1. CALL TO ORDER AND ROLL CALL

Mayor Tim Matthes called the meeting to order at 7:00 p.m. Pro-Tem Cindy Lucarelli and Councilmembers Bek Ashby, Jeff Cartwright, Fred Chang, Jerry Childs, John Clauison, and Rob Putaansuu were present and constituted a quorum. City Clerk Rinearson, Public Works Director Dorsey, City Treasurer Martin, Assistant City Engineer Archer-Parsons, Development Director Bond, Deputy City Clerk Fernandez, and City Attorney Jacoby were also present.

1. Pledge of Allegiance

Mayor Matthes led the audience and Council in the Pledge of Allegiance.

MAYOR’S OPENING COMMENTS

Mayor Matthes said the Ad Hoc Committee assigned to discuss the West Sound Utility District Interlocal Agreement met last Thursday, April 17, 2014, at 6:30 p.m. The Committee met and a fourth Councilmember attended unexpectedly.

The City recognizes that proper notice was not given when a quorum of four Councilmembers met and discussed City business, resulting in a violation of the Open Public Meetings Act (OPMA). The City will take measures to assure this does not happen again. Mayor Matthes has sought resources to schedule a mandatory Elected Officials and supervisory staff training. He will advise the Council and the public later as to when that date will be.

An audio recording is available to any member of the public at no charge. Please see the City Clerk after the meeting to request a copy.

During Business Item 7E, Mayor Matthes said he will open the floor to the Committee members to fully disclose and repeat what the committee discussed and ratify the direction given at that meeting. Upon completion of the discussion, he will open the floor to the public and allow them to speak to the matter of the WSUD ILA agreement.

2. CITIZENS COMMENT

Elissa Whittleton addressed last week’s Work Study meeting when Councilmember Clauison voiced his concern of Councilmember Ashby attending committee meetings that she was not participating in but observing. He felt the City may be in violation of rules governing meetings, although she had obtained previous permission from the City Attorney. The City Attorney indicated that after further investigation, Mr. Clauison was in fact correct
that if a condition was to exist when more than three Councilmembers gather at a meeting, a special meeting had to be noticed before the meeting took place. Councilmember Ashby asked if the committee meetings could be moved from the restaurants to the Council Chambers where they could be recorded on video, that way she could observe the video without violating the rule. She also noted that the public has been asking for this for over a year, and the Utility Committee and Finance Committees continue to resist, even though these are very important subjects. Mr. Clauson indicated that the 7:30 a.m. meetings were early, and it was most efficient to combine breakfast with the meeting. The offer was made to provide an audio recording of committee meetings from the restaurants and then put it on the City’s website.

Yesterday Mrs. Whittleton heard while listening to the Sewer Advisory Ad-Hoc Committee meeting audio recording that the concerns brought up on Tuesday, April 15, regarding councilmember attendance were completely disregarded on Thursday, April 17, although Mr. Clauson presided over the meeting and the City Attorney was present, and they had full and recent knowledge that this was wrong. There was no effort observed to reduce the number of Councilmembers to three. No public notification was made prior to this special meeting. The meeting proceeded with four Councilmembers participating. This brings up the issue of transparency. Mrs. Whittleton objects to the holding of any committee meetings outside Council Chambers. It is the public’s right to see clear information regarding the government of their City. The City is privileged to have a recently upgraded audio system within the Council Chambers, with the technical abilities to make these meetings visible and audible to all with computer access or to comfortably seat those who wish to attend in person. Her idea of attending a committee meeting does not include having to struggle to find a seat where she can hear, or feel obligated to buy breakfast so she can sit in on meetings that should be available in a business-like setting. This is ridiculous and demeaning. She understands most everyone needs to have breakfast; she suggested this task be addressed before the work of City business. What has been offered is simply unacceptable. Our City business is too important. What takes place at these meetings affects us all. We, the citizens of this community, have the right to know what is transpiring and it should be offered utilizing the resources we already have in place. She would think it would be in the Council’s best interest to offer transparency in this way. The citizens need transparency, not only to understand the workings of our City, but also to learn who is serving the needs of our City and, perhaps, who is not, and act accordingly.

**Mr. Randy Jones** spoke regarding the properties that are along the path of the proposed Bay Street Pedestrian Pathway. He noted that there are areas along the path that will require overwater structures to be built, because there is no room along the road to accommodate the path. In order to get an overwater structure approved, the Army Corps of Engineers would have to approve the project, which would require approval from the tribes and the game department. He has been told his home needs to be removed, because they do not want any driveways going across the path. If that were the case, 12 homes will have to be factored into this. He believes the City wants his property to use as a mitigation piece for the tribes to get approval to build the overwater structure on the path. He would like to see
where the City has the approval to build out over the water without taking his property. Unless the City takes their homes as mitigation, it will not get approval. The property owners are not going to stand for it.

