



**SPECIAL/REGULAR CITY COUNCIL STUDY SESSION
WEDNESDAY, APRIL 3, 2013
LOCATION: BAINBRIDGE ISLAND CITY HALL
280 MADISON AVENUE N., BAINBRIDGE ISLAND, WASHINGTON**

**AMENDED AGENDA
(4A Added)**

1. EXECUTIVE SESSION

6:30 PM Property Disposition RCW 42.30.110(1)(c), Collective Bargaining Negotiations, Issues, or Proceedings (RCW 42.30.140)

2. CALL TO ORDER / ROLL CALL

7:00 PM Mayor: Steven Bonkowski
Councilmembers: Anne Blair Debbi Lester
 Sarah Blossom Bob Scales
 Kirsten Hytopoulos David Ward

**3. ACCEPTANCE OR MODIFICATION OF AGENDA / CONFLICT OF INTEREST DISCLOSURE
7:05 PM**

4. PRESENTATIONS

7:10 PM

A. Subject: National Poetry Month, Bainbridge Island Arts & Humanities Council Poetry Reading
Discussion Leader: Richard Levin, Poet
Discussion Goal: Information only.

B. Subject: Murden Cove Watershed Project – 10 min.
Discussion Leader: Eva Crim, Kitsap Public Health District
Discussion Goal: Information only.

C. Subject: Prepared Neighborhoods – 20 min.
Discussion Leader: Scott James
Discussion Goal: Information only.

D. Subject: Annual Briefing on 2013 PSE Activities – 30 min.
Discussion Leader: Linda Streissguth, Puget Sound Energy
Discussion Goal: Information only.

5. STAFF INTENSIVE

8:15 PM

A. Subject: Ordinance No. 2013-06, Revisions to Off-Site / Right-of-Way Signs, AB 13-030 – 15 min.
Discussion Leader: Planning
Discussion Goal: Consider scheduling first reading for April 24, 2013.

B. Subject: Bohlander Revocable License Agreement / License Agreement Process, AB 13-038 – 15 min.
Discussion Leader: Planning
Discussion Goal: Consider scheduling approval for April 10, 2013.

** Public comment at study sessions is encouraged. Times listed on this agenda are approximate**



Americans with Disabilities Act (ADA) accommodations provided upon request. Those requiring special accommodations, please contact the City Clerk at 206-842-2545 (cityclerk@bainbridgewa.gov) by noon on the day preceding the Meeting.

C. **Subject:** Fort Ward Hill Reconstruction and Shoulder Widening Phase II – Design Completion Award, Skillings Connolly, AB 11-097 – 10 min.

Discussion Leader: Public Works

Discussion Goal: Consider scheduling approval for April 10, 2013.

D. **Subject:** Fletcher Bay Well House Repair and Refurbishment Project, Bid Rejection & Construction Award, DP Wain Construction, AB 13-039 – 5 min.

Discussion Leader: Public Works

Discussion Goal: Consider scheduling contract approval for April 10, 2013.

E. **Subject:** Local Technology Planning Grant, AB 13-041 – 5 min.

Discussion Leader: City Manager Schulze

Discussion Goal: Consider authorizing the City Manager to submit grant application.

6. COUNCIL DISCUSSION

9:05 PM

A. **Subject:** Water System Management – 30 min.

Discussion Leader: Council

Discussion Goal: Council deliberation on policy issues. Consider scheduling public hearing on April 10, 2013.

7. CITY MANAGER REPORT

9:35 PM

8. COMMITTEE REPORTS

9:40 PM

9. REVIEW UPCOMING COUNCIL MEETING AGENDAS

9:45 PM

10. FOR THE GOOD OF THE ORDER

9:50 PM – Grandmothers Against Gun Violence – Mayor Bonkowski

11. ADJOURNMENT

10:00 PM

**** Public comment at study sessions is encouraged. Times listed on this agenda are approximate****



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COBI

Scott James

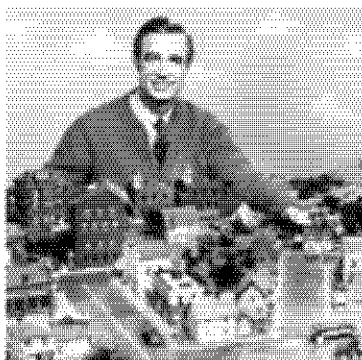
Scott James

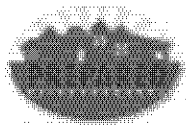
social entrepreneur

author
Resiliency
Instructor

**Resiliency is
a worthwhile
pursuit.**

© 2014 Scott James

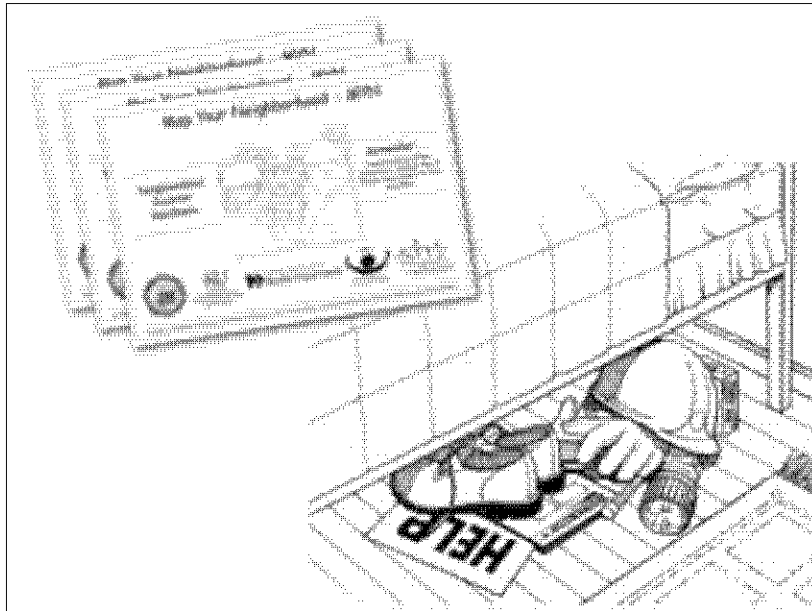




Map your neighborhood

Recruit volunteer shelters

What's your Step 10?



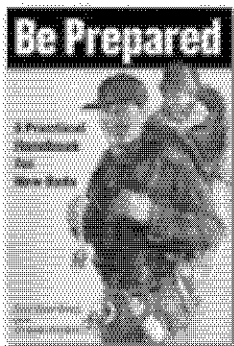
10 steps immediately
following a disaster



Identifying skills and
equipment



Creating a neighborhood
emergency map





CITY OF BAINBRIDGE ISLAND

CITY COUNCIL AGENDA BILL



PROCESS INFORMATION

Subject: Ordinance No. 2013-06, Revisions to Off-Site / Right-of-Way Signs	Date: April 3, 2013
Agenda Item: Staff Intensive	Bill No.: 13-030
Proposed By: Code Enforcement Officer Meghan McKnight	Referral(s):

BUDGET INFORMATION

Department: Planning & Community Development	Fund: n/a	Munis Contract # n/a
Expenditure Req: n/a	Budgeted? ☐ Yes ☒ No	Budget Amend. Req? ☐ Yes ☒ No

REFERRALS/REVIEW

City Manager ☒ Yes ☐ No ☐ N/A Legal ☒ Yes ☐ No ☐ N/A Finance ☒ Yes ☐ No ☐ N/A

DESCRIPTION/SUMMARY

Action Item:

Consideration of Ordinance No. 2013-06 relating to commercial sign placement off-site and / or in the right-of-way; amending various sections of Chapter 15.08, Sign Code, of the Bainbridge Island Municipal Code.

History:

The City of Bainbridge Island allows limited sign placement within rights-of-way. Council consideration on March 6, 2013 addressed whether to allow off-site commercial signs and if so what time, place and manner limitations to require. The proposed amendment will require commercial signs to obtain the abutting property owner's permission, ensuring the requirements are consistent for political and commercial signs in the rights-of-way. Staff has recommended that only small (18 inches by 24 inches) freestanding signs and sandwich board signs (2 feet by 3 feet) be allowed for a maximum of 36 days per 12 month period. No limit on the number of signs is proposed.

Additionally, the sign permit fee will be adjusted to a flat fee and a temporary sign permit fee established.

Schedule/Next Activities:

Ordinance 2013-06 would be scheduled for first reading on April 24, 2013 and second reading with a public hearing after proper notification to the Department of Commerce and the SEPA comment period. If approved, staff will notify businesses and organizations that have previously obtained sign permits in accordance with BIMC 15.08.115 of the change and ensure future applicants are aware of the requirement.

RECOMMENDED ACTION

Motion:

I move that the City Council schedule Ordinance 2013-06 relating to off-site signs for first reading on April 24, 2013

City of Bainbridge Island
PLANNING & COMMUNITY DEVELOPMENT



MEMORANDUM

TO: Councilmembers
Doug Schulze, City Manager

FROM: Meghan McKnight, Code Enforcement Officer

DATE: April 3, 2013

RE: Revisions to Off-Site / Right-of-Way Signs

INTRODUCTION

On March 6th the City Council reviewed the possibility of allowing commercial signs off-site and/or within the right-of-way.

Staff was directed to bring forth an ordinance for review that permitted temporary off-site signs. The proposed ordinance includes:

- A permit is required, identifying contact information and dates/ location of placement.
- Signs are required to be maintained and removed.
- No limit on the number of signs each event/ organization is allowed.
- Signs are limited to 36 days per 12 months.
- Signs will continue to be prohibited on trees, public buildings, utility poles and where they present a traffic hazard (such as the medians or roundabout).
- Signs must obtain the property owner's permission / abutting property owner's permission.
- Signs are limited to (18 inches by 24 inches) freestanding signs and sandwich board signs (2 feet by 3 feet).
- Off-site signs in violation are subject to immediate removal and disposal.

The proposed 36 days will allow businesses to place signs one weekend per month (Friday – Sunday) or one day per week for 70% of the year or for just over one month to raise awareness for an event/ enrollment period.

NEXT STEPS

Schedule Ordinance 2013-06 for first reading at a City Council meeting.

ORDINANCE NO. 2013-06

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to the placement of commercial signs off-site and/ or within the right-of-way and amending Sections 15.08.010, 15.08.030, 15.08.040, 15.08.115, 15.08.120, 15.08.130 and 15.08.150 of the Bainbridge Island Municipal Code.

WHEREAS, the City desires to allow limited placement of commercial signs off-site; and

WHEREAS, the City desires to allow limited placement of commercial signs within the right-of-way; and

WHEREAS, the City wishes to have consistent requirements for all signs placed within the right-of-way; and

WHEREAS, the City wishes to require that the permission of the adjacent/abutting property owner be obtained before signs are placed in the right-of-way; and

WHEREAS, timely notice was given to the Department of Commerce in conformance with RCW 36.70A.106; and

WHEREAS, the City held a public hearing on the proposed amendments on _____; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 5.08.010 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

15.08.010 Purpose.

The purpose of this chapter is as follows:

- A. To promote and protect the public welfare, health and safety.
- B. To encourage the installation of signs which harmonize with building design, natural settings and other geographical characteristics of the locations in which they are erected.
- C. To create a more attractive economic and business climate.

