REGULAR CITY COUNCIL STUDY SESSION
WEDNESDAY, APRIL 17, 2013
LOCATION: BAINBRIDGE ISLAND CITY HALL
280 MADISON AVENUE N., BAINBRIDGE ISLAND, WASHINGTON

AGENDA

1. **CALL TO ORDER / ROLL CALL**
7:00 PM Mayor: Steven Bonkowski
Councilmembers: Anne Blair, Debbi Lester, Sarah Blossom, Bob Scales, Kirsten Hytopoulos, David Ward

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

3. **PRESENTATIONS**
7:10 PM
   - **A. Subject:** National Poetry Month, Bainbridge Island Arts and Humanities Council Poetry Reading – 5 min.
   Discussion Leaders: Cosette Miller and Evan Bergen-Epstein (6th Grade) Poets
   Discussion Goal: Information only.

   - **B. Subject:** Performance Measures – 15 min.
   Discussion Leader: Tom Nelson, New Pathways
   Discussion Goal: Information only.

   - **C. Subject:** Suzuki Property – 15 min.
   Discussion Leader: Mark Blatter, Housing Resources Board
   Discussion Goal: Information only.

4. **STAFF INTENSIVE**
7:45 PM
   - **A. Subject**: Shoreline Master Program Consistency Matrix – 15 min.
   Discussion Leader: Planning
   Discussion Goal: Information only.

   - **B. Subject:** Contract Amendment Relating to Energy Efficiency Conservation Block Grant Contract, AB 09-024 – 10 min.
   Discussion Leader: Planning
   Discussion Goal: Consider scheduling approval for April 24, 2013.

   - **C. Subject:** Ordinance No. 2013-02, Business and Occupation Tax Administrative Procedures, AB 13-046 – 5 min.
   Discussion Leader: Finance
   Discussion Goal: First reading. Consider scheduling second reading for May 8, 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.

D. **Subject:** Ordinance No. 2013-08, Relating to the Police Civil Service Appointments, AB 13-044 – 5 min.
Discussion Leader: Executive
Discussion Goal: First reading. Consider scheduling second reading for April 24, 2013.

E. **Subject:** Madison Avenue Water Main Construction Award, Liden Land Development and Excavation, AB 13-045 – 15 min.
Discussion Leader: Public Works
Discussion Goal: Consider scheduling approval for April 24, 2013.

F. **Subject:** License Agreement with Kitsap Public Utility District, Meigs Farm Well Water Level Monitoring, AB 13-047 – 10 min.
Discussion Leader: Public Works
Discussion Goal: Consider scheduling contract approval for April 24, 2013.

G. **Subject:** Resolution No. 2013-08, Lynwood Center Stormwater Outfall Project, Sole Source Purchase, and CheckMate® Inline Check Valve Purchase, AB 13-048 – 10 min.
Discussion Leader: Public Works
Discussion Goal: Consider scheduling approval for April 24, 2013.

H. **Subject:** Dripping Water Creek Drainage Improvements, Professional Services Agreement, Amendment No. 2, Map Ltd., AB 13-049 – 10 min**.**
Discussion Leader: Public Works
Discussion Goal: Consider scheduling approval for April 24, 2013.

5. COUNCIL DISCUSSION
9:05 PM

A. **Subject:** TransPol Funding: Key Milestones – 15 min.
Discussion Leader: Council
Discussion Goal: Information

B. **Subject:** Pacific Gateway Terminal Coal Proposal – 10 min.
Discussion Leader: Mayor Bonkowski
Discussion Goal: Information. Consider next steps.

6. COMMITTEE REPORTS
9:30 PM

7. REVIEW UPCOMING COUNCIL MEETING AGENDAS
9:35 PM

8. FOR THE GOOD OF THE ORDER
9:40 PM

9. ADJOURNMENT
9:45 PM

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

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CITY OF BAINBRIDGE ISLAND
CITY COUNCIL AGENDA BILL

PROCESS INFORMATION		
Subject: Contract Amendment relating to Energy Efficiency Conservation Block Grant Contract		Date: April 17, 2013
Agenda Item: Staff Intensive		Bill No.: 09-084
Proposed By: Kathy Cook, Planning Director	Referral(s):	

BUDGET INFORMATION		
Department:	Fund:	Munis Contract #
Expenditure Req:	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 placing Contract Amendment relating to Energy Efficiency Conservation Block Grant Contract on April 24, 2013 consent agenda.

History:

The City of Bainbridge Island entered into an Energy Efficiency Loan Loss Reserve Agreement on January 6, 2011 with Kitsap County and the Kitsap Credit Union to establish a loan loss reserve and weatherization program as a part of the Energy Efficiency Conservation Block Grant. This amendment impacts mainly Kitsap County's portion of the contract and provides one consistent set of requirements for people applying anywhere in the County (i.e., there are no different criteria or steps now for City vs. County residents).

*** Continued on Page 2***

RECOMMENDED ACTION

Motion:

I move that the City Council place the Contract Amendment relating to the Energy Efficiency Conservation Block Grant on the April 24, 2013 consent agenda.

DESCRIPTION/SUMMARY – Page 2 –

History cont.:

Specifically, the following changes were made:

- Removed the requirement that County residents had to obtain a home energy assessment with an Energy Performance Score (EPS) prior to applying for a loan. The new language says that the following energy audit tools will suffice for a loan application anywhere in the County.
    - "loans shall only fund energy efficiency measures identified in home energy assessments conducted by Conservation Services Group, Puget Sound Energy, or BPI certified contractors participating in the RePower Program, or any online audits completed on the RePowerKitsap, RePowerBremerton, or RePowerBainbridge.org websites."
- Removed the requirement that loan applicants had to use a RePower trade ally to complete the funded work. Since the future of the RePower program is uncertain once the other grant funding sources expire this year and there is no guarantee that this trade ally list will continue to exist or have any kind of QA/QC process in place, the fact that the new PSCCU does not require this, and in order to avoid having to do another amendment at the end of 2013, this requirement was removed now.
- Adds requirement for KCU to provide copies of contractor invoices submitted for each loan-funded project. This change was made to ensure that there is a process in place to verify that only acceptable activities are being funded with loan funds backed by the City and County, and was specifically requested by the Department of Energy.

These changes were made for a couple of reasons:

- Federal Energy Efficiency & Conservation Block Grant funds expired in December 2012, so an instant rebate to help subsidize the cost of a home energy assessment with an Energy Performance Score (EPS) is no longer offered. Although the grant has ended, the Department of Energy has indicated that this is still an "open" activity and will continue to align with original grant criteria and reporting requirements (contract with KCU goes through 2020).
- The State Department of Commerce used some of their RePower Kitsap grant money to establish a second energy efficiency loan program with Puget Sound Cooperative Credit Union (PSCCU) that does not require the same EPS assessment and use of trade ally contractors that the KCU program did. Changes were made to the program to make the KCU loan program more competitive and ensure that the funds the County and City invested in this as early pioneers of energy efficiency loans would continue to be utilized.

Revision 2000-09-02
KC-432-10 B

CONTRACT AMENDMENT

This CONTRACT AMENDMENT is made and entered into between KITSAP COUNTY, a municipal corporation, with its principal offices at 614 Division Street, Port Orchard, Washington 98366, hereinafter "COUNTY", and the City of Bainbridge Island and Kitsap Credit Union, hereinafter "CONTRACTOR."

In consideration of the mutual benefits and covenants contained herein, the parties agree that their Contract, numbered as Kitsap County Contract No. KC-432-10, and executed on 12/5/12, shall be amended as follows:

1. **ARTICLE IV Section 4.01: Quarterly Reporting.**

(a) KCU will provide the Municipalities Quarterly Reports within three calendar days of the end date of each quarter (quarter end dates are 3/31, 6/30, 9/30, and 12/31), listing the Loan activity in that Quarter, within KCU's regulations. The Quarterly Report shall list the number of new EE Loans applications received, denied, approved, and funded by KCU for the preceding quarter and any reasons for denial. The Quarterly Report shall indicate the payment performance on outstanding Loans, collections if any, and other activities in the Escrow Accounts, Reserve Accounts, and Reflow Escrow Accounts. The Quarterly Report shall also indicate the number of any delinquent EE Loans. The Quarterly Report shall include a section noting which Loans have been paid in full and any funds in the Reserve Accounts corresponding to those paid Loans that will be transferred to the Reflow Escrow Accounts. The Quarterly Report shall also tabulate the number of Loans made, categorized by the type of EE upgrade and the zip code where the work was done. A form Quarterly Report is attached as Annex A and shall be submitted with copies of contract receipts showing energy efficiency conservation measures installed with proceeds of Loans and any other information to enable the COUNTY and/or CITY to calculate estimated greenhouse gas (GHG) metric impacts. The quarterly report shall also include copies of the certificate of completion for each loan-funded project completed during the quarter.

2. **Annex B.1– Example Terms, Conditions, and Underwriting Criteria – Residential Loans on Behalf of the County**

Borrowers: Eligible borrowers include individuals residing in Kitsap County who qualify for KCU membership, have no active collections or judgments, and have two years stable income.

Lender: KCU

Use of Proceeds & Eligible Projects: Pursuant to the Program Agreement among the County, the City, and KCU, and this Agreement, loans shall only fund energy efficiency measures identified in home energy assessments conducted by Conservation Services Group, Puget Sound Energy, or BPI certified contractors participating in the RePower Program, or any online audits completed on the RePowerKitsap, RePowerBremerton, or RePowerBainbridge.org websites. To the extent allowable by law, loans may fund renewable energy measures where energy efficiency measures identified in the home energy assessments are also part of the loan, as well as associated remodel costs that must be incorporated in order to complete the energy efficiency measures. Property must be located in Kitsap County.

Multi-family residences qualify for Eligible Loans if and only if they are four units or less, owned by a non-incorporated individual, and comply with other Grantor's requirements.

Unsecured EE Loan:

Minimum Loan: $1,000

Maximum Loan: $10,000

Loan Terms: 24, 36, 48, or 60 months

Interest Rates: 4-6%

Minimum Credit Scores: 620-650 Beacon with BNI 285+; 650+ Beacon with BNI 250+

Maximum Debt to Income Ratio: 50%

Interest rates, minimum credit scores, and maximum debt to income ratio may be adjusted semi-annually in agreement with KCU, the County, and the City.

Security: UCC filings shall be required for Loans above $5,000. Loans will also be indirectly secured by the pledge of loan loss reserve funds.

EE Home Equity Loan:

Minimum Loan: $10,001

Maximum Loan: $50,000

Loan Terms: 180 months

Interest Rates: 5% up to 80% CLTV; 6% up to 100% CLTV

Minimum Credit Scores: 620-650 Beacon with BNI 285+; 650+ Beacon with BNI 250+

Maximum Debt to Income Ratio: 50%

Interest rates, minimum credit scores, and maximum debt to income ratio may be adjusted semi-annually in agreement with KCU, the County, and the City.

Security: Second DOT Primary Residence. Loans will also be indirectly secured by the pledge of loan loss reserve funds.

Valuation Method: Tax Assessed Value or Automated Valuation Method or BPO. Any borrower requested appraisal will be at the borrower's expense.

Payment Schedule: Payments will be fully amortized, fixed monthly principal and interest amounts, beginning with the initial payment. Rates will be fixed for each loan at the time of loan application approval.

Origination Fees and Closing Costs: Waived.

Price Adjustments: KCU offers a 0.25% discount for automatic payment from any KCU deposit account.

Prepayment Option: Interest on KCU's loans is calculated using the actual / actual interest approach, and these loans will not include any penalties for pre-payment.

