



**REGULAR CITY COUNCIL STUDY SESSION
WEDNESDAY, AUGUST 21, 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. STAFF INTENSIVE
7:10 PM**

A. Subject: Update on Policies and Regulations Relating to the Legalization of Marijuana, AB 13-107
– 20 min.

Discussion Leader: Planning/Executive

Discussion Goal: Information.

B. Subject: Cost Allocation Policy Alternatives – 20 min.

Discussion Leader: Finance

Discussion Goal: Information.

C. Subject: Vincent Road Landfill Groundwater Monitoring and Reporting Professional Services Agreement
Information, AB 13-108 – 10 min.

Discussion Leader: Public Works

Discussion Goal: Consider scheduling on August 28, 2013 consent agenda.

D. Subject: Resolution No. 2013-14, Right-of-Way Vacation by Operation of Law of Unnamed 15' Road
Located in Eagledale, AB 13-109 – 10 min.

Discussion Leader: Public Works

Discussion Goal: Consider scheduling on August 28, 2013 consent agenda.

E. Subject: Clarify Lease Agreement with Bainbridge Island Farmer's Market – 10 min.

Discussion Leader: Executive

Discussion Goal: Information. Next steps.

**4. COUNCIL DISCUSSION
8:20 PM**

A. Subject: Use of City Property for Television Commercial and/or Movie Filming – 10 min.

Discussion Leader: Councilmember Lester

Discussion Goal: Information. Next steps.

**5. CITY MANAGER'S REPORT
8:30 PM**



Times listed on this agenda are approximate. Public Comment may be limited to allow time for Council to deliberate.

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.

6. COMMITTEE REPORTS
8:35 PM
7. REVIEW OF UPCOMING COUNCIL MEETING AGENDAS
8:40 PM
8. FOR THE GOOD OF THE ORDER
8:45 PM
9. ADJOURNMENT
8:50 PM



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CITY OF BAINBRIDGE ISLAND

CITY COUNCIL AGENDA BILL



PROCESS INFORMATION

Subject: Update on Policies and Regulations Related to Legalization of Marijuana

Date: August 21, 2013

Agenda Item: Staff Intensive

Bill No.: 13-107

Proposed By: Planning Director Kathy Cook

BUDGET INFORMATION

Depart/Fund:

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:

Initiative 502 (I-502) enacted by Washington state voters in November 2012, calls for the establishment of a regulatory system licensing producers, processors and retailers of recreational marijuana for adults 21 years of age and older. The purpose of the Council study session on August 21 is to discuss issues related to the implementation of I-502. Attorney Angela Belbeck will be available to answer legal questions.

Background:

In November 2012, Washington voters passed I-502, directing the state government to regulate and tax adult marijuana use. I-502 delineates three levels for this regulated business: marijuana producers (growing the plant); processors (incorporating the plant into edibles, liquids or packaged bud ready for retail); and retailers (running the shops where marijuana products are sold).

I-502 includes the following land use provision which applies to all three levels of the regulated business: *"The state liquor control board shall not issue a license for any premises within 1000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older."* Staff will provide a map at the August 21 Council meeting that shows areas on the island that are affected by this restriction.

(Continued on next page)

RECOMMENDED ACTION

Motion:

Information only.

DESCRIPTION/SUMMARY (continued)

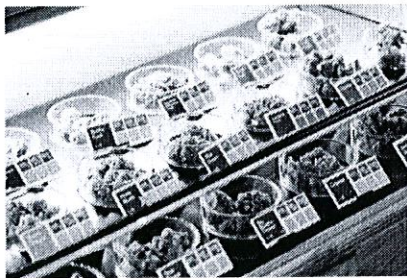
The state Liquor Control Board (LCB) is responsible for developing the basic regulations that implement I-502. The LCB issued draft rules for public comment in the spring of 2013 and conducted a public hearing on August 7. The revised schedule calls for the rules to be adopted on September 4, and acceptance of license applications for a 30-day period, November 18-December 18.

The following background material is provided for the Council's discussion:

- Municipal Research Services Center article, June 27, 2013
- Municipal Research Services Center article, March 5, 2013
- Liquor Control Board Proposed Rules Highlights, July 3, 2013
- Liquor Control Board Frequently Asked Questions, July 3, 2013

It's Really Happening – the Local Marijuana Store!

Posted on June 27, 2013 by Jim Doherty



The voters passed Initiative 502 last November, but perhaps you expected the federal government to step in and stop this “foolishness.” Well, we’re still waiting for any federal response, so it seems that the federal government is likely going to sit back and see how well Washington and Colorado handle this transition to a regulated and taxed marijuana industry. Is your city or county ready? Have you decided where and what marijuana businesses can and will be accommodated within your borders? If you haven’t made that decision yet, we recommend for a number of

reasons that you move with all deliberate speed in that direction.

Bob Meinig from our legal staff attended a meeting last week hosted by Association of Washington Cities with staff from the Liquor Control Board (LCB) and a number of city attorneys. A lot of good information came out of that meeting, and I’d like to pass it on.

The primary subject of discussion at this meeting concerned the LCB licensing process for marijuana growers, processors, and retailers and the consideration, if any, to be given in that process to local zoning and licensing regulations. The key points that emerged from this discussion were:

- An LCB license for a marijuana grower, processor, or retailer does not guarantee the right of the licensee to operate in the jurisdiction and at the specific location in that jurisdiction for which the license is issued. The licensee must still comply with local zoning and business licensing regulations to be able to operate. The process, as such, is basically the same as for liquor licensing.
- The LCB will determine whether the applicant has the necessary legal interest (ownership or lease) in the property that will be the licensed premises. The LCB *will not* inquire or determine whether the applicant will be in compliance with local regulations or whether the local jurisdiction has in place a moratorium on accepting applications for marijuana businesses. (But see above bullet.)
- The LCB *will* determine if the property subject to the application meets the 1000-foot restrictions in 1-502 with respect to proximity to certain uses (schools, playgrounds, parks, child care centers, libraries, etc.). A license will be denied if the applicant does not meet those locational restrictions.
- As with the liquor permitting process, cities and counties may file written objections in response to a notice of application for license for a marijuana grower, processor, or retailer. These objections should relate to public safety issues such as criminal activity in the area and the suitability of the applicant. Objections based on local regulations will not be considered, but it was suggested that they might be provided anyway to give notice to the applicant (who should, but may not, already have knowledge of applicable local regulations; see bullet below). The LCB says it will pass on to the applicant information supplied by the local jurisdiction as to compliance with local laws.
- The LCB will recommend that applicants talk with the applicable jurisdiction about the applicant’s plans and about local regulations and licensing requirements that would apply to the proposed use. The LCB has already done this broadly in its “Top 10 Suggestions for Preparing to Apply for a Marijuana License.”

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According to the LCB's timeline, it will begin accepting applications for all marijuana licence types *on September 14*, and it will begin issuing licenses *on December 1* of this year. The LCB will open registration for license applications for only 30 days, though it may extend that the application window. (You can follow the regulatory process by visiting the liquor control board I-502 implementation web page.) The process will be difficult for applicants if, when they apply for licenses, they don't know if where they want to grow, process, or sell marijuana is a place that the city or county will allow marijuana to be grown, processed, or sold.

So what's a city or county to do, given this landscape? Here are some suggestions:

- As I recommended in a previous blog, figure out where in your jurisdiction potential licensees can locate given the I-502's 1000-foot restrictions. For small cities and towns, there may be no locations available for a marijuana business. If that's the case in your city or town, you can just sit back and watch other jurisdictions wrestle with these issues.
- Consider adopting *interim* zoning regulations if adopting "permanent" regulations will likely take a long time and your jurisdiction hasn't yet done much to advance in that regard. A moratorium on accepting applications for marijuana businesses, if still in place when the LCB begins accepting applications, will not help with the process of letting these businesses get established in places where it may be appropriate to locate. A moratorium is intended as a temporary device while the jurisdiction works towards establishing interim or permanent regulations. We recommend adopting a work plan to guide that process.
- Consider how existing collective gardens and distribution points for medical marijuana, if any, and possible future collective gardens and distribution points will interact with recreation marijuana uses. One good suggestion I've seen is to impose on medical marijuana uses the same 1000-foot locational restrictions that I-502 imposes on recreational marijuana uses, and to impose the same zoning restrictions.

A big part of the problem in developing zoning for these marijuana uses is the difficulty in evaluating their potential impacts. Washington is the first place *in the world* - along with Colorado - to confront these issues involved with a regulated marijuana market, so data on potential impacts is speculative. But to some extent, the potential impacts of these uses may be mitigated by the 1000-foot locational restrictions (which are measured from the perimeter of the grounds containing the school, playground, child care center, etc.) and other restrictions such as security requirements that I-502 imposes.

If you haven't already, you may also want to review the initial draft rules released by the LCB. The comment period for those initial draft rules has passed, but when the next version gets released, on July 3rd, you will have an opportunity to attend the public hearing on the rules or to submit written comments.

The initial draft rules provide for a rigorous regulatory system that will track licensed marijuana from initial cultivation to final sale - with specific requirements for surveillance cameras and security measures that should make it difficult for people to subvert the process. The goal is to keep licensed marijuana from being diverted or stolen, to make sure that minors do not have easy access, and to collect all of the required tax.

While the recreational marijuana process unfolds we still have the almost-unregulated medical marijuana system here in Washington. Medical marijuana is mostly untaxed and significantly abused. If our recreational marijuana market is to succeed, it will be necessary to either merge the two systems or bring more regulation and taxation to the medical marijuana system. The state legislature was too busy struggling with the budget to deal with the issue this year, but expect some significant proposals for change in the future.

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So, given that the Liquor Control Board rulemaking process is well under way and the board will in less than three months start accepting applications for marijuana uses, local governments should deal with their zoning and local regulatory issues promptly. From recent newspaper articles, it is becoming clear that well-funded businesses are hoping to establish a role in the new regulated marijuana market, and they have the resources to challenge local governments that adopt obstructionist policies. There will be conflicts and litigation as licensed marijuana businesses try to set up shop in our communities. For better or for worse, the future is almost here.

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About Jim Doherty

Jim has 19 years of experience researching and responding to varied legal questions at MRSC. He updates MRSC's Public Records Act publication and has special expertise in transmission pipeline planning issues.

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This entry was posted in Legal, Planning, Policy, Public Safety. Bookmark the permalink.

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Marijuana Producers, Processors, and Retailers – Where Will They Be Setting Up Shop?

Posted on March 5, 2013 by Jim Doherty



It's been almost four months since Washington voters passed Initiative 502 and directed our state to take a "new approach" to adult marijuana use: regulate and tax instead of prohibit. Are you, and your community, still in shock? Have some residents been telling you that they "certainly don't want any such businesses locating anywhere in _____!!" – while at the same time potential marijuana entrepreneurs are contacting the planning department and searching for prospective locations?

The state Liquor Control Board is working hard at coming up with the basic regulations, but nothing has been issued for public comment yet. We encourage you to visit its [I-502 Implementation](#) page to stay current on the rule development process. But do not expect the board to issue regulations that will resolve many of the city and county planning issues presented by I-502.

Have you thought about the distinctions between marijuana producers, processors, and retailers? Initiative 502 delineates three levels for this regulated business. The growers are restricted to growing the plant; the processors are the ones who incorporate the plant product into edibles, liquids, or packaged bud ready for retail; and the retailers are, as expected, the people who run the shops where marijuana products and related paraphernalia are sold.

There is, fortunately, one clear land use provision in initiative 502, found in subsection 8 of section 6:

The state liquor control board shall not issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.

That provision applies to marijuana producers, processors, and retailers. So we suggest that each jurisdiction start by having its planning department do a careful job mapping out areas that are specifically excluded from having any marijuana-related businesses. You might be surprised. We talked to one smaller town in eastern Washington that concluded there is no place in town where any marijuana business can legally locate. We suspect that in many jurisdictions there will be limited or even no locations where such businesses can locate.

You really cannot assess your situation until you know, after consideration of the locational restrictions imposed by the initiative, the potential locations for these marijuana-related businesses. Once your city or county has done that mapping and determined where these businesses could potentially locate, there are some obvious questions that need to be addressed, such as: what is the applicable zoning for these areas; in which of these areas might you want to allow these marijuana-related businesses to locate; and will they be allowed as a permitted or as a conditional use?

Marijuana growers. Here's a thorny question: if someone is growing marijuana in an enclosed building (not a greenhouse), is that an agricultural use? At this point we don't know whether the Liquor Control Board will be issuing licenses to many small growers, or to just a few larger growers, or to a mix of both. A state-licensed grower may want to locate in small warehouse in your jurisdiction's commercial or industrially zoned areas – is that  Follow

agricultural type use currently allowed? To take the lingering “moral” issue out of the question, consider where your jurisdiction would allow someone to construct greenhouses for flower cultivation. Should outdoor growing or greenhouse cultivation be allowed in all agriculturally zoned areas?

Marijuana processors. What zones in your jurisdiction might be appropriate for marijuana processors? Remember that marijuana will be sold for consumption not only in the raw, smokeable form but also through “marijuana-infused” products, such as baked goods and liquids. For an equivalent business, consider someone who has a business making baked goods or a small chocolates factory. Where in your jurisdiction would you normally allow such a business to locate? People in the food processing business need to meet various state and county health and safety codes. Is there any basis for treating marijuana processing differently than food processing businesses?