D. To reduce distractions and obstructions from signs which would adversely affect traffic safety and reduce hazards that may be caused by signs overhanging or projecting over or within public rights-of-way.

Section 2. Section 5.08.030 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

15.08.030 Signs not requiring a permit.

The following signs shall not require a permit:

A. Signs erected or posted and maintained for public safety and welfare or pursuant to any law or regulation;

B. Bulletin boards, either one or two sided, with no face exceeding 20 square feet in display area, associated with any church, museum, library, school, or similar use; provided, that the top of such signs shall be less than eight feet high and such signs shall meet all other provisions of this chapter;

C. Directional signs solely indicating ingress or egress, the display area not exceeding three square feet;

D. Signs relating to trespassing and hunting, not exceeding two square feet of area;

E. Signs displaying address numbers only, not exceeding two square feet of area;

F. Culturally, historically or architecturally significant signs, existing at the time of passage of the ordinance codified in this chapter and officially recognized by the city. Designation of culturally, historically or architecturally significant signs will be adopted by separate resolution;

G. Any window sign four square feet or less in size; provided, that no single sign or combination of signs shall exceed 25 percent of an individual window area;

H. Agricultural products signs advertising products grown on or produced at the subject property. The signs shall be allowed at each street frontage, and shall be temporary, erected for a period not exceeding 10 days prior to the availability of the products for sale, and removed when the products are no longer available for purchase. The maximum sign area shall not exceed 10 square feet for each face of a single or two faced sign;

I. Single signs, not exceeding 24 square feet in area, mounted at a height not exceeding 20 feet above grade, displaying the name of a farm. The farm shall meet the standards as defined in BIMC 16.20.020;

J. Banners, not exceeding 30 square feet in area, displayed by a nonprofit or civic organization. The banners and flags are not required to be displayed on the premises of the organization, and may be displayed for a maximum of two periods not exceeding 14 days total within any calendar year;

K. Bannerets, not exceeding 12 square feet in area, displayed by a city council-designated civic organization. Bannerets shall not advertise or promote any individual business or the sale of any product or commodity, and shall only be erected on city-approved standards and in approved locations within the Mixed Use Town Center zone. The city council may delegate the authority to manage and coordinate the erection and removal of bannerets to a civic organization;

L. Construction signs, not exceeding one per construction site, and not exceeding 12 square feet in area, when erected in connection with a building permit. The sign shall be removed within 30 days of the occupancy of the structure. Public works projects are authorized to install signs at the ends of a project which shall not exceed 32 square feet in area;

M. For sale/rent or lease signs on the property being sold, rented or leased. One sign, not exceeding six square feet in area, shall be allowed on each street frontage;

N. Political signs in accordance with BIMC 15.08.095;

O. On-site Signs, intended to be temporary, either the same sign or different sign, may be displayed for a maximum of two periods not exceeding 14 days total within any calendar year. Signs must conform to size and location limitations of this chapter.

P. Public right-of-way signs shall conform to the current Manual on Uniform Traffic Control Devices (MUTCD), as modified, and in developments, shall be installed by and at the applicant's expense.

Q. Off-site non-commercial signs, intended to be temporary, in accordance with the following:

1. Located on private property must obtain the permission of the property owner. Posted within public right-of-way only if the sign does not interfere with sight distances and does not create a vehicular or pedestrian traffic obstruction or hazard, and permission to place the sign in the right-of-way has been obtained from the abutting property owner.

2. Freestanding (under 18 inches in height and 24 inches wide) or sandwich board signs (meeting the size requirements of BIMC 15.08.090.E).

3. Regularly inspected to ensure that they have not been damaged or destroyed by natural forces or vandalism. Damaged or destroyed signs shall be immediately removed or repaired so as to avoid threats to public health and safety or the accumulation of unclaimed refuse upon the public rights-of-way.

Section 3. Section 5.08.040 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

15.08.040 Prohibited signs.

The following signs are prohibited:

A. Billboards, streamers, pennants, ribbons, spinners or other similar devices.

B. Flashing signs, roof signs, signs containing moving parts or appearing to move, and signs which sparkle or twinkle in the sunlight.

C. Signs advertising or identifying a business or organization which is defunct.

D. Signs, except for traffic, regulatory, or informational signs, using the words “stop,” “caution,” or “danger,” or incorporating red, amber, or green lights resembling traffic signals, or resembling “stop” or “yield” signs in shape or color.

E. Signs advertising a business or organization not located on the parcel containing the business or organization except signs erected by the state of Washington.

F. Signs erected within the public rights-of-way, access corridors or easements, except the following: signs erected by the city or state; those signs projecting/hanging over the public sidewalk, erected in compliance

with the Mixed Use Town Center design guidelines; ~~and political signs displayed in compliance with BIMC 15.08.095;~~ and temporary signs in compliance with BIMC 15.08.115 or BIMC 15.08.030(Q).

G. Signs with content or subject matter that constitutes obscenity as defined by law.

H. Portable reader boards and signs mounted on stationary, unlicensed vehicles.

I. Illuminated features, on the exterior of a building that call attention to the building or product sold within the building.

J. Any window sign(s) exceeding four square feet in area or exceeding 25 percent of an individual window area.

K. Neon facade signs except as permitted in BIMC 15.08.080.C.6.

L. On-premises signs in the natural, conservancy, aquatic conservancy and aquatic shoreline environments, except for navigation aids and public information.

M. Signs placed on trees or other natural features.

N. Signs on any utility pole, traffic control device, lamp post, or any other public building or structure.

O.. Any sign placed without the necessary permit or not in accordance with the size place and manner limitations provided in this chapter.

Section 4. Section 5.08.115 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

15.08.115 ~~Freestanding or sandwich board~~ Temporary off-site commercial signs.

A. Off-site signs, intended to be temporary, either the same sign or different sign, may be displayed for a maximum of 36 days within a twelve-month period. Temporary off-site signs located on private property must obtain the permission of the property owner. Temporary off-site signs may be posted within public right-of-way only if the sign does not interfere with sight distances and does not create a vehicular or pedestrian traffic obstruction or hazard, and permission to place the sign in the right-of-way has been obtained from the abutting property owner.

B. All temporary off-site signs relating to a specific meeting, event, or occurrence shall be removed immediately following the conclusion of the meeting, event, or occurrence to which they relate.

C. Temporary off-site signs shall be freestanding (under 18 inches in height and 24 inches wide) or sandwich board signs (meeting the size requirements of BIMC 15.08.090.E).

D. Temporary off-site signs shall be regularly inspected to ensure that they have not been damaged or destroyed by natural forces or vandalism. Damaged or destroyed signs shall be immediately removed or repaired so as to avoid threats to public health and safety or the accumulation of unclaimed refuse upon the public rights-of-way.

E. Temporary off-site signs are exempt from BIMC 15.08.030.C, 15.08.040.E, and 15.08.090.B.1.

F. A permit in accordance with BIMC 15.08.120 and identifying the dates the signs will be displayed shall be obtained for each twelve-month period.

G. All signs visible from Highway 305 must be in conformance with the standards of the Scenic Vistas Act (RCW 47.42 and WAC 468-66) that is incorporated herein by this reference as well as the related Washington State Department of Transportation ("WSDOT") rules, regulations, and noncompliance penalties; provided that all signs within the city shall also be subject to any additional restrictions as provided in this chapter. In the case of conflict between the requirements of the Scenic Vistas Act and this chapter, the more restrictive requirement shall apply.

~~A. Home Occupations. Up to 10 freestanding signs (under 18 inches in height and 24 inches wide) or sandwich board signs (meeting the size requirements of BIMC 15.08.090.E), advertising on-site sales at home occupations, as regulated under BIMC 18.09.030.I.2 and I.3, may be placed off of the parcel upon which the home occupation is located with permission of the parcel owner, or within the public right of way located as far as possible from the street or road so as not to create a traffic hazard or obstruction, for a maximum of 21 days. These signs are exempt from BIMC 15.08.030.C and O, 15.08.040.E and F, and 15.08.090.B.1. The home occupation business owner shall obtain a permit for all signs from the planning and community development department. The permit shall describe the size, content, and location of the signs and the days on which the signs will be displayed. There shall be no fee for the permit.~~

~~B. Events and Tours. Freestanding (under 18 inches in height and 24 inches wide) or sandwich board signs (meeting the size requirements of BIMC 15.08.090.E), advertising community events or self-guided tours of city residences and places, may be placed for a maximum of 21 days off of the parcel upon which the event or tour is located with permission of the parcel owner, or within the public right-of-way located as far as possible from the street or road so as not to create a traffic hazard or obstruction. These signs are exempt from BIMC 15.08.030.C and O, 15.08.040.E and F, and 15.08.090.B.1. The event or tour sponsor shall obtain a permit for all signs from the planning and community development department. The permit shall describe the size, content, and location of the signs and the days on which the signs will be displayed. There shall be no fee for the permit.~~

Section 5. Section 5.08.120 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

15.08.120 Permits required.

A. No signs, except those described in BIMC 15.08.030 and 15.08.100(C), shall be erected without a valid sign permit.

B. Permit application requirements shall be determined by the director and shall include a site plan showing the location of the signs, the position of buildings and landscaped areas, the elevations of the signs and the configuration and size of the signs.

C. A valid sign permit is required before altering an existing sign or repairing a sign where the repair exceeds 50 percent of the replacement cost.

D. Legally established signs that include changeable copy are exempt from permit requirements for altering the changeable copy.

Section 6. Section 5.08.130 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

15.08.130 Permit fees.

~~A. Plan check fees, p~~Permit fees ~~and inspection fees~~ shall be as established by the city council by resolution.

~~B. Until January 1, 2000, permit fees shall be waived for signs replacing nonconforming signs.~~

Section 7. Section 5.08.150 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

15.08.150 Enforcement and penalties.

A. Anyone violating or failing to comply with the provisions of this chapter shall, upon conviction thereof, be punishable by fine of not more than \$500.00, or by imprisonment for not more than six months, or by both fine and imprisonment, and each day's violation or failure to comply shall constitute a separate offense.

B. In addition to any other sanction or remedial procedure which may be available, any person failing to comply with a notice of violation or order issued by the building official, or failing to comply with any other provision of this chapter, shall be subject to cumulative civil penalty in the amount of \$500.00 per day from the date set for compliance until compliance with such violation or order.

C. In addition to instituting criminal prosecution for violation of any of the provisions of this chapter, the city, through the city attorney, may institute civil proceeding in the Bainbridge Island municipal court or the superior court of the county to obtain a temporary restraining order or injunction prohibiting violation of this chapter and to collect any fines, fees or penalties due under the provisions of this chapter.