Loan Disbursement: Loans will be disbursed via Cashier's Check made payable to the contractor. Each Loan disbursement on each project will be contingent upon prior written approval by borrower and contractor, based upon a signed Certificate of Completion.

Loans may be disbursed in two separate disbursements when agreed upon prior to loan documentation.

Loan Repayment: Repayment will be expected to come from the borrower's monthly income. Borrowers will be fully obligated to repay the credit via the promissory note and any associated filing to perfect KCU's interests.

Should the borrower default on repayment, the Loss Reserve Account will be drawn upon to cover a portion of the loss per this Agreement.

Underwriting Criteria: See Schedule 1 for KCU's Loan Criteria.

Loan Origination Procedures & Schedule:

- Loan applications shall be submitted to one of KCU's branches located in Kitsap County.
- Applications may be submitted in person, by fax, by email, or by mail. The application must note the street address of the subject property.

- Accompanying the application shall be the following:
    - Copy of home energy assessment outlining energy efficiency opportunities conducted by Conservation Services Group, Puget Sound Energy or BPI certified contractors participating in the RePower program, or any online audits completed on the RePowerKitsap, RePowerBremerton, or RePowerBainbridge.org websites.
    - Statement of intended work from the contractor, listing the work to be performed, the estimated cost, and the needed loan amount.
    - Income documentation: current pay stub or for self-employed applicants a full, signed copy of their last federal income tax return.
- KCU will underwrite the complete loan application and associated documentation, and will respond back to the applicant within 1 to 2 business days. Loan closing will occur in a KCU branch. Closing is subject to 3-day right of rescission. Funding projected for fourth business day.

Restriction on Use of Funds: Loans cannot be made for any improvements taking place at casinos, zoos, aquariums, golf courses, or swimming pools per American Recovery and Reinvestment Act of 2009 funding guidelines.

3. **Annex B.2 – Example Terms, Conditions, and Underwriting Criteria – Residential Loans: Bainbridge Island**

Borrowers: Eligible borrowers include individuals residing in Bainbridge Island.

Lender: KCU

Use of Proceeds & Eligible Projects: Pursuant to the Program Agreement among the County, the City, and KCU, and this Agreement, loans shall only fund energy efficiency measures identified in home energy assessments conducted by Conservation Services Group or BPI certified contractors participating in the RePower Bainbridge program. To the extent allowable by law, loans may fund renewable energy measures where energy efficiency measures identified in the home energy assessments are also part of the loan. Property must be located in the City of Bainbridge Island.

Multi-family residences qualify for Eligible Loans if and only if they are four units or less owned by a non-incorporated individual, and comply with other Grantor's requirements.

Unsecured EE Loan:

Minimum Loan: $1,000

Maximum Loan: $10,000

Loan Terms: 24, 36, 48, or 60 months

Interest Rates: 4-6%

Minimum Credit Scores: 620-650 Beacon with BNI 285+; 650+ Beacon with BNI 250+

Maximum Debt to Income Ratio: 50%

Interest rates, minimum credit scores, and maximum debt to income ratio may be adjusted semi-annually in agreement with KCU, the County, and the City.

Security: UCC filings shall be required for Loans above $5,000. Loans will also be indirectly secured by the pledge of loan loss reserve funds.

EE Home Equity Loan:

Minimum Loan: $10,001

Maximum Loan: $50,000

Loan Terms: 180 months

Interest Rates: 5% up to 80% CLTV; 6% up to 100% CLTV

Minimum Credit Scores: 620-650 Beacon with BNI 285+; 650+ Beacon with BNI 250+

Maximum Debt to Income Ratio: 50%

Interest rates, minimum credit scores, and maximum debt to income ratio may be adjusted semi-annually in agreement with KCU, the County, and the City.

Security: Second DOT Primary Residence. Loans will also be indirectly secured by the pledge of loan loss reserve funds.

Valuation Method: Tax Assessed Value or Automated Valuation Method or BPO. Any borrower request appraisal will be at the borrower's expense.

Payment Schedule: Payments will be fully amortized, fixed monthly principal and interest amounts, beginning with the initial payment. Rates will be fixed for each loan at the time of loan application approval.

Origination Fees and Closing Costs: Waived.

Price Adjustments: KCU offers a 0.25% discount for automatic payment from any KCU deposit account.

Prepayment Option: Interest on KCU's loans is calculated using the actual / actual interest approach, and these loans will not include any penalties for pre-payment.

Loan Disbursement: Loans will be disbursed via Cashier's Check made payable to the contractor. Each Loan disbursement on each project will be contingent upon prior written approval by borrower and contractor, based upon a signed Certificate of Completion.

Loans may be disbursed in two separate disbursements when agreed upon prior to loan documentation: 50% up front for materials and 50% upon receipt of Certificate of Completion.

Loan Repayment: Repayment will be expected to come from the borrower's monthly income. Borrowers will be fully obligated to repay the credit via the promissory note and any associated filing to perfect KCU's interests.

Should the borrower default on repayment, the Loss Reserve Account will be drawn upon to cover a portion of the loss per this Agreement.

Underwriting Criteria: See Schedule 1 for KCU's Loan Criteria.

Loan Origination Procedures & Schedule:

- Loan applications shall be submitted to one of KCU's branches located in Kitsap County.
- Applications may be submitted in person, by fax, by email, or by mail. The application must note the street address of the subject property.
- Accompanying the application shall be the following:
    - Copy of home energy assessment outlining energy efficiency opportunities conducted by Conservation Services Group or BPI certified contractors participating in the RePower Bainbridge program or any online audits completed on the RePowerBainbridge.org website.
    - Statement of intended work from the contractor, listing the work to be performed, the estimated cost, and the needed loan amount.
    - Income documentation: current pay stub or for self-employed applicants a full, signed copy of their last federal income tax return.
- KCU will underwrite the complete loan application and associated documentation, and will respond back to the applicant within 1 to 2 business days. Loan closing will occur in a KCU branch. Closing is subject to 3-day right of rescission. Funding projected for fourth business day.

Restriction on Use of Funds: Loans cannot be made for any improvements taking place at casinos, zoos, aquariums, golf courses, or swimming pools per American Recovery and Reinvestment Act of 2009 funding guidelines.

4. **Annex B.3 – Example Terms, Conditions, and Underwriting Criteria – Commercial Loans: Kitsap County**

Borrowers: Eligible borrowers include businesses residing in Kitsap County.

Lender: KCU

Use of Proceeds & Eligible Projects: Pursuant to the Program Agreement among the County, the City, and KCU, and this Agreement, loans shall only fund energy efficiency measures identified by the Puget Sound Energy Business Energy Audit, BPI certified contractors participating in the RePower Kitsap Program, or certified contractors providing energy audits on behalf of Washington State University or the Kitsap Food Chain Program. To the extent allowable by law, loans may fund renewable energy measures where energy efficiency measures identified in the home energy assessments are also part of the loan. Property must be located in Kitsap County.

Minimum Loan: $5,000

Maximum Loan: $25,000

Loan Terms: 36, 60 or 84 months (must not exceed lease term)

Interest Rates: 7.00% (Subject to change)

Minimum Credit Scores: 650

Maximum Debt to Income Ratio: 1.25:1 DSCR

Income Verification: Last three years profitability required

Interest rates, minimum credit scores, and maximum debt service coverage ratio may be adjusted semi-annually in agreement with KCU, the County, and the City.

Security: UCC Filing on Furniture, Fixtures, Equipment. Loans will also be indirectly secured by the pledge of loan loss reserve funds.

Payment Schedule: Monthly Fully Amortized Principle and Interest payments. Rates will be fixed for each loan at the time of loan application approval.

Origination Fees and Closing Costs: $250.00 origination fees. Third Party Fees Paid by Borrower.

Price Adjustments: KCU offers a 0.25% discount for automatic payment from any KCU deposit account.

Prepayment Option: Interest on KCU's loans is calculated using the actual / actual interest approach, and these loans will not include any penalties for pre-payment.

Loan Disbursement: Loans will be disbursed via Cashier's Check made payable to the contractor. Each Loan disbursement on each project will be contingent upon prior written approval by borrower and contractor, based upon a signed Certificate of Completion.

Loans may be disbursed in two separate disbursements when agreed upon prior to loan documentation.

Loan Repayment: Repayment will be expected to come from the borrower's monthly cashflow. Borrowers will be fully obligated to repay the credit via the promissory note and any associated filing to perfect KCU's interests.

Should the borrower default on repayment, the Loss Reserve Account will be drawn upon to cover a portion of the loss per this Agreement.

Underwriting Criteria: See Schedule 1 for KCU's Loan Criteria.

Loan Origination Procedures & Schedule:

- Loan applications shall be submitted to one of KCU's branches located in Kitsap County.
- Applications may be submitted in person, by fax, by email, or by mail. The application must note the street address of the subject property.
- Accompanying the application shall be the following:
  - Approved energy assessment from Puget Sound Energy Business Energy Audit, BPI certified contractors participating in the RePower Kitsap, Bremerton or Bainbridge Program, or certified contractors providing energy audits on behalf of Washington State University or the Kitsap Food Chain Program.
  - Statement of intended work from the contractor, listing the work to be performed, the estimated cost, and the needed loan amount.
  - Income documentation: signed copy of their last three years federal income tax returns and year to date profit & loss statement and balance sheet.
- KCU will underwrite the complete loan application and associated documentation, and will respond back to the applicant within 2 to 3 business days. Loan documents will normally be available 3-4 business days. Loan closing will occur in a KCU branch.

Restriction on Use of Funds: Loans cannot be made for any improvements taking place at casinos, zoos, aquariums, golf courses, or swimming pools per American Recovery and Reinvestment Act of 2009 funding guidelines.

5. Annex B.4 – Example Terms, Conditions, and Underwriting Criteria – Commercial Loans: Bainbridge Island

Borrowers: Eligible borrowers include businesses residing in Bainbridge Island.

Lender: KCU

Use of Proceeds & Eligible Projects: Pursuant to the Program Agreement among the County, the City, and KCU, and this Agreement, loans shall only fund energy efficiency measures identified by a Puget Sound Energy Business Energy Audit or BPI certified contractors participating in the RePower Bainbridge program. To the extent allowable by law, Loans may fund renewable energy measures where energy efficiency measures identified in the home energy assessments are also part of the loan. Property must be located in Bainbridge Island.

Minimum Loan: $5,000

Maximum Loan: $25,000

Loan Terms: 36, 60 or 84 months (must not exceed lease term)

Interest Rates: 7.00% (Subject to change)

Minimum Credit Scores: 650

Maximum Debt to Income Ratio: 1.25:1 DSCR

Income Verification: Last three years profitability required

Interest rates, minimum credit scores, and maximum debt service coverage ratio may be adjusted semi-annually in agreement with KCU, the County, and the City.

Security: UCC Filing on Furniture, Fixtures, Equipment. Loans will also be indirectly secured by the pledge of loan loss reserve funds.

Payment Schedule: Monthly Fully Amortized Principle and Interest payments. Rates will be fixed for each loan at the time of loan application approval.

Origination Fees and Closing Costs: $250.00 origination fees. Third Party Fees Paid by Borrower.

Price Adjustments: KCU offers a 0.25% discount for automatic payment from any KCU deposit account.

Prepayment Option: Interest on KCU's loans is calculated using the actual / actual interest approach, and these loans will not include any penalties for pre-payment.

Loan Disbursement: Loans will be disbursed via Cashier's Check made payable to the contractor. Each Loan disbursement on each project will be contingent upon prior written approval by borrower and contractor, based upon a signed Certificate of Completion.

Loans may be disbursed in two separate disbursements when agreed upon prior to loan documentation.