Marijuana retailers. (Note that retailers may sell only marijuana, marijuana-infused products, and paraphernalia, and that they may display only a single sign no larger than 1600 square inches, displaying the business name.) Should a jurisdiction allow marijuana retailers to set up shop in any area zoned for retail use (so long as it meets the 1,000-foot exclusion zone requirement)? Might there be different safety concerns for marijuana retailers than for other types of retail businesses? Will the likely clientele be different? How will your community feel about such businesses? These are but a few of the questions you will end up asking.

The Liquor Control Board now estimates that it will have draft regulations for the marijuana producer licenses released for public comment around mid-April. The draft regulations for processors and retailers will come later. It will be a few months between the issuance of draft regulations and when the final regulations will go into effect. This is going to take a while. In the meantime, we suggest that you spend some time thinking about the many zoning issues raised by this new class of business. Will your jurisdiction have sufficient time to adopt local land use regulations? Should your jurisdiction consider interim regulations or a moratorium on accepting applications for such uses?

Before the Liquor Control Board issues a license for a marijuana business, the local jurisdiction – city or county – has an opportunity to file written objections against the applicant or against the proposed location, and the local jurisdiction can request that a hearing be held by the board. See subsection 7 of section 6 of Initiative 502 for details regarding this process.

Local licensing. When a marijuana entrepreneur shows up with a state-issued license for growing, processing, or retailing marijuana, is the city or county required to issue a local business license (assuming that zoning requirements are met)? We think so (though see below). To forestall people applying for business licenses before they obtain a state license, you may want to consider expressly requiring a state license as a condition of issuing a business license.

If marijuana businesses are not prohibited based on the initiative’s locational restrictions, can a jurisdiction prohibit in its zoning code all marijuana businesses, either because of local public sentiment or based on concerns involving the ongoing federal prohibition? This is an issue the initiative does not address and it remains an open question. Your legal counsel should be consulted should your jurisdiction be considering such a course of action.

Be patient with all the uncertainty regarding these issues. This topic will be studied diligently by county prosecutors and city/town attorneys over the coming months. We expect that there will be a wide range of approaches taken to these questions. Nobody has any clear answers – we aren’t in Kansas any more!

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[MRSC recently posted a new webpage on “Recreational Marijuana - Initiative 502 Implementation.” Additional materials will be posted there as regulations are adopted by the Liquor Control Board, and as jurisdictions start to adopt local ordinances dealing with the above issues.]

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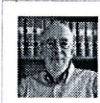
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This entry was posted in Land Use and Zoning, Legal. Bookmark the permalink.

One Response to *Marijuana Producers, Processors, and Retailers – Where Will They Be Setting Up Shop?*



Steve Erickson says:

March 7, 2013 at 11:17 am

Agreed. We are definitely not in Kansas. We're in Washington, where the people spoke very loudly and clearly.

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Washington State Liquor Control Board

Proposed Rules Highlights

July 3, 2013

LCB Rulemaking Objective

- o Creating a tightly controlled and regulated marijuana market;
- o Including strict controls to prevent diversion, illegal sales, and sales to minors; and
- o Providing reasonable access to products to mitigate the illicit market.

LCB Role and Responsibility

- o Ensuring public safety is the top priority;
- o Creating a three-tier regulatory system for marijuana;
- o Creating licenses for producers, processors, and retailers;
- o Enforcing laws and rules pertaining to licensees; and
- o Collecting and distributing taxes.

Proposed Rules Highlights

License Requirements

- **30 day window**
 - o The LCB will open registration for all license types for a 30 calendar day window (mid-September)
 - o LCB may extend the time or reopen application window at its discretion
- **State Residency Requirement**
 - o I-502 requires a three month state residency requirement (all license structure types)
- **Background Checks**
 - o Personal criminal history form with license forfeiture if incomplete or incorrect
 - o Fingerprinting of all potential licensees
 - o Background checks of license applicants and financiers
- **Point System**
 - o The LCB will apply a disqualifying point system similar to liquor
 - o Rules allow exceptions for two misdemeanor convictions of possession w/in three years
- **Costs and Fees**
 - o \$250 application fee
 - o \$1,000 annual renewal fee
 - o Additional fees for background check and filing for local business license
- **Taxes**
 - o License applicants must submit a signed attestation that they are current on taxes owed to the Washington State Department of Revenue.

Public Safety

- **Producer Structures**
 - o Rules allow producer operations in secure: indoor and outdoor grows as well as greenhouses

July 03, 2013

- **Traceability**
 - o LCB will employ a robust and comprehensive traceability system (software) that will trace product from seed/clone to sale.
 - o LCB enforcement can match records to actual product on hand.
- **Background Checks**
 - o Personal criminal history form
 - o Fingerprinting of all potential licensees
 - o WSP and FBI back background checks of licensees and financiers
- **Point System**
 - o LCB will apply a disqualifying point system similar to liquor (exceptions for possession)
- **Violation Guidelines / Standard Administrative Procedures Act Guidelines**
 - o \$1,000 criminal penalty for sales to a minor
 - o Sets strict tiered system of violation record over a three year period
 - Group 1 public safety:
 - First violation: 10 day suspension or \$2,500
 - Second violation: 30 day suspension
 - Third violation: license cancellation
- **Child Resistant Packaging**
 - o Specific requirements for marijuana and marijuana-infused products in solid and liquid forms
- **Security and Safeguards**
 - o Alarm and surveillance video camera requirements (including minimum pixels and lockbox encasement)
 - o Strict transportation and record keeping requirements (no third party transport of product)
 - o Hours of operation limited to 8:00 a.m. to 12:00 a.m.
- **Advertising Restrictions**
 - o Law restricts advertising within 1,000 feet of schools, public parks, transit centers, arcades, and other areas where children are present.

- o May not contain statements or illustrations that: is false or misleading, promotes over consumption, represents that the use of marijuana has curative or therapeutic effects, depicts a child or may be appealing to children.

- **Limits on Retail Stores**

- o LCB to provide advance notice to local authority
- o Per I-502, LCB to determine number of retail outlets per county
 - ☐ LCB to hold county-by-county lottery accounting for population distribution
 - ☐ BOTEK Analysis Corporation determining county consumption levels.
 - Consumption will drive number of retail outlets.

Consumer Safety

- **Behind the counter storage**

- o No open containers or handling of product
- o Sniff jars with sealed, screened-top lids allowed

- **Strict packaging and label requirements**

- o Limited servings and concentration per package
- o Lot number
- o Warning label
- o Net weight
- o Concentration of THC and five other cannabinoids
- o Usage warnings (specific warning for ingestible foods/liquids about effect delays)
- o Upon request
 - ☐ Third party lab that tested lot and results
 - ☐ All pesticides, herbicides, fungicides found in product

- **Defined Serving Size**

- o Defined serving sizes on marijuana-infused product label
 - ☐ 10 mg of THC per serving
 - ☐ 100 mg of THC per product

- **Lab Tested and Approved (monograph)**

- o All lots will be tested by independent accredited labs
- o Established and uniform testing standards

- **Store Signage and Product Warnings**

- o No minors allowed in stores
- o Required product and usage signs within stores

For more information regarding Initiative 502, please visit the Liquor Control Board website at www.liq.wa.gov.

###



Washington State Liquor Control Board

Frequently Asked Questions about the I-502 Proposed Rules

Topic: Initiative 502

Date: July 3, 2013

Licensing

When can I get my license?

We will begin accepting applications for all three license types (producer, processor and retailer) for 30 days on November 16, 2013 and expect to begin issuing licenses, at the earliest, in December/January 2013. Due to the anticipated turnout and rush to obtain a license it is possible that the process may take longer than the projected 90 days. The best way to stay up to date on the implementation process and when the applications become available is to register for [email notifications](#) on the WSLCB website.

Why are you only accepting applications for 30 days?

Opening up the licensing window for 30 days affords anyone who is qualified to apply for a license the opportunity to do so. Whether you are a small grower or larger company you will be given the same opportunity to get a license. Closing the window after 30 days allows the Board the opportunity to assess the market and see what changes, if any, are needed regarding the number of licenses. The Board may also reopen the window at its discretion.

How many producer and processor licenses will be issued?

Presently the WSLCB does not intend to limit the amount of producer or processor licenses it will issue. The LCB will open a 30 day window in September where anyone can apply, and qualified applicants will receive licenses.

How many retail licenses will be issued?

The number of retail locations will be determined using a formula that distributes the number of locations proportionate to the most populous cities within each county. Locations not assigned to a specific city will be at large. Once the number of locations per city and at-large have been identified, the specific locations will be selected by lottery in the event the number of applications exceeds the allotted amount for the cities and county.

How will the lottery work?

WSLCB staff are developing the guidelines for the retail license lottery. As more information becomes available we will notify stakeholders via the [I-502 Listserv](#).

If the local authority objects to my proposed location after filing my application can I move my location without refiling?

Applicants will be able to change the location of a potential license if the local authority objects, as long as the application is still in the processing stage, without filing a new application.

Will a criminal record impact my ability to get a license?

The WSLCB will employ a disqualifying criminal history point system similar to liquor. An exception would be allowed for two misdemeanor convictions of possession within three years. A felony conviction will prohibit you from obtaining a marijuana license if the conviction was in the last 10 years.

How do I prove three months residency?

There are many ways to prove residency. Some examples include:

- Get a Washington State driver's license or ID card, which has an issue date on it
- Present three months worth of utility bills, pay stubs, etc.
- Register to vote

You can find out more about state residency requirements at [Access Washington](#).

How do I show I'm current on my taxes?

Prospective licensees will be required to sign an attestation that they are current on their taxes. Failure to do so or misrepresentation of the status of your taxes is grounds to deny the application.

Can I get my \$250 application fee back?

Marijuana application fees are non-refundable.

Is it true that the WSLCB is just going to license current medical marijuana outlets to retail marijuana?

No. Retail licenses will be issued to qualified applicants who meet the licensing criteria. A medical marijuana outlet that wants to convert to a recreational outlet will have to go through the same application process as any other potential applicant. If they were to obtain a retail license they would only be allowed to sell marijuana purchased from the recreational system, they would not be allowed to comingle medical and recreational marijuana.

Can local jurisdictions prevent me from opening a location?

The LCB has no authority to dictate zoning requirements to local governments. Municipalities could conceivably zone marijuana/related businesses out of their geographical area, check with your local authority to understand their requirements.

Since there are a limited number of retail licenses available can I apply for a retail license and a processor and/or producer license at the same time to ensure that I'm not left out and then withdraw the processor and/or producer license application in the event that I get the retail license?

No. Applicants must decide ahead of time which license type they are pursuing. If an applicant applies for a retail license in addition to one of the other two license types all of the applications will be rejected.

Can I be a processor and a producer?

Yes. Licensees may hold both a producer and processor license together.

Is there a producer/processor license?

No. Applicants must apply for, and obtain, both licenses separately and must pay the application and renewal fees on both licenses.

Do I have to pay the 25% tax on sales between producer and processor if I hold both licenses?

No. If you hold a producer/processor license you avoid the 25% tax that would be applied to a producer to processor sale.

Do I have to provide proof from my landlord that they are aware of how their property is being used?

No. The provision requiring an applicant to provide a signed affidavit showing their landlord is aware of the marijuana related business using their property has been removed.

There is a bus stop in front of my location; will that disqualify me from getting a license?

The rules define "public transit center" as a facility located outside of the public right-of-way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge.

Can I have multiple locations?

Yes. However each location must be licensed separately and the licensee must meet the previously mentioned requirements on license types.

How will the WSLCB measure distance from a restricted area to a potential marijuana location?

I-502 directs the WLCB to measure, in a straight line, from the perimeter of a restricted area to the perimeter of a potential location.

If I'm providing financial backing do I have to be a resident?

Yes. Financiers will be required have three months Washington state residency and to pass the same criminal background checks as a licensee.

Testing

How can I get my laboratory certified to test marijuana?

The LCB will contract (via the request for proposals process) with a firm who will be responsible for accrediting labs.

How will I get my products tested?

The LCB will furnish a list, via our website, of accredited labs for producers to contract with for testing services.

Traceability/Product

What is the traceability system?

A robust and comprehensive traceability software system will that will trace product from start to sale. Licensees will have to use tracking software that is compatible with LCB's traceability system and allows the LCB to monitor and track any plant at any time.

When do my plants need to be entered into the traceability system?

Prior to reaching eight inches in height or width each plant must be tagged and tracked individually

How do I obtain startup inventory?

Within fifteen days of starting production operations a producer must have all non-flowering marijuana plants physically on the licensed premises and recorded into the traceability system. No flowering marijuana plants may be brought into the facility during this fifteen day timeframe. After the 15 days pass, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

Growing

Where can I grow?

- **Indoors/Greenhouse**

Fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.

- **Outdoor**

Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

Can a current farm just convert its crop to marijuana?

Converting a crop to marijuana would require a producer license and the farm would have to meet all of the guidelines set forth in the rules pertaining to outdoor growing.

Can I grow in my personal residence?

No. The rules state that "the Board will not approve a license for any location where law enforcement access, without notice or cause, is limited. This includes personal residences." Private residences are afforded a degree of privacy under the 4th amendment of the U. S. Constitution that is incompatible with the regulatory requirements of I-502.