**Mr. John Strassinger** wanted to start the conversation with the City Councilmembers regarding being able to put tables on the sidewalk. He understands that it will be placed on the Public Properties Committee agenda on May 12. Ladies Night Out and the Art Walk and Farmers Market are coming up before that meeting date. He said ADA requirements state that 36 inches are needed, and 32 inches can be allowed for a 2-foot stretch. He can accommodate these requirements with his tables, but needs the Council to approve this.

**Mr. Dave Colombini**, Assistant Superintendent of Educational Services of South Kitsap School District, announced the Back to School Celebration on August 16, 2014. He expressed the importance of this free event that brings the school and community together. He invited the public and the Council to attend. The District is looking for financial funds, and he asked the Councilmembers to consider a financial donation to the event. He hopes he is invited back to talk about a potential partnership.

**Mr. Vance Vaught** congratulated the Mayor for all the work he has been doing for the City. The City of Port Orchard was just recently ranked No. 6 of the best small cities to live in the State of Washington.

**Mr. Rob Conkle** asked the Council to consider a 30 to 60-day extension to his parking permit to park his travel trailer in the right-of-way in front of his house. He was able to get two of his three neighbors to sign off on allowing the extension; the other neighbor is a long-haul trucker and is out of town. This additional time will allow him to get funding in place to get the septic tank care of.

3. **APPROVAL OF AGENDA**

Councilmember Ashby MOVED and Councilmember Clauson seconded the motion to add Business Item 7G, discussion on Mr. Conkle's extension of his RV Parking Permit. Upon vote, the motion passed unanimously.

Councilmember Ashby MOVED and Councilmember Cartwright seconded the motion approving the agenda, as amended. Upon vote, the motion passed unanimously.

4. **APPROVAL OF CONSENT AGENDA**
   A. Approval of Checks Nos. 61676 through 61743 totaling $137,426.81
   B. Approval of April 8, 2014, Council Meeting Minutes
   C. Adoption of Resolution No. 007-14, Authorizing Submittal of a Grant Application to the Recreation Conservation Office for McCormick Park Phase 2 Improvements
D. Adoption of Resolution No. 008-14, Authorizing Submittal of a Grant Application to the Recreation Conservation Office for the Bay Street Pedestrian Pathway Acquisition in the Vicinity of the Marlee Apartments and Comfort Inn

E. Adoption of Resolution No. 009-14, Declaring Certain Personal Property as Surplus and Authorizing the Disposition of a Vehicle

Councilmember Putaansuu MOVED and Councilmember Childs seconded the motion approving the Consent Agenda. Upon vote, the motion passed unanimously.

5. PRESENTATION

A. Proclamation: Puget Sound Starts Here Month

Mayor Matthes read the Puget Sound Starts Here Month proclamation into the record and presented the proclamation to Andrea Archer-Parsons, City Assistant Engineer, who thanked the Council for their continued support.

B. Proclamation: Building Safety Month

Mayor Matthes read the Building Safety Month proclamation into the record and presented the proclamation to Susan May, Kitsap County Department of Emergency Management Public Information Officer, who thanked the Council for their continued support.

6. PUBLIC HEARING

A. Recreational Marijuana Development Regulations

Development Director Bond presented the staff report, noting the City’s Interim Recreational Marijuana regulations are set to expire in May of 2014. At the February 18, 2014, Work Study meeting, Council discussed its options for bringing permanent regulations forward for a public hearing and consideration. After weighing the alternatives, Council requested that staff bring forward an ordinance, which would adopt the interim regulations on a permanent basis for a public hearing.

The Planning Commission at its January meeting conducted a public hearing on a proposal to adopt the interim recreational marijuana regulations on a permanent basis and approved Resolution No. 001-14, recommending that action to the City Council. The proposal was submitted to the Department of Commerce and their 60-day comment expired on February 20, 2014.

Mayor Matthes opened the Public Hearing at 7:34 p.m.
Mr. Nick Whittleton referred to language in the proposed Ordinance that talked about what could be emitted from a facility, the first word was smoke. He does not think smoke should appear in the verbiage that deals with this.

Ms. Gerry Harmon asked for clarification of the streets that are next to the small red corner on the map. Councilmember Putaansuu explained that was the area around Saar’s Marketplace. The larger red area is near Fred Meyer on Bethel.

There being no further testimony, Mayor Matthes closed the Public Hearing at 7:37 p.m.

B. School Bus Bases in Commercial Zones

Development Director Bond presented the staff reporting, noting the South Kitsap School District has requested a minor change to the City’s zoning table, POMC 16.30.070 Regional Land Uses, to allow a “School Bus Base” as a conditional use in the commercial zone, limited to bus storage. Transit bus bases are already allowed as a conditional use in the commercial zone if the use is limited to bus storage. This issue was discussed at the March Work Study meeting, at which time the Council requested that staff draft an ordinance and bring it forward for a public hearing and consideration.

Mayor Matthes opened the Public Hearing, and there being no testimony, closed the Public Hearing at 7:38 p.m.