Loan Repayment: Repayment will be expected to come from the borrower's monthly cashflow. Borrowers will be fully obligated to repay the credit via the promissory note and any associated filing to perfect KCU's interests.

Should the borrower default on repayment, the Loss Reserve Account will be drawn upon to cover a portion of the loss per this Agreement.

Underwriting Criteria: See Schedule 1 for KCU's Loan Criteria.

Loan Origination Procedures & Schedule:

- Loan applications must be submitted to one of KCU's branches located in Kitsap County.
- Applications may be submitted in person, by fax, by email, or by mail. The application must note the street address of the subject property.
- Accompanying the application shall be the following:
  - Approved energy assessment from Puget Sound Energy Business Energy Audit or BPI certified contractors participating in the RePower Bainbridge Program.
  - Statement of intended work from the contractor, listing the work to be performed, the estimated cost, and the needed loan amount.
  - Income documentation: signed copy of their last three years federal income tax returns and year to date profit & loss statement and balance sheet.
- KCU will underwrite the complete loan application and associated documentation, and will respond back to the applicant within 2 to 3 business days. Loan documents will normally be available within 3-4 business days. Loan closing will occur in a KCU branch.

Restriction on Use of Funds: Loans cannot be made for any improvements taking place at casinos, zoos, aquariums, golf courses, or swimming pools per American Recovery and Reinvestment Act of 2009 funding guidelines.

6. If this Contract Amendment extends the expiration date of the Contract, then the Contractor shall provide an updated certificate of insurance evidencing that any required insurance coverages are in effect through the new contract expiration date. The Contractor shall submit the certificate of insurance to: Kitsap County Risk Management Division, 614 Division Street, MS-7, Port Orchard, WA 98366.

7. Except as expressly provided in this Contract Amendment, all other terms and conditions of the original Contract, and any subsequent amendments, addenda or modifications thereto, remain in full force and effect.

This amendment shall be effective upon execution by the parties.

DATED this 14 day March, 2013.

KITSAP CREDIT UNION

~~George Hall,~~ CLO / SVP Lending
Anthony G Bulleri

Dated this ___ day of __________ 2013

CITY OF BAINBRIDGE ISLAND

Brenda Bauer, Interim City Manager

BOARD OF COMMISSIONERS ★ STATE OF WASHINGTON ★ KITSAP COUNTY ★

DATED this 14 day March, 2013.

KCU as ESCROW AGENT

~~George Hall,~~ CLO / SVP Lending
Anthony G Bulleri

Scott Henderson, CFO / SVP Finance

Dated this 29 day of January 2013

KITSAP COUNTY

Josh Brown, Chair
Board of County Commissioners

Robert Gelder, Commissioner

Charlotte Garrido, Commissioner

ATTEST:

Dana Daniels, Clerk of the Board

CITY OF BAINBRIDGE ISLAND
CITY COUNCIL AGENDA BILL

PROCESS INFORMATION		
Subject: Ordinance No. 2013-02 relating to business and occupation tax administrative procedures		Date: April 17, 2013
Agenda Item: Staff Intensive		Bill No.: 13-046
Proposed By: Finance Director Schroer	Referral(s):	

BUDGET INFORMATION		
Department: Finance	Fund:	Munis Contract #
Expenditure Req:	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:

1st reading of Ordinance No. 2013-02 relating to business and occupation tax administrative procedures and amending Chapter 5.06 of the Bainbridge Island Municipal Code.

History:

In December 2012, City Council adopted the updated model business and occupation tax ordinance recommended by the Association of Washington Cities (AWC). Similarly, the City needs to adopt the adopted model business and occupation tax administrative provisions. Attached is an ordinance that would conform the City's business and occupation tax administrative provisions to the model ordinance.

The AWC's explanation of the changes is available on their web site: http://www.awcnet.org/LegislativeAdvocacy/Legislativeissues/MunicipalBO.aspx.

RECOMMENDED ACTION

Motion:

I move that the City Council schedule Ordinance No. 2013-02 relating to business and occupation tax administrative provisions for 2nd reading on May 8, 2013.

ORDINANCE NO. 2013-02

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to the City's business and occupation tax administrative procedures, and amending Chapter 5.06 of the Bainbridge Island Municipal Code.

WHEREAS, RCW 35.21.710 authorizes cities to levy and collect a tax not to exceed two-tenths of one percent (.2%) on the gross income of persons doing business within the city; and

WHEREAS, in accordance with State law requirements, the City adopted the model business and occupation tax administrative procedures ordinance on October 27, 2004 pursuant to Ordinance No. 2004-17; and

WHEREAS, the model ordinance was amended in 2008, but the City did not adopt the changes; and

WHEREAS, during the summer of 2012, a workgroup of cities, in consultation with the business community, again revised the model ordinance to include changes to RCW 35.102 and to reflect other changes made to state law since 2008; and

WHEREAS, all cities with local business and occupation taxes have to adopt the mandatory portions of the changes to the model ordinance;

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

Section 1. A new Section 5.06.021 is inserted to read as follows:

<u>**5.06.021 Definitions – References to Chapter 82.32 RCW**</u>

<u>Where provisions of Chapter 82.32 are incorporated in BIMC 5.06.090 of this Title, "Department" as used in the RCW shall refer to the "director" as defined in BIMC 5.06.020, and "warrant" as used in the RCW shall mean "citation or criminal complaint."</u>

Section 2. Section 5.06.040 is amended to read as follows:

5.06.040 When due and payable – Reporting periods – Annual returns – Threshold provisions or relief from filing requirements – Computing time periods – Failure to file returns.
A. For purposes of the tax imposed by Chapter 5.05 BIMC, any person whose value of products, gross proceeds of sales, or gross income of the

business, subject to tax after all allowable deductions, is greater than or equal to $100,000 in the current calendar year shall file a return, submit the return to the director and shall pay the correlating business and occupation tax on such products, gross proceeds of sales and/or gross income of the business as set forth in this chapter and Chapter 5.05 BIMC. [A person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is less than $100,000 in the current calendar year shall file a return, declare that no tax is due on that person's return, and submit the return to the director.] [The gross receipts and deduction amounts shall be entered on the tax return regardless of whether any tax may be due].

B. Any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is less than $100,000 in the current calendar year is not required to file a return but is required to certify the total gross income of the business on the business license renewal required by Chapter 5.04 BIMC.

C. A taxpayer that commences to engage in business activity in the city shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in such business activity.

D. Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or city or federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or city or federal legal holiday.

E. If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the city by the taxpayer. The director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

Section 3. Section 5.06.090 is amended to read as follows:

5.06.090 Underpayment of tax, interest, or penalty – Interest.
A. If, upon examination of any returns, or from other information obtained by the director, it appears that a tax or penalty less than that properly due has been paid, the director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The director shall notify the person by mail of the additional amount, which shall become due and shall be paid within 30 days from the date of the notice, or within such time as the director may provide in writing.

B. For the purposes of this section:

1. The rate of interest to be charged to the taxpayer for taxes on the taxable gross receipts prior to January 1, 2005, shall be one percent per month.

2. ~~Interest imposed as of January 1, 2005, and thereafter shall be computed from the last day of the month following the end of the reporting period and will continue to accrue until payment is made. In case of an audit the interest shall be computed from the first day of the month following each calendar year or portion thereof included in the audit period~~ For tax periods after December 31, 2004, the director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.

3. ~~The rate of interest to be charged to the taxpayer for taxes on the taxable gross receipts as of January 2005 and thereafter shall be an average of the federal short-term rate as defined in 26 U.S.C. Section 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year~~ If BIMC 5.06.090.B.2 is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

Section 4. Section 5.06.100 is amended to read as follows:

5.06.100 Overpayment of tax, penalty, or interest – Credit or refund – Interest rate – Statute of limitations.

A. If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer, in the director's discretion. Except as provided in subsection B of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

B. The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the director discovers that a refund or credit is due.

C. Refunds shall be made by means of vouchers approved by the director and by the issuance of a city check or warrants drawn upon and payable from such funds as the city may provide.

D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner as provided in subsection C of this section, upon the filing with the director a certified copy of the order or judgment of the court.

E. No interest shall be paid on overpayments of taxes for periods ending on or before December 31, 2004. ~~Interest on overpayments of taxes for periods beginning on or after January 1, 2005, shall be the average federal short-term interest rate as outlined for assessments under BIMC 5.06.090.B.3 plus two percentage points.~~

F. For tax periods after December 31, 2004, the director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended.

G. If BIMC 5.06.100.F is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of this ordinance shall apply.

Section 5. Section 5.06.110 is amended to read as follows:

5.06.110 Late payment – Disregard of written instructions – Evasion – Penalties.

A. If payment of any tax due on a return to be filed by a taxpayer is not received by the director by the due date, the director shall add a penalty ~~equal to five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, the director shall add a total penalty equal to 15 percent of the amount of the tax; and if the tax is not received on or before the last day of the second month following the due date, the director shall add a total penalty equal to 25 percent of the amount of the tax. No penalty assessed herein shall be less than $5.00~~ in accordance with RCW 82.32.090(1), as it now exists or as it may be amended.

B. ~~If a tax deficiency is assessed by the director, there shall be added a penalty equal to five percent of the amount of the deficiency. If payment of any tax deficiency assessed by the director is not received by the due date specified in the notice, or any extension thereof, the director shall assess a penalty equal to 15 percent of the amount of the additional tax found due. If payment of any tax deficiency assessed by the director is not received on or before the thirtieth day following the due date specified in the notice, or any extension thereof, the director shall assess a penalty equal to 25 percent of the amount of additional tax found due. No penalty added shall be less than $5.00.~~ If the director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2), as it now exists or as it may be amended.

C. If a citation or criminal complaint is issued by the director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty ~~of 10 percent of the amount due, but not less than $10.00~~ in accordance with RCW 82.32.090(3), as it now exists or as it may be amended.

D. If the director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the director a license as required by Chapter 5.04 BIMC, the director shall impose a penalty ~~of five percent of the amount of tax due from that person for the period that the person was not licensed~~ in accordance with RCW 82.32.090(4), as it now exists or as it may be amended. No penalty shall be imposed under this subsection if the person who has engaged in business without a license obtains a license prior to being notified by the director of the need to be licensed.

E. If the director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty ~~of 10 percent of the amount of the additional tax due~~ in accordance with RCW 82.32.090(5), as it now exists or as it may be amended.

~~1. A taxpayer fails to follow specific written tax reporting instructions when the director has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the director has not issued final instructions because the matter is under appeal pursuant to this chapter. The director shall not assess the penalty under this subsection E upon any taxpayer that has made a good faith effort to comply with the specific written instructions provided by the director to that taxpayer.~~

~~2. Specific written instructions may be given as a part of a tax assessment, audit, determination or closing agreement; provided, that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents.~~

~~3. Any specific written instructions by the director shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.~~

F. If the director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the director shall assess a penalty ~~of 50 percent of the additional tax found to be due~~ in accordance with RCW 82.32.090(6), as it now exists or as it may be amended.

G. The ~~director may impose the~~ penalties ~~authorized~~ imposed under subsections A through E of this section can each be imposed on the same tax found to be due ~~or anytime thereafter~~. This subsection does not prohibit or restrict the application of other penalties authorized by law.

H. ~~The director shall assess the penalties authorized by subsections E and F of this section in accordance with the provisions of this chapter governing assessment of tax deficiencies.~~ The director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

I. For the purposes of this section, "return" means any document a person is required by the city to file to satisfy or establish a tax or fee obligation that is administered or collected by the city, and that has a statutorily defined due date.

J. If incorporation into the City of Bainbridge Island code of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this ordinance is effective shall apply.

