



Request for Proposal (RFP)

COMPREHENSIVE IMPACT FEES STUDY

Soliciting Agency: City of Oak Harbor

Proposals Due by: 2:00 p.m. on June 4, 2024

Submit to: City of Oak Harbor
ATTN: Sandra Place, Central Services Manager
865 SE Barrington Drive
Oak Harbor, WA 98277

For More Information: David Goldman, Deputy City Administrator
dgoldman@oakharbor.org

About Oak Harbor, Washington

The City of Oak Harbor (population 23,809+) was incorporated on May 14, 1915, and is situated on northern portion of Whidbey Island, approximately a two-hour drive north of Seattle, and is accessible by both land and ferry.

Oak Harbor is Whidbey Island's largest incorporated city (located in Island County). Named for the Garry Oak trees that grace its skyline, the city's growth coincided with two significant events: the building of Deception Pass Bridge on July 31, 1935, and the completion of Naval Air Station Whidbey Island on September 21, 1942.

The City of Oak Harbor operates under the Mayor-Council form of government. The Mayor and City Council are elected at-large for four-year overlapping terms. The Mayor serves as the Chief Executive Officer and is responsible for developing budgets and related financial plans, as well as the overall operation of the City.

The City of Oak Harbor hosts several annual events, including but not limited to, the Whidbey Island Marathon, Music Fest, Holland Happenings, and more.

BACKGROUND AND DISCUSSION

The City currently uses two impact fees to help pay for new or expanded public capital facilities that directly address the increased demand for services created by that development: Parks and Transportation. Parks Impact Fees were initiated in 1996 via Ordinance 1045. Transportation Impact Fees were initiated in 1997 via Ordinance 1103. Parks Impact Fees were updated in 2006 via Ordinance 1473. Other City ordinances affecting impact fees include: 1399, 1696, 1697, 1772, and 1735. All City Ordinances can be found online www.codepublishing.com.

PURPOSE OF REQUEST

The City's impact fee program aims to create mechanisms to charge and collect fees to ensure that development bears its proportionate share of the capital facility and improvement costs necessitated by development.

The City of Oak Harbor requests proposals from qualified firms to perform a comprehensive impact fee update, including analysis, review, and recommendation based on the information in this RFP.

The intent is to select one firm to perform the tasks associated with the RFP. Still, a firm may propose a team approach for completing the comprehensive impact fee update, with one firm being named the primary consultant responsible for contracting and overall scope performance.

Parks: We request that the successful consultant conduct a park impact fee rate study to allow the City to approve updated park impact fees. The study should include assessing and updating all information needed to recalculate the park impact fee formula based on modern, up-to-date methodologies. The consultant shall propose an option to expand the fee application to non-residential development.

Transportation: We request that the successful consultant conduct a park impact fee rate study to allow the City to approve updated transportation impact fees. The study should include assessing and updating all information needed to recalculate the transportation impact fee formula based on the current and modern, up-to-date methodologies. The City applies its impact fee schedule citywide.

Fire: We are requesting that the successful consultant conduct a fire protection facilities impact fee rate study that will allow the City to consider implementing fire protection facilities impact fees. The study should include assessing all information needed to calculate a fire protection facilities impact fee using a methodology or methodologies that satisfies the requirements of the law.

School: We request that the successful consultant conduct a school facility impact fee rate study to allow the City to consider implementing school facility impact fees. The study should include assessing all information needed to calculate a school facility impact fee using a methodology or methodologies that satisfies the requirements of the law.

Exemptions: Per RCW 82.02.060, we would like all methodologies to include exemptions for:

- Affordable housing (“low-income housing” equivalent term used in RCW 82.02.060(2)) in excess of what is required by Oak Harbor code.
- Early learning facilities.
- Accessory Dwelling Units (ADUs).
- Development activities of community-based human services agencies that meet the community's human services needs, such as providing employment assistance, food, shelter, clothing, or health services for low- and moderate-income residents.

The successful consultant will meet with City staff to review and evaluate current data and methodologies, provide suggestions for modern, up-to-date methodologies, move forward with the study using agreed-upon methodologies, and gather the data needed to conduct the studies; identify specific changes to the Oak Harbor Municipal Code that is needed; estimate potential revenue from the updated impact fees; assist in reviewing the proposed resolutions and/or ordinances needed to effectuate the rates; and present and participate in discussions about the updated impact fees, resolutions and/or ordinances, and revenue forecasts at up to six public meetings.

