

August 11, 2009

Mayor Joe Beavers  
City of Gold Bar  
107 5th Street.  
Gold Bar, WA 98251

Re: Request for Proposals - City Attorney Services

Dear Mayor Beavers:

The law firm of Ogden Murphy Wallace P.L.L.C. is pleased to submit the enclosed Proposal for Attorney services. After reviewing the City of Gold Bar's Request for Proposal, we are confident that our firm possesses the skill, capacity and expertise necessary to meet the City's legal needs.

Ogden Murphy Wallace is a well-established and highly regarded law firm that has served clients throughout the Pacific Northwest for over 100 years. Our firm's longevity has enhanced our regional reputation for stability, and underscores the success we have enjoyed in attracting and retaining clients over the past century. Many of OMW's institutional clients have remained with the firm for many decades.

OMW currently employs 43 attorneys in its Seattle and Wenatchee offices. The firm is divided into three main practice areas, focusing upon business, litigation and municipal law issues. Although our proposed representation of Gold Bar would primarily involve OMW's municipal department, the diversity of our firm's practice enables us to draw upon the specific expertise of our business and litigation attorneys where necessary to best serve the City's needs.

The municipal attorneys at Ogden Murphy Wallace enjoy a statewide reputation for providing the highest quality legal services to Washington cities, towns, counties and special-purpose districts. As a result of our expertise in this field, our firm currently serves as general counsel to more cities than any other Washington law firm. Included in our institutional client base are the cities of Edmonds, Redmond, Issaquah, Poulsbo, Mukilteo, Woodinville, Edgewood, Woodway, Milton, Normandy Park, Monroe, Carnation, Index, Clyde Hill, Pomeroy, Bridgeport, Rock Island, Brewster and Deer Park. The numerous services we provide to our municipal clients include consultation and litigation regarding public contracting, real property acquisition, zoning, growth management, environmental law, complex agreements, sale and leasing, personnel matters, land use issues, condemnation, telecommunications, public records disclosure, municipal ethics, parliamentary procedures and compliance with the Open Public Meetings Act.

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As the enclosed Proposal demonstrates in greater detail, Ogden Murphy Wallace P.L.L.C. is able to provide the City of Gold Bar with exceptional, cost-effective representation encompassing the full spectrum of municipal law issues. We look forward to hearing from you as the first step in what will hopefully be a long and successful relationship with the City.

Sincerely,

OGDEN MURPHY WALLACE, P.L.L.C.

A handwritten signature in black ink, appearing to read "Wayne D. Tanaka". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Wayne D. Tanaka

WDT:  
Enclosures

**PROPOSAL FOR LEGAL SERVICES  
CITY OF GOLD BAR**

**Submitted by**

**Ogden Murphy Wallace P.L.L.C.  
1601 Fifth Avenue, Suite 2100  
Seattle, WA 98101-1686  
(206) 447-7000**

**OGDEN MURPHY WALLACE P.L.L.C.**

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**Firm Experience**

Ogden Murphy Wallace P.L.L.C. was founded in 1902 when Raymond D. Ogden, Sr. opened a small general law practice. Since then, the firm has grown to over forty lawyers with offices in both Seattle and Wenatchee. Today Ogden Murphy Wallace is a leading multi-specialty law firm committed to providing practical, cost-effective legal services to businesses, municipal corporations and individuals. All of our attorneys are fully accredited and licensed to practice law in the State of Washington. We pride ourselves in addressing each client's needs with the most appropriate specialization available in our firm, employing a team approach to draw on the specialized knowledge of our attorneys across a broad spectrum of legal expertise. OMW has represented Washington cities, towns, counties and special purpose districts for over forty years, and currently serves more Washington cities as general counsel than any other law firm in the state. Our commercial clients include hospitals and healthcare providers, banks, agribusiness concerns, construction contractors, architects, insurance companies, manufacturers, information technology businesses and restaurants. We assist our clients with a wide range of matters, including business mergers and acquisitions, tax counseling, local and international commercial transactions, labor and employment, real estate and land use, litigation and much more.