Section 6. Section 5.06.120 is amended to read as follows:

5.06.120 Cancellation of penalties.
A. The director may cancel any penalties imposed under BIMC 5.06.110.A if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection C of this section.

B. A request for cancellation of penalties must be received by the director within 30 days after the date the department of finance and administrative services mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.

C. The director may ~~waive~~ cancel the penalties in BIMC 5.06.110.A one time if a person:

1. Is not currently licensed and filing returns;

2. Was unaware of its responsibility to file and pay tax; and

3. Obtained business licenses and filed past due tax returns within 30 days after being notified by the department of finance and administrative service of the violation.

D. The director shall not cancel any interest charged upon amounts due.

Section 7. Section 5.06.140 is amended to read as follows:

5.06.140 Administrative appeal.
A. Except to the extent that such appeal may be barred pursuant to BIMC 5.06.060.B, any person aggrieved by the amount of the fee or tax determined by the director to be required under the provisions of this

chapter, or any other determination by the director pursuant to this chapter, may, upon paying the amount determined by the director to be due, appeal such determination to the city ~~[~~hearing examiner~~/council or a committee of the city council]~~.

B. The appeal shall be in writing and shall contain the following:

1. The name and address of the taxpayer appealing the director's decision;

2. A statement identifying the determination of the director from which the appeal is taken;

3. A statement setting forth the grounds upon which the appeal is taken and identifying the specific errors that the director is alleged to have made in making the determination;

4. A statement identifying the requested relief from the determination being appealed; and

5. The appeal fee as provided by city council resolution.

C. The appeal must be filed with the city clerk within 30 days from the date written notice of the amount determined to be due, or other notice of the director's determination, is mailed to the taxpayer.

D. The ~~[city council or a committee of the city council/~~hearing examiner~~]~~ shall, as soon as practical, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties.

~~[~~The hearing examiner shall conduct an appeal hearing in accordance with the applicable hearing procedures set forth in BIMC 2.16.100, and~~] [to be used if hearing examiner only]~~ the taxpayer and the director or designee shall have the opportunity to be heard and to introduce evidence relevant to the subject of the appeal. ~~[~~The hearing examiner shall establish rules for such hearings consistent with the provisions of this section~~] [to be used if hearing examiner only]~~.

F. The ~~[~~hearing examiner~~/city council or committee of the city council]~~ shall give substantial weight to the director's decision.

G. Following the hearing, the ~~[~~hearing examiner~~/city council or committee of the city council]~~ shall render a decision on the appeal, and shall enter written findings and conclusions of law in support thereof. A copy of the findings, conclusion and decision shall be mailed to the taxpayer and the director. The decision shall state the correct amount of tax owing as determined by the ~~[~~hearing examiner~~/city council or committee of the city council]~~, and/or any other information relevant to the hearing examiner's decision.

Section 8. Section 5.06.150 is amended to read as follows:

5.06.150 Judicial review of administrative appeal decision.
The taxpayer or the city may obtain judicial review of the ~~[~~hearing examiner's~~/city council's or committee of the city council's]~~ decision by appealing the decision to the Kitsap County superior court within 21 days from the date of such decision, in accordance with the procedure set forth in Chapter 7.16 RCW, other applicable law, and court rules ~~state law~~. The City shall have the same right of review from the administrative decision as does a taxpayer.

Section 9. Section 5.06.200 is amended to read as follows:

5.06.200 Public disclosure – Confidentiality – Information sharing.
A. For purposes of this section, unless a different meaning is clearly established by context, the following definitions apply:

1. "Disclose" means to make known to any person in any manner whatever a return or tax information.

2. "Tax information" means:

a. A taxpayer's identity;

b. The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;

c. Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or

d. Other data received by, recorded by, prepared by, or provided to the ~~director~~ city with respect to the determination or the existence, or possible existence, of liability, or the amount thereof, of a person under Chapter 5.05 BIMC for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, ~~a taxpayer;~~

~~provided, that tax information shall not include~~ data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material or documents so as to permit its disclosure.

3. "City agency" means every city office, department, division, bureau, board, commission, or other city agency.

4. "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.

B. Returns and tax information are confidential and privileged, and except as authorized by this section, neither the director nor any other person may disclose any return or tax information.

C. This section does not prohibit the director from:

1. Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(a) In respect of any tax imposed under Chapter 5.05 BIMC if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or

(b) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding.

2. Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to BIMC 5.06.160, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure

would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court.

3. Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

4. Disclosing such return or tax information, for official purposes only, to the mayor or city attorney, or to any city agency, or to any member of the city council, or their authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

5. Permitting the city's records to be audited and examined by the proper state officer, his or her agents and employees;

6. Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this section;

7. Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the city;

8. Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United

States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of the treasury, and the United States department of transportation, or any authorized representative of these federal agencies or their successors, for official purposes;

9. Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

10. Disclosing in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. Except that this subsection may not be construed as giving authority to the city or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;

11. Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

12. Disclosing such return or tax information to the United States department of agriculture, or successor department or agency, for the limited purpose of investigating food stamp fraud by retailers;

13. Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the City for a filed tax warrant, judgment, or lien against the real property;

14. Disclosing to a person against whom the department has asserted liability as a successor under section 5.06.130 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

15. Disclosing real estate excise tax affidavit forms in the possession of the city, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

16. Disclosing such return or tax information to the court or hearing examiner in respect to the city's application for a subpoena if there is probable cause to believe that the records in possession of a third party will aid the director in connection with its official duties under this title or a civil or criminal investigation.

D. 1. The director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection D. The disclosure must be in connection with the department's official duties under this Title, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivables/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

2. Before disclosure of any tax return or tax information under this subsection D, the director must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The director may not disclose any tax return or tax information under this subsection D until the time period allowed in 3 of this subsection has expired or until the court has ruled on any challenge brought under 3 of this subsection.

3. The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under 2 of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the director if the court determines that:

a. The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

b. The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

c. The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

4. The director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

5. Requesting information under 2 of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

E. Service of a subpoena issued by the court does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena issued by the court may disclose the existence or content of the subpoena to that person's legal counsel.

F. Any person acquiring knowledge of any return or tax information in the course of his or her employment with the City and any person acquiring knowledge of any return or tax information as provided under subsection C (4), (5), (6), (7), (8), (9), or (11) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the city, such person must forfeit such office or employment and is incapable of holding any public office or employment in this city for a period of two years thereafter.

~~B. Tax returns and information may be "public records" as that term is defined in RCW 42.17.020. The director shall not disclose tax information if disclosure would violate Chapter 42.17 RCW or any other law prohibiting disclosure.~~

~~C. Reserved.~~

~~D. Tax information may be disclosed to the following:~~

> ~~1. The city manager, members of the city council, city attorney, city clerk, or their authorized designees, for official purposes;~~
>
> ~~2. Any agency or officer of the United States of America, the state of Washington, or a tax department of any state, county, city or town; provided, that the agency or officer grants substantially similar privileges to the city; and further provided, that the agency or officer shall not further disclose the tax information except as authorized in this section;~~
>
> ~~3. The taxpayer to whom it pertains or to such person or persons as the taxpayer may designate in writing as the taxpayer's designee; except that tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the director that provides for the reciprocal exchange of information with other government agencies, which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court.~~

~~E. Nothing in this section shall prevent the use of tax information by the director or any other agency in any civil or criminal action involving any license, tax, interest, or penalty.~~

~~F. A person disclosing tax information to a person not entitled to receive that information under this section is guilty of a misdemeanor, and if the person violating this privacy requirement is an officer or employee of the city, such person may be required to forfeit their office or employment.~~

Section 10. 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, City Clerk

FILED WITH THE CITY CLERK:	April 12, 2013
PASSED BY THE CITY COUNCIL:	____________, 2013
PUBLISHED:	___________, 2013
EFFECTIVE DATE:	______________, 2013
ORDINANCE NUMBER:	2013-02

CITY OF BAINBRIDGE ISLAND
CITY COUNCIL AGENDA BILL

PROCESS INFORMATION	
Subject: Ordinance No. 2013-08 relating to the Police Civil Service and amending BIMC 2.28.030	Date: April 17, 2013
Agenda Item: Staff Intensive	Bill No.: 13-044
Proposed By: Douglas Schulze, City Manager	Referral(s):

BUDGET INFORMATION		
Department:	Fund:	Munis Contract #
Expenditure Req:	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:

1st Reading of Ordinance No. 2013-08 relating to the Police Civil Service and amending BIMC 2.28.030.

History:

The responsibilities of the Civil Service Commission are directly related to hiring, disciplinary actions and termination of personnel within the Police Department. The City Council has no role in these activities in a city operating under the Council/Manager form of government. This section of Bainbridge Island Municipal Code was not likely modified when the Council/Manager form of government was adopted.

An informal survey of Washington cities showed that the city manager in at least 24 Washington cities has the authority to appoint members of the Civil Service Commission. There are 53 cities in Washington operating under the Council/Manager form. At least eleven cities contract for law enforcement services so they do not have Civil Service Commissions. Currently, members of the Bainbridge Island Civil Service Commission are appointed by the Mayor with the concurrence of City Council. The Civil Service Commission has discussed the issue of appointment authority and believes it would be more expeditious to have the appointments made by the City Manager. Attached for Council's consideration is a draft ordinance which would authorize the City Manager to appoint Civil Service Commissioners.

RECOMMENDED ACTION

Motion:

I move that the City Council schedule 2nd reading of Ordinance No. 2013-08 relating to the Police Civil Service on April 24, 2013.

ORDINANCE NO. 2013-08

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to the police civil service and amending Section 2.28.030 of the Bainbridge Island Municipal Code.

WHEREAS, the City Council finds that the public interest would be served by having the City Manager appoint Civil Service Commissioners; and

WHEREAS, the City Council finds that with this change the City would continue to have a civil service system which substantially accomplishes the purposes of RCW Chapter 41.12;

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

Section 1. Section 2.28.030 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

2.28.030 Civil service commission – Created – Composition – Appointments, terms and vacancy filling.

There is created for the administration of such civil service for the police department, a civil service commission composed of five members who shall be appointed by the ~~mayor~~ city manager of the city ~~with the concurrence of the city council~~. A person shall be considered eligible for appointment to the commission if he or she is a citizen of the United States, a resident of the city, and an elector of Kitsap County. The term of office of such civil service commission shall be four years, except that the first five members of the commission shall be appointed for different terms, as follows: three to serve for a period of four years and two to serve for a period of two years. The existing civil service commission shall be dissolved, and all positions on the commission created by the ordinance codified in this section shall be deemed vacant. In the event any civil service commissioner resigns or becomes disqualified or is removed for cause under a process adopted by city council resolution, another commissioner shall be appointed to take his place for the unexpired portion of the term.

Section 2. 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, City Clerk

FILED WITH THE CITY CLERK:	April 12, 2013
PASSED BY THE CITY COUNCIL:	____________, 2013
PUBLISHED:	____________, 2013
EFFECTIVE DATE:	____________, 2013
ORDINANCE NUMBER:	2013-08

CITY OF BAINBRIDGE ISLAND
CITY COUNCIL AGENDA BILL

PROCESS INFORMATION	
Subject: Madison Avenue Water Main– Construction Award	Date: April 17, 2013
Agenda Item: Staff Intensive	Bill No.: 13-045
Proposed By: Public Works Director Lance Newkirk	

BUDGET INFORMATION		
Depart/Fund: CIP Annual Water Preservation Program @ $248k		
Expenditure Req: $227,724.14	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 Madison Avenue Water Main contract award at the next City Council business meeting on April 24, 2013.