Deliverables to include (in electronic format):

- Data tables with raw data, calculations, sources, and links.
- Fee schedule with an up to 5-year phase-in.
- 10-year revenue forecasts.
- Draft and Final Impact fee study reports (separate report for each impact fee) which outline calculations and methodology, including spreadsheets (with calculations) and other documents as appendices.
- Presentations for public meetings in Microsoft PowerPoint format (to be submitted at least one week prior to meetings).
- Any additional items specific to a particular impact fee study.

PROPOSAL REQUIREMENTS

Project Approach: Provide a clear concise statement of the general approach to be undertaken on the project.

Scope of Work: The consultant will be required to provide all services and work to complete the required rate study for each area as outlined in this RFP.

Scalability: The consultant shall submit costs for performing each impact fee study (Parks, Transportation, Fire, Schools) individually and submit a cost for performing all four studies together.

Schedule of Work: The consultant shall provide a schedule for the various tasks identified in the Scope of Work. The schedule should include the time allowed for review by the City.

Qualifications: Consultant qualifications should include detailed information regarding the Consultant's experience on similar projects. Finished products developed by the consultant for other municipalities should be included for evaluation.

A statement to the effect that the consultant's project lead and key team members, as well as sub-consultants, will not be replaced without the City's prior approval shall be included. The Consultant's qualifications should include the following information:

- List a summary of ten (10) projects of similar complexity and magnitude completed in the past five years and provide references and an email and phone number for each reference. Provide finished products for three (3) projects of similar complexity and magnitude completed in the past five years.
- Provide resumes of no more than four key members of the proposed project team and no more than four key members of each sub-consultant who will work on this project. Each resume should be a maximum of two pages in length.
- Of the listed reference projects, list the involvement of proposed project team members for whom resumes have been submitted.
- List sub-consultants and specify their involvement in the project. List no more than five projects of similar complexity and magnitude undertaken by the sub-consultant in the past five years and provide references and a phone number for each project.
- The consultant may submit a brochure or narrative discussion, not to exceed five (5) 8.5" x 11" single-sided pages, that provides any further information describing the firm's qualifications for this project.
- The proposal should be accompanied by a brief introductory letter stating your firm's interest in the project.

Affirmation as to Form of Agreement: Provide a statement to the effect that the City Standard Professional Services Agreement is acceptable to the consultant or state exceptions taken.

Level of Effort: The Consultant shall prepare a separate Level of Effort spreadsheet that contains line items for each major task and subtask to be performed with the estimated person hours per classification to be expended in that effort. The level of effort spreadsheet will be used to evaluate and compare the City’s understanding of the scope of work with the Consultant’s proposal.

Selection Procedure: Subsequent to the deadline for acceptance of proposals, the City will evaluate the Technical Proposal and will determine rankings based upon materials submitted and oral interviews (if deemed necessary by the City) using the selection criteria and weights indicated below. The City will contact the firm with the highest ranked Technical Proposal and request a scope of work and fee. If an agreement cannot be reached with the top ranked firm, the City will contact the firm with the next ranked Technical Proposal and attempt to negotiate with that firm. The process will be repeated until an agreement is reached.

Selection Criteria: Proposals will be evaluated on the basis of both the firm(s) and individual team member’s experience and expertise on similar projects, as well as upon the team/firm’s capacity (personnel and other resources) to complete the project within the proposed schedule. Selection shall be based on the following:

Criteria	Point Value
Responsiveness and completeness of the written proposal to the purpose and scope of services	Up to 20 Points
Quality of the proposed services to be provided for presentations, data reports, and other deliverables	Up to 20 Points
Qualifications of key individuals in terms of what personnel will be committed to this project and what their qualifications are in producing the end product.	Up to 20 Points
Consultant’s experience with projects of similar complexity and function based on the summary of projects and finished projects provided.	Up to 20 Points
Project cost, including total all-inclusive, not to exceed the maximum price, component costs, rates for additional services, and manner of payment	Up to 20 Points
TOTAL	Up to 100 Points

Should the City determine that interviews are desirable, up to 25 additional points may be granted based on those interviews.

Ranking will on a total point basis of the proposal and the interview, if conducted.

Submittal Deadline: 7 copies of the Technical Proposal must be forwarded to the attention of Sandra Place, Central Services Manager, at the following address by 2:00 p.m. on June 4, 2024:

City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Any proposal received after the specified date and time will automatically be rejected and will not receive any further consideration by the City. Postmarks will not be accepted.