D. The city may remove and dispose of signs that it determines are a threat to public safety and recover costs from the owner of the property on which the sign is located or the sign owner. Within 10 days of removal of a sign, and upon payment of the costs of removal, the owner may recover a sign. Any temporary off-site sign posted in the public right-of-way in violation of the regulations set forth in BIMC 15.08.115 constitutes a trespass upon public property and is declared to be a public nuisance. Such signs shall be subject to immediate abatement by removal and confiscation.

Section 8. This ordinance shall take effect and be in force five (5) days from its passage, approval, and publication as required by law.

PASSED BY THE CITY COUNCIL this _____ day of _____, 2013.

APPROVED BY THE MAYOR this _____ day of _____, 2013.

Steven Bonkowski, Mayor

ATTEST/AUTHENTICATE:

Rosalind D. Lassoﬀ, CMC, City Clerk

FILED WITH THE CITY CLERK: March 29, 2013

PASSED BY THE CITY COUNCIL:

PUBLISHED:

EFFECTIVE DATE:

ORDINANCE NUMBER: 2013-06

RESOLUTION NO. 2013-07

A RESOLUTION of the City of Bainbridge Island, Washington, amending Section 9 of the City's fee schedule relating to building and planning fees to amend the sign permit fee.

WHEREAS, the City wishes to be consistent in the application of its fees; and

WHEREAS, the City wishes to have a flat fee for sign permit applications; and

WHEREAS, the City identified the average fee for a sign permit application has been approximately \$50.00; and

WHEREAS, the City wishes to add a fee for temporary sign permit applications; and

WHEREAS, the City wishes to have a reduced fee for temporary sign permit applications; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 9 of the City's fee schedule setting building and planning fees charged by the City is amended to add the following:

SIGN PERMIT (Resolution No. 2007-05)	Calculated from 1997 UAC Table 3-A, using valuation data provided by applicant <u>\$50.00</u>
<u>TEMPORARY SIGN PERMIT</u>	<u>\$10.00</u>

PASSED BY THE CITY COUNCIL this _____ day of April, 2013.

APPROVED BY THE MAYOR this _____ day of April, 2013.

Steven Bonkowski, Mayor

ATTEST/AUTHENTICATE:

Rosalind D. Lassoff, CMC, City Clerk

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:

March 28, 2013

CITY OF BAINBRIDGE ISLAND

CITY COUNCIL AGENDA BILL



PROCESS INFORMATION

Subject: Bohlander Revocable License Agreement	Date: April 3, 2013
Agenda Item: Staff Intensive	Bill No.: 13-038
Proposed By: Lance Newkirk, Public Works Director	

BUDGET INFORMATION

Depart/Fund:	N/A	Munis Contract #
Expenditure Req:	N/A	Budgeted? ☐ Yes ☐ No
		Budget Amend. Req? ☐ Yes ☐ No

REFERRALS/REVIEW

Study Session:	Recommendation:
City Manager ☒ Yes ☐ No ☐ N/A	Legal ☒ Yes ☐ No ☐ N/A
	Finance ☒ Yes ☐ No ☐ N/A

DESCRIPTION/SUMMARY

Action Item:

Consider placement of the Bohlander Revocable License Agreement at the next city council business meeting on April 10, 2013.

Background:

The Bohlander property located at 10456 NE Fenton Road abuts a City-owned right-of-way.

Mr. & Mrs. Bohlander would like to designate an area that is partially located within the City's right-of-way for private storm drainage improvements. The area of the City's right-of-way that the Mr. & Mrs. Bohlander would like to use and designate is depicted on Exhibit B and is located near NE Fenton Road. The Public Works department has determined that it has no immediate needs to construct improvements in the designated area at this time. This License Agreement shall be effective as of the date of mutual execution and shall terminate and be revoked at any time if the City determines the right-of-way is needed for any city purpose whatsoever upon a forty-five (45) days written notice to the property owner.

Further Discussion:

The staff brings ROW license agreements to the Council for approval as there is no other direction provided for this action in the Municipal Code or other City regulation. With the agreement of the Council, the staff suggests bringing forward a resolution assigning the approval authority for similar future ROW license agreements to the City Manager. This action is consistent with how other municipalities approach this issue, and would significantly reduce the staff and Council resources currently required.

RECOMMENDED ACTION

Motion:

I move that City Council place the consideration of the Revocable License Agreement with Mr. & Mrs. Bohlander regarding the use of the City's unimproved right-of-way on the agenda for the April 10, 2013 city council meeting.

AFTER RECORDING RETURN TO:
City of Bainbridge Island, Washington
Attn: City Clerk
280 Madison Avenue North
Bainbridge Island, Washington 98110

REVOCABLE LICENSE AGREEMENT

Licensors: City of Bainbridge Island, Washington, a municipal corporation

Licensee: Kim D. and Kimberly C. Bohlander

Short Legal Description: Lot 10, Blk. 000, Replat of Lots 15-17, Dingley's 1st Addn. to Yeomalt
G.L. 3, Sec. 23, T.25N., R.2E., W.M. Kitsap County, WA
[Full legal description is on page 2.]

Assessor's Property Tax
Parcel/Account Number(s): 4200-000-010-0008

Reference Number(s) of Documents Assigned
or Released: N/A

THIS LICENSE AGREEMENT (this "Agreement") is made and entered into by and between the **CITY OF BAINBRIDGE ISLAND, WASHINGTON**, a municipal corporation (the "City") and **KIM D. AND KIMBERLY C. BOHLANDER** (the "Licensee").

RECITALS

A. The Licensee owns certain real property in the City of Bainbridge Island, located at 10456 NE Fenton Road, Bainbridge Island, Washington, with Tax Parcel No. 4200-000-010-0008 , and legally described as:

Lot 10, Block 000, Replat of Lots 15-16-17, Dingley's 1st Addition to Yeomalt Point, as per the plat recorded in Volume 4 of plats, page 43, in Kitsap County, Washington; subject to easements of record (the "Property").

B. The Property abuts NE Fenton Road and also an unimproved portion of a 14-foot unnamed right-of-way as shown on the above mentioned plat and on **Exhibit A**, attached hereto and incorporated by this reference. The portion of the City right-of-way on which the Property abuts is legally described on **Exhibit B**, attached hereto and incorporated by this reference (the "City Right-of-Way").

C. In connection with the reconstruction of the residence, the Licensee has proposed installing a high-density polyethylene tightline along portions of the southerly property line and crossing the City Right-of-Way near the southeasterly property corner onto the adjacent property (the "Drain Line").

D. The City has determined that it has no immediate need to construct improvements on the City Right-of-Way, and that the Drain Line will not interfere with the public's ability to use the City Right-of-Way, which is currently unimproved.

E. In consideration of the terms, conditions and covenants below, the parties desire to enter into this revocable Agreement to govern the Licensee's use of the City Right-of-Way.

NOW, THEREFORE, it is agreed as follows:

1. License.

1.1 The City grants the Licensee, together with their successors and assigns, permission, revocable and terminable as provided herein, to enter onto and use the City Right-of-Way only for the purpose of construction of the Drain Line. The area of said construction across the City Right-of-Way is limited to that area described on **Exhibit C** and depicted on **Exhibit D** and shall not be expanded in any way. Additionally, the Licensee shall comply with all applicable federal, state and/or local laws and regulations, including but not limited to obtaining all required City permits, with regard to the Drain Line.

1.2 The Drain Line may remain in the location shown on **Exhibit D** until the Director of Public Works, or the successor position, determines that the improvements interfere with the public's use of the City Right-of-Way. The City and the Licensee specifically acknowledge that the improvements as they are currently constructed and existing do not interfere with access or use of the City Right-of-Way. To the extent the Drain Line is located on the City Right-of-Way, the improvements may not be expanded in any way. The Licensee shall comply with all applicable federal, state and/or local laws and regulations, including but not limited to obtaining all required City permits, with regard to any necessary repairs and/or maintenance of the Drain Line on the City Right-of-Way.

1.3 In consideration of the limited rights and privileges granted to the Licensee in this Agreement, the Licensee acknowledges the City's interest in, rights to, and authority over the City Right-of-Way, and that except as expressly stated herein, this Agreement does not create or convey to the Licensee any interest or rights in the City Right-of-Way. The Licensee shall make no use of the City Right-of-Way that is not specifically authorized in this Agreement. The City shall have the right to remove any other encroachment on the City Right-of-Way without notice to the Licensee.

1.4 The Licensee's use of the City Right-of-Way shall not restrict, inhibit, or interfere with the public pedestrian access via the City Right-of-Way. The Licensee shall endeavor to minimize the impacts of their use on the City Right-of-Way.

1.5 The Licensee shall be solely responsible for any and all costs associated with their use of the City Right-of-Way under this Agreement. The Licensee shall not permit any mechanic's, material men's, or similar liens or claims to stand against the City Right-of-Way for labor or material furnished in connection with any work performed on or in the City Right-of-Way. Any taxes imposed as a result of this Agreement or Licensee's use of the City Right-of-Way shall be the responsibility of and shall be paid by the Licensee.

2. Construction.

The Licensee agrees that they will construct the Drain Line in accordance with the permit as specified by the City. All construction shall be performed in accordance with all applicable federal, state and/or local laws and regulations, including but not limited to obtaining all required City permits. At the conclusion of the construction work, the Licensee shall provide the City with as-built drawings and a final legal description of the area used by the Licensee for improvements in the City Right-of-Way, which shall thereafter be deemed to represent the full extent of their permitted use of the City Right-of-Way under this Agreement.

3. Allocation of Risk and Indemnification.

3.1 The Licensee covenants and warrants that they have fully inspected the City Right-of-Way and that the same is reasonably safe and suitable for Licensee's intended use as permitted under this Agreement. The Licensee accepts the same "as-is", without warranty of any kind, whether express or implied.

3.2 The Licensee assumes the risk of any and all damage or loss to Licensee's improvements or property located within the City Right-of-Way.

3.3 The Licensee agrees to indemnify, defend and hold harmless the City, its employees, agents, successors, and assigns from and against any and all damages, injuries, claims or other liability of whatsoever kind or nature (including, but not limited to, reasonable attorneys' fees), incurred by the Licensee, Licensee's invitees, guests, or other third parties, relating to, resulting from or directly or indirectly arising from or associated with Licensee's use

of the City Right-of-Way under this Agreement. This indemnification shall survive the expiration or termination of this Agreement.

4. Termination.

4.1 This Agreement shall be effective as of the date of mutual execution and shall terminate and be revoked upon sixty (60) days' written notice if the City determines, in its sole discretion, that the City Right-of-Way is needed for any City purpose whatsoever; or if the Licensee breaches this Agreement, in which case the termination or revocation shall be immediate.