History:
This project consists of installation of 1,260 linear feet of 12-inch diameter ductile iron water main pipe and appurtenances installed on Madison Avenue from High School Road to Wallace Way.

Bids were solicited through the local newspapers. The bid opening was held on April 9, 2013 and five bids were received. The apparent low bidder is Liden Land Development & Excavation in the amount of $227,724.14. The engineer's estimate is $220,000 to $230,000.

Project Manager Chris Munter has reviewed the bid results and the contractor's qualifications and recommends that the City Council consider award to Liden Land Development & Excavation.

Budget:
The balance of the Annual Water Preservation program is $198,000. The bid of $228,000 leaves a funding gap of $30,000; therefore, a budget amendment is required to provide supplemental funding. $40,000 is requested from the Water Utility fund. This provides the required $30,000 plus a management reserve of $10,000, should it be needed.

RECOMMENDED ACTION

Motion:
I move that the City Council forward the contract with Liden Land Development & Excavation for the Madison Avenue Water Main project in the amount of $227,724.14 and authorize a budget amendment of $40,000.00 from the Water Utility fund to the next City Council business meeting consent agenda.

Project: **Madison Ave Water Main Upgrade**
Bid Opening Date: Bids Due at 9:00a.m. April 9, 2013
Open Bids @ 9:30 am

DRAFT

Note: Bids Are Opened in Order Received. Bids Solicited by: X Advertisement ☐ Small Works Roster The Engineers Estimate is: $220,000-$230,000	Papé ; sons			
Bid Proposal – *Items of Work & Materials, Estimated Quantities, Units of Measurement.*	X			
Signature Page	X			
Addenda Acknowledged – (1)	X			
Non-Collusion Declaration	X			
Proposal Bond (5%)	X			
Statement of Bidder's Qualifications	X			
Statement of Proposed Sub-Contractors	X			
GRAND TOTAL BID AMOUNT	229,802.80			

A total of ________ bids were received for the ______________________________project. ______________, has reviewed all the bids and recommends that the City Council award the contract to the apparent low bidder, ____________________________________ in the amount of $_________________.

CITY OF BAINBRIDGE ISLAND
CITY COUNCIL AGENDA BILL

PROCESS INFORMATION	
Subject: License Agreement with Kitsap Public Utility District for Meigs Farm Well Water Level Monitoring Services	Date: April 17, 2013
Agenda Item: Staff Intensive	Bill No.: 13-047
Proposed By: Lance Newkirk, Public Works Director	

BUDGET INFORMATION		
Fund: N/A		
Expenditure Req: -0-	Budgeted? ☐ Yes ☐ No	Budget Amend. Req? ☐ Yes ☐ No

REFERRALS/REVIEW		
Study Session:	Recommendation:	
City Manager: ☒ Yes ☐ No	Legal: ☒ Yes ☐ No	Finance: ☒ Yes ☐ No

DESCRIPTION/SUMMARY

Action Item:

Consider placement of the License Agreement between the City of Bainbridge Island and Kitsap Public Utility District (KPUD) for Meig's Farm Well water level monitoring services on the consent agenda at the next City Council business meeting on April 24, 2013.

Background:

Both the City of Bainbridge Island and KPUD draw water from the Fletcher Bay Aquifer for their respective water systems. The Meig's Farm well is owned by the City of Bainbridge Island. The well was originally drilled in the late 1980's by KPUD for the purposes of periodic aquifer monitoring and is currently not in use.

This License Agreement authorizes KPUD to access the Meig's Farm well and to install and operate water level recording equipment to continuously monitor water levels at the Fletcher Bay aquifer. Services and data collection will be at no charge to the City.

Aquifer monitoring efforts are vital for proper water resource management and will benefit both the City and KPUD.

RECOMMENDED ACTION

Motion:

I move that the City Council forward the License Agreement with Kitsap Public Utility District for Meig's Farm well water level monitoring services to the next City Council business meeting consent agenda.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made on April __, 2013 (this "Agreement"), by and between CITY OF BAINBRIDGE ISLAND, a municipal corporation ("Licensor"), and KITSAP PUBLIC UTILITY DISTRICT ("Licensee"); Licensor and Licensee shall sometimes hereinafter be referred to as the "Parties."

R E C I T A L S

A. Licensor is the legal and rightful owner of Meigs Farm, as legally described on Exhibit "A", attached hereto and incorporated by this reference (the "Property").

B. A water resource monitoring well with DOE Unique ID Number AAA112, commonly referred to the Meigs Farm Well (the "Well"), was originally drilled by Licensee and Washington State Department of Ecology (DOE) on the Property for identification and long-term monitoring of the Fletcher Bay Aquifer.

C. Licensor and Licensee have a mutual interest in maintaining a cooperative relationship to manage Bainbridge Island groundwater resources for the benefit of their respective customers and the citizens of Bainbridge Island, and long-term monitoring of aquifer levels within the Fletcher Bay Aquifer is imperative for proper resource management of the aquifer.

D. Licensee now desires to enter the Property to access the Well for the purpose of installation and operation of automated water level recording equipment for the collection of continuous water level records in the Fletcher Bay Aquifer.

E. Licensor and Licensee desire to enter into this Agreement for purposes of Licensee's performance of the Licensed Activities (as defined below).

NOW THEREFORE, in consideration of the granting of the foregoing, the mutual promises, covenants, conditions and agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. Grant of License - Licensor hereby grants to Licensee, and its employees, representatives, agents, contractors and subcontractors a non-exclusive license (the "License") to enter upon the Property from time to time to conduct the Licensed Activities on the Property. This License shall commence upon execution of this Agreement by the parties (the "Commencement Date"), and shall remain in full force and effect unless this Agreement is terminated pursuant to Section 9 below.

2. Licensed Activities –

(a) Licensor authorizes Licensee and its employees, representatives, agents, contractors, and subcontractors to access the Well for the purpose of installation, operation and maintenance of automated water level recording equipment for the collection of continuous water level records in the Fletcher Bay Aquifer (the "Licensed Activities").

(b) Licensee shall take all reasonable precaution to protect the Property and Licensor-owned improvements. Licensee shall not cause or permit waste or damage to the Property. The performing entity shall not use, store, generate, process, transport, handle, release, or dispose of any hazardous substance, or other pollutants in or on the Property except in accordance with all applicable laws.

(c) During the term of this Agreement, Licensee shall be responsible for the general maintenance of the recording equipment.

3. Data - Licensee agrees to make all data collected at the Well available to Licensor and the public, and agrees that all monitoring activities and data will be provided by Licensee at no cost to Licensor.

4. Compliance with Laws - Licensee shall conduct all operations which are the subject of this License in compliance with all federal, state, and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies, as such statutes, ordinances, regulations, orders and directives now exist or provide.

5. Permits - Licensee, at no cost or expense to Licensor, shall be responsible for obtaining any and all governmental permits and approvals which may be necessary for it to conduct any work or activities under this Agreement. Licensor shall coordinate and cooperate with Licensee in Licensee's activities to obtain all necessary government permits and permissions.

6. Liens and Claims - Licensee will not permit any mechanics,' materialmen's or similar liens or claims to stand against the Property for labor or material furnished in connection with any work performed by Licensee under this Agreement. Upon reasonable and timely notice of any such lien or claim delivered to Licensee by Licensor, Licensee shall cause such lien to be removed and/or Licensee may bond and contest the validity and the amount of such lien, but Licensee will immediately pay any judgment rendered, will pay all proper costs and charges, and will have the lien or claim released at its sole expense.

7. Indemnity

(a) Licensee agrees that it will indemnify, defend and hold Licensor harmless from and against any claims, demands, liabilities, actions, suits, judgments, losses, damages, costs or expenses incurred as a result of personal injury, property damage, civil penalties or fines proximately caused in whole or in part by Licensee's and/or Licensee's authorized contractors', subcontractors', employees' and/or agents' performance of the Licensed Activities, or proximately resulting from Licensee's entry, presence and/or activities upon the Property (whether such activities are expressly authorized pursuant to this License), or otherwise proximately resulting from Licensee's asserted rights pursuant to this License; provided, however, this indemnity obligation shall not apply to any such claims, demands, actions, suits, judgments, losses, damages, costs or expenses caused solely by any negligence or willful act of Licensor, and/or Licensor's employees and/or agents.

(b) Licensor shall reasonably cooperate with Licensee by allowing Licensee, its agents, representatives, contractors and consultants, prompt and ready access to the Property for the purpose of investigating any matter to which this indemnity may apply.

(c) Licensee's indemnification obligations pursuant to this section of the License Agreement shall include assuming potential liability for actions brought by Licensee's own employees and the employees of Licensee's agents, representatives, contractors, and subcontractors even though Licensee might be immune under RCW Title 51 from direct suit brought by such employees. The obligations of Licensee under this subsection have been mutually negotiated by the parties hereto, and Licensee acknowledges that Licensor would not enter into this License Agreement without Licensee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Licensee waives its immunity under RCW Title 51 as provided in RCW 4.24.115.

(d) Nothing contained in this section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.

(e) The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

8. <u>Insurance</u>

(a) **Insurance Terms.**

(i) Licensee is insured for all exposures to tort liability, general liability, property damage liability and vehicle liability, as provided in statute, but only with respect to Licensee's negligence.

(ii) Licensee shall require its contractors and subcontractors to obtain and keep in force while operating on the Property, the insurance coverages and limits described in Subsection 8(b). Failure of contractors and subcontractors to comply with insurance requirements does not limit Licensee's liability or responsibility.

(b) Insurance Types and Limits.

(i) General Liability Insurance.

(1) Commercial general liability insurance (CGL) covering claims for bodily injury, personal injury, or property damage and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars ($1,000,000) per each occurrence. If such CGL contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

(2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.

(ii) Employer's Liability Insurance. Employer's liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars ($1,000,000) each accident for bodily injury by accident or One Million Dollars ($1,000,000) each employee for bodily injury by disease.

9. **Termination of License** - Either party may terminate this Agreement without cause upon ninety (90) days' written notice to the other party. Prior to the expiration date, Licensee shall, at its sole cost and expense, (a) remove all equipment placed on the Property, (b) remove all debris resulting therefrom, and (c) restore the Property to the substantially similar condition that existed immediately prior to the Commencement Date.

10. **Hazardous Materials** – In the event of any spill, release, or other discharge of any hazardous substance or dangerous waste, as defined in RCW 70.105D.020, on the Property by Licensee, or any of its employees, contractors, subcontractors, or agents, such spill, release, or discharge shall be immediately cleaned up and remediated at Licensee's sole cost, expense and direction. The indemnity provisions of Section 7 shall expressly apply to any and all liability or damages, including but not limited to any fines, penalties, costs of cleanup and/or remediation arising out of any spill, discharge, or release of hazardous substances or dangerous wastes on or in the Property.

11. **Severability** - In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

12. **Notices** - Any notice provided for herein or otherwise required to be given hereunder shall be deemed received when personally served or three (3) days after mailing by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile machine, with transmission and receipt confirmed, or by nationally recognized overnight delivery service, addressed as follows:

To Licensor: City of Bainbridge Island
280 Madison Avenue N
Bainbridge Island, WA 98110
Phone: (206) 842-2545
Attention: City Manager

To Licensee: Kitsap Public Utility District
____
____
____
Phone: _____________________
Attention:

The person and the place to which notices are to be mailed may be changed by either party by providing written notice of same to the other.

13. Assignment - This Agreement, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by the Licensee to any other person or entity without the prior written consent of Licensor. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Licensee as stated herein.

14. Headings - The headings used in this Agreement are for convenience only and in no way define, limit, or extend the scope of this Agreement or the intent of any provision.