Proposal Contact Person: All questions regarding this solicitation should be directed to David Goldman, Deputy City Administrator, via e-mail at dgoldman@oakharbor.org.

Submittals that are not received on or before the specified deadline will not be accepted (no exceptions). The City of Oak Harbor reserves the right to request follow-up information or clarification from vendors in consideration. The vendor is responsible for ensuring delivery by the date and time included.

The City of Oak Harbor reserves the right to reject any or all submittals, compare the relative merits of the respective responses, and choose a vendor that best serves the interests of the City.

Each response to this RFP shall be made at the sole cost and expense of each proposing vendor and with the express understanding that no claims against the City of Oak Harbor for reimbursement will be accepted. All materials submitted in response to this RFP will become the property of the City upon delivery.

Schedule

The approximate RFP schedule is summarized below:

- Issuance of RFP: April 27, 2024
- Vendor submittals due: June 4, 2024
- Vendor interviews, reference checks, draft scope of work: July 2024
- Contract agreement, Vendor approval, Notice to Proceed: August 2024

Dates may be subject to change.

Contract Obligations

The successful Consultant will be required to enter into a Professional Services Agreement (see attachment "A") with the City that will include the following:

- A detailed scope of services
- Insurance requirements
- Indemnity provision

ATTACHMENT "A"

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF OAK HARBOR, WASHINGTON
AND
FOR CONSULTANT SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Oak Harbor, Washington, a Washington State municipal corporation ("City"), and _____, a Washington _____ ("Consultant") [**LEGAL STATUS OF ENTITY SHOULD BE INSERTED i.e., LLC; Sole Proprietor; LLP; Inc., P.S.; Partnership, Foreign Corporation licensed to do business in Washington State**] .

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

ARTICLE I. PURPOSE

The purpose of this Agreement is to provide the City with consultant services regarding [**INSERT SHORT GENERAL DESCRIPTION OF WHAT SERVICES ARE REGARDING**] as described in Article II. The general terms and conditions of the relationship between the City and the Consultant are specified in this Agreement.

ARTICLE II. SCOPE OF SERVICES

The Scope of Services is attached hereto as **Exhibit "A"** and incorporated herein by this reference ("Scope of Services"). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant's profession.

ARTICLE III. OBLIGATIONS OF THE CONSULTANT

III.1 MINOR CHANGES IN SCOPE. The Consultant shall accept minor changes, amendments, or revision in the detail of the Scope of Services as may be required by the City when such changes will not have any impact on the service costs or proposed delivery schedule. Extra work, if any, involving substantial changes and/or changes in cost or schedules will be addressed as follows:

Extra Work. The City may desire to have the Consultant perform work or render services in connection with each project in addition to or other than work provided for by the expressed intent of the Scope of Services in the scope of services. Such work will be considered as extra work and will be specified in a written supplement to the scope of services, to be signed by both parties, which will set forth the nature and the scope thereof. All proposals for extra work or services shall be prepared by the Consultant at no cost to the City. Work under a supplemental agreement shall not proceed until executed in writing by the parties.

III.2 **WORK PRODUCT AND DOCUMENTS.** The work product and all documents produced under this Agreement shall be furnished by the Consultant to the City, and upon completion of the work shall become the property of the City, except that the Consultant may retain one copy of the work product and documents for its records. The Consultant will be responsible for the accuracy of the work, even though the work has been accepted by the City.

In the event that the Consultant shall default on this Agreement or in the event that this Agreement shall be terminated prior to its completion as herein provided, all work product of the Consultant, along with a summary of work as of the date of default or termination, shall become the property of the City. Upon request, the Consultant shall tender the work product and summary to the City. Tender of said work product shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost to the City.

Consultant will not be held liable for reuse of documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of Consultant.

III.3 **TERM.** The term of this Agreement shall commence on _____ and shall terminate at midnight on _____. The parties may extend the term of this Agreement by written mutual agreement.

