

City of Oak Harbor  
City Council Agenda Bill

Bill No. C/A 6.n  
Date: July 7, 2015  
Subject: Temporary Construction  
Easement and Agreement  
between the general fund and the  
sewer fund

**FROM:** Nikki Esparza, City Attorney

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

Authorize the Mayor to sign the Temporary Construction Easement and Agreement between the general fund and the sewer fund.

**BACKGROUND / SUMMARY INFORMATION**

The current waste water treatment facility was constructed in the 1950s, prior to the enactment of the State Accountancy Act. In the 1950s, there was no requirement that the utility funds and the general fund operate separately. As a result, the current treatment facility sits on land that is owned by the general fund as opposed to the sewer fund. The City will be pursuing a boundary line adjustment for the property line that lies between the general fund property on which the current facility sits and the adjacent sewer fund property acquired from Whidbey Island Bank in 2012. Doing so will create one sewer fund owned parcel on which to build the new waste water treatment facility. However, a technical issue has arisen that has increased the timeframe required to complete the boundary line adjustment. Specifically, a potential unopened road through part of the general fund parcels has created the need for additional steps prior to completing a boundary line adjustment.

In order to comply with State Accountancy Act requirements that all funds operate separately, it is advisable for the general fund parcels on which the old treatment facility sits to grant a temporary construction easement to the sewer utility so that the shallow excavation authorized under Hoffman Construction's GMP #3 can begin on or around July 8, 2015. This temporary construction easement allows the sewer utility fund to begin work on general fund property and maintain the current timeline. The temporary construction easement will only be necessary until the boundary line adjustment is accomplished.

**LEGAL AUTHORITY**

## **FISCAL IMPACT**

### **PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

March 18, 2014 - City Council authorized purchase of Whidbey Island Bank property for use in construction of new Waste Water Treatment Plant.

August 6, 2014 - City Council identified by Resolution No. 14-28, the physical location of the new Waste Water Treatment Plant within the Windjammer vicinity.

June 16, 2015 - GMP #3 authorized Hoffman Construction to begin exploratory excavation on the waste water treatment facility site.

### **ATTACHMENTS**

1. [Temporary Construction Easement and Agreement](#)

## **TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT**

WHEREAS, the CITY OF OAK HARBOR (“City”) is the owner of the following-described property:

See **EXHIBIT A** attached hereto  
and incorporated herein by this reference

hereinafter the “Property”; and

WHEREAS, title to the Property is believed to be acquired by and is held in the City’s general fund account; and

WHEREAS, the City has determined that the portion of the Property depicted on **EXHIBIT B** (hereinafter the “Conveyance Property”) will be most suitable for the location of a portion of a new wastewater treatment plant facility that is required to meet the needs of the public; and

WHEREAS, RCW 43.09.210 provides, in part, as follows:

All service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry to another, shall be paid for at its true and full value by the department, public improvement, undertaking, institution, or public service industry receiving the same, and no department, public improvement, undertaking, institution, or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another.

and

WHEREAS, the City sewer utility enterprise has acquired property adjacent to the Conveyance Property where the remaining portion of the new wastewater treatment plan facility will be located; and

WHEREAS, the City general fund and sewer utility enterprise fund have retained the services of a surveyor and secured a title report to prepare a boundary line adjustment to merge the Conveyance Property with the adjacent property where the remainder of the plant will be constructed, and allow the transfer of the Conveyance Property to the sewer utility enterprise; and

WHEREAS, the City’s title research has disclosed that an unopened road, namely Beach Avenue, appears to have been established by exceptions from deeds and

not dedicated to the City for street, leaving at issue a question of whether the unopened road was ever conveyed to the City; and

WHEREAS, transfer of the Conveyance Property to the sewer utility enterprise cannot be concluded until the following "Conditions Precedent" have been completed: (a) title to Beach Avenue has been quieted in the City, (b) the City has surplused the Conveyance Property, (c) the boundary line adjustment has been completed, and (d) an appraisal determining the fair value of the Conveyance Property has been secured; and

WHEREAS, it is anticipated that the Conditions Precedent will take several months to be completed; and

WHEREAS, the City has contracted to commence construction of the wastewater treatment plant immediately, and any delay in the construction program is contrary to the public interest; and

