





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

Bill No. **6.b.**
Date: May 7, 2013
Subject: Wastewater Treatment Plant
Professional Services Agreement
with Fullerton & Associates

**FROM: Cathy Rosen, Public Works Director
Joe Stowell, City Engineer**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Scott Dudley, Mayor
 Larry Cort, City Administrator
 Doug Merriman, Finance Director
 Grant Weed, Interim City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to seek City Council's approval of a Professional Services Agreement with Fullerton & Associates for Real Estate & Property Services related to the new Wastewater Treatment Plant.

AUTHORITY

The Oak Harbor Municipal Code states:

2.310.050 Professional service contracts.

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

FISCAL IMPACT DESCRIPTION

Funds Required: \$20,000.00
Appropriation Source: Wastewater Fund 402

SUMMARY STATEMENT

On August 4, 2010, City Council awarded a professional services contract to Carollo Engineers to prepare a Facilities Plan for the new wastewater treatment plant. On March 19, 2013, City Council authorized submittal of a Draft Facilities Plan to the Washington State Department of Ecology.

March 19, 2013 also signified the start of the preliminary design process when city council authorized an amendment to the professional services agreement with Carollo Engineers. One of the first steps in the amended scope of work is to finalize the location of the wastewater treatment plant.

Fullerton and Associates was selected from the Municipal Research Services Center (MRSC) roster under the category of Real Estate & Property Services with a specialty in Right-of-way Acquisitions / Relocations Services. The city enlists MRSC's, along with other cities, to maintain a list of qualified professionals and contractors for public works projects. For smaller contracts, this is a useful tool to reduce the cost of reviewing individual consultants on our own.

Scope of Services

The attached scope of services (Exhibit A) represents the real estate tasks necessary to assist the city in finalizing the location of the new wastewater treatment plant.

The scope of work is as follows:

- Assist the city in identifying potential issues that may arise during the acquisition process
- Review all pertinent maps and drawings
- Review all preliminary commitments to title
- Review all parcel drawings
- Coordinate efforts with appraiser to provide a fair market value
- Appraisal review
- Review property data on each parcel
- Coordinate efforts with the City Attorney's office for the preparation and recording of all conveyance documents
- Prepare a "Fair Offer Letter" to be presented and countersigned by the property owner(s) at the commencement of negotiations
- Conduct all negotiations and correspondence with the property owner(s) and/or the property owner(s) agent(s) and/or representative(s)
- Create and maintain a negotiators log to detail the content of all conversations with the property owner(s) and/or the property owner(s) agent(s) and/or representative(s)
- If needed, coordinate efforts with experts in the fields of land use, environmental assessment, contaminants and hazardous wastes, property surveys, wetland delineations etc.
- Meet with city staff and/or other consultants as required
- The City may request Fullerton & Associates to perform additional undefined services not included in the above Tasks. No work is to be performed under this Task unless specifically authorized in writing by the City.

Schedule

The proposed scope of services is intended to support the city through the acquisition of property for the new wastewater treatment plant. Under the current schedule, this process is expected to be completed by the end of September, 2013. The contract is written to expire December 31, 2013 to allow for schedule complications.

Budget

The proposed scope of services has three alternatives. Since it is difficult to know the number of properties that will be impacted by the wastewater treatment plant at this time, Fullerton and Associates has provided a level of effort for three alternatives. The alternatives assume we will need to negotiate with one, two or three property owners for the new wastewater treatment plant.

The level of effort for each alternative is as follows:

- 1 property - \$7,000
- 2 properties - \$12,000
- 3 properties - \$16,500

The city will be charged time and materials, not to exceed the amount above, depending on the required level of effort. The scope of services also includes supporting the city in its effort to develop site selection policy.

A management reserve of \$3,500 is included in the requested authorization.

CITY COUNCIL WORKSHOP

This item was discussed at the April 24, 2013 City Council Workshop.

CITY COUNCIL PREVIOUS ACTIONS

March 19, 2013 – Council motion authorizing the Mayor to sign Consultant Agreement Amendment Number 6 with Carollo Engineers for additional site investigation related to a new wastewater treatment plant.

RECOMMENDED ACTION

Authorize the Mayor to sign a Professional Services Agreement with Fullerton & Associates for Real Estate & Property Services related to the new wastewater treatment plant in the amount of \$16,500 and a management reserve of \$3,500.

ATTACHMENTS

- Professional Services Agreement
- Exhibit A – Scope of Work/Proposal

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this _____ day of _____, 2013, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and Fullerton and Associates, hereinafter referred to as the "SERVICE PROVIDER".

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

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

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, the parties hereto agree as follows:

1. Scope of Services.

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit "A" attached hereto and incorporated herein (the "Project").

2. Term.

The Project shall begin on May 7, 2013, and shall be completed no later than December 31, 2013, unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

3.1 Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.

3.2 No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement as follows: \$16,500.00

4. Reports and Inspections.

- 4.1 The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.
- 4.2 The SERVICE PROVIDER shall at any time during normal business hours and as often as the CITY or State Auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the SERVICE PROVIDER'S activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the SERVICE PROVIDER'S activities that relate, directly or indirectly, to this Agreement.

5. Independent Contractor Relationship.

- 5.1 The parties intend that an independent SERVICE PROVIDER/CITY relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.
- 5.2 In the performance of the services herein contemplated, the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

6. Service Provider Employees/agents.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee(s), agent(s) or servant(s) from employment on this Project. The SERVICE PROVIDER may, however, employ that (those) individual(s) on other non-CITY related projects.