III.4 **NONASSIGNABLE.** The services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

III.5 **EMPLOYMENT.**

- a. The term “employee” or “employees” as used herein shall mean any officers, agents, or employees of the of the Consultant.
- b. Any and all employees of the Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of any said employees while so engaged, and any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while so engaged in any of the work or services provided herein shall be the sole obligation of the Consultant.
- c. Consultant represents, unless otherwise indicated below, that all employees of Consultant that will provide any of the work under this Agreement have not ever been retired from a Washington State retirement system, including but not limited to Teacher (TRS), School District (SERS), Public Employee (PERS), Public Safety (PSERS), law enforcement and fire fighters (LEOFF), Washington State Patrol (WSPRS), Judicial Retirement System (JRS), or otherwise. *(Please indicate No or Yes below)*

_____ No employees supplying work have ever been retired from a Washington State retirement system.

_____ Yes employees supplying work have been retired from a Washington State retirement system.

In the event the Consultant indicates “no”, but an employee in fact was a retiree of a Washington State retirement system, and because of the misrepresentation the City is required to defend a claim by the Washington State retirement system, or to make contributions for or on account of the employee, or reimbursement to the Washington State retirement system for benefits paid, Consultant hereby agrees to save, indemnify, defend and hold City harmless from and against all expenses and costs, including reasonable attorney’s fees incurred in defending the claim of the Washington State retirement system and from all contributions paid or required to be paid, and for all reimbursement required to the Washington State retirement system. In the event Consultant affirms that an employee providing work has ever retired from a Washington State retirement system, said employee shall be identified by Consultant, and such retirees shall provide City with all information required by City to report the employment with Consultant to the Department of Retirement Services of the State of Washington.

III.6 INDEMNITY.

- a. **Indemnification/Hold Harmless.** Consultant 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 in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.
- b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.
- c. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant’s waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.
- d. **Public Records Requests.** In addition to Paragraph IV.3b., when the City provides the Consultant with notice of a public records request per Paragraph IV.3b., Consultant agrees to save, hold harmless, indemnify and defend the City its officers, agents, employees and elected officials from and against all claims, lawsuits, fees, penalties and costs resulting from the consultants violation of the Public Records Act RCW 42.56, or consultant’s failure to produce public records as required under the Public Records Act.
- e. The provisions of this section III.6 shall survive the expiration or termination of this Agreement.

III.7 INSURANCE.

- a. **Insurance Term.** The Consultant shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Consultant’s work through the term of the Agreement and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein

- b. **No Limitation.** Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- c. **Minimum Scope of Insurance - Consultant shall obtain insurance of the types described below:**
- (1) 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.
 - (2) Commercial General Liability insurance shall be written at least as broad on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured Agreement. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
 - (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 - (4) Professional Liability insurance appropriate to the Consultant's profession.
- d. **Consultant shall maintain the following minimum insurance limits:**
- (1) Comprehensive General Liability. Insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and \$2,000,000 products-completed operations aggregate limit.
 - (2) Automobile Liability. \$1,000,000 combined single limit per accident for bodily injury and property damage.
 - (3) Workers' Compensation. Workers' compensation limits as required by the Workers' Compensation Act of Washington.
 - (4) Professional Liability/Consultant's Errors and Omissions Liability. \$1,000,000 per claim and \$1,000,000 as an annual aggregate.
- e. **Notice of Cancellation.** In the event that the Consultant receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, the Consultant shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the City.

- f. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- g. **Verification of Coverage.** In signing this Agreement, the Consultant is acknowledging and representing that required insurance is active and current. Consultant 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 Consultant before commencement of the work. Further, throughout the term of this Agreement, the Consultant shall provide the City with proof of insurance upon request by the City.
- h. **Insurance shall be Primary - Other Insurance Provision.** The Consultant's insurance coverage shall be primary insurance with respect to the City. The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain or be endorsed to contain that they shall be primary insurance with respect to the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be in excess of the Consultant's insurance and shall not contribute with it.
- i. **Failure to Maintain Insurance.** Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of Agreement, upon which the City may, after giving five (5) business days' notice to the Consultant to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.
- j. **City Full Availability of Consultant Limits.** If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.
- k. **Subconsultant's Insurance.** The Consultant shall cause each and every Subconsultant to provide insurance coverage that complies with all applicable requirements of the Consultant-provided insurance as set forth herein, except the Consultant shall have sole responsibility for determining the limits of coverage required to be obtained by Subconsultants. The Consultant shall ensure that the City is an additional insured on each and every Subconsultant's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

III.8 **DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION.** The Consultant agrees to comply with equal opportunity employment and not to discriminate against client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Consultant understands and agrees that if it violates

this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Consultant will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

III.9 UNFAIR EMPLOYMENT PRACTICES. During the performance of this Agreement, the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

III.10 LEGAL RELATIONS. The Consultant shall comply with all federal, state and local laws and ordinances applicable to work to be done under this Agreement. The Consultant represents that the firm and all employees assigned to work on any City project are in full compliance with the statutes of the State of Washington governing activities to be performed and that all personnel to be assigned to the work required under this Agreement are fully qualified-and properly licensed to perform the work to which they will be assigned. This Agreement shall be interpreted and construed in accordance with the laws of Washington. Venue for any litigation commenced relating to this Agreement shall be in Island County Superior Court.

