their October 28, 2008 meeting. Staff discussed the purpose of the amendment, displayed examples of existing local electronic message boards and summarized the changes to the code. At the November 25, 2008 meeting the Planning Commission opened the public hearing on the code revisions. After reviewing information presented by staff, accepting public testimony and engaging in some deliberation, the Commission continued the matter so as to allow staff an opportunity to provide additional information. The Planning Commission asked that staff address the following four topics related to electronic message center signs:

1. Aesthetic issues;
2. Appropriateness for the community;
3. The special designation of SR-20 as a scenic highway and its role in determining whether or not this type of signage should be allowed there; and
4. Whether or not this type of signage is appropriate for all commercial properties.

After listening to the Commission's discussion of the original draft amendment, staff included a fifth topic to provide information on; the percent of sign area that could be used as the electronic message center. At the February 24, 2009 meeting the Planning Commission continued its public hearing on the sign code amendments and staff presented the additional information as requested.

After reviewing information presented by staff and accepting public testimony, the Planning Commission completed their deliberations and concluded by recommending approval of the sign code amendment.

STANDING COMMITTEE REVIEW

The proposed sign code amendment was reviewed with the Governmental Services Committee on March 9, 2009.

CITY COUNCIL REVIEW

The City Council opened the public hearing on this matter on March 24, 2009, received a staff presentation and heard testimony from citizens in support of the proposed code. As a result of some of the public testimony, staff clarified the language of OHMC 19.36.110(1) to state that the sign design standards apply as of the effective date of the ordinance. The Council continued the matter, keeping the public hearing open, until such time as the CTED review was complete (see below).

CTED REVIEW

Under the Growth Management Act, cities are required to submit proposed development regulation amendments to the Community, Trade and Economic Development (CTED) Department for their possible comment (RCW 36.70A.106(3)(a)). The CTED review is complete. Only one State agency (the Department of Transportation) chose to comment. Their comment suggested that the City review applicable portions of the RCW related to signage. Staff reviewed the referenced RCW and found no conflict with the proposed code.

RECOMMENDED ACTIONS:

- Conclude the public hearing
- Adopt the ordinance amending Oak Harbor Municipal Code Chapter 19.36, Sign Code, permitting electronic message center signs in certain commercial and industrial districts

ATTACHMENTS:

Exhibit 1: Ordinance

MAYOR'S COMMENTS:

ORDINANCE NO.

AN ORDINANCE READOPTING AND AMENDING SECTIONS 19.36.020, 19.36.030, 19.36.050, 19.36.060, 19.36.110, 19.36.120, 19.36.130, AND 19.36.160 OF THE OAK HARBOR MUNICIPAL CODE TO ALLOW ELECTRONIC MESSAGE CENTER SIGNS IN CERTAIN COMMERCIAL AND INDUSTRIAL DISTRICTS.

WHEREAS, the City of Oak Harbor has established standards in the sign code for the design, placement, and size of signs in the community in order to protect the public health, safety and welfare; and

WHEREAS, it is the purpose of the regulations, standards and criteria of this code to permit and encourage the design of signs which are responsive to the needs of the public in locating a business establishment by identification, address and product and/or services information; and

WHEREAS, the City of Oak Harbor recognizes that a business person's right to identify his or her business contributes to the economic well-being of the community; and

WHEREAS, responsible regulation of signs may, in fact, improve business opportunity as a result of the increased attractiveness of the city's environment; and

WHEREAS, the City of Oak Harbor recognizes that expanding the list of permitted signs to include electronic message center signs can better serve the needs of businesses and the greater community alike; and

WHEREAS, having reviewed the proposed amendment to the sign code, a form of development regulation, for consistency with its Comprehensive Plan as required by RCW 36.70A.040(4); and

WHEREAS, also having reviewed the proposed amendment for consistency with the text amendment criteria identified in OHMC 19.80, namely consistency with the Oak Harbor Comprehensive Plan and substantial promotion of the public health, safety and welfare; and

WHEREAS, being satisfied that the proposed amendment is consistent with the above requirements;

NOW, THEREFORE

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

Section One. The Title and index for Subchapter 19.36 of the Oak Harbor Municipal Code shall read as follows:

Chapter 19.36

SIGN CODE

Sections:

- 19.36.010 General provisions.
- 19.36.020 Definitions.
- 19.36.030 Business district signs – Zones CBD, CBD-1, CBD-2, C-3, C-4 and C-5.
- 19.36.040 Residential/office district and neighborhood commercial district signs – RO and C-1 zones.
- 19.36.050 Industrial, planned industrial park and planned business park district signs – I, PIP, and PBP zones.
- 19.36.060 Multifamily residential district and public facilities district signs – Zones R-2, R-3, R-4 and PF.
- 19.36.070 Single-family residential signs – R-1 zones.
- 19.36.080 Temporary and special signs.
- 19.36.090 Street right-of-way signs.
- 19.36.100 Exempt signs or displays.
- 19.36.110 Requirements applicable to all signs.
- 19.36.120 Prohibited signs.
- 19.36.130 Permits and fees.
- 19.36.140 Administration, enforcement and sign removal.
- 19.36.150 Nonconforming signs.
- 19.36.160 Hearing examiner jurisdiction and power.
- 19.36.170 Conflicting provisions.

19.36.010 General provisions.

- (1) Title. This chapter shall be known as the Oak Harbor sign code, may be cited as such, and will be referred to herein as “this code.”
- (2) Purpose and Scope. The purpose of this code is to protect the health, safety, property and welfare of the citizens of the city of Oak Harbor (hereafter “city”), by establishing standards for the design, placement, size and maintenance of all exterior signs and sign structures in the city. Furthermore, it is the purpose of the regulations, standards and criteria of this code to permit and encourage the design of signs which are responsive to the needs of the public in locating a business establishment by identification, address and product and/or services information.
- (3) It is recognized that the businessman’s right to identify his business contributes to the economic well-being of the community. However, it is felt that this right can be exercised in such a way as to bring great benefit to the public without affecting the welfare of the businessman. The responsible regulation of signs may, in fact, improve business opportunity as a result of the increased attractiveness of the city’s environment.

Section Two. Oak Harbor Municipal Code Section 19.36.020 is hereby amended to read as follows:

19.36.020 Definitions.

- (1) “Abandoned sign” means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity, and/or for which no legal owner can be found.
- (2) “Animation” means the use of movement or some element thereof, to depict action or create a special effect or scene.
- (23) “Area or surface area of sign” means the greatest area of a sign, on which copy or artwork can be placed and not just the portion of which is covered by letters or symbols,

enclosed within not more than three circles, rectangles or squares, or any combination of these forms which produces the smallest area. Sign structure, architectural embellishments, framework and decorative features which contain no written or advertising copy and are not internally lighted shall not be included.

- | (34) "Architectural blade" means a projecting sign with no exposed legs or braces, designed to look as though it could have been part of the building structure rather than something suspended from the building.
- | (45) "Banner" means a flexible material (i.e., cloth, paper, vinyl, etc.) on which a sign is painted or printed.
- | (56) "Billboard" means outdoor advertising signs containing a message, commercial or otherwise, unrelated to any use or activity on the property on which the sign is located, but not including directional signs as defined herein.
- | (67) "Building line" means a line established by ordinance defining the limits of buildings in relation to streets. A building line in some instances may coincide with the property line. "Building line" is sometimes referred to as "required setback line."
- | (78) "Building-mounted sign" means a single or multiple-faced sign attached to the face of a building or marquee.
- | (89) "Canopy" means a freestanding structure affording protection from the elements to persons or property thereunder.
- | (910) "Canopy sign" means any sign erected upon, against or directly above a canopy.
- | (1011) "Construction sign" means an information sign which identifies the architect, engineers, contractors and other individuals, or firms involved with the construction of a building, or announcing the character of the building or enterprise, which is erected during the building construction period.
- | (12) "Electronic message center" means sign capable of displaying words or symbols that can be electronically or mechanically changed by remote or automatic means. An electronic message center is considered a primary sign and may be either freestanding or building mounted.
- | (13) "Flashing" means pattern of changing light illumination where the sign illumination alternates suddenly between fully illuminated and fully non-illuminated for the purpose of drawing attention to the sign. Flashing is not permitted in any zoning district.
- | (14) "Frame effect" means a visual effect on an electronic message center applied to a single frame to transition from one message to the next. Such usage must comply with the 2-1-2 provision.
- | (115) "Freestanding sign" means a single or multiple-faced sign supported from the ground by one or more columns, uprights or braces. Freestanding signs include monument, pylon and pole signs.
- | (1216) "General promotions" means events which occur on a regular basis in retail business for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year end, seasonal sales, civic events, etc.).
- | (1317) "Grade" means the elevation or level of the street closest to the sign to which reference is made, as measured at the street's centerline, or the relative ground level in the immediate vicinity of the sign.
- | (1418) "Grand openings and anniversaries" means events that are held on a "once per year" basis for the purpose of advertising grand openings, ownership changes, or anniversaries.
- | (1519) "Height" or "height of sign" means the vertical distance from the grade to the highest point of a sign or any vertical projection thereof, including its supporting columns, or the vertical distance from the relative ground level in the immediate vicinity of the sign.
- | (1620) "Incidental sign" means a single or double-faced sign not exceeding four square feet in surface area of a noncommercial nature, intended primarily for the convenience of the public. Included are signs designating restrooms, address numbers, hours of operation,

- public telephone, etc. Also included are signs designed to guide pedestrian or vehicular traffic to an area or place on the premises of a business, building or development. Also included are building directories with the letters not to exceed four inches in height. (See OHMC 19.36.100.)
- | ~~(1721)~~ “Marquee” means a covering structure projecting horizontally from and attached to a building, affording protection from the elements to persons or property thereunder.
 - | ~~(1822)~~ “Monument sign” means a primary freestanding sign, generally mounted on a solid base. Monument signs shall not contain or include reader boards.
 - | ~~(4923)~~ “Multiple-occupancy building” means a single structure housing more than one type of retail business office or commercial venture.
 - | ~~(2024)~~ “Multiple-occupancy complex” means a group of structures housing more than one type of retail business, office or commercial venture and generally under one ownership and control.
 - | ~~(2125)~~ “Noncommercial public service sign” means noncommercial signs devoted to religious, charitable, cultural, governmental or educational messages, including, but not limited to the advertising of events sponsored by a governmental agency, a school, church, civic or fraternal organization or other organizations engaged in activities for profit.
 - | ~~(2226)~~ “Occupant” means the person, firm or corporation that occupies the land or building.
 - | ~~(2327)~~ “Office building” means an office building in the commercial and residential-office land use districts as defined by the Oak Harbor zoning ordinance.
 - | ~~(2428)~~ “Parapet” means that portion of a building wall which extends above the roof of the building.
 - | ~~(2529)~~ “Penthouse” means a structure on top of a building roof such as houses an elevator shaft or similar form.
 - | ~~(2630)~~ “Pole sign” means a primary freestanding sign where the sign is supported by a pole or other similar structural element that is substantially narrower than the width of the sign.
 - | ~~(2731)~~ “Political sign” means signs advertising a candidate or candidates for public elective office, or a political party, or signs urging a particular vote on a public issue decided by ballot.
 - | ~~(2832)~~ “Primary sign or signs” means all signs, including freestanding signs, of a user which are not exempt (see OHMC 19.36.100), or which do not come within the category incidental signs (see OHMC 19.36.030 and subsection (16) of this section). The term “primary sign” is intended to include virtually all signs of a commercial nature.
 - | ~~(2933)~~ “Property line” means the line denoting the limits of legal ownership of property.
 - | ~~(3034)~~ “Pylon sign” means a primary freestanding sign other than a pole sign with the appearance of a solid base. The base of a pylon sign shall be distinctive in appearance from the sign area.
 - | ~~(3135)~~ “Reader board” means a sign or part of a sign on which the letters are readily replaceable such that the copy can be changed from time to time at will.
 - | ~~(3236)~~ “Roof sign” means any sign erected upon, against or directly above a roof or on top of or above the parapet of a building, including a sign affixed to any structure erected upon a roof, including a structure housing building equipment.
 - | ~~(3337)~~ “Sign” means any letters, figures, design, symbol, trademark or device intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever. Sources of light used primarily to illuminate a sign, or a building, or ground surrounding the building, shall not be considered signs themselves; provided however, that sources of light used primarily to attract attention to the light itself or as a decorative feature of the display shall be considered as part of the sign. Lighted canopies, with the exception of the signed portion, shall not be considered signs themselves. Excluded from the definition are official traffic signs or signals, sheriff’s notices, court notices or official public notices and the flag of a

government or noncommercial institution, and signs not visible from the street or sidewalk (see OHMC 19.36.100 for more detailed treatment of exempt signs), and religious symbols.

- | (3438) "Single-occupancy building" means a commercial building or structure with one major enterprise, generally under one ownership. A building is classified as single occupancy only if:
 - (a) It has only one occupant;
 - (b) It has no wall in common with another building;
 - (c) No part of its roof in common with another building.
- | (3539) Special Signs. See "temporary and special signs."
- | (3640) "Special projection signs" means a sign no larger than six square feet projecting out from the side of a building.
- | (3741) "Street" means any automobile thoroughfare so designated by city ordinance. "Street" includes portions thereof used for parking.
- | (3842) "Subdivision signs" means signs used to identify a land development which is to be or was accomplished at essentially one time.
- | (3943) Surface Area. See "area or surface area of sign."
- | (4044) "Surface area of facade" means the area of that front, side or back elevation, including doors and windows, but excluding any roof area and structures or elevators or air conditioning equipment thereon; provided, that in the case of a roof sign, the surface area of facade shall be the area of that front, side or back immediately beneath the roof, including doors and windows, but excluding the roof area and structures for elevators or air conditioning thereon.
- | (4145) Temporary and Special Signs. Different types of temporary and special signs included in this category are limited to construction signs, grand opening displays, real estate signs, open house signs, residential land subdivision signs and subdivision directional signs (see OHMC 19.36.080).
- | (46) "Video" means the use of live action footage shot with a video camera or similar device which is sized to fit and be displayed by an electronic message center or similar device. The use of video is not permitted in any zoning district.
- | (47) "Video board" means an electronically activated sign that creates the effect of motion or animation, except as allowed by this chapter for changing electronic message signs which are in compliance with the 2-1-2 provision, and the prohibition of RGB technology. Video board signs are not permitted in any zoning district.
- | (4248) "Way open to public" means any paved or unpaved area on private property open to the general public for driving or parking.
- | (4349) "Window sign" means all signs located inside and affixed to or within three feet of windows of a building, whether temporary or permanent, except lighted signs of a commercial advertisement nature which may be viewed from the exterior of the building. The term does not include merchandise located within three feet of a window. Lighted window signs shall be included in determining the number of primary signs and in determining the permissible sign area for each facade. Does not include incidental signs. (See OHMC 19.36.030.)

Section Three. Oak Harbor Municipal Code Section 19.36.030 is hereby amended to read as follows:

19.36.030 Business district signs – Zones CBD, CBD-1, CBD-2, C-3, C-4 and C-5.

- (1) General.
 - (a) In general, this city takes the view that signs should be scaled to the building to which the sign is related. Accordingly, in the following sections will be found

regulations on the area, number and height of signs, which are a function of the size of the building to which the sign is related.

- (b) Any single-occupancy building in the business district shall be permitted the primary signs described in subsections (2) through (6) of this section. No more than one freestanding sign is permitted per single-occupancy building unless the building faces on more than one street (see subsection (4) of this section), and is not a part of a multiple-building complex.
 - (c) Each occupant in a multiple-occupancy building in the business district shall be permitted the primary signs described in subsections (2) through (5) of this section and the incidental signs described in subsection (6) except that no more than one freestanding sign is permitted per multiple-occupancy building unless the building faces more than one street (see subsection (4) of this section), and is not part of a multiple-building complex.
 - (d) Each occupant in a multiple-building complex in the business districts, which is composed of single and/or multiple-occupancy buildings, shall be permitted the primary signs described in subsections (2) through (5) of this section and the incidental signs described in subsection (6) except that no more than one freestanding sign is permitted per multiple building complex, unless the building faces on more than one street. (See subsection (4) of this section.)
 - (e) Each enterprise shall display and maintain on-premises street address number identification. (See subsection (6) of this section.)
 - (f) A multiple-building complex encompassing at least five acres may display one complex identification sign along with each right-of-way which provides direct access to the complex. Each sign may not exceed 75 square feet in surface area and 25 feet in height. Each sign is subject to the sight distance requirements of the zoning ordinance.
- (2) **Setback Limitations – Freestanding Signs.** Except as otherwise provided in this section the size of any freestanding sign shall not exceed the following limits, based on the setback of the sign from the front property line:
- Minimum Setback: 5 feet from front property line
- Maximum Area: 100 square feet (per side)
- (a) **Sign Height – Freestanding Signs.** Except as otherwise provided in this section the height of any freestanding sign shall not exceed the following limits, based on the sign setback of the sign:
- Maximum Height: 25 feet

A minimum height of eight feet from grade to the bottom of the sign is required, for signs greater than 48 square feet, to ensure adequate sight lines for signs closer than 10 feet to the front property line.

- (b) **Facade Limitations, Building-Mounted Signs, Roof or Canopy-Mounted Signs.** The surface area of any building-mounted sign and roof or canopy-mounted sign shall not exceed the figures derived from the following schedule:

| Relevant Surface Area of Facade as Determined Pursuant to OHMC 19.36.020(40) (sq. ft.) | Maximum Sign Surface Area for that Facade |
|---|--|
| Below 100 | 25 percent of facade |
| 100 – 199 | 26 sq. ft. + 11 percent of facade |

| | |
|---------------|---|
| 200 – 499 | area over 100 sq. ft. 38 sq. ft. + 12 percent of facade area over 200 sq. ft. |
| 500 – 999 | 75 sq. ft. + 11 percent of facade area over 500 sq. ft. |
| 1,000 – 1,499 | 131 sq. ft. + 7.5 percent of facade area over 1,000 sq. ft. |
| 1,500 – 2,999 | 169 sq. ft. + 2.5 percent of facade area over 1,500 sq. ft. |
| Over 3,000 | 206 sq. ft. + 1.5 percent of facade area over 3,000 sq. ft. to a maximum of 300 sq. ft. |

In multiple-occupancy buildings the facade area for each occupant is derived by measuring only the surface area of the exterior facade of the premises actually used by the occupant, and the sign displayed by the occupant must be located on the facade used to determine the size of the sign, except as provided in this section.

Unused sign surface area for a facade may be used by any tenant or user within the same multiple-occupancy building, if:

- (i) The applicant files with the city a written statement signed by the tenant or user permitted to utilize that sign area under this code permitting the applicant to utilize the unused sign surface area;
- (ii) The display of a sign on that facade by the nondependent sign user will not create a significant adverse impact on dependent sign users of that facade;
- (iii) The display of the nondependent sign is necessary to reasonably identify the use, and the provisions of this code do not provide the use with adequate sign display options.

In no case may the maximum sign surface area permitted on a building facade be exceeded.