C. Development Agreement with South Kitsap School Regarding Stormwater Vesting

Public Works Director Dorsey presented the staff report, noting the City staff and South Kitsap School District Staff have been working on the terms and conditions of a Development Agreement regarding stormwater vesting in association with the Feigley Regional Stormwater Detention Pond. A Development Agreement is a contract between a local jurisdiction and a property owner and is expressly authorized by state law, Chapter 36.70B RCW. The School District originally entered into a Development Agreement with Kitsap County. When the City annexed the McCormick Woods area, the City became a party to the earlier agreement. The purpose of the Agreement is to clarify the City procedures by which the School District may seek to extend the period that the School District is vested to the stormwater standards that will govern future development of the School District’s property within the Bailey Creek sub-basin.

RCW 36.70B.200 provides that a City shall only approve a development agreement following a public hearing.

Mayor Matthes opened the Public Hearing, and there being no testimony, closed the Public Hearing at 7:39 p.m.
7. BUSINESS ITEMS

A. Discussion of Mr. Conkle’s Extension of his RV Parking Permit

In response to Councilmember Ashby, Public Works Director Dorsey said he sees no issues of extending the parking permit, since Mr. Conkle is pursuing remediation to his current situation. He understands that it will take some time to get the work done. The neighbors are not complaining.

In response to Councilmember Cartwright, Mr. Conkle said he has contacted Hemley’s for another bid and submitted it to Mr. Dorsey. He does not know how long he will need to get the issue remedied. Public Works Director thought it would take 60 days.

In response to Councilmember Cartwright, Mr. Conkle said he and his wife are weighing their options on whether to stay or sell the property. He would request a 60-day extension, if possible, to allow him time to get funding for the project.

Public Works Director Dorsey said the bigger issue is coming up with the funding and getting that in place to pay the contractor. It would be prudent to give 60 days.

City Attorney Jacoby said that with respect to parking in City right-of-way, the Code says the City Council makes the decision. Then Public Works Director can send out a letter documenting the Council’s decision.

Councilmember Clauson MOVED and Councilmember Lucarelli seconded the motion to approve a 60-day extension for parking in the right of way of this recreational vehicle. Upon vote, the motion passed unanimously.

B. Adoption of Ordinance No. 003-14, Amending the City’s Development Regulations Concerning Recreational Marijuana Uses

Development Director Bond presented the staff report, noting the City’s interim recreational marijuana regulations are set to expire in May of 2014. At the February 18, 2014, Work Study meeting, Council discussed its options for bringing permanent regulations forward for a public hearing and consideration. After weighing the alternatives, Council requested that staff bring forward an ordinance, which would adopt the interim regulations on a permanent basis for a public hearing.

At its January meeting, the Planning Commission conducted a public hearing on a proposal to adopt the interim recreational marijuana regulations on a permanent basis and approved Resolution No. 001-14, recommending that action to the City Council. The proposal was submitted to the Department of Commerce and their 60-day comment expired on February 20, 2014.
In response to Mr. Whittleton's public comment, City Attorney Jacoby said the Section 16.39.080 does not refer to smoking marijuana. It is refers to emissions related to the processing of marijuana. People are not allowed to smoke marijuana in public places.

In response to Councilmember Cartwright, Councilmember Chang said he assumed the motion was for Alternate No. 2, which would adopt the interim regulations on a permanent basis.

In response to Councilmember Chang, City Attorney Jacoby said Section 16.39.080 does speak to samples of marijuana, pipes, or other things to smoke marijuana; they cannot be displayed in the window of a store.

**Councilmember Chang MOVED and Councilmember Putaansuu seconded the motion to approve Ordinance No. 003-14, amending the City's Development Regulations concerning recreational marijuana uses described in Alternate No. 2 of the staff report. Upon vote, the motion passed with six affirmative votes and one dissenting vote. Councilmember Clauson cast the dissenting vote.**

**C. Adoption of Ordinance No 004-14, Amending Port Orchard Municipal Code to allow “School Bus Bases” as a Conditional Use in the Commercial Zone**

Development Director Bond presented the staff report, noting the South Kitsap School District has requested a minor change to the City's zoning table, POMC 16.30.070 Regional Land Uses, to allow a “School Bus Base” as a conditional use in the commercial zone, limited to bus storage. Transit bus bases are already allowed as a conditional use in the commercial zone if the use is limited to bus storage. This issue was discussed at the March Work Study meeting at which time the Council requested that staff draft an ordinance and bring it forward for a public hearing and consideration.

In response to Councilmember Childs, Development Director Bond said there is only one school district that will be using this to create one facility. It is their intent to move to a permanent solution at another location, and this is just a temporary fix. He supposed the Council could ask the School Board to move more quickly if it does not work out. If the conditional use permit (CUP) is approved, they are permitted, unless there are conditions that say it expires after a certain period.

Councilmember Clauson said if you approve a conditional use, they would invest money in the property because they will want to stay there.

