

## SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

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**ITEM NO:** C-7

**DATE:** August 28, 2008

**SUBJECT:** Cairncross and Hempelmann  
Amendment No. 1 Contract for Land Use Attorney Services

**CONTACT PERSON:** Deborah Knight, City Administrator *Deborah Knight*

**ISSUE:**

The issue before the City Council is to authorize the Mayor to sign Amendment No. 1 to the contract with Cairncross and Hempelmann for land use attorney services to assist the City with adopting a compliant comprehensive plan under the State Growth Management Act.

Amendment No. 1 will increase the maximum payment allowed under the contract from \$100,000 to \$150,875 to:

1. Review and analysis of draft responses to public and agency comments. Estimated to require up to 40 hours (\$11,000)
2. Attend team meetings with staff and consultants. Attend Planning Board and City Council workshops and public hearings. Estimated to require up to 45 hours (\$12,375)
3. Prepare and/or review Planning Board recommendations and City Council ordinances. Estimated to require up to 20 hours (\$5,500)
4. Representation at compliance hearings in front of the Central Puget Sound Growth Management Hearings Board. Estimated to require up to 60 hours (\$16,500)
  - Prepare and submit report on compliance and other briefing
  - Respond to requests for information
  - Respond to petitioners' arguments
  - Present oral argument
5. Render legal advice and opinions concerning legal matters that affect the City. Estimated to require up to 20 hours (\$5,500)
  - Review and comment on materials prepared by consultants for the comprehensive plan or other land use matters generally related to the comprehensive plan.
  - Respond to questions from staff regarding other land use matters as needed.

**STAFF RECOMMENDATION:**

Authorize the Mayor to sign Amendment No. 1 with Cairncross and Hempelmann for land use attorney services to assist the City with adopting a compliant comprehensive plan under the State Growth Management Act.

**SUMMARY:**

The City has been working since January 2008 to revise its 2004 Comprehensive Plan to be compliant with the Growth Management Act. Andrew Lane, the City's land use attorney has been the project lead ensuring each technical product delivered by the City's consulting team meets the requirements of the Growth Management Act.

Since January, Mr. Lane has spent over 370 hours assisting the City. Copies of Mr. Lane's invoices since January 2008 are available upon request.

<b>Month</b>	<b>Hours</b>
January	31
Feb	65
March	49.8
April	53.3
May	63.2
June	68.8
July	39
Total	370.1

The original scope of work and budget were developed with the best information and project understanding available at the time. The City is in the final stretch and there is still significant work to do:

- Tuesday, September 2, 2008 – Public Comment Period Closes. Consultants review comments and prepare draft responses. Land use attorney reviews and comments on draft responses.
- Monday, September 8, 2008 – Consultant team meeting to finalize draft responses to public comment. Draft necessary changes to Revised Comprehensive Plan.
- Tuesday, September 9, 2008 – Joint City Council/Planning Board Meeting and Public Hearing on the Comprehensive Plan, Implementing Development Regulations, 6-year Transportation Improvement Plan, and Water/Sewer Plan Amendments.
- Thursday, September 11, 2008 – City Council meeting. Could include First Reading of some implementing ordinances.
- Monday, September 15, 2008 – Issue Final Draft 2008 Revised Comprehensive Plan for public comment on September 25.
- Thursday, September 25, 2008 – City Council Public Hearing on the Final Comprehensive Plan, Implementing Development Regulations, 6-year

Transportation Improvement Plan, and Water/Sewer Plan Amendments. Final adoption of implementing ordinances.

Once the City Council has adopted the 2008 Revised Comprehensive Plan, the coordinated compliance schedule for *Fallgatter V*, *Fallgatter VIII*, and *Fallgatter IX* is set forth below:

- The Board establishes **September 30, 2008** as the deadline for the City of Sultan to take appropriate legislative action to comply with the GMA as interpreted in this Order.
- By no later than **October 10, 2008**, the City of Sultan shall file with the Board an original and four copies of the legislative enactments taken to comply with this Order, along with a statement of how the enactments comply with this Order (**Statement of Actions Taken to Comply - SATC**). By this same date, the City shall also file a "**Compliance Index**," listing the procedures (meetings, hearings, etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.
- By no later than **October 24, 2008**, the Petitioners may file with the Board an original and four copies of Response to the City's SATC.
- By no later than **October 31, 2008**, the City may file with the Board a Reply to Petitioner's Response.
- Pursuant to RCW 36.70A.330(1), the Compliance Hearing in this matter is scheduled for **November 6, 2008, at 10:00 a.m.** at the Board's offices. The compliance hearing shall be limited to consideration of the Legal Issues found to be in continuing noncompliance and invalidity in this Order.
- Board final decision no later than **December 6, 2008**.