- (c) **Sign Height – Building-Mounted Signs.** The height of any building-mounted sign shall not extend above the highest exterior wall of the building to which the sign relates.
- (3) **Number of Primary Signs.** The permissible number of signs for each occupant is dependent upon the surface area of the largest single facade of the building that is under his control. The permitted number of signs is as follows (not including incidental signs):

| Surface Area of Largest Facade | Maximum Number of Signs |
|---|------------------------------------|
| Less than 999 sq. ft. | 3 |
| 1,000 – 2,999 | 4 |
| 3,000 and over | 5 |

Buildings or occupants with more than 3,000 square feet on any face, with several clearly differentiated departments, each with separate exterior entrances, are permitted one sign for each different department with a separate exterior entrance, in addition to the five allotted.

- (4) **Buildings on More Than One Street.** Buildings facing on more than one street are entitled to a bonus in primary signage, depending on whether the building is on two intersecting streets or whether it extends through a block so as to face on two different parallel streets, as defined in subsections (4)(a) and (4)(b) following.
 - (a) **Buildings on Intersecting Streets.** When a building is located on intersecting streets, two freestanding signs are permitted if they are located on two different streets and are separated more than 100 feet measured in a straight line between signs. Otherwise, only one freestanding sign is permitted and must meet the setback limitation under subsection (2) of this section.

- (b) **Buildings Facing on Two Parallel Streets.** Single occupancy buildings that extend through a block to face on two parallel streets with customer entrances on each street are permitted the sign area allowed under subsections (2)(a) and (2)(b) of this section, and the sign number under subsection (3) for each end of the building facing on a street; provided, however, that no more than one freestanding sign is permitted per building unless such signs are located on two different streets and are separated more than 100 feet measured in a straight line between the signs. No more than two freestanding signs are permitted in such case.
- (5) **Types and Placement of Primary Signs.** The permissible types of primary signs, their placement and other limitations are as follows:
- (a) **Freestanding Signs.**
 - (i) Freestanding signs shall be wholly located within the center two-thirds of the frontage of the property on the street or 15 feet from the adjacent property line, whichever provides the longer distance from the closest part of the sign to the adjacent property line; provided, however, that a freestanding sign may be located within five feet of the property line with the written consent of the title holder of the adjacent property. If such consent is obtained, the consenting party or his successors or assigns may not place a freestanding sign on his property within 20 feet of the first freestanding sign.
 - (ii) A freestanding sign located five feet from the property line shall be wholly behind the five-foot setback, and a freestanding sign located at the building line shall be wholly behind the building line.
 - (iii) Any freestanding sign must be "integrated." That is, all elements of the sign must be incorporated in a single design. Auxiliary projections or attachments not a part of a single design are prohibited.
 - (b) **Building-Mounted Signs.**
 - (i) Any building-mounted sign shall not project more than five feet from the face of the building to which the sign is attached. Any structural supports shall be an integral part of the design or concealed from view.
 - (ii) Any building-mounted signs shall be limited in content and message to identifying the building and the name of the firm, or the major enterprise, and principal product and/or service information.
 - (iii) Special projection signs are permitted within the CBD and are allowed in addition to permitted signage. Special projection signs are limited to one per business and shall be attached to the building. The bottom of the sign shall be at least seven feet above the sidewalk.
 - (c) **Roof Signs.**
 - (i) All such signs must be manufactured in such a way that they appear as an architectural blade or penthouse and are finished in such a manner that the visual appearance from all sides is such that they appear to be a part of the building itself.
 - (ii) All roof signs shall be installed or erected in such a manner that there shall be no visible angle-iron support structure.
 - (d) **Canopy Signs.**
 - (i) All such signs shall be manufactured in such a way that they appear as an architectural blade or penthouse and are finished in such a manner that the visual appearance from all sides is such that they appear to be part of the building itself.
 - (ii) All canopy signs shall be installed or erected in such a manner that there

- shall be no visible angle-iron support structure.
- (e) Monument Signs. Monument signs shall not exceed eight feet in height measured from the finished grade to top of the sign and not exceed 32 square feet in area. Monument signs shall be located within the center two-thirds of street frontage. Signs may be located up to the front property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.
 - (f) Pylon Signs.
 - (i) Pylon signs shall not exceed 10 feet in height measured from the finished grade to top of the sign and not exceed 48 square feet in area. Pylon signs shall be located within the center two-thirds of street frontage. Signs may be located up to the property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.
 - (ii) If a pylon sign is used instead of a pole sign an additional 15 percent of wall signage area over that than otherwise permitted shall be allowed. The additional square footage may be used on any facade that permits wall signage.
 - (g) Electronic message center signs. Stationary electronic message center signs and other changeable copy signs may be incorporated in the permanent signage for a business or development in the C-3, C-4 and C-5 zoning districts. Said signs shall meet the following standards:
 - (i) The sign shall follow the standards established in subsections (2) through (5) of this section;
 - (ii) Only one such sign shall be used in a development and it shall not exceed 50 percent of the sign area for that sign;
 - (iii) The electronic message center sign shall be included in the maximum number of signs or sign area allowed for the business or development;
 - (iv) The sign shall be constructed as an integral part of a permanent sign constructed on site, except as permitted under (xiii). Integral shall be considered to be incorporated into the framework and architectural design of the permanent sign;
 - (v) Electronic message center signs may be used only to advertise activities or goods or services available on the property on which the sign is located, or to present public service information.
 - (vi) No segmented message shall last longer than 12 seconds.
 - (vii) Only those changing electronic message signs utilizing monochrome colors such as white, red or amber shall be permitted. No RGB (Red-Green Blue) technologies or other multi-colored display shall be permitted in an electronic message center sign in a manner that would create a video board. This subsection does not prohibit the use of color in a sign that is not a video board.
 - (viii) No changing electronic message center may contain the use of animation, video or flashing as defined in this chapter.
 - (ix) Changing electronic message signs shall maintain a 2-1-2 transition frequency. "2-1-2" means a message display time of a minimum of two seconds, a transition time between messages of a maximum of one second, followed by a message display time of a minimum of two seconds with all segments of the total message to be displayed within ten seconds. Displays which scroll onto the signboard must hold for minimum of two seconds including scrolling. Frame effects may be used for the purpose of transition.

- (x) Electronic message center signs shall come equipped with automatic dimming technology which automatically adjusts brightness because of ambient light conditions.
- (xi) The owners of electronic message center of electronic message center signs shall include a signed letter accompanying their permit application, certifying that they will not tamper with the manufacturer preset automatic brightness levels on such signs.
- (xii) For locations adjacent to a residential use or district electronic displays shall be turned off between the hours of 10:00 pm and 6:00 am.
- (xiii) A single, portable (non-stationary) electronic message center sign may be located in the window of a business subject to the provisions of this subsection. The portable sign shall comply with the provisions of 19.36.030(5)(g) (v) through(ix).

- (6) Incidental Signs. Incidental signs means signs less than four square feet in surface area, of a noncommercial nature, intended primarily for the convenience of the public. Included are signs designed to guide or direct pedestrian or vehicular traffic to an area, place or convenience; designating restrooms, address numbers, hours of operation, entrances to a building, directions, help wanted, public telephone, etc. Also included in this group of signs are those designed to guide or direct pedestrians or vehicular traffic to an area or place on the premises of a business, building or development by means of a directory designating names and addresses only.
- (7) Directional Signs. Directional signs to give the traveling public specific information as to gas, food or lodging available on a crossroad with the state highway may be erected in accordance with RCW 47.42.046 and 47.42.047.
- (8) Gasoline Price Signs. Gasoline price signs shall be located greater than five feet from the property line and must be permanently anchored. Such signs may be freestanding, may be attached to marquees or canopy columns, or may be reader boards. The sign area shall not exceed 20 square feet, and no more than one such sign for each street frontage is permitted. Gasoline price signs shall not be included in determining the number of primary signs, nor in determining the permissible number of freestanding signs.
- (9) Window Signs. The total surface area of all window signs excluding lighted signs shall not exceed 50 percent of the window area, whichever is greater. Such signs shall not be included in determining the number of primary signs, nor in determining the permissible sign area for each facade. Window signs do not require permits.
- (10) Signs for Nonconforming Buildings or Uses. There remain in the city some buildings which were built prior to enactment of Oak Harbor's present zoning ordinance. Generally, under the city zoning ordinances, these legal nonconforming buildings or uses are allowed to remain unless they are altered or improved. As few of these nonconforming buildings are located behind the building line as determined by ordinances currently in effect almost no signing would be possible under the foregoing sign code provisions. Therefore, this section provides for a partial relaxation of the standard sign requirements for signs on legal nonconforming buildings, only so long as the buildings or uses remain legally nonconforming under provisions of the Oak Harbor zoning code.
- (11) Permitted Signs on Legally Nonconforming Buildings. All provisions of the sign code for business district signs apply to signs on nonconforming buildings or uses with the following exceptions:
 - (a) Building-mounted signs may project over the building line, but shall not approach a street closer than five feet. Such signs may extend five feet from the face of the building to which attached and shall have a maximum clearance over

sidewalk below of eight feet, six inches.

- (b) Legally nonconforming buildings are allowed the same sign area as other buildings zoned as commercial districts, as per this section.

19.36.040 Residential/office district and neighborhood commercial district signs – RO and C-1 zones.

(1) General. This section applies only to office and apartment buildings in RO and buildings in C-1 zones of the city. Such buildings in other zones are governed by the sign regulations of the applicable zone. As the RO and C-1 zones are primarily placed as a buffer between CBD, C-3, C-4 and C-5 business district zones and residential zones, the permissible signs are scaled down from those allowed in business districts.

(2) Setback Limitations – Freestanding Signs. The size of any freestanding sign in an RO or C-1 district shall not exceed the following limits, based on the sign setback of the sign:

Minimum Setback: 5 feet from front property line
Maximum Area: 35 square feet (per side)

(a) Sign Height – Freestanding Signs. The height of any freestanding sign in an RO or C-1 district shall not exceed the following limits, based on the sign setback of the sign:

Maximum Height: 15 feet

(b) Facade Limitations – Building-Mounted Signs, Roof and Canopy-Mounted Signs. The surface area of any building-mounted sign and roof or canopy-mounted sign in the RO and C-1 districts shall not exceed the figures derived from the following schedule:

| Relevant Surface Area of Facade as Determined Pursuant to OHMC 19.36.020(40) (sq. ft.) | Maximum Sign Surface Area for that Facade |
|--|---|
| Below 100 | 20 percent of the sign area |
| 100 – 199 | 21 sq. ft. + 9 percent of facade area over 100 sq. ft. |
| 200 – 499 | 30 sq. ft. + 10 percent of facade area over 200 sq. ft. |
| 500 – 999 | 60 sq. ft. + 9 percent of facade area over 500 sq. ft. |
| Over 1,000 | 105 sq. ft. maximum |

In multiple-occupancy buildings the facade area for each occupant is derived by measuring only the surface area of the exterior facade of the premises actually used by the tenant or user, and the sign displayed by that tenant or user must be located on the facade used to determine the size of the sign, except as provided in this section.

Unused sign surface area for a facade may be used by any tenant or user within the same multiple occupancy building, if:

- (i) The applicant files with the city a written statement signed by the tenant or user permitted to utilize that sign area under this code permitting the applicant to utilize the unused sign surface area;
- (ii) The display of a sign on that facade by the nondependent sign user will not create a significant adverse impact on dependent sign users of that facade;

- (iii) The display of the nondependent sign is necessary to reasonably identify the use, and the provisions of this code do not provide the use with adequate sign display options.

In no case may the maximum sign surface area permitted on a building facade be exceeded.

- (c) Sign Height – Building-Mounted Signs. No building-mounted sign in the RO or C-1 district, regardless of type, shall exceed a height of 20 feet above grade, or above the height of the building to which it is attached, whichever is less.
 - (d) Limitation. Any freestanding or building-mounted sign located in these districts shall be limited in content and message to identify the building and the name of the firm, or the major enterprise, and the principal service or product of the business without references to prices or the characteristics of the product or services offered.
- (3) Number of Signs. In the RO and C-1 districts no more than two primary signs are permitted for buildings facing on one street, only one of which may be freestanding. Buildings or building complexes on street corner locations may have two freestanding signs only if they are located on two different streets and are separated more than 100 feet, measured in a straight line between the signs.

Buildings or building complexes which extend a block to face on two parallel streets are permitted two primary signs on each street, only one of which may be freestanding for each street.

For purposes of determining the limit on number of signs for apartments, a single apartment complex, regardless of the number of buildings, shall be considered one building.

- (4) Types and Placement. Within RO and C-1 districts the permissible types of signs, their placement and other limitations are as follows:
- (a) Freestanding Signs. Requirements are identical to OHMC 19.36.030(5)(a), except that advertising shall not be permitted.
 - (b) Building-Mounted Signs. Requirements are identical to OHMC 19.36.030(5)(b), except that advertising shall not be permitted.
 - (c) Electronic Message Center Signs. These signs are allowed only in the C-1 district. Requirements are identical to OHMC 19.35.030(5)(g).
 - (c) Incidental Signs. In addition to the permitted primary signs, each building or complex of buildings is permitted the incidental signs as described and limited in OHMC 19.36.030(6).
 - (d) Street Address Identification. Each building or complex of buildings shall display and maintain on-premises street address number identification.
 - (e) Signs or portions of signs indicating premises for rent (e.g., “Apartment for Rent,” “Apartment Available,” “Vacancy,” “Now Renting,” “Free Rent,” etc.) shall not exceed a surface area of six square feet and many remain up until the premises are sold or rented.
 - (f) The illumination of any sign in the RO and C-1 districts shall be shaded, shielded, directed or reduced so that it is not visible from a public street or adjoining residential property.
 - (g) Legal nonconforming signs same as 19.36.030(10) and (11).
 - (h) Monument signs shall not exceed six feet in height measured from the finished grade to top of the sign and not exceed 32 square feet in area. Monument signs shall be located within the center two-thirds of street frontage. Signs may be located up to the property line when there is no sight visibility obstruction from

driveways or intersections caused by placement of the sign.

Section Four. Oak Harbor Municipal Code Section 19.36.050 is hereby amended to read as follows:

19.36.050 Industrial, planned industrial park and planned business park district signs – I, PIP, and PBP zones.

Permissible signs and their limitation in the industrial district (Zone I), shall be identical to those in the commercial districts CBD, CBD-1, CBD-2, C-3, C-4 and C-5 (OHMC 19.36.030).

Electronic message center signs are permitted.

Section Five. Oak Harbor Municipal Code Section 19.36.060 is hereby amended to read as follows:

19.36.060 Multifamily residential district and public facilities district signs – Zones R-2, R-3, R-4 and PF.

Requirements for signs in multifamily residential districts and public facilities districts shall be identical to those for the R-O residential office district and the C-1 neighborhood commercial district zones as set forth in OHMC 19.36.040.

(1) Exceptions. In the public facilities zoning district, a single freestanding or ~~wall~~ **building** mounted changing general electronic reader board is allowed with the following restrictions:

- (a) Freestanding signs are limited to 35 square feet in sign area, no more than 15 feet in height and must be set back five feet from the property line;
- (b) Wall mounted signs are limited to 35 square feet in sign area and no more than 20 feet in height;
- (c) Lettering shall not be more than 12 inches in height;
- (d) The electronic message shall be limited to those allowed on noncommercial signs as defined in OHMC 19.36.020(24) ~~(25)~~ and shall not change more frequently than every four seconds;
- (e) The sign's lights shall be limited to a warm-toned, off-white color or other similar color as approved by the development services director;
- (f) An electronic reader board counts as one of the allowed primary signs; and
- (g) ~~The hours of operation for reader board signs shall be limited to be from 6:00 a.m. to 10:00 p.m., Sunday through Thursday, and to be from 6:00 a.m. to 12:00 midnight on Fridays and Saturdays.~~ For locations adjacent to a residential use or district, electronic displays shall be turned off between the hours of 10:00 pm and 6:00 am.

19.36.070 Single-family residential signs – R-1 zones.

(1) General. Two categories of sign uses are covered by this section:

- (a) Existing, Legal Nonconforming Commercial Uses. The provisions herein for signs for commercial uses apply only to legal nonconforming uses which have been approved under applicable zoning ordinances prior to the enactment of this code.
- (b) Noncommercial uses such as schools, churches, fire stations and house number identification.

(2) Signs for Existing Legal Nonconforming Uses. No more than one primary sign is permitted for each use in this category so long as the building remains legally nonconforming under provisions of OHMC Title 19 as follows:

- (a) Such sign may be either freestanding or building-mounted.

- (b) If freestanding, the sign shall conform to the requirements of OHMC 19.36.030(5)(a) in regard to placement and OHMC 19.36.040(2)(a) in regard to size and height.
 - (c) A building-mounted sign shall conform to the requirements of OHMC 19.36.030(5)(b); provided, however, that no sign shall exceed 20 square feet in surface area.
- (3) Signs for Noncommercial Uses.
- (a) On-premises signs for churches, schools, golf courses, fire stations, police stations, noncommercial use or public service, or other similar noncommercial uses:
 - (i) Signs shall be unobtrusive, in keeping with the character of the neighborhood and constructed of quality materials, as approved in advance by the administrator of this code. No building-mounted signs shall exceed 20 feet in height and 50 square feet in surface area and no freestanding sign located between the building line and the property line shall exceed five feet in height and 25 square feet in surface area. A freestanding sign located at the building line or behind it shall not exceed 15 feet in height or 35 square feet in area. No more than one freestanding sign and one building-mounted sign is permitted from the above uses per street frontage.
 - (ii) Off-premises signs for nonconforming uses may be approved by the site plan review committee subject to the following conditions:
 - (A) The sign is to identify current events or activities;
 - (B) The sign or message is for a temporary period of time sufficient to inform the public of the event or activity with a maximum of two weeks;
 - (C) The sign shall not be located on street right-of-way except when a part of a permanent subdivision or neighborhood designation sign (see subsection (3)(d) below);
 - (D) The sign shall not exceed 15 square feet in area nor five feet in height;
 - (E) Not more than two such signs shall be permitted.
 - (b) Illumination. Illumination from or upon any signs in single-family residential districts shall be shaded, shielded, directed or reduced so that the light intensity or brightness does not affect the enjoyment of residential property in the vicinity in any substantial way.
 - (c) House Numbers. All houses in the single-family residential district shall display house numbers visible from the street and letters or numbers shall be a minimum of five inches in height.
 - (d) Permanent Subdivision or Neighborhood Designation Signs. Signs shall be unobtrusive, in keeping with the character of the neighborhood, and constructed of quality materials, as approved in advance by the administrator of this code. Signs shall not exceed five feet in height and 25 square feet in surface area, and shall be located between the building line and property line unless a location of excess city right-of-way is approved by the superintendent of public works. Responsibility for the future maintenance or removal of these signs must be determined prior to their construction.

19.36.080 Temporary and special signs.

Temporary and special signs or displays are nonpermanent in nature and are intended for use only for a short period of time. The category includes any banner, pennant or advertising display

constructed of canvas, fabric, wood, plastic or other semi-durable material, with or without frame. Permissible signs, with applicable limitations, are as follows:

(1) Construction Signs.