WHEREAS, the City utility enterprise therefore requires immediate possession and use of the Conveyance Property; NOW, THEREFORE,

**THE CITY HEREBY DECLARES AS FOLLOWS:**

1. The City hereby grants and conveys for use by the sewer utility enterprise fund, its employees, agents, contractors and representatives, a temporary construction easement for the purpose of performing all tasks necessary for the construction of the wastewater treatment plant on the Conveyance Parcel in accordance with the plans now on file with the City Public Works Department or as hereafter amended.
2. Upon conclusion of the Conditions Precedent the City sewer utility enterprise fund shall pay the fair value of the Conveyance Property to the City general fund, and title to the Conveyance Property shall be transferred to the City sewer utility enterprise fund by deed recorded in the records of the Island County Auditor.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF OAK HARBOR

By \_\_\_\_\_  
SCOTT DUDLEY, Mayor

STATE OF WASHINGTON )  
 )ss.  
COUNTY OF ISLAND )

I certify that I know or have satisfactory evidence that SCOTT DUDLEY is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the CITY OF OAK HARBOR to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_ day of July, 2015.

\_\_\_\_\_  
\_\_\_\_\_  
(Legibly print name of notary)  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

## **Exhibit A**

### **PARCEL A:**

That portion of Government Lots 3, 4 and 5 of Section 2, Township 32 North, Range 1 East of the Willamette Meridian, described as follows:

Beginning at the Northeast corner of that certain tract conveyed to Neil H. Koetje and Hazel A. Koetje, husband and wife, by deed dated April 8, 1946, recorded April 10, 1946, in Volume 61 of Deeds, page 458, as File No. 64868, records of said County; (said point being the intersection of the West line of Rainier Street and the North line of Beach Avenue);  
thence North 16°35' West along the West line of said Rainier Avenue 200 feet;  
thence Westerly 1600 feet more or less, on a straight line, to a point 20 feet East of the East line of Ulrich Freund DLC and 400 feet South of the South line of Barrington Street, also called Midway Boulevard,  
thence South 500 feet;  
thence East to the North line of Beach Avenue;  
thence North 58°16' East along the North line of said Beach Avenue to the true point of beginning,

EXCEPT road.

### **PARCEL B:**

That portion of Government Lot 4 of Section 2, Township 32 North, Range 1 East of the Willamette Meridian, described as follows:

Beginning at a point 20 feet East of the East line of Ulrich Freund DLC and 900 feet South of the South line of Barrington Street also called Midway Boulevard;  
thence East 300 feet to the intersection of the North line of Beach Avenue;  
thence Southwesterly along the North line of said Beach Avenue to a point due South of the point of beginning;  
thence North to the point of beginning;

EXCEPT roads and EXCEPT that portion thereof lying within the boundaries of that certain tract conveyed to John Reinstra by deed dated December 20, 1924 and recorded in Volume 41 of Deeds, page 308, records of said County.

### **PARCEL C:**

A tract of land in Government Lot 4, Section 2, Township 32 North, Range 1 East of the Willamette Meridian described as follows:

(Continued...)

(PARCEL C continued)

Beginning at the Southwest corner of said Lot 4 which lies South 0°28'20" West 61.80 feet from a concrete monument on the West line of said lot;  
thence North 57°15'00" East 35.86 feet along the meander line to the true point of beginning of this description;

thence continue North 57°15'00" East 137.47 feet along said meander line;  
thence North 0°28'20" East 329.47 feet to a point of the South line of Beach Avenue as conveyed to the Town of Oak Harbor;  
thence North 58°16'00" East 147.96 feet along the South line of said Beach Avenue to a point on the East line of that certain tract conveyed to John Reinstra by deed recorded in Volume 41 of Deeds, page 308;  
thence South 17°10'00" East 283.41 feet along the East line of said Reinstra tract to a point on the meander line;  
thence Southwesterly along said meander line to a point that lies South 32°45'00" East from the true point of beginning;  
thence North 32°45'00" West to the true point of beginning.

TOGETHER WITH tidelands of the second class, as conveyed by the State of Washington by deed recorded May 2, 1907 in Volume 22 Page 298, lying in front of, adjacent to or abutting upon the above described property.