Are there any limits on how much marijuana I can produce or keep on hand?

Presently the LCB does not plan to limit the amount of marijuana on hand at licensed locations. All marijuana products must be tracked through the traceability software.

How many plants can I grow? Are there any size restrictions on growing operations?

Presently the WSLCB is not capping the number of plants that a producer can grow or how large of a production facility they operate. However producers will have to track and trace every plant and grant access to that information upon request of the WSLCB.

How can I get my marijuana certified as organic?

Marijuana may not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

Processing

Why can't I advertize marijuana's medical benefits?

The WSLCB is regulating the recreational marijuana market and does not evaluate the medical claims of a recreational product. Prospective licensees who want to produce/market marijuana for medical purposes should research Washington's medical marijuana laws.

How will you prevent children from accidentally ingesting marijuana products?

Marijuana infused products must be packaged in child resistant packaging in accordance with Title 16 CFR 1700 of the Poison Prevention Packaging Act.

What happened to the "Produced in Washington" icon?

During the public comment period the WSLCB heard a variety of comments on the icon and ultimately decided to remove it from the rules. The intent of the icon was to provide parents, teachers, etc with a visual aid that helped them readily identify a product as marijuana. Many of the comments were positive and appreciated the WSLCB's work on this issue, while others were concerned that the icon may be seen

as promotional. The Board does reserve the ability to require an icon be included on packaging in the future for public safety purposes if they deem it necessary.

Why does the Board want to ban concentrates?

The Board's analysis believes that the definition of usable marijuana or infused product in I-502 does not cover concentrates. While the Board was willing to allow concentrates they are not inclined to break the law to do so.

Does hash qualify as usable marijuana?

No. Under the definitions of I-502 hash does not qualify as usable marijuana.

Can I infuse concentrates with an inert oil, or similar substance, and sell it?

Yes. This would qualify as a marijuana infused product.

What is the minimum level of added marijuana for a product to be considered a marijuana infused product?

The Board has not set minimum thresholds for what constitutes an "infused" product.

Retail

Can I run a retail delivery business?

No. Third party delivery is not allowed. All retail sales must take place in a licensed retail establishment.

Can a medical marijuana outlet and a retail outlet share the same space?

No. The two operations would have to be separate. Retail outlets are only allowed to sell marijuana that comes from a licensed processor and licensed processors are not allowed to sell to unlicensed entities, such as a medical marijuana outlet.

Are there any restrictions on retail hours of operation?

Retail marijuana operations may take place between the hours of 8:00AM and 12:00AM.

Why can't I hold the marijuana before purchase?

I-502 is very clear that there can be no open containers of marijuana, or consumption of marijuana at licensed locations. The WSLCB cannot write rules that contradict the law.

Why can't I smell the marijuana before purchase?

Retail licensees are allowed to provide a sample jar with a plastic or metal mesh screen to allow customers the ability to smell the product before purchasing. Opened marijuana products are not allowed inside a licensed retail outlet.

Miscellaneous

Will the WSLCB be setting prices?

No. The WSLCB will not set prices but licensees are not allowed to sell marijuana products below their acquisition cost.

Can I provide samples?

Producers are allowed to provide samples to a processor and processors are allowed to provide samples to a retailer. Retailers are not allowed to supply samples to the public.

CITY OF BAINBRIDGE ISLAND

CITY COUNCIL AGENDA BILL



PROCESS INFORMATION

Subject: Vincent Road Landfill Groundwater Monitoring and Reporting Professional Services Agreement	Date: August 21, 2013
Agenda Item: Staff Intensive	Bill No: 13-108
Proposed By: Interim Public Works Director John Cunningham	

BUDGET INFORMATION

Depart/Fund: 2013: PW SSWM Prf Srvcs @ \$13,330.85 and PW SSWM Fuel Budget @ \$2,967.15

Budget Year:	2013	2014	2015	2016	2017
Annual Expenditures:	\$16,298	\$12,552	\$13,106	\$13,432	\$29,126

Expenditure: \$ 84,514.00 - 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 Vincent Road Landfill Groundwater Monitoring and Reporting Professional Services Agreement award on the August 28, 2013 City Council consent agenda.

History:

The City took ownership of the former Vincent Road landfill site in 2002 and with that ownership came the responsibility of monitoring the effectiveness of the site cleanup efforts through groundwater monitoring sampling per WAC 173-340-410(1) (c) and the Final Cleanup Action Plan approved by the Department of Ecology. This responsibility is met through groundwater and surface water sampling at the site and reporting to the City, Kitsap County and the Washington State Department of Ecology. The initial two five-year monitoring periods have been completed. The City is beginning it's third year of five-year monitoring reporting requirements.

The City solicited statements of qualifications from three consultants from the consultant roster for the Vincent Road Landfill Groundwater Monitoring. Aspect Consulting LLC was selected as the most qualified consultant to perform the work. Attached is a copy of the professional services agreement. The scope of work includes semi-annual water quality sample collection and analysis for the next five-year monitoring period. Semi-annual monitoring and water quality analysis reports will also be submitted to the City under this scope of work. In addition, a five-year monitoring report will be completed and submitted to Ecology at the end of the monitoring period. The professional services agreement amount is \$84,514.00 over a five-year time frame.

RECOMMENDED ACTION

Motion:

I move that the City Council forward the Vincent Road Landfill Groundwater Monitoring and Reporting Professional Services Agreement with Aspect Consulting LLC to the August 28, 2013 consent agenda for approval.

**VINCENT ROAD GROUNDWATER LANDFILL MONITORING
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 Aspect Consulting, LLC (the “Consultant”).

WHEREAS, the City is required by the Washington State Department of Ecology to conduct groundwater and surface water confirmation monitoring at the site of the former Vincent Road landfill; and

WHEREAS, the City desires to conduct a five-year groundwater and surface water confirmation monitoring study and receive a report summarizing the study’s findings at the end of the study; 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)

☒ Hourly, plus actual expenses, in accordance with Attachment A, but not more than a total of \$84,514;

☐ 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, 2017, 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:

☒ Commercial General Liability as described in Attachment C.

☒ Professional Liability as described in Attachment C.

☒ Automobile Liability as described in Attachment C.

☐ 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: Public Works Director

To the Consultant: Aspect Consulting, LLC
 350 Madison Avenue N
 Bainbridge Island, WA 98110
 Attention: Erick Miller

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 August ____, 2013.

ASPECT CONSULTING, LLC

CITY OF BAINBRIDGE ISLAND

By _____

By _____

Douglas Schulze, City Manager

Name _____

Title _____

Tax I.D. # _____

City Bus. Lic. # _____

ATTACHMENT A

SCOPE OF SERVICES

Background

In 2002, the City of Bainbridge Island purchased 40 acres from Kitsap County located within the City limits that includes the Bainbridge Island Landfill cleanup site. Kitsap County had previously completed a hazardous waste cleanup action under the Model Toxics Control Act (MTCA) at the site in 2001. Post-cleanup or confirmation monitoring of groundwater and surface water was implemented starting in December 2001. A five-year review was conducted in 2006 and again in 2012 and additional monitoring of groundwater and surface water was deemed necessary.

Groundwater and surface water confirmation monitoring are to be conducted in accordance with the Confirmation Monitoring Sampling and Analysis Plan developed out of the Second Five-Year Review Report (2012). The purpose of the monitoring is to demonstrate the long-term effectiveness of the cleanup action, including natural attenuation of groundwater, in compliance with Washington State Administrative Code 173-340-410 (1) (c). The scope of work and schedule for the next 5 years of confirmation monitoring and the Third Five-Year Review Report are as follows:

- Task 1 - 2013 Confirmation Monitoring August, December
- Task 2 - 2014 Confirmation Monitoring June, December
- Task 3 - 2015 Confirmation Monitoring June, December
- Task 4 - 2016 Confirmation Monitoring June, December
- Task 5 - 2017 Confirmation Monitoring June
- Task 6 - 2017 Third Five-Year Review Report, May

Five-Year Confirmation Monitoring

Groundwater sampling shall be conducted at five locations twice yearly, typically in June and December, and surface water sampling is to be conducted at two locations annually in December. For the first year of monitoring, the initial sample will be collected in early August. Four of the groundwater monitoring stations (MW-12 to MW-15) are located on the Bainbridge Island landfill site; the fifth monitoring station is a community drinking water well (called the Stetson Acres well) located approximately ¼ mile north of the northern property boundary. In addition, a field duplicate will be collected from one of the groundwater monitoring stations during each semiannual sampling event. Both of the surface water monitoring stations (SWU and SWD) are located on the landfill site. A field duplicate will also be collected from one of the surface water monitoring stations during each annual sampling event.

The City and the Stetson Acres well landowner shall be notified at least one week prior to the date of each sampling event. The City shall provide clear and unobstructed vehicular access to the well sites. The Consultant shall provide equipment that includes pump controller, extension cord and generator. The Consultant shall:

- follow the procedures provided in the Second Five Year Review Report (2012);
- provide sampling specific equipment that includes field meters, water level indicator, water quality monitoring equipment;
- be responsible for coordinating and for the cost of all tests with the analytical laboratory;
- maintain electronic and hard copy of all laboratory analytical data;
- be responsible for data quality review and maintaining the project database; and
- provide a copy of the laboratory analytical results, as well as an e-mail summarizing the results and any cleanup level (CUL) exceedances after each sampling event to the City of Bainbridge Island project contact.

The groundwater and surface water parameters to be analyzed during the confirmation monitoring are provided in the below table (Table 1).

Table 1: Chemical Analytical Parameters and Methods (Confirmation Monitoring)

Parameter	Analytical Method
Groundwater	
Vinyl Chloride	8260B/Single Ion Method (SIM)
1, 1-dichloroethene	8260B SIM
Total Manganese	6010B/7000/CLP
Dissolved Manganese	6010B/7000/CLP
Nitrate-N and Nitrite-N	353.2
Sulfate	375.2*
Alkalinity	SM2320
Chloride	325.2*
Surface Water	
Total Iron	6010B/7000/CLP
Dissolved Iron, Copper, Zinc	6010B/7000/CLP
Alkalinity	SM2320
Fecal Coliform	SM9222D
Total Coliform	SM9222B

*The laboratory for the most recent analytical testing (Pace Analytical) reports these analytes were done by method 300.0. Analytical costs are based on using method 300.0.

Third Five-Year Review Report

Groundwater and surface water monitoring data will be compiled in a written report and delivered to the City in May 2017. The following information will be provided in the report:

- Table of depth to water, casing elevations, and calculated groundwater elevations for the four monitoring wells (MW-12 to MW-15).
- Groundwater elevation contour maps showing groundwater flow directions for each of the 10 water level measurement periods.
- Table of analytical monitoring data for the four monitoring wells and the offsite well, including the established cleanup levels for each parameter for the five-year review period.

- Statistical summary table of monitoring data by well, showing the frequency of detections, minimum, maximum, and average values detected, and the number of cleanup levels exceedances per well.
- Times series plots of detected analytical parameters. Time series plots will begin with the earliest data obtained for each well or station and the established cleanup levels will be shown on the plots.
- An evaluation of the current cleanup levels.

Data will be accompanied by text that describes the groundwater monitoring system at the landfill and the equipment and procedures used to collect the data. Deviations from the monitoring program or problems encountered during the monitoring will be noted. The report will also include a brief summary of changes in groundwater flow direction over time, trends in parameter values over time as shown in the times series plots, and parameters that exceed the cleanup levels in at least one well. If any response actions have been taken during the monitoring period they will be described along with the results of such actions. The text will summarize the progress toward cleanup levels.

The Consultant will provide the City with a draft of the report and allow for the City's comments to be incorporated prior to sending the report to regulatory agencies. The Consultant shall plan for two meetings with the Department of Ecology to review the report and shall incorporate any comments from regulatory agencies.