15. Entire Agreement - This Agreement represents the full, complete and entire agreement between the Parties with respect to the subject matter hereof, and the rights and remedies of the Parties shall be solely and exclusively those herein contained, and in lieu of any remedies otherwise available at law or in equity.

16. Modification No modification of this Agreement is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

17. Governing Law - This Agreement shall be construed and interpreted and governed by and in accordance with the laws of the State of Washington. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded.

18. Authority - Licensor and the person or persons executing this Agreement on behalf of Licensor represent that Licensor has full right and authority to enter into this Agreement, and that each person signing on behalf of Licensor is authorized to do so.

19. Counterparts - This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representative(s).

LICENSOR	**LICENSEE**
CITY OF BAINBRIDGE ISLAND	**KITSAP PUBLIC UTILITY DISTRICT**
By: ______________________	By: ______________________
Name: Douglas Schulze	Name: ______________________
Title: City Manager	Title: ______________________
Date: ______________________	Date: ______________________

EXHIBIT "A"

Legal Description of Property

Kitsap County Parcel Number: 152502-1-065-2008

THAT PORTION OF THE EAST HALF OF SECTION 15, TOWNSHIP 25 NORTH, RANGE 2 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, LYING WEST OF S.R. 305 AND BOUNDED ON THE SOUTH, WEST ANDNORTH BY THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE WEST MARGIN OF RIGHT-OF-WAY OF S.R. 305, WHICH BEARS NORTH 00°09'35" EAST 125.77 FEET FROM THE SOUTHEAST CORNER OF LOT 10 OF LARGE LOT SUBDIVISION NO. 43, AS RECORDED UNDER AUDITOR'S FILE NO. 8710060056, RECORDS OF KITSAP COUNTY, WASHINGTON; THENCE SOUTH 00°09'35" WEST 125.77 FEET TO SAID SOUTHEAST CORNER OF LOT 10; THENCE ALONG THE SOUTH LINE OF SAID LOT NORTH 88°55'10" WEST 592.65 FEET; THENCE LEAVING SAID SOUTH LINE OF LOT 10, NORTH 40°00'00" WEST 91.53 FEET; THENCE NORTH 32°10'19" WEST 43.01 FEET; THENCE NORTH 76°16'43" WEST 165.07 FEET;THENCE NORTH 35°58'11 WEST 144.53 FEET; THENCE NORTH 51°50'40" EAST 29.37FEET; THENCE NORTH 12°19'39" EAST 59.36 FEET; THENCE SOUTH 75°58'15" EAST 97.37 FEET; THENCE SOUTH 42°53'28" EAST 49.38 FEET; THENCE NORTH 54°26'21" EAST 260.26 FEET; THENCE NORTH 12°09'06" WEST 81.72 FEET; THENCE NORTH 62°10'43" EAST 93.22 FEET; THENCE NORTH 23°54'58 EAST 37.28 FEET; THENCE SOUTH 83°51'36" EAST 77.11 FEET; THENCE NORTH 06°59'13" WEST 187.07 FEET; THENCE NORTH 51°22'05" WEST 59.19 FEET; THENCE NORTH 25°28'55" WEST 203.36 FEET; THENCE SOUTH 89°03'13" WEST 51.48 FEET; THENCE NORTH 05°15'13" EAST 71.86 FEET; THENCE NORTH 54°44'17" WEST 89.57 FEET; THENCE NORTH 46°13'37" EAST 179.84 FEET; THENCE NORTH 04°47'14" WEST 94.94 FEET; THENCE NORTH 33°35'53" WEST 138.06 FEET; THENCE NORTH 19°43'19" WEST 25.98 FEET; THENCE NORTH 59°57'08" EAST 470.48 FEET TO A POINT ONTHE WEST MARGIN OF RIGHT-OF-WAY OF S.R. 305 AND THE TERMINUS.

CITY OF BAINBRIDGE ISLAND
CITY COUNCIL AGENDA BILL

PROCESS INFORMATION

Subject: Resolution No. 2013-08, Lynwood Center Stormwater Outfall Sole Source Purchase and CheckMate® Inline Check Valve Purchase	Date: April 17, 2013
Agenda Item: Staff Intensive	Bill No.: 13-048
Proposed By: Public Works Director Lance Newkirk	

BUDGET INFORMATION

Depart/Fund: 2013 Annual Stormwater Preservation Program		
Expenditure Req: $24,531.00	Budgeted? ☒Yes	Amendment Req? ☒ No

REFERRALS/REVIEW

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

DESCRIPTION/SUMMARY

Action Item:
Consider placement of the Lynwood Center Stormwater Outfall Sole Source Purchase Resolution and purchase of CheckMate® inline check valve in the estimated amount of $24,531.00 (not including freight costs) at the next City Council business meeting on April 24, 2013.

Background:
RCW 39.04.280 provides that a local agency may waive the competitive bidding requirements (by Resolution) when the purchase is limited to a single source of supply, or when the purchase involves special facilities or market conditions. The proposed purchase of a CheckMate® inline check valve is considered sole source due to the Tideflex Technologies, through its subsidiary Red Valve Company, holding the patent on this neoprene rubber check valve. This company is the sole provider of these types of valves and the valve has been determined to be the best option that will meet the repair needs required for this specific location.

— Continued on Page 2 —

RECOMMENDED ACTION
Motion:
I move that the City Council forward the Lynwood Center Stormwater Outfall Sole Source Purchase Resolution No. 2013-18 and purchase of CheckMate® Inline Check Valve in the estimated amount of $24,531.00 (not including freight costs) to the next City Council business meeting consent agenda.

DESCRIPTION/SUMMARY – Continued

The stormwater outfall from the Lynwood Center basin discharges to Pleasant Beach at the Pleasant Beach Condominiums' location and is subject to tidal backwash of sand, gravel and debris. Also, local marine life inhabits the outfall pipe resulting in high concentrations of bacteria and odorous smell in the discharge area.

The CheckMate® inline check valve is constructed of an all-rubber unibody design which provides for backflow prevention inhibiting gravel backwash into the pipe and prevents animals from inhabiting the pipe. The valve operates under driving head pressure and automatically opens and closes with the stormwater flow. Once installed, the valve would greatly reduce odor and bacteria problems in the area and is maintenance free.

Funding:
A portion of this project is funded by a Department of Ecology Stormwater grant in the amount of $188,000 accepted by the City Council on June 13, 2012. This proposed project also partially satisfies the requirements of the Sinclair & Dyes Inlets Fecal Coliform Bacteria Total Maximum Daily Load (TMDL) state cleanup plan which applies to the Pleasant Beach Watershed.

COPY

QUOTATION

 # TT-13.2940

Antec Corporation

www.anteccorporation.com
46303 SE 134th St., PO Box 1609
North Bend, WA 98045

425-888-9090 (o) • 425-888-6492 (f) • 206-660-1311 (c)

Bruce
CITY OF BAINBRIDGE – PUBLIC WORKS
280 Madison Avenue North
Bainbridge, WA 98110
P:
boyloe@bainbridgewa.gov

LYNWOOD CENTER OUTFALL

April 8, 2013
Quotations are valid for 30 days. Lead times are based upon current production levels.

Item	Qty	Product & Description		Unit Price	Extended Price
1	1	**48" TIDEFLEX Series CheckMate ... Slip-In, InLine CHECK VALVE** Elastomeric Construction with 316SS Expansion Clamps. Approximate Shipping Weight ~ 1700 lbs		22450.00	22,450.00
2	1	FREIGHT ... estimate only		1750.00	1,750.00
3	1		Sales Tax – 8.6%	2081.20	2,081.20
4					0.00
			GRAND TOTAL		$26,281.20

ELASTOMERS: Pure Gum Rubber, Hypalon, Neoprene, Buna-N, EPDM or Chlorobutyl. *(Viton available at extra cost.)*

CheckMate ... ORDERING REQUIREMENTS
Please specify the following for each valve ordered:

- **Pipe I.D.:** Measure END OF PIPE (EOP) I.D. across 4 Axis Positions:
  EOP I.D. 12:00-6:00________ inches EOP I.D. 9:00-3:00_________ inches
  EOP I.D. 10:30-4:30________ inches EOP I.D. 1:30-7:30_________ inches

  Measure **2x Diameters down** into Pipe I.D. across **4** Axis Positions (CheckMates 24" & Larger)
  2XD I.D. 12:00-6:00________ inches 2XD I.D. 9:00-3:00_________ inches
  2XD I.D. 10:30-4:30________ inches 2XD I.D. 1:30-7:30_________ inches

- **Line Pressure:** Gravity Fed or Pumps at ________ PSI
- **Elastomer:** ________________________
- **Upstream or Downstream Clamp** ____________________

RESOLUTION NO. 2013-08

A RESOLUTION authorizing the purchase of a Tideflex Series CheckMate Check Valve from Tideflex Technologies to be used for the Lynwood Center Drainage Project with a purchase price of $24,531.00 (not including freight costs) as a sole source purchase without calling for bids, and further authorizing the City Manager to execute all appropriate and necessary documents to complete the purchase and transaction.

WHEREAS, Section 3.72.020(B) of the Bainbridge Island Municipal Code states that staff "shall continue on an ongoing basis to obtain the lowest practical price for supplies, materials, and equipment purchased under this section"; and

WHEREAS, RCW 39.04.280(1), RCW 35.23.352(9) and state law in general recognize a "sole source purchase" exception from competitive bidding requirements when, due to the uniqueness of the product to be purchased and the fact that there is only one source, it would be futile to utilize a competitive bidding process for such product; and

WHEREAS, the City requires the purchase of a 48" Tideflex Series CheckMate Slip-In, Inline Check Valve to be used for the Lynwood Center Drainage project; and

WHEREAS, for operational reasons, the part must have certain key features, including the following:

- The CheckMate valve is maintenance free.
- The valve can be installed without modifications to the existing 48"outfall pipe.
- The CheckMate valve operates at extremely low head loss. This means since the valve is installed inside the pipe, that restriction of the mechanism is minimal.

WHEREAS, the City conducted extensive research regarding available check valves and concluded that only the check valve available through Tideflex Technologies, which holds the patent through its subsidiary Red Valve Company, would satisfy the requirements and criteria; and

WHEREAS, Tideflex Technologies is the only source for the valve and is willing to sell the valve to the City for a purchase price of $24,531.00 (not including freight costs); and

WHEREAS, the City Council finds it would be futile to call for bids regarding the described equipment since only a check valve from Tideflex Technologies will satisfy the stated requirements and criteria and Tideflex Technologies is the only source for the equipment; and

WHEREAS, the City Council finds that it is in the best interest of the City to authorize purchase of the check valve from Tideflex Technologies as a sole source purchase without calling for bids, now, therefore,

THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

1. The City Manager is hereby authorized and directed to purchase the Tideflex Series CheckMate Check Valve from Tideflex Technologies as a sole source purchase without calling for bids to be used to for the Lynwood Center Drainage Project for a purchase price of $24,531.00 (not including freight costs).

2. The City Manager is further directed to execute all appropriate and necessary documents to complete the purchase and transaction. The final form of said documents shall be reviewed and approved by the City Attorney or his designee.

PASSED by the City Council this ____day of _____, 2013.

APPROVED by the City Council this ____ day of _____, 2013.