AND a tract of land in Government Lot 4, Section 2, Township 32 North, Range 1, East W.M., described as follows:

Beginning at the Southwest corner of said Lot 4, which lies South 0°28'20" West 61.80 feet from a concrete monument on the West line of said Lot;  
thence North 57°15'00" East 36.86 feet along the meander line to the true point of beginning of this description;  
thence continue North 57°15'00" East 137.47 feet along said meander line;  
thence North 0°28'20" East 329.47 feet to a point on the South line of Beach Avenue as conveyed to the Town of Oak Harbor;  
thence South 58°16'00" West 135.91 feet along said South line to a point that lies 30.00 feet, perpendicular measurement, easterly from the West line of said Lot 4;  
thence South 0°28'20" West 332.35 feet, parallel with the West line of said Lot 4, to the true point of beginning.

**PARCEL D:**

The Westerly 100 feet of the following portion of Government Lot 4 in Section 2, Township 32 North, Range 1, East of the Willamette Meridian:

Beginning at the intersection of the Northerly line of Beach Avenue as established in the Town of Oak Harbor with the Easterly line of a tract of land conveyed to John Reinstra by deed dated December 20, 1924, filed January 16, 1925, as File No. 27006, recorded in Volume 41 of Deeds, page 308;

(Continued...)

(PARCEL D continued)

thence South 17°10' East along the Easterly line of said Reinstra tract to the Government meander line;  
thence Northeasterly along said meander line to the Southwest corner of a tract of land conveyed to Charles H. Heighton, et ux, by deed dated August 9, 1948, filed August 25, 1948, as File No. 72541, recorded in Volume 65 of Deeds, page 111;  
thence North 16°35' West along the Westerly line of said Heighton tract to the Northerly line of Beach Avenue;  
thence Southwesterly along said Northerly line to the point of beginning;

EXCEPT the Northerly 60 feet thereof for street;

TOGETHER WITH tidelands of the second class, as conveyed by the State of Washington by deed recorded May 2, 1907 in Volume 22 Page 298, lying in front of, adjacent to or abutting upon the above described property.

**PARCEL E:**

That portion of Government Lot 4, Section 2, Township 32 North, Range 1 EWM, described as follows:

Beginning at a concrete monument at the beach, in the East boundary line of the Ulrich Freund D.C. in Section 2, Township 32 North, Range 1, EWM 5655.99 feet South of the Northeast corner, and 61.8 feet North of the Southeast corner of said DC;  
thence North 58°16' East 574.1 feet to the true point of beginning;  
thence North 58°16' East 400 feet;  
thence North 16°35' West 300 feet;  
thence South 58°16' West 400 feet;  
thence South 16°35' East 300 feet to the true point of beginning;

EXCEPT the North 60 feet for street,

TOGETHER WITH tidelands of the second class, as conveyed by the State of Washington by deed recorded May 2, 1907 in Volume 22 Page 298, lying in front of, adjacent to or abutting upon the above described property.

AND that portion of Government Lot 4, Section 2, Township 32 North, Range 1 EWM, described as follows:

Beginning at the intersection of the North line of Beach Avenue as established in the Town of Oak Harbor with the East line of a tract conveyed to John Reinstra by deed recorded in Volume 41 of Deeds, page 308;

(Continued...)



(PARCEL E continued)

thence South 17°10' East along the Easterly line of the Reinstra tract to the Government meander line;  
thence Northeasterly along said meander line to the Southwest corner of a tract conveyed to Charles H. Heighton by deed recorded in Volume 65 of Deeds, page 511;  
thence North 16°35' West along the Westerly line of said tract to the Northerly line of Beach Avenue;  
thence Southwesterly along said Beach Avenue the point of beginning;

EXCEPT the North 60 feet thereof for street,

And EXCEPT the Westerly 100 feet deeded to Barney Riksen in deed recorded August 12, 1958 under Auditor's File No. 116405.

TOGETHER WITH tidelands of the second class, as conveyed by the State of Washington by deed recorded May 2, 1907 in Volume 22 Page 298, lying in front of, adjacent to or abutting upon the above described property.