Estimated Cost

The cost for Consultant to perform the above tasks, including the groundwater and surface water sampling, is not to exceed \$84,514. These costs are based on the Schedule of Charges attached as Attachment B and include a 6 percent escalator in 2015 followed by a 3 percent escalator during subsequent years. The City shall have the option of performing the groundwater and surface water sampling after the first year upon written notice to Consultant. The cost for Consultant to perform the above tasks with the City taking over the groundwater and surface water sampling after the first year is not to exceed \$77,779. The costs are broken down as follows:

Task Title	Labor	ODC	Lab Costs	3 % Escalator on Labor	Total Cost w/ Aspect Sampling	Cost for Aspect to Perform Sampling	Total Cost w/ City Sampling
Task 1 - 2013 Confirmation Monitoring	\$ 11,361	\$ 1,680	\$ 3,257		\$ 16,298		\$ 16,298
Task 2 - 2014 Confirmation Monitoring	\$ 7,615	\$ 1,680	\$ 3,257		\$ 12,552	\$ 1,872	\$ 10,680
Task 3 - 2015 Confirmation Monitoring	\$ 7,615	\$ 1,680	\$ 3,354	\$ 457	\$ 13,106	\$ 1,984	\$ 11,122
Task 4 - 2016 Confirmation Monitoring	\$ 7,615	\$ 1,680	\$ 3,452	\$ 685	\$ 13,432	\$ 2,040	\$ 11,392
Task 5 - 2017 Confirmation Monitoring	\$ 3,620	\$ 531	\$ 1,333	\$ 434	\$ 5,918	\$ 839	\$ 5,079
Task 6 – Third Five-Year Review Report	\$ 20,107	\$ 85		\$ 3,016	\$ 23,208		\$ 23,208
Total Project Budget	\$ 57,933	\$ 7,336	\$14,653	\$ 4,592	\$ 84,514	\$ (6,735)	\$ 77,779

ATTACHMENT B

ASPECT CONSULTING, LLC SCHEDULE OF CHARGES

Unless otherwise stated in the proposal or services agreement, current rates are as follows:

Personnel Charges – Engineers and Scientists

Effective:	<u>1/1/2013 to 12/31/2014</u>	<u>1/1/2015 to 12/31/2015</u>
Principal	\$187.00 to \$194.00/hour	\$198.00 to \$205.00/hour
Sr. Consultant	\$182.00/hour	\$193.00/hour
Sr. Associate	\$172.00/hour	\$182.00/hour
Associate	\$162.00/hour	\$172.00/hour
Senior	\$140.00/hour	\$148.00/hour
Sr. Project	\$129.00/hour	\$137.00/hour
Project	\$118.00/hour	\$125.00/hour
Sr. Staff	\$102.00/hour	\$108.00/hour
Staff	\$90.00/hour	\$95.00/hour
Technician	\$73.00/hour	\$77.00/hour
Legal Testimony (4-hour minimum)	\$312.00/hour	\$321.00/hour

Other Personnel and Disbursement Charges

Sr. GIS/CAD Specialist	\$98.00/hour	\$104.00/hour
GIS/CAD Specialist	\$88.00/hour	\$94.00/hour
Sr. Technical Editor	\$98.00/hour	\$104.00/hour
Project Assistant	\$72.00/hour	\$76.00/hour

Four-wheel Drive Field Vehicle (w/up to 100 miles)	\$100.00/day	\$110.00/day
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Mileage (federal gov't rate)	plus 15%	plus 15%
------------------------------	----------	----------

Subcontractors and Miscellaneous Expenses	cost plus 15%	cost plus 15%
--	---------------	---------------

Communications Charge (phones, fax, computer, in-house [B/W] reproduction, mailing)	4% of total labor	4% of total labor
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Color Copies/CAD/GIS Plots

8.5x11	N/A	N/A
11x17	N/A	N/A
Oversize	\$2.00/Sq. Ft.	\$2.00/Sq. Ft.

Other equipment rental and expenses will be provided on a per job basis.

ATTACHMENT C

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.

CITY OF BAINBRIDGE ISLAND

CITY COUNCIL AGENDA BILL



PROCESS INFORMATION

Subject: Resolution No. 2013-14, Vacation by Operation of Law of Unnamed 15' Road Located in Eagledale	Date: August 21, 2013
Agenda Item: Staff Intensive	Bill No.: 13-109
Proposed By: Interim Public Works Director John Cunningham	

BUDGET INFORMATION

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

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 Resolution No. 2013-14 vacating an Unnamed Road by operation of law to the August 28, 2013 consent agenda for approval.

History:

When a parcel was divided and deeded in 1912, the original owner reserved a 15' strip of the north and east sides for public roads. This was created to extend Kitsap County's road network in that area of the Island. Subsequently, other county roads were established to give access to properties in the Eagledale area and the 15' strip was never extended or opened. In 1977, Kitsap County was contacted about releasing (vacating) the 15' strip and was informed that the County had no interest in the 15' strip (letter from Jack M. Aquino, Right of Way Agent for Kitsap County, dated November 16, 1977).

Earlier this year, Public Works Engineering was contacted by a resident about resolving the issue and what were his options. A site visit was made by inquirer and City staff for better understanding of the surrounding property access points. The resident was informed about the City's right-of-way vacation process. Also, the possibility that the road may already be vacated by operation of law under RCW 36.87.090 and the City Attorney would need to be consulted. The City Attorney agreed that the road was essentially already vacated by the non-use statute and that the City should prepare a resolution to bring before Council that would formalize the status of the 15' strip of land. Resolution No. 2013-14 formalizes a vacation by operation of law of Unnamed Road; see attached drawings and documentation.

RECOMMENDED ACTION

Motion:

I move that the City Council forward Resolution No. 2013-14 to the August 28, 2013 consent agenda for approval.

KITSAP COUNTY ENGINEERING DEPARTMENT

XXXXXXXXXX

COUNTY ENGINEER

PORT ORCHARD, WASHINGTON 98366

November 16, 1977

Donald S. Ruffini
209 Boston Street
Seattle, Washington 98109

RE: A portion of Section 34
T25N, R2E, W.M.

Dear Mr. Ruffini:

Pursuant to your letter to Commissioner Mahan, dated October 3, 1977, I investigated the 15 foot exception and could not find any interest by Kitsap County in the subject strip.

As I stated to you and your wife prior to your visit, your best solution to this problem would be through an attorney.

If you have further questions, please feel free to contact this office.

Sincerely,

Jack M. Aquino
Jack M. Aquino
Right of Way Agent

JMA:ml

AFTER RECORDING RETURN TO:

City Clerk
City of Bainbridge Island
280 Madison Avenue N.
Bainbridge Island, WA 98110

Document Title: City of Bainbridge Island Resolution No. 2013-14 - Right of Way Vacation

Abbreviated Legal Description:

Portion NW $\frac{1}{4}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$, Sec, 34, T. 25 N., R. 2 E., W.M., Kitsap County, Washington,

Assessor's Property Tax Parcel/Account Numbers:

342502-4-023-2000 and 342502-4-022-2001

RESOLUTION NO. 2013-14

A RESOLUTION of the City Council of the City of Bainbridge Island, Washington, recognizing the vacation by operation of law pursuant to RCW 36.87.090 of that portion of the 15 foot unnamed road lying east of NE McDonald Avenue and 1320 feet, more or less, south of NE Eagle Harbor Road.

WHEREAS, that portion of the 15 foot unnamed road lying east of NE McDonald Avenue and 1320 feet, more or less, south of NE Eagle Harbor Road was designated as a county road in 1912 in an area that was subsequently annexed into the City of Bainbridge Island in 1991; and

WHEREAS, pursuant to RCW 36.87.090, any county road, or part thereof, which remains unopen for public use for a period of five years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time, therefore, the roadway was automatically vacated by operation of law; and

WHEREAS, the City desires to recognize and acknowledge that the portion of the 15 foot unnamed road lying east of NE McDonald Avenue and 1320 feet, more or less, south of NE Eagle Harbor Road, records of Kitsap County, Washington, as described on Exhibit A (legal description) and depicted on Exhibit B (map) attached hereto (the “Vacated Street”) and by this reference incorporated herein has been vacated by operation of law; and

WHEREAS, the City further recognizes and acknowledges that the foregoing vacation of the Vacated Street, does not affect or limit those certain perpetual non-exclusive easements existing automatically by operation of applicable law, and located over, under, upon and across the Vacated Street, for the benefit of Parcels 342502-4-023-2000 and 342502-4-022-2001; now, therefore,

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

Section 1. The City of Bainbridge Island hereby recognizes and acknowledges that, pursuant to RCW 36.87.090, the Vacated Street has been vacated by operation of law.

Section 2. This Resolution shall take effect and be in force immediately upon its passage.

PASSED by the City Council this ____ day of August, 2013.

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

Steven Bonkowski, Mayor

ATTEST/AUTHENTICATE:

Rosalind D. Lassoff, CMC, City Clerk

FILED WITH THE CITY CLERK:	August 14, 2013
PASSED BY THE CITY COUNCIL:	August ____, 2013
RESOLUTION NUMBER:	2013-14

EXHIBIT A
LEGAL DESCRIPTION

The north 15 feet of the following described property:

That portion of the Northwest Quarter of the Southeast Quarter of the Southeast Quarter, Section 34, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington, described as follows:

Beginning at the northwest corner of said subdivision;

Thence east 540 feet;

Thence south 150 feet;

Thence west 540 feet;

Thence north 150 feet to the Point of Beginning;

EXCEPT except the west 30 feet for right of way.

AND

The east 15 feet of the following described property:

Beginning at the northeast corner of the Northwest Quarter of the Southeast Quarter of the Southeast Quarter, Section 34, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington;

Thence south 330 feet;

Thence west 396 feet;

Thence north 30 feet;

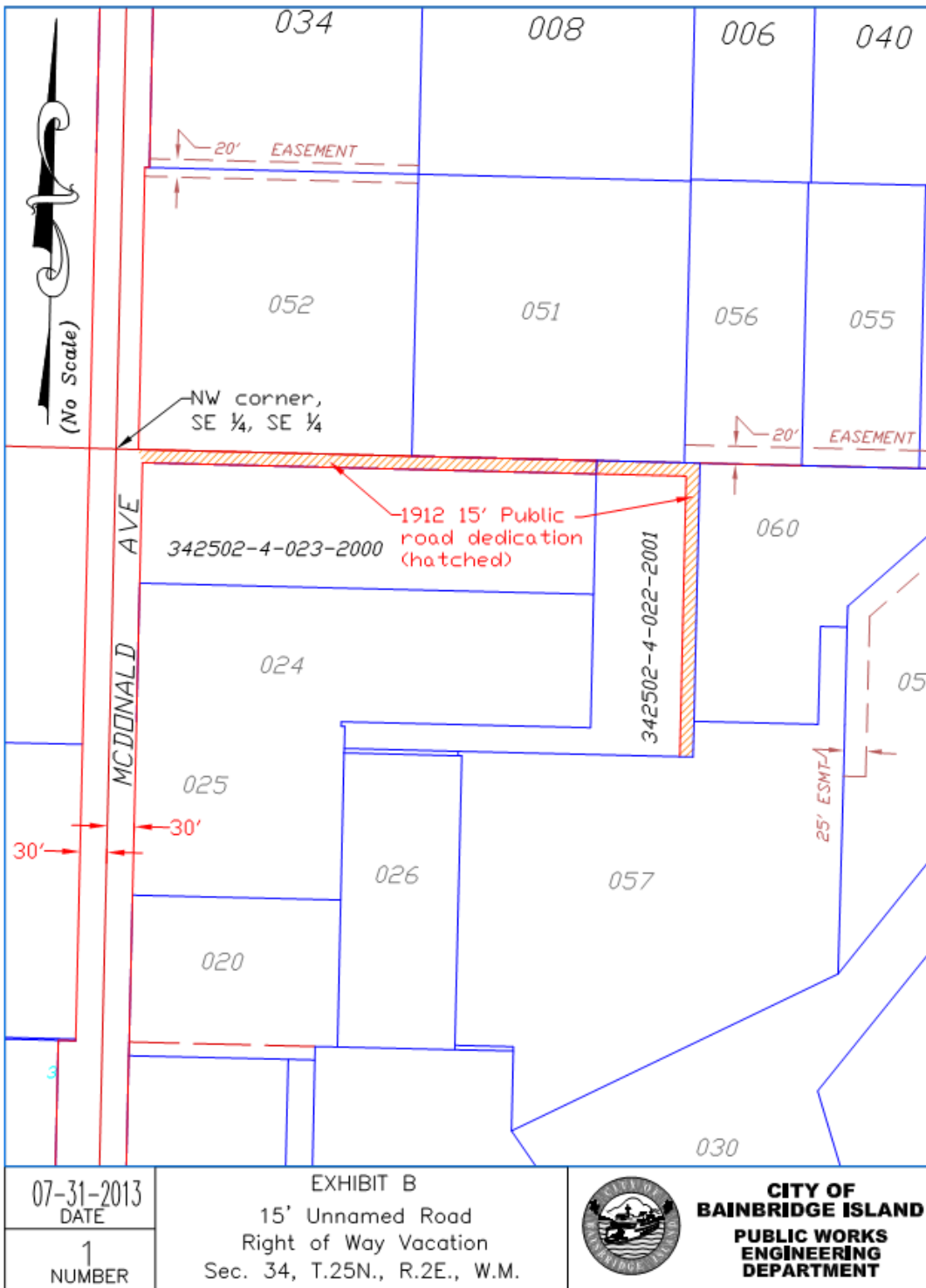
Thence east 276 feet;

Thence north 300 feet;

Thence east 120 feet to the Point of Beginning;

TOGETHER with an easement per Auditor's File No. 7708260149

EXHIBIT B



Bainbridge Island Farmers' Market Association

P.O. Box 10225

Bainbridge Island, WA 98110

RECEIVED

June 4, 2001

JUN 04 2001

456
EXECUTIVE

City Of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110

To Whom It May Concern:

Attached is the City Lease Agreement that the BI Farmers' Market has with the City of Bainbridge Island, which was ratified by the Board of Directors on May 22, 2001.

Also attached for your information are the following documents;

Articles of Incorporation
Market Rules
Vendor Guidelines
Certificate of Insurance (naming the City of Bainbridge as holder)
Blank Vendor Application

If any additional information is needed please contact either myself at 842 7431 or Kathy Morse, Secretary, at 842 2845.