Councilmember Putaansuu said the current situation at hand is they are in a location that is not desirable to the neighborhood, and they are looking for locations that are more
desirable. If the new location presents a problem, he would hope the School District would do what they are doing right now.

Development Director Bond said any CUP is going to have a public hearing and a SEPA review. There will be an opportunity for public comment.

Councilmember Chang said currently if the school wanted to rent a parking lot that were not being used, this would permit them to do that. It would be an agreement between that property owner and School District with whatever terms they have.

Councilmember Ashby will support this, but the City has been working on the employment population that we may have to adopt by growth management. If you look at our maps, we have limited commercial property. She is hoping we do not get in a situation where a large space of commercial property is being used for bases and not for job creation.

In response to Councilmember Ashby, City Attorney Jacoby said he has never seen a CUP have a sunset clause.

Councilmember Chang is concerned about Mile Hill becoming a parking lot.

**Councilmember Lucarelli MOVED and Councilmember Clauson seconded the motion to approve Ordinance No. 004-14, amending Port Orchard Municipal Code to allow school bus bases as a conditional use in the commercial zone. Upon vote, the motion passed unanimously.**

**D. Adoption of Resolution No 010-14, Approving Contract No. 045-14, Authorizing the Mayor to Execute a Development Agreement with SKSD Regarding Stormwater Vesting**

Public Works Director Dorsey presented the staff report, noting the City of Port Orchard staff and South Kitsap School District staff has been working together on the terms and conditions of a Development Agreement regarding stormwater vesting in association with the Feigley Regional Stormwater Detention Pond. A Development Agreement is a contract between a local jurisdiction and a property owner and is expressly authorized by state law, Chapter 36.70B RCW. The School District originally entered into a Development Agreement with Kitsap County. When the City annexed the McCormick Woods area, the City became a party to the earlier agreement. The purpose of the Agreement is to clarify the City procedures by which the School District may seek to extend the period that the School District is vested to the stormwater standards that will govern future development of the School District’s property within the Bailey Creek sub-basin. A Noticed Public Hearing was held earlier this evening on this matter.

In response to Councilmember Chang, Public Works Director said the distinction is that this pond is already built. When you look at stormwater vesting, many times people are
looking to maintain vesting on a design facility that is not actually constructed. This facility is constructed and so to vest under certain expectation of development that enters into this pond is a reasonable approach and would be supported by the Department of Ecology.

Councilmember Putaansuu MOVED and Councilmember Lucarelli seconded the motion to approve Resolution No. 010-14, approving Contract No. 045-14, authorizing the Mayor to execute a Development Agreement regarding stormwater vesting between the City and South Kitsap School District No. 402. Upon vote, the motion passed unanimously.

E. Approval of Contract No. 032-14, Authorizing the Mayor to Execute an Agreement with Sound Excavation, Inc. for the McCormick Village Park – Phase 1 Improvements

Public Works Director Dorsey presented the staff report, noting On March 21, 2014, the City’s Public Works Department issued an Advertisement for Bids using the Builder’s Exchange, Blue-Line, the Port Orchard Independent, and the City Webpage, for the 2014 McCormick Village Park – Phase 1 Improvements. From the 24 project plan holders, the City received seven qualified bids by the April 11, 2014, deadline (applicable tax included) listed in base bid rank order as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Base Bid (Sch. A, B &amp; C)</th>
<th>Bid Alt (Sch. BA)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sound Excavation, Inc.</td>
<td>$227,044.95</td>
<td>$103,319.35</td>
<td>$330,364.30</td>
</tr>
<tr>
<td>Nordland Const. NW</td>
<td>$286,656.00</td>
<td>$84,025.00</td>
<td>$370,681.00</td>
</tr>
<tr>
<td>RV Associates, Inc.</td>
<td>$294,306.70</td>
<td>$98,874.61</td>
<td>$393,181.31</td>
</tr>
<tr>
<td>Seton Construction, Inc.</td>
<td>$312,689.03</td>
<td>$112,567.76</td>
<td>$425,256.79</td>
</tr>
<tr>
<td>Henderson Partners, LLC</td>
<td>$315,824.59</td>
<td>$101,547.21</td>
<td>$417,371.80</td>
</tr>
<tr>
<td>Pacific Coast General, LLC</td>
<td>$340,436.77</td>
<td>$105,737.93</td>
<td>$446,174.70</td>
</tr>
<tr>
<td>Nova Contracting, Inc.</td>
<td>$440,609.65</td>
<td>$109,086.90</td>
<td>$549,696.55</td>
</tr>
</tbody>
</table>

The Base Bid includes Schedule A (TESC), Schedule B (Site Improvements) and Schedule C (Utilities). The Bid Alternates include the Restroom, Light Fixtures, Parking Wheel Stops, and 2-inch HMA at the shared access and parking lot. Upon review, the City’s Public Works Department staff has determined that the Sound Excavation, Inc. Base Bid of $227,044.95 and the Bid Alternate of $103,319.35 for a total bid of $330,364.30 was the lowest qualified bid. The Public Works Department has confirmed 1) that the bidding requirement for Public Work was followed and 2) that the project proposal is funded within the McCormick Woods Park Restricted Fund Balance of the approved 2014 Budget.