4.2 Upon termination or revocation of this Agreement for any reason whatsoever, the Licensee shall immediately surrender and vacate the City Right-of-Way, remove all of Licensee's personal property or fixtures from the City Right-of-Way, and restore the City Right-of-Way to the as good or better condition than at the time of the execution of this Agreement, at Licensee's sole cost. If Licensee fails to comply with this Section 4.2, the City shall have the right to remove Licensee's property and restore the City Right-of-Way at Licensee's expense, which Licensee shall pay to the City on demand.

5. General Provisions.

5.1 This Agreement contains the entire agreement between the parties relating to the subject of this Agreement. This Agreement may be amended or modified only by a written agreement signed by both parties.

5.2 All notices and other material to be delivered under this Agreement shall be in writing and shall be personally delivered or mailed to the following address:

The City:
Attn: City Manager
280 Madison Avenue North
Bainbridge Island, Washington 98110

Licensee:
Kim D. and Kimberly C. Bohlander
10456 NE Fenton Road
Bainbridge Island, WA 98110

Notice shall be deemed to be received either upon delivery, or upon three (3) days after the date of mailing. The parties reserve the right to change their respective addresses by giving written notice thereof to the other party.

5.3 Waiver by the City of any breach of any term or provision of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other provision.

5.4 In the event either party brings an action or proceeding arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

5.5 Venue for any legal actions prosecuted or instituted by either party under this Agreement shall be brought in the Superior Court of the State of Washington at Kitsap County, Washington.

5.6 This Agreement is not an easement, lease, or contract, but is a revocable license to the Licensee for the express and limited purpose outlined herein.

5.7 Upon termination of this Agreement pursuant to Section 4 hereof, the license shall no longer burden the City property and City Right-of-Way. The parties agree that the unilateral recording by the City of a written "Notice of Termination of License" confirming the date of termination shall serve to remove this license as an encumbrance on the City Right-of-Way.

5.8 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

5.9 A. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

5.10 This written document constitutes the entire Agreement between the City and the Licensee and supersedes any and all previous written and/or oral agreements between the parties. There are no other oral or written agreements between the parties as to the matters covered herein. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

5.11 Each of the provisions of this Agreement has been reviewed and negotiated and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

5.12 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same contract.

IN WITNESS WHEREOF, the parties have executed this Agreement by affixing their signatures below:

LICENSOR:

LICENSEE:

THE CITY OF BAINBRIDGE ISLAND

By: _____

By: _____

Name: Kim D. Bohlander

Name: Douglas Schulze

By: _____

Its: City Manager

Name: Kimberly C. Bohlander

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Douglas Schulze is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the City Manager of CITY OF BAINBRIDGE ISLAND, WASHINGTON to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington.

Commission Expires: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Kim D. Bohlander is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it as his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated_____

NAME:_____
(Print Name)

Notary Public in and for the State of Washington
Commission Expires: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Kimberly C. Bohlander is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it as her free and voluntary act for the uses and purposes mentioned in the instrument.

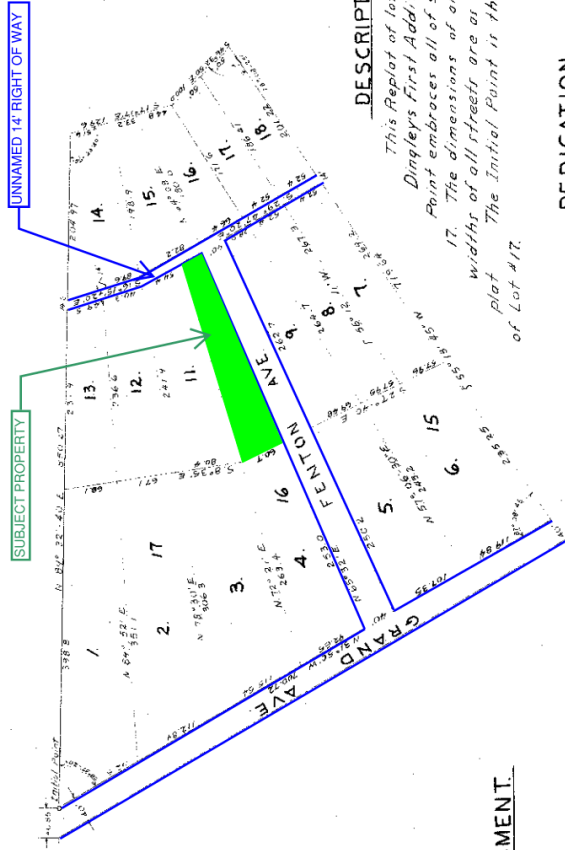
Dated_____

NAME:_____
(Print Name)

Notary Public in and for the State of Washington
Commission Expires: _____

EXHIBIT A

REPLAT OF LOTS 15-16-17, DINGLEYS FIRST ADDITION TO YEOMALT POINT



Scale 1" = 100'

DESCRIPTION

This Replat of lots 15-16 & 17 of Dingleys First Addition to Yeomalt Point embraces all of said lots 15-16 & 17. The dimensions of all lots and the widths of all streets are as shown upon the plat. The Initial Point is the NW corner of Lot #17.

DEDICATION

ACKNOWLEDGMENT

*CERTAIN PLAT LINES HAVE BEEN
HIGHLIGHTED FOR CLARITY

SEE PLAT BOOK VOL. 4 PAGE 43

SEE PLAT BOOK VOL. 4 PAGE 43

EXHIBIT B

Legal Description of City Right-of-Way

A portion of the Replat of Lots 15-16-17, Dingley's 1st Addition to Yeomalt Point described as follows:

That Unnamed 14 foot right-of-way as shown on the Replat of Lots 15-16-17, Dingley's 1st Addition to Yeomalt Point, as per the plat recorded in Volume 4 of plats, page 43, in Kitsap County, Washington;

All in Government Lot 3, Section 23, Township 25 North, Range 2 East, W.M., City of Bainbridge Island, Kitsap County, Washington

EXHIBIT C

Legal Description of Revocable License Area

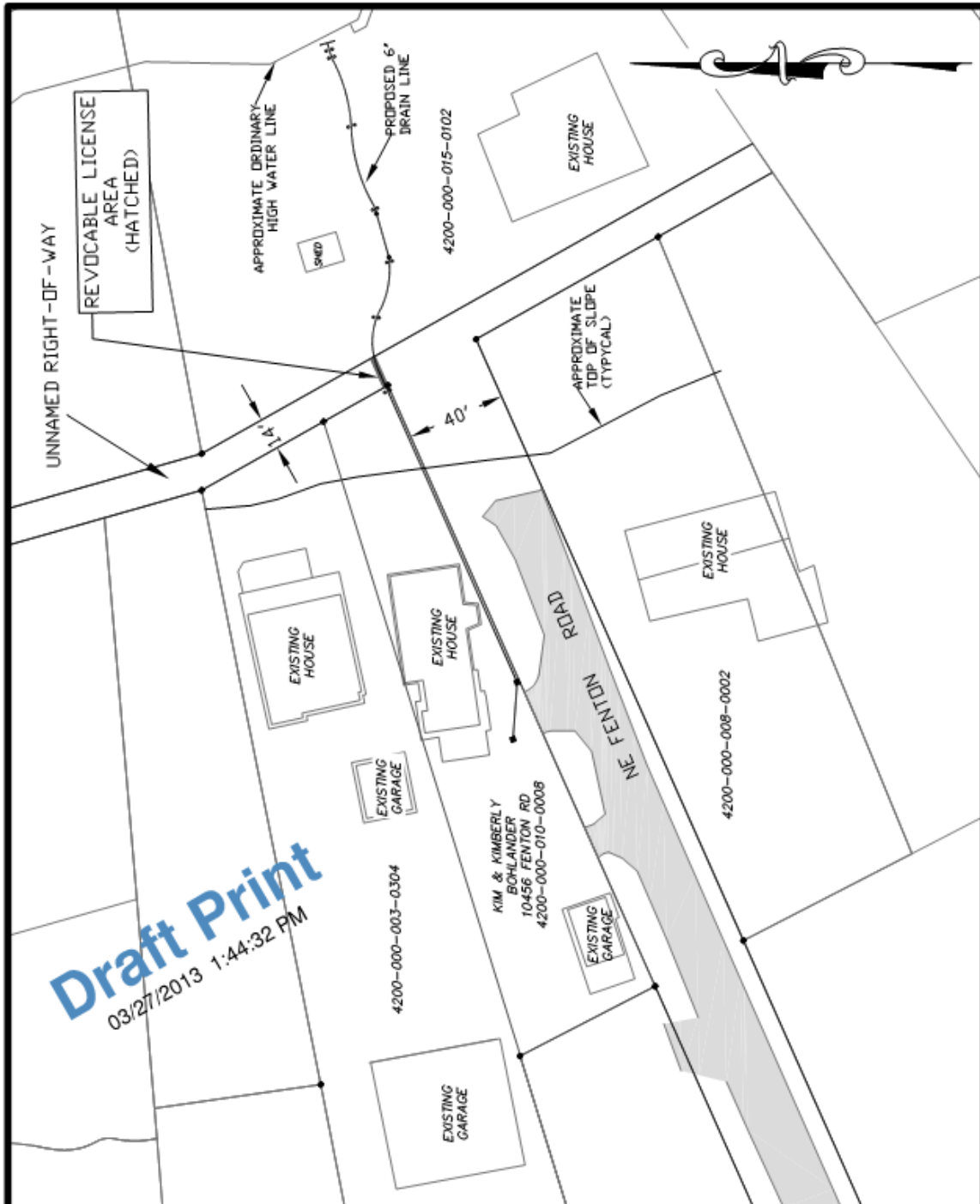
A portion of that Unnamed 14 foot right-of-way as shown on the Replat of Lots 15-16-17, Dingley's 1st Addition to Yeomalt Point, as per the plat recorded in Volume 4 of plats, page 43, in Kitsap County, Washington, described as follows:

A 2.00 foot wide strip, being 1.00 foot on each side of a 6 inch drain line as constructed;

Commencing from a point near the southeasterly corner of Lot 10 of said plat;

Thence northeasterly and perpendicular 14.00 feet, more or less, to the easterly margin of said Unnamed Right-of-Way and the terminus.

All in Government Lot 3, Section 23, Township 25 North, Range 2 East, W.M., City of Bainbridge Island, Kitsap County, Washington



Draft Print
03/27/2013 1:44:32 PM

03-27-2013 DATE	EXHIBIT D BOHLANDER REVOCABLE LICENSE AGREEMENT G.L. 3, SEC. 23,T.25N.,R.2E.,W.M.	 CITY OF BAINBRIDGE ISLAND PUBLIC WORKS ENGINEERING DEPARTMENT
1 NUMBER		

INSERT PRESENTATION QUALITY MAP FOR FINAL DOCUMENTS

CITY OF BAINBRIDGE ISLAND

CITY COUNCIL AGENDA BILL



PROCESS INFORMATION

Subject: Fort Ward Hill Reconstruction & Shoulder Widening Phase II – Design Completion Award	Date: April 3, 2013
Agenda Item: Staff Intensive	Bill No.: 11-097
Proposed By: Lance Newkirk, Public Works Director	

BUDGET INFORMATION

Dept/Fund: Public Works - 2013 CIP Proj. 00318 @ \$990,000		
Expenditure Req: \$45,586.68	Budgeted? ☒ Yes ☐ No	Budget Amend. Req? ☐ Yes ☒ No

REFERRALS/REVIEW

Study Session:	Recommendation:		
City Manager ☒ Yes ☐ No ☐ N/A	Legal ☒ Yes ☐ No ☐ N/A	Finance ☒ Yes ☐ No ☐ N/A	

DESCRIPTION/SUMMARY

Action Item:

Consider placement of the Fort Ward Hill Reconstruction & Shoulder Widening Phase II design contract award at the next city council business meeting on April 10, 2013.