Sincerely,



Art Biggert, President

CERTIFICATE OF INSURANCE

675951

ISSUE DATE (MM/DD/YY)

3/26/01

PRODUCER

K & K Insurance Group, Inc.
1712 Magnavox Way
P.O. Box 2338
Fort Wayne, In 46801

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY **A** TIG INSURANCE COMPANY
LETTER
COMPANY **B**
LETTER
COMPANY **C**
LETTER

INSURED

WASHINGTON STATE FARMERS MARKET
ASSOCIATION
P.O. BOX 30727
SEATTLE, WA 91803

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

CO. LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS (in thousands)	
A	General Liability ☒ Commercial General Liability ☐ Claims Made ☒ Occur. ☐ Owner's & Contractors Prot.	T7 3921342700	12:01AM 4/01/01	12:01AM 4/01/02	General Aggregate	\$ NONE
					Products-Comp/Ops Aggregate	\$ 5000
					Personal & Advertising Injury	\$ 1000
					Each Occurrence	\$ 1000
					Fire Damage (Any one fire)	\$ 300
					Medical Expense (Any one person)	\$ 5
					Participant Legal Liability	\$ N/A
	Automobile Liability ☐ Any auto ☐ All owned autos ☐ Scheduled autos ☐ Hired autos ☐ Non-owned autos ☐ Garage Liability				Combined Single Limit	\$
					Bodily Injury (per person)	\$
					Bodily Injury (per accident)	\$
					Property Damage	\$
	Excess Liability ☐ Other than Umbrella form				Each Occurrence	\$
					Aggregate	\$
	Workers' Compensation and Employers' Liability				Statutory	
					\$	Each Accident
					\$	Disease-Policy Limit
					\$	Disease-Each Employee
	Participant Accident				AD&D	\$
					Primary Medical	\$
					Excess Medical	\$
					Weekly Indemnity	\$ X

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

Bainbridge Island FMKT PO Box 10225 Bainbridge Island, WA 98110
Location of Market: Market Square @ Madison Ave & Winslow Way Bainbridge Island
Certificate holder is additional insured

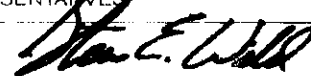
CERTIFICATE HOLDER

City of Bainbridge Island
Madison Ave
Bainbridge Island, WA 98110

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



COMMERCIAL LEASE AGREEMENT

THIS LEASE is entered into this 4th day of JUNE, 2001, by and between the CITY OF BAINBRIDGE ISLAND, a Washington municipal corporation ("City"), having its principal place of business at 280 Madison Avenue North, Bainbridge Island, WA 98110, and the BAINBRIDGE ISLAND FARMERS' MARKET ASSOCIATION ("Farmers' Market"), having its principal place of business at P.O. Box 1025, Bainbridge Island, WA 98110.

1. The Property. The City is the record owner of a certain parcel of real property located in the State of Washington, County of Kitsap, commonly known as Town Square, located at 280 Madison Avenue, North, Bainbridge Island, Washington, and legally described in **Exhibit A**, which is attached hereto and incorporated herein by this reference ("Property").
2. Lease of Leased Premises. The City hereby leases to the Farmers' Market and the Farmers' Market leases from the City the Property, subject to the terms and conditions herein ("Leased Premises").
 - a. Use of the Premises. The Farmers' Market shall use the Leased Premises for the purpose of holding a weekly market to showcase the produce, vegetation, food items and arts and crafts produced by local vendors. The Farmers' Market shall not use the Leased Premises for any other purposes without written consent of the City. In the event that the Farmers' Market's use of the Leased Premises increases the fire and extended coverage or liability insurance rates of the Property, the Farmers' Market agrees to pay for such increases.
 - b. Forbidden Use. The use of candles and/or any type of open flame, and the throwing of rice or confetti materials on or in close proximity to the Leased Premises, shall be prohibited.
3. Rent.
 - a. Base Rent Payment. The Farmers' Market shall pay to the City rent in the amount of \$1.00 per year. Rent shall be due and payable annually commencing on the first Saturday in April, 2001, ("Commencement Date") and thereafter due on the anniversary of the Commencement Date during the term of the Lease.

- b. Utility Charge. The City shall be responsible for payment of all light, heat, water, sewer, garbage, drainage or other utilities and services charged to the Leased Premises during the term of this Lease. The City reserves the right, as it deems necessary, to charge to the Farmers' Market such fees and expenses which result from the usage of light, heat, water, sewer, garbage, drainage or other utilities and services to the Leased Premises that are extraordinarily over and above that use which is deemed normal.
 - c. Taxes. The Farmers' Market shall not be responsible for the payment of any taxes or assessments applicable to the Leased Premises.
- 4. Term of Lease. This Lease shall be for an initial term of seven (7) months (the "Initial Term"), which shall commence on the first Saturday in April, 2001, and shall run until the last Saturday in October, 2001. This initial term shall automatically renew annually. No modification or change may be made to the Lease without a written request submitted by the Farmers' Market and approved by the City.
 - 5. Termination. Either party may terminate this Lease by giving thirty (30) days written notice to the other party. Upon termination of this Lease, the Farmers' Market agrees to peacefully quit and surrender the premises without requiring additional notice, to leave the Leased Premises in a neat and clean condition, and to deliver all keys to the Leased Premises to the City. If the Farmers' Market undergoes a change of ownership, this Lease will terminate automatically, unless the City is informed and a written amendment to the Lease is executed by both parties.
 - 6. Repairs and Maintenance. The Leased Premises has been inspected and is accepted by the Farmers' Market in its present condition. The Farmers' Market shall, at its own expense, and, at all times, keep the Leased Premises neat, clean and in a sanitary condition, and shall keep and use the Leased Premises in accordance with applicable laws, ordinances, rules, regulations and requirements of governmental authorities. The Farmers' Market shall permit no waste, damage, or injury to the Leased Premises, and shall keep all drainpipes free and open. The cost of any repairs required by the City as a result of the Farmers' Market's use of the Leased Premises will be charged to the Farmers' Market.
 - 7. Signs. The Farmers' Market shall not post, place or in any manner display, any sign, notice, picture, placard, poster or any advertising material whatsoever anywhere in, on or about the Leased Premises without first obtaining the City's written consent. This consent shall not be unreasonably withheld. The City may demand the removal of signs that have not been so approved, and the Farmers' Market's failure to comply with the request within forty-eight (48) hours shall constitute a breach of the Lease, and will entitle the City to terminate this Lease or, in lieu thereof, to cause the offending sign to be removed and any resulting damage to be repaired at the sole expense of the Farmers' Market. At the close of each Saturday market event, the Farmers' Market shall remove all authorized signs placed upon the Leased Premises, and will repair any damage caused by such removal. All signs must

comply with sign ordinances and be placed in accordance with required permits. The City shall issue such permits upon its written approval of all proposed signage.

8. Parking. The Farmers' Market understands that parking shall be apportioned in conformity with controlling zoning ordinances, and that the City shall have the right to make such regulations as the City deems desirable for the control of parking automobiles on the Property, including the right to designate certain areas for Farmers' Market parking.
9. Cleaning Procedures. The Farmers' Market shall be responsible for cleaning up the Leased Premises after each Saturday market event and for leaving the Leased Premises in the same condition as it was upon the commencement of the event. The clean up shall include, but not be limited to, the cleaning of the restrooms and parking lot utilized by those individuals attending the event. All cleaning shall be completed immediately after the event. All trash shall be placed in the dumpsters located at the rear of the City Hall building. The cost of any cleaning required by the City as a result of the Farmers' Market's use of the Leased Premises will be charged to the Farmers' Market.
10. After - Hours Emergency Procedure. The Leased Premises is owned and maintained by the City. Should anyone require immediate assistance during a Saturday market, or during any other event, the Farmers' Market shall contact Cencom (with which the City has contracted to relay any problems to the City) at 911.
11. Liens and Insolvency. The Farmers' Market shall keep the premises free from any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Farmers' Market and shall indemnify and hold the City harmless against the same. If the Farmers' Market becomes insolvent or bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the Farmers' Market, the City may cancel this Lease at its option.
12. Assignment and Subletting. The Farmers' Market shall not assign or otherwise transfer or encumber all or any part of its interest in this Lease without the City's prior written consent, which shall not be unreasonably withheld. This Lease shall not be assignable by operation of law. An assignment shall not operate to release the Farmers' Market from liability under this Lease unless the assignment so states.
13. Possession. If, for any reason, the City is unable to deliver possession of the Leased Premises as of the Commencement Date, the Farmers' Market may give the City written notice of its intention to cancel this Lease if possession is not delivered within thirty (30) days after receipt of such notice by the City. The City shall not be liable for any damages caused by this delay, and the Farmers' Market shall not be liable for any rent until such time as the City delivers possession. A delay of possession shall not extend the Initial Term of the Lease. If the City offers possession of the Leased Premises prior to the Commencement Date, and if the Farmers' Market accepts such early possession, then both parties shall be bound by all of the covenants and terms contained within that agreement, including the payment of rent during such period of early possession.

14. Damage or Destruction. If the Leased Premises is rendered untenable in whole or in part by fire, the elements, or other casualty, the City may elect, at its option, not to restore or rebuild the Leased Premises and shall so notify the Farmers' Market, in which event the Farmers' Market shall vacate the Leased Premises and this Lease shall be terminated; or, in the alternative, the City shall notify the Farmers' Market, within thirty (30) days after such casualty that the City will undertake to rebuild or restore the Leased Premises, and that such work can be completed within one hundred eighty (180) days from the date of such notice of intent. If the City is unable to restore or rebuild the Leased Premises within the one hundred eighty (180) days, then the Lease may be terminated at the Farmers Market's option by providing a written ten (10) day notice to the City. During the period of untenability, rent shall abate in the same ratio as the portion of the Leased Premises rendered untenable bears to the whole of the premises.
15. Accidents and Liability. The Farmers' Market agrees to defend and indemnifies and holds harmless the City, its elected or appointed officers, officials, employees, agents and volunteers from and against any and all claims, suits, liabilities of any nature and any costs or expenses including, but not limited to, all losses, damages, judgments and attorney's fees arising from injury to or death of any person and property damage of any kind arising from or related to the Farmers' Market's use of the Leased Premises or the presence of employees, volunteers, participants or agents of the Farmers' Market upon the Leased Premises. The Farmers' Market shall notify the City of any claim as to which the City has the obligation to indemnify the Farmers' Market under this Lease and the Farmers' Market shall, at its sole cost and expense, defend the City against such claim. The Farmers' Market agrees to maintain public general liability insurance on the Leased Premises with broad form property damage and contractual liability endorsements in the minimum combined single limit of \$1,000,000 and deductible of not more than \$5,000 for bodily injuries and death, and shall name the City as an additional insured. The Farmers' Market shall furnish the City with a certificate indicating that the insurance policy is in full force and effect, the City has been named as an additional insured, and that the policy may not be cancelled unless ten (10) days prior written notice of the proposed cancellation has been given to the City.
16. Subrogation Waiver. The City and the Farmers' Market each hereby release and relieve the other and waives its entire right of recovery against the other for loss or damage arising out of or incident to the perils described in standard fire insurance policies and all perils described in the "Extended Coverage" insurance endorsement approved for use in the State of Washington, which occurs in, on or about the Leased Premises, unless due to the negligence of either party, their agents, employees or otherwise.
17. Animals. The Farmers' Market acknowledges that it is unlawful for the owner of an animal to permit the animal, whether licensed or not, to run at large on public grounds, and that the Property is considered to be public grounds. The Farmers' Market further acknowledges that an animal in violation of this prohibition is a nuisance and may be seized and impounded. This prohibition does not apply to cats or owners of cats, and does

not prohibit a person from walking or exercising an animal when such animal is on a leash and proper safeguards are taken to protect the public and property from injury or damage done by the animal.

18. Attorneys Fees. If either party brings an action or proceeding arising out of this Lease Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs. Interest on unpaid sums shall accrue at the rate of 12 percent per annum from due date, even if unliquidated at that time.
19. Venue. Venue for any legal actions prosecuted or instituted by either party under this Lease, with respect to any matters arising under or growing out of this Lease, shall be brought in the Superior Court of the State of Washington at Kitsap County, and each of the signatories hereto consents to the jurisdiction and venue of such Court.
20. No Waiver of Covenants. No conduct of a party shall constitute accord and satisfaction unless contained in writing to such effect and signed by the parties. Any waiver by either party of any breach hereof by the other shall not be considered a waiver of any future similar breach. This Lease contains all of the agreements between the parties, and there shall be no modification of the agreements contained herein except by written instrument.
22. Binding on Heirs, Successors and Assigns. The covenants and agreements of this Lease shall be binding upon the heirs, executors, administrators, successors and assigns of both parties except as provided above.
23. Notice. All notices must be in writing and shall be delivered by hand, by nationally recognized overnight express delivery service, by U.S. registered or certified mail, or First Class Mail, return receipt requested, postage prepaid, to the addressees set forth below or to such other addresses as either party may designate to the other in writing:

City: City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110

Farmers' Market: Art Biggert
President, Bainbridge Island Farmers' Market Association
P.O. Box 10225
Bainbridge Island, WA 98110

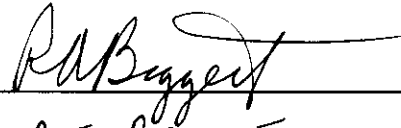
A facsimile transmission will suffice in lieu of mail if receipt is confirmed as to date and time. Any notice or other communication shall be deemed effectively given (a) on the date of delivery if delivered by hand or by fax or (b) on the date mailed, if sent by overnight express delivery, registered or certified mail or first class mail.