- (a) These signs identify the architects, engineers, contractors or other individuals or firms involved with the construction of a building and announce the character of the building, or the purpose for which the building is intended. Such signs may be displayed only after a building permit is obtained and during the period of construction on the construction site. Only one such sign (which may be double faced) is permitted per construction project for each public street upon which the project fronts.
- (b) In all zones other than single-family residential zones, no construction sign shall exceed 32 square feet in surface area or 10 feet in height, nor be located closer than 10 feet from the property line or closer than 30 feet from the property line of the abutting owner. Further, such signs must be removed by the date of first occupancy of the premises, or one year after placement of the sign, whichever first occurs.
- (c) In single-family residential zones, no construction sign shall exceed eight square feet in surface area, or be located closer than 10 feet from the property line of the abutting owner. Such signs shall be removed by the date of first occupancy of the premises or six months after first placement of the sign, whichever first occurs.

(2) General Promotions.

- (a) General promotions are those events which occur on a regular basis in retail businesses for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year end, etc.), seasonal sales and the like.
- (b) Allowed temporary signage for these types of events consists of posters in windows, posters under motor vehicle hoods, glass painting, small balloons of less than 12 inches in diameter and a maximum of one banner per street frontage placed on the exterior of the building on the space that the particular business occupies. The size of the banners will be limited to a maximum of four feet in height and a maximum length of either 50 percent of the length of the side of the building on which the banner is located or 30 feet. Businesses with a facade of less than 24 feet in length may have banners of up to 12 feet in length. Each separate business is permitted to have one banner on the building.
- (c) No clusters of flags or pennants, ribbons, streamers, shimmering discs, spinners, twirlers, or propellers, strings of lights, moving, flashing, rotating or blinking lights, chasing or scintillating lights, flares, or large balloons, bubble machines and similar devices of a carnival nature, or containing elements creating sound or smell may be used for these types of promotions with the exception of Christmas when flashing Christmas type lights will be allowed.
- (d) The duration of these promotions will be 30 days maximum (except banners) and no permit will be required. Banners have no time restrictions but shall be placed solely on the building for which the banner is advertising. In the event that the banner becomes dilapidated or otherwise ruined it must be removed or replaced. Such promotions are permitted only in districts where the enterprise so advertised is allowed under district zoning regulations. Banners shall be allowed in addition to primary signage and shall not be used as primary signs. When no primary sign is installed the duration of a banner shall be no more than 30 days.

(3) Light Pole Banners.

- (a) Businesses may have light pole banners on 100 percent of the total number of poles located in privately owned parking lots.
- (b) Size of banners shall be limited to three feet by seven feet free flying or two feet

- by six feet when attached by brackets.
- (c) There shall be at least eight feet of clearance between the bottom of the banner and the ground. No banner shall extend over a public sidewalk or street.
 - (d) There is no time limit for light pole banners. However, when the banners become dilapidated or otherwise ruined they must be removed or replaced.
 - (e) No other signage of any type shall be permitted on light poles where light pole banners are displayed.
- (4) Grand Openings and Anniversaries.
- (a) Businesses may have one grand opening or anniversary promotion per year. One additional such promotion may be held if the business changes ownership or management, should this occur less than one year after a particular grand opening or anniversary promotion.
 - (b) In addition to those items allowed in general promotions (above) the business may also use flags, pennants, ribbons, streamers, various types of balloons (including large "hot air" types), and strings of lights.
 - (c) These promotions will be no more than 30 days in length.
- (5) Grandfathered Commercial Promotions Signage. No existing temporary or special signage will be grandfathered. Businesses will have 60 days from the date of enactment of the ordinance codified in this chapter in which to comply.
- (6) Real Estate Signs. All exterior real estate signs must be of wood or plastic or other durable material. The permitted signs, with applicable limits, are as follows:
- (a) Residential "For Sale" or "For Rent" Signs. Signs advertising residential property "For Sale" or "For Rent" shall be limited to one single or double-faced sign per street frontage. Sign to be installed 30 days prior to becoming available or during a vacancy only. The sign may not exceed four square feet in surface area, and must be placed wholly on the property for sale or rent. The "For Sale" or "For Rent" sign may remain up until the property is sold or rented.
 - (b) Residential Directions "Open House" Signs. Signs advertising "Open House" and the directions to a residence for sale shall be limited to one single or double-faced on-premises for sale and three single or double-faced off-premises signs. However, if a realtor has more than one house open for inspection in a single development or subdivision, off-premises signs are limited to four for the entire development or subdivision. Such signs are permitted only during daylight hours and when the realtor or seller or an agent is in attendance at the property for sale. No such sign shall exceed four square feet in surface area. The sign may be placed along the periphery of a public right-of-way.
 - (c) Residential Condominiums, Condominium Conversions, Apartments, Mobile Home Parks and New Subdivisions.
 - (i) Temporary Real Estate Signs. Temporary signs, posters and banners may be used for the grand opening and ongoing promotion of new residential projects having five or more units. These signs and banners may be used in a particular project for a period not exceeding one year after the date of issuance of the final occupancy permit for that project or at such time as the project is 90 percent occupied, whichever occurs first, or in the case of subdivision and mobile home parks, one year after final plat approval. In the event that the project consists of more than one phase, as in a "phased" condominium project, the signs and banners promoting one phase must be removed prior to installing the signs and banners for the next phase. A time extension may be granted for up to one year in length by the building official where 90 percent occupancy has not been obtained. Justification for the extension includes:
 - (A) Certification of vacant units; and

- (B) Statement of reason for lack of occupancy.
- (ii) Allowable Number and Sizes of Signs.
 - (A) One banner of not more than 30 feet in length and four feet in height advertising the project for sale or rent;
 - (B) Banners or signs of not more than 18 square feet each on each model unit with a maximum of three of these types allowed per project or phase;
 - (C) "A-frame" and other signs used internally within the project as needed for the purpose of directing traffic to model units or open house functions;
 - (D) One sign per road frontage of not more than 32 square feet per side advertising the project for rent or sale. These signs may be installed only after the construction sign has been removed.
- (d) Undeveloped Commercial or Industrial Property "For Sale or Rent" Signs. Signs advertising undeveloped commercial or industrial property "For Sale or Rent" shall be limited to one single or double-faced sign per street frontage. Signs may be displayed while the property is actually for sale or rent. The sign may not exceed 16 square feet in surface area. If freestanding, the sign may not exceed five feet in height, and shall be located more than 15 feet from any abutting interior property line and wholly on the property for sale or rent.
- (e) Developed Commercial or Industrial Property "For Sale or Rent" Signs. Signs advertising developed commercial or industrial property "For Sale or Rent" shall be limited to one single or double-faced sign per street frontage. Signs may be displayed while the building is actually for rent or sale. The sign may not exceed 16 feet in surface area. If freestanding, the sign may not exceed five feet in height and shall be located more than 15 feet from any abutting side or rear property line, and wholly on the property for sale or rent.
- (f) Residential Land Subdivision Signs. Signs advertising residential subdivisions shall be limited to one single or double-faced sign not exceeding a total of 32 square feet in surface area placed at a right angle to the street, or two signs not exceeding a total of 32 square feet in surface area facing the street, which shall be at least 200 feet apart. No sign shall project beyond the building line. Such signs must be placed more than 30 feet from the abutting owner's property line and may not exceed a height of 12 feet. Such signs shall be removed by the end of one year or when 75 percent of the houses in the subdivision are sold or occupied, whichever first occurs. Permanent subdivision or neighborhood designation signs shall be approved by the administrator of this code as set forth in OHMC 19.36.070.
- (g) Subdivision Directional Signs Designating New Development. Signs advertising the direction to a subdivision shall be furnished and placed only by the developer or residents of the subdivision, but at locations designated by the city. Signs shall be of the dimensions 12 inches by 36 inches, shall bear only the name of the subdivision and a directional arrow (no name or realtor permitted), and be limited in number to four. The city will designate placement of the signs at street intersections a maximum of one mile from the nearest subdivision entrance. The signs shall be maintained by the developer and removed at the end of one year or when 75 percent of the subdivision is occupied, whichever first occurs, unless a variance is granted by the hearing examiner.
- (h) Undeveloped Multifamily Property "For Sale" Signs. Permissible signs and their limitations for undeveloped multifamily zoned property shall be identical to those for undeveloped commercial and industrial property "For Sale" signs as set forth

- in subsection (6)(d) of this section.
- (i) Undeveloped Single-Family Acreage “For Sale” Signs. Permissible signs and their limitations for undeveloped, unsubdivided single-family property which may be legally divided into four or more single lots shall be identical to those for undeveloped commercial and industrial property “For Sale” signs as set forth in subsection (6)(d) of this section.
- (7) Political Headquarters Signs.
- (a) Party Headquarters. On-premises political signs are permitted on the premises of political headquarters located in the business districts (OHMC 19.36.030), on office buildings in the residential/office and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts.
 - (b) Headquarters for Candidate or Ballot Issue. On-premises political signs are permitted on the premises of the headquarters of a candidate for public elective office (whether partisan or nonpartisan) or on the headquarters of persons supporting or opposing a public issue decided by ballot, when such headquarters are located in the commercial districts (OHMC 19.36.030), on office buildings in the residential/office and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts and so long as the signs remain for a period no longer than six months. Such signs shall be removed within seven days after the general election.
- (8) Political Signs on Private Property Not a Headquarters.
- (a) Signs, posters or bills promoting or publicizing candidates for public office or issues that are to be voted upon in a general or special election may be displayed on private property. Such signs, posters or bills shall be permitted only for a period of 60 days preceding the election and for a period of seven days following such election; provided, that signs, posters or bills promoting successful candidates in a primary election may remain displayed on private property until seven days following the immediately subsequent general election.
 - (b) Sign Dimension and Location. Political signs shall not exceed 32 square feet in surface area per side or 10 feet in height, or be located closer than five feet from the property line or closer than 15 feet from the property line of an abutting owner. Signs must be located so as not to restrict sight distances on approaches to intersections. A-frame type political signs are not permitted. Political signs located along SR-20 within the city limits of Oak Harbor must be located on private property. Signs installed within the SR-20 right-of-way will be removed by the city or State Highway Department personnel.
 - (c) Removal of Signs Following Election. Any such sign, poster or bill shall be removed within seven days following an election. It shall be the responsibility of the above campaign officer or responsible official to have the signs, posters or bills removed.
 - (d) Political Signs Not Allowed on Public Property. It is unlawful for any person to paste, paint, affix or fasten on any utility pole or on the sidewalk, roadway, or on any public building or structure any such sign, poster, bill or other advertising device when such facilities are located on public property or within public easements.
 - (e) Public Notices Unaffected. Nothing in this section shall be construed to prohibit the placement of public notices required by law.
 - (f) The display of any political sign in violation of this section, or any portion thereof, shall be presumed to have been done at the direction and request of the

campaign officer or responsible official.

- (g) No permit is required for placement of political signs.
- (9) Community Events and Fundraisers. Celebrations such as Holland Happening, the Fourth of July, and similar events scheduled for the benefit of the general community may install temporary directional signing, provided such signs are removed within two days following the event.
- (10) Civic Organizations. Civic organizations shall be allowed to have two A-frame signs per event or sale. This sign is in addition to directional signs that may be necessary. The sign shall be no larger than the allowed maximum for a business and subject to all requirements of A-frames for businesses. The sign shall be placed solely on the property for which the activity will be conducted and written permission must be obtained from the property owner or their designee. A civic organization sign shall be in addition to any other A-frame signs existing on site at time of application.
- (11) Portable A-Frame Signs.
 - (a) Portable A-frame signs for the purpose of this code also includes sandwich board signs.
 - (b) Portable A-frame signs are allowed in all districts throughout the city except the CBD.
 - (c) Each business is permitted to have one portable A-frame sign no larger than 36 inches by 48 inches. The portable A-frame sign shall be included in the total allowable signage for said business.
 - (d) The portable A-frame sign shall be placed solely on the property of the business for which the sign advertises during normal business hours and removed at the close of business, and located no further than four feet from the building line. No two portable A-frames shall be closer than 20 feet from one another. No direct or indirect lighting of any kind shall be permitted.
 - (e) A-frame signs shall be constructed to be sturdy and withstand all types of weather conditions. No more than two-thirds of the total A-frame sign area may be reader board or changeable copy. All artistic embellishments and lettering shall have the appearance of professionalism.
- (12) No temporary vehicular mounted sign shall be placed in such a manner as to subvert the intentions of this chapter.

19.36.090 Street right-of-way signs.

- (1) General. Signs for the purpose of identification only, which contain no advertising, may be located upon the street right-of-way only where view-obstructing acoustical protective devices such as acoustical walls, berms or solid fences have been legally installed with city approval at property line thereby making building-mounted or conforming freestanding signs ineffective. Such signing may not exceed the maximum square footage for signs permitted in the applicable district.
- (2) Design and Materials. Street right-of-way signs shall be in keeping with the character of the zoning district in which they are located and shall be constructed of quality materials. The proposed design and materials to be utilized in the construction of any such sign shall be approved in advance of the issuance of any sign permit by the administrator of this code.
- (3) Types of Signs Permitted. Only signs identifying the use being maintained or operated upon the immediately abutting property and incidental signs indicating the appropriate entrance to and exit therefrom are permitted upon the public right-of-way under this section; provided, that vacancy signs no larger than three square feet in surface area may be installed as an addition to the identification sign.
- (4) Sign Location. Signs permitted upon the street right-of-way shall not be installed or

placed on the top of acoustical protective devices, nor shall such signs be installed upon or attached to acoustical protective devices constructed by the city.

- (5) Sign Dimensions. Street right-of-way signs shall have a maximum height of five feet measured from the street grade only, a maximum surface area of 15 square feet.
- (6) Sign Illumination. Street right-of-way sign illumination shall be from a source other than the sign itself.
- (7) Permit Requirements. Street right-of-way signs are subject to all general requirements of this code; provided, that no such sign may be erected without a permit regardless of the size of the sign; and provided further, that any application for a street right-of-way sign permit is subject to the approval of the superintendent of public works.

19.36.100 Exempt signs or displays.

The following signs or displays are exempted from coverage under this code:

- (1) Traffic or pedestrian control signs or signals, or signs indicating scenic or historic points of interest, which are erected by or on the order of a public officer in the performance of his public duty;
- (2) Regulatory, informational, identification or directional signs installed by or at the direction of, a government entity;
- (3) Signs required by law;
- (4) Official public notices, official court notices or official sheriff's notices;
- (5) The flag of a government or noncommercial institutions such as schools;
- (6) Exterior signs or displays not visible from streets or ways open to the public;
- (7) Signs in the interior of a building more than three feet from the closest window or not facing a window;
- (8) Plaques, tablets or inscriptions indicating the name of a building, its date of erection, or other commemorative information, which are an integral part of the building structure or are attached flat to the face of the building, which are nonilluminated, and which do not exceed three square feet in surface area;
- (9) "No Trespassing," "No Dumping," "No Parking," "Private," and other informational warning signs, which shall not exceed three square feet in surface area;
- (10) Reasonable seasonal decorations within the appropriate public holiday season. However, such displays shall be removed promptly at the end of the public holiday season;
- (11) Sculptures, fountains, mosaics and design features which do not incorporate advertising or identification;
- (12) Existing theater marquees (freestanding and/or building-mounted);
- (13) Nonflashing, low-lumen building outline and window accent lighting may be installed by businesses in the CBD, CBD-1, CBD-2, C-3, C-4 and C-5 business and commercial districts. Permit and plan review is required.

Section Six. Oak Harbor Municipal Code Section 19.36.110 is hereby amended to read as follows:

19.36.110 Requirements applicable to all signs.

(1) Design. Signs shall be designed using shapes, graphics, colors, materials, and lighting which are coordinated, integrated into, and a natural extension of the design of the building, development or business identified. Building mounted signs shall be incorporated into the design of the building, and shall not be placed in locations which interrupt, detract from or change the architectural lines of the building. The provisions of this section shall not apply to signs lawfully constructed as of the effective date of this ordinance.

- | (42) Structural Requirements. The structure and erection of signs within the city shall be governed by the building code, most recent adopted edition (or any superseding edition adopted by the city).
- | (23) Electrical Requirements. Electrical requirements for signs shall be regulated as under state law, ~~promulgated by the National Fire Protection Association.~~
- | (34) Sign Illumination. Illumination from or upon any sign shall be shaded, shielded, directed or reduced so as to avoid undue brightness, glare, or reflection of light on private or public property in the surrounding area, and so as to avoid unreasonable distracting of pedestrians or motorists. "Undue brightness" is illumination in excess of that which is reasonably necessary to make the sign reasonably visible to the average person on an adjacent street.
- | (45) Sign Maintenance. All signs, including signs heretofore installed, shall be constantly maintained in a state of security, safety and repair. If any sign is found not to be so maintained or is insecurely fastened or otherwise dangerous it shall be the duty of the owner and/or occupant of the premises on which the sign is fastened to repair or remove the sign within five days after receiving notice from the sign code administrator. The premises surrounding a freestanding sign shall be free and clear of rubbish and the landscaping area free of weeds.
- | (56) Sign Obstructing View or Passage. No sign shall be located so as to physically obstruct any door, window or exit from a building. No sign shall be located so as to be hazardous to a motorist's ingress and egress from parking areas of any way open to the public or which obstructs the view in any direction at the intersection of a street or with an alley or driveway. This includes the parking of a vehicle, trailer, or device in such a manner to constitute a sign.
- | (67) Landscaping for Freestanding Signs. All primary freestanding signs shall include as part of their design, landscaping about their base to prevent automobiles from hitting the sign-supporting structure and to improve the overall appearance of the installation. If the required landscaping is not completed within 60 days after completion of the sign installation, the sign shall be in violation of this chapter. The code administrator, for reasons of weather, good planting practices, or unforeseeable construction delay may grant a reasonable extension of the time period specified in this subsection.
- | (78) Sign Inspection. All sign users shall permit the periodic inspection of their signs by the city upon city request.
- | (89) Conflicting Provisions. Whenever two provisions of this code overlap or conflict with regard to the size or placement of a sign, the more restrictive provision shall apply.
- | (910) Building Line. In any area of the city where the applicable building line is located more than 65 feet from the centerline of the city street on which it faces, the building line shall, for purposes of limiting size or placement of signs under this code, be deemed to begin 65 feet from the centerline of the street and to run parallel thereto.
- | (4011) Painted Signs – Mounting. Painted signs may be painted on plywood or other backing material, so that the sign can be physically removed from the building or be painted on the building wall itself; provided, that the copy is surrounded by an appropriate border so that the sign can be distinguished from the building wall.
- | (412) Abandoned Signs. Signs identifying, or window signs advertising, activities, products, businesses or services which have been discontinued for more than 60 days on the premises upon which the signs are located must be removed by the building owner except sign structures in good condition may remain; provided the advertising copy is removed.