Councilmember Putaansuu said this is a good bid with a local contractor. The City needs to do the park right. A lot of work has been done in downtown; the money is there in the park reserves. It is time to do some work up there.
Councilmember Cartwright said he lives in this neighborhood, and said this park was a big selling point for many homebuyers. They are anxious to see it built.

In response to Councilmember Childs, Public Works Director Dorsey said this work will still be done, and it will come out of the same fund. It is better to do the full thing now and make it more pleasing to the user.

Councilmember Lucarelli said she is excited about this project. She had a concern about bathroom safety, but now that concern has been addressed.

Councilmember Cartwright MOVED and Councilmember Putaansuu seconded the motion to authorize the Mayor to execute Contract No. 032-14 with Sound Excavation, Inc. in an amount not to exceed $330,364.30 for the Base Bid and Bid Alternatives of the 2014 McCormick Village Park – Phase 1 Improvements. Upon vote, the motion passed unanimously.

E. Discussion: Ad-Hoc Committee Update on Recommendation Regarding Interlocal Cooperative Agreement with West Sound Utility District for Facility Management and Operation Services of the Joint Wastewater Treatment Facility

Mayor Matthes opened the floor to the Committee members to fully disclose and repeat what the committee discussed and ratify the direction given at that meeting. Upon completion of the discussion, he will open the floor to the public and allow them to speak to the matter of the WSUD ILA agreement.

Councilmember Childs said at the Council meeting, where the Ad-Hoc Committee meeting was discussed, all four councilmembers indicated an interest in attending, and it was important that all four committee members attend. He thought the meeting was noticed based on emails received. He does not understand all of the concern when we have noticed the meeting and said we were going to the meeting.

In response to Councilmember Childs, City Attorney Jacoby said the meeting was not noticed properly. The Mayor's conversation with AWC, which is consistent with advice given by MRSC, is to start this discussion right now with a summary of what was discussed on April 17, make sure at some point the public gets a chance to speak, and then proceed with the agenda item.

Councilmember Clauson said he probably contributed to the confusion in that there were exchanging of emails between the Clerk and the Attorney, and whomever else was on that exchange, they were inquiring whether or not there were going to be four members there, and Councilmember Clauson was under the impression at the Work Study session that Councilmember Childs was not attending. So he responded with an email that we would not have a quorum, and there would only be three Councilmembers attending. In fact, when
Councilmember Childs walked into the committee meeting, Councilmember Clauson was surprised to see him. The confusion continued to mount because Councilmember Clauson told Councilmember Childs that you could not be there, and the Attorney had pointed out that the meeting had been properly noticed so that it was acceptable for the four of them to be there. There were many misunderstandings that resulted in this problem that we have.

As far as what took place at the committee meeting, Councilmember Clauson read the draft minutes prepared by the Attorney into the record:

**Recommendation to Council re WSUD ILA:** The Committee met for the purpose of discussing a recommendation to the full council concerning the WSUD ILA. As a preliminary matter, it was noted that 4 councilmembers were present. The city attorney commented he believed the city clerk had properly noticed the meeting as a special meeting of the council and therefore the meeting could proceed. [Note: this statement was in error; the meeting was noticed only as a committee meeting due to a misunderstanding between the city attorney and the city clerk regarding the likely attendance of Councilmember Childs.] The Committee discussed the letter opinion from Foster Pepper, the comments made to the Committee by Larry Curles and Bob Geiger, and the substance of certain historical documents relating to the formation of ULID #1. Although all of the Committee members were grateful for the additional information and perspective, not all of the Committee members agreed that the additional information was dispositive of the question of ownership of the Marina Pump Station and force main. Several options for moving forward were discussed including: the role of insurance; asking WSUD to sign an ILA that is silent as to ownership of assets; holding additional meetings with WSUD to try and negotiate a compromise resolution; and mediation. After discussing the various options, the Committee agreed to recommend that the Council propose to the WSUD board of commissioners that each governing body appoint one representative from its ranks to meet and confer for the purpose of taking a fresh look at options to resolve the ownership issue. The Committee also agreed to recommend councilmember Childs as the Council's representative in such meeting with WSUD. The meeting adjourned at approximately 7:40pm.

Mayor Matthes commented that the audio recording for the meeting is now available on the City's website.

Councilmember Chang explained it was through no fault of the Councilmembers about the noticing of the meeting. The Council can talk later about the details. The recommendation is a compromise recommendation that the committee made. It is not the most exciting recommendation, but it was the one most people seemed comfortable with. It was seemed as a step forward, that if our emissaries did not come back with green flags, the next was considered mediation.