24. Time is of the Essence of this Lease. If the Farmers' Market is a corporation, each individual executing this Lease on behalf of the corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of the corporation in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the By-laws of the corporation, and that this Lease is binding upon said corporation in accordance with its terms. If the Farmers' Market is a corporation, the Farmers' Market shall, within thirty (30) days after execution of this Lease, deliver to City a certified copy of a resolution of the Board of Directors of the corporation authorizing or ratifying the execution of this Lease. The Farmers Market will provide the City with the Farmers' Market Articles of Incorporation.
26. Business License. The Farmers' Market shall maintain a current business license with the City. Additionally, the Farmers' Market shall notify the City of any changes to the officers or to the Articles of Incorporation of the Farmers' Market by sending a copy to the attention of the City Administrator, City of Bainbridge Island, 280 Madison Avenue North, Bainbridge Island, WA 98110.
27. Insurance.
- a. Commercial General Liability Insurance. During the full term of this Lease, the Farmers' Market shall secure and maintain, at its sole expense, Commercial General Liability Insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to, blanket contractual; products/completed operation; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.
 - b. If the Farmers Market does not have Commercial General Liability Insurance, it must obtain Special Events Insurance Coverage through its insurance carrier. Special Events Insurance Coverage is also available through Washington Cities Insurance Authority (WCIA). In any case, the Farmers' Market shall provide a Certificate of Insurance evidencing the required insurance before using the Leased Premises.
 - c. Liquor Liability Insurance. If liquor is consumed on the Property, the Farmers' Market shall procure and maintain for the full term of this Lease liquor liability insurance in the amount of \$1,000,000 per each occurrence. The City is to be named as an additional insured on the liquor liability insurance. With the prior written approval of the City, host liquor liability coverage may be substituted when alcohol is consumed and not sold on the Property.
 - d. Evidence of Insurance. The Farmers' Market shall deliver to the City copies of all policies or certificates of insurance.

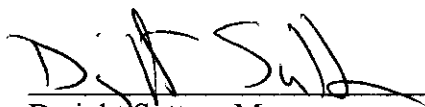
28. Severability. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and such other provision shall remain in full force.

IN WITNESS WHEREOF, the parties have executed this Lease as of June 4th, 2001.

FARMERS' MARKET

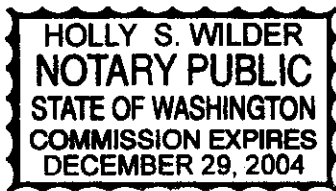
By 
Name Art Biggeri
Title President, BIFMA

CITY OF BAINBRIDGE ISLAND

By 
Dwight Sutton, Mayor

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Dwight Sutton is the person who appeared before me, and who acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Bainbridge Island, a municipal corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

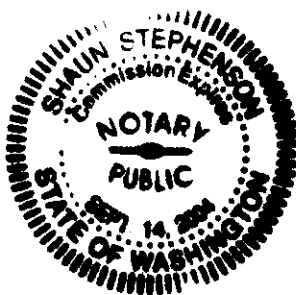


Dated 4/19/01
Holly S. Wilder
NAME: Holly S. Wilder
(Print Name)

Notary Public in and for the State of Washington.
Commission Expires: December 29, 2004

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that R. A. Bigger is the person who appeared before me, and who acknowledged that He signed this instrument, on oath stated that he/~~she~~ was authorized to execute the instrument and acknowledged it as the President of the Bainbridge Island Farmers' Market, to be the free and voluntary act of such Corporation for the uses and purposes mentioned in the instrument.



Dated June 4, 2001
R. A. Bigger Shaun Stephenson
NAME: R. A. Bigger
(Print Name) Shaun Stephenson
RAB SS
Notary Public in and for the State of Washington.
Commission Expires: 9-14-04

LEGAL DESCRIPTION OF LEASE AREA FOR FARMER'S MARKET

A portion of the southwest quarter of the northwest quarter of section 26, Township 25 North, Range 2 East, W.M., City of Bainbridge Island, Kitsap County, Washington, described as follows:

Commencing at the southwest corner of said subdivision, thence along the west line of said subdivision North 01°20'33" East 409.00 feet; thence leaving said west boundary, South 88°40'48" East 324 feet to the POINT OF BEGINNING of this described tract; thence South 01°20'33" West 52.5 feet; thence South 88°40'48" East 122 feet; thence North 01°20'33" East 134.5 feet; thence North 88°40'48" West to a point which bears North 01°20'33" East from the POINT OF BEGINNING; thence South 01°20'33" West to the POINT OF BEGINNING.

EXHIBIT A

MEMBERSHIP APPLICATION
VOTING MEMBER
BAINBRIDGE ISLAND FARMERS' MARKET ASSOCIATION
P.O. BOX 10225
Bainbridge Island, WA 98110

- ❖ Persons Eligible to join the Bainbridge Island Farmers' Market Association as voting members are vendors whose products are homegrown or homemade.
 - BI vendor – may sell farm or craft items
 - North Kitsap vendors – may sell only farm products
- ❖ Voting members pay dues each year (March 1 – February 28) of \$30.00. The BI FMA is a non-profit corporation. Admission as a voting member is subject to the approval of the Board of Directors.
- ❖ Please complete ALL the information requested. Provide your health permit number if your product is prepared food or is otherwise subject to health regulations.
- ❖ **List ALL products, by category, to be sold at the BI Farmers' Market. Pending approval of the Board of Directors, vendors will be certified to sell those products. Items not listed may be sold only after further review and approval by the Board.**

I have received a copy of the BIFMA Rules governing the operation of the Bainbridge Island Farmers' Market Association and agree to abide by them.

Signature: _____
Date: _____

NAME: _____

Commercial Name: _____

MAILING ADDRESS: _____

PHONE:
HOME _____
WORK _____

E-MAIL ADDRESS: (please print clearly)

WA. STATE TAX NUMBER (UBI#):

HEALTH PERMIT NUMBER:

PRODUCTS (by category): OK,+/o)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Board
Approval: _____
Date: _____

BIFMA Farm Inspection Criteria

Farm Name _____

Owners _____

Date _____

Products listed on the application that are grown, produced and harvested on land this farmer owns, rents or leases.

1) Is there evidence of the farm product (or its defining ingredient) being grown in quantities sufficient to stock the vender's booth?

2) Is there evidence that the farm product being produced has been under the vender's control for the previous 60 days?

3) Is there evidence of farming processes such as plant & seed propagation, soil fertility & pest management programs, or irrigation?

Inspectors:

Licenses and Permits Required for Selling at Bainbridge Island Farmer's Market

If You Sell: You Need This License or Permit

If You Sell:	City Business License	Master Business License (UBI)	Six-month Seasonal Health Permit	Temporary Food Establishment Permit	Limited Menu Permit
Fruits, vegetables, berries, eggs, flowers, or other farm produce raised by you	none	none	none	none	none
Dry, baked goods (cookies, cakes, bread), jams, jellies, honey, dried herbs, herb vinegars, foods not necessary to keep cold or hot.	yes	yes		yes	
Cold or hot drinks, candy, hot dogs, popcorn, sno-cones	yes	yes			yes
Foods that contain potentially hazardous foods like dairy products, cooked vegetables, grains, beans, meat, etc., foods that must be kept hot or cold	yes	yes	yes		
Plants and vegetable starts	yes	yes			
Craft items	yes	yes			

Bainbridge Island Farmer's Market Rules of the Market

1. The Market will be open to the public on Saturdays, 9:00 a.m. until 1:00 p.m. from the day before Easter to mid October. No Vendor will sell before 9:00 am. or after 1:00 p.m.
2. The Market Manager is the on-site representative of the Bainbridge Island Farmer's Market (BIFMA) and has the responsibility and authority to collect fees, establish sites and make other decisions as needed.
3. All rules of the market will be enforced by the Market Manager who is responsible to the BIFMA Board of Directors. If a Vendor does not abide by any rule of the Market, the Market Manager may, at his or her discretion, issue warnings, levy fines, and/or bar that Vendor from selling at the Market for that day, pending a resolution by the Board.
4. **PRODUCT GUIDELINES.** Only handmade, homemade or homegrown products, produced or harvested by the Vendor can be sold at the Market. Products allowed to be sold at the Market are fruits, vegetables, herbs, flowers and other agricultural and horticultural products juried crafts; as, well as selected food items. All products shall be of Good Quality
 - a. **PRODUCE and PROCESSED FARM PRODUCTS.** The Farmer's Market is for farm-fresh locally grown products and is NOT an outlet for wholesale produce. Produce shall be fresh and have no residual that cannot be removed by normal washing. Processed Farm products are those in which the primary defining ingredient is grown by the farmer. We reserve the right to request any vendor to remove any merchandise deemed unacceptable to the Farmer's Market. The Vendor may request a meeting of the Board of Directors to appeal this decision.
 - b. **FOOD ITEMS and PREPARED FOODS.** These must be produced by the Vendor from raw ingredients. The Market may, at its discretion, limit the number of Food Vendors. It is the responsibility of each Food Vendor to obtain and keep current au necessary food handler and health permits and comply with local health regulations. Food Vendors must provide waste receptacles of sufficient size to accommodate the garbage they and their customers may create, they must be clearly visible and easily accessible. Food Vendors must then dispose of the garbage off site.
 - i. Arts and Crafts are encouraged to be thematic with the Farmer's Market, reflecting agricultural images, agrarian lifestyle or the Market in general.
 - ii. All art pieces and craft products are subject to jury review. Representative samples or photos should be brought to the Farmer' Market during operating hours at least one week prior to the day the artist/crafter wishes to vend. The jury committee will review the products during market hours and will return them the same day. The purpose of the review is to encourage diversity, and high quality craftsmanship, and to promote the use of locally grown or gathered products. The review is held at the market site to acquaint the potential vendor with both the general atmosphere of the market and the other types of products currently being sold. The quality of the product must be maintained at the level of the juried pieces. A representative sample of each craft item to be sold at the Market must be submitted at the time of review. Only those represented at the review may be sold at the market.
 - iii. In the event of a need for more vendor spaces, art/craft vendors may be required to share spaces. The BIFMA reserves the right to limit the number

of art/craft vendors in order to maintain the ratio required by the Washington State Fanner's Market Association of farmer's to other types of vendors.

- iv. No commercially manufactured clothing, even if hand decorated, will be permitted
- v. Each art/craft Vendor is responsible for obtaining and keeping current all appropriate permits, i.e. Seller's permit from the State board of Equalization and Business License, if applicable. This may include a tax ID# and a City of Bainbridge Island business license
- vi. The above rules apply to ALL crafts, including Agricultural Producers and Prepared Food Vendors who also want to sell crafts.

c. Items sold by a non-profit group must conform to the above guidelines.

5. A family member or employee may sell for a "Qualified Vendor" as described above. Subleasing of sites is not allowed. The artist/crafter should be present the majority of the time.

6. REGISTRATION. All vendors must be paid members of the BIFMA. All new Vendors joining after September, 1996, must be residing and producing on Bainbridge Island. As of April 1999 a change is pending on this rule. Please discuss with manager

- a. MEMBERSHIP DUES. Annual dues are \$30.00 per year for all members at large. Limited membership dues are \$5.00 per year. Limited members may sell at the Market for one day only. Non-profit groups may also qualify as limited members without a limit on their Market participation.
- b. BOOTH FEES. The fee for a space at the Farmer's Market is \$10.00/day for all vendors before June 1 and after August 31. From June 1 through August 31 the fee is \$12.00/day.
- c. ELECTRICITY. There will be an additional fee of \$1.00/week for use of electricity at the Market site
- d. SALES REPORTING. All Vendors must report their total gross sales from their previous Market day to the Market Manager prior to selling again. The gross sales amount will be recorded in an anonymous and legible manner.

7. VEHICLE LOADING/UNLOADING. Everyone must be in the Vendor booths by 8:30 a.m. Vendors may sell out of trucks in designated areas and must be in the Market area by 8:30 a.m. Vendors with other vehicles must park in designated Vendor parking areas. No vehicular traffic will be permitted on the site after 8:30 a.m. It is up to the discretion of the Market Manager regarding safety in the Market area for Vendors to leave the site prior to 1:00 p.m. All Vendors must begin breaking down at 1:00 p.m. and vacate site by 2:00 p.m.

8. CHILDREN'S MARKET will occur on the 4th Saturday of each month. Child Vendors must be accompanied by an adult. Children cannot sell from site to site. Children are encouraged to sell agricultural and horticultural products produced themselves. Children selling food products must comply with all relevant food handling guidelines. ALL products must be produced by the children.
9. If products are subject to Washington State Sales tax, it is the responsibility of the Vendor to obtain a Washington State Tax Number.
10. All farms will be inspected by representatives of the Board of Directors.
11. All Vendors shall receive a copy of the Rules of the BIFMA when registering and will sign the membership application stating that the rules have been read and understood. *(Rules shouldn't be returned with the contract, please retain for future reference.)*
12. The market is not a forum for political or religious activities. Membership will not be issued to persons or organizations wishing to campaign or proselytize. In cases of dispute, the Market Manager has final authorization.
13. The BIFMA reserves the right to prohibit anyone from selling or any product from being sold. The BIFMA is not responsible for loss or property damage.
14. In cooperation with the Kitsap Humane Society, no puppies/dogs or kittens/cats may be sold or given away at the Farmer's Market.
15. The BIFMA is dedicated to assuring the Market is a safe place to work and shop. There will be no discrimination according to race, color, creed, sex, religion, sexual orientation, age or nationality. Harassment of any kind will not be tolerated.