History:

The Fort Ward Hill Reconstruction & Shoulder Widening Phase II project consists of reconstruction of the existing 10-foot lanes and widened shoulders between Bolero Dr and Sunny Hill Circle. Other features include approximately 700 linear feet of guardrail, rockeries and storm drain system.

On December 14, 2011, the City Council awarded a design contract to Skillings Connolly in the amount of \$86,000.00 for the Fort Ward Hill Reconstruction & Shoulder Widening Phase II design contract. This new contract is to complete design work based on WSDOT review comments and provide technical expertise for questions that may arise during the bidding and construction processes as necessary. Attached is a copy of the scope of work.

Budget:

The City received federal grant funds for this project in the amount of \$856,650. The grant funds require a 13.5% local match of \$133,350 (total project budget of \$990,000). The additional work described by this contract will be supported within the original project budget; no new funding is required.

RECOMMENDED ACTION

Motion:

I move that the City Council recommend award to Skillings Connolly in the amount of \$45,586.68 for the Fort Ward Hill Phase Reconstruction & Shoulder Widening II design at the April 10, 2013 City Council meeting.



City of Bainbridge Island
PUBLIC WORKS DEPARTMENT
MEMORANDUM

TO: City Council

FROM: Lance Newkirk, Public Works Director

DATE: April 3, 2013 Study Session

RE: Fort Ward Hill Reconstruction & Shoulder Widening Phase II Update

Project Objective:

To complete Phase II of the Fort Ward Hill Reconstruction project on Fort Ward Hill Road from Bolero Drive to Sunny Hill Circle.

Background:

The Fort Ward Hill Reconstruction Project - Phase 1 was completed in 2008. This project included roadway realignment, new pavement, and rock wall construction beginning at the intersection of Country Club Road and ending at Bolero Drive. Approximately 1,000 linear feet of roadway was reconstructed. The cost to complete Phase 1 was \$707,294.

In December 2011, the City Council authorized a professional services agreement with Skillings-Connolly for completion of the Phase II design work. The scope of work includes reconstruction of ten-foot driving lanes and shoulder widening, embankment stabilization, and storm drainage improvements between Bolero Drive and Sunny Hill Circle (approximately 1,500 linear feet) on Fort Ward Hill Road.

This project is primarily federally funded; therefore, project benchmarks need to be reviewed by the Washington State Department of Transportation (WSDOT), Local Programs division. WSDOT reviewed the design submittal and recommended minor design changes and additional bidding and construction support services to complete the project. As a result there is a need for additional work from the design firm to respond to these changes, as described in the April 3, 2013 professional services agreement in the amount of \$45,586.68 with Skillings-Connolly.

Budget:

Funding – The design work was funded in 2008 by a Limited Term-General Obligation (LTGO) Bond that included a variety of community projects. The bond funded the previous design contract with Skillings-Connolly at \$86,000. Funds for the additional design and technical support will be provided within the existing project budget; no new funding is required.

The 2013 CIP budget for this project is \$990,000. In December 2012, the City received notification from the Kitsap Regional Coordinating Council (KRCC) for an award of \$856,650 in Federal Transportation funds from the Federal Highways Surface Transportation Program (STP). The City's local match is 13.5% or \$133,350. The engineer's construction estimate for this project is \$780,000.

Permitting – See below for status:

- SEPA – MDNS received 07/17/12
- HPA – Approved 09/20/12 (WDFW)
- ECS (NEPA included) – Approved 02/18/13 (WSDOT & FHA)
- General stormwater permit – Notice of Intent submitted 03/08/13 (DOE)

Schedule – Anticipate awarding in June 2013 with construction to start in July. Targeting construction completion in September prior to the start of the new school year presuming no unforeseen construction circumstances arise.

Vegetation Impacts – To lessen the impacts to the environment, the design consultant has taken into consideration vegetation concerns within the footprint of the construction project. As an example, the roadway section is being designed to limit the impact to the uphill slope and not expand beyond the toe of the roadway embankment. A trench drain is included in the design for the uphill side of the roadway in place of a standard ditch to minimize the roadway cross section. Avoiding environmental impacts may increase construction costs; however, it simplifies permitting and is consistent with community values related to trees and native vegetation.

Public Outreach - Public Works staff have set up a project webpage as well as a project listserv. Throughout the project milestones, listserv updates will be sent out to notify the community of upcoming project events and/or possible project disruptions.

To view the project webpage, please visit: www.bainbridgewa.gov, click on projects (top bar) and select *Fort Ward Hill Reconstruction & Shoulder Widening Phase II*.

Local Agency Standard Consultant Agreement	Consultant/Address/Telephone Skillsings Connolly, Inc. PO Box 5080 5016 Lacey Blvd. SE Lacey, WA 98509						
☒ Architectural/Engineering Agreement ☐ Personal Services Agreement							
Agreement Number 13045	Project Title and Work Description Fort Ward Hill PS&E, Bid and Construction Assistance						
Federal Aid Number							
Agreement Type (Choose one) ☐ Lump Sum Lump Sum Amount \$ _____ ☐ Cost Plus Fixed Fee Overhead Progress Payment Rate _____ % Overhead Cost Method ☐ Actual Cost ☐ Actual Cost Not To Exceed _____ % ☐ Fixed Rate _____ % Fixed Fee \$ _____ ☒ Specific Rates Of Pay ☒ Negotiated Hourly Rate ☐ Provisional Hourly Rate ☐ Cost Per Unit of Work	DBE Participation ☐ Yes ☒ No _____ %						
	Federal ID Number or Social Security Number 91-1212924						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;"> Do you require a 1099 for IRS? ☐ Yes ☒ No </td> <td style="width: 30%;"> Completion Date </td> </tr> </table>	Do you require a 1099 for IRS? ☐ Yes ☒ No	Completion Date				
Do you require a 1099 for IRS? ☐ Yes ☒ No	Completion Date						
	<table style="width: 100%;"> <tr> <td style="width: 60%;">Total Amount Authorized:</td> <td style="text-align: right;">\$ 41,442.44</td> </tr> <tr> <td>Management Reserve Fund:</td> <td style="text-align: right;"><u>4,144.24</u></td> </tr> <tr> <td>Maximum Amount Payable:</td> <td style="text-align: right;"><u>\$45,586.68</u></td> </tr> </table>	Total Amount Authorized:	\$ 41,442.44	Management Reserve Fund:	<u>4,144.24</u>	Maximum Amount Payable:	<u>\$45,586.68</u>
Total Amount Authorized:	\$ 41,442.44						
Management Reserve Fund:	<u>4,144.24</u>						
Maximum Amount Payable:	<u>\$45,586.68</u>						

Index of Exhibits (Check all that apply):

- | | |
|---|---|
| ☒ Exhibit A-1 Scope of Work
☐ Exhibit A-2 Task Order Agreement
☐ Exhibit B-1 DBE Utilization Certification
☒ Exhibit C Electronic Exchange Data
☐ Exhibit D-1 Payment - Lump Sum
☐ Exhibit D-2 Payment - Cost Plus
☒ Exhibit D-3 Payment - Hourly Rate
☐ Exhibit D-4 Payment - Provisional
☐ Exhibit E-1 Fee - Lump/Fixed/Unit
☒ Exhibit E-2 Fee - Specific Rates
☒ Exhibit "F" - Overhead Cost
☒ Exhibit "G" - Subcontracted Work
☐ Exhibit G-1 Subconsultant Fee | ☒ Exhibit G-2 Fee - Sub Specific Rates
☒ Exhibit G-3 Sub Overhead Costs
☒ Exhibit H Title VI Assurances
☒ Exhibit I Payment Upon Termination of Agreement
☒ Exhibit J Alleged Consultant Design Error Procedures
☒ Exhibit K Consultant Claim Procedures
☐ Exhibit L Liability Insurance Increase
☒ Exhibit M-1a Consultant Certification
☒ Exhibit M-1b Agency Official Certification
☒ Exhibit M-2 Certification - Primary
☒ Exhibit M-3 Lobbying Certification
☒ Exhibit M-4 Data Certification
☒ App. 31.910 Supplemental Signature Page |
|---|---|

THIS AGREEMENT, made and entered into this _____ day of _____, 2013, between the Local Agency of **City of Bainbridge Island, Washington**, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

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

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

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

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

I General Description of Work

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

II Scope of Work

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

III General Requirements

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

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

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

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

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

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such

instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

IV Time for Beginning and Completion

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

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

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

V Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit "D" attached hereto, and by reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

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

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

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

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

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

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

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

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

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of

the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT'S employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

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

VIII Nondiscrimination

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

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

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

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

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

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

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

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

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

IX Termination of Agreement

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

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

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

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth above.

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

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

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

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X Changes of Work

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

XI Disputes

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

XII Venue, Applicable Law, and Personal Jurisdiction

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

to the personal jurisdiction of the Superior court of the State of Washington, situated in the county in which the AGENCY is located.

XIII Legal Relations

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

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

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

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

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the PROJECT. Subject to the processing of a new sole source, or an acceptable supplemental agreement, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

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

Insurance Coverage

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

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

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

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

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

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

XIV Extra Work

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

XV Endorsement of Plans

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

XVI Federal and State Review

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

XVII Certification of the Consultant and the Agency

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

XVIII Complete Agreement

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

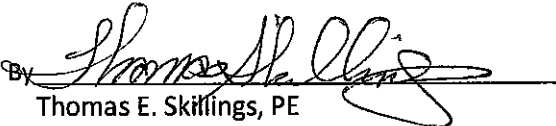
XIX Execution and Acceptance

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

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

Skillings Connolly, Inc.

City of Bainbridge Island

By 
Thomas E. Skillings, PE
President

By _____
Signing Authority

Exhibit A-1 Scope of Work

City of Bainbridge Island Department of Public Works Fort Ward Hill Road – Phase 2 Bolero Lane to NE Sunny Hill Circle

PS&E Revisions, Bid Assistance, Construction Assistance

INTRODUCTION

This project will widen shoulders and reconstruct Fort Ward Hill Road from Bolero Lane to NE Sunny Hill Circle (approximately 1,600 feet). The roadway will consist of two 10-foot lanes, two 5-foot shoulders, with enclosed storm drains and/or ditches on each side to collect and convey the stormwater runoff. The existing roadway horizontal alignment will remain essentially the same. The vertical alignment will be modified to allow for super elevation at the horizontal curves.