Section Seven. Oak Harbor Municipal Code Section 19.36.120 is hereby amended to read as follows:

19.36.120 Prohibited signs.

The following signs or displays are prohibited, except as indicated. Prohibited signs are subject to removal by the city at the owner's or user's expense. (See OHMC 19.36.140.)

- (1) Window signs containing material unrelated to the merchandise for sale or service performed by the person or business on whose premises or property the sign is located (except real estate "Open House" and subdivision directional signs as governed by OHMC 19.36.080(6)(b) and (6)(f)); provided, however, on-premises signs may call the attention of the public to public holidays or community events, the time and temperature;
- (2) Signs which purport to be, or are an imitation of, or resemble an official traffic sign or signal, or which bear the words "Stop," "Caution," "Danger," "Warning," or similar words;
- (3) Signs which, by reason of their size, location, movement, content, coloring or manner of illumination may be confused with or construed as a traffic control sign, signal or device, or the light of an emergency or radio equipment vehicle; or which obstruct the visibility of any traffic or street sign or signal device;
- (4) Signs which rotate or have a part or parts which move or revolve, ~~or electronically or electrically controlled changing message center signs~~, except that movement of the hands of a clock or digital changes indicating time and temperature or national market indices ~~which do not advertise a specific company or commodity~~ are permitted;
- (5) Signs or displays of banners, clusters of flags, posters, pennants, ribbons, shimmering discs, streamers, strings of lights, spinners, twirlers or propellers, flashing, rotating or blinking lights, chasing or scintillating lights, flares, balloons, bubble machines and similar devices of a carnival nature, or containing elements creating sound or smell. Exception: Certain of these devices are permitted on a limited basis as seasonal decorations under OHMC 19.36.100(10) or for grand openings of new business under OHMC 19.36.080(4) and (6);
- (6) Animated signs which flash or simulate motion with an electronic or manufactured source of supply or contain wind activated motion;
- (7) Signs attached to trees, utility poles, street lights, or any public property without permission of the government agency owning the same;
- (8) Billboards;
- (9) Portable signs, which for the purpose of this code means a sign which has no permanent attachment to a building or the ground, including mobile signs, but not including real estate open house signs, light pole banners or A-frame signs permitted under OHMC 19.36.080, and political signs, provided such political signs must meet the requirements of OHMC 19.36.080, where applicable;
- (10) Roof-mounted statues, figures or objects used to attract attention to a particular business;
- (11) Signs for which a permit has been granted under conditions with which the permittee does not comply;
- (12) Signs for which a permit has been granted and subsequently revoked for cause by the administrator of this code;
- (13) Signs erected, altered or relocated without a permit issued by the city or any other governmental agency which requires a permit by law;
- (14) Search lights and beacons;
- (15) Illuminated outdoor vending machines;
- (16) Signs placed on vehicles or trailers which are parked or located for the primary purpose of display and block traffic sight visibility. (This does not apply to signs or lettering on buses, taxis, or vehicles operating during the normal course of business);
- (17) Signs not properly maintained, showing neglect, or in a dilapidated or hazardous condition so as to violate the purpose, intent and objective of this chapter shall be required to be repaired or removed.

Section Eight. Oak Harbor Municipal Code Section 19.36.010 is hereby amended to read as follows:

19.36.130 Permits and fees.

- (1) **Permit Requirements.** All signs more than six square feet in surface area as governed by this code and all lighted signs must have a permit issued by the city, excluding nonlighted window signs in C-1 zones.
- (2) **Permit Applications.** Applications for permits shall contain the name and address of the owner and user of the sign, the name and address of the owner of the property on which the sign is to be located, the location of the sign structure, drawings or photographs showing the design and dimensions of the sign and details of its proposed placement, and such other pertinent information as the administrator of this code may require to ensure compliance with this code and other applicable ordinances. Permit applications shall be available for inspection by the public upon request.
- (3) **Expiration of Permits.** A sign permit shall become null and void if the work for which the permit was issued has not been completed within one year of its issuance. Permits for temporary or special signs (OHMC 19.36.080) shall expire a maximum of 12 months from the date of the sign installation. Such permits are not subject to renewal.
- (4) **Permit Exceptions.** No new permit shall be required:
 - (a) For repainting, cleaning or other normal maintenance or repair of a sign or sign structure for which a permit has previously been issued, so long as the sign structure or content is not modified in any way;
 - (b) For the changing of the advertising copy or message on an approved reader board or theater marquee, during the period of amortization.
- (5) **Notice of Permit Denial – Reasons.** When a sign permit is denied by the administrator, he shall give written notice of the denial to the applicant, together with a brief written statement of the reasons for the denial.
- (6) **Sign Permit Appeals.**
 - (a) ~~Appeal from Denial of Permit. Appeals may be taken to the hearing examiner from the administrator’s denial of a sign permit shall be taken to the Hearing Examiner as per OHMC 19.36.160. for reasons other than failure to meet the requirements of the Uniform Sign Code, or the National Electrical Code (OHMC 19.36.160(1) and (2)). Appeal procedure is set forth in OHMC 19.36.160(3). Appeal from a denial of a sign permit on grounds of noncompliance with the Uniform Sign Code, the building code or the National Electrical Code shall be taken to the hearing examiner and shall be governed by the procedures of OHMC 19.36.160(3).~~
 - (b) **Appeal from Failure of Administrator to Act on Permit Application Within 30 Days.** The administrator’s failure to either formally grant or deny a sign application within 30 days of the date an application meeting the requirements of subsection (2) of this section is filed shall be grounds for appeal to the hearing examiner under terms of OHMC 19.36.160.
- (7) **Fees.** The applicant shall submit the applicable fees at the time of application.

| Permit Application | Fee |
|-----------------------|---------|
| Sign permit: | |
| under 25 sq. ft. | 25.00 |
| \$26 sq. ft. and over | \$50.00 |

- (8) Permit Fee. Sign permit fees shall be determined by value of the sign and a fee shall be charged as set forth in OHMC 17.04.030, Table No. 1-A. Table 17-3.

19.36.140 Administration, enforcement and sign removal.

- (1) Code Administrator. The administrator of this code is the building official or his/her designee. The administrator is authorized and directed to enforce and carry out all provisions of this code, both in letter and spirit, with vigilance and with all due speed. To that end, the administrator is authorized to formulate procedures consistent with the purposes of this code. The administrator is further empowered to delegate the duties and powers granted to and imposed upon him under this code. As used in this code, "administrator of this code" or "administrator" includes his authorized representative.
- (2) Inspection by Administrator. The administrator is empowered to enter or inspect any building, structure or premises in the city, upon which, or in connection with which a sign, as defined by this code, is located, for the purpose of inspection of the sign, its structural and electrical connections, and to ensure compliance with the provisions of this code. Such inspections shall be carried out during business hours, unless an emergency exists.
- (3) Code Violations and Enforcement. The remedies provided in this section for violations of or failure to comply with provisions of this code, whether civil, criminal, or for sign removal, shall be cumulative and shall be in addition to any other remedy provided by law. Any sign which is not in compliance with all provisions of this code is an unlawful sign.
- (a) Civil Remedies. The violation of or failure to comply with any of the provisions of this code, or the erection, use or display of any sign not in compliance with all of the provisions of this code is declared to be unlawful.
- (i) Injunction and Abatement. The city, through its authorized agents, may initiate injunction or abatement proceedings or other appropriate action in the courts against any person who violates or fails to comply with any provision of this code, or against the erector, owner or user of an unlawful sign is located, to prevent, enjoin, abate or terminate violations of the foregoing, furnish the hearing examiner with a brief written statement of the reasons for the failure.
- (ii) When a sign is erected which does not conform to the provisions of the sign code, no additional signage will be permitted on the premises until such sign is removed or brought into compliance.
- (b) Statement in Support of Administrator's Position. Upon any appeal, the administrator may, in his discretion, furnish the hearing examiner with a written statement of his position on the appeal and may therein reply to the position of the appellant. Such statements must be filed with the board at least 10 days in advance of the hearing on the appeal.
- (c) Administrator's Appearance at the Hearing. The administrator or his representative shall attend and state his position at any appeal or variance hearing.

19.36.150 Nonconforming signs.

- (1) General. To ease the economic impact of this code on businessmen with substantial investment in signs in existence on the date of adoption of the ordinance codified in this code, this section provides for continued use of a nonconforming sign in its existing state for 25 years from August, 1986. During this period, it is expected that the sign may be amortized on federal income taxes; however, whether it may be so amortized shall not affect the application of this section. Similar treatment is accorded signs in areas annexed to the city after the code's enactment.

(2) Nonconforming Signs.

(a) Notification of Nonconformity or Illegality. The sign code administrator shall, as soon as practicable, survey the city for signs which do not conform to the requirements of this code. Upon determination that a sign is nonconforming or illegal, the administrator shall use reasonable efforts to so notify, either personally or in writing, the sign user or owner of the sign and where practicable the owner of the property on which the sign is located of the following; provided, that the business licensee of the business with which the sign is associated shall be presumed to be the sign user under this code:

- (i) The sign's nonconformity or illegality;
- (ii) Whether the sign may be eligible for a nonconforming sign permit.

If the identity of the sign user, owner of the sign, or owner of the property on which the sign is located cannot be determined after reasonable inquiry, the notice may be affixed in a conspicuous place on the sign or on the business premises with which the sign is associated.

(b) Signs Eligible for Nonconforming Sign Permit. With the exceptions herein provided, any on-premises primary sign located within the city limits on the date of adoption of the ordinance codified in this code, or located in areas annexed to the city thereafter, which does not conform with the provisions of this code, is eligible for characterization as a nonconforming sign provided it meets the following requirements:

- (i) The sign was covered by a sign permit on the date of adoption of the ordinance codified in this code, if one was required under applicable law; or
- (ii) If no sign permit is required under applicable law for the sign in question; the sign was in all respects in compliance with applicable law on the date of adoption of the ordinance codified in this code.
- (iii) Exceptions: No temporary or special signs, as defined by OHMC 19.36.080, prohibited signs, as defined by OHMC 19.36.120, or incidental signs, as defined by OHMC 19.36.030(6), shall be eligible for characterization as nonconforming signs.

(c) Permit for Nonconforming Signs. A nonconforming sign permit is required for each nonconforming sign designated under subsection (2)(b) of this section. The permit shall be obtained by the sign user or the sign owner, or the owner of the property upon which the sign is located within 60 days of notification by the city (under subsection (2)(a) of this section) that the sign is nonconforming.

Applications for a nonconforming sign permit shall contain the name and address of the sign user, the sign owner, and the owner of the property upon which the sign is located and such other pertinent information as the administrator may require to ensure compliance with the code, including proof of the date of installation of the sign.

A nonconforming sign for which no permit has been issued within the 60-day period shall within six months be brought into compliance with the code or be removed. Failure to comply shall subject the sign user, owner or owner of the property on which the sign is located to the remedies and penalties of OHMC 19.36.150(3).

(d) Loss of Nonconforming Status.

(i) A freestanding, nonconforming sign shall immediately lose its nonconforming designation if:

- (A) The sign is altered in any way, which tends to or makes the sign less in compliance with the requirements of this code than it was before the alteration; or
- (B) The sign is relocated to a position making it less in compliance with the requirements of this code; or
- (C) The sign is replaced.

- (ii) A building-mounted, nonconforming sign shall immediately lose its nonconforming designation if:
 - (A) The sign is altered in any way which tends to or makes the sign less in compliance with the requirements of this code than it was before the alteration; or
 - (B) The sign is relocated to a position making it less in compliance with the requirements of this code; or
 - (C) The sign is replaced.
- (e) On the happening of any one of (A), (B) or (C) of subsection (2)(d)(i) or (2)(d)(ii) of this section, any permit or designation for what had been designated as a nonconforming sign shall become void, the administrator shall notify the sign user, sign owner or owner of the property upon which the sign is located of cancellation of the permit or designation and the sign shall immediately be brought into compliance with this code and a new permit secured therefore, or shall be removed.
- (3) **Illegal Signs.** An illegal sign is any sign which does not comply with the requirements of this code within the city limits as they now or hereafter exist and which is not eligible for characterization as nonconforming under this section. The city may immediately remove an illegal sign, at owner's expense, located on city property or right-of-way. The city may immediately remove an illegal sign located on private property no less than 10 days following the mailing of notice to the property owner or person in charge of the premises that the sign is illegal and must be removed.
- (4) **Amortization Period for Nonconforming Signs.** Those signs which have been approved either through a sign permit or through the building permit/site plan review process, or have been in existence since before such permit processes were in effect, or have been issued a nonconforming sign permit, shall be permitted to remain for 25 years after adoption of the ordinance codified in this chapter.
- (5) **Nonconforming Sign Maintenance and Repair.** Nothing in this section shall relieve the owner or user of a nonconforming sign or owner of the property on which the nonconforming sign is located from the provisions of this code regarding safety, maintenance and repair of signs, contained in OHMC 19.36.110, and from the provisions on prohibited signs, contained in OHMC 19.36.120; provided, however, that any repainting, cleaning, and other normal maintenance or repair of the sign or sign structure shall not modify the sign structure in any way which makes it less in compliance with the requirements of this code or the sign will lose its nonconforming status. (See subsection (2)(e) of this section.)

Section Nine. Oak Harbor Municipal Code Section 19.36.160 is hereby amended to read as follows:

19.36.160 Hearing examiner jurisdiction and power.

- (1) The hearing examiner shall have the power and duty to:
 - (a) Hear and decide appeals by a sign permit applicant from the decision of the administrator of this code denying or failing to grant a sign permit within 30 days of application;
 - (b) Grant a variance from the requirements of this code as part of the disposition of an appeal from action of the code administrator denying or failing to grant a sign permit (see subsection (2)(b) of this section);
 - (c) Hear and decide appeals by a sign owner, user or owner of the property on which a sign is located from characterization of a sign as nonconforming or illegal under OHMC 19.36.150;

- (d) Hear appeals from denial of a sign permit on grounds of noncompliance with requirements of the ~~Uniform Sign Code, building code, or National Electrical Code, required under OHMC 19.36.130(1) and (2).~~
- (2) Criteria for Hearing Examiner Decision.
- (a) Appeals Without Petition for Variance. In appeals to the hearing examiner from decision of the code administrator denying a sign permit in connection with which no petition of variance has been filed, the hearing examiner's scope of review shall be limited to determining whether or not the code administrator's decision is in accordance with the requirements of this code and accordingly affirm or reverse such decision. If the code administrator's decision is reversed, the hearing officer shall direct the administrator to issue the permit in accordance with its decision. In appeals from failure of the administrator to grant a permit within 30 days of application, the hearing officer shall determine whether the sign and the application meet the requirements of this code. If so, the hearing officer shall direct the administrator to issue the permit. If not, the hearing officer shall deny the permit.
 - (b) Appeals with Petition for Variance. In appeals from decisions of the code administrator denying or refusing to grant a sign permit in connection with which the appealing party or any other interested party has filed a petition for variance, the hearing officer shall have the power and duty described in subsection (1) of this section and, in addition, shall have the power to hear, decide and grant or deny the requested variance from the provisions or requirements of this code. The hearing officer may grant a variance no greater than 15 percent (rounded to the nearest foot or square foot as applicable) from the provisions or requirements of this code only where practical difficulties exist rendering compliance with the provisions of this code impractical, and such compliance would create unnecessary hardships to the user or owner of the sign or signs. The hearing officer may grant a variance in harmony with the general purpose and intent of this code by varying the application of rules, regulations or provisions so long as the spirit and benefits of this code will be preserved; provided, however, no variance may be granted from the number of signs authorized by this code. The hearing officer shall not vary any of the rules, regulations or provisions of this code unless the hearing officer, upon due and diligent investigation and after public hearing, shall make specific findings that all of the following conditions exist in such cases:
 - (i) The variance will not constitute a grant of special privilege inconsistent with the limitation upon signage and uses of other properties in the vicinity and zone in which the property, on behalf of which the application was filed, is located;
 - (ii) Such variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with signage use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located;
 - (iii) The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and in the zone in which the subject property is situated; and
 - (iv) Owing to the special circumstances found under subsection (2)(b)(ii) of this section, a strict enforcement of the rules, regulations or provisions of this code will result in unnecessary hardship to the sign user or owner or property owner applying for the variance, and such special circumstances are not the result of the voluntary action of the applicant or its agents.

In granting a variance, the hearing officer may attach thereto such conditions regarding the

location, character and other features of the proposed sign as it may deem necessary to carry out the spirit and purpose of this code of moderating the size, number and obtrusive placement of signs and reduction of clutter in the public interest.

(3) **Perfection of Appeal.**

- (a) An appeal with or without petition for variance may be considered by the hearing examiner only if:
 - (i) Written notice of appeal, with or without petition for variance, is filed with the planning department:
 - (A) Within 10 days of decision of the code administrator denying a sign permit; or
 - (B) Within 40 days of the submission of a sign permit application which the administrator has neither granted nor denied within 30 days; or
 - (C) Within 60 days of the administrator's characterization of the sign as nonconforming or illegal, which period shall begin to run with the mailing of notice of such characterization to the sign user or the sign owner, or the owner of the property on which the sign is located; or the posting of such notice on the sign or the associated business premises.
 - (ii) The notice of appeal is accompanied by a fee as required by OHMC 19.36.130(7).
 - (iii) The hearing examiner shall, on their own initiative or on the motion of any interested party, dismiss an appeal for failure of the appellant to meet any of the requirements of subsection (3)(a) of this section or for failure of the appellant to otherwise diligently prosecute the appeal, or if the hearing officer finds the appellant has made any knowingly false or misleading statement or representation in his sign application or appeal.

19.36.170 Conflicting provisions.

If any provision of this code is found to be in conflict with any provision of any zoning, building, fire, safety or health ordinance or code of the city, the provision which establishes the higher standard shall prevail.

Section Ten. 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 Eleven. Effective Date. This ordinance shall be in full force and effect five days after the date of publication.

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

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

City of Oak Harbor
City Council Agenda Bill

Bill No. 7
Date: May 5, 2009
Subject: Paint West Reservoir Tanks Exteriors
Bid Award

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT:

This agenda bill recommends awarding a construction contract for the Paint West Reservoir Tanks Exteriors Project to Washington Industrial Coatings, Inc. of Silverdale, Washington in the amount of \$86,277.73

AUTHORITY

Oak Harbor Municipal Code paragraph 2.390.010 provides that all contracts over \$30,000 require council approval.

BACKGROUND:

The West Reservoir tanks exteriors are beginning to exhibit excessive chalking and have areas of blistering and peeling in their exterior coatings. This project will recoat both tanks and will provide the necessary surfaces for a subsequent contract to paint landscape murals on both tanks funded by public art funds set aside by the water enterprise fund.

DISCUSSION:

Solicitation documents were prepared by City staff. The project was advertised for bidding using the Municipal Research and Services Center of Washington (MRSC) Small Works Roster. Requests for bids were sent to seven (7) qualified contractors.