Bainbridge Island Farmer's Market P.O. Box 10225
Bainbridge Island, WA 98110

draft 3/99

ARTICLES OF INCORPORATION
OF
WINSLOW FARMERS MARKET ASSOCIATION

The undersigned, in order to form a nonprofit corporation under the Washington Nonprofit Corporation Act, Chapter 24.03 of the Revised Code of Washington, hereby executes the following Articles of Incorporation:

ARTICLE 1. NAME

The name of this corporation is Winslow Farmers Market Association.

ARTICLE 2. DURATION

The duration of the corporation shall be perpetual.

ARTICLE 3. PURPOSES

3.1 Purposes. The corporation is organized exclusively for the improvement of business conditions for farmers, gardeners, food producers and artists, within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986 (the "Code"), including without limitation, to promote the sale of Washington grown and/or produced agricultural and handcrafted products.

3.2 Limitations.

3.2.1 Nonprofit Status. The corporation shall not have or issue shares of stock. The corporation is not organized for profit, and no part of its net earnings shall inure to the benefit of any member, Director or officer of the corporation, or any private individual, except that the corporation shall be authorized and empowered to pay reasonable compensation to its members, Directors or officers for services rendered, and to make payments and distributions in furtherance of the purposes of the corporation and subject to the limitations of Sections 3.2.2 and 3.2.3 hereof.

3.2.2 Distributions; Dissolution. No member, Director or officer of the corporation, nor any private individual, shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the corporation or the winding up of its affairs. Upon such dissolution or winding

up, after paying or making adequate provision for the payment of all of the liabilities of the corporation, all the remaining assets of the corporation shall be distributed by the Board of Directors, for a purpose or purposes similar to those set forth in Section 3.1 hereof, to any other organization which then qualifies for exemption under the provisions of Section 501(c)(3) of the Code. Any such assets not so disposed of shall be disposed of by the Superior Court of Kitsap County, Washington, exclusively for a purpose or purposes similar to those set forth in Section 3.1 hereof, or to such organization or organizations as said Court shall determine, which are organized and operated for similar purposes.

3.2.3 Prohibited Activity. Notwithstanding any other provisions of these Articles of Incorporation, the corporation shall not conduct or carry on activities not permitted to be conducted or carried on by an organization exempt from federal income tax under Section 501(c)(6) of the Code.

3.3 Powers. In general, and subject to such limitations and conditions as are or may be prescribed by law, by these Articles of Incorporation, or by the corporation's Bylaws, the corporation shall have the authority (a) to engage in any and all such activities as are incidental or conducive to the attainment of the purposes of the corporation set forth in Section 3.1 hereof and (b) to exercise any and all powers authorized or permitted under any laws that are now, or hereafter may be, applicable or available to the corporation.

ARTICLE 4. DIRECTORS

4.1 Number. The number of Directors of the corporation shall be determined in the manner provided by the Bylaws and may be increased or decreased from time to time in the manner provided therein.

4.2 Initial Directors. The number of Directors constituting the initial Board of Directors shall be three. The names and addresses of the persons who are to serve as the initial Directors are as follows:

Phil Johnson
5790 Old Mill Road
Bainbridge Island, WA 98110

Bea Lupton
P.O. Box 10563
Bainbridge Island, WA 98110

Sandy Noble
4205 Pleasant Beach Road
Bainbridge Island, WA 98110

ARTICLE 5. MEMBERS

The corporation shall have members. Membership classes, the manner of election or appointment of members, and the qualifications and rights of each class of members shall be as established in the Bylaws of the corporation.

ARTICLE 6. LIMITATION OF DIRECTOR LIABILITY

To the full extent that the Washington Nonprofit Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of the liability of Directors, a Director of this corporation shall not be liable to this corporation or its members for monetary damages for conduct as a Director. Any amendments to or repeal of this Article 6 shall not adversely affect any right or protection of a Director of this corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment or repeal.

ARTICLE 7. INDEMNIFICATION

7.1 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding")), by reason of the fact that he or she is or was a Director or officer of the corporation or, that being or having been such a Director or officer or an employee of the corporation, he or she is or was serving at the request of the corporation as a Director, Trustee, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (hereinafter an "indemnatee"), whether the basis of a proceeding is alleged action in an official capacity as such a Director, Trustee, officer, employee or agent or in any other capacity while serving as such a Director, Trustee, officer, employee or agent, shall be indemnified and held harmless by the corporation to the full extent permitted by applicable law as then in effect, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts to be paid

in settlement) actually and reasonably incurred or suffered by such indemnitee in connection therewith, and such indemnification shall continue as to an indemnitee who has ceased to be a Director, Trustee, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that no indemnification shall be provided to any such indemnitee if the corporation is prohibited by the nonexclusive provisions of the Washington Nonprofit Corporation Act or other applicable law as then in effect from paying such indemnification; and provided, further, that except as provided in Section 7.2 of this Article with respect to proceedings seeking to enforce rights to indemnification, the corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if a proceeding (or part thereof) was authorized or ratified by the Board of Directors. The right to indemnification conferred in this Section 7.1 shall be a contract right and shall include the right to be paid by the corporation the expenses incurred in defending any proceeding in advance of its final disposition (hereinafter an "advancement of expenses"). Any advancement of expenses shall be made only upon delivery to the corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 7.1 and (1) upon delivery to the corporation of a written affirmation (hereinafter an "affirmation") by the indemnitee of his or her good faith belief that such indemnitee has met the standard of conduct necessary for indemnification by the corporation pursuant to this Article or (2) upon such determination (hereinafter a "determination") as may be permitted or required by the Washington Nonprofit Corporation Act or other applicable law.

7.2 Right of Indemnitee to Bring Suit. If a claim under Section 7.1 of this Article is not paid in full by the corporation within sixty days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty days, the indemnitee may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim. If successful in whole or in part, in any such suit or in a suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall also be entitled to be paid the expense of prosecuting or defending such suit. The indemnitee shall be presumed to be entitled to indemnification under this Article upon submission of a written claim (and, in an action brought to enforce a claim for an advancement of expenses,

where the required undertaking and affirmation or determination has been tendered to or made by the corporation) and thereafter the corporation shall have the burden of proof to overcome the presumption that the indemnitee is so entitled. Neither the failure of the corporation (including the Board of Directors, independent legal counsel or the members) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances nor an actual determination by the corporation (including the Board of Directors, independent legal counsel or the members) that the indemnitee is not entitled to indemnification shall be a defense to the suit or create a presumption that the indemnitee is not so entitled.

7.3 Nonexclusivity of Rights. The right to indemnification and the advancement of expenses conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Articles of Incorporation or Bylaws of the corporation, general or specific action of the Board of Directors, contract or otherwise.

7.4 Insurance, Contracts and Funding. The corporation may maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the Washington Nonprofit Corporation Act. The corporation may enter into contracts with any Director, officer, employee or agent of the corporation in furtherance of the provisions of this Article and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article.

7.5 Indemnification of Employees and Agents of the Corporation. The corporation may, by action of the Board of Directors, grant rights to indemnification and advancement of expenses to employees and agents of the corporation with the same scope and effect as the provisions of this Article with respect to the indemnification and advancement of expenses of Directors and officers of the corporation or pursuant to rights granted pursuant to, or provided by, the Washington Nonprofit Corporation Act or otherwise.

7.6 Persons Serving Other Entities. Any person who is or was a Director, officer or employee of the corporation who is

or was serving (a) as a Director, Trustee or officer of another corporation of which a majority of the shares entitled to vote in the election of its Directors is held by the corporation, or (b) in an executive or management capacity in a partnership, joint venture, trust or other enterprise of which the corporation or a wholly owned subsidiary of the corporation is a general partner or has a majority ownership shall be deemed to be so serving at the request of the corporation and entitled to indemnification and advancement of expenses under Section 7.1 of this Article.

ARTICLE 8. REGISTERED OFFICE AND REGISTERED AGENT

The address of the initial registered office of this corporation is 1201 Third Avenue, 40th Floor, Seattle, Washington 98101-3099, and the name of its initial registered agent at such address is Lawco of Washington, Inc.

ARTICLE 9. AMENDMENTS TO ARTICLES OF INCORPORATION

The corporation reserves the right to amend or repeal any of the provisions contained in these Articles of Incorporation in any manner now or hereafter permitted by law.

ARTICLE 10. INCORPORATOR

The name and address of the incorporator of the corporation are as follows:

Phil Johnson
5790 Old Mill Road
Bainbridge Island, WA 98110

DATED: _____

Phil Johnson

RESTATED BYLAWS
OF
BAINBRIGE ISLAND FARMERS MARKET ASSOCIATION

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RESTATED BYLAWS OF BAINBRIDGE ISLAND FARMERS MARKET ASSOCIATION

ARTICLE 1. OFFICES

The principal office of the corporation shall be located at its principal place of business or such other place as the Board of Directors ("Board") may designate. The corporation may have such other offices, either within or without the State of Washington, as the Board may designate or as the business of the corporation may require from time to time.

ARTICLE 2. MEMBERSHIP 2.1 Classes of Members

The corporation shall have two classes of members: Voting Members and nonvoting Friends of the Market. Additional classes of members, the manner of election or appointment of each class of members, and the qualifications and rights of each class of members may be established by amendment to these Bylaws.

2.2 Friends of the market

The only qualification for membership as a Friend of the Market shall be the payment of membership dues in accordance with a schedule adopted by the Board. Membership as a Friend of the Market will terminate automatically if the membership dues are not paid in accordance with the adopted schedule. Friends of the Market may be invited to meetings of the Voting Members, but shall have no right to vote nor any other privileges as members.

2.3 Voting Members; Voting Rights

Any person or entity desiring to become a Voting Member shall complete an application, which application must be approved by at least three Directors. Voting Members shall pay membership dues in accordance with a schedule adopted by the Board. Voting Members may have such other qualifications as the Board may prescribe by amendment to these Bylaws.

Each Voting Member shall be entitled to one vote upon the subject matter of each issue submitted to the Voting Members. Each Voting Member may cast one vote for as many persons as there are Directors to be elected and for whose election such Voting Member has a right to vote. Unless otherwise provided, all references in these Bylaws to actions or votes to be taken by members shall be deemed to refer to Voting Members.

2.4 Annual Meeting

The annual meeting of the Voting Members and Friends of the Market shall be held during the month of February on a date chosen by the

Board for the purpose of electing Directors and transacting such other business as may properly come before the meeting.

2.5 Special Meetings

The President, the Board, or not less than one-third of the Voting Members, may call special meetings of the Voting Members for any purpose.

2.6 Place of Meetings

All meetings of members shall be held at the principal office of the corporation or at such other place within or without the State of Washington designated by the President, the Board, by the Voting Members entitled to call a meeting of Voting Members, or by a waiver of notice signed by all Voting Members.

2.7 Notice of Meetings

The President, the Secretary or the Board shall cause to be delivered to each member entitled to notice of or to vote at the meeting, either personally or by mail, not less than ten nor more than fifty days before the meeting, written notice stating the place, date and time of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. At any time, upon the written request of not less than one-third of the Voting Members, it shall be the duty of the Secretary to give notice of a special meeting of Voting Members to be held at such date, time and place as the Secretary may fix, not less than ten nor more than thirty-five days after receipt of such written request, and if the Secretary shall neglect or refuse to issue such notice, the person or persons making the request may do so and may fix the date, time and place for such meeting. If such notice is mailed, it shall be deemed delivered when deposited in official government mail properly addressed to the member at his or her address as it appears on the records of the corporation with postage thereon prepaid.

2.8 Waiver of Notice

Whenever any notice is required to be given to any Voting Member under the provisions of these Bylaws, the Articles of incorporation or applicable Washington law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

2.9 Quorum

Half of the Voting Members of the corporation represented in person or by proxy, shall constitute a quorum at a meeting of the Voting Members. If less than a quorum of the Voting Members is represented at a meeting, a majority of the Voting Members so

represented may adjourn the meeting from time to time without further notice.

2.10 Manner of Acting

2.10.1 Routine Actions

The vote of a majority of the votes entitled to be cast by the Voting Members represented in person or by proxy at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted upon by the Voting Members, unless a greater proportion is required by applicable Washington law, the Articles of Incorporation or these Bylaws.

2.10.2 Major Actions

The vote of a majority of the Voting Members of the corporation shall be required to approve the following major actions by the corporation: (a) change in location of the Saturday market; (b) any financial transaction valued at more than \$500.00; (c) indemnification of an officer or director; (d) removal of a Director; or (e) alteration or repeal of a decision made by the Board. This section 2.10.1 may not be amended by the Board to exempt any action listed in it from approval by Voting Members or to increase the number of votes of members required to approve such major actions.