Skilling Connolly has prepared construction plans, special provisions, and a construction cost estimate for the project. The project has now been incorporated into the Statewide Transportation Improvement Plan for federal construction funding, the Environmental Classification Summary has been approved by the Washington State Department of Transportation, and the plans are being reviewed by WSDOT Local Programs.

The City of Bainbridge Island (CITY) is requesting assistance to incorporate changes to the PS&E as suggested by WSDOT and CITY reviews, bid period assistance, and design assistance during construction.

The following scope of work delineates tasks to be performed as part of the agreement between Skilling Connolly, Inc. (CONSULTANT) and the City of Bainbridge Island (CITY).

Project Assumptions:

- Work will be performed in accordance with City of Bainbridge Island Road Standards and references contained therein.
- The project is a Federal-aid project.
- All plan sheets will be prepared in AutoCAD2012 format.
- All roadway design will be done using Civil3D2012 software.
- Project advertisement will be in April 2013.
- Construction will start in late May and will include 40 working days.

REFERENCES

The CONSULTANT shall perform services set forth in this SCOPE OF WORK on behalf of the City using procedures specified by the CITY and in compliance with the standards and requirements set forth in the following procedures, regulations and most current (at the time of execution of this agreement) adopted manuals which by reference, are made a part of this Agreement.

- Current (as of the date of execution of the agreement) CITY standards and ordinances:
 - City of Bainbridge Island Code.
 - City of Bainbridge Island Comprehensive Plan, Transportation Section.

- City of Bainbridge Island Land Use and Development Procedures
- City of Bainbridge Island Critical Areas Ordinance.
- City of Bainbridge Island Non-Motorized Transportation Plan.
- City of Bainbridge Island Capital Facilities Plan.
- Current (as of the date of execution of the agreement) versions of the following publications and manuals shall be applicable when specifically cited in the City of Bainbridge Island Road Standards or when required by state or federal funding authorities:
 - *Standard Specifications for Road, Bridge, and Municipal Construction*, published by the Washington State Department of Transportation (WSDOT).
 - *Standard Plans for Road, Bridge, and Municipal Construction*, published by WSDOT.
 - *Design Manual*, published by WSDOT.
 - *Local Agency Guidelines*, published by WSDOT.
 - *A Policy on Geometric Design of Highways and Streets*, published by AASHTO.
 - *Roadside Design Guide*, published by AASHTO.
 - *Manual on Uniform Traffic Control Devices*, published by the U.S. Department of Transportation, Federal Highway Administration, as amended and approved by WSDOT.
 - *Construction Manual*, published by WSDOT.
 - *Traffic Manual*, published by WSDOT.
 - *Highway Capacity Manual*, published by Transportation Research Board.
 - Department of Ecology's *Stormwater Manual for Western Washington*

Task 100 – Project Management

Assumptions:

- CITY will provide minutes/notes of all meetings attended.
- The CITY will pay all permitting and design review fees, if any. The CITY will coordinate with public transportation, school, emergency services, and law enforcement agencies.

Task Description:

1. CONSULTANT will be available for phone consultation throughout the project.
2. CONSULTANT will provide quality control in-house through peer review and principal quality checks.
3. Prepare monthly billings with progress reports.
4. CONSULTANT will maintain a design diary documenting approaches, problems, decisions, and actions. Diary shall be maintained continuously throughout the project. (Finalize diary at bid opening)

Deliverables:

- Monthly invoices and status reports.
- Project diary.

Task 200 – PS&E Revisions

Assumptions:

There will be plan revisions required or suggested by WSDOT Local Programs and CITY plan reviews. These revisions will require design changes, plan sheet revisions, quantity changes, specification changes, and revisions to the estimate of probable construction cost.

Task Description:

1. Design Revisions

Design revisions resulting from the CITY and WSDOT reviews will be completed. One change known to-date is that a design-build retaining wall will not be allowed by WSDOT; therefore, the wall will need to be designed and appropriate specifications written. It is also recommended that the originally specified guardrail terminals be revised to more appropriate crashworthy terminals.

2. Plan Sheet Revisions

Plan sheet revisions resulting from the CITY and WSDOT reviews will be completed.

3. Quantities Revisions/Item Revisions

The CONSULTANT shall verify bid items and calculate quantities for each item. The quantity notebook will be updated to include the design/plan revisions. Quantities shall be summarized on the summary of quantity sheets. Each bid item will be listed in the summary of quantities sheet.

4. Special Provisions.

The CONSULTANT will update the electronic Special Provisions to include the design/plan revisions. The latest (January 2013) WSDOT/APWA general specifications based on the WSDOT 2102 *Standard Specifications for Road, Bridge, and Municipal Construction* will be used.

5. Estimate of Probable Construction Cost

The estimate of probable cost will be updated to include the design/plan revisions.

Deliverables:

- Revised PS&E.
- Revised quantity calculations notebook.
- Comment/response matrix from CITY and WSDOT reviews.

Task 300 – Final Contract Documents

Assumptions:

- Reviews have been completed and comments received from all previous submittals.
- CITY will assemble final Project Manual and Specifications.

Task Description:

Upon completion, review and approval of the revised plans, specifications, and estimate (PS&E) the CONSULTANT shall finalize the drawings and General and Special Provisions based on the CITY's last plan review comments, if any. The CONSULTANT will maintain a review comment matrix tracking sheet to assist in following responses to the CITY's comments.

The tasks that have been identified are as follows:

1. Final Plan Set
2. Following the CITY review of the revised plans the CONSULTANT shall make any changes, modifications or additions necessary.
3. Final Plan Quantities
4. The CONSULTANT shall revise quantities to reflect any changes to the revised plans. The quantity notebook will be updated for each bid item, as will the summary of quantity sheets.
5. Final Specifications.
6. The CONSULTANT shall revise and provide electronic General and Special Provisions for incorporation into the CITY's specification document.

Deliverables:

- One (1) copy of final plan set and copy of all design calculations including design criteria and references. Final documents will be submitted in hard copy and on CD.
- Quantity calculations notebook.
- Special Provisions submitted as a part of the PS&E package.
- Final cost estimate.
- Final copy of review comment matrix with responses.

Task 400 – Bid Period Services

Assumptions:

- Prospective bidders will have questions during the advertisement period requiring assistance from Skillings Connolly.
- One addendum to the project package will be required. Additional addendum assistance will be considered outside this scope of work and CONSULTANT'S effort will be negotiated as a supplement to this agreement.

Task Description:

1. Advertising Period Assistance
CONSULTANT will be available to answer CONTRACTOR questions and provide advice to the CITY on these questions. All CONTRACTOR questions shall come through the CITY and not directly to the CONSULTANT; all responses to the CONTRACTOR will be by the CITY.
2. Addendum Preparation
Should CONTRACTOR questions point out the need for an addendum to the plans or specifications the CONSULTANT shall:
 - 2.1 Prepare the necessary plan revisions
 - 2.2 Revise the item quantities and summary of quantities sheets
 - 2.3 Revise the Special Provisions as needed.

Deliverables:

- Response to CONTRACTOR questions via the CITY.
- One project addendum, if required.

Task 500 – Design Assistance during Construction

Assumptions:

- The CONTRACTOR will have design questions during construction that require assistance from CONSULTANT.
- Design requirements may require a change order to the contract.
- The CITY may request assistance in preparing change orders. Two change orders are anticipated in this scope, additional change order assistance will be considered outside this scope of work and CONSULTANT'S effort will be negotiated as a supplement to this agreement.
- CONSULTANT will attend Pre-construction Conference with CITY and CONTRACTOR.
- CITY will prepare and distribute the Pre-construction Conference minutes.
- CONSULTANT will review and mark-up CONTRACTOR shop drawings and recommend CITY approve or return for correction.

Task Description:

1. Design Questions
CONSULTANT will be available to answer CONTRACTOR questions and provide advice to the CITY on these questions. All CONTRACTOR questions shall come through the CITY and not directly to the CONSULTANT; all responses to the CONTRACTOR will be by the CITY.
2. Change Order Preparation
Should CONTRACTOR questions point out the need for a change order the CONSULTANT shall, at the request of the CITY:
 - Prepare the necessary change order plans.
 - Draft the change order for CITY acceptance.
 - Prepare the change order quantities.
 - Visit the site up to two times, as needed.
 - Provide advice to the CITY as needed for negotiating the change order with the CONTRACTOR.
3. Pre-construction Conference
CONSULTANT will attend the pre-construction conference to either discuss the design intent or to respond to questions.
4. Shop Drawing Review
CONSULTANT will review and mark-up CONTRACTOR shop drawings and recommend CITY approve or return for correction.

Deliverables:

- Response to CONTRACTOR questions via the CITY.
- Two change orders, if required.
- Up to two site visits as needed.
- Attendance at pre-construction conference
- Shop drawings reviewed and marked for CITY response to CONTRACTOR

Task 600 – Construction Administration

Assumptions:

- Overall project management will be by the CITY.

Task Description:

Provide construction phase project administration consulting to the CITY by performing the following services:

1. Record of Materials
CONSULTANT shall assist the CITY in developing appropriate Record of Materials information.
2. Contract administration
CONSULTANT shall be available via phone and/or e-mail to assist CITY with construction administration documentation and/or advice. 40 total hours are estimated.
3. Other services as mutually agreed
CONSULTANT agrees to provide other services as may be required. If these services will incur additional costs to CONSULTANT all parties agree to good faith negotiations.

END SCOPE OF WORK

Prepared by:  Date: 3/19, 2013
Gerald E. Smith, P.E.

Reviewed by:  Date: 3/20, 2013
Thomas E. Skillings, P.E.

Exhibit C

Electronic Exchange of Engineering and Other Data

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

- I. Surveying, Roadway Design & Plans Preparation Section
 - A. Survey Data
 - B. Roadway Design Files
 - C. Computer Aided Drafting Files
 - D. Specify the Agency's Right to Review Product with the Consultant
 - E. Specify the Electronic Deliverables to Be Provided to the Agency
 - F. Specify What Agency Furnished Services and Information Is to Be Provided
- II. Any Other Electronic Files to Be Provided
- III. Methods to Electronically Exchange Data
 - A. Agency Software Suite
 - B. Electronic Messaging System
 - C. File Transfers Format

Exhibit D-3

Payment (Negotiated Hourly Rate)

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

1. **Hourly Rates:** The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibit "E" and "F" attached hereto and by this reference made part of this AGREEMENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the AGENCY. If negotiations are not conducted for the second or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the AGENCY shall be utilized. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.
2. **Direct Non-Salary Costs:** Direct non-salary costs will be reimbursed at the Actual Cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and sub-consultant costs.
3.
 - a. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the AGENCY'S Travel Rules and Procedures. However, air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs."
 - b. The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT.
 - c. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request.
 - d.
 - e. All above charges must be necessary for the services provided under this AGREEMENT.
4. **Management Reserve Fund:** The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section XIV, "Extra Work."