7. Hold Harmless/Indemnification.

- 7.1 SERVICE PROVIDER shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.
- 7.2 For purposes of this indemnification and hold harmless agreement, the Contractor waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.
- 7.3 No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

8. Insurance.

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

- 8.1 Minimum Scope of Insurance. SERVICE PROVIDER shall obtain insurance of the types described below:
- a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
 - b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the SERVICE PROVIDER'S Commercial General Liability insurance policy with respect to the work performed for the City.
 - c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 - d. Professional Liability Insurance appropriate to the SERVICE PROVIDER'S profession.

- 8.2 Minimum Amounts of Insurance. SERVICE PROVIDER shall maintain the following insurance limits:
- a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per accident.
 - b. Commercial General Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate.
 - c. Professional Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) policy aggregate limit.
- 8.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:
- a. The SERVICE PROVIDER'S insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the SERVICE PROVIDER'S insurance and shall not contribute with it.
 - b. The SERVICE PROVIDER'S insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- 8.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- 8.5 Verification of Coverage. SERVICE PROVIDER shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the SERVICE PROVIDER before commencement of the work.

9. Treatment of Assets.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

10. Compliance with Laws.

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

10.2 The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.

11. Nondiscrimination.

11.1 The CITY is an equal opportunity employer.

11.2 Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The SERVICE PROVIDER shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

11.3 Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

11.4 If any assignment and/or subcontracting has been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against

discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. Assignment/subcontracting.

12.1 The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

12.2 Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

12.3 Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. Changes.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

14. Maintenance and Inspection of Records.

14.1 The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

14.2 The SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. Other Provisions.

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

16. Termination.

16.1 Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time, by giving at least thirty (30) days' written notice to the SERVICE PROVIDER. Upon such termination for convenience, the City shall pay the SERVICE PROVIDER for all services provided under this Agreement through the date of termination.

16.2 Termination for Cause. If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days' written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement through the date of termination.

17. Notice.

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

18. Attorneys Fees and Costs.

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

19. Jurisdiction and Venue.

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

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

20. Severability.

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

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

21. Entire Agreement.

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

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

CITY:

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


Scott Dudley, Mayor

Attest:

Valerie Loffler, City Clerk

SERVICE PROVIDER:

Fullerton and Associates
4812 66th NE
Marysville, WA 98270



Craig Fullerton



FULLERTON & ASSOCIATES

April 19, 2013

Mr. Joe Stowell P.E.
City Engineer
CITY OF OAK HARBOR
865 S.E. Barrington Dr.
Oak Harbor, WA 98277

Re: Oak Harbor Waste Water Treatment Plant/Scope of Work-Proposal

Dear Mr. Stowell:

I submit the following Scope of Work/Proposal for professional services to provide negotiations and appraisal review for the acquisition of property(s) needed for the above referenced project.

SCOPE OF WORK/PROPOSAL

- Assist the city in identifying potential issues that may arise during the acquisition process
- Review all pertinent maps and drawings
- Review all preliminary commitments to title
- Review all parcel drawings
- Coordinate efforts with appraiser to provide a fair market value
- Appraisal review
- Review property data on each parcel
- Coordinate efforts with the City Attorney's office for the preparation and recording of all conveyance documents
- Prepare a "Fair Offer Letter" to be presented and countersigned by the property owner(s) at the commencement of negotiations
- Conduct all negotiations and correspondence with the property owner(s) and/or the property owner(s) agent(s) and/or representative(s)
- Create and maintain a negotiators log to detail the content of all conversations with the property owner(s) and/or the property owner(s) agent(s) and/or representative(s)
- If needed, coordinate efforts with experts in the fields of land use, environmental assessment, contaminants and hazardous wastes, property surveys, wetland delineations etc.
- Meet with city staff and/or other consultants as required
- The City may request Fullerton & Associates to perform additional undefined services not included in the above Tasks. No work is to be performed under this Task unless specifically authorized in writing by the City.

Dependent upon the total number of properties to be acquired, the estimated cost for Fullerton & Associates to perform the above professional services is as follows:

Acquisition of one (1) property ownership	Not to Exceed
Negotiations/Acquisition	\$5,500.00
Appraisal Review	\$2,000.00*
Total	\$7,000.00

Acquisition of two (2) property ownerships	Not to Exceed
Negotiations/Acquisition	\$8,000.00
Appraisal Review	\$4,000.00*
Total	\$12,000.00

Acquisition of three (3) property ownerships	Not to Exceed
Negotiations/Acquisition	\$10,500.00
Appraisal Review	\$6,000.00*
Total	\$16,500.00

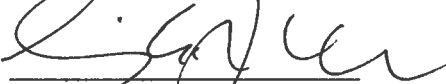
This estimate is based upon my hourly rate of \$120.00 and my associate is \$80.00 per hour, together with reimbursement for mileage and any other out of pocket expenses directly related to this project.

If you have any questions or need additional information, please feel free to contact me at (425) 210-6611.

FULLERTON & ASSOCIATES

Sincerely,

FULLERTON & ASSOCIATES



Craig A. Fullerton SRWA, CRA,
Designated Broker

*Cost for a review appraisal is typically ½ the cost of the original appraisal. In the event the cost of the appraisal(s) is less than \$4000, my "not to exceed" cost would be adjusted accordingly.