____

Steven Bonkowski, Mayor

ATTEST/AUTHENTICATE:

____

Rosalind Lassoff, City Clerk

FILED WITH THE CITY CLERK: April 11, 2013
PASSED BY THE CITY COUNCIL:
RESOLUTION NO. 2013-08

CITY OF BAINBRIDGE ISLAND
CITY COUNCIL AGENDA BILL

PROCESS INFORMATION

Subject: Dripping Water Creek Drainage Improvements Professional Services Agreement Amendment No. 2	Date: April 17, 2013
Agenda Item: Staff Intensive	Bill No.: 13-049
Proposed By: Public Works Director Lance Newkirk	

BUDGET INFORMATION

Depart/Fund: 2013 Annual Drainage Upgrades		
Expenditure Req: $16,025.00	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 Dripping Water Creek Professional Services Agreement Amendment No. 2 on the consent agenda at the next City Council business meeting on April 24, 2013.

Background:

The Dripping Water Creek Drainage Improvements project consists of replacing a deteriorated undersized 24" concrete culvert with a fish passage culvert that flows beneath Sunrise Drive.

The original agreement with Map Ltd. in the amount of $15,150.00 dated December 15, 2011 provided for a fish passage culvert design with associated survey work. Amendment No. 1 in the amount of $2,350.00 was executed in 2012 for additional survey work.

During the permitting and review process, it was discovered that additional design work is necessary to accommodate shoulder improvements on both sides of Sunrise Drive in accordance with the City's Comprehensive Plan, Non-Motorized Transportation element; therefore, the need for Amendment No. 2. See attached Non-Motorized Map. The proposed amendment includes shoulder improvements, design of two 5' asphalt bike lanes and 2'graveled shoulders, temporary and permanent easements, revisions to construction bid documents and revised survey data.

Amendment No. 2 in the amount of $16,025.00 will bring a revised contract amount of $33,525.00 to the Dripping Water Creek Drainage Improvements project.

RECOMMENDED ACTION

Motion:

I move that the City Council forward Amendment No. 2 to the Professional Services Agreement with Map Ltd. for the Dripping Water Creek Drainage Improvements in the amount of $16,025.00 to the next City Council business meeting consent agenda.

Dripping Water Creek Drainage Improvements

Original Agreement & Amendment No. 1

2.1

Vendor# 6454
Munis Contract# 210103
PO# 2100577
ORG 72433430 OBJ 64100 PRJ 00577
KG ☒ Vault ☐ Applicant ☐

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (this "Agreement") is entered into as of the date written below between the City of Bainbridge Island, a Washington state municipal corporation (the "City") and Map, Ltd. (the "Consultant").

WHEREAS, the City desires to enlist engineering services to design a fish passage culvert in accordance with Washington State Department of Fish and Wildlife criteria for a creek known as Dripping Water Creek that flows beneath Sunset Drive; and

WHEREAS, the Consultant has the expertise and experience to provide said services and is willing to do so in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises, and agreements set forth herein, it is agreed by and between the City and the Consultant as follows:

1. SERVICES BY CONSULTANT

The Consultant shall provide the professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as Attachment A and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. PAYMENT

A. The City shall pay the Consultant for such services: (check one)

[X] Hourly, plus actual expenses, in accordance with Attachment A, but not more than a total of Fifteen Thousand One Hundred Fifty Dollars ($15,150);
[ ] Fixed Sum: a total amount of $______;
[ ] Other: _______, for all services performed and incurred under this Agreement, to be billed monthly in equal amounts.

B. The Consultant shall submit monthly invoices for services performed in a previous calendar month in a format acceptable to the City. Each project and each task within a project shall be the subject of a separate invoice. The Consultant shall maintain time and expense records and provide them to the City upon request.

C. All invoices shall be paid by mailing a city check within sixty (60) days of receipt of a proper invoice.

D. If the services rendered do not meet the requirements of this Agreement, the Consultant shall correct or modify the work to comply with this Agreement. The City may withhold payment for such work until it meets the requirements of this Agreement.

3. INSPECTION AND AUDIT

The Consultant shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

4. INDEPENDENT CONTRACTOR

A. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants and agrees that the Consultant's status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

B. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

C. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

D. The Consultant shall obtain a business license and, if applicable, pay business and occupation taxes pursuant to Title 5 of the Bainbridge Island Municipal Code.

5. DISCRIMINATION AND COMPLIANCE WITH LAWS

A. The Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, sexual orientation, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.

B. The Consultant shall comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement.

C. Violation of this Section 5 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension by the City, in whole or in part, and may result in ineligibility for further work for the City.

6. TERM AND TERMINATION OF AGREEMENT

A. This Agreement shall become effective upon execution by both parties and shall continue in full force and effect until July 1, 2013, unless sooner terminated by either party as provided below.

B. This Agreement may be terminated by either party without cause upon thirty (30) days' written notice to the other party. In the event of termination, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to the City, and the Consultant shall be entitled to just and equitable compensation at the rate set forth in Section 2 for any satisfactory work completed prior to the date of termination.

7. OWNERSHIP OF WORK PRODUCT

All data, materials, reports, memoranda and other documents developed under this Agreement whether finished or not shall become the property of the City, shall be forwarded to the City in hard copy and in digital format that is compatible with the City's computer software programs.

8. GENERAL ADMINISTRATION AND MANAGEMENT

The City Manager of the City, or designee, shall be the City's representative, and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices, under this Agreement.

9. HOLD HARMLESS AND INDEMNIFICATION

A. The Consultant agrees to protect, defend, indemnify, and hold harmless the City, its elected officials, officers, employees and agents from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) caused by or occurring by reason of any negligent act, error and/or omission of the Consultant, its officers, employees, and/or agents, arising out of or in connection with the performance or non-performance of the services, duties, and obligations required of the Consultant under this Agreement.

B. In the event that the Consultant and the City are both negligent, then the Consultant's liability for indemnification of the City shall be limited to the contributory negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorneys' fees and disbursements) that can be apportioned to the Consultant, its officers, employees and agents.

C. The foregoing indemnity is specifically and expressly intended to constitute a waiver of the immunity of the Consultant under Washington's Industrial Insurance Act, RCW Title 51, as respects the other parties only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the employees of the Consultant. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

D. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to void, nullify and/or invalidate any of these covenants of indemnification.

E. Nothing contained in this section of this Agreement shall be construed to create a liability or a right of indemnification in any third party.

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

10. INSURANCE

Consultant shall maintain insurance as follows:

[x] Commercial General Liability as described in Attachment B.
[x] Professional Liability as described in Attachment B.
[x] Automobile Liability as described in Attachment B.
[ ] None.

11. SUBLETTING OR ASSIGNING CONTRACT

This Agreement, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by the Consultant to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the Consultant as stated herein.

12. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

13. SEVERABILITY

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.

14. FAIR MEANING

The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

15. NON-WAIVER

A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

16. NOTICES

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City:	City of Bainbridge Island 280 Madison Avenue North Bainbridge Island, WA 98110 Attention: Brenda Bauer, City Manager
To the Consultant:	Mr. Pat Fuhrer, P.E. Map Ltd. P.O. Box 720 Silverdale, WA 98383

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

17. SURVIVAL

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

18. GOVERNING LAW

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

19. VENUE

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Kitsap County, Washington.

20. COUNTERPARTS

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 Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of December 15, 2011.

MAP, LTD.

By Pat Fuhrer

Name: Pat Fuhrer, P.E.

Title; Principal

Tax I.D. #91-0948081

City Bus. Lic. #41693

CITY OF BAINBRIDGE ISLAND

By Brenda Bauer

Brenda Bauer, City Manager

ATTACHMENT A

SCOPE OF SERVICES

Project Name: Dripping Water Creek Culvert Replacement
Location: Adjacent to 13641 Sunset Drive (NE, Sec. 22, Twn. 25, R2E).
Description: Professional services to provide for a design and construction of a fish passage culvert.

1.0 Requirements:

- 1.1 Design to be in accordance with Washington State Department of Transportation (WSDOT) City and County Design Standards in the LAG Manual and the City of Bainbridge (COBI) Design and Construction Standards.
- 1.2 Cadd to be in accordance with COBI standards.
- 1.3 Specifications to be developed using WSDOT Standard Specifications and format.
- 1.4 Fish passage design to be in accordance with Washington State Department of Fish and Wildlife (WDFW) Standards, current edition.

2.0 Tasks:

- 2.1 Review base-map provided by others. Provide comments and assist with coordination of any additional work necessary to refine the base-map as needed. COBI to provide corrections.
- 2.2 Provide Schematic Design Documents to be utilized for WDFW permitting and ROW. Permitting and Easement work. Work does not include permitting and easements.
- 2.3 Provide Construction Documents for bidding and construction and any supplemental design documents for addenda required during bidding. Draft Construction Documents will be submitted for formal review by COBI.
- 2.4. Provide construction observation during Construction. Work does not include construction administration, inspection, and testing.

3.0 Deliverables:

- 3.1 Schematic Level Drawings, Estimate, and Draft Hydraulic/ Fish Passage Report.
- 3.2 Construction Documents including Plans, Specifications, Estimate, and a Final Draft of Hydraulic/ Fish Passage Report. Provide individual word documents for special provisions. COBI staff will assemble the Contract Manual and format specifications. Provide estimate using WSDOT standard bid items.

4.0 Schedule:

- 4.1 Schematic Level Documents to be provided by March 1, 2012
- 4.2 Construction Documents to be provided by August 1, 2012
- 4.3 Construction is anticipated to be physically completed by July 1, 2013

MAP

Dripping Water Creek Culvert Replacement Sunset Drive Bainbridge Island

Engineering Scope and Fee Estimate
November 22, 2011

	Staff	Project Engineer	CADD Technician	Total Hours per	Total Task
	Standard Schedule of Charges	$125.00	$75.00	Task	Cost
Task No.	Tasks Description	No. Hours/Task	No. Hours/Task		
1	Review basemap provided by others. Review WDFW guidelines and assist with additional work necessary for COBI to provide additional information on the basemap	6	0	6	$750
2	Provide Schematic Design documents to be utilized for WDFW permitting and ROW/easement acquisition by COBI	32	32	64	$6,400
3	Provide Construction documents for bidding and Construction and any supplemental design documents for addenda during bidding. Draft Construction documents will be submitted for formal review by COBI.	32	40	72	$7,000
4	Provide construction observation during Construction. Work does not include construction administration, inspection, and testing.	8	0	8	$1,000
				Total Project Estimate	$15,150

ATTACHMENT B

Insurance against claims for injuries to persons or damage to property arising out of or in connection with the performance of this Agreement by the Consultant, its officers, employees and agents:

A. Automobile Liability Insurance with limits no less than $1,000,000.00 combined single limit per accident for bodily injury and property damage.

B. Commercial General Liability Insurance written on an occurrence basis with limits no less than $1,000,000.00 combined single limit per occurrence and $2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

C. Professional Liability Insurance with limits no less than $1,000,000.00 limit per occurrence.

Before commencing work and services, the Consultant shall provide to the person identified in Section 16 of the Agreement a Certificate of Insurance evidencing the required insurance. City reserves the right to request and receive a certified copy of all required insurance policies.

Any payment of deductible or self-insured retention shall be the sole responsibility of the Consultant. City shall be named as an additional insured on the Commercial General Liability Insurance Policy, with regard to work and services performed by or on behalf of the Consultant, and a copy of the endorsement naming City as an additional insured shall be attached to the Certificate of Insurance.

The insurance policies (1) shall state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with regard to City; and (3) shall state that City will be given at least 30 days' prior written notice of any cancellation, suspension or material change in coverage.

AMENDMENT NO. 1 TO
AGREEMENT FOR PROFESSIONAL SERVICES

This Amendment No. 1 to the Agreement for Professional Services, dated as of the date written below (this "Amendment"), between the City of Bainbridge Island ("City") and Map Ltd. ("Consultant") amends that certain Agreement for Professional Services, dated December 15, 2011, between the City and Consultant (the "Agreement").