**Our Municipal Practice Group**

The firm began its municipal practice in 1962, when Jim Murphy was hired to represent the City of Edmonds as its City Attorney. Today, eight of the attorneys in our Seattle office and three of the attorneys in our Wenatchee office emphasize municipal law in their daily practice. In addition, many of the other attorneys in both offices represent our municipal clients in specialized matters such as litigation, bankruptcy, real estate transactions, labor relations and personnel issues. Our current municipal practice involves representing 19 cities as general counsel and a number of others on specific matters. The cities we serve as general counsel include Edmonds, Redmond, Issaquah, Poulsbo, Mukilteo, Woodinville, Edgewood, Woodway, Milton, Monroe, Carnation, Index, Clyde Hill, Normandy Park, Pomeroy, Bridgeport, Rock Island, Brewster and Deer Park. Our municipal practice is as diverse as this list of clients suggests. We provide everything from land use and development consultation to personnel advice and assistance with public works contracting. We also offer training for staff members and elected officials, formal legal opinions, and coordination with special counsel as appropriate. One of the primary benefits of retaining our firm is our ability to employ an integrated approach

to client representation, and to recognize when a particular legal issue requires the attention of more than one department of the client municipality.

In addition to other legal specialties, our firm's municipal practice group offers expertise in each of the follows areas:

- *Public Records.* Public records management and litigation is an integral part of our representation of public agencies. The Public Records Act, chapter 42.56 RCW, begins with a strong statement of its public purpose. When advising clients on the Act, we recognize the principle that "the people insist on remaining informed so that they may maintain control over the instruments they have created." Yet, we also understand that some parties may utilize the provisions of the Act to harass public agencies and intimidate public employees. The Act also contains many gray areas and clear liability for failure to comply. Public records representation therefore requires a commitment to the openness guaranteed by the Act in conjunction with risk management principles so that taxpayers are protected from unnecessary costs and awards. Anticipating issues and providing timely response is essential under the Public Records Act due to the Act's provisions for daily penalties and attorneys' fees.

We work with our clients daily, assisting them on many levels when handling public records, including:

- Timelines for response.
- Requests for clarification.
- Navigating the many exemptions from disclosure found within the Act and those found in other laws.
- Treatment of electronic records.
- Tracking evolving case law and legislative amendments.
- Training agency staff.

We also represent our clients in the event of litigation. This includes responses to actions for injunctive relief under RCW 42.56.550 and proactive requests for the court protection of public records under RCW 42.56.540. A few recent cases include:

- Successfully defended all claims against city including claims that city denied access to responsive records, that city failed to provide adequate explanations for records withheld in whole or in part, that city improperly withheld entire records. *Sammamish Plateau Water and Sewer District v. City of Issaquah*, King County Superior Court Cause No. 08-03156-0 SEA.
- Successfully defended all claims against city including claims that city improperly withheld personal e-mail addresses of elected officials, that city denied records by providing in paper format rather than electronic format, that attorney-client privileged records could not be withheld in their entirety. *Mechling v. City of Monroe*, Snohomish County Superior Court Cause No. 06-2-09900-0 (Court of Appeals Division I, pending oral argument).

- Successfully defended claim that city improperly denied requests for records to be created in the future. *Paulman v. City of Medina*, King County Superior Court Cause No. 05-2-07058-7 SEA.

A related but often overlooked issue relates to the use of subpoenas in an attempt to circumvent the protections provided by the Act. We assist our clients in objecting to and quashing subpoenas where our clients are third parties to litigation and requests are made of them for public records. When possible, we endeavor to work cooperatively with unions and employee groups to ensure that employees have adequate notice of requests for personnel records.