Amount of the Contract: Staff received and opened four (4) sealed bids on April 9, 2009. The following bids were received (amounts include Washington State Sales Tax in the amount of 8.4%):

| <u>Contractor</u> | <u>Location</u> | <u>Bid Amount</u> |
|--------------------------------------|-----------------|-------------------|
| Long Painting Company | Kent, WA | \$95,825.60 |
| Washington Industrial Coatings, Inc. | Silverdale, WA | \$86,277.73 |
| Western Industrial, Inc. | Seattle, WA | \$95,876.14 |
| Coatings Unlimited, Inc. | Kent, WA | \$134,470.20 |

Staff reviewed the bid prices and checked the qualifications, experience and references of the low bidder. It is recommended that a contract in the amount of \$86,277.73 be awarded to Washington Industrial Coatings, Inc., who is the lowest responsible bidder. As a small works roster project a bid bond was not required, however a performance bond is required prior to execution of the contract.

Construction Contingency: Most construction projects involve change orders and modifications to the contract plans. Delays in processing change order requests can result in costly delay claims against the City. To minimize the possibility of delays and the resulting claims, staff requests that the City Engineer be authorized to administratively approve up to \$10,000, a little less than 11.5% of the contract amount, for change orders.

Funding: The funding for the project is available in Water Fund 2009 budget.

Justification: The project is necessary to preserve the 500,000 gallon and 2 million gallon steel water storage tanks at the West Reservoir.

COMMITTEE REVIEW

This project was presented to the Public Works and Utilities Standing Committee at the April 9, 2009 meeting.

RECOMMENDED ACTION:

1. Authorize the Mayor to sign a contract with Washington Industrial Coatings, Inc., in the amount of \$86,277.73.
2. Authorize the City Engineer to administratively approve changes to the construction contract totaling not more than \$10,000.00

ATTACHMENTS:

Bid Tabulation
Agreement

MAYOR'S COMMENTS:

Paint West Reservoir Tanks Exteriors - Contract No. ENG-08-08
 Bid Tabulation

| Bid Item | Description | Units | Number | Engineer | | Long Painting Company | | Washington Industrial | | Western Industrial Inc. | | Coatings Unlimited | |
|----------|--|-------|--------|-------------|--------------|-----------------------|-------------|-----------------------|-------------|-------------------------|-------------|--------------------|--------------|
| | | | | Unit Price | Extension | Unit Price | Extension | Unit Price | Extension | Unit Price | Extension | Unit Price | Extension |
| 1 | Minor changes (SS1-04.4) | MC | 1 | \$5,000.00 | \$5,000.00 | | | | | | | | |
| 2 | Mobilization, Cleanup and Demobilization (SS1-09.7) | LS | 1 | \$9,600.00 | \$9,600.00 | | | | | | | | |
| 3 | Surface Preparation and Exterior Painting One 2 Million Gallon Steel Water Storage Tank Including Disposal of Contaminated Waste (SS 6-07.4) | LS | 1 | \$66,880.00 | \$66,880.00 | 48300 | \$48,300.00 | \$47,000.00 | \$47,000.00 | 51079.76 | \$1079.76 | 70750 | 70750 |
| 4 | Surface Preparation and Exterior Painting One 500,000 Gallon Steel Water Storage Tank Including Disposal of Contaminated Waste (SS 6-07.4) | LS | 1 | \$29,040.00 | \$29,040.00 | 30100 | \$30,100.00 | \$19,092.00 | \$19,092.00 | 27366.86 | \$27366.86 | 43300 | 43300 |
| | Subtotal | | | | \$110,520.00 | | \$88,400.00 | \$79,592.00 | \$79,592.00 | \$88,446.62 | \$88,446.62 | \$124,050.00 | \$124,050.00 |
| | Sales Tax | | | | \$9,283.68 | | \$7,425.60 | \$6,685.73 | \$6,685.73 | \$7,429.52 | \$7,429.52 | \$10,420.20 | \$10,420.20 |
| | Total | | | | \$119,803.68 | | \$95,825.60 | \$86,277.73 | \$86,277.73 | \$95,876.14 | \$95,876.14 | \$134,470.20 | \$134,470.20 |

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CITY OF OAK HARBOR
ISLAND COUNTY WASHINGTON

PROJECT MANUAL

FOR:

**PAINT WEST RESERVOIR
TANKS EXTERIORS**

CITY CONTRACT NO. ENG-09-02

MARCH 2009

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NOTICE TO CONTRACTORS

REQUEST FOR SMALL WORKS PROPOSAL

CITY OF OAK HARBOR

PAINT WEST RESERVOIR TANKS EXTERIORS

Sealed proposals will be received by the undersigned at the City of Oak Harbor, 865 SE Barrington Drive, Oak Harbor, Washington 98277 up to 2:00 p.m. local time on April 7, 2009, for furnishing the necessary labor, materials, equipment, tools, and guarantees thereof to construct PAINT WEST RESERVOIR TANKS EXTERIORS.

PROJECT DESCRIPTION:

The work shall consist of surface preparation and painting the exteriors of two steel water storage tanks (West Reservoir) . One tank contains 2 Million Gallons of water storage and is approximately 80 feet in diameter and 56 feet in height. The other tank contains 500,000 Gallons of water storage and is approximately 40 feet in diameter and 56 feet in height. Primer containing lead is known to exist on the 500,000 gallon tank. A subsequent contract to paint murals on the two tanks is anticipated. Coordination of the application of the finish coat with the owner or mural painting contractor will be required.

The work shall be completed within 20 working days after the commencement date stated in the Notice to Proceed. All bidding and construction is to be performed in compliance with the request for the Proposal, Plans, Specifications, and Contract for this project and any addenda issued thereto which are on file at the office of the City Clerk, City Hall, City of Oak Harbor, Washington.

At the time and date stated above, the proposals will be publicly opened and read aloud. Proposals are to be submitted only on the form provided with the Specification.

Plans and Specifications may be *examined* at the office of the City of Oak Harbor. A list of plan holders will be made available, by request, through the Project Engineer prior to the bid opening via the U.S. mail.

Arrangements for a site inspection/visit can be made through the Project Engineer, Russ Pabarcus, P.E., at 360.279.4520 or rpabarcus@oakharbor.org.

Financing of the Project has been provided by the City of Oak Harbor, Washington. The City expressly reserves the right to reject any or all bids and to waive minor irregularities or informalities and to further make award of the Project to the lowest responsive, responsible bidder as it best serves the interest of the City.

The city of Oak Harbor is an Equal Opportunity employer and encourages Minority Business Enterprises and Women Business Enterprises to participate in the competitive bidding process.

(Signed) _____
CONNIE WHEELER
City Clerk

PART 1. BID PACKAGE

BIDDERS' CHECKLIST

The bidder's attention is especially called to the following forms which must be completed in full as requested and submitted collectively as Bid Proposal package.

- _____ 1. **PROPOSAL FORM**
- _____ 2. **BIDDER'S IDENTIFICATION AND CONTACT INFORMATION**
- _____ 3. **WORK ALLOCATION AND LIST OF SUBCONTRACTORS**
- _____ 4. **ACKNOWLEDGEMENT OF ADDENDA (ON BID PROPOSAL)**
- _____ 5. ~~**POWER OF ATTORNEY FOR SURETY'S AGENT TO EXECUTE BIDDER'S BOND (NOTARIZED)**~~
NA
- _____ 6. ~~**BID BOND**~~
NA ~~Cash, Certified Check or Bid Bond through a Surety Company. This is a Small Works Roster project and a bidder surety will not be required.~~
- _____ 7. **NON-COLLUSION AFFIDAVIT**
- _____ 8. **BIDDER'S EXPERIENCE RECORD**

The following contract forms are to be executed and submitted within ten (10) calendar days after award of Contract:

- _____ 1. **CONTRACT**
This agreement is to be executed by the successful bidder in four counterparts.
- _____ 2. **PERFORMANCE BOND**
To be executed by the successful bidder and the bidder's surety company.
- _____ 3. **LABOR AND MATERIAL PAYMENT BOND**
To be executed by the successful bidder and the bidder's surety company.
- _____ 4. **PROOF OF INSURANCE AND QUESTIONNAIRE**
Copy of policy and appropriate endorsements on forms provided or other form acceptable to the Owner.
- _____ 5. **LETTER OF EMPLOYMENT OF SUBCONTRACTOR**
The contractor shall complete the attached form.
- _____ 6. **INDEMNIFICATION ADDENDUM**
The contractor shall complete the attached form.

PROPOSAL

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

The undersigned has examined the Work site(s), local condition, the Contract Documents, and all applicable laws and regulations covering the Work. The following unit and lump sum prices are tendered as an offer to perform the Work in accordance with all of the requirements set forth in the Contract Documents and all applicable laws and regulations.

After the date and hour set for submitting the Proposals, no bidder may withdraw its Proposal, unless the Award of the contract is delayed for a period exceeding 60 consecutive calendar days.

The undersigned agrees that in the event it is awarded the contract for the Work, it shall employ only contractors and Subcontractors that are duly licensed by the State of Washington remain so at all times they are in any way involved with the Work.

The undersigned agrees that the Owner reserves the right to reject any or all Proposals and to waive any minor irregularities and informalities in any Proposal.

The undersigned agrees that the Owner reserves the right to Award the contract to the lowest responsible, responsive bidder whose Proposal is in the best interests of the Owner. The Owner will determine at the time of Award of the Contract which additives, if any, will be included in the Contract.

PROPOSAL – Continued
PAINT WEST RESERVOIR TANKS EXTERIORS

| NO. | ITEM | QUANTITY | UNIT PRICE | AMOUNT |
|-----|--|----------|------------|------------|
| 1. | Minor Changes (SS 1-04.4) | 1 MC | \$5,000.00 | \$5,000.00 |
| 2. | Mobilization, Cleanup, and Demobilization (SS 1-09.7) | 1 LS | _____ | _____ |
| 3. | Surface Preparation and Exterior Painting of one 2 million gallon steel water storage tank | 1 LS | _____ | _____ |
| 4. | Surface Preparation and Exterior Painting of one 500,000 gallon steel water storage tank | 1 LS | _____ | _____ |

Subtotal:.... \$ _____

Sales Tax (8.4%):..... \$ _____

TOTAL:.....\$ _____

PROPOSAL – Continued

BIDDER IDENTIFICATION AND CONTACT INFORMATION

Name of Firm: _____

Address: _____

Telephone No. _____ Fax No. _____

Contact Person for this Project: _____

Email: _____

PROPOSAL – Continued

WORK COMPLETED BY CONTRACTOR

List the Work and the dollar amount thereof that the Contractor will complete with its forces, if awarded the contract.

| Work to be Performed | Dollar Amount |
|-----------------------------|----------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

PROPOSED SUBCONTRACTORS

List all other Subcontractors and their Washington State Department of Licensing contractor's Registration No. that will be used on the Work if you are awarded the contract, together with the work to be performed. This information shall be provided to the Owner and Engineer within three days of the bid opening.

| Work to be Performed | Subcontractor (Name and Registration No.) |
|-----------------------------|--|
| | |
| | |
| | |
| | |
| | |
| | |
| | |

ADDENDA RECEIVED

| Addendum No. | Date Received | Name of Recipient |
|---------------------|----------------------|--------------------------|
| | | |
| | | |
| | | |
| | | |

NOTE: Contractor is responsible for verifying the actual number of addenda issued prior to submitting a Proposal.

Subject to any extensions of the Contract Time granted under the Contract Documents, the undersigned agrees to physically complete the Work required under this contract within 22 working days after the commencement date stated in the Notice to Proceed.

The undersigned has reviewed and fully understands the provisions in the Contract Documents regarding liquidated damages and agrees that liquidated damages shall be \$200.00 (US) for each and every working day required beyond the Contract Time for physical completion until the Physical Completion Date is achieved.

The undersigned's Washington State Department of Labor and Industries Workman's Compensation Account No. is _____.

The undersigned has reviewed all insurance requirements contained in the Contract Documents and has verified the availability of and the undersigned's eligibility for all required insurance. The undersigned verifies that the cost for all required insurance, has been included in this Proposal.

The undersigned waives its immunity under applicable Workman's Compensation Statutes including, but not limited to, R.C.W. Title 51. This waiver has been specially negotiated by the parties, which is acknowledged by the undersigned in signing this Proposal.

By signing the proposal, the undersigned declares, under penalty of perjury under the laws of the United States and the State of Washington, that the following statements are true and correct:

1. That the undersigned person(s) or entity(ies) has(have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this Proposal is submitted.

PROPOSAL – Continued

2. That by signing the signature page of this Proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.

The undersigned agrees that the Owner is authorized to obtain information from all references included herein.

Very truly yours,

Print Company Name

By: _____
Print Name

Sign Name

Title

Date

BIDDER'S EXPERIENCE RECORD

Name of Bidder: _____

Business Address: _____

Construction successfully completed within the past five years similar in size, scope and difficulty of this project:

| Name & Telephone of Owner Representative | Nature of Project | Amount of Contract |
|--|-------------------|--------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

Signed: _____

By: _____

Title: _____

Date: _____

BE-1

AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF OAK HARBOR (hereinafter called the Owner) and WASHINGTON INDUSTRIAL COATINGS, INC., (hereinafter called the Contractor).

The Owner and the Contractor agree as follows:

ARTICLE 1. WORK.

The City of Oak Harbor proposes to prepare surfaces and paint one 2 million gallon water steel storage tank and one 500,000 gallon steel water storage tank located at the West Reservoir site, near the southwest corner of the intersection of Whidbey Avenue and Heller Road in the City of Oak Harbor. The work shall consist of surface preparation and painting the exteriors of two steel water storage tanks (West Reservoir). One tank contains 2 Million Gallons of water storage and is approximately 80 feet in diameter and 56 feet in height. The other tank contains 500,000 Gallons of water storage and is approximately 40 feet in diameter and 56 feet in height. Primer containing lead is known to exist on the 500,000 gallon tank. A subsequent contract to paint murals on the two tanks is anticipated. Coordination of the application of the finish coat with the owner or mural painting contractor will be required.

ARTICLE 2. CONTRACT TIME.

The Contractor shall physically complete the Work within 20 working days (the Physical Completion Date) of a date specified in the Notice to Proceed.

ARTICLE 3. LIQUIDATED DAMAGES.

The Owner and the Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the Work is not completed within the Contract Time, plus any extensions thereof allowed in accordance with the Contract Documents. They also recognize the inconvenience, expense, and difficulties involved a legal proceeding to prove the actual loss suffered by the Owner if the Work is not completed within the Contract Time. Accordingly, the Owner and the Contractor agree that as liquidated damages for delay, and not as a penalty, the Contractor shall pay the Owner \$200.00 (US) for each working day beyond the Physical Completion Date that the Contractor achieves physical completion of the Work.

ARTICLE 4. CONTRACT PRICE.

The Owner shall pay the Contractor the amount(s) set forth in the Proposal (in United States dollars) for completion of the Work in accordance with the Contract Documents.

AGREEMENT – Continued

ARTICLE 5. CONTRACT DOCUMENTS.

The Contract Documents, which comprise the entire agreement between the owner and the Contractor concerning the Work, consists of the following:

- This Agreement;
- The Call for Bids;
- The Contractor's Proposal including the bid, bid schedule(s), information required of bidder, and all required certificates and affidavits;
- The performance bond and the labor and material payment bond;
- The Special Provisions;
- Addenda numbers 1 AND 2, inclusive;
- WSDOT Standard Specifications for Road, Bridge and Municipal Construction, 2008 edition;
- Amendments;
- Change Orders and written Change directives issued after the effective date of this Agreement;
- City of Oak Harbor Standard Details;
- WSDOT Standard Plans;
- Appendicies

There are no Contract Documents other than those listed in this Article 6. The Contract Documents may be amended only in writing by Change Order or Change Directive as provided in the Contract Documents.

ARTICLE 6. MISCELLANEOUS.

The Contractor specifically waives its immunity under applicable worker's compensation statutes, including, but not limited to RCW Title 51, which is specifically acknowledged by the Contractor. _____ (Contractor's initials)

No assignment of any of the Contractor's rights under or interests in the Contract Documents, including but not limited to rights to payment, will be allowed without the prior written consent of the Owner. Unless specifically stated in a written consent to an assignment, no assignment will release or discharge the Contractor-assignor from any duty or responsibility under the Contract Documents.

The Contract Documents are binding upon the Owner and the Contractor, and their respective partners, successors, assigns and legal representatives.

ARTICLE 7. INDEMNIFICATION ADDENDUM

**CITY OF OAK HARBOR
PAINT WEST RESERVOIR TANKS EXTERIORS CONTRACT ENG-09-02**

Contractor agrees to defend, indemnify and hold the City of Oak Harbor, its agents, and their sub-consultants harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this contract by Contractor or contractor's agents or employees to the fullest extent permitted by law and subject to the limitations provide below.

Contractor's duty to indemnify City, it agents and its Engineer, and their sub-consultants shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Owner or Owner's agents or employees.

Contractor's duty to indemnify Owner, its agents and its Engineer, and their sub-consultants for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) Owner's agents or employees, and (b) Contractor or contractor's agents or employees, shall apply only to the extent of negligence of Contractor or Contractor's agents or employees.

Contractor specifically and expressly waives any immunity that may be granted it under Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts; provided Contractors waiver of immunity by the provisions of this paragraph extends only to claims against Contractor by Owner and does not include, or extend to, any claims by Contractor's employees directly against Contractor.

Contractor's duty to defend, indemnify and hold Owner, its agents and its Engineer, and their sub-consultants harmless shall include as to all claims, demands, losses and liability to which is

applies, Owner's personnel-related costs, reasonable attorney's fees, court costs and all other claim-related expenses.

THE UNDERSIGNED HEREBY CERTIFY THAT THIS ADDENDUM WAS MUTUALLY NEGOTIATED.

| | |
|---------------------------|-------------------|
| Dated: _____ | Dated: _____ |
| Owner: CITY OF OAK HARBOR | Contractor: _____ |
| By: _____ | By: _____ |
| Title: _____ | Title: _____ |

PERFORMANCE BOND

We _____ as Principal, and _____ as Surety, jointly and severally bind ourselves, our heirs, successors and assigns as set forth herein to CITY OF OAK HARBOR (hereinafter called the Owner) for payment of the penal sum of \$_____ (US), lawful money of the United States in connection with the Owner's award to the Contractor of a contract for construction ("Contract") of the following project:

PAINT WEST RESERVOIR TANKS EXTERIORS

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Contractor shall in all respects faithfully perform all obligations and provisions in the said Contract, this obligation shall become null and void; otherwise, it shall remain in full force and effect, and Surety shall defend and indemnify Owner against any loss or damage due to the failure of the Principal to strictly perform all obligations of the Contract.

This bond shall remain in force for a period of at least two years after the Substantial Completion Date of the project, with respect to defective workmanship and materials, and shall otherwise secure all other obligations of the Contractor throughout any other periods of limitation.

This bond is provided pursuant to and in compliance with R.C.W. Chapter 39.08, the terms and requirements of which statute are incorporated herein as though fully set forth.

Surety agrees that no change, extension of time, modification, or addition to the terms of the Contract, or the work to be performed thereunder, or to the specifications shall in any way affect its obligation on this bond, and it hereby waives notice thereof.