Councilmember Childs said the recommendation is just that, what the Council decides here tonight is what we are actually going to do.
Councilmember Putaansuu is concerned. He clarified that what we are still trying to negotiate is the ownership of the marina pump station. WSUD has made it very clear how they feel on that issue, and he feels we have documentation that clearly shows that it belongs to the City. He does not feel there is anything to negotiate or mediate. He still has the same opinion he had before, and probably even stronger based on the documentation he received.

Councilmember Clauson said if the entire council is not comfortable with the agreement, what is it going to hurt to sit down with the District and see if they can work out something that would make a larger portion of the Council comfortable. As he said at the last meeting, he is pretty much in Councilmember Putaansuu’s camp that the documentation is pretty clear. If the Council is not ready to accept it the way it is, then he is all ready for taking the next step.

Mayor Matthes agrees with Councilmember Putaansuu. The next step is futile, because he read West Sound’s letters, and it did not seem like to him that they were open to negotiation. He is very concerned that if we keep going back to the well and demanding we want this, this will not be a cooperative agreement any longer. He even sensed a little bit of frustration on the District’s part the last time the City met them, before their letter was received. The letter was pretty strong. He agrees with Mr. Putaansuu. The City has enough evidence to move forward and ratify this agreement. Ultimately, we are going to spend more time and more money and end up coming back here to this very same agreement to ratify it.

Councilmember Ashby asked Mr. Martin and Mr. Dorsey to refresh her memory of their feelings on the agreement that was presented to the Council in February. She knows Mr. Martin worked under the direction of Mr. Putaansuu to put this together. And she does not believe in February when they reviewed the documents that they had asked Mr. Dorsey his opinion about working with West Sound and whether he thought it was a good agreement.

Public Works Director Dorsey said that based on the information that has been uncovered throughout this process, as well as his operations at the City in the last six years in preparing grants and dealing with the pump station, there has never been any question in his mind that the City owns and operates the Marina Pump Station. Even when working with capital assets, the facility is booked as a capital asset with the City. It says nothing other than that. That has always been his position, and he made his position clear at both the Utility Committee and Sewer Advisory Committee. The Foster Pepper letter simply clarifies that even further. To him the most clarifying of all was when the West Sound General Manager came and talked about the legal nexus that does not exist. It would mean that Port Orchard ratepayers would somehow have to be obligated to pay to fix something that belonged to West Sound, just as a West Sound ratepayers would somehow have to contribute to our infrastructure when the infrastructures are completely separate until they hit the head works of the plant, which is then the shared facility. Everything that he has seen from the beginning has always led to the same conclusion.
City Treasurer Martin said he operated under the auspices of the Utility Committee Chairman, Councilman Putaansuu, and as he said before, the agreement fosters cooperation between the two parties, addresses governance issues, insurance, the assets, and liabilities identified during talks between the parties. Working under Chairman Putaansuu's direction, he sought an agreement that benefited City utility ratepayers, was cost effective, and provided a review of the terms and conditions. After the first five years, and each subsequent five-year period, they can determine if any amendments or modifications are needed. Secondly, he has always kept an open mind, listened to all the Councilmembers and their comments, and has gone back and diligently reviewed their comments to make double sure that the agreement as it was being prepared and written did follow through and meet their concerns. To that level, he believes the last issue was the ownership of the Marina Pump Station. He did give it the benefit of the doubt, even though he may have read it to believe, as Mr. Dorsey did, that it was an asset of the City. He took it further and questioned whether that was the case, and the Foster Pepper letter provides the final answer in its conclusion that we were seeking. He would recommend that the Council pass the agreement and enter into terms of the agreement as it has been presented.

Councilmember Chang said if the City ratifies the agreement as presented, there is a fear that a document will surface in the future that would prove the marina pump station is a joint facility. Would we have any recourse to remedy that situation if a document were found after the agreement was ratified?

City Treasurer Martin said in the Foster Pepper letter they go to pains to explain the City is the ULID sponsor, would have certified that in fact the ULID money was used for the benefit of the District and the benefit of the City. What bought this plant was not City money, it was ULID money. That clearly points out that is where the ownership lies with the ULID ratepayers.

City Attorney Jacoby said if a smoking gun document were found after the agreement is signed, there is a doctrine in contract law that states if the foundation of the contract is based on mutual mistake, then the contract can be rescinded. That means you would start over and address the ownership issue. It seems unlikely, but there would be a legal path forward.

Councilmember Chang kept asking in the past what the penalties would be if the City did not ratify an agreement. He was thinking more in terms of if you do not pay your credit card bill, you would assess late fees. This is not the same as that. He was actually presented with an analogy that was worth thinking about: Operating without an agreement could be considered like driving without a driver's license. You are safe as long as nothing goes wrong. He knows no analogy is perfect, but if you do think about the analogy, he would have to say that driving without a driver's license is not responsible. You may be safe, but it is not the right thing to do. He would be comfortable with ratifying the agreement.
Councilmember Chang MOVED and Councilmember Ashby seconded the motion to authorize the Mayor to execute Contract No. 012-14 with West Sound Utility District for wastewater treatment facilities management and operations.