WHEREAS, City and Consultant entered into the Agreement to provide engineering design services for design of a fish passage culvert at the Dripping Water Creek crossing of Sunrise Drive;

WHEREAS, City desires to have the Consultant perform additional survey services for this project that City staff cannot complete as originally anticipated and to amend the maximum amount payable under the Agreement accordingly.

NOW, THEREFORE, City and Consultant agree to amend the Agreement as follows:

1. Section 2(A) is hereby amended to read as follows:

A. The City shall pay the Consultant for such services: (check one)

[X] Hourly, plus actual expenses, in accordance with Attachment A, but not more than a total of ~~Fifteen Thousand One Hundred Fifty Dollars ($15,150)~~ Seventeen Thousand Five Hundred Dollars ($17,500);
[ ] Fixed Sum: a total amount of $________;
[ ] Other: for all services performed and incurred under this Agreement, to be billed monthly in equal amounts."

2. Task 2.1 of Attachment A is hereby amended to read as follows:

The City has provided a base map of Sunrise Drive right of way. Additional survey work is necessary to include topographic survey information 200' upstream and downstream of the creek crossing in order to design the fish passage culvert. Additional survey information is necessary to complete remaining tasks 2.2, 2.3, 2.4, 3.1 and 3.2. Additional survey work is based on: Crew - 8 hours; Tech - 12 hours; Principal -2 hours, with the total not to exceed $2,350, as described in the Dripping Waters Topographic Survey Addendum attached as Exhibit A. ~~Review base map provided by others. Provide comments and assist with coordination of any additional work necessary to redefine the base map as needed. COBI to provide corrections.~~

3. Except as modified herein, all other terms and conditions to the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of August ____, 2012.

MAP LTD.

By: ______________________

Name: Pat Fuhrer, P.E.

Title: Principal

CITY OF BAINBRIDGE ISLAND

By: ______________________

Morgan Smith, Interim City Manager

EXHIBIT A

Dripping Waters
Topographic Survey Addendum

Surveying Scope and Fee Estimate
August 7, 2012

	Staff	Project Manager	Design Engineer	CADD Technician	Survey Crew	Total Hours per	Total Task
	Standard Schedule of Charges	$125.00	$90.00	$75.00	$150.00	Task	Cost
Task No.	Tasks Description	No. Hours/Task	No. Hours/Task	No. Hours/Task	No. Hours/Task		
	Sitework Plans Design & Preparation Phase						
1	Survey Crew work to perform topographic survey of stream corridor 200 feet upstream and downstream of Sunrise Drive as necessary for permitting plans preparation, work to be based on City-supplied topography and controls in the right-of-way	1			8		$1,325
2	Office work to reduce field survey notes and produce topographic survey CADD file for design use.	1		12			$1,025
[redacted]							

AMENDMENT NO. 2 TO
AGREEMENT FOR PROFESSIONAL SERVICES

This Amendment No. 2 to the Agreement for Professional Services, dated as of the date written below (this "Amendment"), between the City of Bainbridge Island ("City") and Map Ltd. ("Consultant") amends that certain Agreement for Professional Services, dated December 15, 2011, between the City and Consultant, as amended by Amendment No. 1 to Agreement for Professional Services, dated August 31, 2012, between the City and Consultant (the "Agreement").

WHEREAS, City and Consultant entered into the Agreement to provide topographic survey data, and to design a fish passage culvert in accordance with Washington State Department of Fish and Wildlife criteria for a creek known as Dripping Water Creek that flows beneath Sunset Drive; and

WHEREAS, during the land use process, it was discovered that additional design work is necessary to accommodate shoulder improvements on both sides of Sunrise Drive; and

WHEREAS, due to the expanded scope of the project, additional temporary and permanent easements have to be secured from the property owner prior to commencement of final preparation of the contract bid documents;

WHEREAS, City desires to increase the services provided under the Agreement and amend the maximum amount payable under the Agreement;

NOW, THEREFORE, City and Consultant agree to amend the Agreement as follows:

1. Section 2(A) is hereby amended to read as follows:

A. The City shall pay the Consultant for such services: (check one)

[X] Hourly, plus actual expenses, in accordance with Attachment A, but not more than a total of ~~Seventeen Thousand Five Hundred Dollars ($17,500)~~ <u>Thirty-Three Thousand Five Hundred Twenty-Five Dollars ($33,525)</u>;
[ ] Fixed Sum: a total amount of $_________;
[ ] Other, for all services performed and incurred under this Agreement, to be billed monthly in equal amounts."

2. Section 2.0, Tasks, of Attachment A is hereby amended include the following sections:

<u>2.5. Survey crew work to perform topographic survey of adjacent areas upstream and downstream to locate significant trees and topographic features impacted by the culvert and wider roadway prism and construction laydown. Office work to reduce field survey notes and supplement existing topographic survey CADD file for design use.</u>

2.6. Design and prepare a schematic culvert plan/profile and grading plan to accommodate two 5' asphalt and 2' gravel shoulders and determine appropriate temporary and permanent easement from the adjoining property owner.

2.7. Design and prepare revised construction documents and quantity material takeoffs for bid documents. Construction documents to include traffic control plan.

3. Section 3.0, Deliverables, is hereby amended to include the following section:

3.3. Shoulder Improvements.

a. Elaborate basin map identifying additional topography and trees impacted by the culvert and wider roadway prism and construction laydown.
b. Construction documents including Plans, Specifications, and Estimate.

4. Section 4.0, Schedule, is hereby amended to read as follows:

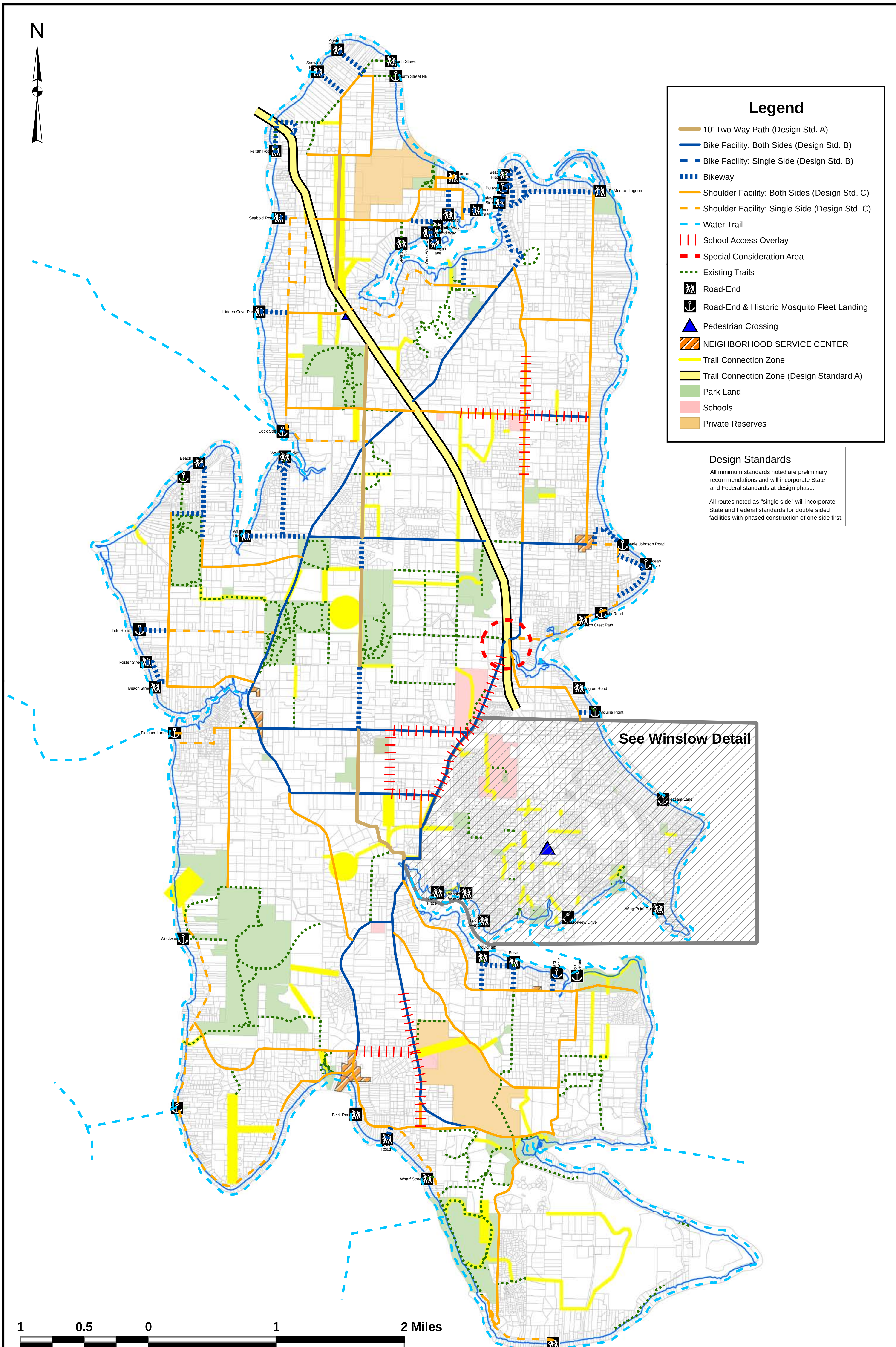
4.0 Schedule

4.1 Schematic Level Documents to be provided by ~~March 1, 2012,~~ June 1, 2013.
4.2 Construction Documents to be provided by ~~August 1, 2012,~~ June 1, 2014.
4.3 Construction is anticipated to be physically completed by ~~July 1, 2013~~ September 30, 2014.

5. Except as modified herein, all other terms and conditions to the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of ______ ____, 2013.

MAP LTD.	CITY OF BAINBRIDGE ISLAND
By:______________________________	By:__________________________
Name: Pat Fuhrer, P.E.	Douglas Schulze, City Manager
Title: Principal	



Non-Motorized System Plan
Map D: (Minimum Standards)
January 2003 Updated May 2008

1:43,768

Mayor Bonkowski,

I hope this finds you well.

Mayor McGinn's office asked that I contact you about activities around the Pacific Gateway Terminal coal proposal that are currently being planned. There are four things we're asking that you and perhaps your colleagues on the council to consider.

1) We're organizing a **press event** highlighting the reasons that stakeholders are opposing the coal train proposal on Monday, April 22nd at 1:30 PM, Golden Gardens Park (8498 Seaview Pl NW, Seattle, WA 98117). We would love for you or a councilmember from Bainbridge Island to attend.
2) There will also be a press release related to that event and we are including a quotes from several jurisdictions. Those quotes will also be used on a website that is currently under construction. **We would need that quote by the 18th** in order to include it in the press release.
3) There is also an **op-ed** attached to this message along those same lines and we are collecting names of co-signers. We would love to add your name to that list.
4) Finally, Seattle and King County are among several jurisdictions contributing to the cost of a **Health Impacts Assessment** of the coal train proposal. The UW, WSU and the Oregon Public Health Institute are conducting the research. The full scope of work will cost somewhere between $250k and $300k. Of that we have $200k in pledges. We've been asking other jurisdictions that have already expressed concerns about the plan to consider **a contribution** towards the study. Thus far, jurisdictional contributions range from $25k to $5k. I'm attaching two documents that outline the planned scope of work. Full funding of course will be required to complete the entire scope of work. So far Shoreline, Edmonds, Marysville, Spokane, and King County have joined us in that endeavor.

Thanks very much for your consideration. Please let me know if you have any questions.

Best,
Rob

Rob Gala
City of Seattle | Regional Affairs Manager | Office of Intergovernmental Relations | Desk 206.233.0073 | Cell 206.601.0053 |