**PARCEL F:**

The Westerly 100 feet of that portion of Government Lot 4, Section 2, Township 32 North, Range 1, East of the Willamette Meridian, described as follows:

Beginning at a concrete monument at the beach on the East boundary of the Ulrich Freund Donation Claim which is 5655.99 feet South of the Northeast corner of said Donation Claim and 61.8 feet North of the Southeast corner of said Donation Claim;  
thence North 58°16' East 974.1 feet to the true point of beginning;  
thence continue North 58°16' East 800 feet to the Westerly line of Rainier Street;  
thence North 16°35' West on said street line 300 feet;  
thence South 56°16' West 800 feet to the point which lies North 16°35' West of the true point of beginning;  
thence South 16°35' East to the true point of beginning,

EXCEPT that portion, if any, lying within Beach Avenue;

TOGETHER WITH tidelands of the second class, as conveyed by the State of Washington by deed recorded May 2, 1907 in Volume 22 Page 298, lying in front of, adjacent to or abutting upon the above described property.

(Continued...)

**PARCEL G:**

The Easterly 100 feet of the Westerly 200 feet of that portion of Government Lot 4, Section 2, Township 32 North, Range 1, East of the Willamette Meridian, described as follows:

Beginning at a concrete monument at the beach on the East boundary line of the Ulrich Freund Donation Claim, in said section, 5655.99 feet South of the Northeast corner, and 61.8 feet North of the Southeast corner of said Donation Claim;

thence North 58°16' East 974.1 feet to the true point of beginning;  
thence North 58°16' East 800 feet to the West line of Rainier Street;  
thence North 16°35' West on said street line 300 feet;  
thence South 58°16' West 800 feet;  
thence South 16°35' East to the true point of beginning;

EXCEPT public streets;

TOGETHER WITH tidelands of the second class, as conveyed by the State of Washington by deed recorded May 2, 1907 in Volume 22 Page 298, lying in front of, adjacent to or abutting upon the above described property.

**PARCEL H:**

The Easterly 100 feet of the Westerly 300 feet of the following described tract:

Beginning at a concrete monument at the beach on the East boundary line of the Ulrich Freund Donation Claim in Section 2, Township 32 North, Range 1, East of the Willamette Meridian 5655.99 feet South of the Northeast corner, and 61.8 feet North of the Southeast corner of said D.C.;

thence North 58°16' East 974.1 feet to the true point of beginning;  
thence North 58°16' East 800 feet to the West line of Rainier Street;  
thence North 16°35' West on said Street line 300 feet;  
thence South 58°16' West 800 feet;  
thence South 16°35' East to the true point of beginning.

TOGETHER WITH tidelands of the second class, as conveyed by the State of Washington by deed recorded May 2, 1907 in Volume 22 Page 298, lying in front of, adjacent to or abutting upon the above described property.

**PARCEL I:**

The Easterly 300 feet of the Westerly 600 feet of the following described tract:

Beginning at a concrete monument at the Beach on the East boundary line of the Ulrich Freund Donation Claim in Section 2, Township 32 North, Range 1, East of the Willamette Meridian 5655.99 feet South of the Northeast corner, and 61.8 feet North of the Southeast corner of said Donation Land Claim;

(Continued...)

(PARCEL I continued)

thence North 58° 16' East 974.1 feet to the true point of beginning;  
thence North 58° 16' East 800 feet to the West line of Rainier Street;  
thence North 16° 35' West on said street line 300 feet;  
thence South 58° 16' West 800 feet;  
thence South 16° 35' East to the true point of beginning.

TOGETHER WITH tidelands of the second class, as conveyed by the State of Washington by deed recorded May 2, 1907 in Volume 22 Page 298, lying in front of, adjacent to or abutting upon the above described property.