- *Land Use and Development.* Land use issues are often paramount in local government. Each of our municipal attorneys is well versed in all aspects of Washington law related to zoning, planning and project permitting, with detailed knowledge of the Growth Management Act, the Planning Enabling Act, the Land Use Petition Act, the Shoreline Management Act, the Regulatory Reform statute, the Appearance of Fairness Doctrine, and all other laws governing land use and development in local communities. Our attorneys have successfully represented municipalities in land use litigation at every level of the Washington State court system, including the Supreme Court. We have also successfully defended local land use decisions and zoning actions before a variety of administrative tribunals, including the Growth Management Hearings Board and the Shoreline Hearings Board. A number of our attorneys routinely serve as Hearing Examiners in local land use matters, a role that enhances the depth and breadth of the municipal practice group's land use expertise. We have the specialized knowledge to advise our municipal clients at every stage of the planning and zoning process, and the proven skill to defend municipal zoning and permitting decisions against legal challenges.
- *Ordinances and Resolutions.* A critical function of municipal government is the development and implementation of local legislation. Each of our municipal attorneys reviews and/or drafts ordinances and resolutions for the firm's municipal clients as part of our daily practice. We are keenly aware of the legal form requirements for these documents, and our substantive understanding of municipal law enables us to assist our clients in crafting clear, concise, well-organized ordinances and resolutions that will advance the legislative intent of the city or town council. Our approach to preparing local legislation is to constantly verify that a particular document is defensible in both format and substance, and we provide our clients with helpful drafting suggestions as appropriate to this end.
- *Contracts and Interlocal Agreements.* Many firms view municipal contract review as a *pro forma*, rubberstamp exercise. The municipal attorneys at OMW, however, recognize that every contract proposal embodies our client's legal relationship with a third party, and we vigilantly review all aspects of a proposed agreement to ensure that the client's legal interests will be adequately protected. We have significant expertise in all aspects of municipal contracting, and each of our attorneys is familiar with the legal requirements and procedural pitfalls of the processes and substantive standards governing competitive bidding, contracting with professional service providers and procuring necessary equipment and materials. We also routinely prepare interlocal agreements spanning a

broad range of issues, including law enforcement matters, shared municipal services, environmental protection, and joint financing programs.

- *Council Meetings.* Attendance at city and town council meetings is a significant aspect of municipal law practice. Each of our municipal attorneys is familiar with the legal requirements imposed by the Open Public Meetings Act, relevant parliamentary procedures, and the mayor/council division of responsibility under state law. Likewise, our land use expertise is invaluable in assisting clients with quasi-judicial public hearings. We pride ourselves on our ability to contribute to orderly, successful public meetings.
- *Police/Fire/Public Safety.* Several of the cities within our firm's municipal client base operate their own police and fire departments; other cities contract with other municipalities, including special purpose districts, for these services. Our attorneys are keenly aware of the unique legal challenges inherent in providing—or contracting for—law enforcement and fire protection, and we are able to knowledgeably advise our clients regarding safety concerns, risk management issues, personnel matters and other issues as necessary in a given case.
- *Employment and Labor.* Several of the attorneys at Ogden Murphy Wallace emphasize labor and/or employment issues in their daily practice. These attorneys conduct workplace investigations, represent clients in arbitration and mediation proceedings, draft employee handbooks and personnel policies, and advise clients regarding a broad range of employment and labor issues, including but not limited to employee discipline, ethics, wage and hour issues and HIPAA compliance.
- *Litigation.* For over 40 years, our firm's lawyers have successfully represented municipal clients before a host of courts and administrative tribunals. The range of legal issues implicated in these proceedings is enormous, and includes personnel matters, public records disclosure, code enforcement, public nuisance abatement, land use permitting and zoning, SEPA determinations, eminent domain, homeless encampments, gambling ordinances, annexation, *quo warranto* actions, takings and substantive due process challenges, among others.

Ogden Murphy Wallace emphasizes a team approach in representing our municipal clients. We provide a slate of experienced attorneys who can each become familiar contacts for Council Members, the Mayor, senior administrators and other City staff members. Our practice is to assign a lead attorney for each municipal client, with our other municipal practitioners in backup roles such that the temporary absence of the primary attorney still leaves familiar and experienced representation available for the client.

The depth and breadth of our municipal experience enables us to utilize this team approach. Having eleven attorneys in the firm whose primary practice involves representing municipalities ensures our flexibility in meeting the immediate needs of our municipal clients. It also allows us to provide a substantial degree of continuity in the representation of each city, and has instilled within our clients the confidence that no task is beyond our firm's ability to handle. We provide whatever personnel are necessary to perform the services required for any given project.