5. **Maximum Total Amount Payable:** The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
6. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly billing shall be supported by detailed statements for hours expended at the rates established in Exhibit "E", including names and classifications of all employees and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT's employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
7. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT shall refund such overpayment to the AGENCY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

8. **Inspection of Cost Records:** The CONSULTANT and their Subconsultants shall keep available for inspection by representatives of the AGENCY, STATE and the United States, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

Exhibit E-2A
Consultant Fee Determination – Fee Schedule
(Specific Rates of Pay)

Discipline or Job Title	Hourly Rate	Overhead @ 190.54 %	Profit @ 32%	Rate Per Hour
Principal-in-Charge	\$42.98	\$81.89	\$13.75	\$138.63
Senior Project Manager	\$37.50	\$71.45	\$12.00	\$120.95
Project Engineer	\$33.25	\$63.35	\$10.64	\$107.24
Technician	\$25.00	\$47.63	\$8.00	\$80.63
Project Administrator	\$27.30	\$52.02	\$8.74	\$88.05

Exhibit E-2B
Consultant Fee Determination – Man-Hours
(Specific Rates of Pay)

PROJECT NAME: 13045 CITY OF BAINBRIDGE ISLAND FORT WARD HILL PHASE 2 PS&E REVISIONS, BID ASSISTANCE AND CONSTRUCTION ASSISTANCE		PRINCIPAL-IN-CHARGE	SENIOR PROJECT MANAGER	PROJECT ENGINEER	TECHNICIAN	PROJECT ADMINISTRATOR
TASK #	TASK DESCRIPTION					
100	PROJECT MANAGEMENT					
100.1	Phone consultation availability.		8	24		
100.2	Quality control.	4	8			
100.3	Prepare monthly billings with progress reports.		4			24
100.4	Maintain a design diary.			8		
200	PS&E REVISIONS					
200.1	Design Revisions			4		
200.2	Plan Sheet Revisions	2	8	24	24	
200.3	Quantities Revisions/Item Revisions			4	4	
200.4	Special Provisions Update		2	4	8	
200.5	Estimate of Probable Construction Cost - Update		2	4	4	
300	FINAL CONTRACT DOCUMENTS					
300.1	Final Plan Set	2	2	16	12	
300.2	Final Plan Quantities			4	2	
300.3	Final Specifications		2	4	2	
400	BID PERIOD SERVICES					
400.1	Contractor RFI		4	16		
400.2	Addendum Preparation		4	16	4	
500	DESIGN ASSISTANCE/CONSTRUCTION					
500.1	Contractor RFI during Construction		4	8		
500.2	Change orders & site visits		12	32		
500.3	Preconstruction conference.		4	4		
500.4	Shop drawing review.		2	16		
600	CONSTRUCTION ADMINISTRATION					
600.1	Record of Materials assistance		4			
600.2	Administration consultation		8	32		
	HOURS PER DISCIPLINE	8	78	220	60	24

Exhibit E-2C
Consultant Fee Determination - Summary Sheet
(Specific Rates of Pay)

NEGOTIATED HOURLY RATE (NHR):					
Classification	Man Hours	x	Rate	=	Cost
PRINCIPAL-IN-CHARGE	8	x	\$138.63	=	\$1,109.04
SENIOR PROJECT MANAGER	78	x	\$120.95	=	\$9,434.10
PROJECT ENGINEER	220	x	\$107.24	=	\$23,592.80
TECHNICIAN	60	x	\$80.63	=	\$4,837.80
PROJECT ADMINISTRATOR	24	x	\$88.05	=	\$2,113.20
Total Hours =	390				Total NHR = \$41,548.28
REIMBURSABLES:					
Mileage	600	x	\$0.565	=	\$339.00
Miscellaneous Expenses	\$15.00	x	10%	=	\$16.50
					Total Expenses= \$355.50
SUBCONSULTANT COST (See Exhibit G):					
Materials Testing	\$0.00	x	0%	=	\$0.00
Subconsultant 1	\$0.00	x	10%	=	\$0.00
Subconsultant 2	\$0.00	x	10%	=	\$0.00
Subconsultant 3	\$0.00	x	10%	=	\$0.00
					Total Subconsultants = \$0.00
SUB-TOTAL (NHR + REIMBURSABLES + SUBCONSULTANTS):					
					Sub Total = \$41,903.78
MANAGEMENT RESERVE FUND:					
SUB TOTAL =	\$41,548.28	x	10%	=	MRF = \$4,154.83
GRAND TOTAL					
					GRAND TOTAL = \$45,858.61
PREPARED BY: <u>Gerald E. Smith, PE</u> REVIEWED BY: <u>Thomas E. Skillings, PE</u> DATE: <u>03/13/2013</u> DATE: <u>03/13/2013</u>					

Exhibit E-2C
Consultant Fee Determination - Expenses
(Specific Rates of Pay)

Item	Description	Basis	Quantity	Rate	Total
1	Telephone	Month			\$0.00
2	Bridge Toll	Each	3	\$5.00	\$15.00
3	Lodging	Day			\$0.00
4	Per Diem-Meal	Day			\$0.00
5	Photo Copies - Blk & White	Each		\$0.10	\$0.00
6	Photo Copies - Color	Each		\$0.35	\$0.00
7	Half Sized Prints	Each		\$3.00	\$0.00
8	Full Sized Prints	Each		\$6.00	\$0.00
9	Postage	Month			\$0.00
10	Shipping	Month			\$0.00
11	FAXs	Each			\$0.00
12	Miscellaneous Project Costs	Month			\$0.00
13	Miscellaneous Survey Costs	Estimated			\$0.00
14	Traffic Control	Estimated			\$0.00
	Total Miscellaneous Expenses				\$15.00
	Mileage	Per Mile	600	0.565	\$339.00
	Total Expenses				\$354.00
Assumptions					
1	Telephone	Estimated			
2	Auto Rental	Estimated trips			
3	Mileage	Estimated miles			
4	Lodging				
5	Per Diem-Meal				
6	Photo Copies - Blk & White	Estimated			
7	Photo Copies - Colored	Estimated			
8	Half Sized Prints				
9	Full Sized Prints				
10	Postage	Estimated			
11	Shipping	Estimated			
12	FAXs	Estimated			
13	Miscellaneous Project Costs	Estimated			
14	Miscellaneous Survey Costs	Estimated			
15	Purchase Order	Estimated			
Prepared by: Gerald E. Smith, PE		03/13/2013			

Exhibit F

Breakdown of Overhead Cost

Account Classification		
DIRECT LABOR	813,601	100.00
FRINGE BENEFITS		
Payroll Taxes	205,349	25.24%
Insurance	112,274	13.80%
Other Employee benefits	-	0.00%
Vacation/Sick/Holiday	136,517	16.78%
Fringe Benefit Adjustment	(36,800)	-4.52%
TOTAL FRINGE BENEFITS	417,340	51.30%
OVERHEAD COSTS		
Indirect Labor	236,047	29.01%
Uncompensated Overtime	1,223	0.15%
Bid and Proposal Labor	454,941	55.92%
Payroll Variance	(2,264)	-0.28%
Trade Show and Misc U/A Labor	(8,617)	-1.06%
Maintenance and Repair	2,459	0.30%
Utilities - Heat and Lights	16,739	2.06%
Utilities - Telephone	51,196	6.29%
Utilities - Other	908	0.11%
Postage and Shipping	2,550	0.31%
Proposal Expenses	377	0.05%
Supplies & Expense - Field	1,262	0.16%
Supplies & Expense - Office	26,932	3.31%
Software & Software Licenses	14,100	1.73%
Fees	6,636	0.82%
Books & Publications	1,100	0.14%
Auto - Gas, Oil and Lube	17,132	2.11%
Auto - Maintenance and Repair	4,475	0.55%
Mileage - Non-billable	12,760	1.57%
Personal Use of Company Auto	(12,233)	-1.50%
Rent	90,414	11.11%
Equipment Rental	2,082	0.26%
Licenses	4,083	0.50%
Taxes - Property	2,243	0.28%
Taxes - State Excise	46,067	5.66%
Taxes - Other Taxes	5,684	0.70%
Depreciation	73,729	9.06%
Insurance - Fire/General Liability	21,900	2.69%
Insurance - Professional Liability	26,734	3.29%
Legal	660	0.08%
Meals - Out of Town	214	0.03%
Travel	636	0.08%
Lodging	2,363	0.29%
Seminars & Education	6,513	0.80%
Dues & Subscriptions	17,446	2.14%
Gain on Sale of Fixed Assets	(1,199)	-0.15%
Purchase Discounts	1	0.00%
TOTAL GENERAL OVERHEAD	1,127,293	138.56%
TOTAL OVERHEAD	1,544,633	189.85%
Overhead Rate (Less FCC)	5,574	0.69%
OVERHEAD RATE		<u>190.54%</u>

Exhibit H

Title VI Assurances

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

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

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

Exhibit I
Payment Upon Termination of Agreement
By the Agency Other Than for
Fault of the Consultant
(Refer to Agreement, Section IX)

Lump Sum Contracts

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

Cost Plus Fixed Fee Contracts

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

Specific Rates of Pay Contracts

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

Cost Per Unit of Work Contracts

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

Exhibit J

Alleged Consultant Design Error Procedures

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

Step 1 – Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Highways and Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 - Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

Step 3 – Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including Subconsultants) deemed appropriate for the alleged design error(s) issue.

Step 4 – Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the

project in which the design error took place. The agency is to provide H&LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.

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

Step 5 – Forward Documents to Highways and Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Highways and Local Programs Engineer to H&LP for their review and consultation with the FHWA. H&LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, H&LP will request assistance from the Attorney General's Office for legal interpretation. H&LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. H&LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Exhibit K

Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 – Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 – Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

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

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

action is needed regarding the claim procedures.