#### **BACKGROUND:**

##### Land Use Attorney Selection Process

At its November 15, 2007 meeting, the City Council directed staff to issue a request for proposal for land use attorneys to assist the City in prepare a comprehensive plan compliant with the Growth Management Act.

The City received nine proposals and invited three first to interview: Bricklin Newman Bold, EKW and Cairncross. The City selected Cairncross and Hempelmann after evaluating each of the three firms interviewed against the selection criteria. Council approved retaining the services of Mr. Lane as the land use attorney to provide special legal counsel to the City during the upcoming compliance effort.

**FISCAL IMPACT:**

There are a lot of unknowns in GMA-related matters. City staff and Mr. Lane have provided a rational estimate but it is to some extent influenced by externalities over which the City has little control.

The original contract amount was \$100,000 although, the City budgeted \$150,000 for land use attorney services.

The total estimate to complete the compliance effort is \$50,875. This includes work in progress (services that have not, yet been billed) –in the neighborhood of \$3,500 - \$4,000.

In order to preserve the City's cash flow to support daily operations, the City negotiated a contract with Caircross to limit the City's monthly expenses to a maximum of \$5,000/month. The City will continue to pay \$5,000/month until the remaining balance is paid in full. There will not be an immediate impact to the City's budget as a result of the amendment rather the impact will be rolled forward into the 2009 budget.

A decision to hire special legal council comes with fiscal impacts. The City's municipal attorney, Kathy Hardy charges \$140/hour for municipal work. Mike Kenyon, a senior partner with land use experience charges \$235. The proposed fee for Mr. Lane is \$275/hour. Mr. Lane's \$275/hour is a reduction from his normal rate of \$325/hour.

**ALTERNATIVES:**

1. Authorize the Mayor to sign Amendment No. 1 with Cairncross and Hempelmann for land use attorney services to assist the City with adopting a compliant comprehensive plan under the State Growth Management Act.

This alternative implies the City Council is comfortable with the staff recommendation to retain the services of Mr. Lane and Cairncross for this work, and the Council is prepared to authorize the necessary funding.

2. Do not authorize the Mayor to sign Amendment No. 1 with Cairncross and Hempelmann for land use attorney services to assist the City with adopting a compliant comprehensive plan under the State Growth Management Act.

This alternative implies the City Council is not comfortable with the staff recommendation to retain the services of Mr. Lane, and/or the Council is not prepared to authorize the necessary funding.

**RECOMMENDED ACTION:**

I MOVE TO AUTHORIZE THE MAYOR TO SIGN AMENDMENT NO. 1 WITH CAIRNCROSS AND HEMPELMANN FOR LAND USE ATTORNEY SERVICES TO ASSIST THE CITY WITH ADOPTING A COMPLIANT COMPREHENSIVE PLAN UNDER THE STATE GROWTH MANAGEMENT ACT.

**ATTACHMENTS:**

- A – Amendment No. 1 Cairncross and Hempelmann
- B – Original Contract Scope of Work

COUNCIL ACTION:

DATE:

## Attachment A to Agenda Cover

### FIRST ADDENDUM BY AND BETWEEN THE CITY OF SULTAN AND CAIRNCROSS AND HEMPELMANN, INC.

**THIS FIRST ADDENDUM**, is made on this 1st day of August, by and between the City of Sultan (hereinafter referred to as “City”), a Washington Municipal corporation, and Cairncross and Hempelmann (hereinafter referred to as “Service Provider”) doing business at 524 Second Avenue, Suite 500, Seattle, WA 98104-2323.

