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 authorize the Mayor to sign a professional services agreement with OAC for project delivery advisory services associated with design and construction of the wastewater treatment plant.

FISCAL IMPACT DESCRIPTION
Funds Required: $55,480  
Appropriation Source: Wastewater Fund

SUMMARY STATEMENT
On December 3, 2013, staff received approval from City Council to pursue the General Contractor / Construction Manager (GC/CM) alternative public works contracting procedure for delivery of the new wastewater treatment plant (WWTP).

For projects over $10 million, RCW 39.10 allows government agencies to use alternative delivery methods for construction projects. In order to pursue the GC/CM alternative project delivery, the City must first get approval from the state Capital Project Advisory Review Board (CPARB). The Project Review Committee (PRC) meets every other month to consider applications from agencies seeking to use an alternative project delivery.

One of the cornerstones of the approval process is having sufficient staff (both in number and knowledge) to successfully complete the project using the proposed alternate delivery method. Due to the dollar threshold for using this delivery method, many agencies don’t have the necessary experience in their existing staff to satisfy PRC requirements. By bringing on an advisor familiar with the process, the City satisfies this requirement and strengthens its potential for gaining approval from the PRC to use GC/CM to deliver the wastewater treatment plant.

Selection Process
The alternative project delivery advisor roll is not very common. In fact, during our research, only 6 individuals with as many companies were found in Western Washington. Research included contacting other agencies familiar with GC/CM, reviewing approved projects on the PRC website, consulting with GC/CM contractors and finally confirming their qualifications on the Municipal Research and Services Center (MRSC).
While advisory services may not technically be considered an architectural and/or engineering service, staff felt it best to qualify the applicants based on this criterion. Advisors in this role are typically either a licensed engineer or an architect.

Selection of a consultant in this manner requires that agencies first consider qualifications then negotiate a price (RCW 39.80). Agencies are allowed to maintain a roster of qualified consultants for smaller contracts. The City subscribes to a service provided by MRSC where they maintain a roster of qualified engineers, architects, contractors and other service providers on our behalf. Staff verified that candidates were on the MRSC roster before making a final decision.

Of the 6 potential candidates, only two were available to provide advisory services to the City. Both advisors were invited to visit the City of Oak Harbor and were interviewed by a panel of staff members. While both proved to be well qualified, Dan Chandler with OAC was selected based on his experience with GC/CM and his knowledge of the process.

**Scope of Services**

OAC will provide the following services to the City:
- Prepare and submit the Project Approval Application to the PRC
- Respond to PRC questions associated with the application
- Prepare PRC presentation, coach City staff and others
- Manage and oversee GC/CM procurement including:
  - Preparation of the RFQ, advertisement and questions
  - Oversee RFQ response evaluations, short-listing and documentation
  - Organize, attend and chair short-listed contractor interviews and site visits
  - Organize and chair interview scoring and (if appropriate) additional short-listing
  - Prepare Request for Fee Proposal (RFFP) documents
  - Collaborate with City-appointed legal counsel in developing the GC/CM agreement
  - Organize and chair fee proposal opening, final scoring and award
- Assist in GC/CM team integration including meeting attendance, pre-construction fee negotiation and other duties as requested
- Review design meeting notes on a weekly basis and attend project meetings on a monthly basis through design
- Assist City in reviewing the GC/CM subcontractor procurement plan including self-performed work, early materials procurement and similar duties
- Assist the City in negotiating contract amendments (Guaranteed Maximum Price, or Maximum Allowable Construction Cost).

OAC’s scope of services will begin once approved and will extend through completion of the project. The proposed scope of services is just through pre-construction. Any work requested through Construction will be negotiated when appropriate.

**CITY COUNCIL WORKSHOP**

November 19, 2013 – Project delivery options and the need for an advisor were discussed.

**RECOMMENDED ACTION**

Authorize the Mayor to sign a Professional Services Agreement with OAC for project delivery advisory services associated with design and construction of the wastewater treatment plant in the not to exceed contract amount of $55,480.00.

**ATTACHMENTS**
- Professional Services Agreement with OAC
CONSULTANT/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this 12/17/2013, and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the “CITY” and OAC 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 December 17, 2013, and shall be completed no later than December 31, 2017 unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

3.1 Payment 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: Time and Materials, not to exceed $55,480.

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. As required by CITY, SERVICE PROVIDER will cooperate to respond to public record requests under the laws of the State of Washington.

4.3 The SERVICE PROVIDER shall keep in strict confidence, and will not disclose, communicate or advertise to third parties, without the express written consent of CITY the confidences of CITY or any information regarding the CITY or services provided to the CITY under 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 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 of 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 and policies.** Insurance is to be placed with insurers with a current A.M. Best rating of not less and A: VII. Unless otherwise agreed by CITY all insurance policies shall be written on an “occurrence” policy and not a “claims-made” policy.

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. The SERVICE PROVIDER may keep one copy of the work product and documents for its records.

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 accreditations, 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 present 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.