Councilmember Cartwright said he had previously supported the contract. He waffled a bit on that position when the finding of fact document was discovered. However, the Foster Pepper letter sufficiently addressed all of that. His concern now would be to support Mr. Childs and his efforts if there could be some more discussion that would lead to some sort of a neutral agreement on the ownership, because he works with this Council more than he works with the Plant and the West Sound Utility District. But, since there is a motion, and a second, and he is going to be asked to vote, he will be voting for the ratification of the contract.

City Attorney Jacoby clarified that the intent of the motion was to approve the ILA with West Sound in the form signed by West Sound on February 12, 2014. Councilmember Chang confirmed that was the intent of the motion.

At 8:33 p.m., Mayor Matthes opened the floor to the public for their comments.

Ms. Elissa Whittleton said from what she has observed, she does not see any way that the City does not own that pump station. From a citizen’s point of view, it looks like it belongs to the City.

Councilmember Childs couldn’t disagree more about what the Council is going to do and to what has been said. He won’t put the citizens on the hook for money when he thinks there is enough ambiguity in the original agreement to make him have some doubts. And if he has some doubts, then he has to kind of use common sense. When he uses common sense he cannot even imagine why originally we would agree to let West Sound help pay for our pump station, a very expensive process – he thinks it was a couple of million dollars when we did it then—and then now say but no big deal, we’ll take control of any kind of costs for that pump station and let your ratepayers out and put our ratepayers on the hook. He cannot imagine that and in good conscience won’t do that. His feelings about the ambiguities are the things like the ULID that describes the Joint Facilities and it lists the pump station, where the Superior Court ruling described the Joint Facilities and lists the pump station. It doesn’t make sense to him that we could build something together and then at some point own it without there being a deed to transfer the ownership that West Sound had on that facility. He realizes the City is starting to maintain it. But none of this makes sense to him. There is enough doubt in his mind and his job is to represent the citizens and look after their best interests. He won’t vote for this.

Councilmember Clauson is going to vote against the motion only because, as he said earlier, it doesn’t hurt to sit down and discuss the issue with the partners. He understands that the letter they have given the City has given a hard line, but you run into that whenever you
negotiate something. Somebody always wants to try to take their position. He does not agree with Mr. Chang’s analogy of having a driver’s license. He feels Mr. Chang is suggesting the City is doing something illegal by not having an agreement and he does not see where the legality of it comes into play. We have a treatment plant that is operating just fine. We are contributing as we have in the past to the cost of the operation. Because he doesn’t think that all the members on the Council are comfortable with it, he is going to vote against it.

Councilmember Lucarelli said she is not comfortable with it and she is going to vote against it.

Councilmember Childs said he also had a problem with the Foster Pepper letter. He never saw what was said to Foster Pepper when asking them for that response. He knows if he went to a lawyer and said he feels a certain way and would like some clarification, he has a feeling it would come back telling him what he feels. Because he hasn’t seen any written thing from the Mayor as to what was said to those people, how can he give any credence to that. They passed a ruling on “I-don’t-know-what”. He didn’t see any memo, didn’t see any email, he didn’t see anything to tell him what was asked. Even though in the letter they set the parameters of what they are responding on, he still doesn’t know what was said to them.

Upon vote, the motion passed with four affirmative votes and three dissenting votes. Councilmembers Childs, Clauson, and Lucarelli cast the dissenting votes.

F. Discussion: Potential Partnership on Downtown Hanging Baskets

Public Works Director Dorsey gave a report from the last Public Properties Committee meeting where the Port Orchard Bay Street Association requested assistance in fertilizing the hanging baskets on the marquee. They discussed the rate it would cost for POBSA to contract out for fertilizing the baskets versus the cost of having Public Works staff do the work. POBSA received a bid for $2,000 for 18 weeks of fertilizing.

Ms. Kathleen Wilson said POBSA has contracted with Foxglove Nurseries for hanging baskets. They have learned that to have the very full, beautiful hanging baskets, that they need to use a water fertilizer system. Currently the baskets are being watered by a drip irrigation system, so they would need to be hand-watered with the fertilizer mixture. The baskets are ready for delivery for mid- to late-May. It would cost $2,000 to buy the fertilizer and have them watered.

Councilmember Clauson MOVED and Councilmember Putaansuu seconded that the City pay the $2000 fee for the hanging baskets in the downtown area.

In response to City Treasurer Martin, Councilmember Cartwright said the City would make a $2,000 contribution to POBSA.
Councilmember Clauson wants to be clear that POBSA will be responsible for installing the baskets and making sure they are taken care of.

In response to Councilmember Lucarelli, Ms. Wilson said POBSA could pay for the fertilizer, but she is unsure what the cost of that was separately. POBSA is paying $1,036 for the baskets separately.

Councilmember Putaansuu hopes that this is included in POBSA's budget for next year, and that this does not set a precedence that the City will fund this year after year.