Our extensive municipal representation also benefits our clients in that we do not have to “reinvent the wheel” every time a particular issue arises. Municipalities often face similar challenges, and we have been able to significantly reduce our clients’ legal costs by applying our previous and current experience with other cities. Where appropriate, when working on projects of common interest we spread the legal expense of that work throughout our client base so that no single municipality is forced to absorb the entire cost. This is not to say that we employ a one-size-fits-all approach. We recognize that each municipality has unique issues and circumstances, and we have always used an individualized approach for each client. This requires the firm’s attorneys to not only call upon their experiences with other municipalities, but also to perform quick and efficient research and to engage in innovative thinking. We pride ourselves in consistently achieving our clients’ objectives and we are not deterred by the complexity or difficulty of any task.

Through the combined experiences of our municipal attorneys, Ogden Murphy Wallace has encountered virtually every conceivable type of municipal issue. We have represented our clients in all levels of state and federal courts, including the Ninth Circuit Court of Appeals and the United States Supreme Court. We have litigated dozens of administrative appeals before administrative tribunals, including the Growth Management Hearings Board, the Shoreline Hearings Board and the Washington Utilities and Transportation Commission. Our attorneys have successfully secured over one hundred properties in condemnation actions. We constantly monitor developments in the courts and state legislature, and we provide timely and proactive advice to our clients on current legal issues. Our office regularly sends the firm’s municipal clients timely notification of important judicial opinions as well as a yearly summary of pertinent legislative enactments.

### **Proposed Attorney Team**

Our proposed City Attorney team for Gold Bar would feature Wayne Tanaka as the primary attorney, with Phil Olbrechts as primary backup. A short biography of each is attached.

### **Accessibility, Staffing and Responsiveness**

Our firm’s responsiveness to the needs of our clients is a point of professional pride for our attorneys. The large number of lawyers practicing municipal law at Ogden Murphy Wallace enables us to meet any level of availability the City of Gold Bar may require. Although our firm’s primary office is located in Seattle, it has been our experience that—other than attendance at Council and staff meetings—the vast majority of our municipal work can be cost-effectively conducted via telephone and email. We nevertheless also recognize the importance of occasional face-to-face meetings with staff. If selected as the Gold Bar City Attorney, we would reserve the first and third Tuesdays of each month for City Council meetings and would also remain available for special meetings on an as-needed basis. We are always accessible by telephone (each of our attorneys carries a cellular phone) and we commonly utilize email to both answer client inquiries and to review and/or provide legal documents. In the event that the designated lead attorney is temporarily unavailable to receive an urgent telephone call or email, our staff is trained to quickly connect the client with another available municipal attorney to ensure that the client receives timely assistance. Our clients’ needs are paramount and we make ourselves available accordingly.

Each attorney, paralegal and legal assistant employed by Ogden Murphy Wallace is provided with a personal computer, and is proficient in online legal research, court docket access and monitoring, and internet communication. OMW utilizes Microsoft Office for its internal network, and the firm's information technology staff are adept at identifying and eliminating technological problems before they negatively impact client service.

Our response time in providing requested advice and assistance to clients depends largely upon the nature and complexity of the particular issue involved. It is our standard practice to provide an initial response within 24 hours of receiving a client request. For routine and relatively simple issues, the initial response typically includes a substantive answer to the client's inquiry. For more complex or long-term matters requiring consultation with third parties or research (e.g., ordinance drafting, contract negotiation, preparation of formal legal opinions, etc.), the initial response is sometimes formatted as an acknowledgement of the client's request and an estimated timeframe for completing the necessary work. We are sensitive to our clients' needs for timely assistance and we can generally meet any reasonable deadline.

### **Proposed Fee Structure**

Our rates and charges are extremely competitive with other reputable Seattle-area law firms that practice in the fields of municipal and land use law. Indeed, our experience allows us to provide more efficient and cost-effective services than many other firms. We are open to negotiating different forms of payment such as retainers and flat fees for certain specified items. However, the usual fee structure is straight hourly rates. For the 2009 calendar year, our proposed rate structure for the City of Gold Bar is as follows:

Members	\$215.00/hr.
Associates	\$170.00/hr.
Law Clerks	\$120.00/hr.
Paralegals	\$105.00/hr.

The fees above would apply to the following services:

- A. Attendance at all regular and special meetings of the City Council, Planning Board or other boards and commissions as requested by the City.
- B. Routine consultation with City staff or officials as requested by the City, preparation and legal research required in connection with such duties, and the drafting of ordinances, resolutions and legal memoranda.
- C. Review, consultation, revision and approval of public works contracts, professional services agreements, and interlocal agreements.
- D. All transit time, including transportation to and from required meetings, etc., incurred in furtherance of the above tasks.
- E. All services rendered in connection with any potential or actual litigation, arbitration, mediation, administrative hearings and/or enforcement proceedings wherein the City, one of its boards, or one of its officials is or likely will be a party.