The Contractor and Surety agree that if the Owner is required to engage the services of an attorney in connection with the enforcement of this bond, each shall be jointly and severally liable to pay the Owner reasonable attorneys' fees, costs and expenses incurred, with or without suit, in addition to the penal sum.

Surety certifies that it is an authorized surety bond issuer, properly authorized to transact surety business in Washington. Surety agrees to be bound by the laws of the State of Washington and subject itself to the jurisdiction of the courts or the State of Washington.

PERFORMANCE BOND – Continued

Executed in for original counterparts on _____, 20__.

CONTRACTOR

By _____

(Title)

(Attach acknowledgement of authorized representative of Contractor).

Any claims under this bond made in accordance with R.C.W 39.08 may be addressed to;

(Name and address of Surety)

(Name and address of Surety's agent of process in Washington if different from above)

(Telephone No. of Surety's Washington agent)

(Attach acknowledgment)

Surety

By _____

Its Attorney-in-Fact

NOTICE:

Sureties must be authorized to conduct surety business in Washington and have an agent for service of process in Washington. Certified copy of Power of Attorney must be attached.

LABOR AND MATERIAL PAYMENT BOND

We _____ as Principal, and _____ as Surety, jointly and severally bind ourselves, our heirs, successors and assigns as set forth herein to CITY OF OAK HARBOR (hereinafter called the Owner) for payment of the penal sum of \$ _____ (US), lawful money of the United States in connection with the Owner's award to the contractor of a contract for construction ("Contract") of the following project.

PAINT WEST RESERVOIR TANKS EXTERIORS

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Contractor shall in all respects faithfully perform all obligations and provisions in the said Contract, and pay all laborers, mechanics, subcontractors, materialmen, taxing authorizes and all persons who supply such person or persons or subcontractors with material, equipment and supplies for the carrying on of such work, this obligation shall become null and void; otherwise, it shall remain in full force and effect, and Surety shall defend and indemnify Owner against any loss or damage due to the failure of the Principal to strictly perform all obligations of the Contract.

This bond shall remain in force until completion of the project and acceptance by the Owner, and also for such period thereafter during which the law allows claims to be filed and sued upon.

This bond is provided pursuant to and in compliance with R.C.W. Chapter 39.08, the terms and requirements of which statute are incorporated herein as though fully set forth.

Surety agrees that no change, extension of time, modification, or addition to the terms of the Contract, or the work to be performed thereunder, or to the specifications shall in any way affect its obligation on this bond, and it hereby waives notice thereof.

The Contractor and Surety agree that if the Owner is required to engage the services of an attorney in connection with the enforcement of this bond, each shall be jointly and severally liable to pay the Owner reasonable attorneys' fees, costs and expenses incurred, with or without suit, in addition to the penal sum.

Surety certifies that it is an authorized surety bond issuer, properly authorized to transact surety business in Washington. Surety agrees to be bound by the laws of the State of Washington and subject itself to the jurisdiction of the courts or the State of Washington.

LABOR & MATERIAL PAYMENT BOND – Continued

Executed in for original counterparts on _____, 20__.

CONTRACTOR

By _____

(Title)

(Attach acknowledgement of authorized representative of Contractor).

Any claims under this bond made in accordance with R.C.W 39.08 may be addressed to;

_____ (Name and address of Surety)

_____ (Name and address of Surety's agent for service of
process in Washington if different from above)

_____ (Telephone No. of Surety's Washington agent)

(Attach acknowledgment)

Surety

By _____

Its Attorney-in-Fact

NOTICE:

Sureties must be authorized to conduct surety business in Washington and have an agent for service of process in Washington. Certified copy of Power of Attorney must be attached.

NOTE: THIS QUESTIONNAIRE MUST BE COMPLETED AND ATTACHED TO CERTIFICATE OF INSURANCE.

INSURANCE COVERAGE QUESTIONNAIRE

For : _____
(Name of Insured)

Project Title : **PAINT WEST RESERVOIR TANKS EXTERIORS**
Project Owner: **CITY OF OAK HARBOR**

Are the following coverages and/or conditions in effect?

| | Yes | No |
|---|-----|----|
| The Policy form is ISO Commercial General Liability form CG 20 10 10 01 (circle ONE). If no, attach a copy of the policy with required coverages clearly identified. | | |
| The Owner, its officials, officers, employees and volunteers are additional insureds as Respects (a) activities performed for the Owner by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, or (c) premises, owned, leased, or used by the Named Insured. | | |
| Products Completed operation coverage. | | |
| Personal Injury Liability Coverage | | |
| Broad Form Damage with X, C U Hazards included. | | |
| Blanket Contractual Liability coverage applying to this contract or Contractual Liability Coverage applying to this contract | | |
| Employers Liability – Stop Gap | | |
| 45 days written notice of cancellation to the City | | |

Deductibles Or SIRS GL _____ AL _____ Excess _____
Insurer's Best Rating GL _____ AL _____ Excess _____

This questionnaire is issued as a matter of information. This questionnaire is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies indicated on the attached Certificate of Insurance.

Agency/Broker

Address

Name of person to contact

Completed by (type)

Completed by (Signature)

Telephone Number

LETTER OF EMPLOYMENT OF SUBCONTRACTOR

_____, 2009

TO:
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, Washington 98277

Re: contract No. 08-03

Dear Sir:

We, the undersigned, request permission of the city of Oak Harbor to employ a subcontractor in order to fully perform the work covered by the terms of that written contract made and executed by and between the City of Oak Harbor and ourselves, _____ on the ____ day of _____, 2008, designated as Contract No. 08-03

We intend to employ the firm of:

- A.
- B.
- C.

for the purpose of performing the following described work, _____

_____ and represent and warrant that the work shall be performed by said subcontractors, in a good and workmanlike manner and under our direct supervision. We further represent and warrant that the work to be performed by them constitutes approximately _____ percent of the total dollar value of said contract.

Very truly yours,

Contractor

Signature of Surety

PART 3. AMENDMENTS, GENERAL SPECIAL PROVISIONS, AND SPECIAL PROVISIONS TO THE STANDARD SPECIFICATIONS

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**DIVISION 1
GENERAL REQUIREMENTS**

1-01.3 Definitions

(May 25, 2006 APWA GSP)

This Section is supplemented with the following:

All references in the Standard Specifications to the terms "State", "Department of Transportation", "Washington State Transportation Commission", "Commission", "Secretary of Transportation", "Secretary", "Headquarters", and "State Treasurer" shall be revised to read "Contracting Agency".

All references to "State Materials Laboratory" shall be revised to read "Contracting Agency designated location".

The venue of all causes of action arising from the advertisement, award, execution, and performance of the contract shall be in the Superior Court of the County where the Contracting Agency's headquarters are located.

Additive

A supplemental unit of work or group of bid items, identified separately in the proposal, which may, at the discretion of the Contracting Agency, be awarded in addition to the base bid.

Alternate

One of two or more units of work or groups of bid items, identified separately in the proposal, from which the Contracting Agency may make a choice between different methods or material of construction for performing the same work.

Contract Documents

See definition for "Contract".

Contract Time The period of time established by the terms and conditions of the contract within which the work must be physically completed.

Bid Opening Date

The date on which the Contracting Agency publicly opens and reads the bids.

Award Date

The date of the formal decision of the Contracting Agency to accept the lowest responsible and responsive bidder for the work.

Contract Execution Date

The date the Contracting Agency officially binds the agency to the contract.

1 **Notice to Proceed Date**

2 The date stated in the Notice to Proceed on which the contract time begins.
3

4 **Substantial Completion Date**

5 The day the Engineer determines the Contracting Agency has full and unrestricted use and
6 benefit of the facilities, both from the operational and safety standpoint, and only minor
7 incidental work, replacement of temporary substitute facilities, or correction or repair
8 remains for the physical completion of the total contract.
9

10 **Physical Completion Date**

11 The day all of the work is physically completed on the project. All documentation required
12 by the contract and required by law does not necessarily need to be furnished by the
13 Contractor by this date.
14

15 **Completion Date**

16 The day all the work specified in the contract is completed and all the obligations of the
17 Contractor under the contract are fulfilled by the Contractor. All documentation required by
18 the contract and required by law must be furnished by the Contractor before establishment of
19 this date.
20

21 **Final Acceptance Date**

22 The date on which the Contracting Agency accepts the work as complete.
23

24 **Notice of Award**

25 The written notice from the Contracting Agency to the successful bidder signifying the
26 Contracting Agency's acceptance of the bid.
27

28 **Notice to Proceed**

29 The written notice from the Contracting Agency or Engineer to the Contractor authorizing
30 and directing the Contractor to proceed with the work and establishing the date on which the
31 contract time begins.
32

33 **Traffic**

34 Both vehicular and non-vehicular traffic, such as pedestrians, bicyclists, wheelchairs, and
35 equestrian traffic.
36

37 **1-02 BID PROCEDURES AND CONDITIONS**

38
39 **1-02.1 Prequalification of Bidders**

40
41 Delete this Section and replace it with the following:
42

1 **1-02.1 Qualifications of Bidder**

2 *(October 1, 2005 APWA GSP)*

3
4 Bidders shall be qualified by experience, financing, equipment, and organization to do the
5 work called for in the Contract Documents. The Contracting Agency reserves the right to
6 take whatever action it deems necessary to ascertain the ability of the bidder to perform the
7 work satisfactorily.

8
9 **1-02.2 Plans and Specifications**

10 *(October 1, 2005 APWA GSP)*

11
12 Delete this section and replace it with the following:

13
14 Information as to where Bid Documents can be obtained or reviewed will be found in the
15 Call for Bids (Advertisement for Bids) for the work.

16
17 After award of the contract, plans and specifications will be issued to the Contractor at no
18 cost as detailed below:

| To Prime Contractor | No. of Sets | Basis of Distribution |
|----------------------------|--------------------|-------------------------------------|
| Contract Provisions | 4 | Furnished automatically upon award. |

19
20
21 Additional plans and Contract Provisions may be purchased by the Contractor by payment of
22 the cost stated in the Call for Bids.

23
24 **1-02.5 Proposal Forms**

25 *(October 1, 2005 APWA GSP)*

26
27 Delete this section and replace it with the following:

28
29 At the request of a bidder, the Contracting Agency will provide a proposal form for any
30 project on which the bidder is eligible to bid.

31
32 The proposal form will identify the project and its location and describe the work. It will also
33 list estimated quantities, units of measurement, the items of work, and the materials to be
34 furnished at the unit bid prices. The bidder shall complete spaces on the proposal form that
35 call for, but are not limited to, unit prices; extensions; summations; the total bid amount;
36 signatures; date; and, where applicable, retail sales taxes and acknowledgment of addenda;
37 the bidder's name, address, telephone number, and signature; the bidder's D/M/WBE
38 commitment, if applicable; a State of Washington Contractor's Registration Number; and a
39 Business License Number, if applicable. Bids shall be completed by typing or shall be
40 printed in ink by hand, preferably in black ink. The required certifications are included as
41 part of the proposal form.
42

1 The Contracting Agency reserves the right to arrange the proposal forms with alternates and
2 additives, if such be to the advantage of the Contracting Agency. The bidder shall bid on all
3 alternates and additives set forth in the proposal forms unless otherwise specified.
4

5 Any correction to a bid made by interlineation, alteration, or erasure, shall be initialed by the
6 signer of the bid. The bidder shall make no stipulation on the Bid Form, nor qualify the bid in
7 any manner.
8

9 A bid by a corporation shall be executed in the corporate name, by the president or a vice
10 president (or other corporate officer accompanied by evidence of authority to sign).
11

12 A bid by a partnership shall be executed in the partnership name, and signed by a partner. A
13 copy of the partnership agreement shall be submitted with the Bid Form if any D/M/WBE
14 requirements are to be satisfied through such an agreement.
15

16 A bid by a joint venture shall be executed in the joint venture name and signed by a member
17 of the joint venture. A copy of the joint venture agreement shall be submitted with the Bid
18 Form if any D/W/MBE requirements are to be satisfied through such an agreement.
19

20 **1-02.6 Preparation of Proposal**

21 *(January 23, 2006 APWA GSP)*

22 Supplement the second paragraph with the following:
23

- 24 4. If a minimum bid amount has been established for any item, the unit price must equal or
25 exceed the minimum amount stated.
26

27 **1-02.7 Bid Deposit**

28 *(October 1, 2005 APWA GSP)*
29

30 Supplement this section with the following:
31

32 Bid bonds shall contain the following:

- 33 1. Contracting Agency-assigned number for the project;
34 2. Name of the project;
35 3. The Contracting Agency named as obligee;
36 4. The amount of the bid bond stated either as a dollar figure or as a percentage which
37 represents five percent of the maximum bid amount that could be awarded;
38 5. Signature of the bidder's officer empowered to sign official statements. The signature of
39 the person authorized to submit the bid should agree with the signature on the bond, and
40 the title of the person must accompany the said signature;
41 6. The signature of the surety's officer empowered to sign the bond and the power of
42 attorney.
43

1 If so stated in the Contract Provisions, bidder must use the bond form included in the
2 Contract Provisions.

3
4 **1-02.9 Delivery of Proposal**
5 *(October 1, 2005 APWA GSP)*

6
7 Revise the first paragraph to read:

8
9 Each proposal shall be submitted in a sealed envelope, with the Project Name and Project
10 Number as stated in the Advertisement for Bids clearly marked on the outside of the
11 envelope, or as otherwise stated in the Bid Documents, to ensure proper handling and
12 delivery.

13
14 **1-02.13 Irregular Proposals**
15 *(October 1, 2005 APWA GSP)*

16
17 Revise item 1 to read:

- 18
19 1. A proposal will be considered irregular and will be rejected if:
- 20 a. The bidder is not prequalified when so required;
 - 21 b. The authorized proposal form furnished by the Contracting Agency is not used or is
22 altered;
 - 23 c. The completed proposal form contains any unauthorized additions, -deletions,
24 alternate bids, or conditions;
 - 25 d. The bidder adds provisions reserving the right to reject or accept the award, or enter
26 into the contract;
 - 27 e. A price per unit cannot be determined from the bid proposal;
 - 28 f. The proposal form is not properly executed;
 - 29 g. The bidder fails to submit or properly complete a subcontractor list, if applicable, as
30 required in Section 1 02.6.
 - 31 h. The bidder fails to submit or properly complete a Disadvantaged, Minority or
32 Women's Business Enterprise Certification, if applicable, as required in Section 1-
33 02.6; or
 - 34 i. The bid proposal does not constitute a definite and unqualified offer to meet the
35 material terms of the bid invitation.

36
37 **1-02.14 Disqualification of Bidders**
38 *(September 12, 2007 APWA GSP)*

39
40 Revise this section to read:

- 41
42 1. A bidder will be deemed not responsible and the proposal rejected if the bidder does not
43 meet the responsibility criteria in RCW 39.04.
- 44
45 2. A bidder may be deemed not responsible and the proposal rejected if:

- a. More than one proposal is submitted for the same project from a bidder under the same or different names;
- b. Evidence of collusion exists with any other bidder or potential bidder. Participants in collusion will be restricted from submitting further bids;
- c. The bidder, in the opinion of the Contracting Agency, is not qualified for the work or to the full extent of the bid, or to the extent that the bid exceeds the authorized prequalification amount as may have been determined by a prequalification of the bidder;
- d. An unsatisfactory performance record exists based on past or current Contracting Agency work or for work done for others, as judged from the standpoint of conduct of the work; workmanship; progress; affirmative action; equal employment opportunity practices; or Disadvantaged Business Enterprise, Minority Business Enterprise, or Women's Business Enterprise utilization;
- e. There is uncompleted work (Contracting Agency or otherwise) which might hinder or prevent the prompt completion of the work bid upon;
- f. The bidder failed to settle bills for labor or materials on past or current contracts;
- g. The bidder has failed to complete a written public contract or has been convicted of a crime arising from a previous public contract;
- h. The bidder is unable, financially or otherwise, to perform the work; or
 - i. There are any other reasons deemed proper by the Contracting Agency.

1-02.15 Pre Award Information
(October 1, 2005 APWA GSP)

Revise this section to read:

Before awarding any contract, the Contracting Agency may require one or more of these items or actions of the apparent lowest responsible bidder:

1. A complete statement of the origin, composition, and manufacture of any or all materials to be used,
2. Samples of these materials for quality and fitness tests,
3. A progress schedule (in a form the Contracting Agency requires) showing the order of and time required for the various phases of the work,
4. A breakdown of costs assigned to any bid item,
5. Attendance at a conference with the Engineer or representatives of the Engineer,
6. Obtain, and furnish a copy of, a business license to do business in the city or county where the work is located.
7. A copy of State of Washington Contractor's Registration, or
8. Any other information or action taken that is deemed necessary to ensure that the bidder is the lowest responsible bidder.

1 **1-03.1 Consideration of Bids**
2 *(January 23, 2006 APWA GSP)*

3
4 Revise the first paragraph to read:

5
6 After opening and reading proposals, the Contracting Agency will check them for correctness
7 of extensions of the prices per unit and the total price. If a discrepancy exists between the
8 price per unit and the extended amount of any bid item, the price per unit will control. If a
9 minimum bid amount has been established for any item and the bidder's unit or lump sum
10 price is less than the minimum specified amount, the Contracting Agency will unilaterally
11 revise the unit or lump sum price, to the minimum specified amount and recalculate the
12 extension. The total of extensions, corrected where necessary, including sales taxes where
13 applicable and such additives and/or alternates as selected by the Contracting Agency, will be
14 used by the Contracting Agency for award purposes and to fix the Awarded Contract Price
15 amount and the amount of the contract bond.

16
17 **1-03.3 Execution of Contract**
18 *(October 1, 2005 APWA GSP)*

19
20 Revise this section to read:

21
22 Copies of the Contract Provisions, including the unsigned Form of Contract, will be available
23 for signature by the successful bidder on the first business day following award. The number
24 of copies to be executed by the Contractor will be determined by the Contracting Agency.

25
26 Within 10 calendar days after the award date, the successful bidder shall return the signed
27 Contracting Agency-prepared contract, an insurance certification as required by Section 1-
28 07.18, and a satisfactory bond as required by law and Section 1-03.4. Before execution of the
29 contract by the Contracting Agency, the successful bidder shall provide any pre-award
30 information the Contracting Agency may require under Section 1-02.15.

31
32 Until the Contracting Agency executes a contract, no proposal shall bind the Contracting
33 Agency nor shall any work begin within the project limits or within Contracting Agency-
34 furnished sites. The Contractor shall bear all risks for any work begun outside such areas and
35 for any materials ordered before the contract is executed by the Contracting Agency.

36
37 If the bidder experiences circumstances beyond their control that prevents return of the
38 contract documents within the calendar days after the award date stated above, the
39 Contracting Agency may grant up to a maximum of 5 additional calendar days for return of
40 the documents, provided the Contracting Agency deems the circumstances warrant it.