**WHEREAS**, on February 1, 2008, the City and the Service Provider entered into that certain Agreement for Services (“Agreement”) for the provision of land use attorney services; and

**WHEREAS**, the City and Service Provider agree there are additional tasks to perform that exceed the original payment amount; **NOW THEREFORE**,

**IN CONSIDERATION OF** the mutual promises, terms and conditions set forth in the Agreement and contained herein, the Parties hereby agree as follows:

#### **Section 1. Amendment of Section 1 Description of Work of the Agreement.**

Section 1 of the Agreement is hereby revised to provide in its entirety as follows:

Service Provider shall perform the additional work as described in Attachment A.1, Scope of Work, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed permission of the City.

#### **Section 2. Amendment of Payment**

Section 2 A Payment of the Agreement is hereby revised to provide in its entirety as follows:

#### **2. Payment.**

- A. The City shall pay Service Provider at the hourly rate set forth in **Attachment A**, but not more than a total of one hundred and fifty thousand dollars (\$150,875) for the services described in this Agreement. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement.

**Section 2. Effect of Addendum.** This 1st Addendum is in addition to the Agreement. Except as otherwise provided herein, the provisions of this 1<sup>st</sup> Addendum modify, but do not

supersede the provisions of the Agreement. Except as otherwise provided herein, each provision of the Agreement shall continue in full force and effect as if this 1<sup>st</sup> Addendum did not exist. Except as otherwise provided herein, capitalized words and phrases shall have the meanings ascribed to them in the Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Addendum to be signed and executed this 1st day of August, 2008.

**CITY OF SULTAN:**

By: \_\_\_\_\_  
Mayor Carolyn Eslick

**SERVICE PROVIDER:**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Taxpayer I D Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

**ATTEST/AUTHENTICATED:**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Office of the City Attorney

**Attachment A.1 to Amendment No. 1  
Additional Scope of Work**

6. Review and analysis of and draft responses to public and agency comments. Estimated to require up to 40 hours (\$11,000)
7. Attend team meetings with staff and consultants. Attend Planning Board and City Council workshops and public hearings. Estimated to require up to 45 hours (\$12,375)
8. Prepare and/or review Planning Board recommendations and City Council ordinances. Estimated to require up to 20 hours (\$5,500)
9. Representation at compliance hearings in front of the Central Puget Sound Growth Management Hearings Board. Estimated to require up to 60 hours (\$16,500)
  - Prepare and submit report on compliance and other briefing
  - Respond to requests for information
  - Respond to petitioners' arguments
  - Present oral argument
10. Render legal advice and opinions concerning legal matters that affect the City. Estimated to require up to 20 hours (\$5,500)
  - Review and comment on materials prepared by consultants for the comprehensive plan or other land use matters generally related to the comprehensive plan
  - Respond to questions from staff regarding other land use matters as needed.

**Hourly Rates**

Hourly rates for attorneys who may assist:

Andrew S. Lane: \$275 per hour (discounted from \$300 per hour)  
Primary Attorney

Sean K. Howe, Attorney: \$220 per hour

## Attachment B to Agenda Cover

Cairncross and Hempelmann  
Contract Effective February 1, 2008  
Scope of Work

1. Representation at compliance hearings in front of the Central Puget Sound Growth Management Hearings Board. Estimated to require up to 60 hours (\$16,500)
  - Prepare and submit briefs
  - Respond to requests for information
  - Respond to petitioner
2. Attend at Council, boards, commission, and committee meetings as required. Estimated to require up to 165 hours (\$45,375)
  - City Council and Planning Board meetings – two to three meetings per month February 2008 through September 2008
  - Open Houses – one per month March 2008 through August 2008
3. Attend meetings with staff as needed. Estimated to require up to 60 hours (\$16,500)
  - Coordination team meetings – one per month February 2008 through December 2008
  - Consultation meetings with the Mayor and City Administrator
4. Render legal advice and opinions concerning legal matters that affect the city. Estimated to require up to 65 hours (\$17,875)
  - Prepare and/or review land use ordinances and resolutions
  - Review and comment on materials prepared by consultants for the comprehensive plan or other land use matters generally related to the comprehensive plan
  - Review development regulations and make recommendations regarding proposed code amendments