16.3 **Work Product.** In the event of any termination whether for convenience or cause, all work product of the SERVICE PROVIDER, along with a summary of the work to the date of termination shall become the property of CITY.

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 with 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. **Addenda.**

21.1 This Agreement is subject to additional terms as set out in Addenda as follows: N/A

22. **Entire Agreement.**

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

SERVICE PROVIDER:

OAC
701 Dexter Avenue, Suite 301
Seattle, WA 98109

______________________________
Daniel J. Chandler, PE, AIA, Principal

Attest:

______________________________
Valerie Loffler, City Clerk
December 3, 2013

Joe Stowell
City Engineer
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Re: Waste Water Treatment Plant GC/CM Advisory Services — Fee Proposal

Dear Joe:

This letter will serve as OAC’s scope and fee proposal for consulting services associated with using the General Contractor/Construction Manager (GC/CM) delivery method as defined in RCW 39.10 for Oak Harbor’s planned new waste water treatment plant.

Statement of Understanding:
The City of Oak Harbor is currently completing site selection, preliminary design and funding strategies for a $70-$80M, 2.7-3.4 mgd waste water treatment plant. The City prefers to deliver the project through a collaborative GC/CM process and is seeking consulting services to maximize the value of GC/CM delivery and advise the City on procurement and integration of the GC/CM... The design engineer, Corollo Engineers will design the facility and associated conveyance systems and support GC/CM delivery. The GC/CM contractor will provide pre-construction services including cost estimating, scheduling, subcontractor and supplier procurement, value engineering and constructability reviews. Once construction contracts are negotiated, the GC/CM contractor will execute construction, commissioning and start up services.

The current schedule indicates the Final Design phase beginning in Q2 2014 and some construction beginning in Q4 2015. The entire project is scheduled to be closed out by Q4 2017.

Scope of Services:
OAC will serve in an advisory role to assist the City in maximizing the value of GC/CM delivery including by not limited to the following services:

- Prepare and submit the Project Approval Application to the Project Review Committee (PRC)
- Respond to PRC questions associated with the application
- Prepare PRC presentation, coach City staff and others
- Manage and oversee GC/CM procurement including:
  - Preparation of the Request for Qualifications (RFQ), advertisement and questions
  - Oversee RFQ response evaluations, short-listing and documentation
  - Organize, attend and chair short-listed contractor interviews and site visits
Oak Harbor WWTP GC/CM Advisory Services Fee Proposal
December 2, 2013

- Organize and chair interview scoring and (if appropriate) additional short-listing
- Prepare Request for Fee Proposal (RFFP) documents
- Collaborate with City-appointed legal counsel in developing the GC/CM agreement
- Organize and chair fee proposal opening, final scoring and award

- Assist in GC/CM team integration including meeting attendance, pre-construction fee negotiation and other duties as requested
- Review design meeting notes on a weekly basis and attend project meetings on a monthly basis through design
- Assist the City in reviewing the GC/CM subcontractor procurement plan including self-performed work, early materials procurement and similar duties
- Assist the City in negotiating contract amendments (Guaranteed Maximum Price, or Maximum Allowable Construction Cost)

**Duration, level of services and assigned staff:**

OAC proposes Principal Dan Chandler as primary contact with administrative support staff as needed for document production, meeting planning and similar services.

Our fees are proposed on an hourly not to exceed basis and based on our understanding of the level of service needed. The level of service estimated through GC/CM selection is approximately 0.5 FTE and 0.25 from design through construction. Hourly rates listed for our staff as shown below for 2014 and are subject to 5% annual adjustments each year.

<table>
<thead>
<tr>
<th>OAC Fee Estimate:</th>
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<tbody>
<tr>
<td>1. PRC Prep</td>
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<td>Project Coordinator</td>
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<td>2. GCCM Selection</td>
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<td>3. Design and Construction</td>
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<td>Hours</td>
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<td>Mar 2014-Dec 2017</td>
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<td>Total All Activities:</td>
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We propose to negotiate fees and services for the Design and Construction Phases once the GCCM contractor has been selected. Thank you for the opportunity to assist in this important project. After you have reviewed this proposal, let’s discuss how you would like to proceed.

Sincerely,

Daniel J. Chandler, PE, AIA
Principal
Project and Construction Management Fee Schedule—2014

Client: City of Oak Harbor
Project: Oak Harbor WWTP

Principal $225
Associate $165
Senior Project Manager $155
Project Manager $125
Project Engineer $90

Senior Project Coordinator $125
Project Coordinator $90

Rates listed above include all salaries, benefits, taxes, insurance, technology, computers, cell phones, cameras, and incidental expenses. Rates will be adjusted annually by 5% each year beginning January 1.

Discounts are negotiable for larger, long term or full-time assignments.

Reimbursable expenses in addition to the rates listed above are mileage at IRS published rates, ferry tolls, parking or other travel expenses approved by the City of Oak Harbor. All reimbursable expenses and subconsultants retained at the request of the City, will be marked up 10%.