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

Step 3 – Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that includes the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s)
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 – Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Highways and Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 – Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 – Preparation of Supplement or New Agreement for the Consultant's Claim(s)

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

Exhibit M-1(a)
Certification Of Consultant

Project No. 12137

Local Agency: **City of Bainbridge Island**

I hereby certify that I am **Thomas E. Skillings, President** and am a duly authorized representative of the firm of **Skillings Connolly, Inc.** whose address is **5016 Lacey Blvd. SE, Lacey, WA 98503** and that neither I nor the above firm I here represent has:

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

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

3/20/2013
Date


Thomas E. Skillings, PE
President

Exhibit M-1(b)
Certification Of Agency Official

I hereby certify that I am the AGENCY Official of the Local Agency of **City of Bainbridge Island**, Washington, and that the consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

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

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

Date

Signature

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

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (I)(B) of this certification; and
 - D. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm): **Skillings Connolly, Inc.**

3/20/2013
Date


Thomas E. Skillings, PE
President

Exhibit M-3
Certification Regarding The Restrictions
Of The Use of Federal Funds For Lobbying

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

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

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

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

Consultant (Firm): **Skillings Connolly, Inc.**

3/20/2013
Date

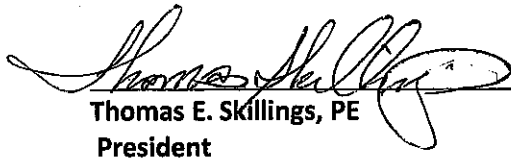

Thomas E. Skillings, PE
President

Exhibit M-4
Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of **Fort Ward Hill PS&E Assistance, Bid Assistance and Construction Assistance** are accurate, complete, and current as of March 13, 2013. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm **Skillings Connolly, Inc.**

Name **Thomas E. Skillings, PE**

Title **President**

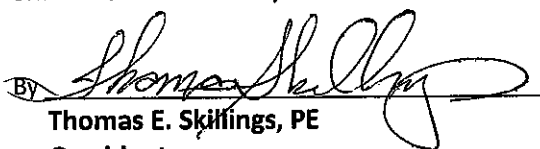
Date of Execution: **March 13, 2013**

Supplemental Signature Page for Standard Consultant Agreement	Consultant/Address/Telephone Skillings Connolly, Inc. PO Box 5080 5016 Lacey Blvd. SE Lacey, WA 98509
Agreement Number 13045	Project Title And Work Description Fort Ward Hill PS & E Assistance, Bid Assistance and Construction Assistant
Federal Aid Number	
Local Agency City of Bainbridge Island, Washington	

THIS AGREEMENT, made and entered into this _____ day of _____, 2013, between the Local Agency of **City of Bainbridge Island, Washington**, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

SKILLINGS CONNOLLY, INC.

By 
**Thomas E. Skillings, PE
President**

CITY OF BAINBRIDGE ISLAND, WASHINGTON

By _____

By _____

By _____

By _____

CITY OF BAINBRIDGE ISLAND

CITY COUNCIL AGENDA BILL



PROCESS INFORMATION

Subject: Fletcher Bay Well House Repair and Refurbishment Project - Bid Rejection & Construction Award	Date: April 3, 2013
Agenda Item: Staff Intensive	Bill No.: 13-039
Proposed By: Lance Newkirk, Public Works Director	

BUDGET INFORMATION

Fund: 2013 Annual Water Preservation Program @ \$139k

Expenditure Req:	Budgeted? ☒ Yes ☐ No	Budget Amend. Req? ☐ Yes ☒ No
------------------	---	--

REFERRALS/REVIEW

Study Session:					
City Manager:	☒ Yes ☐ No	Legal:	☒ Yes ☐ No	Finance:	☒ Yes ☐ No

DESCRIPTION/SUMMARY

Action Item:

Consider placement of the Fletcher Bay Well House Refurbish project bid rejection and contract award at the April 10, 2013 City Council meeting.

History:

The Fletcher Bay Well House Refurbish project consists of refurbishment of the roof, siding, doors, and interior of the existing Fletcher Bay Well House.

Bids were solicited using the Small Works Roster process and two bids were received at the March 28, 2013 bid opening. The apparent low bidder was Coultas General Contracting in the amount of \$41,829.46. After further review, Coultas bid was determined non-responsive due to their bid proposal being late and not acknowledging Addendum No. 1 in the bid documents. Therefore, staff recommends awarding this project to DP Wain Construction in the amount of \$48,951.45 as the responsible bidder.

The engineer's estimate is \$42,136.80.

RECOMMENDED ACTION

Motion:

I move that the City Council reject the bid from Coultas General Contracting due to being non-responsive and recommend award to DP Wain Construction in the amount of \$48,951.45 for the Fletcher Bay Well House Refurbish project at the April 10, 2013 City Council meeting.

**City of Bainbridge Island
PUBLIC WORKS DEPARTMENT**



MEMORANDUM

TO: City Council
Douglas Schulze, City Manager

FROM: Lance Newkirk, Public Works Director

DATE: For April 3, 2013

RE: Fletcher Bay Well House Repair and Refurbishment Project

Purpose

The repair and refurbishment project of the Fletcher Bay Well House will preserve and protect a critical water utility asset. This memorandum provides an overview of the project.

Background

The Fletcher Bay Well House treatment building was originally constructed in 1979 and is showing signs of age and water damage. An inspection of the building revealed a number of deficiencies that need to be addressed. To address these deficiencies the refurbishment project includes roofing repairs, siding replacement where rotted, door replacement, exterior and interior painting, and the installation of secondary containment structure to capture chlorinated and fluoridated water from interior floor drains.

The proposed repairs complete a series of repair, replacement and upgrade projects to the facility over the last few years. These projects have included:

- Rehabilitate Well and Replace Well Pump (2005)
- Replace Booster Pump and Associated Equipment (2006)
- Replace Programmable Logic Controller (2008)
- Replace Well Pump (2009)
- Replace Well Pump Variable Frequency Drive

Summary

With the completion of the recommended and recently completed repairs, the Fletcher Bay Well House treatment building will continue to provide the City's water customers with reliable water service long into the future.



City of Bainbridge Island

Public Works Department - Engineering

Project: Fletcher Bay Well House Refurbishment Project

Bid Opening Date: Bids Due on March 28, 2013 @ 11:00 am

Open Bids @ 11:15 am

Note: Bids Are Opened in Order Received. Bids Solicited by: ☐ Advertisement ☒ Small Works Roster The Engineers Estimate is:	DP WAIN CONSTRUCTION PO Box 3771 Silverdale, WA 98383	COULTAS GENERAL CONT. PO Box 549 Poulsbo, WA 98370		
Proposal – <i>Items of Work & Materials, Estimated Quantities, Units of Measurement.</i>	√	√		
Proposal – Signature Page	√	√		
Addendum Acknowledged	√			
Non-Collusion Declaration	√	√		
Proposal Bond (5%)	√	√		
Statement of Bidders Qualifications	√	√		
Base Bid	\$ 45,075.00	\$ 38,517.00		
Sales Tax	3,876.45	3,312.46		
TOTAL BID AMOUNT	\$ 48,951.45	\$ 41,829.46		

A total of 2 bids were received for the **Fletcher Bay Well House Refurbishment Project**. Project Manager, Larry Ward, has reviewed all the bids and recommends that the City Council award the contract to the apparent low bidder, DP Wain Construction in the amount of \$48,951.45.

CITY OF BAINBRIDGE ISLAND

CITY COUNCIL AGENDA BILL



PROCESS INFORMATION

Subject: Local Technology Planning Grant		Date: April 3, 2013
Agenda Item: Staff Intensive		Bill No.: 13-041
Proposed By: Doug Schulze, City Manager	Referral(s):	

BUDGET INFORMATION

Department/Fund:		Munis Contract #
Expenditure Req:	Budgeted? ☐ Yes ☒ No	Budget Amend. Req? ☒ Yes ☐ No

DESCRIPTION/SUMMARY

The 2013 Local Technology Planning Team Grant program is accepting applications now through 5 p.m., April 30, 2013. Application reviewers will be looking for applications and projects that advance broadband deployment and adoption in Washington State and best achieve the following goals:

- Improve the inventory of data, studies, and other resources to enhance the deployment of broadband technology.
- Create a shared, structured, and formalized process for the collection and dissemination of information critical for the successful deployment of broadband infrastructure and technologies.
- Identify and benchmark regional or community specific information and broadband performance needs, requirements, and interests.
- Develop region or community specific broadband deployment and monitoring plans to address the specific needs, requirements, and interests.
- Develop strategies for public/private collaboration to increase efficiency of delivering services to the public.

The Local Technology Planning Team grants are part of a federal State Broadband Data and Development grant awarded to the Washington State Department of Commerce for the Washington State Broadband Office under the American Recovery and Reinvestment Act (ARRA).

For applications from a single entity, the maximum request allowed is \$50,000. For joint applications from two to seven entities, \$70,000 is the maximum request.

RECOMMENDED ACTION

Motion:

I make a motion to authorize the City Manager to submit an application for a Local Technology Planning Team Grant.

Local Technology Planning Team Grant

Application Frequently Asked Questions

Q: The application refers to entities, what is an entity?

A: An entity is any non-profit organization, governmental unit, community group, jurisdiction, provider (public or private), school or public or private college or university. An entity is NOT an individual. Entities may be partners in the grant, but only eligible entities (cities, counties, public utility districts, ports, nonprofit organizations, tribes, public or private colleges and universities and community groups partnering with one of the entities mentioned above in all 39 counties in Washington State) may apply for the grant.

Q: Can the broadband grants be awarded to a state agency?

A: No, the grants cannot be awarded to a state agency with the exception of state colleges or universities; however a state agency may partner with any of the eligible entities on a community or regional grant application.

Q: Can tangible assets be funded?

A: The grant cannot fund infrastructure or real estate. Computer hardware may be eligible provided it is not part of the broadband infrastructure.

Q: Are website development costs (e.g. building websites for e-government processes) eligible under the grant?

A: As long as the website development costs are directly related to a plan for broadband deployment and adoption, including e-government, those costs are eligible.

Q: Are GIS activities (e.g. software licenses/maintenance, map creation, etc.) done in relation to community broadband asset mapping eligible expenses?

A: Yes, GIS activities are eligible as long as they are related to a plan for broadband deployment or adoption, including e-government.

Q: Are satellite communications planning activities eligible?

A: Yes, if your community or region is considering satellite as a technology for broadband deployment and adoption, satellite communications planning activities are an eligible expense.

Q: Is the funding for planning activities only or are expenses related to implementation of any part of the plan eligible?

A: Yes, expenses related to both planning and implementation of a plan are eligible expenses as long as they are not for infrastructure, real estate or food.

Q: Are indirect charges allowed under this grant?

A: Yes, indirect expenses are an allowable cost. Please contact the Broadband Office if you have further questions about indirect costs.

Q: Can staff employee time be counted towards the 20 percent match requirement?

A: Yes, employee time can be used to meet the match requirement as long as the employee is not:

- 1) A state employee OR
- 2) An employee paid with federal funds (this federal grant prohibits the use of federal funds as a match).

Q: Is this grant only for rural areas of the state?

A: No, urban, suburban and rural communities are encouraged to apply. In the case of regional applications it would be likely that all of these kinds of communities might be represented within one planning team.

Q: Is there a list of approved activities for a work plan funded by this grant?

A: No, we recognize that communities vary widely in broadband deployment and adoption and have allowed for flexibility in how a community or region might address its own needs. Please review the Grant Application Overview and Grant Application for activities that we will NOT fund before submitting your application.

Q: Where can I get information on what planning teams have done in other parts of the country?

A: There are several great sources of information on this topic. They include:

- The community toolkit compiled by a committee of the [Rural Telecommunications Congress](#).
- [Connecting Communities](#) a curriculum for communities seeking to improve broadband deployment and adoption.
- [Lessons Learned](#) from Colorado Technology Planning Teams Program.