**PARCEL J:**

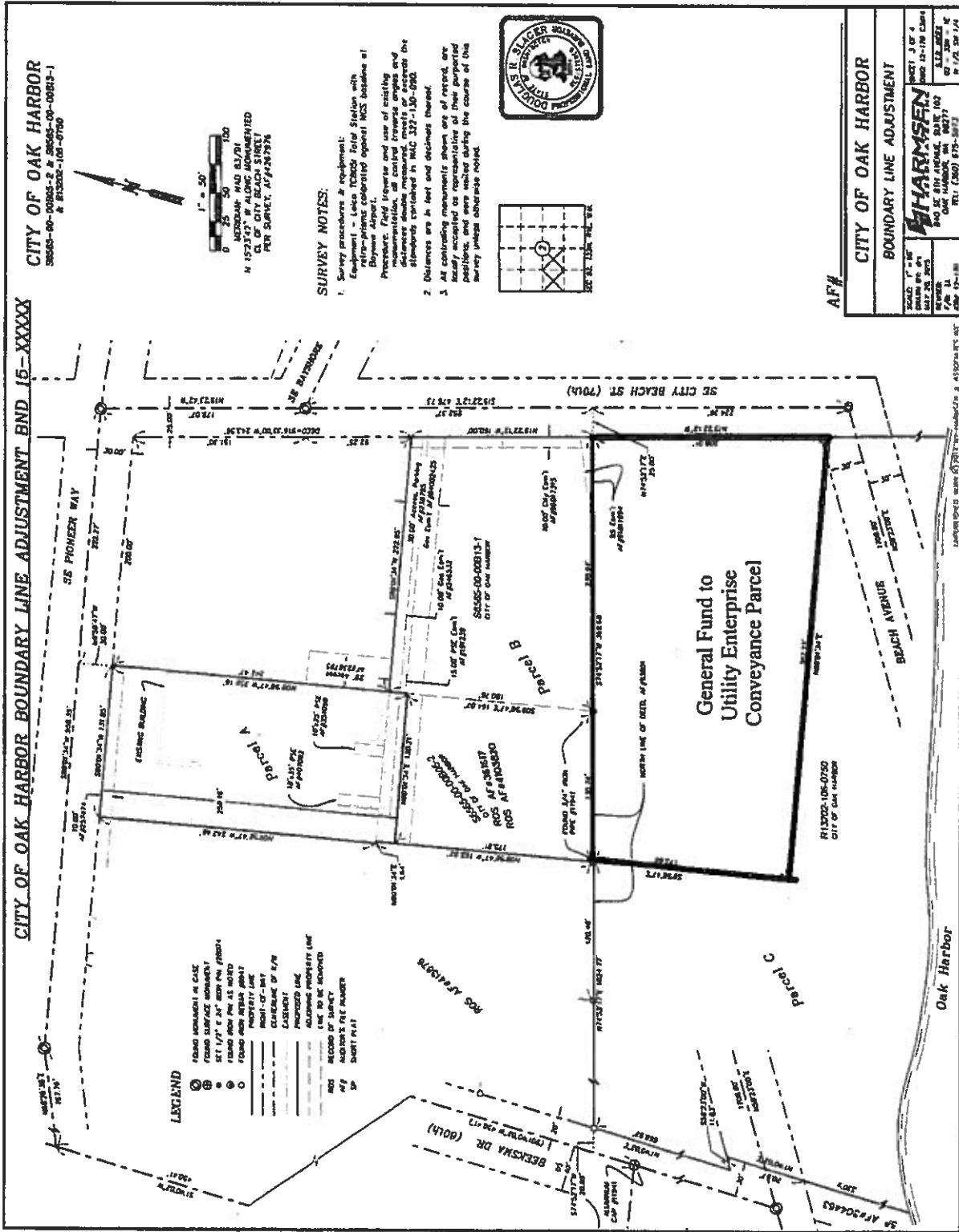
Beginning at a concrete monument at beach on the East boundary of the Ulrich Freund Donation Claim, situated in Section 2, Township 32 North, Range 1, East of the Willamette Meridian 5655.99 feet South of the Northeast corner and 61.8 feet North of the Southeast corner of said D.C.;

thence North 58° 16' East 1,574.1 feet to the true point of beginning;  
thence North 58° 16' East 200 feet to the West line of Rainier Street;  
thence North 16° 35' West on said street line 240 feet to Beach Avenue;  
thence South 58° 16' West 200 feet;  
thence South 16° 35' East to the point of beginning.

TOGETHER WITH tidelands of the second class, as conveyed by the State of Washington by deed recorded May 2, 1907 in Volume 22 Page 298, lying in front of, adjacent to or abutting upon the above described property.

ALL situate in the County of Island, State of Washington.

# EXHIBIT B



OH-15-015/Temp Const Agmt