41
42 **1-03.4 Contract Bond**
43 *(October 1, 2005 APWA GSP)*

44
45 Revise the first paragraph to read:
46

1 The successful bidder shall provide an executed contract bond for the full contract amount.
2 This contract bond shall:

- 3 1. Be on a Contracting Agency-furnished form;
- 4 2. Be signed by an approved surety (or sureties) that:
 - 5 a. Is registered with the Washington State Insurance Commissioner, and
 - 6 b. Appears on the current Authorized Insurance List in the State of Washington
 - 7 published by the Office of the Insurance Commissioner,
- 8 3. Be conditioned upon the faithful performance of the contract by the Contractor within the
9 prescribed time;
- 10 4. Guarantee that the surety shall indemnify, defend, and protect the Contracting Agency
11 against any claim of direct or indirect loss resulting from the failure:
 - 12 a. Of the Contractor (or any of the employees, subcontractors, or lower tier
13 subcontractors of the Contractor) to faithfully perform the contract, or
 - 14 b. Of the Contractor (or the subcontractors or lower tier subcontractors of the
15 Contractor) to pay all laborers, mechanics, subcontractors, lower tier subcontractors,
16 materialperson, or any other person who provides supplies or provisions for carrying
17 out the work;
- 18 5. Be accompanied by a power of attorney for the Surety's officer empowered to sign the
19 bond; and
- 20 6. Be signed by an officer of the Contractor empowered to sign official statements (sole
21 proprietor or partner). If the Contractor is a corporation, the bond must be signed by the
22 president or vice-president, unless accompanied by written proof of the authority of the
23 individual signing the bond to bind the corporation (i.e., corporate resolution, power of
24 attorney or a letter to such effect by the president or vice-president).

25
26 **1-04.2 Coordination of Contract Documents, Plans, Special Provisions, Specifications,**
27 **and Addenda**

28 *(October 1, 2005 APWA GSP)*

29 Revise the second paragraph to read:

30
31 Any inconsistency in the parts of the contract shall be resolved by following this order of
32 precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

- 33 1. Addenda,
- 34 2. Proposal Form,
- 35 3. Special Provisions, including APWA General Special Provisions, if they are included,
- 36 4. Amendments to the Standard Specifications,
- 37 5. WSDOT Standard Specifications for Road, Bridge and Municipal Construction,
- 38 6. Contracting Agency's Standard Plans (if any), and
- 39 7. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

1
2 **1-05.7 Removal of Defective and Unauthorized Work**
3 *(October 1, 2005 APWA GSP)*

4
5 Supplement this section with the following:

6
7 If the Contractor fails to remedy defective or unauthorized work within the time specified in
8 a written notice from the Engineer, or fails to perform any part of the work required by the
9 Contract Documents, the Engineer may correct and remedy such work as may be identified
10 in the written notice, with Contracting Agency forces or by such other means as the
11 Contracting Agency may deem necessary.

12
13 If the Contractor fails to comply with a written order to remedy what the Engineer
14 determines to be an emergency situation, the Engineer may have the defective and
15 unauthorized work corrected immediately, have the rejected work removed and replaced, or
16 have work the Contractor refuses to perform completed by using Contracting Agency or
17 other forces. An emergency situation is any situation when, in the opinion of the Engineer, a
18 delay in its remedy could be potentially unsafe, or might cause serious risk of loss or damage
19 to the public.

20
21 Direct or indirect costs incurred by the Contracting Agency attributable to correcting and
22 remedying defective or unauthorized work, or work the Contractor failed or refused to
23 perform, shall be paid by the Contractor. Payment will be deducted by the Engineer from
24 monies due, or to become due, the Contractor. Such direct and indirect costs shall include in
25 particular, but without limitation, compensation for additional professional services required,
26 and costs for repair and replacement of work of others destroyed or damaged by correction,
27 removal, or replacement of the Contractor's unauthorized work.

28
29 No adjustment in contract time or compensation will be allowed because of the delay in the
30 performance of the work attributable to the exercise of the Contracting Agency's rights
31 provided by this Section.

32
33 The rights exercised under the provisions of this section shall not diminish the Contracting
34 Agency's right to pursue any other avenue for additional remedy or damages with respect to
35 the Contractor's failure to perform the work as required.

36
37 **1-05.11 Final Inspection**

38
39 Delete this section and replace it with the following:

40
41 **1-05.11 Final Inspections and Operational Testing**
42 *(October 1, 2005 APWA GSP)*

43
44 **1-05.11(1) Substantial Completion Date**

45
46 When the Contractor considers the work to be substantially complete, the Contractor shall so
47 notify the Engineer and request the Engineer establish the Substantial Completion Date. The

1 Contractor's request shall list the specific items of work that remain to be completed in order
2 to reach physical completion. The Engineer will schedule an inspection of the work with the
3 Contractor to determine the status of completion. The Engineer may also establish the
4 Substantial Completion Date unilaterally.
5

6 If, after this inspection, the Engineer concurs with the Contractor that the work is
7 substantially complete and ready for its intended use, the Engineer, by written notice to the
8 Contractor, will set the Substantial Completion Date. If, after this inspection the Engineer
9 does not consider the work substantially complete and ready for its intended use, the
10 Engineer will, by written notice, so notify the Contractor giving the reasons therefor.
11

12 Upon receipt of written notice concurring in or denying substantial completion, whichever is
13 applicable, the Contractor shall pursue vigorously, diligently and without unauthorized
14 interruption, the work necessary to reach Substantial and Physical Completion. The
15 Contractor shall provide the Engineer with a revised schedule indicating when the Contractor
16 expects to reach substantial and physical completion of the work.
17

18 The above process shall be repeated until the Engineer establishes the Substantial
19 Completion Date and the Contractor considers the work physically complete and ready for
20 final inspection.
21

22 **1-05.11(2) Final Inspection and Physical Completion Date**

23

24 When the Contractor considers the work physically complete and ready for final inspection,
25 the Contractor by written notice, shall request the Engineer to schedule a final inspection.
26 The Engineer will set a date for final inspection. The Engineer and the Contractor will then
27 make a final inspection and the Engineer will notify the Contractor in writing of all
28 particulars in which the final inspection reveals the work incomplete or unacceptable. The
29 Contractor shall immediately take such corrective measures as are necessary to remedy the
30 listed deficiencies. Corrective work shall be pursued vigorously, diligently, and without
31 interruption until physical completion of the listed deficiencies. This process will continue
32 until the Engineer is satisfied the listed deficiencies have been corrected.
33

34 If action to correct the listed deficiencies is not initiated within 7 days after receipt of the
35 written notice listing the deficiencies, the Engineer may, upon written notice to the
36 Contractor, take whatever steps are necessary to correct those deficiencies pursuant to
37 Section 1-05.7.
38

39 The Contractor will not be allowed an extension of contract time because of a delay in the
40 performance of the work attributable to the exercise of the Engineer's right hereunder.
41

42 Upon correction of all deficiencies, the Engineer will notify the Contractor and the
43 Contracting Agency, in writing, of the date upon which the work was considered physically
44 complete. That date shall constitute the Physical Completion Date of the contract, but shall
45 not imply acceptance of the work or that all the obligations of the Contractor under the
46 contract have been fulfilled.
47

1
2 Add the following new section:
3

4 **1-05.16 Water and Power**
5 *(October 1, 2005 APWA GSP)*
6

7 The Contractor shall make necessary arrangements, and shall bear the costs for power and
8 water necessary for the performance of the work, unless the contract includes power and
9 water as a pay item.
10

11 Add the following new section:
12

13 **1-05.17 Oral Agreements**
14 *(October 1, 2005 AWPA GSP)*
15

16 No oral agreement or conversation with any officer, agent, or employee of the Contracting
17 Agency, either before or after execution of the contract, shall affect or modify any of the
18 terms or obligations contained in any of the documents comprising the contract. Such oral
19 agreement or conversation shall be considered as unofficial information and in no way
20 binding upon the Contracting Agency, unless subsequently put in writing and signed by the
21 Contracting Agency.
22
23

24 **1-07.1 Laws to be Observed**
25 *(October 1, 2005 APWA GSP)*
26

27 Supplement this section with the following:
28

29 In cases of conflict between different safety regulations, the more stringent regulation shall
30 apply.
31

32 The Washington State Department of Labor and Industries shall be the sole and paramount
33 administrative agency responsible for the administration of the provisions of the Washington
34 Industrial Safety and Health Act of 1973 (WISHA).
35

36 The Contractor shall maintain at the project site office, or other well known place at the
37 project site, all articles necessary for providing first aid to the injured. The Contractor shall
38 establish, publish, and make known to all employees, procedures for ensuring immediate
39 removal to a hospital, or doctor's care, persons, including employees, who may have been
40 injured on the project site. Employees should not be permitted to work on the project site
41 before the Contractor has established and made known procedures for removal of injured
42 persons to a hospital or a doctor's care.
43

44 The Contractor shall have sole responsibility for the safety, efficiency, and adequacy of the
45 Contractor's plant, appliances, and methods, and for any damage or injury resulting from
46 their failure, or improper maintenance, use, or operation. The Contractor shall be solely and

1 completely responsible for the conditions of the project site, including safety for all persons
2 and property in the performance of the work. This requirement shall apply continuously, and
3 not be limited to normal working hours. The required or implied duty of the Engineer to
4 conduct construction review of the Contractor's performance does not, and shall not, be
5 intended to include review and adequacy of the Contractor's safety measures in, on, or near
6 the project site.

7
8 **1-07.2 State Sales Tax**

9
10 Delete this section, including its sub-sections, in its entirety and replace it with the following:

11
12 **1-07.2 State Sales Tax**
13 *(October 1, 2005 APWA GSP)*

14
15 **1-07.2(1) General**

16
17 The Washington State Department of Revenue has issued special rules on the State sales tax.
18 Sections 1-07.2(1) through 1-07.2(4) are meant to clarify those rules. The Contractor should
19 contact the Washington State Department of Revenue for answers to questions in this area.
20 The Contracting Agency will not adjust its payment if the Contractor bases a bid on a
21 misunderstood tax liability.

22
23 The Contractor shall include all Contractor-paid taxes in the unit bid prices or other contract
24 amounts. In some cases, however, state retail sales tax will not be included. Section 1-
25 07.2(3) describes this exception.

26
27 The Contracting Agency will pay the retained percentage only if the Contractor has obtained
28 from the Washington State Department of Revenue a certificate showing that all contract-
29 related taxes have been paid (RCW 60.28.050). The Contracting Agency may deduct from
30 its payments to the Contractor any amount the Contractor may owe the Washington State
31 Department of Revenue, whether the amount owed relates to this contract or not. Any
32 amount so deducted will be paid into the proper State fund.

33
34 **1-07.2(2) State Sales Tax — Rule 171**

35
36 WAC 458-20-171, and its related rules, apply to building, repairing, or improving streets,
37 roads, etc., which are owned by a municipal corporation, or political subdivision of the state,
38 or by the United States, and which are used primarily for foot or vehicular traffic. This
39 includes storm or combined sewer systems within and included as a part of the street or road
40 drainage system and power lines when such are part of the roadway lighting system. For
41 work performed in such cases, the Contractor shall include Washington State Retail Sales
42 Taxes in the various unit bid item prices, or other contract amounts, including those that the
43 Contractor pays on the purchase of the materials, equipment, or supplies used or consumed in
44 doing the work.

1 **1-07.2(3) State Sales Tax — Rule 170**

2
3 WAC 458-20-170, and its related rules, apply to the constructing and repairing of new or
4 existing buildings, or other structures, upon real property. This includes, but is not limited to,
5 the construction of streets, roads, highways, etc., owned by the state of Washington; water
6 mains and their appurtenances; sanitary sewers and sewage disposal systems unless such
7 sewers and disposal systems are within, and a part of, a street or road drainage system;
8 telephone, telegraph, electrical power distribution lines, or other conduits or lines in or above
9 streets or roads, unless such power lines become a part of a street or road lighting system;
10 and installing or attaching of any article of tangible personal property in or to real property,
11 whether or not such personal property becomes a part of the realty by virtue of installation.
12

13 For work performed in such cases, the Contractor shall collect from the Contracting Agency,
14 retail sales tax on the full contract price. The Contracting Agency will automatically add this
15 sales tax to each payment to the Contractor. For this reason, the Contractor shall not include
16 the retail sales tax in the unit bid item prices, or in any other contract amount subject to Rule
17 170, with the following exception.
18

19 Exception: The Contracting Agency will not add in sales tax for a payment the Contractor or
20 a subcontractor makes on the purchase or rental of tools, machinery, equipment, or
21 consumable supplies not integrated into the project. Such sales taxes shall be included in the
22 unit bid item prices or in any other contract amount.
23

24 **1-07.2(4) Services**

25
26 The Contractor shall not collect retail sales tax from the Contracting Agency on any contract
27 wholly for professional or other services (as defined in Washington State Department of
28 Revenue Rules 138 and 244).
29

30 **1-07.18 Public Liability and Property Damage Insurance**

31
32 Delete this section in its entirety, and replace it with the following:
33

34 The Contractor shall procure and maintain for the duration of the Agreement, insurance
35 against claims for injuries to persons or damage to property which may arise from or in
36 connection with the performance of the work hereunder by the Contractor, their agents,
37 representatives, employees or subcontractors.
38

39 No Limitation. Contractor's maintenance of insurance as required by the agreement shall not
40 be construed to limit the liability of the Contractor to the coverage provided by such
41 insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
42

43 **A. Minimum Scope of Insurance**

44
45 Contractor shall obtain insurance of the types described below:
46

1 1. Automobile Liability insurance covering all owned, non-owned, hired and leased
2 vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a
3 substitute form providing equivalent liability coverage. If necessary, the policy shall be
4 endorsed to provide contractual liability coverage.

5
6 2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00
7 01 and shall cover liability arising from premises, operations, stop gap liability, independent
8 contractors, products-completed operations, personal injury and advertising injury, and
9 liability assumed under an insured contract. The Commercial General Liability insurance
10 shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11
11 85. There shall be no endorsement or modification of the Commercial General Liability
12 insurance for liability arising from explosion, collapse or underground property damage. The
13 City shall be named as an insured under the Contractor's Commercial General Liability
14 insurance policy with respect to the work performed for the City using ISO Additional
15 Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations
16 endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

17
18 3. Workers' Compensation coverage as required by the Industrial Insurance laws of the
19 State of Washington.

20
21 4. Bidders Risk insurance covering interests of the City, the Contractor, Subcontractors, and
22 Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form
23 and shall insure against the perils of fire and extended coverage and physical loss or damage
24 including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary
25 buildings and debris removal. This Builders Risk insurance covering the work will have a
26 deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor.
27 Higher deductibles for flood and earthquake perils may be accepted by the City upon written
28 request by the Contractor and written acceptance by the City. Any increased deductibles
29 accepted by the City will remain the responsibility of the Contractor. The Builders Risk
30 insurance shall be maintained until final acceptance of the work by the City.

31
32 B. Minimum Amounts of Insurance

33
34 Contactor shall maintain the following insurance limits:

35
36 1. Automobile Liability insurance with a minimum combined single limit for bodily injury
37 and property damage of \$1,000,000 per accident.

38
39 2. Commercial General Liability insurance shall be written with limits no less than
40 \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-
41 completed operations aggregate limit.

42
43 3. Builders Risk insurance shall be written in the amount of the completed value of the
44 project with no coinsurance provisions.

45
46 C. Other Insurance Provisions

1 The insurance policies are to contain, or be endorsed to contain, the following provisions for
2 Automobile Liability, Commercial General Liability and Builders Risk insurance:
3

4 1. The Contractor's insurance coverage shall be primary insurance as respect the City. Any
5 insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess
6 of the Contractor's insurance and shall not contribute with it.
7

8 2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled
9 by either party, except after thirty (30) days prior written notice by certified mail, return
10 receipt requested, has been given to the City.
11

12 D. Contractor's Insurance For Other Losses 13

14 The Contractor shall assume full responsibility for all loss or damage from any cause
15 whatsoever to any tools, Contactor's employee owned tools, machinery, equipment, or motor
16 vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or
17 contractors as well as to any temporary structures, scaffolding and protective fences.
18

19 E. Waiver of Subrogation 20

21 The Contractor and the City waive all rights against each other any of their Subcontractors,
22 Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or
23 other perils to the extend covered by Builders Risk insurance or other property insurance
24 obtained pursuant to the Insurance Requirements Section of this Contract or other property
25 insurance applicable to the work. The policies shall provide such waivers by endorsement or
26 otherwise.
27

28 F. Acceptability of Insurers 29

30 Insurance is to be placed with insures with a current A.M. Best rating of not less than A:VII.
31

32 G. Verification of Coverage 33

34 Contractor shall furnish the City with original certificates and a copy of the amendatory
35 endorsements, including but not necessarily limited to the additional insured endorsement,
36 evidencing the Automobile Liability and Commercial General Liability insurance of the
37 Contractor before commencement of the work. Before any exposure to loss may occur, the
38 Contractor shall file with the City a copy of the Builders Risk insurance policy that includes
39 all applicable conditions, exclusion, definitions, terms and endorsements related to this
40 project.
41

1 H. Subcontractors
2

3 Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same
4 insurance coverage and limits as stated herein for the Contractor (with the exception of
5 Builders Risk insurance). Upon request the City, the Contractor shall provide evidence of
6 such insurance.
7

8
9 **1-08.0(1) Preconstruction Conference**

10 *(May 25, 2006 APWA GSP)*
11

12 Prior to the Contractor beginning the work, a preconstruction conference will be held
13 between the Contractor, the Engineer and such other interested parties as may be invited.
14 The purpose of the preconstruction conference will be:

- 15 1. To review the initial progress schedule;
- 16 2. To establish a working understanding among the various parties associated or affected by
17 the work;
- 18 3. To establish and review procedures for progress payment, notifications, approvals,
19 submittals, etc.;
- 20 4. To establish normal working hours for the work;
- 21 5. To review safety standards and traffic control; and
- 22 6. To discuss such other related items as may be pertinent to the work.
23

24 The Contractor shall prepare and submit at the preconstruction meeting the following:

- 25 1. A breakdown of all lump sum items;
- 26 2. A preliminary schedule of working drawing submittals; and
- 27 3. A list of material sources for approval if applicable.
28

29 Add the following new section:
30

31 **1-08.0(2) Hours of Work**

32 *(May 25, 2006 APWA GSP)*
33

34 Except in the case of emergency or unless otherwise approved by the Contracting Agency,
35 the normal straight time working hours for the contract shall be any consecutive 8-hour
36 period between 7:00 a.m. and 6:00 p.m. of a working day with a maximum 1-hour lunch
37 break and a 5-day work week. The normal straight time 8-hour working period for the
38 contract shall be established at the preconstruction conference or prior to the Contractor
39 commencing the work.
40

41 If a Contractor desires to perform work on holidays, Saturdays, Sundays, or before 7:00 a.m.
42 or after 6:00 p.m. on any day, the Contractor shall apply in writing to the Engineer for
43 permission to work such times. Permission to work longer than an 8-hour period between
44 7:00 a.m. and 6:00 p.m. is not required. Such requests shall be submitted to the Engineer no

1 later than noon on the working day prior to the day for which the Contractor is requesting
2 permission to work.
3

4 Permission to work between the hours of 10:00 p.m. and 7:00 a.m. during weekdays and
5 between the hours of 10:00 p.m. and 9:00 a.m. on weekends or holidays may also be subject
6 to noise control requirements. Approval to continue work during these hours may be
7 revoked at any time the Contractor exceeds the Contracting Agency's noise control
8 regulations or complaints are received from the public or adjoining property owners
9 regarding the noise from the Contractor's operations. The Contractor shall have no claim for
10 damages or delays should such permission be revoked for these reasons.
11

12 Permission to work Saturdays, Sundays, holidays or other than the agreed upon normal
13 straight time working hours Monday through Friday may be given subject to certain other
14 conditions set forth by the Contracting Agency or Engineer. These conditions may include
15 but are not limited to: requiring the Engineer or such assistants as the Engineer may deem
16 necessary to be present during the work; requiring the Contractor to reimburse the
17 Contracting Agency for the costs in excess of straight-time costs for Contracting Agency
18 employees who worked during such times, on non Federal aid projects; considering the work
19 performed on Saturdays, Sundays, and holidays as working days with regards to the contract
20 time; and considering multiple work shifts as multiple working days with respect to contract
21 time even though the multiple shifts occur in a single 24-hour period. Assistants may
22 include, but are not limited to, survey crews; personnel from the Contracting Agency's
23 material testing lab; inspectors; and other Contracting Agency employees when in the
24 opinion of the Engineer, such work necessitates their presence.
25

26 Add the following new section:
27

28 **1-08.0(3) Reimbursement for Overtime Work of Contracting Agency Employees**
29 *(May 25, 2006 APWA GSP; may not be used on FHWA-funded projects)*
30

31 Where the Contractor elects to work on a Saturday, Sunday, or holiday, or longer than an 8-
32 hour work shift on a regular working day, as defined in the Standard Specifications, such
33 work shall be considered as overtime work. On all such overtime work an inspector will be
34 present, and a survey crew may be required at the discretion of the Engineer. In such case,
35 the Contracting Agency may deduct from amounts due or to become due to the Contractor
36 for the costs in excess of the straight-time costs for employees of the Contracting Agency
37 required to work overtime hours.
38

39 The Contractor by these specifications does hereby authorize the Engineer to deduct such
40 costs from the amount due or to become due to the Contractor.
41

42 **1-08.1 Subcontracting - D/M/WBE Reporting**
43 *(October 1, 2005) APWA GSP; may not be used on FHWA-funded projects)*
44

45 Revise the seventh paragraph to read:
46

1 On all projects funded with Contracting Agency funds only, the Contractor shall certify to
2 the actual amounts paid Disadvantaged, Minority, or Women's Business Enterprise firms that
3 were used as subcontractors, lower tier subcontractors, manufacturers, regular dealers, or
4 service providers on the contract. This certification shall be submitted to the Engineer, on
5 the form provided by the Engineer, calendar days after physical completion of the contract,
6 whichever comes first.