The firm would work with the Mayor to develop and implement a billing and invoicing framework that meets the City's recordkeeping and budgetary needs. At the City's preference, individual billing numbers can be established for each City department as well as for any specialty matter (i.e., litigation, contract negotiations, etc.) that arises. Legal services would be billed on a monthly basis, and each invoice would include a billing narrative for every time entry. Document reproduction charges, CALR charges, delivery fees, filing charges and other external expenses would be billed to the City at cost with no mark up. Transit time would be billed at the applicable hourly rate above. The City would not be separately invoiced for mileage reimbursement, long-distance telephone calls or facsimile transmissions.

### References

**For Mr. Tanaka:**

Leon Kos, City Administrator  
Issaquah, Washington  
130 E. Sunset Way  
Issaquah WA 98027  
425-837-3033

Mayor Carla Nichols  
Town of Woodway  
23920 113th Place West  
Woodway WA 98020  
206-542-4443


**For Mr. Olbrechts:**

Mayor Katrina Asay  
City of City of Milton  
1000 Laurel Street  
Milton, WA 98354  
253-922-8733

Tim Quenzer, City Administrator  
City of Monroe  
806 W. Main Street  
Monroe WA 98272  
360-794-7400

### Conclusion

Ogden Murphy Wallace P.L.L.C. is extremely interested in serving as the City Attorney for the City of Gold Bar. Our firm would also welcome the opportunity to provide specialty legal services for the City on an as-needed basis. We believe that our professional experience and the depth and breadth of our expertise make us the logical choice to meet the City's needs. We hope you will agree after reviewing our Proposal, and we look forward to working with you.

  
Wayne D. Tanaka

## WAYNE D. TANAKA

Wayne Tanaka is a member and past chair of the firm's Municipal practice area. As a lead attorney, Mr. Tanaka is responsible for the full range of projects associated with our municipal clients, which include land use decisions, growth management, municipal financing, personnel matters, public records and open public records. He also represents municipal clients on a variety of other matters, such as shoreline management, local improvement districts, civil service and tort litigation. From 2000 to 2005, Mr. Tanaka served as the firm's Managing Member.

Mr. Tanaka has been President and was on the Board of the Washington State Association of Municipal Attorneys, the statewide organization of municipal attorneys. Mr. Tanaka also was elected to three terms on the Bellevue School District Board of Directors.

Mr. Tanaka was born in 1950 in Lufkin, Texas. He graduated *cum laude* from Harvard University in 1972 and received his law degree in 1975 from the University of Washington. He began his career at Ogden Murphy Wallace in August 1975.

## PHIL A. OLBRECHTS

Phil Olbrechts, a Member in the firm's Municipal practice area, focuses his practice in land use law. Mr. Olbrechts serves as the City Attorney for Monroe, Milton, Buckley, and Index, and provides specialized land use services for other municipalities such as Kent and Federal Way and various private applicants, including citizen groups, homeowner associations, and development companies. Mr. Olbrechts has represented his clients in front of all land use decision making forums, including Growth Management Hearings Boards, the Shoreline Hearings Board, every type of local government decision-making body, superior courts all over Western Washington, and Divisions I and II of the Washington Court of Appeals. He also serves as the Hearing Examiner for Mason County and the Cities of Auburn, Federal Way, Port Townsend, Mountlake Terrace, Fife, and Black Diamond.

Mr. Olbrechts has taught a year-long three-credit graduate land use course at the University of Washington and makes about twenty presentations per year to jurisdictions throughout the state on land use issues for the Washington State Office of Community Development ("CTED"). He has written the latest edition of the CTED "Short Course On Local Planning," a 250-page overview on land use law, and has written several articles for the MRSC *Planning Advisor*. Mr. Olbrechts also served as legal counsel to CTED in its 2004 report on annexation reform. He teaches several continuing legal education courses on land use law each year.

Mr. Olbrechts is a 1989 honors graduate of Seattle University School of Law.