Councilmember Childs questioned what POBSA is doing with their lodging tax allocation. Ms. Wilson did not have the contract in front of her to go into the details of the lodging tax budget; however, the baskets are being paid for with those funds, as is the advertising of POBSA events.

City Attorney Jacoby requested that the Council table this discussion and continue it at the next Council meeting in order to allow the City Treasurer and the City Attorney time to figure out the appropriate funds that could be used in this way. He wants to make sure it is not a gift of public funds.

Councilmember Clauson said this is for flowers that are going in the City's right-of-way. He feels it is no different from the plants that are bought to go around the flagpole. These flowers are not going into their individual stores. It is a beautification of our right-of-way. The City has the downtown merchants willing to contribute and help the City beautify our portion of the downtown.

Public Works Director Dorsey said the difference is if we were going to do the fertilizing, and went out to bid and had prevailing wage, which would be okay. The issue is we are going to be contributing money to a private entity.

Councilmember Clauson disagreed. He used the Etta Turner Park or the Rotary Round-a-Bout for an example where other organizations came in, contributed, and helped us beautify our right-of-way, and we contribute towards the maintenance of that right-of-way with agreements.

City Attorney Jacoby said the activity that the City would be underwriting is the fertilizing, which is "work."

**Councilmember Clauson MOVED and Councilmember Putaansuu seconded the motion to continue the discussion to the May 13, 2014 Council meeting. Upon vote, the motion passed unanimously.**
8. COMMITTEE REPORTS

Councilmember Ashby reported the Economic Development & Tourism Committee meet on April 14, and they discussed the wayfinding system; centers designation, housing and employment allocations; transportation needs and funding; and commercial redevelopment.

Councilmember Putaansuu reported the Utility Committee met on April 11, and they discussed the gap analysis on the storm water utility; Well 9 Update, Well 4B water right agreement; and the Well 10 loan agreement.

Councilmember Cartwright reported the Public Property Committee met on April 10, and they discussed the policy of demolition of dangerous buildings; committee agenda development; committee purpose statement; public participation plan for the comp plan; intersection of Rockwell and Bay; hanging basket partnership; Bethel Avenue pavement grind out project; Melcher Street mobile home; a public event application for a wedding ceremony; and public art in City Hall. The next meeting will be May 12 at 8:30 a.m. and it will be in the Council Chambers so that it can be video recorded and put on the website.

Councilmember Lucarelli reported that she attended the Library’s Anniversary event and read the Mayor’s proclamation.

Councilmember Ashby attended the PSRC Transpol meeting on April 10 where they recommended awarding Snohomish County $5 million from the supplemental fund account for immediate road projects and recommend to the PSRC Executive Board approval of Transportation 2040. She also attended the KRCC Transpol meeting where they discussed: the possibility of the supplemental funds from PSRC; 2015-17 budget cycle; and phase two of a county-wide multi-modal transportation plan. She attended the Peninsula Regional Transportation Policy Board last Friday, and Paul Parker from the Washington State Transportation Commission gave a presentation on the State’s planning process.

9. MAYOR’S REPORT

Mayor Matthes reported:
- He attended a meeting today for WSDOT, where they are looking at fixes for the SR3/SR304 interchange.
- CitiesJournal.com named the City of Port Orchard number 6 in their list of best 14 small cities in Washington.

10. REPORT OF DEPARTMENT DIRECTORS
Public Works Director Dorsey reported that he received another complaint regarding the sight distance at Rockwell & Bay Street. He would like to make that a right-turn only from Bay to Rockwell and this will be discussed at the May Work Study session.

Development Director Bond reported at the Public Properties Committee meeting they discussed the public participation plan for the comp plan update. It is straightforward and will come straight to the Council for consideration. There is an Open House on May 3 at City Hall for the comp plan update. The final presentation from the UW students is going to be June 5. He would like to advertise that as a joint Planning Commission/Council meeting and asked the Council to put that date on their calendars. The Melcher mobile home discussion will move to Work Study, instead of executive session tonight.

City Attorney Jacoby apologized for the misunderstanding that led up to the Ad-Hoc Committee not being properly noticed.

City Clerk Rinearson reported the upgrade for broadband speed will only cost $60 a month and AWC’s insurer was here, met with City staff, and will provide a report that she will share with the Council.

11. CITIZENS COMMENTS

Ms. Gerry Harmon asked if it was required to provide their address when they speak during the citizen comment portion of the Council meeting.

12. EXECUTIVE SESSION

At 9:20 p.m., Mayor Matthes recessed the meeting for a 20-minute executive session regarding the acquisition of real estate in accordance with RCW 42.30.110(1)(b). City Attorney Jacoby and Development Director Bond were invited to attend and the Mayor announced that no action would be taken because of the executive session.

At 9:40 p.m., Mayor reconvened Council back into regular session.

13. ADJOURNMENT

At 9:40 p.m. Mayor Matthes adjourned the meeting.

Brandy Rinearson, CMC, City Clerk

Timothy C. Matthes, Mayor