7
8 Revise this section to read:

9
10 **1-08.4 Notice to Proceed and Prosecution of the Work**
11 *(October 1, 2005 APWA GSP)*

12
13 Notice to Proceed will be given after the contract has been executed and the contract bond
14 and evidence of insurance have been approved and filed by the Contracting Agency. The
15 Contractor shall not commence with the work until the Notice to Proceed has been given by
16 the Engineer. The Contractor shall commence construction activities on the project site
17 within ten days of the Notice to Proceed Date, unless otherwise approved in writing. The
18 Contractor shall diligently pursue the work to the physical completion date within the time
19 specified in the contract. Voluntary shutdown or slowing of operations by the Contractor
20 shall not relieve the Contractor of the responsibility to complete the work within the time(s)
21 specified in the contract.

22
23 **1-08.5 Time for Completion**
24 *(June 28, 2007 APWA GSP, Option A)*

25
26 Revise the third and fourth paragraphs to read:

27
28 Contract time shall begin on the first working day following the Notice to Proceed Date.

29
30 Each working day shall be charged to the contract as it occurs, until the contract work is
31 physically complete. If substantial completion has been granted and all the authorized
32 working days have been used, charging of working days will cease. Each week the Engineer
33 will provide the Contractor a statement that shows the number of working days: (1) charged
34 to the contract the week before; (2) specified for the physical completion of the contract; and
35 (3) remaining for the physical completion of the contract. The statement will also show the
36 nonworking days and any partial or whole day the Engineer declares as unworkable. Within
37 10 calendar days after the date of each statement, the Contractor shall file a written protest of
38 any alleged discrepancies in it. To be considered by the Engineer, the protest shall be in
39 sufficient detail to enable the Engineer to ascertain the basis and amount of time disputed.
40 By not filing such detailed protest in that period, the Contractor shall be deemed as having
41 accepted the statement as correct. If the Contractor elects to work 10 hours a day and 4 days
42 a week (a 4-10 schedule) and the fifth day of the week in which a 4-10 shift is worked would
43 ordinarily be charged as a working day then the fifth day of that week will be charged as a
44 working day whether or not the Contractor works on that day.

1
2 Revise the sixth paragraph to read:

3
4 The Engineer will give the Contractor written notice of the completion date of the contract
5 after all the Contractor's obligations under the contract have been performed by the
6 Contractor. The following events must occur before the Completion Date can be established:

- 7 1. The physical work on the project must be complete; and
8 2. The Contractor must furnish all documentation required by the contract and required by
9 law, to allow the Contracting Agency to process final acceptance of the contract. The
10 following documents must be received by the Project Engineer prior to establishing a
11 completion date:
12 a. Certified Payrolls (Federal-aid Projects)
13 b. Material Acceptance Certification Documents
14 c. Annual Report of Amounts Paid as MBE/WBE Participants or Quarterly Report of
15 Amounts Credited as DBE Participation, as required by the Contract Provisions.
16 d. Final Contract Voucher Certification
17 e. Property owner releases per Section 1-07.24

18
19 **1-08.7 Maintenance During Suspension**
20 *(October 1, 2005 APWA GSP)*

21
22 Revise the second paragraph to read:

23
24 At no expense to the Contracting Agency, the Contractor shall provide through the
25 construction area a safe, smooth, and unobstructed roadway, sidewalk, and path for public
26 use during suspension (as required in Section 1-07.23 or the Special Provisions). This may
27 include a temporary road or detour.
28

29 **1-09.6 Force Account**
30 *(October 1, 2005 APWA GSP)*

31
32 Supplement this Section with the following:

33
34 Owner has estimated and included in the Proposal, dollar amounts for all items to be paid per
35 force account, only to provide a common proposal for Bidders. All such dollar amounts are
36 to become a part of Contractor's total bid. However, Owner does not warrant expressly or by
37 implication, that the actual amount of work will correspond with those estimates. Payment
38 will be made on the basis of the amount of work actually authorized by Engineer.
39

40 **1-09.9 Payments**
41 *(October 1, 2005 APWA GSP)*

42
43 Delete the third paragraph and replace it with the following:
44

1 Progress payments for completed work and material on hand will be based upon progress
2 estimates prepared by the Engineer. A progress estimate cutoff date will be established at the
3 preconstruction meeting.
4

5 The initial progress estimate will be made not later than 30 days after the Contractor
6 commences the work, and successive progress estimates will be made every month thereafter
7 until the Completion Date. Progress estimates made during progress of the work are
8 tentative, and made only for the purpose of determining progress payment. The progress
9 estimates are subject to change at any time prior to the calculation of the Final Payment.
10

11 The value of the progress estimate will be the sum of the following:

- 12 1. Unit Price Items in the Bid Form — the approximate quantity of acceptable units of work
13 completed multiplied by the unit price.
- 14 2. Lump Sum Items in the Bid Form — the estimated percentage complete multiplied by the
15 Bid Forms amount for each Lump Sum Item, or per the schedule of values for that item.
- 16 3. Materials on Hand — 100 percent of invoiced cost of material delivered to Job site or
17 other storage area approved by the Engineer.
- 18 4. Change Orders — entitlement for approved extra cost or completed extra work as
19 determined by the Engineer.
20

21 Progress payments will be made in accordance with the progress estimate less:

- 22 1. Retainage per Section 1-09.9(1);
- 23 2. The amount of Progress Payments previously made; and
- 24 3. Funds withheld by the Contracting Agency for disbursement in accordance with the
25 Contract Documents.
26

27 Progress payments for work performed shall not be evidence of acceptable performance or an
28 admission by the Contracting Agency that any work has been satisfactorily completed.
29

30 Payments will be made by warrants, issued by the Contracting Agency's fiscal officer,
31 against the appropriate fund source for the project. Payments received on account of work
32 performed by a subcontractor are subject to the provisions of RCW 39.04.250.
33
34

35 **1-09.13(3) Claims \$250,000 or Less**

36 *(October 1, 2005 APWA GSP)*

37 Delete this Section and replace it with the following:
38

39 The Contractor and the Contracting Agency mutually agree that those claims that total
40 \$250,000 or less, submitted in accordance with Section 1-09.11 and not resolved by
41 nonbinding ADR processes, shall be resolved through litigation unless the parties mutually
42 agree in writing to resolve the claim through binding arbitration.
43

1 **1-09.13(3)A Administration of Arbitration**
2 **(October 1, 2005 APWA GSP)**

3
4 **Revise the third paragraph to read:**

5
6 **The Contracting Agency and the Contractor mutually agree to be bound by the decision of**
7 **the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the**
8 **Superior Court of Island County. The decision of the arbitrator and the specific basis for the**
9 **decision shall be in writing. The arbitrator shall use the contract as a basis for decisions.**

10

1 **DIVISION 6**

2
3 **6-07 PAINTING**

4
5 **6-07.1 Description**

6 *(March 1, 2009 CITY OF OAK HARBOR GSP)*

7
8 Add new subparagraph:

9
10 **6-07.1A Definitions**

11
12 A. Definitions of Painting Terms: ASTM D 16, unless otherwise specified.

13
14 B. Dry Film Thickness (DFT): Thickness of a coat of paint in fully cured state measured in
15 mils (1/1000 inch).

16
17 **6-07.2 Materials**

18 *(March 1, 2009 CITY OF OAK HARBOR GSP)*

19
20 Substitute the following

21
22 Tnemec Company, Inc., is listed as the standard of excellence. Substitutions shall be considered but
23 must be approved by Engineer prior to bid deadline. Offers for substitutions will not be considered
24 which decrease film thickness, solids by volume or the number of coats to be applied or which
25 propose a change from the generic type of coating specified herein. All substitutions shall include
26 complete test reports to comply with specified performance criteria. Paint application shall be in
27 strict accordance with manufacturer's printed instructions except that coating thickness specified in
28 paint schedule herein shall govern.

29
30 **6-07.2(1) Coating System Performance**
31 **Exterior Coating**

32
33 **Primer:**

34 A. VOC Un-thinned 11 grams per liter Thinned 25% 11 grams per liter
35 HAPS .0 lbs/gal per solids

36
37 B. Adhesion:

38 Method: ASTM D 3359B Crosshatch Adhesion

39 Requirement: No less than a rating of 5.
40

41 C. Salt Spray (Fog):

42 Method: ASTM B 117

43 Requirements: No blistering, cracking, spot rusting, of delamination of film. No rust
44 creepage at scribe after 1500 hours.
45
46

1 **Finish:**

2 A. VOC Un-thinned 92 grams per liter Thinned 10% 92 grams per liter
3 HAPS .0 lbs/gal per solids
4

5 B. QUV Exposure

6 Method: ASTM G 53 (UVA-340 bulbs, 4 hours light, 4 hours dark)

7 System: Series L69 HB Epoxoline/Series 740 Endura-Shield applied to SSPC-SP10 Near-
8 White Blast cleaned steel and cured 14 days at 75 F (24 C).

9 Requirement: No blistering, cracking or chalking. No gloss loss and no more than 0.67
10 DE_{00} (2.02 DE_{FMC2}) color change after 4,000 hours exposure.

11
12 C. Graffiti Resistance

13 Method: The following graffiti materials applied to coating and allowed to dry for
14 seven days: acrylic, epoxy-ester and alkyd spray paints, ballpoint ink, crayon, Market
15 marker, black shoe polish and lipstick. Removal first attempted with xylene, if graffiti
16 remained then Methyl Ethyl Ketone was used.

17 Requirements: Complete and easy removal without loss of shine.
18

19 **6-07.2(2) Submittals**

20
21 A. Product Data: Submit manufacturer's product data for each coating, including generic
22 description, complete technical data, surface preparation, and application instructions.

23
24 B. Color Samples: Submit manufacturer's color samples showing full range of standard colors.
25

26 C. Manufacturer's Quality Assurance: Submit manufacturer's certification that coatings
27 comply with specified requirements and are suitable for intended application.
28

29 D. Warranty: Submit manufacturer's standard warranty.
30
31

32 **6-7.2(3) Quality Assurance**

33
34 **Manufacturer's Qualifications:**

- 35 1. Specialize in manufacture of coatings with a minimum of 10 years successful experience.
36 2. Able to demonstrate successful performance on comparable projects.
37 3. Single Source Responsibility: Coatings and coating application accessories shall be products
38 of a single manufacturer.
39

1 **6-07.3 Construction Requirements**

2
3 **6-07.3 (2) Painting Existing Steel Structures**
4 *(March 1, 2009 CITY OF OAK HARBOR GSP)*

5
6 Substitute the following:

7
8 **6-07.3(2) Coating System for Exterior Steel**

9
10
11 **NOTE: Minimum dry film thickness shall be 6.0 mils.**

12
13 Accessories required for application of specified coatings shall be in accordance with
14 manufacturer's instructions, including thinners.

15
16 **6-07.3(2)A Tank Cleaning and Surface Preparation**

17
18 Examine areas and conditions under which coating systems are to be applied. Notify Engineer of
19 areas or conditions not acceptable. Do not begin surface preparation or application until
20 unacceptable areas or conditions have been corrected.

21
22 Protect surrounding areas and surfaces not scheduled to be coated from damage during surface
23 preparation and application of coatings.

24
25 Immediately remove coatings that fall on surrounding areas and surfaces not scheduled to be
26 coated.

27
28 **SURFACE PREPARATION OF STEEL**

29
30 Prepare steel surfaces in accordance with manufacturer's instructions.

31
32 **SURFACE PREPARATION**

33
34 Exterior: All exterior existing coated surfaces shall receive a high-pressure wash -- 3,000 PSI at 3.5
35 gallons per minute minimum. Surface is to be clean, dry and free of all contaminants, to include
36 chalking, reference ASTM 4214 Evaluation of degree chalking rating of 10. The Contractor shall
37 take precautions not to damage or remove tightly adherent paint or primer in preparing the
38 exterior surface of the reservoir for painting. If the pressure rating and washing distance for the
39 high pressure washer removes tightly adherent paint or primer, then the Contractor shall reduce
40 the pressure and/or change the spraying distance from nozzle to reservoir at the Owner's
41 immediate request such that the existing paint systems remains intact. The request and the
42 Contractor's compliance to and performance of same shall not be considered a change of
43 condition and as such will not be subject to any additional monies to the Contractor. All pitted
44 and rusted areas shall receive a Power Tool Cleaning in accordance with SSPC SP-11. All "popped"
45 or loose paint and rusted areas shall be DA sanded to remove all loose or flaking paint. The
46 250,000 gallon tank has been determined to have a lead based primer and all local and federal
47 regulations addressing the removal of lead based coatings will be applicable and will be observed by

1 the contractor including but not limited to vacuum attachments for all power tools used in surface
2 preparation.

3
4
5
6 **6-07.3(2)G Painting Steel Surfaces**
7

8 Spot Prime all prepared bare steel surfaces with one coat of Tnemec Series 27WB Typoxy at 3.0 to
9 5.0 mils dry film thickness. Prime all prepared surfaces with one coat of Tnemec Series 27WB
10 Typoxy at 3.0 to 5.0 mils dry film thickness. Prime coat is a full coat. Finish all primed surfaces
11 with one coat of Tnemec Series 740/750 EnduraShield at 3.0 to 5.0 mils dry film thickness. Two
12 colors to be selected by the owner will be required and shall be applied without a hard boundary
13 between them in a manner appropriate for the mural painting to follow.

14
15 **APPLICATION**
16

- 17 A. Apply coatings in accordance with manufacturer's instructions.
18
19 B. Mix and thin coatings, including multi-component materials, in accordance with
20 manufacturer's instructions.
21
22 C. Keep containers closed when not in use to avoid contamination.
23
24 D. Do not use mixed coatings beyond pot life limits.
25
26 E. Use application equipment, tools, pressure settings, and techniques in accordance with
27 manufacturer's instructions.
28
29 F. Uniformly apply coatings at spreading rate required to achieve specified DFT.
30
31 G. Apply coatings to be free of film characteristics or defects that would adversely affect
32 performance or appearance of coating systems.
33
34 H. Stripe paint with brush critical locations on steel such as welds, corners, and edges using
35 specified primer.
36
37

38 **REPAIR**
39

- 40 A. Damaged Materials: Repair or replace damaged materials and surfaces not scheduled to be
41 coated.
42
43 B. Damaged Coatings: Touch-up or repair damaged coatings. Touch-up of minor damage
44 shall be acceptable where result is not visibly different from adjacent surfaces. Recoat entire
45 surface where touch-up result is visibly different, either in sheen, texture, or color.
46

- 1 C. Coating Defects: Repair in accordance with manufacturer's instructions coatings that
- 2 exhibit film characteristics or defects that would adversely affect performance or appearance of
- 3 coating systems.
- 4

1 **FIELD QUALITY CONTROL**

- 2
- 3 A. Inspector's Services:
- 4 1. Verify coatings and other materials are as specified.
- 5 2. Verify surface preparation and application are as specified.
- 6 3. Verify DFT of each coat and total DFT of each coating system are as specified using wet
- 7 film and dry film gauges.
- 8 4. Coating Defects: Check coatings for film characteristics or defects that would
- 9 adversely affect performance or appearance of coating systems.
- 10 a. Check for holidays on interior steel immersion surfaces using holiday detector.
- 11
- 12 5. Report:
- 13 a. Submit written reports describing inspections made and actions taken to correct nonconforming
- 14 work.
- 15 b. Report nonconforming work not corrected.
- 16 c. Submit copies of report to Engineer and Contractor.
- 17
- 18 B. Manufacturer's Field Services: Manufacturer's representative shall provide technical
- 19 assistance and guidance for surface preparation and application of coating systems.
- 20

21 **CLEANING**

- 22
- 23 A. Remove temporary coverings and protection of surrounding areas and surfaces.
- 24

25 **PROTECTION OF COATING SYSTEMS**

- 26
- 27 A. Protect surfaces of coating systems from damage during construction.
- 28

29 **ONE-YEAR INSPECTION**

- 30
- 31 A. Owner will set date for one-year inspection of coating systems.
- 32
- 33 B. Inspection shall be attended by Owner, Contractor, Engineer, and manufacturer's
- 34 representative.
- 35
- 36 C. Repair deficiencies in coating systems as determined by Engineer in accordance with
- 37 manufacturers instructions.
- 38
- 39
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