2. 11 Proxies

A Voting Member may vote by proxy executed in writing by the Voting Member or by his, her or its attorney-in-fact. Such proxy shall be filed with the Secretary of the corporation before or at the time of the meeting. A proxy shall become invalid eleven months after the date of its execution unless otherwise provided in the proxy. A proxy with respect to a specific meeting shall entitle the holder thereof to vote at any reconvened meeting following adjournment of such meeting but shall not be valid after the final adjournment thereof.

2.12 Action by Voting Members Without a Meeting

Any action which could be taken at a meeting of the Voting Members may be taken without a meeting if a written consent setting forth the action so taken is signed by all Voting Members. Such written consents may be signed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same document. Any such written consent shall be inserted in the minute book as if it were the minutes of a meeting of the Voting Members.

2.13 Meetings by Telephone

Voting Members of the corporation may participate in a meeting of Voting Members by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

2.14 Membership Dues

The Board shall establish a schedule of membership dues for Friends of the Market and for Voting Members, and rules concerning the manner and time of payment of dues by members and termination of membership for nonpayment of dues.

2.15 Termination of Membership

Membership as a Voting Member or Friend of the Market will terminate automatically if the membership dues are not paid in accordance with the adopted schedule. The membership of a Voting Member may be terminated by the affirmative vote of at least three Directors.

ARTICLE 3. BOARD OF DIRECTORS 3.1 General Powers

The affairs of the corporation shall be managed by a Board of Directors and, subject to the provisions of this Section 3.1, the Board shall make and implement all decisions concerning the affairs of the corporation. The members shall have the authority to alter or repeal decisions made by the Board and may exercise such authority by calling a special meeting of members in accordance with the provisions of Section 2.5. Adoption of a resolution to alter or repeal a decision made by the Board shall require the affirmative vote of a majority of the members of the corporation. **This Section 3.1 may not be amended by the Board in any manner which decreases the authority of members or increases the number of votes required to adopt a resolution.**

3.2 Number

The Board shall consist of not less than three nor more than ten Directors, the specific number to be set by resolution of the Board or members. The number of Directors may be changed from time to time by amendment to these Bylaws, provided that no decrease in the number shall have the effect of shortening the term of any incumbent Director.

3.3 Qualifications

Directors shall be members of the corporation. A simple majority of Directors shall reside on Bainbridge Island, WA. A simple majority of Directors shall be Farmers as defined by the Washington State Farmers' Market Association. Directors shall attend 12 regularly scheduled Board meetings, as well as committee and other special meetings averaging a total of 20 meetings per year or term of office. Directors are expected to be familiar with the BIFMA rules and bylaws. Directors shall draw on the expertise of the BIFMA membership and other community resources in order to protect and promote activities of the Farmers' Market. Directors may have such other qualifications as the Board may prescribe by amendment to these Bylaws.

3.4 Election of Directors

3.4.1 Initial Directors

The initial Directors named in the Articles of Incorporation shall serve until the first annual meeting of members.

3.4.2 Successor Directors

Successor Directors shall be elected each year at the annual meeting of members. The election of Directors may also be conducted by mail in such manner as the Board determines. If the election is conducted by mail, at least fifty percent of the members must return ballots for the election to be valid.

3.5 Term of office

Unless a Director dies, resigns or is removed, he or she shall hold office until the next annual meeting of the Board or until his or her successor is elected, whichever is later.

3.6 Annual Meeting

The annual meeting of the Board shall be held without notice immediately following and at the same place as the annual meeting of members for the purposes of electing officers and transacting such business as may properly come before the meeting.

3.7 Regular Meetings

By resolution, the Board may specify the date, time and place for the holding of regular meetings without other notice than such resolution.

3.8 Special Meetings

Special meetings of the Board or any committee designated and appointed by the Board may be called by or at the written request of the President or any two Directors, or, in the case of a committee meeting, by the chairman of the committee. The person or persons authorized to call special meetings may fix any place either within or without the State of Washington as the place for holding any special Board or committee meeting called by them.

3.9 Meetings by Telephone

Members of the Board or any committee designated by the Board may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

3.10 Place of Meetings

All meetings shall be held at the principal office of the corporation or at such other place within or without the State of Washington designated by the Board, by any persons entitled to call a meeting or by a waiver of notice signed by all Directors.

3.11 Notice of Special Meetings

Notice of special Board or committee meetings shall be given to a Director in writing or by personal communication with the Director not less than five days before the meeting. Notices in writing may be delivered or mailed to the Director at his or her address shown on the records of the corporation. Neither the business to be transacted at, nor the purpose of any special meeting need be specified in the notice of such meeting. If notice is delivered by mail, the notice shall be deemed effective when deposited in the official government mail properly addressed with postage thereon prepaid.

3.12 Waiver of Notice

3.12.1 in writing

Whenever any notice is required to be given to any Director under the provisions of these Bylaws, the Articles of Incorporation or applicable Washington law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the waiver of notice of such meeting.

3.12.2 By Attendance

The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

3.13 Quorum

A majority of the number of Directors fixed by or in the manner provided by these Bylaws shall constitute a quorum for the transaction of business at any Board meeting. If a quorum is not present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

3.14 Manner of Acting

The act of the majority of the Directors present at a meeting at which there is a quorum shall be the act of the Board, unless the vote of a greater number is required by these Bylaws, the Articles of Incorporation or applicable Washington law. *Each Director shall be entitled to one vote on any matter duly before the Board. Directorship on the Board may be shared by partners from a single qualified business operation. But such shared Directorships are entitled to only one vote per qualified business.*

3.15 Presumption of Assent

A Director of the corporation present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

3.16 Action by Board Without a Meeting

Any action which could be taken at a meeting of the Board may be taken without a meeting if a written consent setting forth the action so taken is signed by each of the Directors. Such written consents may be signed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same document. Any such written consent shall be inserted the minute book as if it were the minutes of a Board meeting

3.17 Resignation

Any Director may resign at any time by delivering written notice to the President or the Secretary at the registered office of the corporation, or by giving oral or written notice at any meeting of the Directors. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

3.18 Removal

At a meeting of members called expressly for that purpose, one or more Directors (including the entire Board) may be removed from office, with or without cause, by the affirmative vote of a majority of the members of the corporation. *A Director may be removed from office by the affirmative vote of at least a majority of the Board for neglect of duty or 3 unexcused absences from Board meetings. But such removal shall be without prejudice to the contract rights, if any, of the person so removed. A removed Director does not forfeit their Member Voting privileges.*

3.19 vacancies

A vacancy in the position of Director may be filled by the affirmative vote of a majority of the remaining Directors though no less than a quorum of the Board. A Director who fills a vacancy shall serve for the unexpired term of his or her predecessor in office.

3.20 Board Committees

The Board, by resolution adopted by a majority of the Directors in office, may designate and appoint one or more standing or temporary committees, each of which shall consist of two or more Directors. Such committees shall have and exercise the authority of the Directors in the management of the corporation, subject to such limitations as may be prescribed by the Board [and by applicable Washington law, except that no committee shall have the authority to: (a) amend, alter or repeal these Bylaws; (b) elect, appoint or remove any member of any other committee or any Director or officer of the corporation; (c) amend the Articles of Incorporation; (d) adopt a plan of merger or consolidation with another corporation; (e) authorize the sale, lease or exchange of all or substantially all of the property and assets of the corporation not in the ordinary course of business; (f) authorize the voluntary dissolution of the corporation or revoke proceedings thereof; (g) adopt a plan for the distribution of the assets of the corporation; or (h) amend, alter or repeal any resolution of the Board which by its terms provides that it shall not be amended, altered or repealed by a committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board or any individual Director of any responsibility imposed upon it, him or her by law.

3.21 Compensation

The Directors shall receive no compensation for their service as Directors but may receive reimbursement for expenditures incurred on behalf of the corporation. *Directors and Members who perform other prescribed services for the BIFMA may receive compensation for such service through discounted booth fees only. Booth fee discount schedules shall be approved by an affirmative vote of a majority of Members.*

3.22 Advisory Board

The Board may appoint an Advisory Board of two or more members. The Advisory Board shall provide advice and assistance to the Board and members, may be invited to meetings of the Board, but shall not be entitled to vote or exercise other powers of a Director of the corporation.

ARTICLE 4. OFFICERS 4.1 Number and Qualifications

The officers of the corporation shall be a President, one or more Vice Presidents, a Secretary and a Treasurer, each of whom shall be elected by the Board. Other officers and assistant officers may be elected or appointed by the Board, such officers and assistant officers to hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as may be provided by resolution of the Board. An officer may be assigned by the Board any additional title that the Board deems appropriate. Two or more offices may be held by the same person, except the offices of President and Secretary. All officers who are not Directors shall be ex-officio, nonvoting members of the Board.

4.2 Election and Term of office

The officers of the corporation shall be elected each year by the Board at the annual meeting of the Board. Unless an officer dies, resigns, or is removed from office, he or she shall hold office until the next annual meeting of the Board or until his or her successor is elected.

4.3 Resignation

Any officer may resign at any time by delivering written notice to the President, a Vice President, the Secretary or the Board, or by giving oral or written notice at any meeting of the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery thereof and, unless

otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.4 Removal

Any officer or agent elected or appointed by the Board may be removed from office by the affirmative vote of at least a majority of the Board whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

4.5 Vacancies

A vacancy in any office created by the death, resignation, removal, disqualification, creation of a new office or any other cause may be filled by the Board for the unexpired portion of the term or for a new term established by the Board.

4.6 President

The President shall be the chief executive officer of the corporation, and, subject to the Board's control, shall supervise and control all of the assets, business and affairs of the corporation. The President shall preside over meetings of the members and the Board. The President may sign deeds, mortgages, bonds, contracts, or other instruments, except when the signing and execution thereof have been expressly delegated by the Board or by these Bylaws to some other officer or agent of the corporation or are required by law to be otherwise signed or executed by some other officer or in some other manner. In general, the President shall perform all duties incident to the office of President and such other duties as are assigned to him or her by the Board from time to time.

4.7 Vice Presidents

In the event of the death of the President or his or her inability to act, the Vice President shall perform the duties of the President, except as may be limited by resolution of the Board, with all the powers of and subject to all the restrictions upon the President. The Vice President shall have, to the extent authorized by the President or the Board, the same powers as the President to sign deeds, mortgages, bonds, contracts or other instruments. The Vice President shall perform such other duties as from time to time may be assigned to him or her by the President or the Board.

4.8 Secretary

The Secretary shall: (a) keep the minutes of meetings of the members and the Board, and minutes which may be maintained by

committees of the Board; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records of the corporation; (d) keep records of the post office address and class, if applicable, of each member and Director and of the name and post office address of each officer; (e) sign with the President, or other officer authorized by the President or the Board, deeds, mortgages, bonds, contracts, or other instruments; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or the Board. In the absence of the Secretary, an Assistant Secretary may perform the duties of the Secretary.

4.9 Treasurer

If requested by the Board, the Treasurer shall give a bond for the faithful discharge of his or her duties in such amount and with such surety or sureties as the Board may determine. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in banks, trust companies or other depositories selected in accordance with the provisions of these Bylaws; and in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or the Board. In the absence of the Treasurer, an Assistant Treasurer may perform the duties of the Treasurer.

4.10 Salaries

The salaries of the officers and agents shall be as fixed from time to time by the Board or by any person or persons to whom the Board has delegated such authority. No officer shall be prevented from receiving a salary by reason of the fact that he or she is a Director of the corporation.

ARTICLE 5. ADMINISTRATIVE AND FINANCIAL PROVISIONS

5.1 Contracts

The Board may authorize any officer or officers, or agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation. Such authority may be general or confined to specific instances.

5.2 Loans

No loans shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in its name unless

authorized by resolutions of the Board (and members if such loan exceeds the authority of the Board set forth in Section 3.1). Such authority may be general or confined to specific instances.

5.3 Loans or Extensions of Credit to officers and Directors

No loans shall be made and no credit shall be extended by the corporation to its officers or Directors.

5.4 Checks, Drafts, Etc.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, or agent or agents, of the corporation and in such manner as is from time to time determined by resolution of the Board.

5.5 Deposits

All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board may select.

5.6 Books and Records

The corporation shall keep at its principal or registered office copies of its current Articles of Incorporation and Bylaws; correct and adequate records of accounts and finances; minutes of the proceedings of its members and Board, and any minutes which may be maintained by committees of the Board; records of the name and address and class, if applicable of each member and Director, and of the name and post office address of each officer; and such other records as may be necessary or advisable. All books and records of the corporation shall be open at any reasonable time to inspection by any member of three months standing or to a representative of more than five percent of the membership.

5.7 Corporate Seal

The corporation shall not have a corporate seal.

5.8 Accounting Year

The accounting year of the corporation shall be the twelve months ending December 31.

5.9 Rules of Procedure

The rules of procedure at meetings of the Board and committees of the Board shall be rules contained in Roberts' Rules of Order on Parliamentary Procedure, newly revised, so far as applicable and

when not inconsistent with these Bylaws, the Articles of Incorporation or any resolution of the Board.

ARTICLE 6. AMENDMENTS

Subject to the provisions of Sections 2.10.2 and 3.1, these Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the vote of a majority of the Directors fixed by or in the manner provided by these Bylaws, or by the written consent of each of the Directors. Amendment of Sections 2.10.2 and 3.1 shall require the affirmative vote of a majority of the members of the corporation.