III.11 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 its 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 or as hereafter amended. 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. Prior to commencement of work, the Consultant shall obtain a business license from the City.

III.12 CONFLICTS OF INTEREST. The Consultant agrees to and shall notify the City of any potential conflicts of interest in Consultant's client base and shall obtain written permission from the City prior to providing services to third parties where a conflict or potential conflict of interest is apparent. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

III.13 CITY CONFIDENCES. The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate or advertise to third parties without specific prior written consent from the City

in each instance, the confidences of the City or any information regarding the City or services provided to the City.

III.14 SUBCONSULTANTS.

- a. The Consultant shall be responsible for all work performed by subconsultants pursuant to the terms of this Agreement.
- b. The Consultant must verify that any subconsultants they directly hire meet the responsibility criteria for the project. Verification that a subconsultant has proper license and bonding, if required by statute, must be included in the verification process. The Consultant will use the following subconsultants or as set forth in Exhibit ____:

- c. The Consultant may not substitute or add subconsultants without the written approval of the City.
- d. All subconsultants shall have the same insurance coverages and limits as set forth in this Agreement and the Consultant shall provide verification of said insurance coverage.

ARTICLE IV. OBLIGATIONS OF THE CITY

IV.1 PAYMENTS.

- a. The Consultant shall be paid by the City for services rendered under this Agreement as described in the Scope of Services and as provided in this section. In no event shall the compensation paid to Consultant under this Agreement exceed _____ (\$_____) without the written agreement of the Consultant and the City. Such payment shall be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. In the event the City elects to expand the scope of services from that set forth in Exhibit A, the City shall pay Consultant a mutually agreed amount.
- b. The Consultant shall submit a monthly invoice to the City for services performed in the previous calendar month in a format acceptable to the City. The Consultant shall maintain time and expense records and provide them to the City upon request.
- c. The City will pay timely submitted and approved invoices received before the 20th of each month within thirty (30) days of receipt.

IV.2 CITY APPROVAL. Notwithstanding the Consultant's status as an independent contractor, results of the work performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if work has been completed in compliance with the Scope of Services and City requirements.

IV.3 MAINTENANCE/INSPECTION OF RECORDS.

- a. 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.

- b. **Public Records.** The parties agree that this Agreement and records related to the performance of the Agreement are with limited exception, public records subject to disclosure under the Public Records Act RCW 42.56. Further, in the event of a Public Records Request to the City, the City may provide the Consultant with a copy of the Records Request and the Consultant shall provide copies of any City records in Consultant's possession, necessary to fulfill that Public Records Request. If the Public Records Request is large the Consultant will provide the City with an estimate of reasonable time needed to fulfill the records request.

ARTICLE V. GENERAL

V.1 **NOTICES.** Notices to the City shall be sent to the following address:

[INSERT NAME, TITLE AND ADDRESS OF CITY CONTACT]

Notices to the Consultant shall be sent to the following address:

[INSERT NAME, TITLE AND ADDRESS OF CONSULTANT CONTACT]

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

V.2 **TERMINATION.** The right is reserved by the City to terminate this Agreement in whole or in part at any time upon ten (10) calendar days' written notice to the Consultant.

If this Agreement is terminated in its entirety by the City for its convenience, the City shall pay the Consultant for satisfactory services performed through the date of termination in accordance with payment provisions of Section IV.1.

V.3 **DISPUTES.** The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

V.4 **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.

V.5 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.

V.6 NONWAIVER. 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.

V.7 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.

V.8 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

V.9 VENUE. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Island County, Washington.

V.10 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.

V.11 AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT. The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth below.

DATED this _____ day of _____, 2024.

CITY OF OAK HARBOR [INSERT TRUE AND ACCURATE NAME OF COMPANY]

By _____
Ronnie Wright, Mayor

By _____
[PRINT OR TYPE NAME AND TITLE]

Approved as to form:

Hillary J. Evans, City Attorney

Exhibit A
Scope of Services